



Judgment

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

CRIMINAL APPEAL NO.834 OF 2019

Prabhakar Rambhau Charape @
Motiram Rambhau Guru,
aged about 48 years, occupation labour,
r/o Mowad, taluka Narkhed,
district Nagpur. **Appellant.**

:: VERSUS ::

State of Maharashtra,
through PSO,
Police Station Karanja (Gh.),
tahsil Karanja and district Wardha. **Respondent.**

Shri R.M.Patwardhan, Counsel for the Appellant.
Mrs.H.N.Prabhu, Additional Public Prosecutor for the
State.

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

CLOSED ON : 08/09/2025
PRONOUNCED ON : 01/10/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 30.9.2019 passed

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by learned Additional Sessions Judge, Wardha (learned Judge of the trial court) in Sessions Case No.189/2014.

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 rigorous imprisonment for remainder of his life and to pay fine Rs.1000/-.

3. Brief facts of the prosecution case emerge from police papers and recorded evidence are as under:

The complainant is a Police Patil of village Kajali, district Wardha. On 25.8.2014, one Dhanraj Devraoji Bannagade approached him along with him a person namely Prabhakar Charpe (the accused) and informed that the accused works with Manoj Wakde (the deceased) in Cattle Shed at the field of Suryabhanji Sambare. He further informed that 3-4 male persons and women came in the agricultural field in a white car and

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assaulted the deceased. They tried to assault him, but he fled away from the spot and, therefore, the complainant went along with him in the said filed. However, he has not witnessed any vehicles or any persons. He went in the Cattle Shed and saw the deceased lying in the adjoining room in a pool of blood with head injuries. He immediately informed the police station. It is further alleged that he realized that the accused is giving inconsistent information and the police also ascertained that the accused is giving inconsistent information. They have also noticed blood stains on his clothes and, therefore, the accused was taken into custody. Initially, report was lodged against unknown person. During investigation, the investigating officer has visited the alleged spot of incident and drawn spot panchanama. He has also seized clothes of the deceased and collected blood stains from the spot of the incident. The

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photographer was called and obtained photographs. After sending dead body for postmortem examination, he called panchas and done inquest panchanama at the hospital. During the investigation, on observing the dead body, bunch of hairs was found between thumb and index finger of the deceased. The same was seized in presence of panchas. It further revealed during the investigation that there was dispute between the accused and the deceased on account of money. The injury was found on the person of the accused. He was referred for medical examination. The blood stained clothes of the accused are also seized. On the basis of the memorandum statement of the accused, weapon of the offence “hammer” was seized. It further revealed during the investigation that the accused was involved in a crime registered under Section 376 of the IPC and trial was conducted against him and he was held guilty and

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sentenced to suffer rigorous imprisonment for 3 years and 6 months for offences under Section 376 read with Sections 307 and 511 of the IPC. He concealed his identity and started residing at village Kajali in the agricultural field of Suryabhanji Sambare. The statement of the wife of the accused as well as his brother was recorded. All incriminating articles were forwarded to the Chemical Analyzer and after completion of the investigation, chargesheet was submitted against the accused.

4. Being the offence under Section 302 of the IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. Learned Judge of the trial court framed charge vide Exh.3C. The charge was altered by adding Section 75 of the IPC. The contents of the charge were explained to the accused to which he pleaded not guilty and claimed to be tried.

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5. In support of the prosecution case, the prosecution has examined in all 15 witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Jagdish Borje, Police Patil	20
2	Kailash Barange, pancha on spot	23
3	Lingappa Hingmire	34
4	Dhanraj Bannagare	38
5	PW5 Pralhad Girhale, pancha on seizure of clothes	35
6	Police Constable Yeshwant Golhar, carrier	40
7	Chandrashekhar Tope	43
8	Sunita Charpe, LPC	49
9	Kiran Wakade, wife of the deceased	55
10	Sunita Guru, the wife of the accused	61
11	Police Constable Manish Kamble	53
12	Bhalchandra Guru, the brother of the accused	74
13	Dr.Pravin Zopate, Medical Officer	79
14	Pawan Kadave, Photographer	88
15	Vinod Choudhari, Investigating Officer	113

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6. Besides the oral evidence, the prosecution relied upon report Exh.21, FIR Exh.22, spot panchanama Exh.24, seizure memos Exhs.25 to 27, seizure panchanamas of clothes of the deceased Exh.36, requisition to CA Exh.41, requisition letter Exh.44, memorandum of the accused Exh.45, discovery panchanama Exh.46, requisition to CA Exh.65, requisition to Medical Officer Exh.67, requisition to obtain postmortem notes Exhs.80 and 82, query opinion Exh.83, requisition to the Medical Officer Exh.115, inquest panchanama Exh.119, seizure memo Exh.120, arrest panchanama Exh.123, injury certificate of the accused Exh.125, requisition to the Medical Officer Exh.126, station diary entries Exhs.128 and 129, letter to the Circle Officer Exh.130, map Exh.131, station diary entries Exhs.128 and 129, letter to the Circle Officer Exh.130, map Exh.131 station diary entry Exh.132, judgment in

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previous case against the accused Exh.145, CA Report Exhs.151 to 154.

