
(2002) 02 BOM CK 0101

In the Bombay High Court

Case No : Criminal Appeal No's. 57 and 199 of 1995

Smt. Mangalabai Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 164, 17, 207, 208

Evidence Act, 1872 — Section 27, 30

Penal Code, 1860 (IPC) — Section 120B, 194, 201, 203, 210

Citation : (2002) 104 BOMLR 86

Hon'ble Judges : S.S. Parkar, J;D.S. Zoting, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.S. Zoting, J.—These are the two criminal appeals preferred by the original accused Nos. 1 and 2 against the order of conviction and sentence passed by the Additional Sessions Judge, Jalgaon in Sessions Case No. 120 of 1993 on 14.2.1995. These two appellants along with one more accused namely Rakeshsingh @ Minty Tukmarsing Bhadoriya, aged about 20 years were tried before the Sessions Court for offence punishable u/s 302 r/w Section 120B and in the alternative u/s 302 r/w Section 34 of the Indian Penal Code. Both the appellants along with Rakeshsingh were convicted for the offence punishable u/s 302 r/w Section 120B of the Indian Penal Code and each of them was sentenced to suffer imprisonment for life and to pay a fine of Rs. 5000/- in default to suffer further R.I. for one year. In addition to the above imprisonment awarded to the appellant Mangalabai, she is also convicted for offence punishable under Sections 194, 210, 203 of the Indian Penal Code and she is cumulatively sentenced to suffer R.I. for five years and to pay a fine of Rs. 2000/- in default to suffer further R.I. for one year. All the sentences awarded to the appellant accused Mangalabai were directed to run concurrently.

2. The prosecution case in brief is as under :

The murdered man was one Vijaysingh Patil, aged about 59 years, who retired as Deputy Superintendent of Police from the service of State Government in the year 1992. Accused Mangalabai was the second wife of deceased Vijaysingh Patil. She had married to the deceased Vijaysingh in the year 1984 and since then she was cohabiting with him. Deceased Vijaysingh was having a son named Deepak and a daughter Alka from his first wife. His son and daughter are married and they are residing at Bombay. Since the time of his retirement, deceased Vijaysingh was residing at Jalgaon in his bungalow named as "Ghazal Bungalow". The said bungalow is quite spacious and there is one quarter in the premises of the said bungalow which is meant for watchman. Watchman namely Kamalakar Dusane (P.W. 1) was living along with his wife, small child and his mother in the said out house in the premises of the said bungalow. The incident occurred on the intervening night of 10th and 11th February, 1993 in the said bungalow. Since three months prior to the said incident, one Zoharabai (P.W. 13) was working as a maid servant in the said bungalow. It is alleged that deceased Vijaysingh was addicted to liquor. The accused Mangalabai was not putting well with deceased Vijaysingh. On many occasions accused Mangalabai left the bungalow for her parents' house at Bombay on account of differences between her and her husband. She was suspecting that her husband Vijaysingh was indulging in extra-marital activities with some females and lastly with Zoharabai, who was working as a maid servant in the said bungalow. With a view to redress her grievance, Mangalabai approached Madhukar Patil (P.W. 10) the brother of deceased Vijaysingh in the month of September, 1992, requesting him to intervene in the matter and to keep her husband away from the vices, however, Madhukar Patil (P.W. 10) did not pay any heed to the request of accused Mangalabai. Deceased Vijaysingh had continued to indulge in the said activities. Therefore, Mangalabai left for Bombay at her maternal house. During her stay at Bombay, she used to receive phone message from deceased Vijaysingh disclosing that he had improved himself and, therefore, she should come to Ghazal bungalow to live with him. Relying on the assurance given to deceased Vijaysingh, Mangalabai came to Jalgaon on 2.2.1993 to live with her husband. She came to know that Zoharabai left the Ghazal bungalow on the day on which she came there and her husband Vijaysingh had illicit relations with Zoharabai and she had also noticed that her husband had not given up the habit of drinking liquor. It is alleged that under the influence of liquor, deceased used to utter that he will leave his wife (accused No. 1 Mangalabai) and will marry with Zoharabai and he will transfer his all the properties in the name of Zoharabai. Accused No. 1 Mangalabai thought that if deceased Vijaysingh transfers his properties in the name of Zoharabai she will be deprived of getting any property of Vijaysingh and, therefore, is alleged that she made a plan to cause murder of her husband and for that purpose she took the watchman Kamalakar Dusane (P.W. 1) in confidence and conspired to do away with deceased Vijaysingh Patil by causing his murder. It is alleged that accused Mangalabai had promised to spend quite huge amount for the said purpose for engaging services of hired murderers for killing her husband Vijaysingh. She had given temptation to Kamalakar Dusane

that she will pay Rs. 20,000/- in cash to him and transfer the quarter meant for watchman situated in the said premises of the bungalow in his name. Kamalakar told her that his two friends who are residents of Itarsi would be in a position to carry out this task. Accordingly, Kamalakar Dusane went to Itarsi (M.P.) on 3.2.1993 and brought his two friends - accused No. 2 Banty @ Sadashiv and accused No. 3 Rakeshsingh @ Minty to Jalgaon on 8.2.1993 and took them to Nandra (Bk.). Then on 9.2.1993 Kamalakar Dusane had brought the accused Nos. 2 and 3 at Ghazal bungalow at Jalgaon. Mangalabai had a talk with accused Nos. 2 and 3 about the task that was to be carried out by them to finish Vijaysingh. Consideration for committing murder was fixed at Rs. 40,000. Thereafter accused Nos. 2 and 3 were directed to stay in the lodge at Jalgaon till they receive further instructions from her. Necessary accommodation was secured for accused Nos. 2 and 3 in the lodge on 9.2.1993.

In the evening of 10.2.1993, accused Mangalabai had given Pani Puri and Dahi Wada - edible articles to deceased Vijaysingh. In the said food, one sedative tablet was mixed. Thereafter, liquor was offered to deceased and deceased went to sleep. Thereafter, accused Mangalabai called accused No. 2 Banty and accused No. 3 Minty through the watchman Kamalakar Dusane. Accordingly, on 10.2.1993 at about 11.30 p.m. the accused Nos. 2 and 3 were brought by Kamalakar Dusane to Ghazal bungalow. At that time amount of Rs. 10,000/- was paid to them towards part consideration and cash amount of Rs. 4000/- was given to Kamalakar Dusane and the balance was assured to be paid after the task was over. Accused No. 2 Banty and accused No. 3 Minty along with Kamalakar Dusane were sent to the bed-room where deceased Vijaysingh was sleeping. Thereafter accused No. 1 Mangalabai left the place and went to the out-house where mother and wife of Kamalakar Dusane were sleeping and accused Mangalabai stayed in the out-house. Thereafter within a short time she heard shouts of her husband. Mother and wife of Kamalakar had brought this fact to the notice of Mangalabai, but Mangalabai told them that her husband had habit of raising shouts as "Mangal Mangal" under influence of liquor. Thereafter at about 1.00 a.m. Kamalakar Dusane came to the out-house and met with accused No. 1 Mangalabai and informed her that the task was over.

