

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 47 OF 2017**

1. Santosh alias Appasha Hanmant Birajdar  
Age : 26 Years, Occu.: Agriculture

2. Siddharam Bhimraya Birajdar,  
Age : 26 Years, Occu.: Labour

Both R/at : Mhaisalgi, Taluka Akkalkot,  
District Solapur.

(Presently at Central Jail, Pune)

.. Appellants

**Versus**

The State of Maharashtra

.. Respondent

**WITH**

**INTERIM APPLICATION NO.1723 OF 2024**

**IN**

**CRIMINAL APPEAL NO. 47 OF 2017**

1. Siddharam Bhimraya Birajdar,  
Age : 36 Years, Occu.: Labour

R/at : Mhaisalgi, Taluka Akkalkot,  
District Solapur.

(Presently at Visapur Open Prison,  
Shrigonda, Ahmednagar, Pune)

.. Appellants

**Versus**

The State of Maharashtra

.. Respondent

**WITH**  
**CRIMINAL APPEAL NO. 399 OF 2022**

1. Mudkanna Somanna Pujari,  
Age : 37 Years, Occu.: Agriculturist

2. Hanmant Shivyogi Salotgi,  
Age : 33 Years, Occu.: Agriculturist,

Both R/at : Mhaisalgi, Taluka Akkalkot,  
District Solapur.

.. Appellants

**Versus**

1. The State of Maharashtra

2. Santosh Bhimashankar Birajdar,  
Age : 29 Years, Occu.: Agriculture  
R/at : Mhaisalgi, Taluka Akkalkot,  
District Solapur.

.. Respondents

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Mr. Daulat G. Khamkar a/w Adv. S. B. Bhatagunaki, for the  
Appellants in Appeal/47/2017.

Mr. Priyal Sarda a/w Ms. Seema Dighe, Mr. Shubham Sane, for  
the Appellants in Appeal/399/2022.

Dr. Ashvini A. Takalkar, A.P.P., for the State-Respondent.

Mr. Viresh Purwant a/w Mr. Suraj V. Gadkari, for the  
Complainant.

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**CORAM : BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON : 18<sup>th</sup> JULY, 2024**  
**PRONOUNCED ON : 19<sup>th</sup> SEPTEMBER, 2024 -**

**JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-**

1. The Appellants have filed present Appeals under Section 374(2) of the Criminal Procedure Code (for short “the Cr.P.C.”).

The Appellants in Criminal Appeal No.47 of 2014 are original accused Nos.1 and 2 and Appellants in Criminal Appeal No.399 of 2022 are original accused Nos.3 and 4, in Sessions Case No.153 of 2014, they have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short “the IPC”), sentencing them to suffer rigorous imprisonment for life and to pay fine of Rs.25,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for six months each, *vide* Judgment and Order dated 10.11.2016, passed by the Additional Sessions Judge, Solapur.

2. The factual matrix of the present case are as under :

**FACTS**

PW-10 Santosh Bhimashankar Birajdar, who happens to be the son of deceased Bhimashankar Birajdar, has filed a complaint stating that on 07.02.2014, he alongwith his

father Bhimashankar had gone to village Tadwal for purchasing grocery on a motorcycle bearing registration No. MH.13-BF.0721. On purchasing 'Jwari' (Jawar), Bhimashankar instructed PW-10 to take the said 'Jwari' bags in a Tamtam. Accordingly, PW-10 Santosh Birajdar proceeded in the said Tamtam and while passing through village Tadwal, he saw the motorcycle of his father Bhimashankar parked beside the road. After reaching home, he found that his father had not reached. His brother Raghvendra PW-14 also inquired regarding whereabouts of their father. Raghvendra also informed him that he had tried to call his father on his cellphone, however his call was received by unknown person. Thereafter, Santosh and Raghvendra, both left in search of their father on a motorcycle.

When they came near the place where his motorcycle was parked beside the road. On searching, they could not find their father. After taking search of their father at various places, they again came back to the spot where the motorcycle was parked. On taking extensive search in the light of cellphone they found their father lying in a ditch on the right side of Tadval-Mhaislagi Road. When they went near their father, they saw that their father had sustained serious

injury on his neck, alongwith several other injuries on his body. Suspecting that their father was dead, they started crying. Hearing them cry, some people gathered, and someone among the villagers informed the police.