7. All the incriminating evidence is put to the accused in order to obtain explanation as to the evidence appearing against him by recording his statement under Section 313 of the CrPC. After appreciating the evidence, learned Judge of the trial court held the accused guilty and sentenced him as the aforesaid.

8. Being aggrieved and dissatisfied with the judgment impugned in the appeal, the present appeal is preferred by the accused.

9. Heard learned counsel Shri R.M.Patwardhan for the accused and learned Additional Public Prosecutor Mrs.H.N.Prabhu for the State.

10. Learned counsel for the accused submitted that the entire case is based on the circumstantial evidence

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except the “last seen.” There is no material to connect the accused with the crime. As per the prosecution case, the deceased and the accused were lastly seen in the agricultural field. However, the evidence as to the “last seen” is not sufficient to connect the accused with the alleged offence. It is well settled that when case is rested on circumstantial evidence, the prosecution has to prove all circumstances. The evidence of prosecution witnesses namely PW3 Lingappa Hingmire and PW4 Dhanraj Bannagare is not sufficient to show involvement of the accused in the alleged offence. Therefore, benefit of doubt will go to the accused. He submitted that as incriminating circumstance, that seizure of the weapon at the instance of the accused is also not established and CA Report also nowhere discloses any blood stains of Blood Group of the deceased on the said incriminating weapon, the entire prosecution case fails.

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11. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that besides the evidence as to the “last seen”, the prosecution relied upon chain of circumstances like blood stains found on the shirt of the accused are of Blood Group “A” which is of the deceased for which the accused has not given any explanation; the evidence of the wife of the brother of the accused shows that the accused was staying in the agricultural field of Suryabhanji Sambare by concealing his identity; there was a dispute between the deceased and the accused on account of money which is witnessed by PW3 Lingappa Hingmire and PW4 Dhanraj Bannagare; the weapon of the offence seized at the instance of the accused bears blood stains; and opinion of the Medical Officer discloses that injuries found on the person of the deceased are possible by the said weapon and at the time of examination of the

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weapon, blood stains were noted on the said weapon. Thus, the evidence of “last seen” is corroborated by other circumstantial evidence and, therefore, no interference is called for.

12. After hearing both the sides, the first and the foremost question arises for consideration is that, whether the prosecution succeeded in proving the charges levelled against the accused on the basis of circumstantial evidence.

13. Firstly, it is to be seen, whether the death of the deceased is homicidal one.

14. To prove the homicidal death, the prosecution mainly placed reliance on the evidence of PW13 Dr.Pravin Zopate examined vide Exh.79, who deposed that on 25.8.2014 dead body of the deceased was received along

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with requisition letter Exh.80. On examination, he found following injuries on his person:

“ 1) incised looking lacerated wounds (Split lacerations) are present on right temporal region, vertically placed, measuring 3cm x 2cm x subcutaneous deep, Margins are contused and irregular.

2) Split laceration (Incised looking lacerated wound) is present over frontal region, about 5 cm from the glabella of size 8 cm x 3 cm x Subcutaneous deep, vertically placed. Both ends are acute; Margin of the wound are contused and irregular.

3) Split, laceration (Incised looking lacerated wound) is present on the center of the frontal region 2 cm lateral to injury no.2, vertically placed, 10 cm x 2 cm x Subcutaneous deep. Both angle of the wound are acute, Margins are contused and irregular.

4) Split laceration (incised looking lacerated wound) is present on the left parietal region 6cm from the glabella, vertically placed, * cm x 1 cm x subcutaneous deep, margins are contused and irregular.

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5) Split laceration (Incised looking lacerated wound) H present on the left temporal region 4 cm. From the left ear vertically placed, 3 cm x 1 cm x subcutaneous deep, margins are contused and irregular.

6) Incised wound is present on the right side of the chin, obliquely placed, measuring 2 cm x 1 cm x 1 cm, margins contused and clean cut and both angles are acute.

7) Avulsion laceration is present on the left side of the chin, horizontally placed; measuring 0.5 cm x 0.5 cm, margins are irregular.

8) Laceration is present on the right side of the forehead, just above the right upper eyelid, horizontally placed, 1 cm x 1 cm x 1 cm; margins are irregular, reddish in color.

9) Split laceration is present on the left side of the forehead, star shaped, measuring 4 cm x 2 cm x bone deep, margins are irregular, stained with dried blood, fragments of left frontal and parietal bone is seen.

Limbs:

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10) Incised wound is present on the medial aspect of the right leg arm, placed vertically downwards and 4cm above the right subcutaneo medial malleolus, measuring 1cm x 0.5 cm deep, both ends are acute, margins are clean cut.

11) Contusion is present on the right anterior aspect of the thigh, it is 6 cm below the anterior superior iliac spine, and oval in shape, measuring 2 cm x 1 cm, reddish in color.

12) Contusion is present on the right anterior medial aspect of 10 cm below the pubic symphysis, half-moon in shape, measuring cm x 1 cm, reddish in color.

13) Contusion is present on the lateral aspect of the right thigh, 5 cm below the right anterior superior iliac spine, semicircular in shape, measuring 1cm x 1 cm, reddish in color.

14) Contusion is present on the left anterior aspect of the thigh, it is 8 cm below the left anterior superior iliac spine, and it is semicircular in shape, measuring 2 cm x 1 cm, reddish in color.

