



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

CRIMINAL APPEAL NO.653 OF 2020

Pradeep s/o Manik Kanse
Age 25 years, Occ. Agri.
R/o Talni, Tq. Renapur,
District Latur

... APPELLANT

VERSUS

The State of Maharashtra
through Kotwali Police Station
Ahmednagar, Taluka and
District Ahmednagar
(Copy to be served on
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)

... RESPONDENT

.....
Mrs. S.G. Chincholkar, Advocate for appellant
Mr. V.K. Kotecha, A.P.P. for respondent
.....

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

Date of reserving judgment : 25th July, 2024

Date of pronouncing judgment : 7th August, 2024

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 27/10/2020, passed by learned Sessions Judge, Ahmednagar in Sessions Case, No.279/2016. Vide impugned judgment and order, the appellant was convicted for offence punishable

under Section 302 of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short). He has been sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- with default stipulation for the offence punishable under Section 302 of the Indian Penal Code with further direction that the appellant shall not be released from the captivation until his life. No separate sentence has been awarded for the offence punishable under the POCSO Act. He was acquitted of the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 4/25 of the Arms Act.

2. Facts giving rise to the present appeal are as follows :-

P.W.1 Tirthaprasad was resident of Ahmednagar. He would reside along with his wife and their son. He would serve with a private Company at MIDC, Ahmednagar. His wife was serving as a Conductor with Maharashtra State Road Transport Corporation (MSRTC) at Shirur. One Tanaji Suryawanshi, resident of village Hadgaon, Taluka Nilanga, District Latur was P.W.1's co-brother. Kum. Mohini (deceased) was Tanaji's daughter. She had appeared for 10th Standard

examination in 2016 at her grand parent's place at village Talni. For Summer Vacation she had come to the house of P.W.1 Tirthaprasad at Ahmednagar.

3. On the fateful day i.e. 27/5/2016, both P.W.1 Tirthaprasad and his wife had left the house for their respective work place/s. Their son had gone to his grand parent's house. As such, Mohini was alone at home. By 11.00 in the morning on the fateful day, the appellant went to the house of P.W.1 Tirthaprasad. It appears that, both the appellant and Mohini (deceased) were emotionally involved. They had even married in a temple at Ahmednagar. What went wrong between the two is not known. Mohini had not completed 18 years of age. The appellant, by going to the house of P.W.1 Tirthaprasad, assaulted Mohini with sharp sickle. He gave her number of blows with the sickle. He then left the house of P.W.1 Tirthaprasad and directly went to Kotwali Police Station, Ahmednagar. He reported to the Police Station Officer to have killed his wife. A Station Diary entry was made to that effect. Services of employees of Municipal Corporation were availed for acting as panchas. In their presence, the sickle and blood stained clothes on the person of the appellant were seized. The Police Station Officer informed his higher-ups. The police

officials went to the crime scene. Dead body of Mohini was found lying in a pool of blood. A crime scene panchanama was drawn. Her dead body was shifted to Civil Hospital, Ahmednagar. Inquest panchanama (Exh.38) and autopsy (Exh.51) were conducted on her mortal remains on 27/5/2016. The landlady in whose premises P.W.1 Tirthaprasad was residing, informed P.W.1 Tirthaprasad on phone. He immediately came. He even informed his wife. She too arrived. He then lodged First Information Report (F.I.R.- Exh.16) with Kotwali Police Station, Ahmednagar. The appellant was arrested. He was medically examined before arrest. Statements of persons acquainted with the facts and circumstances of the case were recorded. All the seized articles were sent to Forensic Science Laboratory, Nasik for chemical analysis and report. During interrogation, the appellant made disclosure statement. He led the police to the shop wherefrom he purchased the sickle. Then he took the police to a shop whereat he got it sharpened. Thereafter he took the police to a shop wherefrom he bought a cloth bag to keep the sickle therein. It was also found that the appellant along with his friend had come to Ahmednagar on the previous day. They had stayed in a hotel, "Chetana" at Maliwada overnight. Upon completion of the investigation, a charge

sheet was filed.

4. The Sessions Court (Trial Court) framed the Charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication. He put on record his side of the story in writing. According to him, he was in love with Mohini (deceased). Both of them had even got married with each other in a temple at Ahmednagar. The parents of Mohini were opposed to the relationship. They were persuading her to disassociate from the appellant. She did not listen. With a view to teach him (appellant) a lesson, P.W.1 Tirthaprasad asked Mohini to call the appellant to his residence for talks relating to their marriage. On his arrival, P.W.1 Tirthaprasad got killed Mohini through his men only with a view to falsely implicate the appellant. Even the appellant was assaulted on his head with an iron rod. He became unconscious. He was kept confined in the house of P.W.1 Tirthaprasad and then brought to the police station. According to the appellant, he is from a different district. Nobody was there to speak on his side. He was alone all along.