When the police arrived, they sent Santosh (PW-10) to the police station for lodging complaint. Accordingly, a complaint came to be registered under Section 302 of the IPC bearing C.R. No.24 of 2014, at 1.00 a.m. at Akkalkot South Police Station.

3. When the information was received by the Akkalkot South Police Station at about 10.00 p.m. the Investigating Officer (PW-15) immediately reached the spot. At that time, the villagers as well as the son's of the deceased were present. After registration of the crime, the investigation was carried out. The inquest panchanama (Exh-47) and spot panchanama (Exh-55) were conducted. One bag having sickle, chilly powder, two scarves (Gamcha) and two pair of chappals were seized from the scene of offence. The body was sent for Post-Mortem and on receiving the opinion about the cause of death, it was handed over to the relatives for performing last rites.

After completion of investigation, charge-sheet was

filed and charges were framed. The prosecution has examined 15 witnesses. The accused were confronted with the evidence and their statements under Section 313 of the Cr.P.C., have been recorded. On the basis of the evidence led by the prosecution, the learned Additional Sessions Judge has been pleased to record finding of conviction against the present Appellants.

4. The accused Nos.1 to 4 opposed the prosecution on the ground that, the witnesses are relatives of the deceased therefore they are interested witness. They have been roped in the concocted story, by the witnesses. There is no doubt that the death of deceased is homicidal, but it was required to be proved by leading cogent evidence, against the accused responsible for the death.

5. The learned counsel for the Appellants have challenged the Judgment of conviction on the ground that, the evidence led by the prosecution is not cogent and truthful, pointing only towards the guilt of the present Appellants. In fact the evidence is full of infirmities, inconsistencies and contradictions. The evidence of so called eye witness is not reliable, as there are contradictions and omissions in their

testimony. Though PW-7 and PW-8 claimed to have witnessed the incident, they have given their statement belatedly, reasons for which have proved to be incorrect.

The learned counsel further submits that statement of material witnesses have been recorded after filing of charge-sheet though they were very much available. Though initially complaint is recorded against unknown person, by PW-10, the complainant PW-10, claims to have noticed the bag and the gamcha belonging to the accused on the spot, inspite of that he has given this information to the police after much delay. According to the Appellants the prosecution has neither proved the evidence of alleged eye witness, nor has produced any corroborating evidence in support of eye witness.

6. PW-10 Santosh Birajdar, who is the informant has narrated the events, that had occurred after the assault on Bhimashankar. According to him, when he alongwith his brother found his father lying in the ditch. He had gone to the police station for registering his complaint. The said complaint is at Exh-75. According to him, he had noticed bag of Hanuman Salotgi (accused No.4) lying near the dead body of his father. He identified the said bag because he had seen the said bag

with the accused. He had also noticed Chappal and Gamcha belonging to Mudkanna Somanna Pujari lying near the dead body to his father.

### **EYE WITNESS**

7. The prosecution has heavily relied on the testimony of the eye witnesses PW-7 Revansiddha Vitthal Birajdar and PW-8 Guranna Kamanna Lalsangi.

PW-7 Revansiddha, who belongs to the same village has stated that, on the date of the incident i.e. 07.02.2014, he alongwith PW-8 Guranna was returning from Tadwal from the market while they were proceeding on the motorcycle at about 7.30 p.m., they heard commotion. When they reached near the agricultural land of Sidhu Ambika, in the light of motorcycle, they noticed that four persons were assaulting Bhimashankar. When they inquired with assailant for the reason of their assault, the assailants threatened them of dire consequence. According to the witness, those four persons namely Mudkanna Somanna Pujari, Santosh Hanumath Birajdar, Sidharam Bhimraya Birajdar and Hanumant Shivyogi Salotgi, were the assailants. Accused Mudkanna and Santosh were holding sickles, accused Hanumant was carrying a bag on his

shoulder and accused Shidharam was present alongwith them.

At the time of assault, deceased Bhimashankar was running and pleading to the four accused persons to spare him, while the four accused were chasing him. The witness states that due to fear they returned to the village. On their return, PW-7 dropped PW-8 Guruanna at his residence, Guruanna assured PW-7 that he will inform the family members of Bhimashankar about the incident.

PW-7 claims that after his return, at about 9.45 p.m., he received information about death of Bhimashankar. He accompanied the villagers to the spot of incident and noticed dead body of Bhimashankar. He had sustained injuries on his neck, head, shoulder, hand etc.