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15) Contusion is present on the left anterior aspect of the thigh, it is 9 cm below the left anterior superior iliac spine, and it is semicircular in shape, measuring 1 cm x 1 cm, reddish in color.

16) Contusion is present on the left anterior-medial aspect of the thigh, it is 10 cm below the left anterior superior iliac spine, and it is semicircular in shape, measuring 1 cm x 1 cm, reddish in color.

17) Incised wound is present on the antero medial aspect of the left thigh, obliquely placed, 6 cm below the pubic symphysis, measuring 3 cm x 2 cm x 4 cm. Upper end of the injury is obtuse while lower end is acute, the margins are clean cut.

18) Incised wound is present on the antero medial aspect of the left thigh, obliquely placed, 4cm below the pubic symphysis, measuring 2 cm x 1 cm x 1 cm. Both end of the injury are acute, the margins are clean cut, stained with dried blood.

19) 3 Linear contused abrasions is present on the ventral aspect of the wrist end of the left

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forearm, of length 1 cm, c cm, 5 cm respectively, reddish in colour, i.e. struggle mark.

20) Contusion is present on the ventral aspect of the writ end of the left forearm, crescentric in shape, 0.5 cm in length, reddish in colour, i.e. nail mark.

Thorax and abdomen:

21) Contusion is present on the left anterior aspect of the iliac region 12 cm from the umbilicus, half-moon in shape, 3 cm in length, and reddish brown in colour.

22) Contusion is present on the umbilicus region, 6 cm from the umbilicus, half-moon in shape, 3 em in length, and reddish brown in color.

23) Linear contusion is present on the umbilicus region, 6 cm from the umbilicus just lateral to injury no. 00, 2 cm in length and reddish brown in color.

24) Contusion is present on the tight hypogastrium region 12 em above the

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umbilicus, half-moon in shape, 3 cm in length, and reddish brown in color.

25) Linear contusion is present on the right hypogastrium region 12 cm above the umbilicus, obliquely placed, 3 cm in length, and reddish brown in color.

26) Contusion is present on the right side of the chest, 6 cm below the right nipple, it is oval in shaped, diameter of 2 cm light reddish in color.

27) Contusion is present on the left side of the chest, 9 cm below the Adam's apple, crescentric in shape, of length 3 cm reddish in color.

28) Contusion is present on the left side of the chest, 8 cm below the Adam's apple, obliquely placed, of length 2 cm, reddish in colour.

29) Other injuries discovered by external examination or palpation as fracture etc:

(i) Open compound and comminuted fracture of left frontal, left parietal and left temporal bone is present.

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(ii) Fracture of right 3rd, 4th, 5th, 6th, 7th rib at medial end is present on anterior aspect.

Injuries at St.No.17 and 18 above were ante-mortem and fresh injuries”.

On internal examination, he noted injuries under the scalp and the scalp is multiple split and multiple open compound and comminuted fracture of left frontal, left parietal bone was present. With evidence of brain, matter and pieces of bone is coming out through the fracture. He also noted that meninges are torn at left frontal, left parietal, left temporal area and subarachnoid hemorrhage was present all over the brain. Fracture of right 3rd, 4th, 5th, 6th and 7th rib at medial end are present on anterior aspect. He opined that injuries caused are not sufficient to cause death in the ordinary course of nature. The postmortem report is at Exh.82.

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His evidence further shows that the weapon was forwarded to him in a sealed condition along with letter Exh.66. He examined the said weapon along with Dr.Meena. They also obtained the photograph of the said weapon. It was “hammer” with “iron rod” having heavy sharp edged metallic weapon with blunt tip. The blade and hammer also had dried blood like stains. It also had few hair and dried grass at few places. After examining the weapon, he opined that the injuries present on the body of the deceased were sufficient in the ordinary course of nature to cause death. The injuries mentioned in column No.17 of the postmortem report (sub-heading head and neck injury No.1, 2, 3, 4, 5) and injuries mentioned in column No.18 (sub-heading no.2) and injury mentioned in column No.19 and 20 were sufficient in the ordinary course of nature to cause death and are possible by the said weapon, which was forwarded to

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him. The opinion is at Exh.83. Thereafter, he received weapon and handed over the same to the police. The label is at Exh.84.

Though this witness is cross examined at length, nothing incriminating is brought on record to shatter the evidence of the Medical Officer.

There is no dispute as to the cause of death which is caused due to the hemorrhage and shock in case of assault. The opinion is given by the Medical Officer having photograph of the weapon. The description and dimension of the weapon are given by him saying that the weapon is having one metallic rod which is round and one end is fixed with hammer and other end is open. The length of the rod is 44 cm including hammer except the hammer it is 41 cm in length, circumference of the rod is 7 cm, total maximum length of the hammer is 13.5 cm,

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hammer is having two ends one end is round and other one is having two blunt edged blades (as seen in diagram). Rounded end is 10 cm in circumference, and the end which is having blades are of 3 cm of width, two blades are of 1.5 cm each with gap of 0.5 cm. He further observed that rust is present on the blade at places. The hammer and blade of hammer is having dried blood like stain. The hammer is also having some hairs with dried grass at places.

15. The investigating officer has carried out the investigation and drawn inquest panchanama during the investigation. The said panchanama also shows injuries on the person of the deceased i.e. the head injuries.

