



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.607 OF 2002

Madhukar s/o Narayan Wankhade,
aged about 25 years,
occupation cultivator,
r/o Pimpalgaon Raja, tahsil Khamgaon,
district Buldhana.
(police station Pimpalgaon Raja)
(Now in Central Jail, Amravati). **Appellant.**

:: VERSUS ::

The State of Maharashtra,
through the Police Station Officer,
Police Station Pimpalgaon Raja,
tahsil Khamgaon, district Buldhana. **Respondent.**

Shri S.V.Sirpurkar, Counsel for the Appellant.
Mrs.Sneha Dhote, Additional Public Prosecutor for the
State.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 17/09/2025

PRONOUNCED ON : 25/09/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

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1. By this appeal, the appellant (the accused) has challenged judgment and order dated 30.9.2002 passed by learned 2nd Additional Sessions Judge, Khamgaon (learned Judge of the trial court), in Sessions Case No.22/1995.

2. By the said judgment impugned in the appeal, the accused is convicted for offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay fine Rs.2000/-, in default, to undergo rigorous imprisonment for 6 months.

He is also convicted for offence under Section 201 of the IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay fine Rs.1000/-, in default, to undergo rigorous imprisonment for 3 months.

3. Brief facts necessary for the disposal of the appeal are as under:

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On 2.11.1994, on behalf of the State, PSO Shri D.R.Patil lodged report on an allegation that on 27.10.1994, at about 10:30 am, Madhukar Kisan Wankhade (the complainant), who is brother of Prabhakar Kisan Wankhade (the deceased), lodged report to Pimpalgaon Police Station that the deceased went to agricultural field at about 9:30 am, but did not return to home, till 8:00 pm. He searched for his brother, but his brother was not traced. It is further alleged that when he was searching his brother, he met villagers namely Shankar Sonaji Wankhede, Bhaskar Wankhede, Yashodabai, and one Madhukar. On enquiry by Madhukar Kisan Wankhede, it revealed to him that the accused is also missing. So, they went to the field and took search for the deceased. After 4-5 days, i.e. 1.11.1994, at about 16:15 hours, dead body of the deceased was found in the agricultural field of Narayan

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Sonaji Wankhede i.e. the father of the accused. Accordingly, a merg report was registered under Section 174 of the Code of Criminal Procedure. During the merg enquiry, inquest panchanama was drawn. The body of the deceased was completely decomposed and was buried with the soil and thorny crops. The dead body of the deceased taken out from the ditch. The inquest and spot panchanama was drawn and on the basis of the report of the PSO, the crime was registered against the accused.

4. After registration of the crime, the investigating officer has recorded statements of the relevant witnesses. The weapons used in the commission of the offence are seized at the instance of the accused. The postmortem report was collected. The incriminating articles were forwarded to the Forensic Laboratory and after completion of the investigation, chargesheet was submitted.

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5. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court. Learned Judge of the trial court framed the charge vide Exh.11. The contents of the charge are read over to the accused. The accused pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, the prosecution examined in all 15 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Kashinath Vishwanath Sirsat, pancha on spot where dead body was brought;	16
2	Gajanan Wankhede,	20
3	Ramdas Laxman Wankhede,	21
4	Ashok Rathod, Circle Inspector,	22
5	Madhukar Shankar Wankhede	26
6	Suresh Bodade, villager	29
7	Manohar Ingle, villager	30
8	Arjun Bobade	31
9	Gopal Kalantri, Medical Officer	34
10	Rameshwar Kshirsagar	38

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11	Ravindra Bodade	39
12	Vimalbai Sapkal	40
13	Madhukar Kisan Wankhade	41
14	Narayan Kshirsagar	44
15	Devidas Patil	45

7. Besides the oral evidence, the prosecution placed reliance on spot panchanama Exh.70, inquest panchanama Exh.80, seizure panchanama of clothes of the deceased Exh.90, map Exh.24, memorandum statement of the accused Exh.27, discovery panchanama Exh.28, postmortem report Exh.35, opinion of the medical officer Exh.36, merg report Exh.48, report Exh.49, FIR Exh.50, extract of diary panchanama Exh.46, special report Exh.51, house search panchanama Exh.52, requisition to medical officer Exh.53, requisition to Chemical Analyzer Exh.54, and CA Report Exhs.57 to 59.