8. According to PW-7, 70 to 80 villagers had gathered on the spot. He narrated the incident seen by him to the people gathered on the spot. On the next day at about 6.00 a.m., when police had arrived on the spot and they were making inquiry, he narrated the said incident to the police also, however, he was informed by the police that he will be summoned for recording his statement after two days. After four days, when he visited the police station, the concerned police officer

advised him to come after eight days. When he again visited the police station, the concerned police officer has recorded his statement on 27.02.2014. Thereafter, his statement under Section 164 of the Cr.P.C. was also recorded before the learned Magistrate.

9. The other eye witness PW-8, Guruanna Lalsangi has also given a similar version of the incident. According to him, in the light of the motorcycle he had seen accused Santosh Birajdar was possessing a Koyta, accused Mudkanna was also possessing Koyta, accused Hanmant was possessing a bag, while accused Siddharam Birajdar was holding Bhimashankar from the rear side near his waist. When he inquired about cause of assault, the accused threatened the witnesses of facing similar consequences, if they did not leave. After return to the village he met Bhimashankar's nephew Goudappa, and informed him about the said incident.

On the same night he came to know about death of Bhimashankar. He also accompanied the villagers to the spot of incident during night. Next morning he had been to the spot of incident and narrated the incident to the police. According to him, he was one of the panch witness to the inquest panchanama. He was informed by the police that he will be

summoned to the police station on the next day for recording his statement. But on the next day when he visited the Police Station his statement was not recorded. It could be recorded only after 15 days.

10. PW-9 Arjun Koli is a witness who claims to have seen accused Nos.1 to 4 on their motorcycle on the fateful night, wearing blood stained clothes. Statement of the said witness is also recorded after delay of two months. According to the said witness, he has seen accused Mutanna and Hanumant on one motorcycle while Santosh and Siddhram on another motorcycle. Clothes of all the four accused were stained with blood. He could see it in the light of mercury lamps on the road. According to him, he had stayed back at village Panmangrul and on 07.02.2014, while he was visiting his daughter's house. When he came to know about the death of Bhimashankar on next day, he immediately rushed to the house of Bhimashankar and informed his family members that he had seen the accused persons with blood stained clothes.

He claims to have thereafter gone on the spot and informed the police. According to him, the police had informed him that his statement will be recorded later. Thereafter he

went to reside with his daughter for two months.

### **RECOVERY**

11           The prosecution has relied on recovery at the instance of the accused for corroborating the evidence of eye witnesses. According to PW-15 the Investigating Officer on 13.02.2014, the accused No.2 Sidharam has given the memorandum statement, about his willingness to produce the weapon of assault and clothes worn by him at the time of offence. Accordingly, accused alongwith panch witnesses proceeded to his house and the accused produced clothes and weapon. The weapon sickle, used for cutting sugarcane was stained with blood.

On 14.02.2014 accused No.1 has shown his willingness to produce the sickle and the clothes worn by him at the time of offence, the articles were seized *vide* panchanama at Exh-56.

Accused No.3 on 15.02.2024 gave memorandum statement showing his willingness to produce the clothes worn by him at the time of offence, they were seized from his house *vide* panchanama Exh-64.

On 16.02.2014, accused No.4 has also shown his

willingness to produce the clothes worn by him at the time of commission of offence and it was seized vide panchanama Exh-60.

Since the clothes and weapons used by the accused during the offence were seized, *vide* memorandum panchanama Exh-57, 60, 62 and 64 respectively, PW-15 Investigating Office has sought opinion of medical officer about the injury caused by the weapon seized vide communication dated 11.03.2014. On 12.03.2014 he sent the seized muddemal for Chemical Analysis.

### **MOTIVE**

12. In order to prove the motive, the prosecution has relied on the evidence of PW-6 Gurusidhappa Jokare, PW-10 Santosh Birajdar and PW-11 Sidharam Birajdar.

PW-10, PW-11 and PW-14 are the sons of the deceased Bhimashankar. According to PW-10 complainant since their father was doing social work of settling the disputes in the village, the aggrieved persons had grudge against him, which is supported by the testimony of witness PW-14 Raghvendra, the other son of deceased, who in his testimony stated that, about 8 days prior to the incident, when he went to

a restaurant in their village, he had heard six accused persons in the hotel discussing and hatching a conspiracy to eliminate his father Bhimashankar, for creating hurdles in the Nyay Panchayat.