16. As observed earlier, the cause of death of the deceased was due to loss of blood. Admittedly, the cause of death is not challenged by the defence. Therefore, the

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evidence on record is sufficient to show that the death of the deceased is homicidal in nature.

17. Admittedly, the entire case of the prosecution is based on circumstantial evidence. The law is well settled regarding circumstantial evidence that (i) the circumstances from which an inference of guilt is sought to be drawn on must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt

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of the accused but should be inconsistent with his innocence.

18. In the present, the prosecution mainly relied upon the following circumstances:

(i) the deceased and the accused were residing in the agricultural field of Suryabhanji Sambare;

(ii) the accused came to stay there prior to 8-10 days and was residing by concealing his identity with the name of Prabhakar Rambhau Charpe when his name was Motiram Rambhau Guru;

(iii) there was dispute between the deceased and the accused on the day of the incident at about 9:00 pm to 9:30 pm and the same was

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witnessed by PW3 Lingappa Hingmire and PW4 Dhanraj Bannagare;

(iv) the deceased and the accused were lastly seen together at 9:00 pm to 9:30 pm and the accused has reported the incident at 12:5 am. The dead body of the deceased was found in the agricultural field of Suryabhanji Sambare lying in pool of blood where deceased and accused were staying;

(v) on the bass of the memorandum statement of the accused, the place where the weapon of the offence “hammer” was concealed was discovered; and

(vi) the blood stained clothes of the accused were seized and blood stains of Blood Group

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“A”, which is of the deceased, were found on the shirt of the accused.

19. To prove the alleged circumstances, regarding the deceased and the accused were together and dead body of the deceased was found, implicit reliance was placed on the evidence of PW3 Lingappa Hingmire and PW4 Dhanraj Bannagare.

The evidence of PW3 Lingappa Hingmire shows that he was working as labour in the field of Suryabhanji Sambare and was looking after cows and cattle on his field. Another labour Sanjay Langote was also working as labour at the said field. The deceased was working as “Diwanji” at the said agricultural field. The owner of the field Suryabhanji Sambare and his son were visiting their field occasionally. Eight days prior to the incident, the deceased engaged the accused to work on the field. The

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accused introduced himself as Prabhakar Rambhau Charape. The deceased and the accused were residing in the same house in the said agricultural field. He further deposed that on the day of the incident i.e. 24.8.2014 along with Sanjay he worked in the field, till 5:30 pm.. At about 9:00 to 9:30 pm, he again went at the field and saw the verbal altercation between the deceased and the accused on account of money. However, he left for his house.

Similarly, PW4 Dhanraj Bannagare has testified that he used to graze the cattle in barren land at mouza Kajali Rahate Shivar. His field is barren land and is adjoining to the field of one Shri Sambare. There was a cattle shed in his field which has 2-3 rooms. The deceased was residing there. On 24.8.2014, he was grazing cattle. The accused, the deceased, Lingappa, and Sanjay were also present in the agricultural field. At

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12:00 am, the accused came to his house and informed that 4-5 persons came in white car and assaulted the deceased. He took the accused to the house of Police Patil.

20. In the cross examination of PW3 Lingappa Hingmire, it came on record that he worked for total 10 months at the agricultural field owned by one Shri Sambare. It further came on record that the accused had dispute with the deceased on account of money. It further came in the evidence that the deceased used to bring pesticide required for the field, but it denied that there was dispute between pesticide's supplier and the deceased.

PW4 Dhanraj Bannagare is also cross examined. However, his cross examination shows that he did not have any personal relations with the accused. He

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knows the accused as he was residing in the agricultural field of Shri Sambare. It further came in his evidence that the police visited his village, but he denied that the police have not enquired with him about the said incident.

21. As far as concealment of the identity is concerned, the prosecution placed reliance on the evidence of PW10 Sunita Guru, the wife of the accused and PW12 Bhalchandra Guru, the brother of the accused.

The evidence of PW10 Sunita Guru shows that her marriage was performed with Motiram Rambhau Guru who was residing at Mowad. She identified Motiram Rambhau Gurubefore, the accused, as her husband, before the court and testified that he never behaved nicely with her and used to beat her and, therefore, she was constrained to leave matrimonial house and was staying with her mother. Her evidence further disclosed that she

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was having 2 children from the accused and the accused attempted to kill her son. The first wife of the accused also left him as he used to assault her. She further stated that the police approached her along with the accused to enquire about the accused and she told the police that real name of the accused is Motriram Rambhau Guru. Her cross examination shows that since the marriage, there was dispute between her and her husband. It was confirmed during cross examination that name of her husband is Motiram Rambhau Guru.

PW12 Bhalchandra Guru, is the brother of the accused, who identified and testified that the accused who is present before the court is actually Motiram Guru. He also further testified that PW10 Sunita Guru is the wife of the accused. In 2008, the accused left the village.

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Thus, the evidence of these witnesses shows that the accused sitting before the court is Motiram Rambhau Guru.

22. Thus, as far as concealment of the identity is concerned, the evidence of PW10 Sunita Guru, the wife of the accused and PW12 Bhalchandra Guru, the brother of the accused, shows that the original name of accused is Motiram Rambhau Guru, but the evidence of PW3 Lingappa Hingmire and PW4 Dhanraj Bannagare shows that the accused was residing at village Kajali under the name of Prabhakar Rambhau Charpe.