5. To bring home the charge, the prosecution examined 19 witnesses and produced in evidence certain documents. On appreciation of the same, the Trial Court

convicted the appellant and consequently sentenced as stated above.

6. Heard. Learned counsel for the appellant would submit that, the case was based on circumstantial evidence. She, therefore, relied on the judgment of the Apex Court in case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)**, to submit that the circumstances relied on have not been conclusively proved. The chain of circumstances relied on has not been complete. When the incident took place in a broad daylight that too in a populated area, how there was no hue and cry. No independent witnesses have been examined. Construction work was going on by the side of the premises in which the incident took place. She further relied on the following authorities :

- (1) Anant Dyaneshwar Jadhav Vs. The State of Maharashtra 2017 ALL MR (Cri) 4820
- (2) Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & ors. [2020 (3) SCC 216]
- (3) P. Yuvaprakash Vs. State represented by Inspector of Police [2023 AIR (SC) 3525]
- (4) Gireesan Nair & ors. Vs. State of Kerala 2022 DGLS (SC) 1503 : 2022 K.L.T. 357

7. Turning to the medical evidence, she would submit that, the Medical Officer Dr. Manoj (P.W.11) did not give size and deepness of the injuries suffered by the victim. According to her, 4-5 witnesses who had claimed to have seen the appellant armed with blood stained sickle, did not stand by the prosecution. None of those witnesses could identify the appellant before the Court. The investigating officer had taken the appellant to the shop wherefrom he allegedly purchased the sickle and sharpened it, and then purchased a cloth bag for keeping it therein. The test identification parade lost its efficacy. Had the appellant really been at the Police Station at 11.30 in the morning, there is no explanation as to why he was arrested by 7.30 in the evening. According to learned Advocate, the prosecution miserably failed to bring home the charge beyond reasonable doubt. She, therefore, urged for allowing the appeal.

8. Learned A.P.P. would, on the other hand, submit it to be an open and shut case. The cross-examination of various witnesses would indicate that, the defence was not firm. At one time the appellant admitted his presence at the crime scene. It was suggested that, P.W.1 and his wife were home and Mohini (deceased) was made to call the appellant to

their residence. While it was suggested to one of the witnesses that the P.W.1 Tirthaprasad returned home in the evening from his workplace. No sooner the appellant reached the Police Station, the sickle and blood stained clothes on his person were seized in the presence of panchas. A suggestion was given to the investigating officer and other witnesses that these articles were smeared with the blood of the deceased by the police officials. The same suggests the appellant to have admitted the sickle and the clothes on his person borne the blood of the deceased. It was the appellant and none else who had a motive to commit murder of Mohini. The learned A.P.P. would ultimately submit that no interference is warranted with the impugned order of conviction and consequential sentence in the facts and circumstances of the case. Learned A.P.P. ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

10. In case of in case of Sharad Sarda (supra), the Apex Court observed :-

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

before a case against an 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.

It may be noted here that this Court indicated that the circumstances concerned must or should and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in (Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, where the following observations were made :

“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.”

(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 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.”

11. The following can be the circumstances said to have been relied on by the prosecution.

- (1) The acquaintance and emotional relationship between the appellant and the deceased.
- (2) Presence of the appellant at the crime scene.
- (3) He was seen by number of witnesses running away from the premises of Athare.
- (4) He was carrying a blood stained sickle and clothes on his person were stained with blood.
- (5) Appellant himself visited the Police Station and reported the matter
- (6) Blood stained sickle was seized from him.
- (7) Clothes on his person stained with blood, too were seized.
- (8) Dead body.

EVIDENCE IN THE CASE : -

12. P.W.1 Tirthaprasad was the co-brother of the father of Mohini (deceased). He was resident of Ahmednagar. Mohini's parents would reside at Hadgaon, Taluka Nilanga. Mohini was staying with her grand-parents at village Talni, Taluka Renapur, District Latur for her education. In the year

2016, she had appeared for 10th Standard examination. She had been to the house of P.W.1 Tirthaprasad for Summer Vacation.

13. It is in the evidence of P.W.1 Tirthaprasad that, on the given day i.e. on 27/5/2016, he left for his work place in the early morning. Since his wife was serving as a Conductor with MSRTC at Shirur, she too had left earlier to him. Their son had gone to the house of his grand-parents. As such, Mohini was alone home. It is further in his evidence that, he received a phone call of landlord Athare. He was informed that, Mohini was assaulted. He took a leave and returned to his house. He noticed Mohini lying in a pool of blood on the terrace of the second floor. She had suffered multiple injuries. He then contacted his wife Jayshree. She too came. Both of them went to Kotwali Police Station. Then he came to know the appellant to have assaulted Mohini. He was present at the Police Station. A sickle was in his hand. Clothes on his person were stained with blood. He, therefore, lodged the F.I.R. (Exh.16).

