



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

CRIMINAL APPEAL NO.522 OF 2020

Sanjay Diliprao Madke
Age : 28 years, Occu : Agri,
R/o. Moha, Tq. Kallam,
Dist. Osmanabad

.. Appellant

Versus

The State of Maharashtra

.. Respondent

.....
Shri. S. G. Bobade, Advocate for Appellant.
Shri. N. S. Tekale, APP for the Respondent / State.
.....

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

RESERVED ON : 30.01.2025
PRONOUNCED ON : 05.02.2025

JUDGMENT (*Per* NEERAJ P. DHOTE, J.) :

. This is the Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment and Order dated 27.07.2020 passed by the learned Special Judge, Osmanabad in Atrocity Spl. Case No.26 of 2017 convicting the Appellant for the offence punishable under Sections 302 and 201 of the Indian Penal Code (hereinafter referred to as the, 'I.P.C.') and sentencing him to undergo Imprisonment for Life and to pay fine of Rs.1,000/- (Rs. One Thousand Only), in default, to undergo Simple Imprisonment for One (1) Month and to undergo Rigorous Imprisonment for Three (3) years

and to pay fine of Rs.500/- (Rs. Five Hundred Only), in default, to undergo Simple Imprisonment for One (1) Month, respectively.

2. The Prosecution's case as revealed from the Police Report is as under :-

2.1. Shrirang Shahu Bhoite (hereinafter referred as 'Deceased') and Wife of the Appellant were having illicit relations. On 06.09.2017, they both had telephonic conversation and Wife of the Appellant called Deceased to her house. The Appellant learnt about the same. In the evening of 06.09.2017 Deceased went to the house of the Appellant to meet the Appellant's Wife in absence of the Appellant. The Appellant got the Iron *Katti* from one of the witness and kept it under the seat of his motorcycle and gave the motorcycle to the Juvenile in conflict with law. The Appellant came home and saw Deceased and his Wife together at his home. The Appellant took Deceased on the Motorcycle of Deceased to the agricultural field. The Appellant called the Juvenile in conflict with law, in the agricultural field with his motorcycle having the *Katti* below the seat. Accordingly, the Juvenile in conflict with law reached on the said motorcycle at the agricultural field. The Appellant inflicted fatal blows on Deceased by the said *Katti* and committed his Murder. Thereafter, the Appellant and the Juvenile in conflict with law carried the dead body on the motorcycle of Deceased and threw the dead body in another agricultural field. They broke the number plate of

motorcycle of Deceased and removed the sim card from the mobile of Deceased and destroyed the proof. The Appellant called Co-Accused Sudarshan in the agricultural field. The Co-accused assisted the Appellant in changing the clothes and concealing the clothes which he was wearing at the time of crime.

2.2. Since Deceased left his home in the evening of 06.09.2017 and did not return for Three (3) days, the father of Deceased lodged the Report with Shiradhone Police Station. On the next day, Police informed him that one motorcycle was found lying on Yermala - Babulgaon road and asked him to ascertain whether it was the motorcycle of his Son. Accordingly, father of Deceased went to the spot and identified the said motorcycle as that of his Son. During the search in the sugarcane field, dead body of his Son was found. There were injuries on the dead body. The Report was lodged by the father of Deceased against unknown persons and Crime No.150/2017 came to be registered for the offence punishable under Sections 302 and 201 of the I.P.C.

3. The Police performed the Inquest and referred the body for Post-mortem. The Spot Panchanama was drawn and Statements of the witnesses were recorded. The Post-mortem revealed the cause of death as *'Haemorrhagic Shock caused by cut-throat injury and multiple chop*

wounds.’ The Appellant and Co-accused came to be arrested. *Katti*, clothes of the Appellant and driving licence of Deceased came to be seized pursuant to the voluntary statement of the Appellant. The Articles seized during the course of investigation, were referred to the Chemical Analyzer. The motorcycle used in the crime came to be seized. The Reports of Chemical Analyzers were collected. Since Deceased belonged to the Scheduled Caste, which was known to the Appellant, Sections 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, ‘SC ST Act’) came to be added in the crime. On completion of investigation, the Appellant and Co-accused came to be Charge-sheeted.

4. On committal, the learned Trial Court framed the Charge at Exh.12 for the offence punishable under Sections 302, 120(B), 201 r/w. Section 34 of the IPC and for the offence punishable under Section 3 (2) (v) of SC ST Act against the Appellant and Co-accused. To prove the Charge, Prosecution examined in all twenty (20) witnesses and brought on record the relevant documents. After the Prosecution closed their evidence, the statement of the Appellant and the Co-accused came to be recorded under Section 313 (1)(b) of the Code of Criminal Procedure, 1973 (for short, ‘Cr.P.C.’). They claimed false implication in the crime. After hearing both the sides and appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order

acquitting the Co-accused for all the offences and acquitting the Appellant for the offence punishable under Section 120(B) r/w. Section 34 of the I.P.C. and Section 3 (2)(v) of the SC ST Act and convicting the Appellant, as referred above in paragraph no.1.