23. Police Patil PW1 Jagdish Borje, has lodged the report about the said incident. His evidence shows that it was the accused who along with PW4 Dhanraj Bannagare approached him and said that somebody has assaulted the deceased. He immediately visited the spot, but nobody

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was there. On the contrary, he marked blood stains on the clothes of the accused. He also stated that the clothes of the accused on his person on the day of the incident were black jean and white-black strip shirt.

His cross examination also shows that the deceased was working as Diwanji in the field of Suryabhanji Sambare. There were financial disputes between the accused and the deceased. He stated that he is not aware whether the deceased was having any financial disputes with the other laborers.

24. The evidence of PW2 Kailash Barange, acted as a pancha on the spot panchanama, shows that the spot of the incident was inside the room adjacent to the cattle shed wherein the deceased was lying in a pool of blood having injuries on his person. The blood was on the floor and the mattress and on other articles. The police drawn

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panchanama after seizing blood stains from the spot. He also acted as a pancha on seizure of blood stains of the accused, which is at Exh.26 and also seizure of clothes of the accused, which is at Exh.27. He has identified Articles seized in his presence as well as the shirt and pant of the accused at Articles-9 and 10 seized in presence.

Though he is cross examined, except suggestion that he signed on the panchanama at police station, which is denied by him, nothing is brought on record.

25. PW5 Pralhad Girhale, another pancha on seizure of clothes of the deceased, stated that ASI Bhajipale had brought one envelope, four sealed bottles, and two sealed bundles of clothes. On opening of the bundle of the clothes, he witnessed that the clothes of the deceased are having blood stains on it. Accordingly, the police

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prepared the panchanama. He has identified the said articles.

26. PW7 Chandrashekhar Tope, also acted as a pancha, who deposed vide Exh.43 that police issued summons to him as well as another pancha which is at Exh.44. Accordingly, they went to the police station. The accused who was in the lock-up was brought before them. The accused shown his willingness to make a statement and made the statement in their presence that he will show the place wherein he concealed the weapon “hammer” used in the offence. Accordingly, his statement was recorded, which is at Exh.45. Thereafter, he led them towards the spot of the incident on highway and took them towards Bangalapur-Kajali Road towards Shiv Mandir. He took them on the kaccha road and asked them to halt the vehicle. He shown the field of the Suryabhanji Sambare. He alighted from the vehicle and they followed

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him. He led them to the fodder house and shown the place where he has hidden the hammer beneath the fodder. The fodder house was made with bricks and cement. He took them to the hall of the said house and took out the hammer which was beneath of the fodder and produced the same. Accordingly, panchanama was drawn, which is at Exh.46.

His cross examination shows that the accused took them by passing various villagers. The rest of he cross examination is in the denial form.

27. PW14 Pawan Kadave, who is photographer, deposed that he was called to obtain photograph of the dead body as well as he was present when the accused has shown the place where the hammer was concealed. Accordingly, he obtained photographs.

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28. The last set of evidence is, PW6 Yeshwant Golhar, is the police constable who acted as a carrier. As per his evidence, on 27.8.2014, he was assigned with the duty of depositing muddemal in Forensic Laboratory, Nagpur. Accordingly, muddemal was handed over along with with requisition letter Exh.41. He has handed over the said muddemal to the Forensic Laboratory.

29. PW8 Sunita Charpe, is LPC, whose evidence is to the extent that PW1 Jagdish Borje came to the police station and informed that the deceased is lying injured. Accordingly, API Choudhary obtained his report.

Her cross examination shows that crime was registered initially against the unknown person.

30. Police Constable PW11 Manish Kamble, has also acted as a carrier. As per his evidence, he received a query letter along with the sealed weapon. He delivered it

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at Kasturba Hospital, Sewagram. His duty pass is at Article-64. He also carried out the muddemal to CFL. His cross examination shows that it is not written in the letter that the weapon was in a sealed condition.

31. PW15 Vinod Choudhari, is the Investigating Officer.

32. Before coming to the evidence of Investigating Officer PW15 Vinod Choudhari, it is relevant to address the evidence of PW9 Kiran Wakade, wife of the deceased. As per her evidence, on 24.8.2014, her husband Manoj had called her and informed her that he has received salary and will visit on the next day. Her evidence further shows that he informed that from the last 10 days a person by name Prabhakar Charpe is residing with him.

Though she is cross examined, nothing came on record.

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33. The evidence of Investigating Officer PW15 Vinod Choudhari shows that Police Patil PW1 Jagdish Borje gave him telephonic message that in the field of Suryabhanji Sambare, Diwanji has been murdered with serious injuries on head. He immediately rushed to the spot of the incident and witnessed a person lying on the floor and blood is oozing from the injuries. He has drawn the spot panchanama. At the relevant time, the accused was present and was giving evasive answers. There were blood stains on his clothes and also some injuries. He sent the dead body for postmortem examination. The report of Police Patil PW1 Jagdish Borje was obtained. The accused was taken into the custody. The accused gave memorandum statement in presence of panchas and at the instance of the accused, the weapon of the offence was recovered. The blood stained clothes of the accused were also seized. It revealed to him during the investigation

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that out of dispute over money, the alleged incident has taken place.

