IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 1336 OF 2023**
**WITH**
**INTERIM APPLICATION NO.5343 OF 2024**

Ajay Vijay Fugare,
Age 34 Years, Occu. : Agriculture,
R/o. Fugare Vasti, Kasegaon,
Tal. Pandharpur, Dist. Solapur
Yerwada Central Prison. ...Appellant.

***Versus***

The State of Maharashtra
(Through Taluka Police Station
Pandharpur). ....Respondent.

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*Mr. Ishaan Kapse, Advocate appointed through Legal Aid, for the Appellant.*
*Ms. Manalaxmi Ganpathy, APP with Mr. A. A. Shalgaokar, APP, for the Respondent-State.*

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**Coram : Sharmila U. Deshmukh &**
**Neeraj P. Dhote, JJ.**
**Reserved on : October 06, 2026.**
**Pronounced on : November 03, 2026.**

**JUDGMENT : (Per Neeraj P. Dhote, J.)**

**1.** This is the criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") against the conviction of the Appellant by the learned Additional Sessions Judge, Pandharpur in Sessions Case No. 27 of 2013 by Judgment and Order dated 20th April 2017, convicting the Appellant for the offence punishable under Section

302 of the Indian Penal Code, 1860 (for short, "IPC") and sentencing to suffer imprisonment for life (25 years) and to pay fine of Rs. 5,000/- (Rupees Five Thousand only), in default to pay the fine, to suffer rigorous imprisonment for one (1) year.

**2.** The prosecution's case, as revealed from the police report, is as under :

(a) The informant is the full-blood brother of the Appellant. The informant was residing at Fugare Vasti, Kasegaon, Taluka Pandharpur, with his wife, four daughters, parents and the Appellant. The Appellant's father was the retired teacher. They had in all nine (9) acre agricultural land, which was partitioned equally amongst the informant and the Appellant. Both the brothers got 4½ acres agricultural land to their share. The Appellant transferred 2 acres of land from his share in the name of his wife Kavita. The Appellant had sold 1 acre land out of 2½ acres land which was in his name, 5 years prior to the date of incident. The Appellant was having two (2) sons and two (2) daughters. The Appellant used to harass his wife for transferring the two (2) acre land, which was in her name to his name.

(b) The Appellant was addicted to alcohol. The Appellant's wife being fed up with the harassment at the hands of Appellant, had gone to her parents' house. The Appellant used to ask his father to bring his wife back

to her matrimonial home. The Appellant had threatened his father with dire consequences, if he did not bring his wife to her matrimonial home. Therefore, the Appellant's father had gone to the house of Appellant's in-laws on two (2) to three (3) occasions. However, the in-laws of the Appellant refused to send the Appellant's wife to her matrimonial home. On 30th October, 2012, a meeting was held with the villagers on account of the harassment by the Appellant to his father. The Appellant was given understanding, however, in vain. The Appellant continued the harassment to his father to bring his wife back home.

(c) The Appellant used to have the dinner at the house of the informant and used to go for sleeping at the nearby place. In the night of 3rd November 2012, around 11:00 p.m., the Appellant came home in an inebriated state. The Appellant took the food and went to the usual place, where he used to sleep. In the night, the Appellant's father slept in the tin shed next to the informant's house and the informant, his mother and his family went to sleep inside the house. At 6:00 a.m. on 4th November, 2012, when the informant's wife, mother and sons got up and were engaged in cleaning the courtyard and putting fodder to the cattle, the Appellant came home with the axe in hand. The Appellant went near the cot on which his father was sleeping and shouted whether his wife would be brought back or not. Due to the shout of the Appellant, his father woke

up and sat on the cot. The Appellant gave blow by the axe in the head of his father. Due to the blow, his father fell down from the cot. At that time, the informant, his wife and mother rushed towards his father. At that time, the Appellant dealt three (3) blows in the head of his father. They all asked the Appellant not to assault, but the Appellant threatened them not to intervene, otherwise he will also kill them. The father became unconscious and the Appellant fled.