8. After appreciation of the evidence, learned Judge of the trial court held that there was previous

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enmity between the deceased and the accused as the evidence shows that quarrel took place between the accused and the deceased prior to 7-8 months as well as prior to 4-5 days of the incident and, therefore, the accused has motive to commit the offence and convicted him as the aforesaid.

9. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused.

10. Heard learned counsel Shri S.V.Sirpurkar for the accused and learned Additional Public Prosecutor Mrs.Sneha Dhote for the State.

11. Learned counsel for the accused submitted that the entire case is rested on circumstantial evidence. The only circumstance, on which the prosecution relied upon, is the previous dispute between the deceased and the accused prior to 7-8 months and another circumstance of

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“last seen.” In fact, the deceased and the accused were not seen by anybody together prior to the incident. He submitted that the conviction is based on surmises and conjectures. He submitted that learned Judge of the trial court has inferred about involvement of the accused only on the basis that there was a previous dispute. However, there is nothing on record to show that there was any immediate cause for the accused to commit the murder of the deceased. He submitted that as far as circumstantial evidence is concerned, the prosecution has to establish chain of circumstance, which is absent in the present case. In view of that, the appeal deserves to be allowed by setting aside the judgment impugned in the appeal.

12. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that the evidence of the witnesses unerringly points out that there was previous

dispute between the accused and the deceased. The deceased and the accused are cousin brothers. As far as previous dispute is concerned, the witnesses, who are villagers, stated about the previous dispute. Villager PW7 Manohar Ingle, has stated about the previous dispute between the accused and the deceased prior to 4-5 days of the incident, which is not stated by any other witness. However, she submitted that the fact of previous dispute between the deceased and the accused shows that there was motive for the accused to commit the murder of the deceased, coupled with fact that the weapons were seized at the instance of the accused. Thus, circumstances, that there was a previous dispute between the deceased and the accused, the accused was having motive to commit the murder of the deceased and the weapons of the offence are seized at the instance of the accused, sufficiently show involvement of the accused in the alleged offence. In view

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of that, the judgment impugned in the appeal deserves to be confirmed.

13. Having heard both the sides and perused the evidence on record, the core question to be decided is, whether death of the deceased is homicidal death.

14. Before addressing the evidence of the medical officer, examined to prove the nature of the death of the deceased as homicidal one, it has to be seen whether the dead body found, in the agricultural field of the father of the accused, is of the deceased.

15. PW1, Kashinath Vishwanath Sirsat, acted as a pancha on spot where dead body of the deceased was found, is examined by the prosecution vide Exh.16. His evidence is to the extent that Madhukar Kisan Wankhade has shown him the spot of the incident. The field is situated on the bank of Palladi River. They have seen dead

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body which was buried in the ground and some bones were seen apparently. Accordingly, the police drawn panchanama. Thereafter, the dead body was taken out from the ground. The dead body was having maggots. There were injury marks on his shoulder and thigh. Accordingly, panchanama was drawn, which is at Exh.18. In his presence, the police also carried out seizure of articles found on the person of the deceased, which is at Exh.19.

His cross examination shows that he has not seen eyes and ears to the dead body. There were no hairs on head and there was no skin on the dead body and the dead body was not identifiable.

Thus, the evidence of this witness shows that the dead body was not in a condition to identify it.

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16. Coming to the evidence of Medical Officer PW9 Gopal Kalantri, examined Exh.34, it shows that he has conducted the postmortem by visiting the spot of the incident where the dead body was found. His evidence shows that on 2.11.1994, police constable, having bakkal No.1358, at 12:00 noon, brought memo for postmortem. Accordingly, he went to the spot along with the police and started postmortem. On examination, he found that the dead body was highly decomposed, skin was peeled of, and maggots were present all over the body. There was foul smelling. Features were swollen, both eyes were absent, tongue was inside, lips was absent, external nose and external left ear were absent. The external genital was not seen. He found following injuries on the dead body of the deceased:

Left upper and left lower extrimity not seen, bones were decomposed muscles exposed. Left

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tibia attached to Lt. Tumer attached to left hip joint, seen. Right upper extrimity extended. Lacerated wound below occipital region horizontally situated seen. 4" x 1/2 x 1/2" on palpation structure on body third cervical verticle. Lacerated wound over left scapula region present size 1" x 1/2" x 1 2". Lacerated wound over right scapula region size 3" x 1" x 1/2". Abrasion over lateral side of right thigh size 1/2 " x 1/4" x 1 4". Lacerations over face at the side of face at the side of nose size 3" x 1/2" x 1". Lacerations over lateral side of face at the side of left ear seen size 2" x 1/2" x 1/2". Laceration over left shoulder joint seen completely encircling the joint 15" in length, bones decomposed, muscles tenders exposed. Laceration over left lower extrimity seen completely encircling left hip joint 20" in length. Muscles vessels tendered not seen over left lower extrimity. Only feamer and tibia seen. Laceration over mouth seen, teeth exposed.