Investigating Officer PW15 Vinod Choudhari, was cross examined at length and he admitted that he asked for the opinion regarding how the accused has sustained the injuries, but he did not ask for specific opinion about the weapon with which the accused would have sustained the injuries. He has not recorded statement of Suryabhanji Sambare, who is owner of the agricultural field.

Thus, an attempt was made that the injuries on the person of the accused are not explained.

Reexamination of Investigating Officer PW15 Vinod Choudhari shows that the person, arrested in the present crime and stated his name as Prabhakar Rambhau

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Charpe, revealed to be Motiram Rambhau Guru who is present before the court.

34. The injury certificate of the accused at Exh.125 shows that in all five injuries on his person are in the nature of abrasion. Exh.145 is the judgment of Ad hoc Assistant Sessions Judge, Nagpur in Sessions Trial No.436/1994 whereby the accused was prosecuted and convicted.

35. The requisition letter Exh.65 addressed to the FSL shows that all the articles seized were forwarded to the CA, out of which Article-C4 is the shirt of the accused and Article-C5 is his jeans pant, Article-D5 are bunch of hairs found between fingers of the deceased, Article-A1 to A9 are articles seized from the spot of the incident, Article-B1 is the blood samples of the deceased, Article-B2 is the hair sample of the deceased, Article-B3 and B4 are

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clothes of the deceased, Article--C1 is the blood samples of the accused, and Articles-C2 and C3 are nail samples of the accused, and Article-C6 is the hammer. All these articles were forwarded to the CA. The CA Reports are at Exhs.151, 152, 153, and 154. Exh.152 shows that Blood Group of the accused is "B". The Blood Group of the deceased was not ascertained. Exh.154 shows that the blood detected on Exh.2 i.e. cement flooring piece, Exhs.3 and 4 ATM Cards, and Exh.5 piece of wood, Exh.6 piece of mattress, Exh.7 piece of mattress, Exh.8 piece of flooring map, Exh.9 piece of clothes (chaddar), Exh.10 full shirt of the deceased, Exh.11 half pant of the deceased, Exh.12 scalp hair found in the finger of the deceased and Exh.13 is full shirt of the accused. The hammer and hair collected are having blood stains which is human blood. It further shows that Exh.4 i.e. ATM Card, Exh.5 is of wood, Exhs.6 and 7 pieces of mattress,

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Exh.8 piece of flooring mat, Exh.9 piece of clothes, Exh.10 full shirt of the deceased, Exh.11 half pant of the deceased and Article-13 shirt of the accused are stained with blood of Group “A”

36. On the basis of the above evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt.

37. As far as evidence of PW3 Lingappa Hingmire, who was working in the agricultural field and witnessed altercation of the words between the accused and the deceased prior to the incident at about 9:00 to 9:30 pm, is concerned, has not during the cross examination. Nothing is brought on record to falsify his version. It is also not denied that he was not working at the said place.

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38. Thus, the circumstance that immediately prior to the incident there was dispute between the accused and the deceased is established by the prosecution.

Another circumstance that the accused was staying in the agricultural field along with the deceased is also established by Police Patil PW1 Jagdish Borje, PW3 Lingappa Hingmire, and PW4 Dhanraj Bannagare. This fact is also stated by PW9 Kiran Wakade, wife of the deceased. The presence of the accused in the agricultural field along with the deceased and the fact that he was working there along with the deceased is also not denied by the defence. The fact that it was the accused who informed about the incident to the police patil by misleading is also established by the prosecution.

39. Thus, the facts that the accused was residing under another name in the agricultural field of

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Suryabhanji Sambare along with the deceased, he had dispute with the deceased on the day of the incident and he disclosed the said incident to the police patil by misleading the facts are facts which are already established.

40. As already observed, the prosecution has established the death of the deceased is homicidal one and sustained in all 28 injuries on his person and death is due to hemorrhage i.e. loss of blood.

41. The another circumstance on which the prosecution placed reliance is on recovery of weapon at the instance of the accused.

42. The evidence of the PW7 Chandrashekhar Tope, acted as a pancha, shows that the accused has made voluntary statement in his presence and in furtherance of

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that statement he led them to the spot and produced the weapon which was kept beneath of the fodder.

Though PW7 is cross examined at length, except the denial, no evidence is brought on record to falsify the aspect of recovery. His evidence shows that the statement of the accused was voluntary disclosing the place where he concealed the weapon and in pursuance of the said statement, led them towards that spot and reproduced the weapon.

43. The requirement of Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered, after search is carried out, on the search of any information obtained from the prisoner, such discovery is guaranteed that the information supplied by the prisoner is true. It goes without saying and, therefore,

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that recovery of articles at the instance of the accused has to be proved by independent witness.

44. Section 27 of the Indian Evidence Act is recently interpreted by the Hon'ble Apex Court in the case of Subramanya vs. State of Karnataka, reported at 2022 LiveLaw (SC) 887 and held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(i) discovery of fact in consequence of an information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must be in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

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It is further held by the Hon'ble Apex Court that what is admissible is the information the same has to be proved and not the opinion formed on it by the Police Officer. In other words, the information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary that the benefit of both i.e. accused and the prosecution that information given should be recorded and proved and if not so recorded the exact information must be adduced through the 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 prisoner such a discovery is a made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is

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true. It is further held by the Hon'ble Apex Court that mere 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.