(d) The informant lodged the report with the Pandharpur Taluka Police Station against the Appellant and Crime No. 217 of 2012 came to be registered for the offence punishable under Section 302 of IPC. The spot panchanama was conducted. The inquest was done. The body was referred for the post-mortem. The statements of witnesses were recorded. The Appellant came to be arrested. The axe came to be discovered and seized at the instance of the Appellant. The police seized the letters/chits which were written by the deceased. The documents in the handwriting of the deceased were collected from the school, where the deceased was serving. The chits and the admitted handwriting were sent for the opinion of the handwriting expert. The articles seized during the course of investigation were sent for examination to the Chemical Analyser. As the investigation revealed that, the Appellant had committed murder of his father, charge-sheet came to be submitted.

**3.** The learned Magistrate before whom the charge-sheet was filed passed the committal order. The learned Trial Court framed the charge against the Appellant for the offence punishable under Section 302 of IPC below Exhibit 2. The Appellant pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined in all thirteen (13) witnesses. The relevant documents were brought on record in the evidence of the witnesses. After the evidence was closed by the prosecution, the statement of the Appellant came to be recorded under Section 313(1)(b) of Cr.P.C. The Appellant stated that, he was falsely implicated on account of politics in the village. After hearing both the sides and appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order convicting and sentencing the Appellant as mentioned above.

**4.** Heard learned counsel for the Appellant and the learned APP for the prosecution. With their assistance, scrutinized the evidence on record.

(a) It is submitted by learned counsel for the Appellant that, the evidence of the eye-witnesses does not inspire confidence and there were various discrepancies in the testimonies of the two eye-witnesses examined by the prosecution. Both the eye-witnesses were the related witnesses. The evidence of the doctor, who performed the post-mortem did not corroborate the prosecution's case. The discovery and seizure of

the weapon was delayed and was from the place accessible to the public, therefore, the discovery was doubtful. There is no conclusive proof as to whether the blood found on the clothes of the Appellant and the weapon was that of the deceased. The letters/chits were handed over by the wife of deceased after two (2) days from the date of incident. The chain of circumstances was doubtful. The conviction for the offence of murder cannot be upheld, when there are several discrepancies in the evidence and shortfall in the investigation. He submitted that the impugned Judgment and Order be quashed and set aside. In support of his submissions, she relied on the following decisions:

i) ***Sampath Kumar v. Inspector of Police, Krishnagiri;***[1]

ii) ***Naresh alias Nehru v. State of Haryana;***[2]

iii) ***State of Punjab vs. Kewal Krishan;***[3]

iv) ***Aslam @ Imran vs. State of Madhya Pradesh;***[4]

v) ***Ashok Upadhyay & Anr. v. State of Bihar.***[5]

(b) It is submitted by the learned APP that, in the statement under Section 313(1)(b) of Cr.P.C., the Appellant gave no explanation. The eye-witnesses were examined before the learned Trial Court and in the cross-examination, their evidence remained unshaken. The letters/chits written

1 (2012) 4 SCC 124.
2 (2023) 10 SCC 134.
3 (2023) 13 SCC 695.
4 2025 SCC OnLine SC 670.
5 2026 SCC OnLine SC 1804.

