

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 610 OF 2021

Deepak Madhu Waghmare }
Age 50 years, resident of Honad }
Adiwasiwadi, Tal- Khalapur, }
Dist- Raigad } ...Appellant

Versus
The State of Maharashtra }
(Through Khopoli Police Station }
CR No.174/ 2017) } ...Respondent

Mr. Yashodeep Deshmukh (Appointed Advocate) a/w.

Ms. Vaidehi Deshmukh, for the Appellant.

Ms. Sharmila S. Kaushik, APP, for the Respondent–State.

CORAM : MANISH PITALE, J.

MANJUSHA DESHPANDE, J.

RESERVED ON : 18th NOVEMBER 2025
PRONOUNCED ON : 19th JANUARY 2026

JUDGMENT: (Per Manjusha Deshpande, J.) :

1. This Criminal Appeal is directed against the Judgment and order dated 15.01.2019, passed by the Sessions Judge Raigad at Alibaug convicting the Accused for offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life with fine of Rs. 1,000/-, and in default of fine to suffer further simple imprisonment for 3 months.

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2. The Appellant has challenged the order of conviction on various grounds, his two primary grounds of challenge are that there are missing links, in the chain of evidence relied upon by the prosecution, rendering the chain of circumstantial evidence incomplete and insufficient to convincingly establish the guilt of the Accused. The other relevant and important ground of challenge is that the conviction is also based on the so-called “judicial confession” allegedly made by him, which was not given voluntarily rendering it unworthy of reliance.

3. The Brief facts giving rise to the present appeal are as under:

The story of prosecution leading to the conviction of the Appellant/Accused is that, the Accused alongwith his deceased wife Sundar and their daughter was residing at village Sangada, while he was working as a labourer at Adlab Imagica. His wife was also working as a domestic servant with one Appanna Reddy. The Accused suspected his wife was having illicit relations with Appanna. When his wife conceived, he had doubts about the paternity of the child, therefore he shifted to his native place, where his wife gave birth to a girl child. The Accused still suspected his wife, since she used to get phone calls from Appanna frequently, on that count there used to be frequent quarrels between them.

4. On 15.08.2017 shortly before 11.00 pm the Accused assaulted deceased with a sickle causing her fatal injury on the vital parts of her body, thereby intentionally committing her murder. One Govind Sonu Chavan gave information of the incident, to the police informing them

that the deceased was found lying in the pool of blood in her house. On the basis of information received by the Khopoli Police, C.R. No. 174 Of 2017 was registered. The PW-6 I.O. was entrusted with the investigation, who visited the Hospital, prepared the inquest Panchanama; referred the body for postmortem and drew spot Panchanama. The Accused was arrested on 16.08.2017. The weapon used in the offence was seized from the spot and the clothes of the Accused were recovered pursuant to the Memorandum Panchnama under Section 27 of the Indian Evidence Act, 1872, which was sent for chemical analysis. After completion of investigation, chargesheet was submitted.

5. The prosecution has examined, the following 6 witnesses in support of their case to prove the guilt of the Accused during the trial.

PW-1	Avinash Madhu Waghmare	Panch Witness
PW-2	Shankar Gopal Waghmare	Nephew of the Deceased
PW-3	Rekha Ravindra Waghmare	Chance witness and a neighbour
PW-4	Guddu Rajkumar Gaund	Labour contractor to prove motive
PW-5	Dr. Mohitkumar Ramesh Kagade	Medical officer who carried out post-mortem
PW-6	Rajvardhan Namdeo Khebude	Police Sub-Inspector (I.O.)

After examining the witnesses, incriminating material was brought to the notice of Accused as required under Section 313 of the Cr.P.C. The Accused examined 2 Defence witnesses and after hearing the respective

parties the learned Sessions Judge Raigad has convicted the Accused for offence punishable under Section 302 of the IPC.

