
(2018) 11 BOM CK 0031

In the Bombay High Court

Case No : Criminal Appeal No. 1057, 1068 Of 2017 With Criminal Application
No.1094 Of 2018

Ganesh Sunil Jagtap and Other

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 19-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Code of Criminal Procedure, 1973 — Section 313, 437A

Citation : (2018) 11 BOM CK 0031

Hon'ble Judges : S.S. Shinde, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Satyavrat Joshi, Sumant Deshpande, H.J. Dedhia

Final Decision : Disposed Off

Judgement

S.S. Shinde, J

1. Criminal Appeal No. 1057 of 2017 filed by Accused No.2 Ganesh Sunil Jagtap, is directed against the Judgment and Order dated 14th December,

2017 passed by the Additional Sessions Judge, Pune thereby convicting Accused No.2 Ganesh Sunil Jagtap for the offence punishable under Section

302 read with Section 34 of the Indian Penal Code (for short, "IPC") and sentencing him to suffer life imprisonment and to pay fine of

Rs.5,000/ and in default to suffer simple imprisonment for one year. The Trial Court also convicted Accused No.2 Ganesh Sunil Jagtap for the

offence punishable under Section 201 read with 34 of IPC and sentenced him to suffer rigorous imprisonment for one year and to pay fine of

Rs.1,000/, in default to suffer simple imprisonment for two months. Both sentences were directed to be run concurrently.

2. Criminal Appeal No.1068 of 2017 filed by Accused No.1 Krishna Subramaniyam Swamy is directed against the Judgment and Order dated 14th December, 2017 passed by the Additional Sessions Judge, Pune thereby convicting him for the offence punishable under Section 302 read with 34 of

IPC and sentencing him to suffer life imprisonment and to pay fine of Rs.5,000/ and in default to suffer simple imprisonment for one year. The Trial

Court also convicted Accused No.1 Krishna Subramaniyam Swamy for the offence punishable under Section 201 read with 34 of IPC and sentenced

him to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/, and in default to suffer simple imprisonment for two months. Both

sentences were directed to be run concurrently.

3. Criminal Application No.1094 of 2018 is filed by original Accused No.2 Ganesh Sunil Jagtap, for suspension of aforesaid sentence imposed upon

him and for enlarging him on bail, pending the hearing and final disposal of Criminal Appeal No.1057 of 2017.

4. Both these Criminal Appeals are arising out of one and the same Judgment and Order passed by the Trial Court, hence the same are being decided

by this common Judgment.

5. The prosecution case, in brief, is as under:

[A] The husband of Sheetal (PW4) was a friend of Rakesh. Earlier Rakesh was in prison. Rakesh had visiting terms with Sheetal (PW4). Rakesh

was the son of informant Dnyaneshwar (PW 1). Accused persons were residing in the same locality where Sheetal was residing. Accused persons

disliked the relations of Rakesh with Sheetal.

[B] On 22nd June, 2013, Rakesh had been to the house of Sheetal (PW4) at about 4.00 p.m., at that time, accused persons came there and they

scolded Rakesh and asked him that, why he is in the house of Sheetal when her husband is in Prison. Rakesh told them that he is there to meet Netaji

(brother of landlord of Sheetal). Accused persons quarreled with Rakesh. At that time, Netaji came there and hence Accused stopped quarreling.

Thereafter, the accused and Rakesh were chitchatting outside the house of Sheetal(PW4).

[C] The informant (PW1) returned from his duty on 23rd June, 2013 and he saw his son Rakesh was not at home. On inquiry, informant came to

know that, on earlier day Rakesh had gone to Lohgaon, and he was not attending

phone call of anyone since 9.00 p.m. The Informant came to know from his wife that, the accused have threatened Rakesh not to meet Sheetal, otherwise they will finish him. As Rakesh did not return, the informant went to Police Station to lodge the missing report.

[D] When the informant was in Police Station, at that time, one Bhupendrasingh (PW11) informed to Police that, there was a pool of blood on wall

near Cricket Ground and some articles were lying there. Accordingly, police and informant proceeded to open ground near Kalwad Vasti, Lohgaon,

Pune, where informant saw goggles of his son, mobile of Samsung make and pool of blood. He identified those articles to be of his son Rakesh.