3. Thereafter accused Mangalabai went to the bed-room of deceased along with Kamalakar Dusane. At that time she had noticed the dead body of deceased Vijaysingh lying on the cot in a pool of blood. It is further alleged that at that time the accused Mangalabai in order to create a show that somebody had caused murder, arranged a teapot and put three glasses, and liquor bottle on the said teapot in the bed-room of deceased. This arrangement was made to create an impression to believe that friends of deceased were sitting along with him and they caused murder of deceased. It is further alleged that thereafter accused Mangalabai and watchman Kamalakar Dusane came out from the bungalow and locked the bungalow. Kamalakar Dusane was asked to go away from the home and to come back after 3-4 days as by that time everything would be set right. Accused Banty and Minty also left the said bungalow. Thereafter early in the

morning the accused Mangalabai came to the bungalow, opened the lock which was put on the rear door and thereafter she gave telephone ring to the Police Station informing that her husband was murdered in the bungalow. On the basis of the information given by her, the Police Station Officer had taken entry in the station diary at about 5.55 a.m. Immediately Police Inspector Khan (P.W. 18) received telephone message from the P.S.O. and he rushed to the spot. Accused Mangalabai lodged oral report which was reduced into writing by Shri Khan. In the report, she told the Police Inspector that on 10.2.1993 after finishing meals her husband had been to his bed-room for sleeping. The front door of the bungalow used to be locked. She left the bungalow at 12.00 midnight by locking the rear side door of the bungalow and went to the out house and slept there for whole night and early in the morning when she came back to the bungalow, and opened the lock with the key and when she visited the bedroom of the deceased, she found the dead body of deceased. On the basis of the report of Mangalabai, offence was registered at C.R. No. 53 of 1993 for an offence punishable u/s 302 of the Indian Penal Code at Zilla Peth Police Station, Jalgaon. Shri Khan took up the Investigation. Immediately he held inquest on the dead body of deceased Vijaysingh in presence of two panchas and drew inquest panchanama. The dead body of deceased Vijaysingh was referred to the Medical Officer for postmortem examination. Thereafter Police Inspector Khan (P.W. 18) attached the bed sheet, pillow stained with blood. In the said room wine bottle and glasses were found. They were preserved for the purpose of seeking finger print expert's opinion. Medical Officer Shri Chavan (P.W. 3) conducted autopsy on dead body of Vijaysingh on the same day.

4. In the meanwhile, Shri Khan the Police Inspector (P.W. 18) recorded the statements of inmates of the outhouse, i.e. Vijaya (P.W. 12) the wife of Kamalakar Dusane and Radhabai the mother of Kamalkar. During the investigation, it was transpired to Police Inspector Khan that accused Mangalabai is connected with the crime in question, so she was arrested at about 2.30 p.m. on that day i.e. on 11.2.1993. He recorded statements of some other persons, namely, Zoharabai, Madhukar Patil Kishor Narkhede, Dashrath Patil, however, watchman Kamalakar Dusane was not found on that day. He was arrested on 14.2.1993.

5. During the course of investigation, accused Mangalabai made a statement that she wants to make confession. It is to be noted that Mangalabai is a graduate lady. She made application to the Police Inspector about her intention to make confession and as such on the basis of the said application, Police Inspector Khan produced her before the Chief Judicial Magistrate Shri Harpale (P.W. 8) on the very day. The learned Chief Judicial Magistrate, after satisfying that Mangalabai wanted to make confession, cancelled her police custody and remanded her to the Magisterial custody and sent her to District Prison at Jalgaon. On the same day, he issued order to the effect that she be produced before the Special Judicial Magistrate, Bhusawal appointed for recording the confessional statement. Pursuant to the said direction, dated 16.2.1993, accused Mangalabai was taken

to the Special Judicial Magistrate, Shri Sarode (P.W. 7). After following due procedure as laid down in Chapter I of Criminal Manual issued by the High Court for the guidance of the officers recording the confessions, and after ascertaining that the accused wanted to make the statement voluntarily, the learned Magistrate had given 24 hours time to Mangalabai to think over in the matter and warned her about consequences of such confession and then direction was issued to the Jailor to produce her on the next day i.e. 17.2.1993 after expiry of 24 hours. Accordingly, on 17.2.1993 accused Mangalabai was taken to Special Judicial Magistrate Shri Sarode (P.W. 7) by two female police constables. On that day after following the same procedure as followed by him on the previous day and on ascertaining the willingness of Mangalabai to make statement, Shri Sarode (P.W. 7) recorded the confessional statement of Mangalabai as per the provisions of Section 164 of Criminal Procedure Code. The confessional statement recorded by the learned Special Judicial Magistrate was kept in sealed cover and it was forwarded to the Chief Judicial Magistrate.

6. Accused No. 2 Banty alias Sadashiv came to be arrested on 3.3.1993. While he was in police custody, he made a disclosure that he wanted to point out the place where he had concealed the knife. Therefore, two panchas were called. In their presence the accused No. 2 made a disclosure, Panchanama was drawn to that effect. Accused No. 2 Banty took the panchas and the police to the premises of the Ghazal bungalow and pointed out the place and in pursuance to the said information given by the accused, one knife Article No. 17 was recovered. It was found stained with blood. It was found hidden under the earth. It was attached and panchanama to that effect was drawn. Thereafter on 11.4.1993, accused No. 3 Minty who was absconding was also arrested.

7. During investigation, sample of blood of deceased was collected. At the time of arrest, it is noticed that accused No. 2 was having injury on his fingers. He was examined by Medical Officer. His blood was also collected for chemical analysis. The blood stained clothes of deceased Vijaysingh, the blood stained bedsheet, pillow and other articles which were found stained with blood of accused No. 2 and knife were sent to the Chemical Analyser for chemical analysis. In the mean time, the Chief Judicial Magistrate, Jalgaon tendered pardon the accomplice Kamalakar Dusane on a condition of his making full and true disclosure of the whole of the circumstances, within his knowledge. Thus out of four accused, as Kamalakar Dusane was made approver, charge-sheet was submitted against only three accused i.e. Mangalabai, Banty and Minty.

8. As the offence u/s 302 of Indian Penal Code is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Jalgaon, committed the case to the Court of Sessions for trial according to law. The accused were produced before the Court of Additional Sessions Judge, Jalgaon. Charge u/s 302 r/w Section 120B and in the alternative for an offence punishable u/s 302 r/w Section 34 of the Indian Penal Code was framed against all the three accused. The accused No. 1 Mangalabai was further charged for having committed offence

punishable under Sections 194, 201 and 203 of Indian Penal Code. Charge was read over to all the accused. They pleaded not guilty and claimed to be tried. The defence of accused No. 1 Mangalabai and Banty accused No. 2, as it can be gathered from their say and the cross-examination, the prosecution witnesses and the statements made by them in their examination u/s 313 of Criminal Procedure Code, was one of innocence and of false implication in the crime. Appellant Mangalabai has given her say in writing vide Exh. 143 while recording her statement u/s 313 of Criminal Procedure Code and at that stage she had resiled from her confessional statement. Both the appellants have not adduced any evidence in their defence. The defence of both the appellants will be discussed while discussing the evidence at appropriate stage.

