

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.316 OF 2022

Tanhaji Baburao Pandhare,
Age 52 years, Occ.Labour,
R/o.Shivajinagar Railway Station, Pune
(Presently lodged at Yerwada Central Prison, Pune)
versus
The State of Maharashtra

Appellant

Respondent

Mr.Mandar Soman for Appellant.

Ms.Sharmila S.Kaushik, APP, for Respondent-State.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

Date of Reserving the Judgment : 24th March 2026
Date of Pronouncing the Judgment : 7th May 2026

JUDGMENT (Per : Aarti Sathe, J.) :-

1. The Appellant, who stands convicted for the offence punishable under Section 302 of Indian Penal Code, 1860 ('IPC'), and who has been sentenced to suffer life imprisonment and pay a fine of Rs. 500/-, and in default of payment of the fine to undergo rigorous imprisonment for a further period of one month, by the learned Additional Sessions Judge, Pune, by judgment and order dated 27th May 2021 in Sessions Case No. 682 of 2018 (hereinafter referred to as "**impugned order**"), by this appeal questions the correctness of his conviction and sentence.

2. The facts as necessary for the decision of this appeal, may briefly be stated thus:

i. Prosecution Witness (PW)-6 Police Sub-Inspector (PSI) Anil Pachave

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attached to Pune Railway Police Station was on Personal Security Officer duty on 13th July 2018 at 5.00 a.m. PW-1 Sachin Algude (complainant) came to the Police Station and informed PW-6 about the incident, and thereafter his complaint was recorded. The PW-1's complaint was to the effect that the Appellant had hit a stone on the head of Basavraj (the deceased), and had seriously injured him, thereby causing the death of the deceased (hereinafter referred to as the "**incident**"). Post filing of the complaint, an offence under C.R No. 775 of 2018 under Sections 307 and 506 of IPC was registered against the Appellant.

ii. Investigation of the crime was handed over to PW-8 Assistant Police Inspector Amar Kadam, The Sassoon Hospital, Pune informed the Police Station that the deceased had succumbed to the injuries caused by the stone, which had been hit on his head. An inquest panchanama of the dead body, of the deceased was recorded in the hospital, and further on 13th July 2018 a spot panchanama was drawn at the place where the stone and the clothes of the deceased were seized.

iii. On 16th July 2018, at Platform No. 1 of Shivaji Nagar Railway Station the police added Section 302 of the IPC in the chargesheet, with permission of the Judicial Magistrate, First Class (JMFC). PW-6 has also deposed that he had seized the plain and blood-stained soil and one blanket from the spot.

iv. On 17th July 2018, PW-6 filed a report in the Police Station in respect of investigation conducted by him. Thereafter, post-mortem was conducted on the dead body of the deceased on 17th July 2018, between 10:00 A.M. to 11:00 A.M. by three doctors of Sassoon Hospital, Pune, which confirmed the date of admission as 13th July 2018 at 5:29 A.M., and date of death as 16th July 2018 at

12:15 P.M. The post-mortem report recorded that as per the police inquest and clinical papers, there was an alleged history of assault for which the deceased was admitted to Sassoon Hospital, Pune. It further recorded that in spite of the treatment being administered to the deceased, on 16th July 2018 at 12.15 P.M., the deceased died, and the following injuries were found on the body of the deceased:

“Surface wounds and injuries :

- i) Contused abrasion of 4cmx2cm over right parieto occipital region 5cm lateral from midline of skull with brown scab;
- ii) Contused abrasion of 5cmx2cm with brown scab present over left cheek 3cm below left eye;
- iii) Contused abrasion of 3cmx2cm with brown scab present over left side of forehead just above left eye brow;
- iv) Abrasion of 2cmx1 cm with brown scab over left pinna of ear;
- v) Therapeutic wound of puncture of central I.V line over right upper chest just infraclavicular with single stitch in situ.

Head injuries :

- i) Under scalp hematoma of 10cmx6cm, muscle deep over left fronto parieto occipital region, dark red.
- ii) Under scalp hematoma of 7cmx4cm, muscle deep over right parieto temporal region, dark red. No fracture noted.