5. It is submitted by the learned Advocate for the Appellant that the case is based on circumstantial evidence. The FIR was lodged against unknown person. Circumstances brought on record were not conclusively proved and do not form a complete chain to prove the involvement of the Appellant. The learned Trial Court did not appreciate the evidence in its correct perspective and convicted the Appellant. The Appeal be allowed by setting aside the conviction and sentence. In the alternative he submitted that the evidence on record shows that, due to the illicit relations between Deceased and Wife of the Appellant, Deceased was in the house of the Appellant when Wife of the Appellant was alone. The Appellant when came and saw Deceased and his Wife, he lost his control and the incident took place. He submitted that, the case would fall within the exception to Section 300 of the I.P.C.

6. It is submitted by the learned Additional Public Prosecutor (APP) that, the Homicidal Death of the Informant's Son is not in dispute. The evidence on record goes to show that the driving licence of Deceased was found at the instance of the Appellant. The weapon *Katti*

used in the crime and clothes of the Appellant were seized pursuant to the disclosure made by the Appellant. The weapon was stained with Human blood. It was for the Appellant to explain as to how the licence of Deceased came to be seized from his mother's field. There is nothing to show that the witnesses had any animus with the Appellant. Though the Prosecution witnesses were cross-examined by the defence, their testimony remained unshaken. The trustworthy evidence on record proves the involvement of the Appellant in the crime and the Appeal be dismissed by maintaining the conviction and sentence. The alternate submission made by the learned Advocate for the Appellant has no merits as the evidence shows that the Appellant made preparation to commit Murder of Deceased and executed his plan.

7. Heard both the sides and scrutinized the evidence available on record. Undisputedly, the Prosecution's case is based on circumstantial evidence. The law in respect of circumstantial evidence is well settled right from the Judgment in **Hanumant vs. The State of Madhya Pradesh, MANU/SC/0037/1952** and **Sharad Birdhi Chand Sarda vs. State of Maharashtra, MANU/SC/0111/1984**. The circumstances are required to be conclusively proved to form a complete chain which would unerringly point towards the involvement of the Accused in the crime. The Prosecution witnesses can be categorised as

(a) The Informant, (b) The Panch Witnesses, (c) The Other Witnesses, and (d) Police Witnesses.

8. The circumstances brought on record by the Prosecution are as follows :-

- (i) Homicidal Death of Informant's Son.
- (ii) Deceased came to the house of the Appellant to meet his Wife and after some time the Appellant reached home
- (iii) Discovery of licence of Deceased and *Katti* at the instance of the the Appellant.
- (iv) Reports of the Chemical Analyzers.
- (v) Showing the dead body by the Appellant to the witnesses and taking the *Katti*

(i) **Homicidal Death of Informant's Son:-**

9. There is voluminous evidence to establish this circumstance. Evidence of PW7 - Eknath Baliram Waghmare shows that he was the Police Patil of village Babhalgaon, Tal. Kallam, Dist. Osmanabad. On 10.09.2017 he learnt that one motorcycle was kept in the field of Suresh Barkul i.e. PW8, and there was rotten smell in the vicinity. He went to the said spot with some villagers and saw the motorcycle. There was Rotten smell in that part of the field. He noticed dead body of a male person lying there. He informed the police. The police arrived. The Post-mortem was conducted on the spot. There is no cross-examination by the defence.

10. Evidence of PW8 - Suraj Chandrasen Barkul shows that he was having land at Babhalgaon. On 10.09.2017 between 09:15 a.m. and 09:30 a.m. he received phone call from Police Patil of Babhalgaon i.e. PW7 - Eknath Baliram Waghmare, informing that dead body of unknown person was lying in the standing sugarcane at his field. He reached the spot. PW7 - Eknath Baliram Waghmare, police and people were present over there. Staff from Civil Hospital was called and Post-mortem was performed on the spot. The father of Deceased came along with some people and body was handed over to the father of Deceased. There is no cross-examination by the defence.

11. The evidence of PW4 - Shailesh Sudhakar Avadhoot shows that he was serving in the electricity department at village Dahiphal. On the directions of his superiors, he went on the spot of incident in the capacity of Panch. The spot was an agricultural field bearing Gat No.146 belonging to PW8 - Suraj Chandrasen Barkul. The dead body of a male was lying in the standing sugarcane crop. The body was decomposed. There were injuries on the dead body. White shirt with black checks, white sando baniyan, underwear and blue pant were on the body. There were marks of motorcycle tyre on the spot. The number plate of motorcycle was broken into pieces and lying nearby. The motorcycle was also seen at some distance. There were blood stains on the silencer

of the motorcycle. One broken I-Ball mobile without sim card and battery was lying near the motorcycle. The police collected the samples and the Articles from the spot. The motorcycle was also seized. The Spot Panchanama at Exh.23 and Inquest at Exh.115 came to be drawn. He identified the Articles shown to him. In cross-examination it has come that the said spot was 25 kilometers from Kallam. Nothing has come in the cross-examination to discard his testimony.