Submissions on behalf of the Accused-Appellant:-

6. The learned Advocate Mr. Yashodeep Deshmukh, appearing for the Appellant, through Legal Aid submits that, the case of the prosecution is fully based on the circumstantial evidence therefore it was necessary for the prosecution to prove the guilt of the Accused beyond reasonable doubt. In the present case, the prosecution has failed to establish the chain of circumstantial evidence which pointed only towards the guilt of the Accused. The case of prosecution is based on 3 foundational facts, firstly, motive, secondly the recovery of incriminating articles like weapon of assault and blood stained clothes and thirdly, the voluntary confession of the Accused recorded under Section 164 of the Cr.P.C.

7. It is submitted that, the informant of the incident, one Mr. Govind Sonu Chavan, has not been examined by the prosecution. The failure to examine the person who has given the First Information Report itself weakens the case of prosecution. It was necessary for the prosecution to examine the informant who is the first link in the chain to throw light on the circumstances, under which the deceased was found.

8. It is submitted that, when the case is entirely based on circumstantial evidence it is necessary to prove the 'Motive' for commission of the offence. According to the prosecution the 'Motive' of the Accused for commission of the offence was the infidelity of his wife. In order to prove the 'Motive' of the Accused, the prosecution has

examined PW-4 Mr. Guddu Rajkumar Daund, who was the labour contractor for Adlab Imagica, where the Accused was also working as Labourer. PW4 has stated that, when the Accused was working at Adlab Imagica one Appanna Reddy was living in the same Chawl where the Accused resided. The deceased used to cook meals for Appanna. When the deceased conceived the Accused suspected the paternity of the child and on that count there used to be frequent quarrels between the Accused and deceased.

9. Mr. Deshmukh submits that, PW-4, has admitted that he has never seen quarrels between Accused and the Deceased, he also admitted that he never saw deceased working with Appanna. Therefore the material witness examined by the prosecution to prove the 'Motive' could not satisfactorily establish that the deceased had illicit relations with Appanna, due to which the Accused held grudge against him. Due to the infidelity of his wife, the Accused was infuriated and it was the 'motive' for him to commit the offence. He further submits that, the prosecution could have examined Appanna himself to prove the motive of the Accused. Hence according to him the prosecution could not prove the 'Motive' of the Accused by examining PW-4.

10. It is submitted that, the prosecution case is also based on the incriminating material seized during the investigation and the confessional statement of the Accused recorded under Section 164 of the Cr.PC. The incriminating material are the blood stained clothes of the Accused and the weapon used for commission of offence. The clothes of Accused were recovered under the memorandum Panchanama, seized in the presence of Panchas. It is submitted that, the

witnesses to the Memorandum Panchanama have stated different timings than the one shown in the Panchanama. Therefore, it is not reliable piece of corroborative evidence.

Though the weapon “Sickle” has been seized during the spot Panchanama Exhibit-14, and it discloses blood stains on the sickle however, the C.A. report shows no blood stains are detected on the sickle, therefore it is doubtful whether the sickle that has been seized during the spot Panchanama is the weapon used for commission of the offence.

11. Mr. Deshmukh submits that, even the memorandum Panchnama Exhibit -13 for recovery of clothes of the Accused does not inspire confidence, since the clothes worn by the Accused at the time of commission of offence were recovered from open space behind his house, from grass overgrowth, near the bamboo Trees. It is submitted that, since the clothes were recovered from open space, it is not reliable piece of evidence. It is, submitted that, all these Panchanamas are doubtful and there is a reasonable ground to believe that they are fabricated and prepared in the Police Station itself.

12. The learned Advocate further places reliance on the FSL Reports dated 24th July 2018, which discloses blood group A on Exhibits-4 to 9. These exhibits are the clothes of deceased and the Bermuda of the Accused respectively. The Blood Group A detected on the Bermuda of the Accused, belongs to the deceased. According to him, merely few blood stains detected on the Bermuda of the Accused, are not sufficient to convict the Accused.