by the deceased were seized under the panchanama. The delay in seizure of the said letters/chits was not put to the witnesses in the cross-examination. The Handwriting Expert's report established that, the letters/chits were in the handwriting of the deceased. Since the incident had taken place in the early morning, there was no independent witness. There is no omission in the evidence of the material witnesses. The injuries on the deceased are proved. The minor discrepancies in the evidence were not fatal. The medical evidence support the prosecution case. In case of inconsistency between the ocular evidence and the medical evidence, the ocular evidence will prevail. The discrepancy in the number of blows dealt by the Appellant in the evidence of the eye-witnesses is not fatal. Everyone can't have the photographic memory. The post-mortem report proved the cause of death. Though there is delay in the discovery and seizure of the weapon, the same was from the hidden place, which was known only to the Appellant. The seizure panchanama of the weapon speaks of the blood stain on the weapon. Merely because the Chemical Analysis Report is inconclusive, the discovery of the weapon cannot be discarded. The learned Trial Court has rightly appreciated the evidence on record and convicted and sentenced the Appellant. No case was made out for interference in the impugned judgment. In support of her submissions, she relied on the decision of the Hon'ble Apex Court in

*Goverdhan & Anr. v. State of Chhattisgarh.*[6]

**5.** Perusal of the judgments relied upon by the learned counsel for the Appellant shows that, the settled legal position regarding the appreciation of evidence has been reiterated. The said principles are:

(a) Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness.

(b) Minor contradictions are bound to appear in the statements of truthful witness as memory sometimes plays false and the sense of observation differ from person to person.

(c) If the discrepancies between the first version and the evidence in Court were material, it was safer to err in acquitting than in convicting the accused.

(d) The witnesses can be classified in three categories, namely, (i) those that are wholly reliable, (ii) those that are wholly unreliable, and (iii) those who are neither wholly reliable nor wholly unreliable.

(e) Motive alone in the absence of any other circumstantial evidence would not be sufficient to convict.

(f) Evidence of the eye witness should be of sterling quality and caliber and it should not only instill confidence in the Court to accept the same, but it should also be a version of such nature that can be accepted at its

6 Cri.Appeal No.116 of 2011 dtd. 9th January 2025.

face value.

(g) Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt.

(h) Enmity is a double-edged weapon. On one hand, it provides motive, on the other hand, it also does not rule out the possibility of false implication.

**6.** The judgment relied on by the learned APP is also in respect of the appreciation of the evidence. There is reference of several Judgments of the Hon'ble Apex Court in the said Judgments, wherein it is laid down that, when a witness is examined at length, it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness, who is well tutored can successfully make his testimony totally non-discrepant, but Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach of judicial scrutiny. It further lays down that, the evidence of the rustic

witness has to be appreciated in the light of the behavioural pattern in the rural environment. The evidence of rustic witnesses should not be ignored because of minor discrepancies.

**7.** Coming to the case at hand, the prosecution's case primarily rests on the testimony of P.W.No.3 - Ashalata Fugare and P.W.No.6 - Sanjay Vijay Fugare, who are the widow and son, respectively of the deceased. Their evidence shows that, the Appellant was the son of deceased. The deceased had partitioned the nine (9) acre land between the Appellant and P.W.6 - Sanjay Fugare, equally. The Appellant had sold some part of the land from his share. The Appellant was addicted to vices. Some of the land, which had come to the share of the Appellant, was in the name of the Appellant's wife. The Appellant's wife, P.W.No.5 - Kavita Fugare, was residing with her parents due to the harassment at the hands of the Appellant. The Appellant used to harass his parents, particularly the deceased, as the Appellant wanted that, deceased should bring the Appellant's wife back to her matrimonial home. The Appellant was residing in the same village where these witnesses and the deceased were residing, next to the house of his brother, P.W.No.6- Sanjay Fugare. The deceased and P.W.No.3 - Ashalata Fugare were residing with P.W.No.6 - Sanjay Fugare The cross-examination of both the witnesses shows that, the relationship between the Appellant and the witnesses was not in dispute. The suggestions that

the Appellant did not harass the deceased are denied.