Therefore, informant proceeded to Police Station and lodged the report against accused persons vide Crime No.119 of 2013 under Sections 302 read with 34 of IPC.

[E] P.I. Naukudkar (PW14) arrested accused persons. Accused No.1 Krishna Swamy made a disclosure statement that, he would show the

place where the dead body of Rakesh was thrown. In consonance of his disclosure statement, police discovered the body of deceased. The Informant

identified the body of deceased. Accused No.2 Ganesh was arrested by the police. Accused No.2 immediately disclosed that he want to produce the

car used in commission of offence and clothes. Accordingly, police discovered the car and clothes and seized those articles. It transpired during the

investigation that the accused persons, in furtherance of their common intention committed the murder of deceased as according to them he was

having love affair with Sheetal Kamble (PW4).

[F] The Investigating officer sent body of deceased for medical examination. PM was conducted by Dr.Jadhav (PW10). Investigating Officer

collected PM report. The police collected various samples of blood stains on clothes and sent it to Chemical Analyzer. After completion of the

investigation, the investigating officer filed charge sheet against the accused persons for the offence punishable under Sections 302, 201 read with 34

of IPC.

[G] As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, hence the matter was

committed to the Sessions Court for trial.

[H] The charge (Exhibit 18) under Sections 302, 201 r/w. 34 of IPC was framed against the accused. The contents of the charge were read over

and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. Their defence is of false implication.

6. After recording the evidence and conducting full-fledged trial, the trial Court convicted and sentenced both appellants "accused for the aforesaid offences. Hence Criminal Appeal No.1057 of 2017 is preferred by appellant Ganesh Sunil Jagtap and Criminal Appeal No.1068 of 2017 is preferred by appellant " Krishna Subramaniam Swamy challenging their conviction and sentence.

7. Mr. Satyavrat Joshi, learned counsel appearing for the Appellants submitted that there was no eye witness to the incident and the case of the

prosecution is based upon the circumstantial evidence. There is no direct evidence against the accused. He further submitted that chain of

circumstances on which reliance was placed by the prosecution, has not been established beyond reasonable doubt by the prosecution. The

prosecution has failed to prove that there was any motive for the accused to commit the offence. The prosecution has examined only interested

witnesses. The material witnesses like Masudkar and Shahrukh, whose presence is brought on record through the evidence of PW 4 Sheetal are not

examined by the prosecution. Learned counsel submits that it is settled law that in case motive is not proved by leading cogent and reliable evidence,

then the chain of circumstances in a case of circumstantial evidence is not complete. In support of his contention, learned counsel placed reliance upon

the ratio laid down in the case of Surinder Pal Jain Vs. Delhi Administration (1993) 3 SCC 681 Sup and S. Harnam Singh Vs. The State [Delhi Administration] (1976) 2 SCC 819.

8. Learned counsel further submits that though the prosecution has examined PW 4 Sheetal on the point of "last seen together", the defence has

brought on record the contradiction in the police statement of PW 4 Sheetal wherein she has stated that after the incident of quarrel between Rakesh

and accused, Rakesh again visited her house at which time he was fully under the influence of alcohol. Thus, the evidence brought on record by the

prosecution regarding last seen together is not reliable. Learned counsel further submits that the evidence of panch witness PW 3 Nilesh regarding

recovery of scythe at the instance of Accused No.1 Krishna is not reliable as the recovery is not from the place which was exclusively within the knowledge of Accused No.1.

9. Learned counsel further submits that the prosecution has not brought on record any evidence showing that the seized articles were properly sealed

by affixing label by sealing with wax seals till the same were sent to Chemical Analyzer. Learned counsel further submits that C.A. report is

inconclusive and the circumstance regarding the C.A. report was not put to Accused No.1 while recording his statement under Section 313 of the

Code of Criminal Procedure. In support of his aforesaid submission, learned counsel placed reliance upon the exposition of law in the case of Kiran

