



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

CRIMINAL APPEAL NO.107 OF 2021

Sahebrao Pralhad Ingole
Age 55 years, Occu. Agri.,
R/o Pimpalgaon (Dola),
Tq. Kalamb, Dist. Osmanabad ... **APPELLANT**

VERSUS

- 1) The State of Maharashtra,
through Police Station Officer,
Kalamb Police Station,
Tq. Kalamb, Dist. Osmanabad
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
- 2) Sarika Goroba Ingole,
Age 38 years, Occ. Labour
R/o Pimpalgaon (Dola),
Tq. Kallam, Dist. Osmanabad ... **RESPONDENTS**

.....
Mr. S.J. Salunke, Advocate for appellant
Mr. S.J. Salgare, A.P.P. for respondent No.1 – State
Mr. S.B. Bhapkar, Advocate holding for
Mr. S.S. Bhise, for respondent No.2.

.....

WITH

CRIMINAL APPEAL NO.130 OF 2021

Rahul @ Lakhan Shrirang Chudavakar
Age 30 years, Occu. Driver,
R/o Lane No.6, Janta Vasahat
Parbati, Pune ... **APPELLANT**

VERSUS

- 1) The State of Maharashtra,
through Police Station Officer,
Kalamb Police Station,
Tq. Kalamb, Dist. Osmanabad
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
- 2) Sarika Goroba Ingole,
Age 38 years, Occ. Labour
R/o Pimpalgaon (Dola),
Tq. Kallam, Dist. Osmanabad

... **RESPONDENTS**

.....
Mr. S.J. Salunke, Advocate for appellant
Mr. S.J. Salgare, A.P.P. for respondent No.1 – State
Mr. S.B. Bhapkar, Advocate holding for
Mr. S.S. Bhise, for respondent No.2.

.....

WITH

CRIMINAL APPEAL NO.131 OF 2021

Suvarna Deepak Bhadale
Age 45 years, Occu. Household,
R/o Lane No.46, Janta Vasahat,
Parbhathi, Pune

... **APPELLANT**

VERSUS

- 1) The State of Maharashtra,
through Police Station Officer,
Kalamb Police Station,
Tq. Kalamb, Dist. Osmanabad
(Copy to be served on
Public Prosecutor, High Court of

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Judicature of Bombay,
Bench at Aurangabad)

- 2) Sarika Goroba Ingole,
Age 38 years, Occ. Labour
R/o Pimpalgaon (Dola),
Tq. Kallam, Dist. Osmanabad ... **RESPONDENTS**

.....

Mr. S.G. Bobade, Advocate for appellant
Mr. S.J. Salgare, A.P.P. for respondent No.1 – State
Mr. S.B. Bhapkar, Advocate holding for
Mr. S.S. Bhise, for respondent No.2.

.....

WITH

CRIMINAL APPEAL NO.180 OF 2021

1. Uttam Bhivaji Ingole,
Age 50 uyears, Occ. Selling Vegetables
& Agri., R/o Pimpalgaon (Dola),
Tq. Kallam, At present, Plot No.5,
Manik Bag National Park,
Sinhagad Road, Pune
2. Sow. Urmila Uttam Ingole,
Age 45 years, Occ. Selling Vegetables
& Agri., R/o Pimpalgaon (Dola),
Tq. Kallam, At present, Plot No.5,
Manik Bag National Park,
Sinhagad Road, Pune ... **APPELLANTS**

VERSUS

The State of Maharashtra
through Police Station,
Kallamb, Tal. Kallamb,
District Osmanabad,
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... **RESPONDENT**

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.....
Mr. Joydeep Chatterji, Advocate for appellants
Mr. S.J. Salgare, A.P.P. for respondent – State
.....

WITH

CRIMINAL APPEAL NO.307 OF 2021

Draupadi @ Laxmi Babu Poul
Age Major, Occu. Agri.,
R/o Pimpalgaon (Dola),
Tq. Kallamb, Dist. Osmanabad ... **APPELLANT**

VERSUS

The State of Maharashtra,
through Incharge Police Station Officer,
Kallamb Police Station,
Tq. Kalamb, Dist. Osmanabad
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad) ... **RESPONDENT**

.....
Mr. V.D. Sapkal, Senior Counsel with Mr. P.S. Dikle
Mr. S.R. Sapkal, & Mr. Ajit Chormal, Advocates for appellant
Mr. S.J. Salgare, A.P.P. for respondent – State
.....

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

Date of reserving judgment : 24th October, 2024

Date of pronouncing judgment : 12th November, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

This group of five appeals is taken up together for
decision since the challenge therein is to the judgment and

order dated 23 October 2020, passed by Additional Sessions Judge, Osmanabad (Trial Court) in Sessions Case, No.31/2017. The appellants in all these appeals were the accused in the said Sessions Case. The material part of the operative order of conviction and consequential sentence impugned in all these appeals, reads thus :

- (1) Uttam Bhivaji Ingole (A1), Sow. Urmila Uttam Ingole (A2), Rahul @ Lakhan Shrirang Chudavakar (A3), Dropadi @ Laxmi Babu Poul (A4), Sahebrao Pralhad Ingole (A5) and Sow. Suvarna Dipak Bhadale (A6) are convicted under Sec.235(2) of the Code of Criminal Procedure, 1973 for having committed offences punishable under Ss. 302, 363, 364, 120-B all r.w. Sec.34 of the Indian Penal Code, 1860 and Sec.3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.
- (2) Accused No.1 to 6 are sentenced to undergo imprisonment for life and everyone of them shall pay fine Rs.3000/- (Rupees three thousand only), in default thereof they shall undergo Simple Imprisonment for further Three (3) months, for having committed an offence punishable under Sec. 302 r.w S.34 I.P. Code.