12. The evidence of PW1 - Madhav Laxman Chandanshive shows that he was also in the services of Electricity Board at the Dahiphal. On the directions of the Superiors, he went to the spot as the Panch on 10.09.2017 along with PW4 - Shailesh Sudhakar Avadhoot. He saw the dead body in the standing sugarcane. Motorcycle was seen near the dead body. There were blood stains on the silencer of the motorcycle. The number plate was lying on the spot. The police collected the samples and seized the Articles under the Panchanama at Exh.23. Though cross-examined, his testimony remained unshaken.

13. PW2 - Shahu Srirang Bhoite was the resident of Lohata (west), Tal. Kallam, Dist. Osmanabad. Deceased was his Son and working as the Driver. On 06.09.2017 around 06:00 p.m. Deceased left home for work on his motorcycle. He did not return till morning. He thought that Deceased might have stayed with his friend after night

duty. When Deceased did not return home for three (3) days, he lodged Report on 09.09.2017 with the Shiradhon Police Station. On 10.09.2017 he again visited the said police station in the morning. The police informed him that one motorcycle was lying on Yermala - Babulgaon road and asked him to ascertain the same. So, he visited the said spot and found that the said motorcycle was that of his Son. The police took him in the sugarcane field at some distance from the motorcycle. He saw the dead body and identified the same as that of his Son. There were injuries on the neck, shoulder and other parts of body. He lodged the Report at Exh.27 against unknown person. He was cross-examined on the point of distance between his village and Babulgaon, regarding employment of Deceased, his visit to the Police Station for the first time, the number of people present on the spot when he reached and other aspects. However, his testimony remained unshaken.

14. The evidence of PW19 – Nitin Narayan Katekar shows that he was the Sub Divisional Police Officer (SDPO) at Kallam from August-2016 to August-2019. On 10.09.2017 he received phone call from the Assistant Police Inspector of Yermala Police Station that a dead body was lying in Bhabalgaon village. He visited the spot, where dead body was lying. The Spot Panchanama and Inquest were drawn. The dead body was identified. On this aspect, there is no cross-examination.

15. The evidence of PW10 - Dr. Prasanjeet Shivaji Padwal shows that after receiving the phone call from the Police Sub Inspector of Yermala Police Station that, it was not possible to bring the dead body at P.H.C. and he was requested to visit the spot for Post-mortem, he went on the spot and performed the Post-mortem. He prepared the Post-mortem Report at Exh.127. There is no challenge in respect of the Post-mortem. The Post-mortem Report was admitted by the defence. The Post-mortem Report shows the following external injuries on the body.

- “1. Chop wound over anterior aspect of neck & upper part of right chest-wall of size 12 cm x 4 cm x 5 cm extending obliquely downward from 3 cm below left angle of mandible to 2 cm below from right mid-clavicular point irregular margins.
2. Chop wound of size (10 cm x 3 cm x bone deep) at occipetal region of scalp, slightly oblique irregular margins.
3. Contused lacerated wound of size (5 cm x 2 cm x 2 cm) at upper part of nape region at the centre noted irregular margins infiltrated clotted blood.
4. Stab-wound of size (5 cm x 3 cm x 1 cm) spindle shaped noted 1 cm below left clavicle extending from medial end to midclavicular portion.
5. Chop-wound of size (8 cm x 4 cm x bone deep) noted at first webspace between thumb & index finger of right hand; exposing underlying muscles & lumbricals.
6. Multiple incised wounds of varying sizes ranging from 3 x 2 x 2 cm to 2 x 1 x 0.5 cm noted over palmar aspect of right hand with zigzag shaped margins.
7. Chop wound of size (10 cm x 3.5 cm x 2.5 cm) over ventral aspect of left limb at wrist joint mid-portion & also on lower 1/3 of radius & ulna exposing underlying muscles of bony portion noted.
8. Incised wound of size (2 x 0.5 x 0.5 cm), linear in shape, obliquely downwards noted on lateral aspect of left arm, in upper 1/3 portion at the centre.
9. Incised wounds <a> of size (2 x 1 x 0.5 cm) over left suprascapular region of back & of size (1.5 x 0.5 x

- 0.5 cm) noted over left midscapular region more towards medial end; 2 cm lateral to spinal column.*
10. *Contusion of size (3 cm x 2 cm) noted over rt. Suprascapular region.*
 11. *Burnt skin in the form of blackish leathery material found attached to the face, anterior aspect of neck, upper part of chest & certain areas of skull."*

15.1. The position of limbs is mentioned in the Post-mortem Report as *"Supine anatomical position, lower limbs abducted & externally rotated partially flexed at knee joints, both upper limbs slightly flexed at elbow joints."*

15.2. The Column No.19 shows the following injuries :-

- "Evidence of linear undisplaced fracture of skull; particularly of occipital bone corresponding to injury No.(2) of column No.17 noted.*
- . Evidence of subdural haematoma occipital lobe of size (4 x 3 x 0.5 cm) dark brownish in colour noted*
 - . Meninges torn at occipital region of scalp*
 - . Brain liquified."*

15.3. The Column No.20 – Thorax in respect of walls, ribs and cartilages shows linear displaced fracture of 4th and 5th rib on left side of chest noted, anteriorly at midclavicular line. The cause of death was due to *'Haemorrhagic Shock caused by cut-throat injury and multiple chop wounds'*.