**8.** The evidence of P.W.No.3 - Ashalata Vijay Fugare and P.W.No.6 - Sanjay Vijay Fugare shows that, in the night of 3rd November 2012, the Appellant came to the house of P.W.No.6 - Sanjay around 11:00 p.m. in an inebriated state. He was provided meals, which he took with him and went to the house of his uncle Ramchandra Fugare, where he used to go to sleep. The witnesses and the deceased went to sleep. The deceased had slept in the tin shed in the courtyard of their residence. The evidence of both these witnesses shows that, they got up early in the morning at 6:00 a.m. on 4th Novebmer 2012 and were doing their routine household work in the courtyard. They saw the Appellant coming with the axe in his hand. The Appellant came to the tin shed where deceased was sleeping. The Appellant abused and assaulted the deceased in the head by the axe. Both these witnesses rushed to prevent the Appellant from assaulting the deceased. The Appellant threatened them and again gave blows on the head of the deceased with the axe and ran away. Their evidence goes to show that, the deceased became unconscious. The evidence of P.W.No.3 - Ashalata Fugare shows that, deceased was taken to hospital and was declared dead. The evidence of both these witnesses shows that, the incident was reported to the police and P.W.No.6 - Sanjay Vijay Fugare lodged the report. In the evidence of P.W.No.6 - Sanjay Vijay Fugare, the

report is brought on record at Exhibit 41.

**9.** P.W. No. 3 and P.W. No. 6 were cross-examined by the defense. The inconsistency in the evidence of both the said witnesses in respect of the number of blows as 6 and 4 by the axe is tried to be shown by the defense. The same cannot be the reason to discard their testimony. There is bound to be variance in the testimonies of two eye witnesses on such aspect. Accepting the variance in respect of the blows as 4 and 6, the said is not at all significant. It is not expected that the witnesses, while witnessing such an incident, will count the blows. The statement in the cross-examination of P.W.No.3 - Ashalata Vijay Fugare that, her son Sanjay, i.e., P.W.No.6, saw the dead body of her husband for the first time, do not lead to the conclusion that P.W.No.6 - Sanjay did not witness the incident. Both have deposed of presence of each other on the spot at the time of incident. The evidence of both the witnesses examined by the prosecution as the eye witnesses is consistent with each other. Their testimonies are also consistent with their previous statements. The minor improvement in the evidence of P.W.No.6 - Sanjay Vijay Fugare in respect of deceased falling on the ground after receiving first blow is immaterial. The evidence of both these witnesses shows that they had witnessed the incident. Their presence on the spot of incident is natural. The statement in the cross-examination of P.W.No.3 - Ashalata Fugare that, there was no electric bulb

in the tin shed leads nowhere, as the incident took place at 6:00 a.m. in the morning at the beginning of November month. The time of incident is such that, absence of electric bulb at the spot of incident is immaterial and more particularly when the assaulter is a known person. Both the eye witnesses are consistent on the aspect that the Appellant dealt the blows by the axe on the head of deceased. The suggestions that, due to the political enmity with the Deshmukh family in the village, deceased was done to death by the rival group, is denied. There is immediate lodging of report in respect of the incident to the police. The evidence of both the witnesses clearly shows that, they witnessed the act of assault by the Appellant on his father with axe. Evidence of both the witnesses inspire full confidence. The cross-examination of both the witnesses could not create any dent in the evidence of both the witnesses. Considering the timings and the place of incident, non-presence of the neighbours on the spot at the time of incident is not fatal for the prosecution. It was the early morning time, during which the people are either sleeping or busy with their everyday morning rituals.

**10.** The evidence of P.W.No.13 - Rajendra Maske shows that, he was the police officer attached to the Pandharpur Taluka Police Station and on 4th November 2012, P.W.No.6 - Sanjay Fugare lodged report with the police station and he registered Crime No. 217 of 2012 for the offence