45. In the light of the above well settled legal position, it has to be seen whether the evidence adduced by the prosecution i.e. PW7 Chandrashekhar Tope, acted as a pancha on memorandum statement and discovery panchanama, and Investigating Officer PW15 Vinod Choudhari is sufficient to prove the discovery at the instance of the accused. After perusal of the evidence of PW7, it nowhere reveals that the accused made voluntary statement and in pursuance of the said statement, weapon hammer was recovered and the place where it was concealed was discovered.

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46. Thus, in view of the decision of the Hon'ble Apex Court in the case of **Subramanya vs. State of Karnataka** *supra*, the discovery panchanama was not drawn as contemplated under Section 27 of the Indian Evidence Act and, therefore, we have no to hold that the part of recovery sufficient to infer authorship of concealment by the person at whose instance the articles are discovered is established by the prosecution. Moreover, the blood stains found on the said hammer, are also established by the prosecution. Merely because the Blood Group is not ascertained, is not sufficient to discard the evidence of the prosecution.

47. The Hon'ble Apex Court, in the case of **Kishor Bhadke vs. State of Maharashtra**, reported in 2017 ALL MR 1316 observed that presence of human blood on the clothes recovered at the instance of the accused, mere absence of evidence regarding the blood group cannot be

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fatal to the prosecution as the evidence regarding the seizure of banian of the accused having blood stains remained unchallenged.

48. In the present case also, the evidence as to blood stains on the hammer seized at the instance of the accused, remained unchallenged.

49. The material circumstance on which the prosecution placed reliance is the “last seen”.

50. The theory of “last seen” together is one where two persons are seen together alive, and after an interval of time one of them is found alive and the other dead. If the period between the two is short, presumption as to the person alive being the author of death of the other can be drawn. Time gap should be such as to rule out possibility of somebody else committing the crime. Last seen together principle is one of latest principles which is

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taken into consideration in establishing the guilt of the accused. In absence of eyewitnesses and tangible evidence, it is last resort of the prosecution in murder case that the person last seen with the victim is presumed to be murderer. However, the circumstances of last seen together does not by itself and necessarily lead to inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where on account of closed proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death a rational mind may be persuaded to reach and irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.

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51. The theory of “last seen together” is one where two persons are seen together alive and after an interval of time, one of them is found alive and the other dead. If the period between the two is so short, presumption as to person alive being the author of death of the other can be drawn. Time gap should be such as to rule out the possibility of somebody else committing the crime. Last seen together is one of principles which can be taken into consideration in establishing the guilt of the accused. The circumstances of “last seen together” not by itself and necessarily leads to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime.

52. In the case of Jaswant Gir vs. State of Punjab, reported in 2005(12) SCC 438, the Hon’ble Apex Court observed that even assuming that the deceased had

accompanied the accused in their vehicle, that circumstance by itself did not irresistible conclusion that the appellant and his companion had killed the deceased and thrown the dead body in the culvert. In Sk. Yusuf vs. State of West Bengal, reported in (2011) ALL MR (Cri) 2365, the Hon'ble Apex Court has reiterated its observation in State of U.P. vs. Satish, reported in (2005) 3 SCC 114 that the "last seen theory" comes into play where the time-gap between point of time when the accused and deceased were seen last alive and when the deceased dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It was held that where there is a long gap between the "last seen together" and the crime and there is possibility of other persons enter there, it is hazardous to rely on the theory of "last seen together". It is further held that even if time-gap is short, there is no

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possibility of others intervening, it is safer to look for corroboration.

53. It is well settled that criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Indian Evidence Act with regard to the circumstances under which death may have taken place.

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54. Recently, the Hon'ble Apex Court, in Criminal Appeal No.972/2013 (**Jabir and others vs. The State of Uttarakhand**) decided on 17.1.2023, has dealt with the issue regarding the admissibility of the evidence regarding the last seen doctrine and held that it has been repeatedly emphasized by this court, that the "last seen" doctrine has limited application, where the time lag between the time the deceased was seen last with the accused, and the time of murder, is narrow; furthermore, the court should not convict an accused only on the basis of the "last seen" circumstance.

55. In the case of **Rambraksh @ Jalim vs State Of Chhattisgarh**, reported in **(2016)12 SCC 251** the Hon'ble Apex Court stated, as follows:

“10. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other

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words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

11. In a similar fact situation this Court in the case of *Krishnan v. State of Tamil* (2014) 12 SCC 279, held as follows:

21. The conviction cannot be based only on circumstance of last seen together with the deceased. In *Arjun Marik vs. State of Bihar* (1994) Supp (2) SCC 372) “31. Thus the evidence that the Appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the Appellants having been

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seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

22. This Court in Bodhraj vs. State (2002) 8 SCC 45) held that: “31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.” It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.”

56. In the light of the above well settled legal position, admittedly, besides the evidence of PW3 Lingappa Hingmire and PW4 Dhanraj Bannagare, that the

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deceased and the accused were lastly seen together, the circumstances, that it was the accused who approached PW4 Dhanraj Bannagare and narrated about the injuries sustained by the deceased by misleading, blood stains were found on the shirt of the accused after the incident and not of his blood group, and the weapon recovered at his instance and the circumstance that he was residing at the spot by concealing his identity, are sufficient to show his involvement in the alleged offence.