14. P.W.1 Tirthaprasad was subjected to a searching cross-examination. It is in his evidence that, it was a three storey building owned by Shri Athare. He was staying on the

ground floor. There were shop blocks on the ground floor. The construction work of a two storey building was in progress by the side of the premises of Shri Athare. Here, the learned counsel for the appellant would submit that, when the victim was assaulted with number of blows, how could there be no hue and cry. It is further in his evidence that, he received a phone call by 12.15 p.m. On having seen Mohini in a pool of blood, he became numb. His wife too returned in response to his call. Then both of them went to the Police Station. It was suggested to him that, when he reached his house from his workplace, the police had already been present there. He denied to have known the appellant since before the incident. He admitted the appellant to have been resident of village Talni. He was shown a photograph. He admitted that the persons in the photograph were the appellant and Mohini. He, however, denied that, Mohini was seen in the photograph to have sported a Mangalsutra of his wife. It was also suggested to him that, a year before the incident, the appellant had been to his house and stayed overnight when he and his wife were not there. He denied to have secured a job for appellant, but the appellant left the same. He also denied that there was emotional relationship between the appellant and the deceased. It was also suggested to him that, whenever he

would visit Talni, his mother-in-law would inform him that Mohini would wander with boys and her behaviour made them difficult to stay in the village. He denied that he, therefore, brought her to his residence. He denied to have made Mohini to call the appellant to his house and got her killed through his men. He denied that he smeared clothes on the person of the appellant at the relevant time and sickle (Koyta) with blood of the deceased. He was confronted with his F.I.R. which is silent to state therein that when he had been to police station to lodge F.I.R., he saw the appellant present there armed with sickle and the clothes on his person to have been stained with blood.

15. P.W.2 Mahadev was an employee of Municipal Corporation, Ahmednagar. The police authorities availed his services to act as panch witness to various panchanamas. First of such panchanamas is relating to seizure of blood stained sickle and clothes on the person of the appellant by 12.45 p.m. on 25/7/2016. It is in his evidence that, pursuant to the directions of the Deputy Commissioner of Municipal Corporation, Ahmednagar, he went to Kotwali Police Station. In his presence a blood stained sickle was seized from the appellant. Clothes on the person of the appellant were stained

with blood. Those too were taken charge of. Those clothes were – shirt, banian and Jeans Trouser. It is further in his evidence that, P.S.I. Karhewad wrapped these articles and placed them under seal. He referred to the panchanama (Exh.23) in that regard.

16. Then, he is a witness to the crime scene panchanama (Exh.24) and sketch thereof (Exh.25). According to him, hair clip, a pair of ladies chappal, blood stained soil, a mobile handset, a saffron colour cloth bag etc. were taken charge of from the crime scene. According to him, those articles were packed and sealed on the spot.

It is further in his evidence that, on the same day, by 5.30 p.m., the clothes on the person of the deceased were seized under panchanama (Exh.26) drawn by P.S.I. Chavan. The seized clothes were white top, black scarf, legging and knicker of the deceased. It is further in his evidence that, the appellant was then personally searched. Articles like mobile handset, 4 GB Micro Card, 2 SIM Cards, PAN Card, Aadhar Card etc. were seized besides admission card of Mohini (deceased) of examination for 10th Standard. It was vide panchanama (Exh.27).

17. It is further in his evidence that, on the same day the appellant was arrested in his presence. A panchanama to that effect (Exh.28) was drawn.

18. We do not propose to refer to his further evidence which pertains to the disclosure statement made by appellant, disclosing the shop wherefrom he purchased sickle, shop whereat he sharpened it and another shop wherefrom he purchased a cloth bag to keep the sickle therein. The police officer recorded such statements given by the appellant and drew the panchanama of the places (shops) to which the appellant took them. There is nothing to indicate that the seized sickle was the one which was allegedly purchased by the appellant from the shop of P.W.6 Husen and sharpened it at the shop of P.W.7 Mustafa and the shop owned by P.W.8 Sahil from whom he purchased the cloth bag.

19. P.W.3 and P.W.4 were the owner and Manager respectively of Hotel Chetana, Ahmednagar wherein the appellant had stayed overnight on 26/5/2016. An extract from the Check-in Register was placed on record vide Exh.34. The said extract indicates the appellant had stayed in the said hotel along with his friend.

Learned Advocate for the appellant brought to our notice that the extract contained 12 entries of the customers who had checked in. As against the 4 entries only, there were signatures of the customers. According to the learned Advocate the witnesses have admitted to have not obtained any document in proof of identification of customers and not explained why there were no signatures of customers whose names are there at Sr.No.5 onwards.