Brain injuries :

- i) Subdural hemorrhage present diffusely over right parieto temporal, left parieto occipital, over cerebellum region of brain,
- ii) Subarachnoid hemorrhage present bilaterally over parieto-occipital and over temporal region, dark red.
- iii) Multiple contusions present over right parietal, occipital, left temporal, parietal region, dark red.”

v. The post-mortem report concluded that the death of the deceased was due to a head injury and hence concluded that the said was on account of unnatural circumstances.

vi. PW-6, during the investigation has recorded statements of the witnesses, and as stated aforesaid, the spot panchanama and the inquest panchanama was made in the presence of the witnesses and the chargesheet was filed against the Appellant for the offence under Section 302 of the IPC.

vii. As the offence was triable by the Court of Sessions, the learned JMFC committed the matter before the District and Sessions Judge, Pune on 11th October 2018, which was numbered as Sessions Case No. 682 of 2018. The Additional Sessions Judge, Pune framed the charge against the Appellant under Section 302 of the IPC, and the chargesheet had been marked as Exhibit-1 of the Paperbook File. The Appellant, having denied his guilt, claimed to be tried.

viii. The prosecution, in support of its case, has examined ten witnesses. The defense of the Appellant was of denial. The Trial Court upon appreciation of the evidence, has convicted and sentenced the Appellant.

3. We have heard Mr. Mandar Soman for the Appellant, and Ms. Sharmila Kaushik, learned Assistant Public Prosecutor, for the State. In order to effectively deal with the submissions advanced by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

4. PW-1, Sachin Algude is the complainant, and the deceased helped him in his business of running a vada pav stall. He has deposed that he has been running a vada pav stall near Shivajinagar Bus Stand at Pune since the last ten years. He stated that he starts his stall at 6:30 A.M. and closes it at 10:00 P.M. He further deposed that since five months prior to the incident, the deceased used to come to his stall and help him in his work. The deceased also did labour work as

and when he got work. The complainant deposed that he had known the Appellant for 5-6 years before the incident. He also deposed that the Appellant resides in the surrounding/vicinity of the Shivaji Nagar Railway Station (hereinafter referred to as the “**Railway Station**”). The Appellant and the deceased were friendly with each other. He deposed that on 12th July 2018, the deceased had come to his vada pav stall to help him at 8:30 P.M. He was at the Vada pav stall till 9:00 P.M., and thereafter he left the stall to have his meal. The complainant stated that he thereafter closed his stall and went to his home. At about 9:30 P.M. to 9:45 P.M., in front of Yewale Tea Stall, Shivajinagar, there was a scuffle between the Appellant and the deceased. The complainant further deposed that he separated the quarrel between the Appellant and the deceased. The complainant further stated that at that time the deceased told the complainant that on 11th July 2018 the Appellant had taken Rs. 500/- from him, and now the Appellant was not ready to repay the same. The complainant persuaded both of them. At that time the Appellant threatened the deceased to kill him. Thereafter the deceased went towards the Railway Station and the complainant went to his house. The complainant has deposed that on the next day on 13th July 2018, at 5:00 A.M. in the morning, PW-5 Babu Alzhende came and told him that the Appellant had hit a stone on the head of the deceased. The Appellant hit a stone on his head while the deceased was sleeping on the bench of Platform No. 1 of the Railway Station. The complainant further deposed that immediately thereafter he went to the Railway Station and saw that the deceased was unconscious and soaked in blood. The police took the deceased to the hospital for treatment. The complainant went

along with police. On the next day, on 14th July 2018 the complainant lodged the complaint of the said incident with the police station. The complainant further deposed that the deceased, who was admitted to Sassoon Hospital, Pune had died after two days. He also deposed that he had shown the spot of the incident to the police. On 22nd July 2018, the police had called the complainant to the police station and recorded his statement.