Ashok Jadhav v/s State of Maharashtra (2014) ALL MR(Cri) 3850. Learned counsel further submits that though Medical Officer (PWÂ10) has

stated that, injury No.2 was possible by any sharp pointed weapon, the weapon i.e. scythe was never shown to the doctor and hence, the said

circumstance is not proved beyond reasonable doubts against the Accused. The evidence of Medical Officer is silent on the point that the injuries

found on the dead body were contaminated though it was found in drainage. This creates doubt whether really dead body was found in drainage. In

support of his aforesaid submission, learned counsel placed reliance upon the exposition in the case of Virender V/s The State of Delhi(1997) 6 SCC

171 , Raja Ram V/s State of Rajasthan(2005) 5 SCC 272, Kiran Gorakh Shelke and another V/s the State of Maharashtra (2016) ALL MR (Cri) 4160

and Krishan Mohar Singh Dugal V/s State of Goa (1999) 8 SCC 552.

10. Learned counsel further submits that the evidence of PWÂ5 regarding purchase of bottle of Rum by Accused No.2 Ganesh is also not useful as

he admitted that the Accused was shown to him in the Police Station. Learned counsel further submits that the Car was discovered from the open

place and the prosecution has not brought on record evidence that the said Car was in locked condition and the Accused were having dominion over

the said car. No evidence regarding ownership of the Car has been brought on record. Though set of clothes had been recovered from the said Car,

there was no identification of the said clothes showing them to be of Accused. Learned counsel further submits that the evidence regarding recovery

panchanama of dead body is also not reliable. The said panchanama was drawn

between 18.10 hours to 19.30 hours and the FIR was lodged at 17.00

hours. Informant admitted in cross examination that after confirming that the dead body of his son, he lodged the FIR.

11. Learned counsel further submits that the evidence of panch witness PW⁸ Samir regarding recovery of motorcycle at the instance of Accused

No.2 is not reliable, as where the motorcycle was allegedly thrown, was already known to the Police and hence the discovery will have no

consequences. The number of motorcycle of the deceased mentioned by the informant is different than the number of the vehicle mentioned in the

discovery panchanama. In support of his submission, learned counsel placed reliance upon the exposition of law in the case of Datta Daulatrao

Mundhe V/s The State of Maharashtra 2018 ALL MR (Cri) 3130. Learned counsel therefore submits that both the Appeals deserve to be allowed.

12. As against this, learned A.P.P. appearing for the State submitted that, though the case of the prosecution is based upon the circumstantial

evidence, the chain of circumstances on which reliance was placed, has been established beyond reasonable doubt by the prosecution. Learned APP

invites our attention to the evidence of PW⁴ Sheetal and submits that, in presence of PW⁴ both the accused have quarreled with Rakesh on the

issue of he having on visiting terms with PW⁴ though her husband was in jail. Learned APP further invites our attention to various recovery

panchnamas under which weapon and other incriminating material was seized at the instance of both the accused. Learned APP also invites our

attention to the evidence of PW⁹ Sunil whose evidence shows that on the day of incident i.e. 22nd June, 2013, at 10.30 to 11.00 a.m. accused came

to him and demanded money for filling the diesel at which time the clothes on the person of the accused were stained with blood, and accused were

under the influence of liquor. Learned APP further submits that the dead body of Rakesh was recovered at the instance of accused No.1 Krishna

from the place which was exclusively within the knowledge of the accused.

13. Learned A.P.P. further submits that after considering the entire evidence on record the trial court has convicted and sentenced both the accused,

and the findings recorded by the trial Court are in consonance with the evidence brought on record. He, therefore, submits that both the appeals may

be dismissed.

14. Heard learned counsel appearing for the Appellants and learned A.P.P. appearing for the Respondent " State, at length. With their able

assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance

with the evidence brought on record or otherwise.

15. Firstly, we will discuss the evidence of Medical Officer PW¹⁰ Vijay Tarachand Jadhav who conducted postmortem on the dead body of

Rakesh. PW¹⁰ Vijay deposed that he himself and Dr.Vikas Borkar conducted postmortem. His evidence shows that on examination, they noticed

following external injuries on the person of deceased:

1. Crushed injury present over face also involving chin, both fronto parieto temporal region of size 30 X 25 cm underlying skin, muscles, soft tissues,

vessels, bones, crushed, brain exposed to exterior half of the cerebrum absent.