13. A strong objection is raised to the reliance placed on the 'judicial confession' of the Accused recorded under Section 164 of the Cr.PC. It is submitted that, though prosecution is heavily relying on the judicial confession of the Accused, the Accused has denied to have given any such confession. The confessional statement was recorded while the Accused was in the MCR. Mr. Deshmukh has drawn our attention to the question no.9 posed to the Accused by the Judicial Magistrate First Class, Khalapur, while recording his statement on the first day of his confession i.e. 21.08.2017. While answering the question whether he was forced by the Police Authorities or any other person to give such confession the Accused has answered in positive. Therefore, in view of the clear indication, given by the Accused, about being forced to give such confession, it becomes unreliable piece of evidence. The reliance placed on such tainted piece of evidence by the learned Sessions Judge, for convicting the Accused is totally erroneous.

14. He submits that, even the reliance placed by the prosecution on Section 106 of the Indian Evidence Act, 1872 is also unwarranted. The initial responsibility to discharge the burden of proof is on the prosecution to *prima facie* make out the case against the Accused.

Thus, according to him the prosecution has failed to prove the complicity of Accused by proving the chain of circumstantial evidence beyond reasonable doubt. The confessional statement of the accused coupled with few blood stains on his Bermuda cannot be made, basis for convicting the Accused. Hence, the Impugned Judgment and order, convicting the Accused under Section 302 of the IPC needs to be set aside.

Submissions on behalf of Respondent-State:-

15. Responding to the arguments of the Advocate for the Appellant the learned APP, Ms. Sharmila Kaushik, for the State submits that, the prosecution has proved the complicity of the Accused in the offence beyond reasonable doubt by leading cogent evidence. This case is based on circumstantial evidence as well as, the confessional statement of the Accused recorded under Section 164 of Cr.PC. So far as, the circumstantial evidence is considered the prosecution has proved the chain of events leading to the guilt of the Accused. The first ingredient necessary to be proved in cases of circumstantial evidence is the 'Motive'. According to the prosecution the Accused was suspecting the character of his deceased wife, for having illicit relationship with one Appanna, who was an Engineer working at Adlab Imagica. The prosecution has examined PW-4 Guddu Rajkumar Gaund, who was the labour contractor at Adlab Imagica, to prove the 'Motive' and the suspicion harboured by the Accused against his wife. He has stated in his deposition that the wife of Accused became pregnant while she was working as a Cook with Appanna. Appanna as well as Accused used to live in the same Chawl near each other. The Accused used to suspect the relationship of his wife with Appanna. Hence, he had a Motive to commit offence, which is proved through PW-4

16. Reliance is also placed on the Memorandum statement of the Accused, which further led to the recovery of clothes worn by him while committing the offence. It was proved by the examining the Panch witness PW-1 Mr. Avinash Shridhar Sawant, who was also Panch Witness for the spot panchnama conducted on 16.08.2017. The 'Sickle'

used by the Accused was seized from the spot, which was stained with blood and identified by PW-1 in the Court. The same Panch witness also proved memorandum Panchnama at Exhibit-12 dated 21.08.2017, which led to the recovery of the blood stained clothes, of the Accused in a polythene bag thrown by him, behind his house in the over grown grass.

17. Most importantly the Accused had given his confessional statement on 21.08.2017 and 22.08.2017 in accordance with Section 164 of the Cr.P.C. The confessional statement of the Accused, undeniably discloses the 'Motive' for commission of offence by the Accused. He has narrated the events, occurred during their stay at Village Sangade, while he was working at Adlabs Imagica. In his confessional statement, he in no uncertain terms has stated that, he had seen his wife coming out of the house of Appanna for whom she used to cook food. She also used to get frequent phone calls from Appanna, therefore he suspected character of his wife, and was not sure about the paternity of the child, when she conceived. Even after returning to the village, the people used to gossip about the character of his wife. Because of the continuous taunting by the people, being fed up of the circumstances, he has assaulted his wife on the fateful day, with the Sickle that was lying near the cooking stove. This confession is clear, and unambiguous thus cannot be doubted.