9. During trial, 19 witnesses have been examined including the approver Kamalakar Dusane (P.W. 1). The learned Additional Sessions Judge heard the arguments advanced by both the parties, and on going through the evidence of prosecution witnesses, and the defence of accused persons, the learned Additional Sessions Judge held all the three accused guilty of the offence u/s 302 r/w 120B of the Indian Penal Code and in addition to this the accused No. 1 Mangalabai is held guilty for other offences punishable under Sections 194, 201, 203 of the Indian Penal Code and convicted and sentenced all of them in the manner as already stated above.

10. Being aggrieved by the said judgment of conviction and sentence passed by the learned Additional Sessions Judge, the original accused Nos. 1 and 2 have preferred these appeals. Appeal preferred by accused No. 1 Mangalabai is numbered as Criminal Appeal No. 57 of 1995, whereas the appeal preferred by accused No. 2 Banty is numbered as Criminal Appeal No. 199 of 1995. The third accused Minty had also preferred appeal but he died during pendency of the appeal hence his appeal stands abated.

11. We have heard the arguments advanced by Shri V.J. Dixit, learned Counsel for the appellant No. 1 Mangalabai, Shri S.P. Brahmas, learned Counsel for the appellant No. 2 Banty and the learned A.P.P., Shri N.N. Jadhav, appearing on behalf of the State/Respondent. We have gone through the prosecution evidence and we find that there is ample, cogent and trustworthy evidence in the form of confession, which further finds corroboration in various circumstances to sustain conviction and sentence passed by the learned Additional Sessions Judge. Therefore, we find that the appeals are devoid of substance and the order of conviction and sentence deserve to be confirmed for the following reasons.

12. The fact that deceased Vijaysingh Patil died unnatural death on the intervening night of 10th and 11th of February, 1993 at his residential bungalow "Ghazal" has not come to be disputed in any manner by or on behalf of the appellants. His dead body was noticed early in the morning. At about 5.55 a.m. Zilla Peth Police Station received phone message that the deceased Vijaysingh was murdered. Police Inspector Shri Khan visited the spot immediately after receipt of the information. He held inquest on the dead body of deceased in

presence of two panchas and he described the injuries noticed by him on the person of deceased Vijaysingh in the inquest panchanama Exh. 68. He had noticed several incised wounds on the person of deceased Vijaysingh. Dead body of deceased was referred to Medical Officer for postmortem examination. Dr. Ranjit Chavan (P.W. 3) conducted autopsy on the dead body of deceased Vijaysingh Patil on 11.2.1993 from 5.20 p.m. to 7.20 p.m. On external examination, he noticed as many as 30 injuries. He described all those injuries in column No. 17. Those are as under :

1. Incised wound right arm upper third anterior lateral aspect 2 cm x 1-1/2 cm muscle deep with clean cut, edges.
2. Incised wound right arm anterior axillary line upper third size 2 cm. x 1 cm. sharp edges, muscle deep.
3. Incised wound anterior axillary fold near axilla 1 cm. x 1/2 cm. sharp edges, muscle deep.
4. Incised wound three in number, 4 and half below lateral end of clavicle right side size 1" x 1/4", each one above the other transversely placed over the chest wall right side, bone deep, with sharp edges.
5. Incised wound right line 3 and one third" x 1/4" above right nipple transverse, bone deep.
6. Incised wound external and right clavicle 1" x 1/4" bone deep.
7. 5 incised wounds in right supra clavicle fossa 1" x 1/2" muscle deep.
8. Incised wound right anterior triangle of neck near right carotid sheath, 1" x 1/2" deep into tracheas.
9. Incised wound in midline of the neck anterior aspect 3" above sternal notch about 3" x 1" tracheas out.
10. Incised wound near sternal end of left clavicle superiorly about 1" x 1/2" cm muscle deep.
11. Incised wound that two in numbers, below sternal and of left clavicle, muscle deep, about 1" x 1/4" transverse.
12. Abrasion over the chest wall left side 3 and half above left nipple, mid clavicle line size 1 and half cm. x 1/2 cm.
13. Incised wound left supra scapular region about 12" x 1/4" muscle deep.
14. Four linear abrasions in posterior triangles of neck left side about 1 and half x 1/4 cm.
15. Incised wound in anterior triangle of neck near mid line on left side about 12" x 1/5" muscle deep.

16. Incised wound 2 in numbers, in sub-mental region left side, about 1 and half x 1/2" muscle deep transversely placed one above the other.
17. Incised wound left angle of mandible, 1" x 1/2" bone deep transverse.
18. Incised wound 2" below angle of mouth left side, about 1" x 1/2" bone deep.
19. Incised wound over chin left end about 2" x 1" bone deep, abrasion linear extending medially from wound about 2" in length.
20. Incised wound in right anterior triangle of neck, 2 and half below right angle of mandible about 1" x 1/2" muscle deep oblique.
21. Incised wound near right angle of mandible about 1" x 1/4" bone deep transverse.
22. Incised wound 1" x 1/2" anterior to right ear lobule muscle deep.
23. Incised wound anterior to right tragus, 1" x 1/2" x 4" deep obliquely placed.
24. Incised wound through right ear lobule about 1" x 1/4".
25. Incised wound pinna right ear splitting the pinna 1 and half x 1/2".
26. Incised wound half inch anterior to right mastoid behind right ear pinna about 1 and half x 1/2" deep upto service spine. C-3, carotid right partial tear present, (internally)
27. Incised wound 1" x 1/2" below right mastoid 4" deep.
28. Incised wound 1" x 1/2", 1" below and anterior to right mastoid 4" deep.
29. Incised wound 1 and half below right ear pinna about 3/4" x 1/4", 4" deep transverse.
30. Incised wound in the posterior mid line, mid cervical region, transversely placed, muscle deep.

He opined that all these injuries are ante mortem and are on the vital part of the body. The internal damage that has been caused due to the external injuries is described in column No. 20 of the postmortem report Exh. 66. In his opinion, the cause of death of deceased Vijaysingh is hemorrhagic shock due to multiple injuries. He opined that all these injuries are sufficient in ordinary course of nature to cause death of the person. He has categorically stated that these injuries are possible with sharp cutting instrument like knife article No. 17 before the Court. He has been cross-examined but his evidence remained unshattered. Having regard to all this evidence of incontrovertible nature, there cannot be any doubt in this case that deceased Vijaysingh died homicidal death.

13. Now the vital question that arises for consideration is whether the prosecution has succeeded in proving that the appellants were amongst the authors of the crime, in other words, whether the conviction recorded by the Trial

Court can be sustained or not. In support of its case, the prosecution examined as many as 19 witnesses.

JUDICIAL CONFESSION

14. It is well settled that prosecution has to prove its case beyond reasonable doubts irrespective of whether or not the accused have made a plausible defence and burden lies on the prosecution to prove its case beyond reasonable doubt. In the present case, there is no ocular evidence and the prosecution has relied upon :

- (1) the judicial confession made by accused Mangalabai before the Special Judicial Magistrate - Sarode (P.W. 7);
- (2) extra judicial confession made before Vijaya (P.W. 12);
- (3) non-confessional F.I.R. Exh. 125;
- (4) discovery pursuant to the statement made by accused Banty.