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Laceration at the sight of penis completely encircling the penis length 4". Sleeping of skin of right foot seen in a manner of glove. Fracture with clean cut edges having redish margins seen over vault 1" below occipital region horizontally situated 2" x 4" 1/4". Brain substance liquified and blackish in colour. Foul smell present. Internal organs were congested friable and srinkled. Heart empty fribage and srinkled. Stomach empty and shrinkled. Small and large intestine contains gaseous and faccal matter. Time of death more than six hours after last meal. Spinal cord opened, crack fracture seen over body of third cirvicle verticle. Blood clots were present incised fracture".

17. Accordingly, he carried out the postmortem examination. The postmortem report is at Exh.35. He further stated that the police enquired with him about time and cause of death. He gave his opinion that the deceased might have died before 4-5 days of this

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postmortem. The cause of death due to hard and sharp object. The opinion is at Exh.36. He further stated that such types of injuries, given at Exh.35, are possible by hatch. He has also given his opinion in writing that such types of injuries are possible by the said objects.

During his cross examination, he admitted that the injuries as per column Nos.16 and 17 are lacerated injuries. The portion eaten by maggots would give the appearance of lacerated wound. He further stated that he agree with the proposition of Parekh Medical Jurisprudence that wounds caused before or after death begin to bleed once again becomes so altered in appearance that it is difficult to form an opinion as to whether they were caused before or after the death. He further admitted that the injuries mentioned in postmortem report were caused by sharp object. He admitted that lacerated wound can be caused only by

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blunt object. He specifically stated that the face of the deceased was not in a position to identify him.

18. Thus, the evidence of PW1, Kashinath Vishwanath Sirsat and Medical Officer PW9 Gopal Kalantri shows that the dead body of the deceased was not in a position to identify the same.

19. Now, it has to be seen, whether any evidence is adduced by PW13 Madhukar Kisan Wankhade, the brother of the deceased, as to identification of the dead body to show that it was the dead body of his deceased's brother. The said witness testified that on 27.10.1994, the deceased went to the field bullock cart by taking gunny bag, agricultural ploughing implements, and piecemeal. But, he did not return till 8:00 pm. So, he along with Suresh Bobade and Sudhakar went to take his search. When they were searching, they met Manohar Ingle,

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Bhaskar, Narayan, and Yashodabai. On enquiry with them, it revealed that the accused did not return to home. They proceeded ahead to search the deceased. They gave call to the deceased, but he did not respond. However, they found bullock-cart and gunny bag. As the deceased was not found, they returned to him at 11:00 pm. They have also verified whether the accused is returned or not and it revealed to them that the accused had already come to his home. On the next day, again, they searched for the deceased, but they could not find him. On 1.11.1994, at about 1:00 pm, Sudhakar and Gajanan Wankhede came to his home and informed him that the dead body of the deceased is lying in nullah of “Dhnyangaga Shivar” in the field of the father of the accused. They went there and saw the dead body. The dead body was buried in nullah. They have seen piece of

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clothes of the deceased and, thereafter, they went to the police station and lodged the report.

Perusal of chief-examination of PW13 Madhukar Kisan Wankhade nowhere reveals that on the basis of which identification, he had identified the dead body is of his brother Prabhakar.

During the cross examination, he admitted that when they took out the dead body from nullah, there was no nose, one ear, and one eye on the dead body and it was decomposed and surrounded by maggots.

20. Thus, as far as identification of the dead body as it is the dead body of the deceased itself is not established by the prosecution. There is no dispute as to the fact that the dead body was found in the agricultural field of the father of the accused and death of that person was due to the assault on him. However, considering the

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evidence of PW1, Kashinath Vishwanath Sirsat, Medical Officer PW9 Gopal Kalantri, and PW13 Madhukar Kisan Wankhade, it reveals that dead body found was not in a position to be identified. The evidence of PW13 is completely silent on what basis he has identified the dead body as of his brother. The evidence adduced by the prosecution nowhere shows that for establishing the identification, any samples are obtained either of the deceased or from the brother of the deceased to ascertain that the deceased is related to PW13 Madhukar Kisan Wankhade and he is the same person i.e. the brother of the deceased.