16. In the light of the above evidence on record, it is firmly established by the Prosecution that Deceased left home in the evening of 06.09.2017 and did not return and his dead body with several injuries

was noticed in the agricultural field after three (3) days. The identity of Deceased as the Son of PW2 - Shahu Srirang Bhoite (Informant) is firmly established. The medical evidence proved the Death due to the injuries on the body. The Prosecution conclusively proved that the Son of Informant met with the Homicidal Death.

(ii) Deceased came to the house of the Appellant to meet his Wife and after some time the Appellant reached home :-

17. PW12 - Seema Sanjay Madake is the Wife of the Appellant. She was residing at Moha. Deceased was her friend. On 06.09.2017 around 02:00 p.m. she made a phone call to Deceased and asked him to visit her house. The said phone call was made to enquire about the girl, to whom he had gone to see for marriage. She asked Deceased to visit her house around 04:00 p.m. As this witness did not support the case of Prosecution, she was allowed to be cross-examined by the learned APP. In her cross-examination done by the Prosecution, it has come on record that, she used to talk with Deceased on the phone and on that day she made phone call to Deceased around 02:00 p.m. The day, she made call to Deceased, was the Ganapati immersion day. Her husband went to the field between 04:00 and 04:30 p.m. She talked with Deceased till 09:00 p.m. Between 09:00 and 09:30 p.m. Deceased came to her house. At that time, the Appellant had gone for Ganapati immersion. To the question by the learned APP that when Deceased was in her house, her

husband i.e. the Appellant, came home and took deceased with him, she replied that Deceased had come to her house and when she asked him about the girl, he hugged her and so she got frightened and she picked up Sickie and threw on the head of Deceased and he fell down. It is reiterated that her husband came home. She told him that she was raped. She accepted that she was stating for the first time before the learned Trial Court that, Deceased came to her house and raped her. She never disclosed about the same to anyone. She accepted that the Police Officer visited her house several times during the course of investigation. She added that the police came to her house only once. She accepted that she was taken to the Court. Suggestion is put to her that, to save the Appellant she was deposing false.

18. The evidence of PW12 - Seema Sanjay Madake shows that she was using the mobile by number 7350955054. The Prosecution examined PW20 - Dattatram Shantaram Aangre, who was the Nodal Officer in Vodafone Company. In his evidence, the documents in connection with mobile phone of the Appellant, mobile phone used by PW12 - Seema Sanjay Madake, mobile phone of witnesses and mobile in the name of father of Deceased are brought on record at Exhs.181, 187/1, 187/2, 188/1 and 188/2. His evidence shows that, the said call details were supported by the Certificate under Section 65B of the Indian Evidence Act (Exh.190) which makes the electronic evidence

admissible. The evidence of this Nodal Officer shows that, the said Certificate was in consonance with the said mandatory provision, hence admissible. Though the call records indicate the phone calls between the cell number used by PW12 – Seema Sanjay Madake and number which was in the name of the father of Deceased in the evening of 06.09.2017 at 15:48:48, 15:50:58, 16:04:27, 20:59:11 and 21:34:39, we keep this piece of electronic evidence aside for the reason that, there is no evidence from the Informant i.e. PW2 - Shahu Srirang Bhoite that the sim card which was in his name was being used by the Deceased

19. The further evidence of PW12 - Seema Sanjay Madake shows that she was cross-examined by the defence Advocate. It has come that, to save her chastity she took the Sickle and Deceased suffered injuries when she resisted the rape. When the Appellant came home, she narrated the incident to him and due to the incident she was frightened and sat in another room. She reiterated that, regarding the rape and the manner in which she resisted it, was stated by her for the first time as she was deposing on oath. She deposed that she kept quiet to save her image from getting tarnished.

20. It is settled position under the law that, the testimony of the witness, who do not support the Prosecution, cannot be ignored or

discarded altogether. It can be accepted to the extent it supports the Prosecution's case and found dependable after careful evaluation.

20.1. The version of PW12 - Seema Sanjay Madake that, after Deceased hugged her, she got frightened and took the Sickie and threw it on the head of Deceased, is unbelievable. The reason for not believing the said version is the extent of injuries found on the dead body. The Post-mortem Report shows that there were eleven (11) external injuries on the dead body. It is strange as to how the Sickie was readily available with her to assault Deceased. It is further strange that, no Report was lodged by PW12 - Seema Sanjay Madake in that regard. It was for the first time she stated about the rape on her and assault to Deceased by her. The said version of PW12 - Seema Sanjay Madake is highly improbable and not corroborated by any evidence. She nowhere deposed that after she threw Sickie on Deceased, Deceased left her house. However, from her consistent evidence, it is proved that, in the evening of 06.09.2017 Deceased had come to her house to meet her and thereafter the Appellant reached home. This circumstance is conclusively proved by the Prosecution.