As the case is mainly based on the confession, before it can be acted upon, it must be established to have been voluntarily made and is true. As regards the evidentiary value of the confession, which passes through the two tests against the maker thereof, the Apex Court has held in the case of Sarwan Singh Vs. The State of Punjab, as under :

.... in law it would be open to the Court to convict him on his confession itself though he has retraced his confession at a later stage. Nevertheless usually Courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.

The same principle has been reiterated by the Supreme Court In Kehar Singh and Others Vs. State (Delhi Administration), .

Such a confession can also be used against a co-accused, in view of Section 30 of the Evidence Act, which reads as under :

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take Into consideration such confession as against such other persons as well as against the person who makes such confession.

The next question that naturally arises is how far and in what way the confession can be used against a co-accused, who had faced the trial for the same offence with the maker thereof. This was pithily answered by the Supreme Court in Kashmira Singh Vs. State of Madhya Pradesh, with the following words:

The proper way to approach a case of this kind is, first, to marshal the evidence

against the accused excluding the confession altogether from consideration and see whether, if is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

15. Keeping in view the above principles, we may now proceed to consider the case of the appellants.

5.2.2002

The confessional statement made by the appellant Mangalabai before the Special Judicial Magistrate, Sarode (P.W. 7) is at Exh. 89. On perusal of the said statement, it appears that it has been recorded in question and answer form and there is a certificate of the Magistrate at the foot of the confession. As the conviction of the appellants is based mainly on the confession of Mangalabai recorded by the Special Judicial Magistrate, it is necessary to see whether the said confession is voluntary and truthful.

From the plain language of Section 164 of Criminal Procedure Code and the Rules and guidelines framed by the High Court in Chapter I of Criminal Manual regarding recording of the confessional statement of accused u/s 164 of Criminal Procedure Code, it is manifest that the said provisions emphasize an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be most significant and important part of the duty of the Magistrate recording the confessional statement of the accused u/s 164 of the Criminal Procedure code.

16. The learned Counsel for the appellant submitted that though the Trial Judge has rightly rejected the statement of Kamalakar (P.W. 1) who has been examined as an approver, the learned Trial Judge erred in accepting the confession of the appellant Mangalabai, as according to him, it was obtained by police by giving threats and inducement as disclosed by accused Mangalabai in her written statement submitted by her during her examination u/s 313 of Criminal Procedure Code. Therefore, now it is necessary to ascertain that while recording the said confessional statement whether the Special Judicial Magistrate has made proper inquiry as per provisions of Section 164 of the Criminal Procedure Code and the guidelines issued by the High Court in Criminal Manual regarding recording of the confession so as to satisfy himself regarding the voluntary nature of the confession.

17. In this regard, the Special Judicial Magistrate Premchand Sarode (P.W. 7) gave evidence that on 16.2.1993 the accused Mangalabai was brought before him by two female police constables from Jalgaon in view of the order passed by

the Chief Judicial Magistrate, Jalgaon. He further stated that he had inquired with those female police constables as to whether they are concerned with the investigation in crime in question and they informed that they were not concerned with the investigation in the matter in any way. He further stated that then he got ascertained that in his office or outside of his office there was no police or police officer present. He had also ascertained that while accused Mangalabai was sitting in his office, she would not be seen by outsiders or that her talk shall not be heard by outsiders. Thereafter he informed accused Mangalabai that she was not in police custody and that she was free from police pressure. He further stated that thereafter he made inquiry about ill-treatment ,if any from the police to the accused and the accused answered the same in negative. He further stated that putting certain questions he had also ascertained as to whether she was pressurised by police to give her confession or that she had been instigated by police to give her confession and he had satisfied that she was neither pressurised nor instigated to make confession before him. He further stated that he informed her that she was not bound to give her confession and if she makes the confession, the same will be used against her during trial. He further stated that she was informed that she will not be given in police custody after recording her statement and that she will be kept in Magisterial custody in the prison. He had ascertained whether she gave application to the Police Officer Shri Khan expressing her desire to make disclosure voluntarily and the accused told him that she had given such application voluntarily. He further ascertained whether the accused is in a good state of mind to make the statement and for that purpose he asked her the reason to make a disclosure of the facts, to which she told him that she was repenting of her acts and that is why she wanted to make disclosure of the truth. After recording the reply given by accused No. 1 Mangalabai in question and answer form, then he informed the accused Mangalabai that she can think over of her idea to give confession before him and for that purpose she was given time of about 24 hours and she was informed that she will be produced before him on the next day, therefore, he directed the police to produce her on the next day. He had finished the inquiry made by him which was reduced into writing vide Exh. 36 bearing his signature and the signature of accused No. 1.

18. Premchand Sarode (P.W. 7) further stated that on the next day i.e. on 17.2.1993, accused Mangalabai was produced before him by two police constables from the District Prison, Jalgaon. He has made it clear that those two police constables were not the same who produced the accused on the previous day. On production of the said accused before him on that day, he again repeated the same procedure as followed by him on the previous day by putting same questions to the appellant/accused No. 1 Mangalabai. He has also made it clear that he made inquiry with the female police constables whether they have any role in the investigation and he was satisfied that they were not concerned in any way with the investigation in the matter. Thereafter on satisfying that accused Mangalabai was disclosing voluntarily, he started recording the confessional

statement as per her version in his own handwriting and then read over the confession to the accused. Accused admitted the same to be true and correct as per her version and thereafter the accused Mangalabai put her signature thereon. The said statement is at Exh. 89. At the foot of the said statement, the Special Judicial Magistrate certified that the said statement has been recorded by him as per the version of the accused and it is true and correct. He has also made endorsement regarding his satisfaction after putting the questions to the accused to ascertain the voluntary nature of the confession including the precaution taken by him that no police was present in or near the room. He had also made endorsement to the effect that two female police constables who produced the accused before him for recording the confessional statement were present outside the room to guard her. He has categorically denied the suggestion made by the defence in his cross-examination that both the police constables were present by the side of accused Mangalabai at the time of recording the statement. It is to be noted that the quarter of the Magistrate consists of three rooms, one behind another and one Veranda and the office of the said Magistrate is in the middle room. He had categorically stated that the female police constables were placed in front of that room to guard the accused and not inside the room.

19. Shri Dixit, learned Counsel for the appellant No. 1 Mangalabai contended that both the police constables were present in front of the door of the office room and as such the accused was under the influence of the police and, therefore, the confessional statement recorded by the Special Judicial Magistrate should not be treated as voluntary disclosure of the accused Mangalabai, We are unable to accept the contention raised by the learned Counsel for accused Mangalabai. It is to be noted that there is absolutely no evidence to show participation of both these two female police constables in the investigation of the crime. Even the guidelines issued by the High Court in Chapter I of Criminal Manual does not speak that no Police Officer should be posted to secure the safe custody of accused while recording the confessional statement. It is to be noted that the guidelines issued by High Court in Chapter I of Criminal Manual under Clause (viii) of para 18 specifically refer for ensuring safe custody of the accused at the time of recording the confessional statement of the accused and also specify that minimum number of Police Officers necessary should be allowed to remain with the accused and the only precaution to be taken in any case is that it is not desirable that the Police Officer making investigation should be present. No Police Officer making investigation was present at the time of recoding the confessional statement Exh. 89.