21. To establish the charge against the accused, the prosecution has examined PW2 Gajanan Wankhede whose evidence is to the extent that the deceased and the accused are from his village. He identified both of them. The agricultural fields of the deceased and the accused are

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adjacent to each other. Prior to 7-8 months of the incident there was quarrel in the morning at about 7:30 am between the deceased and the accused and on the same day, there was quarrel between them at about 7:30 pm. As to the incident, his evidence is that on the day of the incident, he was in the field and returned back at about 5:00 pm. When he was sitting along with the other villagers, his daughter informed him that he was called at home. At that time, the accused asked him to help in lifting the grass bundle. Therefore, he helped him. After two days, he came to know that the deceased is missing. After 4-5 days, the dead body of the deceased was found in a ditch and they have seen 2-3 injuries on his person and the dead body was having maggots.

His cross examination shows that the wife of the deceased was not residing along with him as she left his company and was separately residing. Whereas, the

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deceased was residing with his mother. He admitted that when he went in the field, dead body was covered with the help of grass.

22. PW3 Ramdas Laxman Wankhede, is another villager, who has also stated that prior to 8-9 months of the incident, there was a quarrel between the deceased and the accused. The quarrel has taken place in his presence. He came to know from his wife that the deceased was missing.

During his cross examination, he admitted that he is not aware as to whether the quarrel took place between the deceased and Indubai as the deceased sat for urine in presence of Indubai.

23. PW6 Suresh Bodade, is also a villager, whose evidence also shows that he knows the accused as well as the deceased. The agricultural land of the deceased was

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situated near “Dhyanganga Shivar”. The deceased used to approach his field from the road passing through his land. He was informed that the deceased is missing. He also went in search of the deceased along with his brother Sudhakar. On the way, he met other villagers along with Yashodabai and Manohar Ingle from whom they came to know that the accused has also not returned home. Though they searched for the deceased, the deceased was not found, but his bullock-cart was seen in which some gunny bags were kept and the shirt of the deceased was also hanging. On the next day, again, the deceased was searched, but his dead body was found after 4-5 days.

His cross examination shows that after returning from field, there was communication between him and the accused. Sudhakar did not talk with PW13 Madhukar Kisan Wankhade when he came home. Madhukar was wearing white full pant and white shirt.

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Thus, except the communication between this witness and the accused, nothing is brought on record.

24. PW7 Manohar Ingle, villager, has also deposed that on the day of the incident, he was at home and at that time, Shankar Wankhede came there and informed him that the accused did not return. So, they went in search of the accused. They met the brother of the deceased and they came to know that the deceased is also missing. It was informed to them by Madhukar Kisan, Sudhakar Kisan, and Suresh Bodade that they have seen the accused in the village and, therefore, this witness went along with them in search of the deceased.

Though he is cross examined, nothing incriminating is brought on record. His evidence is only to the extent that when they were searching the accused, the

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brother of the deceased informed them that the accused is in the village.

25. PW8 Arjun Bobade, has not supported the prosecution case.

26. The evidence PW10 Rameshwar Kshirsagar shows that in the year 1994, he was in the house of his maternal aunt. He was visiting the field of Tukaram Wankhede. The said filed is in “Dhyangaga Shivar”. The agricultural fields of the accused and deceased were adjacent to each other and near the land of Tukaram, the houses of the deceased and the accused were also near the house of Tukaram. For approaching the field of Tukaram, there is a road from the boundary of the agricultural field of the accused and the deceased. The incident occurred on 27.10.1994 and on that day, he went to the field at about 10:00 am. At about 1:30 pm, small boys came there

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and in his presence, one bullock-cart of the accused proceeded from the agricultural field. He witnessed that the bullock-cart of the accused is also proceeding. After some time, he met the accused who told him that he should carry his grass bundle to home. He kept his grass bundle to the bullock-cart and they returned home.

Thus, his evidence is only to the extent that the accused asked him to carry his grass bungle to home.