2. Stabbed wound present over front of neck, 4.5cm above supra sternal notch, obliquely placed of size 3 cm x 1 cm x tracheal lumen deep, margins

contused.

3. Three contused abrasions present over mandibular region, each size 5 cm x 5 cm, red.

4. Multiple contused abrasions present over lower neck, left supra clavicular region, sternal region of size varying from 1 cm x 1 cm to 3 x 2 cm, red.

5. Lacerated wound present over lower 1/3rd of right forearm of size 3 cm x 2 cm x bone deep, underlying bone fractured.

6. Lacerated wound present over left ear pinna of size 5 cm x 1 cm x cartilage deep.

7. Lacerated wound present over right ear pinna of size 5 cm x 1 cm x cartilage deep.

16. The evidence of PW¹⁰ Vijay shows that all above injuries were ante mortem in nature. His evidence further shows that on internal examination,

they found the following internal injuries on the dead body:

(1) Head (i) Injuries under the scalp crushed injury present over both fronto parieto temporal region refer to injury no.1 in column no.17.

(2) Brain Half of cerebrum absent, rest of the brain contused lacerated.

(3) Thorax Stabbed wound present over anterior wall of trachea, refer to injury no.2 in column no.17.

17. The evidence of PW¹⁰ Vijay further shows that as per his opinion, the cause of death of Rakesh was "due to head injury". His evidence

further shows that injury No.1 "crushed injury could be possible if big stone hit on the head, and injury No.2 could be possible by any sharp pointed

weapon. His evidence further shows that injury Nos.1 and 2 individually sufficient to cause death of a person in ordinary course of nature.

18. Thus, the evidence of Medical Officer i.e. PW¹⁰ Vijay shows that he noticed multiple external and internal injuries on the person of Rakesh,

including severe injuries to the head, brain and thorax. Even half of cerebrum of the brain was absent and rest of the brain was contused lacerated.

Thus, the evidence of Medical Officer shows that the death of Rakesh was homicidal.

19. Now, we would discuss the evidence of other prosecution witnesses. PW¹ Dyaneshwar Mahadev Hargude is the informant, and father of

deceased Rakesh. His evidence shows that in June 2013 his son Rakesh (deceased) was serving in IBM Company at Yerwada. The evidence of

informant further shows that on 23rd June, 2013 when he returned home at about 7.30 a.m., at that time his son Rakesh was not present in the house,

and on enquiry with his wife, the informant came to know that on the earlier day Rakesh had gone to Lohgaon and thereafter did not return to house

and since after 9.00 p.m. of the earlier day, the mobile of Rakesh was found switched off. On enquiry his wife disclosed to the informant that Rakesh

had stated to his mother that accused Nos.1 and 2 were threatening him by saying that he should not keep relations with Sheetal Kamble otherwise

they would kill him. Thus, the evidence of informant shows that his son Rakesh was missing and therefore he went to the police station and lodged the

report. Thereafter he himself went to Lohgaon police chowky to lodge missing complaint. His evidence further shows that at police chowky, he came

to know that murder of one person has been committed in open land near Kalvad Vasti. Thereafter, police took him to the said place. There was pool

of blood and blood was spilled on compound wall. Besides the pool of blood, one Raybon goggle stained with blood of chocolate shade, one Samsung

mobile was lying. Police showed both the articles to the informant and he identified it to be of his son. His evidence further shows that from the

situation of spot, he came to know that his son was murdered by sharp edged weapon. Thereafter, he lodged complaint in the police station [Exhibit¹

33].

20. In order to prove the motive for commission of offence of murder of Rakesh, the prosecution has examined PW⁴ Smt. Sheetal Rakesh Kamble.

The evidence of PW⁴ Sheetal shows that in June 2013, she was residing in the chawl of Vivek Chavan at village Lohogaon along with her husband

Nitin. Her evidence further shows that she was knowing deceased Rakesh who was friend of her husband from his childhood days. Rakesh

(deceased) used to visit their house and even some time her husband and Rakesh used to consume liquor in her house. Her evidence further shows

that in June, 2013, her husband was lodged in Yerwada Jail at which time she herself and Rakesh had gone to Yerwada Jail to meet her husband and

at that time her husband asked deceased to take care of his house.