We do not propose to give much credence to the submissions made by learned Advocate for the appellant and even evidence as regards the appellant to have stayed overnight at Hotel Chetana since he himself has admitted his presence at the crime scene by 11.00 in the morning on 27 May (fateful day).

20. P.W.5 Raju is proprietor of a shop Srichand Electronics. He produced in evidence receipt (Exh.40) in the name of person – Kanse Pradeep (appellant), suggesting the appellant to have purchased a cell phone worth Rs.1300/- on 23/5/2016. No office copy or the original receipt book was placed before the Court. The receipt does not bear appellant's signature. The prosecution proposes to rely on his evidence to make out a case that the cell phone seized from the crime

scene was one gifted by the appellant to deceased as a birthday gift on 23/5/2016.

21. P.W.6 Husen was proprietor of a Hardware Shop, "Ajj Tools". It is in his evidence that, police had come to his shop along with one person, (appellant), who had purchased a sickle for Rs.100/-. He delivered the police a CCTV footage in that regard in one pen drive after obtaining it in one CD.

22. For want of there being any receipt of the appellant to have purchased a sickle from him, we do not propose to give much credence to his evidence. The CCTV footage tendered by him was in the nature of "secondary of secondary evidence". The same too, therefore, is not relied on.

23. P.W.7 Mustafa would run a shop by name "Poona Machine Dhar Kendra". It is in his evidence that, one person had been to his shop by 10.45 a.m. on 27 May and got one sickle sharpened. The appellant had taken the police to his shop pursuant to a disclosure statement made by him. As already observed above, there being no further evidence to indicate the very sickle to have been sharpened by this witness, his evidence too is not given much credence.

24. P.W.8 Sahil was serving as a Salesman in a shop

of one Rohit Lodha. The appellant had taken the investigating officer to his shop. According to this witness, the appellant had purchased a saffron colour bag from his shop for Rs.10/-. For the reason that there being no earmark on the cloth bag seized from the crime scene to identify it to have been purchased by the appellant from the said shop, the evidence of this witness too is given little importance.

25. Then there is evidence of P.W.9 Nanda. It is in her evidence that, she was residing at Burudgaon Road, Ahmednagar. Athare Niwas was adjacent to her premises. It is further in her evidence that, it was 11.35 a.m. of 27/5/2016. She left the house for collecting scrap. She saw one person came running from opposite side. He was armed with a sickle. Clothes on his person were stained with blood. The said person was clad in a white shirt and blue Jeans. She heard noise from the premises of Athare house.

She, however, could not identify the appellant before the Court since according to her, about three years were passed post she had seen that person.

26. During her cross-examination, it was suggested to her that said person ran away within a fraction of seconds.

This suggestion goes a long way to indicate the appellant to have admitted P.W.9 Nanda to have witnessed one person running away and he was having a blood stained sickle and clothes on his person were stained with blood. Further questions put to her during her cross-examination would, therefore, be of little consequence.

27. P.W.10 Ravindra was a rickshaw driver by profession. According to him, he was present at Chanakya Chowk. Little past 11.30 a.m., one person came running from Bhosle Akhada. He was armed with sickle. The person was clad in white shirt and blue Jeans. The clothes on his person and the sickle were stained with blood. On his request, he took that person to Kotwali Police Station. That person gave him Rs.500/- as fare. During interaction, he told a quarrel between two brothers to have ensued.

This witness too could not identify the appellant before the Court only on account of gap of three years between he carried that person as passenger in his auto and gave evidence before the Court.

28. P.W.11 Dr. Manoj conducted autopsy on the mortal remains. His evidence would be referred to a little later.

P.W.12 Sadashiv was the Naib Tahsildar-cum-Executive Magistrate. He conducted test identification parade. In our view, his evidence too is of little consequence since the witness who identified the appellant in test identification parade were the shop owners to whom the appellant had taken the police pointing out the places wherefrom he purchased sickle, sharpened it and then purchased a cloth bag. Meaning thereby, the witnesses who identified him in test identification parade had already seen him a few days before the test identification parade was held.

29. P.W.13 Vaishali was the landlady, owner of Athare Niwas. P.W.1 Tirthaprasad was residing as a tenant in the said premises. It is in her evidence that, on 27/5/2016, it was 11.30 a.m., she was serving meal to her husband. She heard hue and cry. She, therefore, went close to the entry gate of her house. Outside, people told her that something was going on the terrace of her house. She, therefore, entered the premises and while climbing the staircase, she saw a boy coming down the staircase. He was in the age group of 25-30 years. He was clad in white shirt and blue Jeans. A sickle was in his hand. Both the sickle and clothes on his person were stained with blood. She went upstairs and noticed a girl lying

in a pool of blood. She was none other than Mohini, who had come for Summer Vacation to the house of P.W.1 Tirthaprasad. She informed the incident to her husband, who in turn contacted P.W.1 Tirthaprasad on phone.