27. PW11 Ravindra Bodade has also not supported the prosecution case.

28. PW12 Vimalbai Sapkal, deposed that the deceased was residing along with mother Anusayabai. The wife of the deceased was not residing with him. There was a quarrel between the accused and the deceased prior to the incident. She further deposed that the deceased was assaulted by the accused. She further

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deposed that on 27.10.21994 the deceased went to his field taking with him piecemeal and did not return back.

Thus, her evidence is only to the extent of the quarrel between the deceased and the accused prior to 7-8 months.

29. As earlier observed, PW13 Madhukar Kisan Wankhade, the brother of the deceased, stated that before 10-12 months of this incident, there was quarrel between his mother and Shankar on account of coming out of water from “gattar” from the house on the road. The said quarrel was pacified by other villagers. Before 7 months of this incident, Wasudeo spread over manure came on the road. The deceased and Praksh went to collect this manure which was prohibited by Indubai and there was a quarrel between the deceased and Indubai on that count. The deceased was assaulted by the accused. His further

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evidence shows that on 27.10.1994, the deceased went to his agricultural field and did not return back. Despite search, they could not find him and on 1.11.1994, dead body of the deceased was found in the agricultural field of the father of the accused. He stated that on account of previous quarrel, the accused used to threat the deceased to kill him.

His cross examination shows that they did not lodge the report on account of threat to kill the deceased. He also admitted that till 1.11.1994, he had no talk with the accused in respect of this incident. The police did not seize the bullock-cart and other articles in the panchanama of bullock-cart. He further admitted that at the time of taking search, they have also verified nullah, but they have not seen any ditch in the said nullah.

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Thus, his evidence is only to the extent that as there was quarrel between the accused and the deceased, they suspected about the death of the deceased at the hands of the accused.

30. The evidence of PW14 Narayan Kshirsagar is to the extent that the agricultural lands of the accused and the deceased were adjacent to each other. Before 4-5 days of the incident, he went to the field of the deceased for weeding out and the deceased was also present working in the field. In the evening, when he and the deceased were returning home, the deceased came from the field of Narayan by taking plough and he was going from cart-way. At the relevant time, the accused obstructed the deceased. So, there was quarrel between the deceased and deceased. He pacified the said quarrel and he returned the home along with the deceased.

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Thus, this witness came with a case that prior to the incident of 4-5 days before, there was a quarrel between the deceased and the accused.

As far as the incident is concerned, his evidence is to the extent that the deceased was missing on 27.10.1994 and his dead body was found on 11.10.1994.

31. Beside the evidence of these witnesses, the prosecution also placed reliance on the evidence of PW5 Madhukar Shankar Wankhede. As per his evidence, on 6.11.1994 police called him to act as pancha. In presence of police, the accused made memorandum statement that he is ready to hand over pea-axe and hatch which he used in the crime. Accordingly, his statement was recorded. Thereafter, the accused along with police staff and he and another pancha went to "Dhyanganga Shivar". The accused took them near the nullah where he buried the

deceased. Thereafter, he shown the place where he burned the clothes. Thereafter, he shown the meter room and from the meter room, he has taken out hatch as well as pea-axe kept underneath of the fodder. Accordingly, recovery panchanama Exh.28 was drawn.

During cross examination, he admitted that when memorandum panchanama was prepared, police took him to the house of the accused and in house search, police seized blood stained clothes. The field, where meter room was situated, was having sugarcane crops. He admitted that the pea-axe and the hatch were used in sugar cutting. The said meter room was in the name of Narayan Wankhade.

32. PW4 Ashok Rathod, who is Circle Inspector, is the formal witness and PW15 Devidas Patil is the Investigating Officer who has investigated the crime. He

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has narrated about the investigation carried out by him. During his cross examination, he admitted that he has not seized soil mixed with blood from any other place than the spot where the dead body was found.

33. On the basis of this oral as well as documentary evidence, the prosecution claimed the prosecution has proved its case beyond reasonable doubt by establishing the circumstances appearing against the accused.

34. As already observed earlier, the identification of the dead body that is of deceased Prabhakar itself is not established by the prosecution. Therefore, the death of the deceased is homicidal or not is not established by the prosecution.