18. Once having proved the confession recorded by the Magistrate, the 'Motive' for commission is also proved. It is further supported by the corroborative evidence hence there cannot be any doubt about the complicity of Accused and the fact that he has brutally committed the

murder of his wife. Therefore, the order of conviction passed by the Sessions Judge Raigad-Alibaug, does not deserve any interference.

Our Analysis:—

19. We have heard the respective Advocates and perused the record and proceedings of the trial court. Admittedly, this is a case based on circumstantial evidence, it is therefore necessary for the prosecution to prove the chain of events, which would lead to the guilt of none other than the Accused, beyond reasonable doubt. The question that arises is who is the author of the crime. The present case is based on circumstantial evidence, which requires evidence of impeccable quality for recording conviction. The judgment of the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda V. State of Maharashtra***¹, has set the standards and guiding principles for proving cases based on circumstantial evidence. The relevant para is reproduced herein below which reads thus:

'153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an Accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*it may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahab Rao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*

"Certainly, it is a primary principle that the Accused must be and not merely may be guilty before a court can convict and

1. (1984) 4 SCC 116

the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the Accused, that is to say, they should not be explainable on any other hypothesis except that the Accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the Accused and must show that in all human probability the act must have been done by the Accused.'

20. Let us now analyse the present case on the basis of afore-stated guiding principles laid down by the Hon'ble Supreme Court. The prosecution was set in motion by reporting the incident viz. filing of FIR. In the present case, the FIR was filed by one Govind Sonu Chavan, he has not been examined by the prosecution. It is reported by him that, one Sangita Waghmare was the first person to see the deceased lying in a pool of blood in an injured condition. Both these witnesses are material witnesses, who could have thrown light on the circumstances under which the deceased was found.

The prosecution has directly examined PW-1, who is the Panch Witness for the spot Panchnama Exhibit-14 and Memorandum Panchnama Exhibits-12 and 13. There is an inconsistency in the time recorded in the memorandum panchnama and the recovery panchnama. The time of conducting both the panchnamas, as stated by PW-1 in his deposition as well as cross-examination do not match, with

the time mentioned in both the documents. Due to the inconsistency in the evidence produced by the prosecution, it does not inspire confidence. Apart from inconsistency in the timings as stated above, the seizure of clothes of the accused is made from an open space behind his house, which is accessible at all. Hence, on that count also, the corroborative evidence produced by the prosecution to prove the guilt of the accused falls short, of the standard of proof necessary in cases based on circumstantial evidence.

21. PW-2 is the nephew of the deceased and the panch witness to the recovery of the clothes of deceased, his testimony also is not of much assistance to prove the complicity of the accused. Similarly, PW-3 Rekha Ravindra Waghmare, who is one of the neighbours of the deceased, also does not give any material information about the incident, except her statement that, after receiving the information about the offence, when she went on to the scene of offence the accused was seen there in the crowd.

22. So far as the cause of death is concerned it is not disputed that death is homicidal and not accidental. The postmortem report clearly establishes the cause of death. Even the weapon i.e. the 'Sickle' used for causing death has been seized from the spot of the incident which is proved by examining the Panch witness of spot Panchanama.

23. It is trite law that, in cases based on circumstantial evidence it is necessary to prove 'Motive' of the Accused for commission of the offence. Failure to prove 'Motive' proves fatal to the case of prosecution

and it weighs in the favour of the accused, since there is always a presumption in the favour of innocence of the Accused.