During her cross-examination, it was suggested to her that after arrival of police to the crime scene, P.W.1 Tirthaprasad arrived. He then called his wife by making a phone call. She too came. Thereafter both of them went to the police station. These suggestions are implied admissions given on behalf of the appellant.

30. P.W.14 Dattatraya was Station House Officer, Kotwali Police Station on 25/5/2016. It is in his evidence that, by 11.30 a.m., the appellant came to the Police Station and disclosed him to have beaten up his wife Mohini on account of domestic quarrel at Athare Niwas, Near Jakat Naka, Burudgaon Road, Ahmednagar. He narrated the said fact to his superior – Malkar. On the directions of his superior, he deputed police staff to the crime scene. They were, A.P.I. Chavan, Patil, Head Constable Musale. It is further in his evidence that, he made a station diary entry, as to what was disclosed by the appellant. He referred to the station diary entry (Exh.65) (Sr.No.26). It is further in his evidence that,

while appellant appeared in the police station, he was armed with a sickle stained with blood. Clothes on his person also borne blood stains. He identified the appellant as the person who had come to the police station and based on his disclosure, made station diary entry (Exh.65).

During cross-examination, he admitted that, station diary entry is silent to record therein that the appellant was armed with a sickle stained with blood and clothes on his person too borne blood stains. He, however, denied the appellant to have had not come to the police station. He also could not state as to why did he not record appellant's statement.

31. P.W.15 Gajanan was P.S.I. attached to Kotwali Police Station. It is in his evidence that, he was present at the police station while appellant came there. It is further in his evidence, after a while, P.W.1 Tirthaprasad appeared in the police station and lodged F.I.R. (Exh.16). He registered the crime based on the said F.I.R.

It is further in his evidence that, he seized the clothes on the person of the appellant and the sickle as well, under panchanama (Exh.23). He then handed over those

articles to the Muddemal Clerk. It is further in his evidence that, during personal search of the appellant, certain articles like deceased Mohini's admission card, handset, SIM Card etc. were seized and handed over to Muddemal Clerk. He referred to the Muddemal Receipt (Exh.71).

During his cross-examination, he testified that, the appellant was given old clothes to put on his person while blood stained clothes were taken charge of. He could not offer any reason as to why panchanama (Exh.23) is silent to state seizure of admission card of Mohini, wallet, mobile handset etc. He denied that, P.W.1 Tirthaprasad and parents of deceased Mohini had brought the appellant to the police station by little past 5.00 in the evening. It was suggested to him that, he applied blood of Mohini on the sickle seized from the appellant and then sprinkled the same on the appellant's clothes.

32. P.W.16 Vinod was the investigating officer. He referred to all the panchanamas which have already been referred to hereinabove during evidence of the panch witness. His evidence is consistent with the evidence of the prosecution witnesses namely P.W.2. According to him, the appellant had made disclosure statement. He referred thereto. He being

investigating officer, what he did as part of investigation has already been referred to hereinabove as evidence of the prosecution witnesses. We do not propose to refer to his evidence in extenso.

33. P.W.17 was Dr. Kaustubh, who examined the appellant before his arrest. The medical examination report (Exh.76) of the appellant indicates that there was abrasion over clavicular area of approximately 5 cms.

34. P.W.18 Bajrang was Sub-Divisional Police Officer, Ahmednagar. Since provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were invoked, further investigation was entrusted with him. His evidence is of little relevance. His evidence indicates that, he obtained caste certificate of the victim. Got test identification parade held etc.

35. P.W.19 Laxmi was mother of the deceased. It is in her evidence that, she was resident of village Talni, Taluka Renapur. Mohini (deceased) had told her that the appellant was insisting her to marry him. He would also abuse Mohini. She tried to reason with the appellant not to be after her daughter since she was minor and belonged to Scheduled

Caste. According to her, appellant still did not listen. The appellant had even threatened them if they did not allow him to marry her daughter. According to her, after 10th Standard examination, Mohini had been staying at the house of P.W.1 Tirthaprasad since it being Summer Vacation.

36. Exh.104 is the C.A. report of the articles seized during investigation and chemically analysed at Forensic Science Laboratory, Nasik. While Exh.106 is the written statement given by the appellant in addition to his replies to the questions put to him under his examination under Section 313 of the Cr.P.C.

Aforestated was the evidence adduced before the Trial Court and was relied on before us in this appeal.

APPRECIATION :

37. Kum. Mohini (deceased) died of haemorrhagic shock due to multiple injuries is not in dispute. P.W.11 Dr. Manoj conducted autopsy on her mortal remains. He found 17 external injuries, almost all of them were in the nature of incised wounds. P.W.11 did not describe size and dimensions of injuries noticed on the person of Kum. Mohini. The post mortem report is also silent to state time by which Mohini died.