- (3) Accused No.1 to 6 are sentenced to undergo rigorous imprisonment for seven (7) years and everyone of them shall pay fine Rs.2000/- (Rupees two thousand only), in default thereof they shall undergo Simple Imprisonment for further Two (2) months, for having committed an offence punishable under Sec.363 r.w. Sec.34 I.P. Code.
- (4) Accused No.1 to 6 are sentenced to undergo imprisonment for life and everyone of them shall pay fine Rs.3000/- (Rupees three thousand only), in default thereof they shall undergo Simple Imprisonment for further Three (3) months, for having committed an offence punishable under Sec.364 r.w. Sec.34 I.P. Code.
- (5) Accused No.1 to 6 are sentenced to undergo Rigorous Imprisonment for Seven (7) years and everyone of them shall pay fine Rs.2000/- (Rupees two thousand only), in default thereof they shall undergo Simple Imprisonment for further Two (2) months, for having committed an offence punishable under Sec. 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghjori practices and Black Magic Act, 2013.

(6) All the sentences in respect of Accused No.1 to 6 shall run concurrently.

2. For the sake of convenience, the appellants in all these appeals would be referred to as per their Serial Number in the Charge. They would, however, be described as the appellants.

3. The long and short of the prosecution case before the Trial Court was as follows :

Pimpalgaon (Dola) is the village in Kallam Taluka, District Osmanabad. Appellant Uttam Ingole is the husband of appellant Urmila. Appellant Dropadi @ Laxmi Poul is the sister of appellant Uttam Ingole. Appellant Sahebrao Ingole is Uttam's cousin. While appellants Rahul @ Lakhan and Sow. Suvarna Bhadale were Gondhalis by profession. They were no way related to the other appellants. They were permanent residents of Pune.

4. A crime vide C.R. No.25/2017 was registered for offence punishable under Section 363 of the Indian Penal

Code, based on the First Information Report (F.I.R.) lodged by Sarika (P.W.1).

5. According to Sarika (P.W.1), she would reside along with her husband, his parents and her two children at Pimpalgaon (Dola). Her husband Goroba was a sugarcane harvester by profession. During relevant days, he was away from the village for sugarcane harvesting. It was 26 January 2017, her son – Master Krishna (aged 6 years) went to school in the early morning for flag hoisting ceremony. Shri Korde Master was one of the neighbours of informant Sarika (P.W.1). They would reside on their respective fields. A religious function at Shri Korde Master's residence pertaining to serving/ providing meal to 11 married women (whose husbands are alive) was there. Sarika (P.W.1) along with her mother-in-law had, therefore, been to the house of Shri Korde Master for assisting them in cooking. Krishna returned from the school by little past 10.30 a.m. He went home and enquired with his grandfather where his mother was. Having learnt about the whereabouts of his mother, Krishna left the house, informing his grandfather that he was proceeding to join his mother.

6. Sarika (P.W.1) returned home by 3.00 p.m. from the house of Shri Korde Master. Krishna was not to be seen at or around. She was, therefore, worried for him. She made enquiry with one and all about his whereabouts. Many persons joined her in making search for Krishna, but in vain. Sarika (P.W.1), therefore, lodged the F.I.R. (Exh.35) on the same day evening, alleging therein that some unknown person kidnapped her son for unknown reason. The dead body of Krishna was found in the field of Govardhan Tekale. Krishna had suffered multiple injuries. Police authorities came to the spot. A crime scene panchanama (Exh.78) and inquest (Exh.147) were drawn. Mortal remains of Krishna were subjected to autopsy. Section 302 of the Indian Penal Code therefore came to be additionally invoked besides Section 364.

7. Certain cell phone numbers were under surveillance during investigation. A supplementary statement of Sarika (P.W.1) was recorded. During investigation, it was revealed that, late Kadubai, paternal aunt of appellant Uttam had passed away 40 years ago. Similarly, wife of appellant

Sahebrao had committed suicide by jumping into a well about 35 years back. Appellant Dropadi had 4 daughters. Two of them were widows. While children of other two daughters did not survive. As such, the appellant Uttam, his wife, Sahebrao and Dropadi thought that the departed souls were not resting in peace and the families of these appellants were suffering thereby. It was also the case of the prosecution that there used to be a Pooja at Uttam's house on every No moon night and Full moon night. Appellants Rahul and Suvarna would attend those Poojas.

8. In short, the case of the prosecution before the Trial Court was that, on the advice of both appellants Rahul and Suvarna, the other appellants committed murder of Krishna as a human sacrifice. Much was said to have been discovered during investigation. A reference thereto would be made while appreciating the evidence in the case. The provisions of Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 were also invoked.

9. All the appellants were arrested. Appellants Dropadi and Sahebrao made disclosure statements. Very many incriminating articles came to be recovered pursuant to their disclosure statements. During house search panchanama of Suvarna, material was found indicating them to have been professing witchcraft and indulging in Aghori practices. It was also revealed that an order was placed for preparing a stone image of a woman (Kadubai) for being installed in the field. The order was placed with one Pandurang Patil of village Kale, Taluka and District Satara. It was found that, Krishna was lastly seen in the company of appellants Dropadi and Sahebrao. Call Data Records and Subscribers Details Records (CDRs and SDRs) were obtained. The same indicate that all the accused were in contact with each other for about 15 days since before the incident to some days after the incident. Tower locations thereof would indicate that, on the fateful day, they were under one tower location i.e. nearby village Pimpalgaon (Dola). The statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, a charge sheet was filed.