5. In the cross-examination, the complainant admitted that his house was at five minutes walking distance from his vada pav stall. He further stated one Mahadeo Bhoine also runs his vada pav stall adjacent to his stall. He admitted that the Appellant was working with Mahadeo Bhoine and the deceased was coming to his stall daily. He admitted that the deceased used to come to his stall when he was not getting labour work, and he was providing him with food. He further admitted that he did not know the residence of the deceased and also admitted that he did not know that the deceased had a love affair with Deepa. He also further admitted that he did not know the deceased had a one-sided love with Deepa, and due to the said love affair, he had left his house. The complainant deposed that he did not know that whether due to frequent threats given by the family members of Deepa, the deceased had left his village and come to Pune. He admitted that the deceased was in the habit of drinking liquor. He denied that he was angry with the Appellant on account of the fact that he was working with other stall owner Mahadeo Bhoine. He further denied that the deceased was always quarreling with others under the influence of liquor, and he was settling the said quarrels. He admitted that the area around Yewale Tea Stall, where the deceased and the

Appellant had a quarrel, was always crowded, and when he came to know of the incident from PW-5, Babu Alzhende he rushed to the spot at 5:10 A.M. in the morning. The police was present there when he arrived and the deceased was taken to Sassoon Hospital, Pune at 6:00 A.M., and at that time the deceased was breathing. He further admitted that he went to Sassoon Hospital, Pune at about 6:45 A.M. and came back to his house. On that day he went to the police station between 10 A.M. to 10:15 A.M. He was in the police station for about half an hour to one hour, and thereafter he never went to Sassoon Hospital. Although he went to Sassoon Hospital, but the guards did not allow him to meet the deceased. After 4-5 days of the incident, he understood that the deceased had died. He also admitted that on 22nd July 2018, when he again went to the police station, he was at the police station for about half an hour. When the police obtained his signature on his statement. He denied that he had made any false deposition of the incident which had occurred on 12th July 2018, and he admitted to his stand that there was a scuffle between the deceased and the Appellant, and he separated them from the quarrel, and the deceased had told him that the Appellant had taken Rs. 500/- from him and was not ready to pay it back to the deceased. He further denied that he did not have any anger against the Appellant as he was working with the other vada stall owner and that he had not lodged a false complaint against the Appellant because of this. He also denied that he had given any false statement regarding the fact that PW-5 Babu Alzhende told him that the Appellant hit the stone on the head of the deceased, and thereafter he went to the spot. He also denied that as the Appellant was working with Mahadeo Bhoine, he had anger towards him. He

admitted that the police had seen the spot of incident prior to him. He denied that he had given false complaint and a false statement before the police, or false evidence in the Court on the say of the police.

6. PW-2 Abdul Razzak Bagwan, who was doing the work of selling clothes at M.G. Road, Pune since the last 3-4 years before the date of incident, has deposed that he was working at a vada pav stall. He also deposed that he knew the Appellant, and he was working at a *Tapri* of somebody. He further deposed that after finishing his work on 13th July 2018 in the night at about 1:00 A.M., he returned to his friend Vilas Vimanna Kolekar's vada pav center. After closing the vada pav stall, PW-2 and Vilas Kolekar went to have dinner, and after having dinner they returned at about 4:00 A.M. At that time, they saw a dead body lying on Platform No. 1 of the Railway Station in a pool of blood. They thereafter went to the police chowki and talked about the incident. Thereafter, they went to the house of the complainant and narrated to him the said incident. Thereafter PW-2, his friend Vilas, and the complainant again went to the railway station where the dead body of the deceased was lying and identified the dead body. The police called the ambulance, and the dead body was taken to Sassoon Hospital. He further deposed that when PW-2 and his friend Vilas were going to the complainant, PW-5 Babu Alzhende and the Appellant also met them. The Appellant told them that he has hit stone on the head of the deceased. The police recorded the statement of PW-2 on 14th July 2018.