24. In order to establish the 'Motive' of the Accused, the prosecution has come with a story that, the deceased had illicit relations with one Appanna Reddy, therefore, there was 'Motive' for the Accused to commit murder of his wife. To prove the 'Motive' for commission of the offence, the prosecution has examined PW-4 Guddu Rajkumar Gaund,

25. PW-4 Guddu Rajkumar Gaund in his deposition has stated that the Accused and Appanna Reddy were residing in the same Chawl. The deceased used to cook meals for Appanna. When the deceased conceived, the Accused started suspecting her character, and was feeling betrayed therefore, he had a 'Motive' for commission of the offence. However, in his cross-examination PW-4 has admitted that, he was not staying in the same chawl and he had visited the chawl only once or twice. He also admitted that he had never seen Sundar i.e. the deceased working with Appanna. He admitted that, he has never seen Accused quarrel with his wife. Therefore, on this background, due to the failure of PW-4, to give any first hand information about the suspicion and the grudge, harboured by the Accused, the prosecution has failed to prove the 'Motive' of the Accused for commission of the offence.

26. To prove the 'Motive' of the Accused, reliance is also placed on the statement of the Accused recorded under Section 164 of the Cr.P.C. In his confessional Statement, Accused has given the details about his stay and work at village Sangade, where his wife was working for Appanna as cook and how it culminated into illicit relationship. Because

of her behavior, the women in the Village started gossiping about his wife, therefore, being infuriated by her betrayal, he has, committed the murder of his wife. This confessional statement, though recorded scrupulously adhering to the procedure as prescribed under Section 164 of the Cr.P.C, it cannot be relied for convicting the Accused, since the Accused has categorically denied his guilt while framing the charge. He has also examined defence witnesses to prove his innocence.

27. On this background, it needs to be examined, whether the learned Sessions Judge could have relied on the confessional statement of the Accused to prove his guilt. While relying on the confessional statement, the Court has to be satisfied that, such statement has been made voluntarily without any external influence and under duress and it has been corroborated in material particulars. A confessional statement is not a substantive piece of evidence, but a corroborative piece of evidence. Thus it cannot take place of Substantive evidence.

28. In this regard, it would be apposite to rely on the observations made by the Hon'ble Supreme Court in case of *Vijaya Singh and Anr. V/s. State of Uttarakhand*², which reads thus:

27. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposited before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses. In R. Shaji v. State of Kerala⁶, this Court discussed the two-fold objective of a statement under Section 164 CrPC as:

“15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted ...”

The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:

“16. ... During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced ...”

28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend

to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.

29. Apparently, the learned Sessions Judge, has merely recorded his satisfaction about the procedural part, while recording the confessional statement, of the accused to hold that, the essential requirements contemplated under Section 164(3) are complied, and the confession given by the Accused is voluntary. The learned Sessions Judge, has not taken into account that, the accused has denied the guilt, while framing the charge and has examined defence witnesses to rebut the evidence of the prosecution. In the light of the observations made by the Hon'ble Supreme Court in case of *Vijaya Singh (supra)*, reliance by the learned Sessions Judge, on the confessional statement of the Accused to prove the 'Motive' of the accused is contrary to the law, laid down by the Hon'ble Supreme Court.

30. Pertinently, even while recording the statement of the accused under Section 313 of the Cr.P.C., the Accused has not been confronted with his confessional statement recorded under Section 164 of the Cr.P.C. A Confessional statement recorded by the Magistrate being an incriminating piece of evidence, against the Accused it was necessary for the court to question the Accused about it, distinctly and separately, Failure to do so vitiates the trial. In the present case it has resulted in

causing great prejudice to the Accused, due to his conviction under Section 302 of the IPC. The very object of Section 313 of the Cr.PC is to give a fair chance to the Accused to respond to the incriminating material brought against him on record by the prosecution. Failure to do so also amounts to, depriving the Accused of fair trial and failure to adhere to the principles of natural justice.