10. The Trial Court framed the Charge (Exh.10). The appellants pleaded not guilty. Their defence was of false implication.

11. The prosecution, to bring home the charge, examined 30 witnesses and adduced in evidence number of documents. On appreciation of the entire evidence in the case, the Trial Court passed the impugned order of conviction and consequential sentence.

12. We have perused the impugned judgment to find the Trial Court did its best to appreciate and marshal the evidence to reach to its conclusion the appellants to have been guilty. We are, however, not at one with the Trial Court.

13. Heard. Learned Advocates representing the appellants would submit that, the case was based on circumstantial evidence. They adverted our attention to the judgment of the Apex Court in case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)**. According to them, the F.I.R. has been lodged against

unknown person. The informant Sarika's supplementary statement was recorded two and half months after the incident. Although an unfortunate incident took place, there was nothing to indicate the appellants to have an axe to grind against the informant. Kadubai and wife of Sahebrao had passed away about 40 and 35 years back respectively. There was thus no question of their souls haunting their family members. The appellants Uttam, his wife Urmila, appellants Dropadi and Sahebrao were as such distant relatives. Their lands were separate. They did not have a common cause to commit the crime. So far as regards other appellants are concerned, it was submitted that, they were professional Gondhalis. Post marriages, those two appellants along with other members of their troupe were engaged to sing religious/ God-praising songs. Whatever disclosure statements and recoveries made pursuant thereto, were long after the crime took place. All the recoveries were from the open places. Possibility of articles to have been planted could not be ruled out. The C.A. reports of all those articles do not support the prosecution case. The person who claimed to have seen the deceased lastly in the

company of two of the appellants was a chance witness. His statement was recorded 8 days after the incident. It was also submitted that, merely because the appellants were in contact with each other on cell phone, they could not be said to have hatched a conspiracy and committed murder pursuant thereto since the conversation was not intercepted and placed before the Court as an evidence. All the appellants were either related or acquainted with each other. There was, therefore, nothing unusual for them to be in contact. The SDRs of some of the cell phone numbers would indicate that, those were standing in the names of the family members of some of the appellants. There is nothing to indicate that those cell phones were in fact being used by the appellants. There is no evidence at all to indicate that the appellant Suvarna was seen at Pimpalgaon (Dola) on the given day. The informant admitted that she did not have grievance against appellant Sahebrao.

14. Instead of detaining ourselves to the submissions advanced by the learned Advocates, it would be better to appreciate the evidence on record.

15. The learned A.P.P. and the learned Advocate for the informant, on the other hand, took us through the evidence of each and every witness. According to them, the wife of Sahebrao had committed suicide by jumping into the well was a fact not in dispute. Similar was the case of Kadubai to have passed away 40 years before the incident. Appellant Dropadi's two daughters were widows while children born to other two daughters passed away. All of them felt it to be an evil luck, they thought that the souls of Kadubai and wife of Sahebrao were not resting in peace. There used to be Pooja at the house of appellant Uttam on every No moon night and full moon night. Appellants Rahul and Suvarna would attend the same. Both these appellants would advice them in other aspects. The same suggests that an image of a lady was directed to be prepared from a sculptor. It was even got prepared. Police could reach the sculptor. A receipt could be seized. During the search of house of appellant Suvarna, such material came to be recovered indicating them to have been witchcraft and indulging evil and Aghori practices besides black magic. The learned A.P.P. relied on the following authorities to

submit that minor contradictions and omissions do not affect the case of the prosecution and the same cannot be taken a ground to reject the prosecution case :

- (1) Mritunjoy Biswas Vs. Pranab alias Kuti Biswas & anr.
2013 AIR SCW 4961
- (2) State of Maharashtra Vs. Damu Gopinath Shinde & ors.
AIR 2000 SC 1691
- (3) C. Muniappan & ors. Vs. T.N.D.K. Rajendran & ors. etc.
etc. Vs. State of T.N. [AIR 2010 SC 3718]
- (4) State of Maharashtra Vs. Santosh Ramdas Kalwe
AIR Online 2022 BOM 6067

The learned A.P.P. would further submit that, non-mentioning of name of culprits in the F.I.R. is not a ground to throw away the prosecution case. It is only the investigation which starts on the basis of the F.I.R. and the role of each and every culprit is disclosed in the crime in question while collecting the evidence. So far as regards discovery pursuant to Section 27 of the Evidence Act is concerned, the learned Advocates relied on the case of State Vs. Damu Gopinath Shinde (supra). They would further submit that, test identification parade is not a substantive piece of evidence. It

is resorted to by the investigating officer to have lead in the investigation. Identification of the accused before the Court is a substantive piece of evidence. They would further submit that, evidence of a hostile witness cannot be totally discarded. The learned A.P.P. then took us through the judgment of the Trial Court and particularly evidence and appreciation regarding CDRs and SDRs. He then relied on the judgment of the Apex Court in case of State Vs. Santosh Ramdas Kalwe (supra). Both the learned Advocates ultimately urged for dismissal of the appeals.

16. Considered the submissions advanced. Perused the judgment impugned herein. Also perused the evidence on record. Let us appreciate the same. Before undertaking the said exercise, we must have a look at the law relating to the case based on circumstantial evidence. A very useful reference, therefore, could be made to the judgment of the Apex Court in the case of Sharad Sarda (supra), in which the Apex Court has observed thus :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before

a case against the accused can be said to be fully established.

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established,

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) The circumstances should be of a conclusive nature and tendency,

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

17. The prosecution, to bring home the charge, proposed to rely on the following circumstances, homicidal death, motive, last seen together, recovery pursuant to the disclosure statements, CDRs./ SDRs. etc.