13. According to the PW-10, PW-11 and PW-14 their father was active in settling the disputes in the village and was doing social work. The accused are some of the disgruntled souls who were aggrieved, since the decision in dispute did not favour them, they have hatched conspiracy to eliminate deceased Bhimashankar.

14. PW-15 the Investigating Officer states that, the accused persons were traced on 11.02.2014 and were arrested. According to the Investigating Officer on 09.02.2014 he recorded statements of six witnesses including sons of the deceased namely Raghvendra, Siddhram and the wife of the deceased.

15. The Investigating Officer has testified that on 17.02.2014 additional information about the crime was given therefore, he has recorded supplementary statement of seven witnesses and statement of Revansidha Birajdar and Guranna

Lalsangi PW-7 and PW-8 was recorded on 27.02.2014.

On completion of investigation, he has filed the charge-sheet. After filing of charge-sheet, two eye witnesses PW-7 and PW-8 namely Revansidha Birajdar and Guranna Lalsangi again came to the police station for giving information about the incident, therefore their supplementary statements were recorded. Thereafter, again three witnesses came to the police station on 24.05.2014 for giving additional information, accordingly statements of these witnesses namely PW-6 Gurusidhappa Jokare, PW-9 Arjun Koli and Shivyogi Lalsangi came to be recorded.

According to the Investigating Officer he was on leave on 24.02.2014 and 25.02.2014. He has categorically stated that from 08.02.2014 to 23.02.2014 no eye witness had approached him for recording of any statement. He had proceeded on leave on 24.02.2014 and 25.02.2014, while proceeding on leave he had handed over his charge to Second Officer. When he resumed his duties on 26.02.2014, there was no progress in the investigation during his absence. This statement of the Investigating Officer falsifies claim of the PW-7 and PW-8 that, they had immediately approached the Police Authorities, but their statement was not recorded on account

of unavailability of the Investigating Officer. The delay in recording the statements of vital witnesses like PW-7, PW-8 and PW-9 is not properly explained, on the contrary their explanation has proved to be false, in the light of the testimony of the Investigating Officer PW-15.

16. The cross-examination of the PW-7 is full of omissions. He has admitted that there is a omission in the statement under Section 161 about getting knowledge of the murder of Bhimashankar on previous day, and his presence on the spot alongwith the villagers on the next day.

PW-7 has given admission in his cross-examination that, he had no dialogue with the villagers, on the next morning, when the police arrived at the spot; he alongwith Guruanna and other villagers were present; three sons of Bhimashankar were also present on the spot on the night of the incident.

PW-7 had claimed that he had informed the incident to the villagers who were present and also to the police officer who arrived at the spot.

17. PW-15 in his testimony in no uncertain terms had admitted about the contradictions and omissions in the

testimony of PW-7. The PW-15 has categorically denied the allegations of PW-7 that, when he visited police station, he was asked to come after three days for recording statement.

From the aforementioned infirmities, the presence of the eye witness during the incident and their claim that they had seen the accused persons assaulting the deceased becomes doubtful. The explanation for delay in recording statement of PW-7 under Section 161 of the Cr.P.C. is manifestly untenable.

18. PW-8 Guruanna also could not give any satisfactory explanation, about not raising any alarm, about the assault on deceased, in the nearby dwellings or in the village after his return. Not raising any alarm in the neighborhood houses or in the village after returning, is not a conduct of a normal human being, when faced with such a situation. The behaviour of PW-7 and PW-8 does not inspire confidence and leaves much to be desired. Though they claim that, they have seen the incident yet after returning to the village, PW-7 and PW-8 have gone to their respective houses and kept quite. It is claimed by them that they have been to the spot alongwith villagers on the very night after the incident as well as on the next morning and

they had informed the villagers as well as police about, witnessing the incident, is neither supported by statement of any of the villagers, nor by the Investigating Officer. In fact, in the cross-examination the Investigating Officer has denied that, any such information has been given to him during the investigation on the spot or even thereafter. From the inconsistencies of the statements of witnesses recorded under Section 161 of the Cr.P.C. and in the witness box, the irresistible conclusion that can be drawn is that, an improvement is made to fit the story of prosecution.