20. On perusal of the preliminary statement Exh. 86 recorded by the Special Judicial Magistrate on 16th February, 1993 and the confessional statement recorded by him on 17th February, 1993, we are satisfied that the learned Special Judicial Magistrate had observed the guidelines issued by the High Court for the guidance of the Magistrate to satisfy himself about the voluntary nature of the confession and we are satisfied that after following due procedure the

learned Magistrate was satisfied about the voluntary nature of the confession and perusal of the confessional statement had transpired that the said confessional statement is voluntarily made by the accused No. 1 Mangalabai.

21. The learned Counsel for the appellant Mangalabai has cited the decision of the Apex Court in the case of Shivappa Vs. State of Karnataka, in the said case, with a view to satisfy the voluntary nature of the confession, Magistrate did not disclose the appellant that he was a Magistrate, no inquiry was made to find out whether he has been influenced by anyone. Magistrate did not lend assurance to the accused that he would not be sent back to the custody in case he makes the confessional statement. Appellant was not questioned as to why he wants to make the statement. Under such circumstances, the Apex Court held that the said confessional statement cannot be said to be voluntary and it would not be prudent to act upon such a confessional statement.

22. The evidence of Shri Sarode (P.W. 7) the Special Judicial Magistrate, as discussed above, clearly shows that he has observed the guidelines by putting the questions to the accused to satisfy himself the voluntary nature of the confession. He had put all the questions which were expected to be put by the Magistrate for recording the confessional statement. In the case cited by Shri Dixit, learned Counsel, such questions were not put by the Magistrate dealing with the case referred to above. Therefore, the case cited by the learned Counsel for the appellant is of no avail to the appellant Mangalabai.

23. The learned Counsel for the petitioner further contended that Police Inspector Khan (P.W. 18) gave inducement to the accused Mangalabai that in case she makes the confessional statement as per his instructions before the Special Judicial Magistrate, he would not take objection to her bail application and she would get bail. It is also submitted that Shri Khan had promised her to make her approver so as to make a strong case against Kamalakar Dusane and other two accused and thus to enable the accused Mangalabai to get herself free from the case. We do not find any substance in the submissions made by the learned Counsel for the appellant in this regard. It is to be noted that she did not make complaint in this regard before any authority or the concerned Courts even after the accused Kamalakar was made an approver in the case. As already pointed out, she is graduate and if it was a state of affair, she would not have failed to make complaint in this regard, though she was on bail during trial.

24. This brings us to consider whether the said confessional statement is true and trustworthy. In order to ascertain whether such statement is trustworthy or not, it is necessary to see whether it finds corroboration in other circumstances which are brought on record.

25. Accused No. 1 Mangalabai in her confessional statement has narrated the story since the time of her marriage with Vijaysingh Patil in the year 1984 and stated that he was addicted to liquor and he ill-treated her on several occasions and with a view to get rid of ill-treatment and harassment to her, she was

required to visit her parents" house at Bombay every now and then. She stated that after retirement of the deceased Vijaysingh, he had no work and he used to remain under influence of liquor for 24 hours. He had engaged a maid servant Zoharabai (P.W. 13) and he was spending much amount for Zoharabai (P.W. 13) and he wanted to marry with said Zoharabai and transfer the entire property in her name. Feeling aggrieved by the said conduct of deceased and his illicit relations with Zoharabai, she approached the younger brother of deceased Vijaysingh named Madhukar Patil (P.W. 10), who is a legal practitioner at Dhule and put her grievance before him and requested him to intervene in the matter so as to advise his brother to keep him away from the vices. In this regard, her statement finds corroboration in the statement of Madhukar Patil (P.W. 10). Madhukar Patil (P.W. 10) stated that in the first week of September, 1992 accused Mangalabai had come to Dhule and told him that her husband Vijaysingh was addicted to liquor and he had kept one maid servant namely Zoharabai and he was thinking to marry her and he was spending huge amount on her. He further stated that at that time Mangalabai requested him to accompany her to Jalgaon to tell Vijaysingh Patil to be on proper path and as such she requested him to settle their dispute. But he told Mangalabai that he was unable to intervene in the dispute and declined to accompany her to Jalgaon, therefore, Mangalabai went to Bombay to her maternal house. Thereafter during her absence, Zoharabai (P.W. 13) was staying in Ghazal bungalow and this fact is fairly established from the statement of Zoharabai (P.W. 13), so also from the evidence of Vijaya Dusane (P.W. 12).

26. Accused Mangalabai in her confessional statement further stated that she stayed at the residence of her parents for two months, however, during that period, deceased Vijaysingh telephoned her and informed her that he had stopped drinking liquor and he drove out Zoharabai from his house and he gave assurance to her (Mangalabai) that he would treat her properly and requested her to come to live with him and, therefore, on 2.12.1992 she came back to Jalgaon and started living with her husband at Ghazal bungalow and at that time she did not find Zoharabai. However, she came to know that deceased had continued contacts with Zoharabai. She further stated that she had also noticed that her husband did not stop drinking liquor and he had continued his habit to remain under influence of liquor throughout the day. She further stated that under influence of liquor deceased used to tell her that she wanted to marry Zoharabai (P.W. 13) and transfer the property in her name. Therefore, she thought that she would be deprived of the property of her husband to which she was entitled to. Therefore, she decided to finish her husband. For this purpose, she took Kamalakar Dusane, who was staying in the out-house and working as watchman for the said bungalow, in confidence and disclosed him her plan to finish her husband and for that purpose she sought assistance of Kamalakar Dusane (P.W. 1) and made a proposal to him that if he engaged hired murderers, she would pay Rs. 40000/- to them and Rs. 20000/- to him and also transfer the said out-house where he was living, in his name. She further stated that

Kamalakar Dusane (P.W. 1) accepted the said proposal and he left Jalgaon for Itarsi and brought his two friends, namely, Rakeshsingh (accused No. 3) and Banty (accused No. 2) on 9.2.1993.

27. In this regard, the evidence as regards the arrival of accused Nos. 2 and 3 at Jalgaon before commission of the murder finds support in the testimony of Vijaya Dusane (P.W. 12) the wife of Kamalakar Dusane (P.W. 1). She stated that eight days prior to the murder of Vijaysingh Patil her husband Kamalakar had gone to Itarsi and after about 5-6 days her husband came back from Itarsi to Jalgaon along with his two friends i.e. accused Nos. 2 and 3. She further stated that all of them took lunch at her residence on that day. She identified accused Nos. 2 and 3 during the identification parade held by Tahsildar Deelip Mahajan (P.W. 16) in presence of the panch witnesses Malojirao (P.W. 14) and Ramesh Gavali (P.W. 15) to be the same persons who were accompanying her husband for taking lunch in her house. She further stated that after taking lunch, accused Nos. 2 and 3 left her house with her husband and thereafter on inquiry with her husband she came to know that they were staying in Prakash Guest House. Dashrath Patil (P.W. 11) who was working as Manager of Prakash Guest House stated about the stay of these two accused in Prakash Guest House from 11.00 p.m. on 9.2.1993 to 9.00 a.m. 11.2.1993. He had also identified both of them during the identification parade. He has produced the register bearing the name of accused No. 3 to be a person who booked the room in the said Guest House along with his friend Banti to be his companion staying in the said room.