57. As far as “last seen” evidence is concerned, the Full Bench of the Hon’ble Apex Court in the case of **Kattavellai@Devakar v. State of Tamil Nadu**, reported in **2025 LiveLaw (SC) 703** by referring its earlier decision in the case of **Ravasaheb v. State of Karnataka**, reported in **(2023) 5 SCC 391** observed that, “on its own, last seen theory is considered to be a weak basis for conviction. However, when the same is coupled with other factors

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such as when the deceased was last seen with the accused, proximity of time to the recovery of the body of the deceased, etc. The accused is bound to give an explanation under Section 106 of the Evidence Act, 1872. If he does not do so, or furnishes what may be termed as wrong explanation or if a motive is established - pleading securely to the conviction of the accused closing out the possibility of any other hypothesis, then a conviction can be based thereon.

It has further held that in applying the last-seen theory, Courts should keep in mind the totality of the circumstances, or the case put forward by the prosecution. In other words, also to be seen is, what preceded and followed the accused person being last seen with the deceased”.

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58. In the light of the above observations, if the facts of the present case are considered, it would show that the following circumstances are proved :

(i) the accused and the deceased were residing together in the agricultural filed of Suryabhanji Sambare;

(ii) the accused was residing along with the deceased by concealing his identity;

(iii) the identity of the accused was established by the prosecution by examining PW10 Sunita Guru, the wife of the accused and PW12 Bhalchandra Guru, the brother of the accused;

(iv) the evidence of PW3 Lingappa Hingmire establishes that prior to the incident at about 9:00 to 9:30 pm, there was quarrel between the deceased and the accused and there was

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quarrel between the deceased and the accused on account of money;

(v) the death of the deceased occurred within approximately 2-3 hours after the quarrel took place between the accused and the deceased and no possibility is brought on record of interference of any 3rd person or possibility of any 3rd person to commit the offence;

(vi) the blood stained shirt of the accused was seized wherein the blood stains of Blood Group “A” was ascertained when the CA Report shows that the Blood Group of the accused is “B”; and

(vii) the weapon of the offence is recovered at the instance of the accused on the basis of his memorandum statement by which the place of concealment of the weapon was discovered. No

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explanation is put forth by the accused as to incriminating circumstances regarding appearance of blood stains on his clothes or the circumstances under which the death of the deceased occurred and there is false explanation by the accused stating that some persons came there and assaulted the deceased.

59. Thus, entire circumstances brought on record and cumulative effect of the same disclose involvement of the accused in the alleged incident. Where the question of burden of proof and facts are within personal knowledge of the accused, the provisions of Section 106 of the Indian Evidence Act come into play.

60. It is true that guilt of the accused must be proved beyond all reasonable doubts. However, where incident occurred inside the house in a secrecy, then after

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proving the material facts, burden shifts on the accused to give an explanation regarding nature and circumstances in which the death of the deceased occurred. In a case based on circumstantial evidence, when no eyewitness account is available, another principle of law which must be kept in mind that when incriminating circumstances are put to the accused and the accused either offers an explanation which is found to be untrue or offer no explanation, the same become an additional link in the chain of circumstances to make it complete.

61. By applying these principles, if the evidence of the prosecution witnesses in the present case adduced is considered, the prosecution has proved that (i) the death of the deceased is homicidal one; (ii) the death of the deceased has occurred in cattle shed where the deceased and the accused were residing; (iii) there was previous

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dispute between them; (iv) the weapon of the offence is recovered at the instance of the accused; (v) blood stained clothes of the accused having Blood Group “A” was recovered at the instance of the accused; and (vi) and concealment of the fact regarding the name of the accused, which is sufficient to show involvement of the accused in the alleged offence and, therefore, we have no hesitation to hold that the prosecution has established the case beyond reasonable doubt.

62. Coming to the aspect of imposing the sentence upon the accused by learned Judge of the trial court to undergo life imprisonment for remainder of his life is concerned, in the decision of the Constitution Bench of the Hon’ble Apex Court in the case of **Union of India vs. V.Sriharan alias Murugan and ors, reported in (2016)7 SCC 1** it has been held that there is power which can be derived from IPC to impose fixed term sentence or

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modified punishment which can only be exercised by the High Court or in the event of any further appeal by the Supreme Court and not by any other court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

63. Thus, it is held that the trial court has no jurisdiction or power to impose sentence by mentioning any specific term of incarceration and, therefore, the operative portion of the judgment impugned in the appeal, that the accused is sentenced to undergo rigorous imprisonment for remainder of his life for offence under Section 302 of the IPC and to pay fine Rs.1000/-, requires to be modified. Accordingly, we modify the judgment

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and order impugned in the appeal that the accused shall undergo imprisonment for life for the offence punishable under Section 302 of the IPC along with the fine.

64. In view of that, we proceed to pass following order:

ORDER

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

(2) The judgment and order dated 30.9.2019 passed by learned Additional Sessions Judge, Wardha in Sessions Case No.189/2014 convicting and sentencing the accused for offence under Section 302 of the IPC to undergo rigorous imprisonment for remainder of his life and to pay fine Rs.1000/- is modified.

(3) We direct that the accused shall undergo imprisonment for life for offence punishable under Section 302 of the IPC and fine Rs.1000/-. In default to

pay the fine amount, he shall undergo rigorous imprisonment for 2 years.

With this, the appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede, PS !!