In this regard, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in case of **Ganesh Bhavan Patel V/s. The State of Maharashtra And Ors., reported in 1979 AIR 135.** Wherein held that, delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that, the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case. Delay in

recording statements of PW-7 and PW-8, inspite of their availability do not fit in the story narrated by the witnesses.

19. PW-15 the Investigating Officer has testified that there is an omission in the statement of PW-8, about the accused Siddharam Birajdar holding Bhimashankar from back side near his waist. PW-8 has omitted to state that he had told Revansiddha to go home and he would inform about the incident at the house of Bhimashankar. Above of the statements of the PW-7 and PW-8 have not been supported or corroborated by the PW-15 the Investigating Officer. From the testimony of the PW-15 the Investigating Officer, the only conclusion that can be drawn is that the testimony of PW-7 and PW-8 is full of infirmities and not worth relying, and their presence in the spot, is also doubtful.

20. So far as the improvements in the testimony of the informant PW-10 Santosh Birajdar about the motive of the accused persons to eliminate his father and the justifying reasons narrated by him is concerned, the Investigating Officer has categorically stated, that he has recorded the Supplementary Statement of Santosh Birajdar on 09.02.2014 and 17.02.2014. In the said statement Santosh Birajdar had

never disclosed about the dispute between the deceased Bhimashankar and the accused.

21. Though the complaint is filed by the PW-10 informing that, unknown persons have caused death of his father, the arrest of accused, seems to be on the basis of information given by the sons of the deceased, as an afterthought and after exploring various possibilities regarding the assailant of their father in order to fit in the story of the prosecution. The various persons to the dispute in the village who were aggrieved by the intervention of deceased, seem to have been named as suspects.

22. PW-15 the Investigating Officer has categorically denied that, PW-10 has brought to his notice while recording the spot panchanama that, the bag belonging to the accused No.4 and one chappal and gamcha belonging to the accused No.3 were lying on the spot.

23. The PW-15 Investigating Officer has admitted in his cross-examination that, there is a delay in sending muddemal for chemical analysis. The muddemal was lying in the muddemal room of the police station up to 02.03.2014 though

incident occurred on 07.02.2014. He has admitted that the seized muddemal is required to be sent to the Chemical Analyzer as early as possible. He has also admitted that he has taken out three sickles from the muddemal and sent it to the Medical Officer seeking his opinion about the cause of death. The said muddemal was received from the Medical Officer on the next day. He also admits that he has neither prepared any panchanama at the time of removing of muddemal, for sending it to the Medical Officer, nor after receiving it back from the Medical Officer. This is a serious lapse committed by the investigating agency, making the seized material susceptible to doubts about its contamination and tampering.

Considering the admissions given by the Investigating Officer, tampering of the evidence can not be ruled out. He admits that, he had sent the blood samples of the deceased to the chemical analyzer alongwith other muddemal on 02.03.2014 i.e. almost three weeks after the blood samples were drawn from the body of deceased, during the Post-Mortem. The Investigating Officer has failed to follow the established norms of sealing of the muddemal and conducting the panchanama while taking out the sealed articles from the muddemal room. This reflects the cavalier and negligent

conduct of the Investigating Officer.

24. In the case of *Prakash Nishad alias Kewat Zinak Nishad V/s. State of Maharashtra, reported in 2023 SCC OnLine SC 666*, the Hon'ble Apex Court while making observations about the scientific examination, in DNA Report by the Scientific Officer, has been pleased to observe about the procedure prescribe in the Maharashtra Police Manual, for preserving integrity of Scientific Evidence, which reads as thus :

*“61. We may observe that the Maharashtra Police Manual 6, when speaking of the integrity of scientific evidence in Appendix XXIV states- “The integrity of exhibits and control samples must be safeguarded from the moment of seizure upto the completion of examination in the laboratory. This is best done by immediately packing, sealing and labeling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them*

*separately and contact be scrupulously avoided in transport also.”*

62. *In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to “Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers-Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India” 7 which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken “Must be submitted in the laboratory without any delay.”*

63. *The document also lays emphasis on the ‘chain of custody’ being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended*

*that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item."*

According to the said manual, the investigating agency has to maintain the custody of muddemal as per the procedure laid down in the Maharashtra Police Manual, as has been observed. The unexplained delay in sending the specimen for chemical analysis is likely to entail in contamination and diminishment of value therefore while handling specimen the procedure laid down in the Maharashtra Police Manual, has to be followed scrupulously, in order to ensure that the specimen has reached the forensic science laboratory in a condition which would yield best possible results. The chain of custody of documents while handling them has to be maintained in order to ensure the integrity of the said specimen.