18. Although 30 witnesses were examined, a few of them did not stand by the prosecution. Other few are the police officials, who participated in the investigation. The Trial Court appears to have mainly relied on the evidence of the

investigating officer and some other witnesses to find the offences to have been proved beyond reasonable doubt.

FACTS NOT IN DISPUTE :

19. Appellants Uttam and Urmila are the husband and wife. Appellant Dropadi is Uttam's sister. Appellant Sahebrao is cousin of Uttam. Kadubai, paternal aunt of Uttam passed away 40 years back. Cause of her death is not known. Sahebrao's wife committed suicide by jumping into a well about 35 years back. Sahebrao was prosecuted for abetting her suicide. The appellant Dropadi has 4 daughters. Husbands of 2 of the 4 daughters passed away. While other 2 daughters are issueless. The informant Sarika would reside along with her husband Goroba, his parents and her two minor sons together. Her husband Goroba was a sugarcane harvester by profession. During the relevant days, he was away from the village for sugarcane harvesting. Master Krishna (deceased) was little over 6 years of age. He was a student of Cambridge School. He would shuttle between the school and his house in a school bus. It is not in dispute

before us that, P.W.6 Santosh Pawar was the school bus driver. His evidence indicates that, on the fateful day i.e. on 26 January, he had taken Krishna to the school and dropped off by little past 10.30 a.m. We have no reason to disbelieve his evidence. There is also nothing to indicate that there was no religious function at the house of Shri Korde Master, who was residing on his field. His field was nearby the field of the informant Sarika and appellants Uttam and Sahebrao as well. There is no serious dispute about the fact that the informant Sarika along with her mother-in-law had been to the house of Korde Master to assist them in cooking on the given day. There is also no evidence either to indicate any enmity or the reason for the appellants to grind an axe against the informant Sarika. Since the F.I.R. cannot be said to be an Encyclopaedia and by the time it was lodged, nothing was in the know of the informant, it was therefore but natural for her to lodge the F.I.R. against an unknown person alleging that her son Krishna was kidnapped for unknown reason. The disturbing fact as regards other evidence of P.W.1 Sarika, is in the nature of improvements over her F.I.R., suggest that her statement in

relation thereto was recorded two and half months after the incident. The said fact leads us to find the evidence against appellants uninspiring.

20. Sarika (P.W.1) testified that the appellant Uttam, his wife Urmila, appellants Dropadi and Sahebrao did not turn for taking search of her son Krishna on the given day no other witness has deposed in this regard to reinforce her case. The F.I.R. lodged by her is silent in this regard. It is reiterated that, relations between the two i.e. informant on one hand and these appellants on the other, were not unfriendly. It is in her evidence that the other two appellants namely Rahul and Suvarna would visit the house of both Uttam and Sahebrao on No moon and Full moon nights to sooth discontented souls of deceased Kadubai and deceased wife of Sahebrao. Admittedly, appellant Dropadibai is real sister-in-law of the informant. According to Sarika, grandchild of Dropadi died before a month of the incident. On the previous day i.e. 25 January, both Uttam and Urmila, residing in Pune, had come to the village. On the same day, a Pooja was held at the house of Sahebrao. It was No moon night. According to her, she did

not know who killed her son Krishna. In the second breath, it is her case that it were the appellants who committed the murder of Krishna. Sarika reached home by 3.00 p.m. from the house of Korde Master to find her son Krishna to have not been around. On enquiry, she learnt from her father-in-law that Krishna returned from school, immediately and left informing to have been going to join her (Sarika). The same suggests that, Sarika had not seen her son Krishna since he left for the school early in the morning and even after his return from school. So she lodged the F.I.R. (Exh.35) after taking much search for Krishna.

21. On the following day, a dead body of Krishna was found in the field of P.W.9 Govardhan. Krishna had suffered multiple injuries. The inquest panchanama (Exh.147) reinforces the same besides the autopsy report and the crime scene panchanama as well.

22. It was P.W.4 Dr. Sudhir who conducted autopsy on the mortal remains of Krishna. The post mortem report finds place at Exh.89. Dr. Sudhir noticed following external and

internal injuries on the person of Krishna.

- (1) Forehead- central portion depressed of size 7 cm. x 8 cm. x 1 cm.
- (2) CLW 3 cm. x 2 x 2 cm. over right side of forehead.
- (3) Punctured wound of 0.5 cm. x 0.5 cm. x 2 cm. piercing the bone and underneath soft tissue over right side of forehead.
- (4) Punctured wound of 0.5 cm. x 0.5 cm. x 1 cm. just lateral to outer contours of right eye piercing the underneath bone.
- (5) Punctured wound of 0.5 cm. x 0.5 cm. x 1 cm. deep right side of nose in maxillary region.
- (6) Upper central incisor teeth is broken.
- (7) Lower lateral incisor teeth missing.
- (8) CLW 5 cm. x 3 cm. x 2 cm. over dorsum of left hand tendon exposing.
- (9) CLW 1 cm. x 1 cm. x 1 cm. over dorsum of left hand tendon exposing.
- (10) Crushed injury to left index finger terminal portion.
- (11) 2 abrasions over left knee of 0.5 cm. length each one.
- (12) abrasion over right ankle of 2 cm. length.