(iii) Discovery of licence of Deceased and *Katti* at the instance of the the Appellant :-

21. The evidence of PW19 – Nitin Narayan Katekar, who was the Investigating Officer, shows that the Appellant was arrested on

10.09.2017 under the Arrest Memo at Exh.156. During custody, the Appellant stated that, he will show the place where the weapon and his clothes were kept. His Memorandum at Exh.110 was prepared in that regard and the Appellant led the police and the Panchas to a place in the vicinity of village Moha. At the said place, the license of Deceased and hairs were found. The same were seized. Thereafter, the Appellant led them to one Bore Well in which the weapon and clothes were concealed. The Police called a person to remove the said Articles from the Bore Well. With the help of the said person, Sickle and clothes were removed from the Bore Well and the same were seized under the Panchanamas at Exhs.111 & 157, respectively. Though cross-examined on that aspect, the evidence of this witness remained unshaken. Non filing of the extract of register of police station lock up will not be sufficient to discard his testimony.

22. The evidence of PW3 - Pravin Vikram Palake shows that he was working as Talathi of Moha village since 2016. On 11.09.2017 he was directed by his Superiors to act as the Panch in the case. He along with the Gram Sevak had gone to the Police Station. In his presence the Appellant disclosed to show the place where the weapon and his clothes were kept. The Memorandum of the said statement was prepared at Exh.110. Thereafter the Appellant led them and the police to one place in the vicinity of village Moha. After alighting from the vehicle the

Appellant led them to a place which was near the cattle-shade and water tank. At the said spot the driving licence and soil mixed with hairs and blood was noticed. The same were seized. Thereafter the Appellant led them to a place which was the field of Soyabean crop. After walking for some distance, the Appellant indicated to one Bore Well. On removal of plastic lid of the Bore-Well, blood was noticed. The said blood was collected with the cotton swab. With the help of the person who knew how to remove the Articles from the Bore Well, the Sickle and clothes comprising blue jeans pant and one shirt were removed from the Bore Well. As the clothes were wet, they could not be packed at that point of time. On the next day, the Panchas went to the police station where the Sickle, clothes and cotton swab came to be sealed under the Panchanama at Exh.111. He identified the Appellant as the same person at whose instance the said Articles were seized. It is reiterated that, the Memorandum of the statement by the Appellant was prepared in the police station immediately after he was brought in the police station. The cross-examination could not create any dent in his evidence.

23. There is evidence of PW6 - Wasim Mehboob Shaikh which shows that, he was in the work of motor rewinding at Kallam. He was called by the police for removing Articles from the Bore Well. He took small inverter with bulb, hook (anchor), magnet and rope with him and went on the spot which was in the vicinity of village Moha. The

Appellant, the police and Panchas were present on the spot. He deposed of removing the clothes and Sickle from the Bore Well with the help of anchor and magnate, respectively. The defence tried to show variations / contradictions from the previous statement of this witness. On going through the cross-examination, it is clear that the evidence of this witness is natural and corroborate the testimony of PW3 – Pravin Vikram Palake and PW19 – Nitin Narayan Katekar in respect of removing the clothes and Sickle from the Bore Well.

24. From the above discussed consistent evidence, the Prosecution successfully established that, clothes of the Appellant and the Sickle came to be discovered / recovered at the instance of the Appellant.

(iv) Reports of the Chemical Analyzers :-

25. There is evidence of PW17 – Nagesh Suryakant Sherkar and PW18 – Ajit Balasaheb More, who were the policemen with the Yermala police station. Their evidence shows that they carried the muddemal and blood samples, respectively to the Forensic Science Laboratory, Aurangabad. Their evidence remained unshaken in the cross-examination. Their evidence is corroborated by the communications at Exhs.148, 149, 151 and 152.

26. The C.A. Reports are brought on record by the Prosecution with the communication at Exh.16 (collectively). The said CA Reports show that the blood group of Deceased could not be determined as the results were 'inconclusive'. One of the CA Report is in respect of seventeen (17) Articles such as cotton swab, earth, quilt, clothes, driving licence and *Katti* (weapon). The result of analysis of the said Articles was that, Human blood was found on the driving licence, earth with hair, *Katti*, clothes which were removed from the Bore Well and the cotton swab by which the blood was collected from the Bore Well.

27. From the above discussed evidence on record, the Prosecution successfully established that, incriminating Articles such as the licence of Deceased, *Katti* and clothes of the Appellant having human blood stains were seized at the instance of the Appellant. Thus, this evidence becomes relevant pursuant to the provisions of Section 27 of the Indian Evidence Act.