35. It is not in dispute that there is no direct evidence in the nature of the eye witnesses but entire case of the prosecution is based on the circumstantial

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evidence. In such a case, the prosecution is under obligation to establish the chain of circumstance so complete that it unerringly establishes the guilt of the accused and does not lead any scope for any interference consistent with the innocence of the accused. The circumstances relied upon by the prosecution must be incompatible with the hypothesis consistent with the innocence of the accused and should negate all possibilities of the innocence of the accused. The law regarding circumstantial evidence is well settled that :

“(1) the circumstances from which an inference of the guilt is sought to be drawn must cogently and firmly established, (2) though circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances taken cumulatively, should form a chain so complete

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that there is no escape that within all probabilities the crime was committed by the accused and none else; (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of a guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Sir Alfred Wills in his admirable book “Wills Circumstantial evidence” (Chapter VI) lays down following rules specially to be observed in the case of circumstantial evidence;

2. The facts alleged as the basis of any legal inference must be clearly proved and beyond

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reasonable doubt connects with the factum probandum;

3. the burden of proof is always on the party who asserts the existence of any fact , which infers legal accountability;

4. in all case, whether of a direct or circumstantial evidence the best evidence must be adduced which in the nature of the case admits.

5. in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt,

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6. if there be any reasonable doubt of the guilt of the accused, he is entitled as of a right to be acquitted.

36. In the light of the above settled legal position, we have to see whether the prosecution succeeded in proving the chain of circumstances to prove the guilt of the accused. The circumstances on which the prosecution relied upon can be summed up as follows:

“(1). There was enmity between the accused as there was a quarrel took place between them 7-8 months prior to the incident;

(2) Due to the previous enmity, there was motive for the accused to commit the offence;

(3) As per the evidence of PW14 Narayan Kshirsagar, there was a quarrel between the

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deceased and the accused prior to 4-5 days of the incident; and

(4) The recovery of the incriminating weapons at the hands of the accused, and the evidence as to the “last seen.”(5)

37. On appreciation of the evidence of the witnesses, especially PW2 Gajanan Wankhede, PW3 Ramdas Laxman Wankhede, PW6 Suresh Bodade, PW7 Manohar Ingle, PW12 Vimalbai Sapkal, and PW13 Madhukar Kisan Wankhade, it reveals that all have stated that there was a quarrel between the deceased and the accused prior to 7-8 months of the incident. On that basis, the prosecution claimed that there was a motive for the accused to commit offence. Admittedly, none of the witnesses has stated that the quarrel was of such a nature and the accused has threatened the deceased in their

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presence. Though PW13 Madhukar Kisan Wankhade stated that the accused has threatened the deceased that he would kill him, the vague evidence is adduced by PW13 Madhukar Kisan Wankhade as no specific instances are narrated by him as to the threatening by the accused to the deceased. Only PW14 Narayan Kshirsagar has stated that there was quarrel between the accused and the deceased prior to 4-5 days of the incident. Neither the brother of the deceased nor any other witnesses has stated that there was any dispute between the accused and the deceased prior to 4-5 days of the incident.

38. Though the prosecution has examined PW5 Madhukar Shankar Wankhede and PW6 Suresh Bodade who are having agricultural lands adjacent to the lands of the deceased and the accused, they have not stated about the quarrel between the deceased and the accused prior to 4-5 days of the incident.

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39. The other witness PW10 Rameshwar Kshirsagar, is adjacent land owner who has also not narrated as to the quarrel between the accused and the deceased. Therefore, except suspicion, there is no other evidence on record to show that there was any motive for the accused to commit the offence. Even, the nature of the quarrel is not narrated either by the brother of the deceased or by any other witness.

40. Though the prosecution has claimed about “last seen” together, absolutely, there is no single witness who is examined by the prosecution to show that the deceased and the accused, at any point of time, were seen by anybody lastly together and, thereafter, the deceased got missing.

41. Thus, even accepting the evidence as it is, and the circumstances on which the prosecution relied upon,

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and considering the well settled law in what circumstances the circumstantial evidence has to be considered, admittedly, there is no link established by the prosecution to prove that the circumstantial evidence adduced by the prosecution sufficiently establishes that the death of the deceased is caused by the accused due to the previous dispute and the accused was having motive to kill the deceased.