23. According to Dr. Sudhir, post post-mortem report was submitted to the police, the investigating officer had made

some correspondence with him, soliciting his opinion regarding certain queries. On two occasions, two weapons were produced before him in sealed condition. One of them in the nature of a long and thick needle (Dabhan). Other one was a Rumne. According to him, the injuries could have been possible by those weapons. He gave his report in that regard vide Exhs.93 and 95. In his view, the injuries on the head of Krishna could be possible by hit of a Rumne (agricultural instrument which is used to tie two bullocks together at each of the ends of Rumne while using them for ploughing). We, therefore, do not reiterate in detail the evidence of P.W.2 Madhav, witness to the spot panchanama (Exh.48) and inquest (Exh.14). He is also panch witness to the seizure of clothes of the deceased.

24. The evidence of most of the prosecution witnesses is not of much assistance. A cursory reference would, therefore, be made thereto. P.W.5 Ashok was a cousin of the deceased. He participated in taking search for Krishna. He did not stand by the prosecution. Evidence of P.W.8 is also on the same lines. The evidence indicates that, D.P. (Distribution

Point) of electricity had burst a month before the incident and therefore, there was no electricity. P.W.9 Govardhan is a witness in whose field the dead body of Krishna was found. According to him, the Rumne, aluminum pot, a lid thereof and chopper, found in the hut.

During his cross-examination, he admitted that the police officials had detained him for some time and even threatened to make him an accused in the case since the dead body was found in his field. P.W.21 is a photographer. P.W.22 Mukund Giri is Police Constable who carried muddemal articles to FSL, Aurangabad. Most of the witnesses were on the point of taking search for Krishna. Same is the case of P.W.25 Mahesh, nephew of the informant.

25. As such, the fact that Krishna met with homicidal death, has undoubtedly been proved. It has also not been in dispute before us.

LAST SEEN :

26. On this aspect, we have evidence of P.W.7 Anil. His native village is Jaggi, 50 Kms. away from Pimpalgaon.

According to him, his cousin sister resides at village Pimpalgaon. He had been to Pimpalgaon 2-3 months prior to the incident. On his sister's request, he stayed there for harvesting her Soyabean crop. He then went back to his village. He again returned to Pimpalgaon. According to him, one Sahebrao Somwanshi and he himself took the land of Korde Master for cultivation on crop share basis (Batai). According to him, there was Asara Programme (feeding 11 Sawashinis) at the house of Korde Master. He went to take meal at Korde Master's house by 12.00 noon. After taking meal, he came out of the house and saw appellant Sahebrao and Dropadi were along with a boy/ child. Both of them were talking with the child. It was a place of Sahebrao's Kotha (house). He then proceeded for his work. It is further in his evidence that, late in the night, he heard barking of a dog in the field of Sahebrao. He came out of the room. He could not see due to darkness. He went back to sleep.

During his cross-examination, he could not state the Survey or Gut number of the land he has taken for cultivation from Korde Master. Neither Shri Korde nor

Sahebrao Somwanshi has been examined. As such, he was a chance witness. According to him, no document was made regarding taking the land for cultivation. He was confronted with his police statement which was recorded 7 days after the incident. The statement is silent to record therein that he claimed to have seen Sahebrao and Dropadi talking along with one boy. It appears that, in his police statement, he only referred to appellant Dropadi to have been seen in the company of one unknown boy. Whatever is appearing in the police statement cannot partake substantive evidence. As such, whatever he has deposed before the Court as regards having seen both Sahebrao and Dropadi talking with a boy is an improvement over his police statement. According to him, on the following day, he seen the dead body and then realised the boy talking with appellant Dropadi was deceased Krishna.

27. From the cross-examination of this witness, we find his evidence in examination-in-chief to be uninspiring. Even for the sake of assumption we accept his evidence as it is, what can be said to have been proved by his evidence is that he had seen the appellants Dropadi and Sahebrao talking with

the deceased Krishna outside Sahebrao's residence. It was by 12.00 in the noon. True, thereafter Krishna has not been seen by anyone else. The post mortem examination took place little past 5.00 p.m. on 27 January. Rigour mortis was completely developed. As such, the time of death necessarily comes to 12 hours therebefore. True, such ghastly incident must not have been committed in a day time. The exact time of death of Krishna has not been proved. The fact remains the evidence as regards last seen by P.W.7 Anil Uphade inspires no confidence. Moreover, time gap between the last seen and time of death has not been conclusively proved.

MOTIVE :

28. The motive behind commission of the crime has already been stated above. It is reiterated that, informant Sarika's supplementary statement was recorded two and half months after the incident. Except Sarika, there is no witness to state that a Pooja/ worship took place at Sahebrao's house in the evening of the fateful day. True, the tower location of Sahebrao's cell phone indicate him to have come to the village, it was admittedly a No moon night. Sarika claimed to

have had seen appellant Rahul with Sahebrao. None of the prosecution witnesses claimed to have seen appellant Suvarna to have been at Pimpalgaon on the given day. The motive is said to be giving human sacrifice to solace the departed souls of Kadubai and wife of Sahebrao. In that regard, we have evidence of P.W.3 Sunil, a panch witness to the two disclosure statements made by Sahebrao and Dropadi (one each). His evidence indicates that, on 13/4/2017, he was present at Kallam Police Station by 11.15 a.m. Appellant Sahebrao made a statement that he would produce a rope used in commission of the offence. His statement was recorded vide Exh.81. Sahebrao then took the police officials and both the panchas to a pond in the field of one Popat Somase. It was a dry stream. He entered the stream and took out a white rope after excavating a soil. A white rope was seized under panchanama (Exh.82).