31. The Hon'ble Supreme Court in case of *Samsul Haque Vs. The State of Assam*³ while deciding a similar issue, on the omission by the prosecution, to question the Accused about the inculpatory piece of evidence produced against him has made following observations :

22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the Accused so that the Accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in Asraf Ali v. State of Assam'. The relevant observations are in the following paragraphs:

"21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the Accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the Accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the Accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the Accused. If a point in the evidence is important against the Accused, and the conviction is intended to be based upon it, it is right and proper that the Accused should be questioned

*about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in *S. Harnam Singh v. State (Delhi Admn.)* while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial court to the Accused adds to the vulnerability of the prosecution case. Recording of a statement of the Accused under Section 313 is not a purposeless exercise."*

23. While making the aforesaid observations, this Court also referred to its earlier judgment of the three-judge Bench in *Shivaji Sahabroo Bobade v. State of Maharashtra*", which considered the fallout of the omission to put to the Accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement that the Accused's attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the Accused must be eschewed. No doubt, it is recognized, that where there is a perfunctory examination under Section 313 CrPC, the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed.

32. As observed hereinabove the prosecution has failed to prove the 'Motive' for commission of the offence by the Accused. Even, the reliance placed by the learned Sessions Judge, on the confessional statement recorded by the Magistrate for convicting the Accused is contrary to the settled position of law. Since the Accused was not confronted with the inculpatory evidence produced by the prosecution in the form of his confessional statement, while recording his statement under Section 313 of the Cr.P.C, it has resulted in depriving him of an opportunity to deny and explain it, which has resulted in his conviction. This denial of opportunity, is not only a statutory violation of the right

of the accused of fair trial, but also infringement of his fundamental right guaranteed by Article 20(3) of the Constitution of India.

33. PW-5 Dr. Mohit Kumar Ramesh the Medical Officer, who conducted the postmortem has been examined to prove the cause of death of the deceased. He has testified that all the injuries mentioned in Column No.17 can be caused by means of the sickle seized on the spot. So far as cause of death is concerned, there is no doubt that, the death is homicidal and the injuries are sufficient in ordinary course of nature, to cause death. Therefore, the evidence of PW-5 is of no assistance, except to prove the homicidal death of the deceased, which is not in dispute.

34. PW-6 is the Investigating Officer, who has given details of the investigation conducted by him after receiving information about death of the deceased. It is his testimony that, he has seized the bloodstained 'Sickle' along with a bloodstained cloth from the spot. After conducting panchnama, he has deposited, it in the muddemal section, which is at Exhibit 14. He has also testified that, after seizing the clothes of the accused and drawing panchnama, he has deposited the seized articles in the muddemal room by executing a receipt. He has also drawn blood sample of the accused while in custody and sent all the seized articles, deposited in the muddemal room, to the Chemical Analyser. After receiving the CA reports he has filed the chargesheet. The CA reports have been relied as a corroborative evidence to connect the accused with the offence and establish his guilt. The CA report on the seized articles at Exhibit 51 discloses that, there is no blood detected on the weapon i.e. 'sickle' used in the offence. The report further shows that

other Exhibits i.e. Exhibits 5 to 8 are the clothes of the deceased and Exhibits 9 and 10 are the clothes of the Accused, and they are detected with either blood group 'A' or are inconclusive. The blood group 'A' belong to the deceased. Except Exhibit 9, the Bermuda of the accused, which is detected with blood Group 'A', to some extent establishes connection of the Accused with the offence.

35. The failure to examine the carrier of the clothes of Accused and deceased along with their blood samples, to the Forensic Science Laboratory (FSL), is also a fatal flaw in the case of the prosecution and forms a missing link in the chain of evidence. In reference to drawing, sealing, storage and handing over the samples for examination to the FSL, the Hon'ble Supreme Court has underscored the importance of proving FSL report, in cases based on circumstantial evidence.

36. The Hon'ble Supreme Court has also elaborately dealt with the reliability and integrity of scientific evidence, such as, FSL reports, referring to the procedure prescribed in Appendix XXIV of the Maharashtra Police Manual. The observations made by the Hon'ble Supreme Court about the possibility of contamination and diminishment of value of the sample during its transit, for depositing it in the FSL for examination has been observed in Paragraph Nos.59 to 61, of the Judgment in case of *Prakash Nishad Alias Kewat Zinak Nishad V/s The State of Maharashtra*⁴, which are reproduced herein below, which reads thus:

59. We may observe that the Maharashtra Police Manual, when speaking of the integrity of scientific evidence in Appendix XXIV states—

"The integrity of exhibits and control samples must be safeguarded from the moment of seizure up to the completion of examination in the laboratory. This is best done by immediately packing, sealing and labelling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also."