(v) Showing the dead body by the Appellant to the witnesses and taking the *Katti* :-

28. The Prosecution examined PW13 - Nandkishor Vasant Rao Shinde, who was the resident of village Moha. The evidence of PW13 - Nandkishor Vasant Rao Shinde shows that the Appellant called him in the night between 10:30 p.m. and 10:45 p.m. on 06.09.2017 to one field. He went to the field where the Appellant was present. The

Appellant informed him that one person was killed and thrown there. He noticed one person sleeping in front of cattle shed. On noticing the same from long distance, he returned home. Thereafter he received the phone call from the Appellant; however, he did not answer the call. He identified the clothes at Articles 'F' and 'P' as that of the Appellant. His statement under Sections 161 and 164 of the Cr.P.C. was recorded.

29. Though PW13 - Nandkishor Vasantrao Shinde was cross-examined by the defence, nothing has come so as to discard his testimony. In absence of anything to show any contradictions, omissions or improvements, it is clear that his testimony was corroborated by his previous statements. He denied the suggestion that due to the hand loan of Rs.50,000/- (Rs. Fifty Thousand) taken by him from the Appellant, there was quarrel between him and the Appellant as he was not repaying the same. Merely because he did not inform the said fact to the Police Patil or Sarpanch of their village, by itself will not be sufficient to discard his testimony.

30. There is evidence of PW14 - Sambhaji Shivaji Madake that, he was having Pan Shop and in the evening of 06.09.2017 between 07:00 p.m. to 07:30 p.m. the Appellant called him around 08:00 p.m. and asked for the *Katti*. After some time the Appellant came on the motorcycle to his shop and collected the Sickle from him and left. He

further goes to depose that in the night around 10:00 p.m. to 10:30 p.m. the Appellant called him in the field urgently. When he reached the field, the Appellant told him that his Wife killed a boy who was attempting to rape her. He found one person lying in a pool of blood. His evidence goes to show that as he did not support the Prosecution, he was cross-examined by the Prosecution. He was confronted with the contents of his previous statement which he agreed to have recorded as per his say. The learned Trial Court while considering the testimony of this witness observed as under :-

“He was confronted with his statement under Sec.164(5) Cr. P. C, wherein he gave following admissions :-

- a. Police recorded his statement and thereafter his statement was recorded in the Court at Kallam.*
- b. His statement recorded in the Court at Kallam (Exh.142) under Sec.164(5) of Cr.PC. was recorded as per his say.*
- c. His statement under Sec.164 Cr.PC. (Exh.142) bears his signature, and it was recorded as per his narration.*
- d. Paragraph 4 in the statement under Sec.164 (Exh.142) was referred to him which he admits having recorded as stated by him.*
- e. He is B.Com. well educated and has good knowledge of social affairs and not illiterate.*
- f. In Moha Madke's are in majority and Sarpanch in open category is always Madke.*
- g. He, for the first time stated in the Court that Sanjay (A1) told him that his (A1's) wife killed the boy from Lohata who raped her.*
- h. Sanjay(A1) is from his brotherhood (bhavki) with whom he (PW14) has good relation since the beginning.*
- i. Sanjay(A1) is his friend and he(PW14) felt that, he (A1) should not be troubled.”*

All these admissions indicate who he is and what is his position in life as per Sec.146(2) r/w Sec.154 of the Indian Evidence Act. Same further prove that, he is a genuine witness, knows the real facts and circumstances of the transaction, yet tried to save his friend (A1) from the clutches of this case. It

needs to be noted that, when his statement (Ex.142) was referred to him, he admits everything as referred above vide a to i.

35. *Hon'ble Supreme Court in **Dhanabal and Anr. Vs. State of Tamilnadu (1980) 2 SCC 84** held that,*

“Statement of a witness becomes substantive evidence under, if it is read in extensoto the witness and the witness admits having made it in the committal Court. There is no need to read passage by passage. If it is further held that mere fact that the police secures statement of a witness under, in view of expediency or anticipating possibility of his being one over, would not make the statement unreliable. It is for the Court to determine the extent of reliance to be placed on such statement in the circumstances of the case including the fact of witness having resiled from it and at which stage. Statement under Sec.164 has corroborative value.”

In the present case Sambhaji(PW14) admits having given the statement under Sec.164 Cr.P.C. in the Court at Kallam. There is a presumption that the Ld. J.M.F.C. has recorded it while exercising judicial work and official duties. Also, he(PW14) admits that his statement (Exh.142) under Sec.164 was recorded as stated by him. Hence, the deliberate avoidance on his part about an extra judicial confession made to him by Sanjay(A1), has no meaning but the same speaks volumes. It is settled law that extra judicial confession is a weak piece of evidence and the Rule of Prudence requires corroboration for the same. In view of the above discussion, I hold that whatever deposed by the Sambhaji (PW14) in the Court including his statements and admissions given under Sec.154 of the Indian Evidence Act, is substantive evidence which has full corroboration of the statement (Exh.142) under Sec. 164 Cr. P. C. Regarding corroboration in respect of extra judicial confession, it is discussed in the next paragraph.”