29. This witness was again summoned to the Police Station on 18/4/2017. According to him, appellant Dropadi made a disclosure statement claiming to have had brought Krishna from his house. **This evidence is inconsistent with**

the evidence of P.W.7 Anil Uphade, who claimed to have seen appellants Dropadi and Sahebrao talking with Krishna outside Sahebrao's residence and from then onwards Krishna was not seen. She then took them to a place nearby a well and stated that Krishna was given a bath at that place and his Pooja was solemnized. Then she stated that, she would take them to a spot where Krishna was killed and weapon of assault was buried. Then she took them to one ditch and stated that blood of deceased was sprinkled in the said ditch. Whatever was stated by her was recorded in its entirety. He read it and then signed the same as panch witness. The memorandum panchanama is at Exh.85. It is further in his evidence that Dropadi took them to village Pimpalgaon (Dola). She directed to stop the vehicle at one place. All of them got down the vehicle. She then led them to one tamarind tree and stated that Krishna was brought to this spot (open place). She then took them to one well. There were trees. There was one Neem tree. *Apta* tree was also there. Many trees were around. There was one stone. She stated that Krishna was made to sit on the said stone and

given a bath. Then she pointed out a stone idol and said that Krishna's Pooja was solemnized thereat. Some Pooja articles were lying there. Those were green bangles, Two Lakh Chudas, imitation Mangalsutra and cloth-doll besides an empty cover, five green bangles. There was a shendur, empty cover of incense sticks, green blouse piece and one iron Panati (lamp), two pieces of coconut lying at that spot. Two dry lemons were also lying at the spot. All these articles were taken charge of under panchanama. Dropadi then showed a white cotton rope. She told that Krishna's hands were tied therewith. It was also seized. The witness further went on to state that Dropadi told them that she would show a place whereat a weapon was dumped. The said spot was near a Guava tree. She excavated a spot and produced a weapon having green handle. It had a sharp point. It was like a *Dabhan*. It was also sealed. She then took them to a ditch, wherein Krishna's blood was sprinkled. She took them near the house of Uttam Ingole where a ditch was. Police seized some soil from the ditch, sealed it. A panchanama of seizure of all these articles finds place at Exh.86. Learned A.P.P.

heavily relied on this piece of evidence. The rope seizure panchanama is at Exh.82.

30. In cross-examination undertaken on behalf of appellant Sahebrao, the witness stated, he went to the Police Station. Police Inspector had told them what had to be done. He also told them the name of village they had to visit and what was to be taken out from the spot. They were also there in the Police Station for 10 to 15 minutes. It is further in his evidence that, all the places shown by both Sahebrao and Dropadi were open and accessible to one and all.

31. On the same lines is the evidence of Investigating Officer Sunil Newase (P.W.28) to whom these disclosure statements were made. We find these disclosure statements to be not relevant under Section 27 of the Evidence Act. The reasons are more than one. The entire statement is confessional in nature. About two and half months after the incident those articles were seized that too from an open place, except one *Dabhan* and knife.

32. The C.A. reports find place at Exhs.70 to 72. The

C.A. report Exh.72 indicates that, clothes on the person of the deceased and the Rumne were stained with blood. No blood was detected on article namely sickle, metal lead in polythene packet. This C.A. report pertain to forwarding letter dated 8/2/2017 i.e. long before the disclosure statement was/ were made by Dropadi and Sahebrao. The C.A. report Exh.70 indicates that no blood was detected on rope pieces and *Dabhan* as well, besides three parcels of earth.

33. We fail to understand as to how the Trial Court relied on the disclosure statement made by Dropadi and Sahebrao. No human tissues of body of deceased were traced on both the ropes.

34. We must have a reference to a landmark judgment of a Privy Council, under Section 27 of the Evidence Act. It is **Pulukuri Kottaya Vs. Emperor, reported in AIR 1947 Privy Council 67.** In paragraphs No.8, 9, 10 and 11 of the judgment, it has been observed thus :-

“8. The second question, which involves the construction of Section 27 of the Indian Evidence Act, will now be considered. That section and the two

preceding sections, with which it must be read, are in these terms:-

25. No confession made to a Police officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

9. The explanation to the section is not relevant.

27. Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police

custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a

knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

11. The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into S.27 something which is not there, and admitting in evidence a confession barred by S.26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.”

35. Moreover, the place like a ditch had already been noticed by the police authorities long before the disclosure statement was made. We are also unable to agree with the observations of the Trial Court that the disclosure statement under Section 27 made by an accused could be admissible against a co-accused in view of Section 30 of the Evidence Act.

36. The appellants No.1, 2, 4 and 5 were stated to have intended to erect platform with a small temple of a lady –

Kadubai thereon. A ditch was, therefore, dug. There are photographs on record and there is voluminous evidence to indicate taking of a ditch/ pit. It is P.W.10 Shahu, who was engaged in centering work, claimed to have been engaged by Sahebrao to dig a pit admeasuring 4 x 4 ft. with raised platform thereon. He agreed to do the job for Rs.9000/-. He received Rs.4000/- in advance. P.W.11 Pandurang was a labour. He claimed to have had been engaged by P.W.10 Shahu to take a ditch. He accordingly dug the same for Rs.500/-. Since the ditch was at the place, one cannot dispute that the ditch was intended for raising construction. Whether it was at the instance of one or all the four appellants, there is nothing in evidence. Although the contract was given by appellant Sahebrao, P.W.10 Shahu in his cross-examination stated that, until 20/1/2017 the work of taking ditch was not commenced. The statement of P.W.11 Pandurang was recorded on 13 April 2017 while the incident is of 26 January 2017.