The same, however, in our view, is of little consequence. The appellant in his examination under Section 313 of the Cr.P.C. and written submissions, admitted his presence by little past 11.00 a.m. at the crime scene i.e. terrace of second floor of a three storey building of one Shri Athare, Burudgaon Road, Ahmednagar. Mohini met with homicidal death is also undisputed since it was suggested to P.W.1 in his cross-examination that he got her killed through his men. Except the bare suggestion, nothing was there to substantiate the said suggestion even on preponderance of probabilities. True, the burden of proof rests on the prosecution.

38. The question is, whether the appellant has committed murder of Mohini. Admittedly, the appellant was resident of village Talni, Taluka Renapur while Kum. Mohini's parental house is at village Hadgaon. Mohini was, however, staying at her grand-parent's house at Talni for education. She had appeared for 10th Standard examination in March 2016. There is evidence to indicate that, both, appellant and Mohini were emotionally involved. A photograph (Exh.100) has been admitted in evidence. The same indicates both, the appellant and Mohini posed themselves as husband and wife. Mohini was even sporting Mangalsutra. It was even suggested to

P.W.1 Tirthaprasad in his cross-examination that, the appellant and Mohini got married in a temple at Ahmednagar. He, however, denied the suggestion that he secured a job for appellant in M.I.D.C., Ahmednagar and the appellant then left the job.

39. The crime scene is a terrace of a second floor of a premises, on the ground floor of which P.W.1 Tirthaprasad would reside. His evidence indicates that, he left the house on 27/5/2016 in the early morning for his work place. His wife too left the house as she was serving as Conductor in MSRTC at Shirur. Their son was away at his grand-parent's house. His evidence would further indicate that he returned to his house little past 12.00 noon in response to a phone call made by his landlord. On his return, he saw Mohini lying in a pool of blood. He, therefore, immediately contacted his wife on phone. She too arrived. The case of the prosecution is that, the appellant, after having committed murder of Mohini, himself surrendered at Kotwali Police Station.

40. P.W.14 Dattatraya was discharging duty as Station House Officer at Kotwali Police Station on 27/5/2016. His evidence is to the effect that the appellant came to the Police Station by 11.30 a.m. The appellant disclosed him to have

beaten up his wife Mohini on account of domestic reason at Athare Niwas, near Jakat Naka, Burudgaon Road, Ahmednagar. He informed the said fact to his superior. Made a Station Diary Entry (Exh.65) to that effect. True, the Station Diary Entry was made at 12.30 p.m. It is but natural that after the appellant reached police station by 11.30 in the morning, it must have taken time for him to intimate his official. Moreover, the evidence of this witness was recorded about three years after the incident. A little difference in timing here and there is, therefore, bound to occur. The extract of Station Diary has been placed on record. The same indicates the entries therein to have been made in the official course of business. There is nothing to indicate the entries to have been manipulated. True, the entry is silent to record therein that the appellant was armed with sickle, and clothes on his person were stained with blood. It is also true that, no statement of the appellant was recorded nor, based on what has been reported by him a crime was registered. After all, P.W.14 was an officer in the rank of Police Constable.

41. P.W.2 Mahadev was an employee of the Municipal Corporation, Ahmednagar. On the directions of the Deputy Commissioner of the Corporation, he along with another

employee reached Kotwali Police Station by 11.30 a.m. on 27/5/2021. In his presence a panchanama (Exh.23) was drawn. The same is on record to indicate a blood stained sickle and blood stained clothes on appellant's person were seized under the said panchanama. True, there is some variance between his evidence and the evidence of P.W.16 as to whether old or new clothes were provided to the appellant to put on immediately after the clothes on his person were taken charge of. The same too makes little difference. Although the witness stated that those were old clothes, while the panchanama indicates new clothes were provided. This inconsistency in the evidence is also of not much assistance to the appellant since it was suggested to the investigating officer and even P.W.1 as well that they smeared the clothes on the person of the appellant and the sickle with the blood of the deceased. This suggestion too goes a long way to indicate the appellant to have admitted that the sickle and the clothes on his person borne the blood of the deceased – Mohini.