31. PW14 - Sambhaji Shivaji Madake was not cross-examined by the defence. The cross-examination was declined by the defence. Therefore, his testimony remained unchallenged. However, he was not confronted with the Article - 'G' Katti seized during the investigation and

therefore, there is no evidence that it was the same *Katti*. Even if the aspect of Extra Judicial Confession by the Appellant to this witness is ignored, his evidence that the Appellant called him on his mobile in the night of 06.09.2017 and he saw the dead body in the field is established.

32. Through the above referred evidence of PW13 – Nandkishor Vasantrao Shinde and PW14 – Sambhaji Shivaji Madake, the Prosecution established the circumstance that the Appellant showed the dead body of Deceased which was lying in the field to these witnesses in the night of 06.09.2017.

FURTHER DISCUSSION :-

33. From the above discussed evidence on record, the Homicidal Death of the Informant's Son by name Shrirang Shahu Bhoite is established. It is further established by the Prosecution that in the night of incident, Deceased visited the house of the Appellant. It is further established that the licence of Deceased, blood stained clothes of the Appellant and *Katti* (weapon) having human blood came to be seized at the instance of the Appellant. The evidence of PW10 – Dr. Prasanjeet Shivaji Padwal shows that the weapon *Katti* was referred to him by the police seeking his opinion and he gave his opinion. The said documents are at Exhs.131 and 132. He identified the Article 'G' *Katti* as the one, which was referred for his opinion. In his statement under Section 313 of the Cr.P.C. the Appellant stated

that, when he reached home in the night, his Wife was found weeping and one dead body was lying. His Wife told him that the said person committed rape on her and while resisting, the said person suffered injuries and died. He further stated that to save their reputation, he threw the dead body in the agricultural field. The explanation given by the Appellant in his statement under Section 313 of the Cr.P.C. is not probable. Had it been that Deceased got killed at the hands of the Appellant's Wife while resisting rape on her, it would have been a case where the plea of self-defence was available to the Appellant's Wife. Even for the sake of argument the Appellant's statement is to be accepted, it is inconsistent with the conduct of the prudent man. No one will carry the dead body of a rapist from his home to the agricultural field and keep silent. Though no time of death is available, it is clear from the evidence on record that after Deceased left home in the evening of 6th, he was not seen by anyone and lastly he was in the house of the Appellant as emerged from the conclusive evidence etc. The proved circumstances conclusively established the involvement of the Appellant in Homicidal Death of Deceased.

34. As regards the alternate submissions made by the learned Advocate for the Appellant that, when the Appellant saw the Deceased and his Wife together at their home, he committed the crime due to grave and sudden provocation and therefore, the case would fall within Exception-1 of Section 300 of the I.P.C. is concerned, useful reference

can be made to the observations made by the Hon'ble Supreme Court of India in **K.M. Nanavati vs. State of Maharashtra, AIR 1962 SC 605**, wherein the point of grave and sudden provocation was considered. The relevant paragraph nos.84 and 85 from the said Judgment reads as under :-

“84. Is there any standard of a reasonable man for the application of the doctrine of “grave and sudden” provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his Wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

*85. The Indian law, relevant to the present inquiry, may be stated thus : (1) The test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) **The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.** (4) The fatal blow should be clearly traced to the influence of passing arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.”*

35. Reference can also be made to the recent decision of the Hon'ble Supreme Court of India in **Vijay @ Vijaykumar vs. State represented by Inspector of Police, 2025 SCC OnLine SC 123 / MANU/SC/0085/2025** wherein the applicability of Exception 1 to Section 300 of I.P.C. is considered and it is observed in paragraph Nos.24 and 25 as under :-

“24. In order to bring his case under Exception 1 to Section 300 Indian Penal Code the following ingredients:

- (i) The provocation was sudden; (ii) the provocation was grave; and (iii) loss of self-control. These three ingredients may be considered one by one:*
- (i) Whether the provocation was sudden or not does not present much difficulty. The word 'sudden' involves two elements. First, the provocation must be unexpected. If an Accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. Secondly, the interval between the provocation and the homicide should be brief. If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation.*
- (ii) the main difficulty lies in deciding whether a certain provocation was grave or not. A bare statement by the Accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this: "Is a reasonable man likely to lose self-control as a result of such provocation?" If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation is not grave. In this context, the expression 'reasonable man' means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A*

reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the judge himself. The reasonable man under consideration is a member of the society, in which the Accused was living. So, education and social conditions of the Accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, courts are prepared to treat adultery as a basis for grave provocation.