punishable under Section 302 of IPC. The evidence shows that, he visited the spot and prepared the spot panchnama in presence of two witnesses and the panchnama was at Exhibit 22. The evidence shows that, he collected the articles from the spot of incident, prepared the inquest panchnama below Exhibit 17 and referred the dead body for post-mortem to the Sub-District Hospital, Pandharpur. The evidence of P.W.No.2 - Gorakh Aasbe shows that, on 4th November 2012, the police called him to the spot of incident, which was the land of Kavita Ajay Fugare (wife of the Appellant). The evidence shows that P.Wno.6 - Sanjay Vijay Fugare shown the spot of incident, which was the tin shed and dead body was lying with five (5) to six (6) injuries on the head. The evidence shows that, the police collected the articles from the spot and prepared the panchnama below Exhibit 22. The cross-examination of P.W.No.2 shows that, he was related to the informant. Though it is expected that, the panch should be an independent panch, in view of the evidence of P.W.No.13 - Investigating Officer, the evidence in respect of the spot panchnama cannot be discredited.

**11.** There is medical evidence on record in the nature of testimony of P.W.No.8 - Dr. Shobha Kamble. Her evidence shows that, on 4th November 2012, she was working as the Medical Officer at Pandharpur Sub-District Hospital, where the dead body of Vijay Fugare was brought for post-

mortem. She performed the post-mortem from 12.35 hours to 1.30 hours. She found the following injuries on the dead body, which were mentioned in column No. 17 of the postmortem report below Exhibit 49 :

*i) Triangular laceration resuming 14 x 10 x 5 cm with depth of 4 cm with protrusion of brain matter was present on frontal bone of scalp.*

*ii) Laceration of 3 x 2 x 1 cm on scalp.*

*iii) Laceration of 5 x 2 x 1 cm on fronto-temporal bone.*

*iv) 12 x 2 x 1 cm laceration on occipito-temporal bone present.*

**12.** The medical evidence shows that, the cause of death was due to fracture to skull bone. The injuries may be caused by use of the axe and death was possible due to the injuries. The cross-examination shows that injury No.1 was triangular and triangular injury was possible by giving three blows by axe in triangular manner. It has come in the cross-examination that, *rigor mortis* is visible after 6 to 8 hours after the death and *rigor mortis* might have been started 6 to 8 hours after death and it may be possible in the present case that, death of the patient may have occurred before 8 to 10 hours. From the evidence of this Medical Officer, the prosecution proved the injuries on the deceased. The post-mortem report below Exhibit 49 corroborates the evidence of P.W.No.8 - Medical Officer. The cause of death is proved through this medical evidence. The post-mortem report records the cause of death as *death due to fracture in*

*skull with head injury*. The contention of learned counsel for the Appellant that, the timings of incident deposed by the aforesaid two eyewitnesses and the medical evidence in respect of *rigor mortis* do not match and, therefore, the evidence of the eyewitnesses be discarded, has no merits. It is only the possibility, which is expressed by P.W.No.8 - Medical Officer in the cross-examination that, the death of the patient may have occurred before 8 to 10 hours. As seen from the evidence of the above referred eye-witnesses, the incident took place at 6.00 a.m. and the postmortem started from 12:30 hours, i.e., six (6) and a half (½) hours after the incident. The remarks in column No. 11 of the post-mortem report that, the *rigor mortis* was partially developed, in fact, corroborates the case of prosecution, as there was gap of more than six (6) hours between the death and post-mortem. We have no hesitation to hold that the medical evidence corroborate the testimony of the eye-witnesses.

**13.** The evidence of P.W.No.5 - Kavita Ajay Fugare shows that, she was the wife of the Appellant. Due to the drinking habit of the Appellant and ill-treatment to her by the Appellant to sell the agricultural land, which was in her name, she left her matrimonial home and went to reside with her parents. It has come in her cross-examination that, once she had lodged the complaint to the Mohol Police Station against the Appellant in respect of ill-treatment. Her evidence shows that, on getting information

in respect of the incident, she came to the spot and saw the dead body of her father-in-law in the tin shed. Nothing has come in her cross-examination so as to disbelieve her. Her evidence corroborates the testimony of P.W.No.3 - Ashalata Vijay Fugare and P.W.No.6 - Sanjay Vijay Fugare in respect of the conduct of the Appellant due to which she had to leave her matrimonial home.