60. *In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the laboratory concerned as soon as possible, we may refer to "Guidelines for Collection, Storage and Transportation of Crime Scene DNA Samples For Investigating Officers — Central Forensic Science Laboratory, Directorate Of Forensic Sciences Services, Ministry of Home Affairs, Government of India" which in particular reference to blood and semen, irrespective of its form i.e. liquid or dry (crust/stain or spatter) records the sample so taken: "Must be submitted in the laboratory without any delay."*

61. *The document also lays emphasis on the "chain of custody" being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item".*

The same view as been reiterated in a recent decision of the Hon'ble Supreme Court in the case of *Putai V state of Uttar Pradesh*⁵

37. In the present case, the Prosecution has not proved the chain of Custody, by examining the carriers and the Panch Witnesses, to prove the integrity of the samples examined by the FSL. Even otherwise FSL report can only be used for corroboration, of other evidence, hence not much importance can be attached to it. As such the FSL reports cannot form the basis to record conviction of the Accused.

38. The presumption is always in favour of the Accused unless proven otherwise by the prosecution. The circumstances presented before us taken together with the evidence produced by the prosecution fails to conclusively establish the hypothesis of the guilt of the Accused. Upon appreciation of the evidence led by the prosecution, and its application to the given facts, we find that, the prosecution has miserably failed to prove the guilt of the accused. The prosecution failed to examine the material witnesses, and also failed to adhere to the established procedure, while conducting the investigation. The prosecution has tried to establish guilt of the accused by examining barely 6 witnesses, amongst which more than half are not relevant. The most important and relevant witness to prove the chain is PW-4 who is examined to establish 'Motive'. Even that witness could not convincingly testify the 'Motive' of the accused.

39. Significantly, even the learned Sessions Judge, Raigad has committed a grave error, by relying on confessional statement of the accused to prove his 'Motive', when in fact the accused has pleaded not guilty. He has also deviated from the established procedure by failing to question of the accused about his confessional statement, while recording his statement under Section 313, resulting in causing

miscarriage of Justice. Reliance on the confessional statement of the Accused recorded under section 164 of the Cr.PC for establishing the 'Motive' and the guilt of the Accused, without affording him the opportunity to explain or to deny it, has resulted into a finding of conviction, which amounts to infringement of his fundamental rights guaranteed under the Constitution of India.

40. The learned Session Judge, Raigad has committed grave errors by deviating from the well established principles of criminal jurisprudence leading to the miscarriage of justice. Neither the chain of circumstantial evidence is completely established, nor the guilt of accused has been proved beyond reasonable doubt, hence the finding of conviction recorded against the Accused becomes unsustainable, warranting interference by this court

41. In view of the observations made herein above, we do not have any hesitation in holding that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt, hence the order of conviction recorded under Section 302 of the IPC, by the Sessions Judge Raigad, by sentencing him to undergo imprisonment for life deserves to be quashed and set aside. Accordingly, we pass the following order:

42. In view of the above, the following order :-

:: ORDER ::

- (A) The appeal is allowed;
- (B) The judgment and order dated 15.01.2019 passed by the Sessions Judge, Raigad at Alibaug in Sessions Case

No.138 of 2017, convicting and sentencing the appellant, is quashed and set aside;

(C) The appellant, who is in custody, shall be released forthwith, if not required in any other case. Before being released, the appellant shall execute P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only), under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437A of the Cr.P.C.) for his appearance, in case an appeal is preferred against his acquittal.

43 Pending applications, if any, also stand disposed of.

[MANJUSHA DESHPANDE, J.]

[MANISH PITALE, J.]