- (iii) *the question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not. So, if it is proved that the Accused did receive grave and sudden provocation, the court is generally prepared to assume that homicide was committed while the Accused was deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the Accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the Accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300 Indian Penal Code.*

25. *What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The Court has to consider whether a reasonable person placed in the same position as Accused would have behaved in the manner in which the Accused behaved on receiving the same provocation. If it appears that the action of the Accused was out of all proportion to the gravity or magnitude of the provocation offered, the case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the Accused in the circumstances in which the Accused was placed, acted."*

36. It is the inherent case of the Prosecution as revealed from the Police Report that, the Appellant came to know that Deceased was coming to his house to meet his Wife and he saw Deceased and Wife at his home together and so, he killed Deceased. The Exception-1 to Section 300 of the I.P.C. reads as under :-

“Exception 1. —When culpable homicide is not murder. — Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

Firstly. - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. - That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

37. Even the learned Trial Court in paragraph no.31 of the Impugned Judgment observed that :-

“31. Prosecution case is that Sanjay (A1) had gone to the Ganpati procession but returned abruptly and noticed that his wife Seema (PW12) and her paramour, the victim were together in his house. He went to the village, brought katti (Art. G) from the shop of his friend, returned home and then committed murder of the victim near Kotha (Cattle Shed) in his field, by the katti / sickle (Art.G).”

38. Undisputedly, the Appellant was a villager engaged in agriculture and a rustic person. His getting provoked to such an extent after noticing his Wife and Deceased together in his house at the night time is natural. A man of his position in life would behave in the similar manner. It is thus clear that, getting knowledge of Deceased coming to his home to meet his Wife and noticing Deceased and his Wife together is bound to give grave and sudden provocation to the Appellant which resulted in the Murder of Deceased. Explanation to Exception-1 of Section 300 speaks that, whether the Provocation was grave and sudden enough to prevent the offence from amounting to Murder is a question of fact. From the proved circumstances, as discussed above, we find that Deceased was done to death whilst the Appellant was deprived of the power of self-control in a mental state of grave and sudden provocation which was the result of illicit relations between his Wife and Deceased. Applying the principles as laid down in the above referred judgments to the proved circumstances, brings the case of Prosecution within Explanation 1 of Section 300. It is true that no such defence is raised by the Appellant either in his cross-examination and in his statement under Section 313 (1)(b) of the Cr.P.C. On this aspect, it would not be out of place to refer the relevant observations made by the Hon'ble Supreme Court of India in **Vijayee Singh and Ors vs. State of U.P.**, AIR 1990 SC 1459 / MANU/SC/0284/1990 which reads as under :

“33. *The general burden of establishing the guilt of accused is always on the prosecution and it never shifts. Even in respect of the cases covered by Section 105 the prosecution is not absolved of its duty of discharging the burden. The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and circumstances obtaining in the case. He may adduce the evidence in support of his plea directly or rely on the prosecution case itself or, as stated above, he can indirectly introduce such circumstances by way of cross-examination and also rely on the probabilities and the other circumstances. Then the initial presumption against the accused regarding the non-existence of the circumstances in favour of his plea gets displaced and on an examination of the material if a reasonable doubt arises the benefit of it should go to the accused. The accused can also discharge the burden under Section 105 by preponderance of probabilities in favour of his plea. In case of general exceptions, special exceptions, provisos contained in the Penal Code or in any law defining the offence, the Court, after due consideration of the evidence in the light of the above principles, if satisfied, would state, in the first instance, as to which exception the accused is entitled to, then see whether he would be entitled for a complete acquittal of the offence charged or would be liable for a lesser offence and convict him accordingly.*”

39. On re-appreciation of the evidence available on record and in the light of the above discussion, the conviction of the Appellant for the offence punishable under Section 302 of the Indian Penal Code needs to be converted to the offence punishable under Section 304 Part-I of the IPC. As regards the conviction and sentence for the offence punishable under Section 201 of the IPC is concerned, we do not see that the same requires interference. Admittedly, there is no Appeal by the Prosecution for acquittal of Co-accused and acquittal of the

Appellant for the offence punishable under Section 120B and Section 3 (2)(v) of the SC ST Act. The Appellant is behind the bars for a period of Five (5) years i.e. Five (5) years, Ten (10) months and Six (6) days. This period of imprisonment, in our view, would be appropriate. Hence, we proceed to pass the following order.

ORDER

- [i] The Appeal is partly allowed.
- [ii] The conviction of the Appellant recorded by the learned Special Judge, Osmanabad, *vide* Judgment and Order dated 27.07.2020 in Atrocity Spl. Case No.26 of 2017, for the offence punishable under Section 302 of the I.P.C. and consequent sentence, is hereby quashed and set aside. Instead, the Appellant is convicted for the offence punishable under Section 304 Part-I of the I.P.C. and sentenced to suffer imprisonment already undergone i.e. Five (5) years, Ten (10) months, Six (6) Days with fine of Rs.500/- (Rupees Five Hundred), in default, to suffer imprisonment for One (1) month.
- [iii] The conviction and sentence of the Appellant for the offence punishable under Section 201 of the I.P.C. is maintained.
- [iv] Record & Proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)