21. The evidence of PW⁴ Sheetal further shows that on 22.06.2013 at about 4.00 p.m. Rakesh had come to her house and inquired about her health.

Her evidence further shows that Rakesh had brought liquor bottle with him and he started consuming liquor by sitting in her house. At that time door

of her house was partly closed. After some time accused Ganesh Jagtap, Krishna Swamy along with Rahul Masulkar and Shahrukh came to her

house. They opened the door. Her evidence further shows that the accused Ganesh Jagtap and Krishna Swamy asked the deceased Rakesh, why he

had been to the house of Sheetal when her husband was lodged in Jail, and on that count they started quarreling with Rakesh. Her evidence further

shows that after sometime accused Krishna, Ganesh along with their other two companions and Rakesh left her house and started chitchatting on the

road and thereafter went away. Her evidence further shows that on next day, she came to know that Rakesh had been murdered.

22. During the course of cross examination, PW⁴ Sheetal stated that her husband was in Jail in connection with the murder case. Shahrukh and

Masudkar were friends of her husband. She admits that prior to the incident occasionally Rakesh used to visit her house. When portion marked 'A' in

her statement was read over to her, she stated that the same is not correct and she had not stated so before the police.

23. Thus, so far as the motive for commission of crime is concerned, the evidence of PW⁴ Sheetal is relevant as the prosecution has brought on

record that when husband of Sheetal was in Jail, Rakesh used to frequently visit

the house of Sheetal which was disliked by the accused. The prosecution has also relied upon the evidence of PW⁴ Sheetal on the issue of ²last seen together³. However, the evidence of PW⁴ Sheetal is not useful on the issue of last seen together to the prosecution. In her deposition, Sheetal has stated that when accused along with Rakesh left her house, she had gone to the Hospital and thereafter never met with Rakesh. However, her statement recorded by the police shows that when she returned from the Hospital, again Rakesh visited her house at which time he was under the influence of alcohol and asked her whether accused have given any trouble to her and thereafter left her house. Even the evidence of investigating officer, PW¹⁵ Subhash shows that while recording her statement, Shital had stated so. Thus, on the point of ²last seen together³ the evidence of Sheetal is not useful to the prosecution. However, through the evidence of Sheetal, the prosecution has brought on record motive for commission of offence.

24. PW² Nilesh Vijay Dagade is a panch witness, in whose presence dead body of Rakesh was discovered at the instance of accused No.1

Krishna. The evidence of PW² Nilesh shows that on 23rd June, 2013, he was called by Vimantal Police Station to act as Panch. His evidence

shows that in his presence accused No.1 Krishna voluntarily made disclosure statement that he would show the place where he has concealed the

dead body of Rakesh. He proved memorandum statement [Exhibit³⁸] of accused No.1 Krishna.

25. The evidence of PW² Nilesh further shows that thereafter accused No.1 Krishna took him along with the police party to the place where the

dead body was concealed. His evidence further shows that accused No.1 Krishna took them to PMC water supply tank by Lohgaon Dhanori road.

Near that tank there was drainage tank. There were two covers to the said drainage tank. Accused No.1 pointed towards cover No.2 and disclosed

that the dead body of Rakesh was thrown in that drainage water tank. Police staff opened the cover of drainage tank and found that the dead body of

one person was floating on the surface of water in the drainage tank. Police summoned fire brigade there and with the help of fire brigade team the

dead body was recovered from the tank. The evidence of PW² Nilesh further shows the details of the clothes which were on the person of the dead

body at that time. His evidence further shows that the face of the deceased was mangled. He proved recovery panchnama [Exhibit 39]. The

defence has extensively cross examined PW 2 Nilesh, but nothing contrary was brought on record and his evidence remained in tact and un

shattered.

26. Thus, evidence of PW 2 Nilesh shows that dead body of Rakesh was recovered at the instance of accused No.1 from the place which was

exclusively in his knowledge. The dead body of Rakesh was recovered from behind the drainage tank which was covered and the place was not open

and accessible to all. Thus, the prosecution has proved most incriminating circumstance from which and along other surrounding and attending

circumstance only reasonable influence can be drawn that accused No.1 has committed murder of Rakesh and to cause disappearance of evidence

thrown the dead body in the drainage tank which was covered.