37. P.W.13 Ranjit is the brother of the deceased. It is in his evidence that, he was 17 years of age while his evidence was recorded. Meaning thereby, he was aged 14 years when

the incident took place. He testified that, he had gone to attend flag hoisting to his school in the village. He returned home by 11.00 a.m. His mother and grandmother had gone for cooking at the house of Shri Korde. Krishna had also not returned from the school. On his way home, his paternal aunt (appellant Dropadi) met him and enquired about the whereabouts of his mother (P.W.1 Sarika) and brother Pilya (deceased Krishna). He told him her mother to have gone to the house of Korde while Pilya had not come from the school. He further testified that appellant Dropadi enquired with him as to when Pilya would be back. While he was confronted with his police statement, it has been brought on record the fact that the statement is silent to state to have told Dropadi that Pilya had gone to the school. It has, however, been brought on record that, he stated her that he did not know where was Pilya, but his mother had gone for cooking. The defence has brought on record the fact that appellant Dropadi had made enquiry with him as to whereabouts of his mother and Krishna and when they were going to come.

38. This witness is a real brother of the deceased. He

was then 14 years of age. His statement was recorded on the following day of the incident. We have no reason to disbelieve his evidence about the appellant Dropadi to have made enquiry as to his mother and Pilya (deceased Krishna). The fact is, however, the person who made enquiry with the witness was none other than real sister of the father of the witness Ranjit. Making such enquiry by that time could be said to be neither usual nor unusual. More so, no suspicion was raised against any of the appellants in the F.I.R. or by then as well. Admittedly, the relationship of the appellants on one hand and the informant and her family on the other was not found to be not good. We rely on this witness that the appellant Dropadi made enquiry about Sarika (P.W.1) and her son Krishna and when they were going to come.

IMAGE OF KADUBAI:

39. P.W.15 Pandurang was a professional sculptor, resident of village Kale, District Satara. It is in his evidence that two women and equal number of men had come to him 8 days before 26 January. They wanted to make an image of a lady, in stone. The deal was struck for Rs.5000/-. He was

paid Rs.2000/- in advance. According to him, a lady police officer accompanied by one lady accused had come to his shop. A receipt was seized by that police officer, P.W.23 Surekha Dhas. A panchanama regarding seizure of receipt was drawn vide Exh.125. P.W.16 Pandurang Vedpathak, a servant of P.W.15 Pandurang Patil was a witness to the said panchanama. Close reading of their evidence would indicate that the receipt (Exh.125) was in the name of appellant Lakhan Chudavakar. Receipt (Exh.122) is a carbon copy dated 13 January 2017. The receipt, however, does not bear signature of the person who placed the order. No original receipt book has been seized. It is, therefore, doubtful. Since it being a case based on circumstantial evidence, how far one can place reliance on this receipt (Exh.122). P.W.15 Pandurang Patil, while called upon to identify the lady who had accompanied his shop along with the lady police officer P.W.23 Surekha, he identified the appellant Urmila. While close reading of evidence of P.W.23 Surekha indicates that the police had learnt it from appellant No.6 Suvarna that an order for making of a stone image of a lady was placed. She further testified

that the owner of the shop namely P.W.15 Pandurang had told that one lady and one man had placed the order. The same suggests the prosecution meant to say that the order was placed by appellant Rahul @ Lakhan and appellant Suvarna. According to P.W.15 Pandurang Patil, 4 persons had in fact come to place the order. While according to P.W.3 Sunil Bansode, it was Suvarna Bhadale who had accompanied her to the shop of P.W.15 Pandurang Patil while the receipt was seized. Whereas P.W.15 Pandurang Patil identified appellant Dropadi as that lady who had accompanied the lady police officer. This evidence indicates its glaring inter-se inconsistencies.

40. We take it that, P.W.15 Pandurang is a professional sculptor. We even take that an order was placed with him in the third week of January 2017, but after having disclosed all these facts, the investigating officer failed to conduct test identification parade who had in fact been to his shop to place an order whether they were four or two in number or appellant Rahul alone in whose name the receipt was issued. It is reiterated that, had the receipt book been taken charge of as it

is instead of a single carbon copy, it would have really furthered the prosecution case. Although the cell phone number of appellant Rahul @ Lakhani is appearing thereon, the receipt is silent to bear his signature as a person who placed the order.

House Search of appellant Suvarna:

41. P.W.18 Ranjit and P.W.20 Kunal were the witnesses to the search of the house of appellant Suvarna Bhadale. Both these witnesses did not stand by the prosecution, although their evidence indicates that both these appellants were residing in one Wada (big premises). The panchanama of the house search was admitted in evidence based on the testimony of the police officer (Exh.128) Mukund Giri (P.W.22). It is in his evidence that he went to the house of appellant Suvarna and took search. Her family members were present in the house is evident from the panchanama. Both the panchas who did not stand by the prosecution were not from the very vicinity. The contents of the panchanama indicate the following articles were taken charge :

- (१) मोठ्या कागदावर लाल शाईने "शत्रू मुख बंध मंत्र शत्रू सारण मंत्र, मुळव्याध मंत्र, शत्रू वशीकरण मंत्र, शत्रू वशीकरण प्रयोग, शत्रू नाशक यंत्र मंत्र, देह रक्षा मंत्र, शत्रू मोहिनी मंत्र, मनोकामना, सिद्धीकारक मंत्र, भूत हाडळ उतारा मंत्र हे लिहिलेले ६ कागदपत्र
- (२) लखन चुडावकर सोबत देवाचे मूर्ती घेतलेले फोटो, व्हिजिटिंग कार्ड, सुवर्णा भाडळे याचे मतदान कार्ड,
- (३) पाच मोबाईल हँडसेट मायक्रोमॅक्स त्यात एअरटेल, आयडिया कंपनीचे सिमकार्ड, नोकियाचा साधा हँडसेट, सॅमसंग एसस कंपनीचे हँडसेट. जुने वापरते
- (४) लखन चुडावकर याचे आधार कार्ड, मतदान कार्ड, पॅनकार्ड, ड्रायव्हिंग लायसन्स, राजश्री शाहू सहकारी बँकेचे **ATM** कार्ड."