**14.** The other evidence is in respect of the discovery and seizure of the axe at the instance of the Appellant on 13th November 2012. The evidence in that regard is that of the panch P.W.No.9 - Dattatraya R. Tikore. Though he deposed of the discovery of the axe at the instance of the Appellant, it has come in his cross-examination that, there were no bloodstains on the axe. P.W.No.13 - Rajendra Maske, Investigating Officer also deposed of discovery and seizure of the axe at the instance of the Appellant. He gives contrary evidence that, there were bloodstains on the axe. The reports of the Chemical Analyser (CA) show that, the result of analysis of the blood of the deceased and that of the appellant was inconclusive and the C.A. reports in respect of articles noted blood of 'B' group of human species on the articles. The said C.A. reports are at Exhibit 76 (Collectively). As the forensic evidence do not establish that, the blood of group 'B' was that of the deceased, the discovery of the axe will not be relevant under Section 27 of the Indian Evidence Act, 1872.

**15.** The other evidence is that of Shamrao Ghodke, who acted as the panch for inquest and for the arrest of the Appellant. The evidence shows that, he was examined twice, firstly as P.W.No.1 and thereafter as P.W.No.10. The evidence shows that, he was called by the police on the spot of incident at 6.00 a.m. The timing of incident was 6.00 a.m. and, therefore, his presence at 6.00 a.m. for inquest appears to be exaggeration and, therefore, his presence on the spot at the said timing cannot be accepted. Though it has come in his cross-examination that, the axe and clothes were seized, the evidence of this witness appears to be shaky and we, therefore, keep the same out of our consideration.

**16.** The other evidence is that of P.W.No.7 - Bharat Khilare, P.W.No.11 - Vijay Deshmukh and P.W.No.12 -Dinkar Pawar, who were the teacher and headmaster of the school, where the deceased was working before his retirement, and pancha respectively. They are examined by the prosecution to show the seizure of the documents in the natural handwriting of the deceased from the school, where the deceased was working. The evidence of P.W.No.3-Ashalata Vijay Fugare shows that, she handed over four (4) chits written by the deceased to the police. The evidence of P.W.No.3-Ashalata Vijay Fugare shows that, the said four (4) chits were written by the deceased in her presence about harassment by the Appellant. The said chits are exhibited below Exhibits 33 and 34. The

evidence of P.W.No.13 - Rajendra Maske, Investigating Officer, shows that, the Exhibits 33 and 34 - the chits and the documents collected from the school, were sent for the handwriting expert. The handwriting expert report/opinion at Exhibit 77 shows that, the handwriting on the questioned documents and on the admitted documents were found similar. The cross-examination of P.W.No.3 – Ashalata Vijay Fugare shows that, as she was confronted with the said chits/letters and questions were put to her on the same in the cross-examination, they were exhibited. From the cross-examination, it becomes clear that the said chits were in the handwriting of the deceased, which speaks about the harassment to the deceased by the Appellant. Thus, the said piece of evidence, i.e., the chits would be relevant under Section 32(1) of the Indian Evidence Act, 1872.

**17.** The above discussed evidence of the eyewitnesses and the medical evidence clearly establishes that Vijay Fugare, who was the husband of P.W.No.3 - Ashalata Fugare and father of P.W.No.6 - Sanjay Fugare and the Appellant, died homicidal death. The evidence of the eyewitnesses, as discussed above, clearly proved that, it was the Appellant, who caused the homicidal death of his father. Though the discovery of the axe under Section 27 of the Indian Evidence Act 1872 is held to be not relevant, it is proved through the evidence of the eyewitnesses that, the deceased was assaulted by the axe. The medical evidence established that the injuries,

which were possible by the axe, had caused the death. The use of the axe and causing injuries in the head of deceased clearly proved that, the Appellant had the intention to kill the deceased. The evidence of the eye-witnesses shows that, there was instant death of the deceased after the fatal blows by the Appellant in the head. With the evidence of the eye-witnesses corroborated with the medical evidence, the prosecution successfully proved the charge for the offence punishable under Section 302 of IPC against the Appellant.