27. PW 3 Nilesh Bharat Saste is another panch witness. His evidence shows that in his presence accused No.1 made voluntary disclosure statement

that he would show the place where he had concealed scythe which was used in the commission of offence. PW 3 Nilesh Saste proved

memorandum statement [Exhibit 41] of accused No.1. His evidence further shows that accused No.1 took him and police personnel to quarry near

Kalwad Vasti and further took them near one Babool tree and produced one scythe from the grass near the tree. His evidence further shows that one

side of the scythe was sharp edged and one side was blunt and it was stained with blood. He proved the seizure panchnama [Exhibit 42] regarding

seizure of scythe at the instance of accused No.1. When muddemal article 33 i.e. scythe was shown to him during the course of his evidence, he

identified the same, which was seized at the instance of accused No.1.

28. The evidence of PW 3 Nilesh Saste further shows that accused No.1 also made disclosure statement that he would show the place where he had

thrown motorcycle of deceased. But regarding discovery of motorcycle of deceased Rakesh, the evidence of PW 3 Nilesh Saste is not useful as the

motorcycle which was discovered at the instance of accused No.1 was different than the motorcycle of deceased.

29. Though the defence has cross examined PW 3 but nothing contrary has been brought on record

regarding the discovery of the scythe at the instance of the accused No.1. Thus, through the evidence of PW-3 Nilesh Saste, the

prosecution has proved that the scythe, which was used in the commission of offence by accused No.1 was seized at his instance from the place

which was exclusively within his knowledge and the said place was not accessible to the general public.

30. The prosecution has examined PW-5 Govind Dattatraya Ghorpade, whose evidence shows that on 22nd June, 2013 at about 5.30 to 6.00 p.m.

accused No.2 Ganesh purchased Rum Bottle from him. It is pertinent to note that though the prosecution has proved that on the day of incident

accused No.2 Ganesh had purchased liquor, but the said circumstance cannot be said to be an incriminating as against accused No.2.

31. The prosecution has examined PW-6 Ashok Bhagwan Salvi, in whose presence the police had taken search of the houses of accused Nos.1 and

2. But his evidence shows that when the police took search of the house of accused No.2 Ganesh, nothing incriminating was found in the house. Thus,

evidence of PW-6 Ashok is not useful to the prosecution case.

32. The prosecution has examined PW-7 Sanjay Sadashiv Hagawane to show that at the instance of accused No.2 Ganesh, blood stained clothes

were seized, which allegedly were on the person of accused No.2 at the time of incident. But the said recovery is from the open place.

33. The evidence of PW-7 Sanjay further shows that at the instance of accused No.2 Ganesh, one Indica Car was recovered in which some clothes

stained with blood were recovered along with other articles like photos, visa card, election identity card and mobile etc. which were kept in the said

car. However, the evidence of PW-7 Sanjay shows that the said car was not locked and the place where the car was parked was accessible to all

and open to sky. Thus the evidence of PW-7 Sanjay is not at all useful to the prosecution.

34. PW-8 Samir Suresh Tapkir is another panch witness. His evidence shows that at the instance of accused No.2 Ganesh one Honda Unicorn

Motorcycle which was belonging to deceased, was recovered. The evidence of this witness shows that, at the instance of accused No.2 the said

motorcycle was recovered from the mine. We find considerable force in the argument advanced by the learned counsel appearing for the appellant

that the evidence of PW8 â?" Samir cannot be relied upon as the said place was already known to the police, because from the said place itself at the instance of accused No.1 one another motorcycle was recovered.

35. The evidence of PW9 Sunil Rameshsinh Rajput shows that, on the day of incident i.e. 22nd June, 2013, at about 10.30 to 11.00 p.m.

accused No.1 and accused No.2 had came to the place where he was working and asked for Rs.1000/â? from him for filling the diesel in vehicle. His

evidence further shows that, at that time the clothes on the person of accused were stained with blood and they had consumed the liquor. His

evidence further shows that he had given money to the accused and they went away.