25. In the present case, the Investigating Officer has specifically admitted that while sending the sickles to the

Medical Officer for examination as well as after its return to the custody of the Investigating Officer, there was no panchanama conducted, as well as the delay in sending the blood samples is also not explained by the Investigating Officer. Therefore, the report of the Chemical Analyzer becomes untrustworthy and unreliable due to the non-adherence to the procedure which is required to be followed while sending the samples to the Chemical Analyzer.

26.           Though the prosecution has claimed that PW-7 and 8 are the eye witnesses who have witnessed the accused assaulting deceased Bhima Shankar, the evidence led by the prosecution does not inspire confidence in the eye witnesses who are chance witnesses. Therefore, if we appreciate the corroborative evidence by excluding the evidence of the eye witness, it leaves us only with the recovery and motive, to analyse whether the chain of circumstantial evidence is complete.

PW-9 has been examined by the prosecution to corroborate the eye witness and to prove the complicity of the accused. The statement of PW-9 is also recorded two months after the incident, for which no satisfactory explanation is

given by him. In his cross-examination he has admitted that, in the statement under Section 161 of the Cr.P.C., he has failed to mention that he had seen the stains of blood on the clothes of the accused in the light of mercury lamps. The testimony of this witness, is full of infirmities, therefore it does not inspire confidence.

Apart from the testimony of eye witness and that of PW-9 regarding blood stained clothes of the accused, the prosecution has tried to project the incident of death of Bhimashankar as a revenge by the person who were aggrieved by his meddling in the disputes in the village. PW-14 has been examined to prove the conspiracy planned by the accused in the restaurant, which is claimed to be overheard by the PW-14. But the PW-14 has not given any such statement on the first available opportunity, when his statement has been recorded by police on 09.02.2014 and 17.02.2014. The omissions clearly indicates towards improvement made by the said witness to fit the prosecution case. As a result, the evidence of this witness becomes unreliable and inadmissible to prove the complicity of the accused.

27. Though there is a recovery made by the

Investigating Officer PW-15, of the alleged clothes and weapon of the accused, the result of the CA Report which is based on the muddemal which has not been preserved and handled according to the standard norms, would not be admissible in evidence. Admission is given by the Investigating Officer about non adherence to the norms while handling the muddemal. As a result, the prosecution has failed to establish the link of the accused with the material recovered.

28. On scrutiny of the evidence and hearing the respective counsel it is apparent that, the prosecution has failed to prove that, the Appellants have caused death of the deceased, by producing cogent and reliable evidence. The testimony of the two eye witness does not inspire confidence, there are number of discrepancies and infirmities in the testimony of witnesses.

The motive attributed also could not proved by the prosecution. The CA Report being tainted with irregularities, makes the recovery suspicious and undermines the case of the prosecution.

29. In view of the vitiating circumstance, and failure of the prosecution to prove the evidence which would point only

towards the guilt of the accused, they cannot be convicted for the offence, by sentencing them to undergo imprisonment for life. Hence, the conviction of the Appellants becomes unsustainable. In our opinion the learned Additional Sessions Judge, Solapur, has failed to appreciate the glaring discrepancies in the evidence while convicting the Appellants. Therefore, the Judgment and Order of conviction passed by the learned Additional Sessions Judge, Solapur, cannot be sustained and it deserves to be quashed and set aside.

30. Considering the all pervading circumstances, we have no hesitation in holding that the prosecution has failed to prove the guilt of the accused by leading cogent and reliable evidence. As a result, Criminal Appeal Nos.47 of 2017 and 399 of 2022 are allowed and Judgment and Order of the Additional Sessions Judge, Solapur, dated 10.11.2016 in Sessions Case No.153 of 2014, sentencing the Appellants to undergo punishment for the offence punishable under Section 302 of the IPC is quashed and set aside and the Appellants are directed to be released forthwith.

31. In view of disposal of both the Criminal Appeals, the Interim Application No.1723 of 2024 stands disposed off.

**(MANJUSHA DESHPANDE, J.)**

**(BHARATI DANGRE, J.)**