28. In her confessional statement accused Mangalabai stated that on 9.2.1993 Kamalakar Dusane had brought his two friends namely Rakeshsingh and Banty in Ghazal bungalow and at that time there was a talk amongst the two friends of Kamalakar and Mangalabai. At that time the plan was explained to them and for that purpose she agreed to pay amount of Rs. 10000/- to accused Nos. 2 and 3 in advance and Rs. 4000/- to Kamalakar as part consideration for causing murder of deceased Vijaysingh and promised to pay Rs. 40000/- to the accused Nos. 2 and 3 after the task was over and thereafter she advised the accused Nos. 2 and 3 to stay in lodge at Jalgaon and wait for instructions from her.

29. As regards the actual occurrence of the incident on 10.2.1993 she stated that in the evening Dahi Wada and Pani Puri were brought from the market by Kamalakar at her instance and one sedative tablet was added by her in Dahi Wada and these eatables were given to her husband and she offered liquor to him. After taking Dahi Wada and consuming the liquor her husband went fast asleep and thereafter she sent Kamalakar to call his friends and in pursuance to the said directions, Kamalakar along with accused Nos. 2 and 3 came to the Ghazal bungalow for executing the task. She further stated that as per the agreement she paid Rs. 10000/- to accused Nos. 2 and 3 and Rs. 4000/- to Kamalakar and sent them to the bed-room where deceased Vijaysingh was sleeping.

30. After issuing necessary instructions to them, she went to the outhouse where

mother and wife of Kamalakar were sleeping and stayed in the out-house and at that time it was time of about 12.00 midnight. She further stated that after some time in midnight she heard shouts as, "Mangal Mangal" in the voice of Vijaysingh from the bungalow and on hearing the said shouts, mother and wife of Kamalakar enquired as to what happened and why Saheb shouted. She told them not to pay attention and let him to shout and switched off the light buttons and went to bed. In this regard also there is corroboration from the statement of Vijaya (P.W. 12) the wife of Kamalakar Dusane who heard the shouts. This is a very important circumstances.

31. Mangalabai further stated that at about 1.00 a.m. Kamalakar came to the out-house. She took him out of the house and enquired him and on inquiry he told her that the task was over. The learned Counsel for the appellant contended that in this regard there is no corroboration to the statement of Mangalabai. He contended that if it was a fact, Vijaya (P.W. 12) would have disclosed about the fact of her husband's coming to the outhouse and going out of the house of the accused Mangalabai at about 1.00 a.m. In this regard, it is to be noted that Vijaya and her mother-in-law were sleeping. It was high time to remain awake at such late hours. Only the person who had some work will not be sleeping and that has happened in this case in respect of the accused Mangalabai and Kamalakar indulging in conspiracy but not in respect of Vijaya and her mother-in-law, therefore, under such circumstances, it is not expected to seek corroboration on each and every aspect of the statement of accused Mangalabai from Vijaya who could not notice further happenings which occurred after she slept.

32. Mangalabai further stated that when she along with Kamalakar went to the bed-room of deceased Vijaysingh, she found Vijaysingh lying in a pool of blood and he was not alive. She stated that thereafter she arranged three steel glasses and liquor bottle on teapot so as to create a show that her husband took liquor with his friends and his friends committed his murder and ran away. She further stated that thereafter she locked the bungalow and told Kamalakar not to disclose the occurrence to anybody, else he would be implicated in the crime and thereafter she went to the out-house and slept there and early in the morning went to the bungalow and informed the police on phone.

33. Shivdas Barkake (P.W. 17) who was attached to Zilla Peth Police Station, Jalgaon on 11.2.1993 stated that he received phone message from Mangalabai at about 5.55 a.m. about murder of Vijaysingh, the retired Deputy Superintendent of Police. The station diary entry to that effect is at Exh. 122. He informed the Police Inspector Khan about the information received by him. Pursuant to this message, Police Inspector Khan (P.W. 18) rushed to the spot and found the dead body of deceased Vijaysingh lying in a pool of blood on the cot. Immediately he recorded the detailed report of Mangalabai as per her version. The said first information report is at Exh. 125. After drawing inquest panchanama, he had drawn the spot panchanama in presence of the panchas. At that time, he found

liquor bottle and four glasses on the teapot. He preserved all these articles with a view to obtain report as regards the finger prints to find out the culprits. It is pertinent to note that no finger prints were found on the glasses which show that precaution was taken to cause disappearance of the finger prints. As regards finger prints on the bottle, they tallied with the finger prints of the accused Mangalabai. The learned Additional Public Prosecutor submits that there were no other finger prints noticed on the bottle. As the finger prints of accused Mangalabai were found on the liquor bottle it indicates that she had played a game of creation of false evidence i.e. to create a show that friends of deceased might have committed murder.

34. The accused No. 1 had resiled from the confessional statement recorded by the Special Judicial Magistrate after the recording of evidence is over and not before and she took up the defence by filing written statement Exh. 143. In para 6 of the said statement, it has been stated that on 10.2.1993 friends of deceased Vijaysingh came to Ghazal bungalow for enjoying liquor party with him and they were enjoying the same, however, there was no sign to finish that party till 12.00 midnight, therefore, she went to the out-house of the watchman and slept there along with the mother and wife of the watchman and on the next day early in the morning when she visited the bed-room of the deceased, she noticed that he was murdered and hence she went back to the out-house and enquired about Kamalakar and as he was not found she had shown suspicion on him and therefore, both of them got annoyed at her and threatened her that if she utters a single word against Kamalakar, they would see her and therefore, she had not shown suspicion on any person and simply made a report that in the morning she noticed that her husband was murdered.

35. If the story regarding the liquor party enjoyed by Vijaysingh in the company of his friends was the factual position, she might not have forgotten to mention this fact In the report lodged by her early in the morning. It is pertinent to note that she has specifically mentioned in the first information report that the front door of Ghazal bungalow used to be locked always and at midnight when the party was going on and when she left the bungalow she locked the rear side door. In her confessional statement, she herself admitted that early in the morning she opened the rear side door of the bungalow and entered into the house. If both the doors of the bungalow were locked, then the question will arise as to how the friends of deceased came out of the bungalow. It is pertinent to note that no door or window or any lock of the bungalow was found broken. This circumstance also goes against the defence of the accused Mangalabai as regards the liquor party enjoyed by deceased Vijaysingh with three friends during the intervening night of 10th and 11th of February, 1993. If it was a fact then finger prints of other persons would have appeared on the glasses which were found on the teapot. Thus the defence appears to be after thought and false and therefore, deserves to be rejected. False defence is one of the circumstance which also goes against the accused.