36. We have carefully perused the cross examination of PW9 Sunil. In his cross examination, he stated that in

connection with the murder of Rakesh, police took him in custody for five days, and told him that he being the friend of accused, they will book him in

the crime. He further stated that, police told him to depose in the Court as stated by them to him, and he obliged the police by doing so, since he had

fear in his mind that police might falsely implicate him in said crime. Thus it is clear that, the evidence of PW9 â?" Sunil is not at all reliable and the

same deserves to be discarded, as he has deposed in the Court as per the say of the police.

37. PW11 Bhupendrasinh Tarasingh Gandyok, whose evidence shows that on 23rd June, 2013 he had seen blood was spilled on the compound wall

of Kalwad ground. He also found that near the compound wall, on earth human hair, blood, and one goggle was lying. Therefore, he went to the Police

Chowky and informed the said fact to the police. Thus, PW11 is the witness on his information, an investigation in aforesaid crime was commenced.

38. PW12 Rahul Gajanan Kadam is the panch witness in whose presence panchnama [Exhibit77] was drawn by the police, of the spot which was

already shown by PW11 Bhupendrasinh. The evidence of PW12 Rahul further shows that on 23rd June, 2013 he was called by police at Kalwad

ground for panchnama. There was a compound wall near the ground and they found blood was spilled on the compound wall, so also the blood was

lying on the earth near the compound wall. His evidence further shows that, small piece of human skull, 2 human teeth were also lying there. Police

seized those articles and prepared panchnama. He proved spot panchnama [Exhibit 77].

39. PW 13 Haribhau Bhagwan Markad was the PSI of Vimantal Police Station at the relevant time, who has registered offence vide

C.R.No.119/2013 under Section 302, 201, 34 of the IPC, on the basis of report of informant Dnyaneshwar, and accordingly recorded statement of witnesses .

40. PW 14 Dilip Ganpat Naukudkar and PW 15 Subhash Shankar Chavan, are the other Investigating Officers who have carried out

further investigation in the matter. PW 14 Dilip and PW 15 Subhash deposed about the manner in which they have carried out the investigation in the crime.

41. The prosecution has also brought on record C.A. Reports regarding the seized articles, which are at Exhibits 24 to 30.

42. We have discussed the entire evidence brought on record by the prosecution. As already observed, the evidence of the Medical Officer (PW 10)

shows that, deceased Rakesh received multiple internal and external injuries, including severe injuries to the head, brain and thorax. Even half of

cerebrum of the brain was absent and rest of the brain was contused lacerated, and thus death of Rakesh was homicidal.

43. Admittedly, in the present case there is no eye witness to the incident and the entire prosecution case is based upon circumstantial evidence. For

connecting the said offences with accused No.1, the prosecution has brought on record overwhelming circumstantial evidence. The evidence on

record shows that at the instance of accused No.1 dead body of Rakesh was recovered from the place which was exclusively within his knowledge.

The dead body was recovered from below the drainage which was covered and was not accessible to all. Accused No.1 showed the said place, and

at his instance after opening the cover of the drainage, the dead body was taken out from the water of drainage. The evidence of Medical Officer,

who conducted postmortem on the dead body of Rakesh, shows that injuries noticed on the person of Rakesh were possible by sharp pointed weapon.

The evidence on record further shows that the weapon i.e. scythe which was used in the commission of crime, was recovered at the instance of

accused No.1 from the grass and the said place was not the place having access

to the general public. The prosecution has brought on record motive through the evidence of PW 4 Sheetal. The prosecution has proved that Rakesh used to visit Sheetal when her husband was lodged in the Jail, and the said fact was not liked by accused No.1 and thus there was motive for commission of offence. Even the evidence of the informant shows that, accused used to threaten Rakesh due to his relations with Sheetal. Thus the prosecution has brought on record overwhelming circumstantial evidence against accused No.1 showing his involvement in the commission of murder of Rakesh. The C.A. reports brought on record by the prosecution also shows that at the instance of accused No.1 the clothes which were on his person at the time of commission of offence were seized and there were blood stains on the said clothes. The prosecution has proved that accused No.1 had committed murder of Rakesh and thrown his body into the drainage water. Thus, the prosecution has proved that accused No.1 Krishna has committed an offence under Section 302, 201 of the IPC.