42. The Station Diary Entry was made by 12.30 p.m. regarding the appellant's appearance at the Police Station and reporting to have assaulted his wife. P.W.14 Dattatray testified that, after having made a Station Diary Entry and with the

directions of his officer Shri Malkar, police officials namely A.P.I. Chavan, A.P.I. Patil and Head Constable Musale went to the crime scene. It was specifically suggested to the landlady Vaishali (P.W.13) in her cross-examination that P.W.1 Tirthaprasad (informant) reached his house while the police officials had already been present on the crime scene. The same suggests that, pursuant to the statement made by the appellant to the Station House Officer, it was disclosed/ discovered that Mohini was lying in a pool of blood at the place stated by him to P.W.14 Dattatray. Although he had not accompanied the police to the crime scene, the said statement of the appellant would very much be relevant under Section 27 of the Evidence Act. It is true that, in the crime scene panchanama the C.R. Number has been mentioned. The evidence of P.W.1 Tirthaprasad (informant), however, indicates that he immediately rushed to the Police Station and lodged the report. A Station Diary Entry of registration of crime based on his statement was made by 12.40 noon. The fact remains that, the conduct of the appellant in visiting the Police Station in the condition of having the clothes on his person stained with blood and sickle in his hand too bearing blood stains that too with the blood of the deceased is a fact to have been duly proved. The C.A. report (Exh.104) reinforces the said fact.

The clothes of the deceased namely leggings and Dupatta borne blood stains of blood group "A". While the sickle too was found to have stained with the very blood (Group 'A'). It is reiterated that, the appellant, during cross-examination of the witnesses, has admitted the said fact. True, whatever he has stated to the police about having assaulted his wife would be inadmissible, being confession to police.

43. Kum. Mohini (deceased) belonged to lower caste. Her parents were opposed to relationship between the appellant and her. She, therefore, appears to have been staying at her maternal aunt's house at Ahmednagar during Summer Vacation. Even both, the appellant and Mohini got married with each other clandestinely. It was, however, suggested to P.W.1 Tirthaprasad in his cross-examination that behaviour of Mohini was not good. She had many boy friends. Even her grand-parents had expressed to P.W.1 Tirthaprasad that her conduct made them difficult to stay in the village with honour. This fact, coupled with the opposition of the parents and the relations of deceased Mohini, the relationship with the appellant appear to be a motive for the appellant to eliminate her.

44. True, the appellant was arrested at 7.30 p.m. on

the fateful day. Before his arrest, he was medically screened by P.W.17 Dr. Kaustubh. The appellant's injury certificate is on record. There is nothing to indicate him to have suffered any head injury with an assault with wooden log. It was the case of the appellant that, P.W.1 Tirthaprasad had asked Kum. Mohini to call him to his residence under the pretext of negotiations of marriage. He, therefore, arrived at the house of P.W.1 Tirthaprasad. When he was there, he was assaulted on his head. He became unconscious and post 4.30 p.m., he was brought to the police station by P.W.1 Tirthaprasad. At the cost of repetition, there is nothing to infer the defence version to be true. Lapse in/ or incorrect investigation that does not go to the root of the matter would be of no assistance to the culprit. Delay in arresting the concerned would, therefore, be of little consequence. There is a difference between "arrest" and "detaining a person at the Police Station". More so, when there is voluminous evidence to indicate that the appellant with blood stained sickle in his hand and clothes on his person with blood stains appeared in the police station by 11.30 in the morning and those articles were seized under panchanama (Exh.23) in the presence of panch witness P.W.2 Mahadev. The said exercise was done by police officer, P.W.15 Gajanan.

45. Then there is evidence of P.W.9 Nanda and P.W.13 Vaishali, landlady, indicating them to have had seen a person clad in white shirt and Jeans pant. The person was appearing with a sickle, stained with blood. Clothes on his person too were stained with blood. These witnesses cannot be termed to have been won over merely because they did not identify the appellant before the Court as the very person whom they had seen. Both these witnesses offered explanation that it was after a gap of little over three years they gave evidence in the Court and therefore, could not identify him as the very person. Same is the case about the evidence of P.W.10 Ravi, an autorickshaw driver. His evidence too is consistent with evidence of P.W.9 Nanda and the landlady Vaishali (P.W.13). It is in his evidence that, he reached one person at Kotwali Police Station in his auto. The said person was armed with a blood stained sickle and clothes on his person were also stained with blood.

46. As stated above, we do not propose to refer to and rely on the evidence of P.W. 3 Rameshwar and P.W.4 Saukat in relation to the fact of the appellant had stayed overnight in Hotel Chetana since the appellant himself admitted his presence at the crime scene at the relevant time. We also do

not propose to give much credence to the evidence of P.W.6 to P.W.8 i.e. sickle vendor, the person who sharpened the sickle and the vendor of the cloth bag respectively, since their evidence could not be said to have proved the sickle that was seized from the appellant was the one which was sold by P.W.6 Husen and sharpened by P.W.7 Mustafa. As already observed above that evidence of P.W.5 Raju from whom the appellant admittedly purchased a cell phone to give it to Mohini as a birthday gift is also not relied on for cogent and reliable evidence. Since the appellant accompanied the police pursuant to his disclosure statement, to the shops of P.W.6 to P.W.8, the fact that they identified him in the test identification parade held by P.W.12 Sadashiv, Executive Magistrate lost its efficacy. Moreover, these witnesses namely P.W.6 to P.W.10 failed to identify the appellant before the Court.