42. The Trial Court, on the basis of the articles stated above in clause (1), drew the inference that these two appellants were witchcraft. Admittedly, the panchanama bears the signature of the husband of appellant Suvarna Bhadale. The same suggests that the house was not in exclusive possession of the appellant Suvarna. The documents, therefore, could not be said to have been in her exclusive possession.

43. P.W.17 Nilesh was the resident of Janta Vasahat, whereat appellant Suvarna and Rahul @ Lakhan would reside.

He testified that he was one of the members of the troupe headed by appellant Rahul @ Lakhan. They were Gondhalis. They would sing Aartis and God/ Goddess praising songs on auspicious occasions like post-marriage ceremonies. It is further in his evidence that, devotees/ disciples used to come to meet them (appellants Rahul and Suvarna). They used to give them holy ash/ lemon and coconut to throw it away. Those articles were used to be given for Pooja. If any person was suffering from fever or बाहेरचे (भुताटकी), people used to come them. They used to visit various places in Pune and outside as well.

44. This witness was not declared hostile. During his cross-examination, it has been brought on record that appellant Rahul @ Lakhan was a devotee of Tuljabhawani, Yedeshwari and Khandoba. He used to sing song nicely and hence, people used to invite him.

CDRs & SDRs :

45. P.W.26 Lukas Magar and P.W.27 Dattaram Angre were the Nodal Officers of Bharti Airtel and Vodafone Idea

Company Ltd. respectively. They tendered in evidence CDRs and SDRs of the following cell phone numbers standing in the names of the persons stated against the phone numbers :

- 1) 9860361310 - Rahul @ Lakhan
- 2) 9881702272 - Laxman Ingole
- 3) 9920059253 - Manda S. Sudaonkar
- 4) 7350949735 - Sahebrao
- 5) 9881321780 - Rahul @ Lakhan

46. The CDRs are supported by Certificate in terms of Section 65-B of the Evidence Act. We, however, do not come across Section 65-B Certificate pertaining to tower location of these phone numbers. Be that as it may.

The aforesaid evidence indicates that, two of the six cell phone numbers were not subscribed by any of the appellants. One was subscribed by the son of appellant Uttam while other was by the wife of appellant Rahul @ Lakhan. The prosecution simply relies on these CDRs to indicate all these persons were in contact with each other from 1/1/2017 to 1/2/2017. The tower location pertaining to which Section 65-B Certificate has not been placed on record indicates that, on the

preceding day appellant Sahebrao was in Pune while on the following day he was admittedly at Pimpalgaon. Admittedly 4 of the appellants are relatives of each other. The other 2 appellants namely Rahul @ Lakhan and Suvarna were the acquaintance of other appellants. They would visit the house of appellant Uttam and Sahebrao for performing Poojas on No moon and Full moon nights. What kind of conversation they had inter-se during the relevant days is not before us. It would, therefore, be very difficult to conclude that the conversation pertained only and only in respect of conspiracy to commit the murder. Such inference ought not to have been drawn by the Trial Court. More so, when two of the cell phone numbers which were in contact, belong to the persons who are not the appellants nor were the accused persons. Although they were the relatives of the appellants, there is no evidence to indicate that these phone numbers were in fact used, one by Uttam and other by Rahul @ Lakhan. What has been referred to by the Trial Court is mostly what was disclosed during the investigation. That cannot partake the nature of substantive evidence. Needless to mention, we are short of words to

condemn the nature of offence. True, the offence even might have been committed by all or any of the appellants. There is a long gap between “may” and “must”. The case was admittedly based on circumstantial evidence. Each and every circumstance relied on ought to have been proved up to the hilt indicating the involvement of the appellants in the crime in question and excluding the possibility of involvement of someone else. Appreciation of the evidence referred to hereinabove, lead us to conclude the prosecution to have failed to bring home the charge beyond reasonable doubt.

47. It is reiterated that, the crime took place on the intervening night on 26 and 27 January. The F.I.R. was lodged against unknown person. The informant Sarika gave supplementary statement after about two months of the incident. What has been disclosed and recovered pursuant to the disclosure statement made by appellant Sahebrao and Dropadi was hit by Section 27 of the Evidence Act since almost entire statement of Dropadibai is confessional in nature. Almost all the articles were found at open place, accessible to one and all, that too long after the incident took place. The

articles those were found buried, namely knife and Dabhan borne no blood stains. P.W.7 Anil, on the point of last seen, has not been relied on. Reliance on the judgment in case of Damu Shinde (supra) is of not much relevance since the glass-piece that was recovered pursuant to the disclosure statement was found to be lamp piece of a motorcycle on which the deceased therein was carried. There is nothing to indicate that two rope pieces recovered pursuant to the disclosure statements, one by Dropadi and other by Sahebrao, matched with each other. In view of this and all other aspects, there is nothing to indicate them to have been used in commission of the crime.

48. For all the aforesaid reasons, the appeals succeed. Hence the order :

ORDER

(i) The Criminal Appeals are allowed.

(ii) Conviction of the appellants and consequential sentences recorded by learned Additional Sessions Judge,

Osmanabad vide order dated 23/10/2020 passed in Sessions Case No.31/2017 are hereby set aside. The appellants are acquitted of the offences punishable under Sections 302, 363, 364, 120-B all r.w. Sec.34 of the Indian Penal Code, 1860 and Sec.3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. The appellants be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to them.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-