44. So far as the involvement of accused No.2 Ganesh in the said crime is concerned, we are of the considered view that the prosecution has utterly failed to bring on record sufficient circumstantial evidence against accused No.2. The only evidence brought on record against accused No.2 is that on the day of incident, he purchased one Rum Bottle. But as observed earlier, the said circumstance cannot be said to be an incriminating circumstance.

Another circumstance brought on record against accused No.2 is of the alleged recovery of motorcycle of deceased at the instance of accused No.2.

However, the said recovery of motorcycle is from the place which was already known to the police. Further, the said recovery is from the water of

the mine, visible and accessible to all. The prosecution has also tried to bring on record that at the instance of accused No.2 certain articles were

seized from the car. However, the evidence on record shows that the said car was parked at the open place and also the doors of the said car were

not locked. Thus, the recovery of those articles at the instance of accused No.2 is not useful to the prosecution case. The evidence on record shows

that when the police took search of the house of accused No.2 Ganesh, nothing incriminating was found in his house. The circumstantial evidence

brought on record by the prosecution against accused No.2 is too scanty to base the conviction under Section 302 of the IPC. As observed earlier, the

dead body of Rakesh was recovered at the instance of accused No.1. The prosecution has failed to prove the involvement of accused No.2 while throwing the dead body of Rakesh in the drainage water. Thus prosecution has not proved that accused No.2 had committed offence under Section 201 of the IPC. After considering the entire evidence brought on record by the prosecution, we are of the view that circumstances brought on record by the prosecution are not sufficient to connect accused No.2 for the offence under Section 302 and 201 of IPC. Thus, benefit of doubt deserves to be given to accused No.2.

45. For the reasons afore stated, we are of the view that the prosecution has proved that accused No.1 Krishna had committed murder of Rakesh and thrown his dead body in the water of drainage. Thus, the prosecution has proved that accused No.1 had committed an offence under Section 302 and 201 of the IPC. So far as accused No.2 Ganesh is concerned, the prosecution has utterly failed to prove that he has committed an offence under Section 302 and 201 of IPC.

46. In the result, we pass the following order:

O R D E R

(I) Criminal Appeal No. 1057 of 2017 filed by Appellant " Original accused No.2 Ganesh Sunil Jagtap is hereby allowed.

(IAa) The Judgment and order dated 14th December, 2017, passed by the Additional Sessions Judge, Pune in Sessions Case No.841 of

2013, thereby convicting and sentencing the Appellant " accused No.2 Ganesh Sunil Jagtap for the offence punishable under Sections 302 read

with 34 of the Indian Penal Code and Section 201 read with 34 of the Indian Penal Code, is quashed and set aside. The Appellant " accused No.2

Ganesh Sunil Jagtap, is acquitted of the offence punishable under Sections 302 read with 34 of the Indian Penal Code and Section 201 read with 34 of

the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellant " Accused No.2 Ganesh

Sunil Jagtap.

(IA?b) The Appellant? accused No.2 Ganesh Sunil Jagtap is in jail, he be set at liberty forthwith, if not required in any other case.

(IAc) The Appellant? Ganesh Sunil Jagtap shall furnish Personal Bond of Rs.15,000/ and a surety in the like amount,

under Section 437A of the Code of Criminal Procedure, before the concerned trial Court at Pune.

(II) Criminal Appeal No.1068 of 2017 filed by Appellant â?" Original accused No.1 â?" Krishna Subramaniyam Swamy is hereby dismissed.

(IIAa) The Appellant â?" accused No.1 Krishna Subramaniyam Swamy is convicted for the offence punishable under Section 302 of the Indian Penal

Code and sentenced to suffer imprisonment for Life and to pay fine of Rs.5,000/â?, and in default of payment of fine, he shall suffer simple

imprisonment for one year. The Appellant â?" accused No.1 Krishna Subramaniyam Swamy is also convicted for the offence punishable under

Section 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/â?, and in default he shall

suffer simple imprisonment for two months. Both the sentences shall run concurrently.

(III) In view of the order passed in Criminal Appeal No.1057 of 2017, Criminal Application No.1094 of 2018 does not survive and the same stands

disposed of, accordingly.