36. As regards the report lodged by the appellant, it is to be noted that this is not a confession of the appellant. It is not a statement made to a Police Officer during the course of investigation. Section 162 of Criminal Procedure Code does not bar its admissibility. The report is an admission of the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder of Vijaysingh was committed, or whether the appellant's statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. Admissions are admissible in evidence u/s 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. In view of this position, the admission given by the accused Mangalabai in the said report can be taken into consideration and these admissions also falsify the defence of the accused as discussed above.

37. Apart from the judicial confession of Mangalabai, there is also extra-judicial confession. Therefore, now we would like to deal with the extra-judicial confession made by Mangalabai before witness Vijaya (P.W. 12) who is the wife of watchman Kamalakar and the other circumstances. As already stated, on the fateful night of the incident, it has come in evidence of Vijaya that at about 12.00 midnight Mangalabai came to the out-house where she along with her mother-in-law and child was staying. She stated that Mangalabai knocked the door, hence she opened the door. She stated that Mangalabai stayed in her house during the night time. This fact is not disputed by Mangalabai. She has also admitted this fact in her confessional statement made before the Special Judicial Magistrate. Vijaya further stated that after the visit of Mangalabai to her house at midnight, after some time she heard shouts as, "Mangal Mangal" in the voice of Saheb. It is pertinent to note that she used to address deceased Vijaysingh as Saheb. She further stated that her mother-in-law told Baisaheb (Mangalabai) that she was being called by Saheb. At that time, Baisaheb told that Saheb was shouting under influence of liquor and, therefore, they all should sleep calmly. She further stated that on the following morning at about 5.30 a.m. she was awakened by mother-in-law and informed her that Baisaheb had along gone to the bungalow and, therefore, she should go and sit with her. In this regard, anxiety of mother-in-law of Vijaya is consistent with the human conduct especially in the circumstances under which Mangalabai stayed in her house. It is to be noted that Mangalabai came to the house of Vijaya to stay there during night time under the pretext that her husband consumed excessive liquor and he was fully drunk and was abusing her, so she got afraid of him. Under such circumstances, conduct of mother-in-law of Vijaya to send Vijaya to the house of Mangalabai to accompany her appears natural. She further stated that when she went to the bungalow she saw dead body of Vijaysingh lying in a pool of blood and Mangalabai sitting in the room on the ground floor. She was alone but she was not weeping though her

husband was lying in a pool of blood. This subsequent conduct of Mangalabai speaks volumes against her. Any woman of ordinary prudence would have immediately started crying and weeping on seeing her husband lying dead in a pool of blood. Her silence speaks for her guilty conscious. She further stated that Saheb was calling her at midnight, and when she heard the shouts of Vijaysingh, she (Mangalabai) ought to have gone to him. She further stated that having heard this Baisaheb told her not to touch her by uttering words, "tu mala shahanpana shikawu nakos". However, seeing the conduct of Mangalabai, she being not satisfied, again she -enquired with Mangalabai as to where she had sent her husband (Kamalakar) on earlier night, as her husband was not present during night time in the house. She stated that Baisaheb replied to her that she should not talk any more and her husband shall return home after 2-3 days. In view of this statement, she suspected in Mangalabai and in view of the said suspicion she enquired her as to whether she is behind the murder of Saheb and at that time Mangalabai made extra-judicial confession by giving reply that she had managed to cause murder of Saheb. She further stated that Mangalabai threatened her that she should not talk any more otherwise she would also be involved along with her husband in the murder of Saheb. It is to be noted that this witness was cross-examined at length. There appears no contradiction as regards the conversation between this witness and accused Mangalabai. Shri Dixit, learned Counsel for the appellant contended that no servant would have questioned the employer in this manner and, therefore, what Vijaya (P.W. 12) states as regards the extra judicial confession alleged to have been made by the accused No. 1 Mangalabai should not be believed. In this regard, it is to be noted that what this witness says is not in respect of the extra-judicial confession only but she narrated the entire sequence of occurrence that had taken place since arrival of accused No. 1 from her parental house to Ghazal bungalow eight days prior to the incident and also as regards the visit of her husband Kamalakar and bringing of his two friends accused Nos. 2 and 3 along with him, so also all the events that had occurred and noticed by her including the shouts of husband of Mangalabai and disappearance of her husband during the said fateful night of the incident. Under such circumstances, what Vijaya stated as regards extra-judicial confession cannot be said to be unnatural. It is to be noted that this disclosure is made before Vijaya first in time immediately after the intimation of murder was given by Mangalabai to the Police Station. Vijaya made the statement when she was not knowing about the involvement of her husband. Her evidence in this regard, in view of the circumstances noted above, inspires full confidence and we are inclined to accept the same.

38. Shri Dixit, learned Counsel for the appellant No. 1 contended that the allegations made in the confessional statement to the effect that pass book was opened in the name of Zoharabai does not find support in the deposition of Zoharabai. Similarly, the allegation that the deceased was having illicit relations with Zoharabai also does not find corroboration in her statement. It is to be noted that Zoharabai has not supported the prosecution story. Thereafter, she

was declared hostile. It is difficult to believe that a woman will expose herself by admitting the illicit relations. Therefore, it does not in any way affect the prosecution case. It is further contended that no alcohol was found in viscera. Similarly, no traces of sedative substance were found in the chemical analysis of viscera, therefore, the story regarding mixing the powder of sedative tablet in Dahi Wada and giving alcohol to the deceased does not lend any assurance to the confessional statement of Mangalabai. In this regard, it is to be noted that alcohol and the sedative tablet is not the cause of death and finding of their traces in the viscera or not does not affect the prosecution evidence, especially when the confessional statement as regards the conspiracy and murder of Vijaysingh lends assurance from other circumstances. Similarly, the fact that no cash was found in the building during search cannot and does not negative the value of the confessional statement pertaining to the promise to pay the amount to the accused Nos. 2 and 3 after the task was over.