**18.** The impugned Judgment shows that, the learned Trial Court noted that, as it was not the rarest of rare case, imprisonment for life would be just and proper punishment and awarded the punishment of twenty-five (25) years on the basis of the Government Resolution dated 15th March, 2010. It is needless to state that, the punishment provided under the IPC for the offence punishable under Section 302 of IPC is 'capital punishment' or 'imprisonment for life'. It nowhere provides the punishment in the nature of life imprisonment for twenty-five (25) years, as imposed by the learned Trial Court. The said punishment of twenty-five (25) years imprisonment for life do not have the sanction under the law. For this, profitable reference can be made to the decision of the Hon'ble Supreme Court of India in ***Naval Kishore & Anr. v. State of Punjab***,[7] wherein the

7 2026 SCC OnLine SC 2000.

Trial Court had imposed the sentence of rigorous imprisonment for life and directed the convict to remain in prison till rest of the life for the offence punishable under Section 302 of IPC. The Hon'ble Apex Court noted that, the sentence in the nature of imprisonment till rest of the life required examination. Considering the various decisions, it is observed that, *Section 302 of IPC has not been amended and continues to provide the punishment in the nature of 'death sentence or imprisonment for life, and fine'. The legislative intent while retaining Section 302 of IPC in its existing form, cannot be disregarded while interpreting the scope of the sentencing power under Section 302 IPC and, therefore, it would be impermissible to read into Section 302 IPC, a punishment, which the Parliament has expressly incorporated in other penal provisions and in doing so, the Sessions Court would be supplementing the punishment prescribed by the legislature.* The Hon'ble Apex Court considered the decision by the Constitution Bench in ***Union of India v. V. Sriharan,***[8] wherein it was emphasized that, prescribing punishment is essentially a legislative function and that, the Courts must operate within the punishment prescribed by the legislature, and while the Constitutional Courts may, in appropriate cases, mould a sentence within the permissible limits of the punishment prescribed, the exercise of such power is

8 (2016) 7 SCC 1.

circumscribed by the constitutional and statutory scheme. It observed that, the Trial Court is not competent to impose a special category sentence that the Appellant shall remain in prison till rest of the life, which in substance and effect, excludes the statutory power of remission or commutation.

**19.** In view of the above legal position, the sentence of twenty-five (25) years imprisonment for life awarded by the learned Trial Court is contrary to law and without jurisdiction. Therefore, the same needs to be brought in consonance with law.

**20.** In view of the above discussion, we proceed to pass the following order:

ORDER

i) The conviction of the appellant recorded by the learned Trial Court for the offence punishable under Section 302 of IPC is upheld.

ii) The sentence awarded by the learned Trial Court is modified to, imprisonment for life and fine of Rs. 5,000/- (Rupees Five Thousand only), in default to pay the fine, to suffer rigorous imprisonment for one (1) year.

iii) The paragraphs No.2 and 3 of the operative order are maintained.

iv) The record and proceedings be returned to the learned Trial Court.

v) The fee of the learned counsel appointed for the Appellant is quantified to Rupees Twenty Five Thousand only (Rs. 25,000/-) to be paid by the High Court Legal Services Authority.

vi) The copy of the Judgment be given to the Appellant free of cost.

vii) In view of disposal of Criminal Appeal, nothing survives in the Interim Application and the same also stands disposed of.

**[Neeraj P. Dhote, J.]** **[Sharmila U. Deshmukh, J.]**

RAJU DATTATRAYA GAIKWAD
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Date: 2026.11.03 21:11:28 +0530