42. As far as the evidence as to the recovery is concerned, the doctrine underlined under Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

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43. Section 27 of the Indian Evidence Act is interpreted by the Hon'ble Apex Court in the case of **Subramanya vs. The State of Karnataka, reported in 2022 LiveLaw SC 887** and held that the conditions necessary for the applicability of Section 27 of the Act are that (1) Discovery of fact in consequence of an information received from accused; (2) Discovery of such fact to be deposed to; (3) The accused must be in police custody when he gave information; and (4) So much of information as relates distinctly to the fact thereby discovered is admissible. It has been further held that what is admissible is the information and the same has to be proved and the opinion form it by the police officer. It has been further held that In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused

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and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It is further held by the statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

44. Insofar as the CA Reports as to the examination of the witnesses are concerned, the same are negative.

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45. Testing on the anvil and touchstone on the aforesaid principles laid down by the Hon'ble Apex Court, the evidence of PW2 Gajanan Wankhede, PW3 Ramdas Laxman Wankhede, PW6 Suresh Bodade, PW7 Manohar Ingle, PW12 Vimalbai Sapkal, PW13 Madhukar Kisan Wankhede, and PW14 Narayan Kshirsagar is only to the extent that there was a previous quarrel between the accused and the deceased prior to 7-8 months.

46. As far as the date of the incident is concerned, none of the witnesses have disclosed that at any point of time they have seen the deceased and the accused together.

47. Though PW14 Narayan Kshirsagar, in his evidence has disclosed that there was a quarrel between the deceased and the accused prior to 4-5 days of the incident, the other witnesses PW3 Ramdas Laxman

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Wankhede, PW6 Suresh Bodade, PW7 Manohar Ingle, and PW13 Madhukar Kisan Wankhade who is the brother of the deceased nowhere disclose as to the incident of quarrel between the deceased and the accused prior to 4-5 days of the incident.

48. The evidence as to the recovery of the weapons is also not as per the requirement of Section 27 of the Evidence Act.

49. As to the “last seen”, though claimed by the prosecution, none of the witnesses have stated that at any point of time they have seen the deceased and the accused together. As far as the motive is concerned, except there was a quarrel between the accused and the deceased prior to 7-8 months, no other evidence is brought on record to show that there was a strong motive for the accused to

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commit the offence due to the quarrel took place long back 7-8 months prior to the incident.

50. It is cardinal principle of criminal jurisprudence is that the guilt of the accused must be proved beyond all reasonable doubt, especially, when the case is based on circumstantial evidence, the burden is on the prosecution to establish the circumstances and the chain of circumstances which unerringly points out the guilt of the accused. In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which is in the nature of the case admits.

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51. Admittedly, proof beyond reasonable doubt does not mean proof beyond any doubt. It cannot be considered as if it is mathematical formula. The phrase “beyond reasonable doubt” has been often referred to and is well understood. The burden of proving a crime is generally on the prosecution does not conclude all questions. What degree or quantum of proof is needed: is it mere likelihood or certainty or something in between these two extremes. The proof beyond reasonable doubt does not mean proof beyond shadow of doubt.

52. If the evidence is so strong against a man as to leave only, a remote possibility in his favour, which can be dismissed with sentence “of course is possible”, but not in the least probable, the case is proved beyond reasonable doubt.

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53. In the present case, the prosecution has adduced the evidence in the nature of the circumstances. The only circumstances brought on record are that there was a previous enmity and on the day of the incident the deceased and the accused both were missing. However, none of witnesses has come forward to show that they were seen together. As far as the motive is concerned, except the previous quarrel, which took place long back prior to 7-8 months, the same is not sufficient to infer that the accused was having strong motive to the murder of the deceased. Thus, the evidence adduced is not cogent, and consistent and affecting the case of the prosecution.

54. Learned Judge of the trial court has swayed away with circumstance that there was a previous quarrel between the deceased and the accused and inferred that the accused is guilty for murder of the accused. Learned Judge of the trial court has not considered the well settled

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principles as far as the circumstantial evidence is concerned. As observed earlier, the prosecution miserably failed to prove all the circumstances establishing the chain to infer that it was the accused who has committed the murder of the deceased. In fact, learned Judge of the trial court has not considered that identification of the dead body itself is not established by the prosecution.

55. In the light of the above discussion, the appeal deserves to be allowed, as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 30.9.2002 passed by learned 2nd Additional Sessions Judge, Khamgaon in Sessions Case No.22/1995 is hereby quashed and set aside.

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(3) The accused is acquitted of the offences for which he is charged and convicted and sentenced.

(4) The accused be released from the jail forthwith, if he is not required in any other case.

(5) The Bail Bonds of the accused stand cancelled.

(6) The R&P be sent to the trial court.

Appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede, PS !!

...../-