39. In addition to the evidence regarding confession as discussed above, there is evidence of discovery u/s 27 of the Indian Evidence Act. Accused No. 2 Banty was arrested on 3.3.1993. The Investigating Officer Khan (P.W. 18) stated that when the accused was in custody of police for the purpose of investigation, he had volunteered that he wanted to make a statement as regards the weapon and, therefore. Khan (P.W. 18) called two panch witnesses. He stated that the accused made a statement before the panchas that he had concealed the knife under the earth in the premises of Ghazal bungalow and that he would show it and pursuant to the said statement, he took them to the bungalow, removed the earth and produced the knife article No. 17. The fact disclosed that knife was concealed under the earth in the premises of Ghazal bungalow was within the exclusive knowledge of the accused. The said knife was attached under the seizure panchanama Exh. 72. At the time of attachment of this knife blood stains were found on it. His testimony is fully corroborated by the independent panch witness namely Charudatta (P.W. 5). The Chemical Analyser reported that human blood was found on the said knife. He has also noticed that there were blood stains of blood group "A" as well as blood group "B" on the said knife. It is to be noted that the blood group of deceased is "A", whereas the blood group of accused No. 2 Banty is "B" as per the Chemical Analyser's report Exhs. 107 and 108. It is also pertinent to note that at the time of arrest of accused No. 2, injury was found on the right ring finger in middle horizontal on anterior aspect as stated by Police Inspector Khan (P.W. 18) which is corroborated by independent panch witness Ashok (P.W. 6). The accused was referred to the Medical Officer. The medical certificate is at Exh. 105, the genuineness of which was admitted by the accused. It is pertinent to note that in this certificate, doctor opined that each of these injuries was caused within one month. It is pertinent to note that the accused was also arrested within one month of the incident of the murder. It is also pertinent to note that there were as many as 30 injuries on the person of deceased. Therefore, the possibility of getting injury on his finger while inflicting repeatedly with knife injuries on the person of deceased cannot be overruled and

the accused could not explain the existence of blood group "B" on the knife. Dr. Chavan (P.W. 3) opined that the injuries on the person of deceased Vijaysingh are possible by means of this knife article No. 17 and, therefore, the discovery of the knife at the instance of the accused while in custody is relevant and admissible in evidence. In addition to this circumstance, there are several circumstances including the presence of this accused along with accused No. 3, and their stay at the Prakash Guest House during the relevant period of the incident at Jalgaon. In addition to these circumstances, there is confessional statement of the co-accused Mangalabai which lends assurance to this discovery and the other evidence already discussed above to show involvement of the accused No. 2 to be one of the authors of the crime. It is also pertinent to note that he has relied upon the letter written by Kamalakar to his mother, in which there is a reference of receipt of amount of Rs. 4000/- for his friends i.e. accused Nos. 2 and 3 for going to other city. This reference together with the above evidence as already discussed is also the circumstance against this accused (Accused No. 2 Banti).

40. Thus keeping in view principles laid down by the Apex Court, as already stated above in the cases of (1) Sarwan Singh Vs. The State of Punjab, Kehar Singh and Others Vs. State (Delhi Administration), and (3) Kashmira Singh Vs. State of Madhya Pradesh, there cannot be any doubt in this case that both the appellants are involved in commission of the crime. There are 30 incised wounds inflicted with knives on the person of the deceased which clearly show that they were inflicted only with intention to kill Vijaysingh and as such the case falls under clause firstly of Section 300 which is punishable u/s 302 of the Indian Penal Code. The evidence as disclosed in the confessional statement is sufficient to establish that the said murder is committed in pursuance of the conspiracy hatched amongst all the accused persons.

41. As laid down by the Supreme Court in the case of Firozuddin Basheeruddin and Others Vs. State of Kerala, as regards the admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator and despite of the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.

42. For the reasons recorded above, thus we find that prosecution is successful in proving the charges u/s 302 r/w Section 120B of the Indian Penal Code. At the same time, the prosecution has succeeded in proving accusations against the accused No. 1 Mangalabai for the charge under Sections 194, 201, 203 of the Indian Penal Code.

43. Before parting with the judgment, we would like to deal with the preliminary objection raised by the learned Counsel for the appellant as regards validity of

the committal order passed by the learned Chief Judicial Magistrate. He has drawn our attention to the provision of Section 306(4) of the Cr. P.C. for examination of approver by the Committal Court before the case is committed. He submitted that the said provision is mandatory and Magistrate cannot dispense with the special procedure u/s 306(4) of the Cr. P.C. and commit the case by applying the procedure contemplated u/s 209 under which the examination of any witness is dispensed with and the Magistrate taking cognizance can straightway commit the case to the Sessions Court after complying with the provisions of Sections 207 and 208. Therefore, according to him, the order of committal made without examining the approver as a witness u/s 306(4) of the Cr. P.C. is illegal.

In support of his contention, he has relied upon a decision in the case of *Uravakonda Vijayaraj Paul Vs. The State and Others*, decision in the case of *State (Delhi Administration) Vs. Jagjit Singh*, in which it is held that Sub-section (4) of Section 306 of the Cr. P.C. casts an obligation on the prosecution to examine the approver both in the Committing Court as well as in the Trial Court. So the accused who has been granted pardon has to be examined by the prosecution in the Trial Court no matter that he has resiled from his earlier statement in Committal Court and tried to conceal what was within his knowledge with regard to the offence in question.

There cannot be any doubt regarding the proposition laid down in these cases. It is not disputed that one of the accused namely Kamalakar has been granted pardon and is taken as approver and his statement has been recorded by the Special Judicial Magistrate as per order passed by the learned Chief Judicial Magistrate, however, his examination as a witness u/s 306(4) of Criminal Procedure Code has not been recorded by the learned Chief Judicial Magistrate taking cognizance of offence before committing the case to the Court of Sessions. It is to be noted that despite of the committal of the case without examining the approver in the Committing Court, the order of committal was never challenged in revision, which course was open to the appellants/accused. It may also be noted that during trial of the said case before the Sessions Court, an application was made by the learned P.P. for sending the case back to the Committing Magistrate for examination of said Kamalakar so as to remove procedural defect by making necessary compliance of Section 306(4) of the Cr. P.C., however, the present appellants opposed that application. That application came to be rejected, however, fact remains that when the prosecution wanted to cure the defect, the accused appellants opposed that application and as such it is not open to them to raise the same objection before this Court and to say that the committal order is wrong and illegal and it should be set aside and matter should be remitted to the Committing Magistrate to take steps right from the recording the statement of the approver and then to commit the case again for fresh trial. Moreover, as the appellants have opposed the application for sending the matter back to the Committing Magistrate to cure the defect by following proper procedure, now they cannot be allowed to play fast and loose, to blow hot

and cold to approbate and reprobate to the detriment of the opposite party i.e. prosecution. In this regard, it is to be noted that while deciding the Sessions case, the Trial Court has completely ignored the statement of the approver, as the approver resiled from his earlier statement and as such the learned Additional Sessions Judge found him not to be trustworthy in any way. We find that the learned Additional Sessions Judge has rightly ignored that evidence and as the said evidence is not at all to be considered in the Sessions case, no question of causing any prejudice to the accused persons arises in this matter and as such, non-examination of the approver by the Magistrate before committal of case cannot and does not in any way affect the merits of the prosecution case.

44. Thus on overall consideration of the facts and circumstances of the case, the evidence on record and the important features which have been noted by us above, we find that there is ample, cogent and trustworthy evidence as discussed above to sustain conviction and sentence passed by the learned Additional Sessions Judge. Therefore, we find that both the appeals preferred by original accused Nos. 1 and 2 being appeal Nos. 57 of 1995 and 199 of 1995, respectively are devoid of any substance and they deserve to be dismissed. In the result, the judgment and order dated 14.2.1995 passed by the Additional Sessions Judge convicting and sentencing the above appellants for the aforesaid offences stand confirmed. The bail bonds of appellant Mangalabai stand cancelled. She is directed to surrender to the Competent Authority forthwith to undergo sentence awarded to her. Order accordingly. Both appeals are dismissed.