47. True, some articles namely cell phone, SIM Card, Kum. Mohini's examination admit card were seized from the person of the appellant under the panchanama (Exh.28) drawn by P.W.15 Gajanan. There would be a question as to why, when sickle and blood stained clothes were seized, those articles were not found on his person. However, no question in that regard were also put to the police officials who seized

those articles. Over zealousness of the Police Officer in this act in the facts and circumstances of the case would be of no assistance to the appellant.

48. In our considered view, the facts that the appellant was in relationship with the deceased Mohini, her parents were opposed to their relationship and her behaviour, according to the appellant himself was not good, is a motive for the appellant to commit her murder. Both of them appear in a photograph as husband and wife. Mohini was sporting Mangalsutra. It was suggested to P.W.1 Tirthaprasad that Mohini's marriage was being settled with someone else, but could not take place. In the case based on circumstantial evidence, motive plays an important role. The fact that the prosecution even assumed to have failed to make out a motive itself would not be a ground of acquittal when other circumstances conclusively establish the crime. At the cost of repetition, it is observed by us that, the appellant had admittedly been on the terrace of the second floor whereat the crime took place. The landlady had seen a person climbing down the staircase. A person was armed with a sickle. Clothes on his person were blood stained. Nanda (P.W.9) had also seen a person in similar condition by same time. P.W.10

Ravindra reached the very person to Kotwali Police Station. It was necessarily little past 11.30 in the morning. P.W.14 Dattatray was Station House Officer. The appellant entered the Kotwali Police Station and informed the matter which is not admissible in evidence, being confession to police. However, a Station Diary Entry (Exh.26) was immediately made to that effect. Services of panchas were availed immediately. By 12.30 noon, blood stained clothes and blood stained sickle were seized from the appellant under panchanama. The appellant himself admitted the clothes on his person and sickle borne blood of the deceased. It was his case that, the same was smeared on those articles by police authorities and P.W.1 Tirthaprasad. He could not make out his case even based on preponderance of probabilities. It was suggested to P.W.1 Tirthaprasad that, he reached his house after the police had already arrived at the crime scene. It was also suggested to him that, seeing the body of Mohini, he became insensitive (numb). It was also suggested to him that he made Mohini to call the appellant to his house under the pretext of holding talks of settlement of marriage with her.

49. On appreciation of overall evidence in the case, we find the appellant to have had every motive to eliminate

Mohini. He came to Ahmednagar, was there at the crime scene by 11.00 in the morning on the fateful day. By that time, the informant P.W.1 Tirthaprasad was at his work place. Before that, the appellant, armed with a blood stained sickle and the clothes on his person also stained with blood of Mohini, appeared in the Police Station. A person in the very condition climbing down the premises wherein the crime took place, was seen by the landlady. The same person was seen by P.W.9 Nanda and then the very person went to the Kotwali Police Station in autorickshaw of P.W.10 Ravindra go long way to infer that it was the appellant and none else who brutally killed Mohini. Pursuant to his statement made to the Police Station Officer, the police reached the crime scene first and noticed the dead body of Mohini. This too would be a discovery relevant under Section 27 of the Evidence Act although C.R. Number is recorded in the crime scene panchanama since the time gap between the two was not of more than 10 minutes. The appellant himself had suggested to the landlady that P.W.1 Tirthaprasad reached the crime scene post the police had arrived there. The Medical Officer ruled out the injuries on the person of the deceased to have been caused by a fall on building material like iron rods etc. For all the above reasons, we reach the conclusion that it was the appellant and none

else who has committed murder of Mohini.

50. Since both, the appellant and Mohini were emotionally involved and there is nothing in the evidence to suggest the appellant to have made any sexual overt act towards her, the conviction of the appellant for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act must fail. The offence punishable under Section 302 of the Indian Penal Code is punishable with imprisonment for life or death, and with fine. The Trial Court, while sentencing the appellant to imprisonment for life, appears to have exceeded its jurisdiction while adding clause (2) of the impugned order - "(2) Accused Pradip Manik Kanse shall not be released from the captivation until his life." This clause (2) of the impugned order, therefore, needs to be withdrawn. The same is accordingly withdrawn.

51. Thus, the appeal partly succeeds. Hence the order:-

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The order dated 27/10/2020, passed by learned

Sessions Judge, Ahmednagar in Sessions Case No.279/2016 convicting the appellant for the offence under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for six months is maintained. However, clause (2) of the operative order i.e. *“(2) Accused Pradip Manik Kanse shall not be released from the captivation until his life”* is hereby withdrawn.

(iii) The conviction of the appellant for offence under Section 12 of the Protection of Children from Sexual Offences Act is hereby set aside. The appellant is acquitted of the same.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-