7. In the cross-examination of PW-2, he has admitted that he knew the deceased well, and he had worked as labourer at PW-2's house. He however

denied that he had any idea that the deceased had a love affair with a girl by the name of Deepa. He also denied the fact that he had any knowledge that the deceased was threatened by the family members of Deepa, and therefore he came to Pune. He admitted that the deceased had made a tattoo of the name Deepa on his chest. He admitted that he knew that the deceased was consuming *Tadi*. He further admitted that he did not sleep on the night of the incident, and that he went to the house of the complainant between 4:45 A.M. and 5:00 A.M. and then went to Sassoon Hospital with the dead body. He further admitted that he did not know whether the complainant had told name of the deceased to the doctor or not. He admitted that he had not told the name of the deceased to the doctor, and he went to the police station in the morning. He stated that was not aware of the time when he went to the police station, and he was there for half an hour. He could not state as to how many injuries were on the body of the deceased and further denied that he had made any false deposition about the entire incident.

8. PW-3 Balaji Bharat Chakrupe, who is a panch witness for the spot panchanama and seizure panchanama, has deposed that he was called to the police station on 13th July 2018 along with Ashok Payal, who was also a panch. He deposed that on 13th July 2018 he, along with the complainant and the police went to Platform No. 1 of the Railway Station, where the complainant showed them the spot of incident. The spot of incident was near a water tank on Platform No. 1 of the Railway Station. It was a cement bench, and marble was fixed on it. He further deposed that there was one blood stained blanket, and a cement block having blood on it, and blood was lying on the bench as well as on the floor. The police

obtained blood samples as well as blood mixed with soil, plain soil and seized the blood-stained blanket and cement block from the spot. The seized muddemal was wrapped in the papers, and after sealing it with labels, signatures of pancha witnesses were affixed on it. The police wrote the panchanama and the PW-3 signed the same. He further deposed that on 14th July 2018 at Lohamarga Police Station, and Ashok Payal was another pancha in the matter. He further deposed that the police had asked him and Ashok Payal to take physical search of the Appellant, and he identified that the Appellant was in the Court during the deposition. He deposed that while taking the search of the Appellant, the police did not find anything, and there were blood stains on the clothes worn by the Appellant. Therefore, the police gave the Appellant other clothes to wear and seized a black t-shirt and a black track pant that were on his person. The police thereafter conducted seizure panchanama. He further deposed that on the same day the police seized clothes of the deceased, which included one blood stained half sleeves shirt and one blue jeans pant. The police seized the said clothes and wrapped it in a paper, and affixed labels bearing signatures of pancha witnesses on it. PW-3 further identified the muddemal clothes which were seized by police in his presence.

9. In the cross-examination, PW-3 admitted that he was called to the police station two times, and one time to the Railway Station. He further admitted that he was called for panchanama at the Railway Station at 6:00 P.M., and he did not remember whether the police had called him on phone or personally. He did not remember where he was when police had called him. He stated that PSI Anil

Pachave was not his friend. He admitted that he had no acquaintances with the police and acted as a panch witness in one or two cases. He admitted that he was at the police station for an hour and went to the spot and the dead body was not there. He further admitted that from the spot of incident, the police chowki is at the distance of 100 feet. He denied that the spot panchanama was written in police station. He also admitted that he did not know the names of police personnel who wrote the spot panchanama, and 5-6 policemen were present there and the panchanama was written as per say of the PSI. He deposed that he was not shown the cement block. He admitted that on 14th July 2018, he was called by PW-8 API Amar Kadam to the police station, and he went to the police station at about 12:00 noon, and he was there for half an hour. He admitted that police have informed him that the Appellant was Tanhaji Pandhare and was the Accused. He admitted the contents of seizure panchanama were as per the say of PW-8. He denied that spot panchanamas was prepared in the police station, and that he was a habitual pancha of the police. He further denied that he put his signature on the panchanama in the police station. He admitted that after completion of the panchanama, he went to his home and had lunch. Thereafter he was called at 2:00 P.M. by the police. At that time, he was near the Railway Station. He deposed that he does labour work, and on that day, he did not go for labour work. He stated that the police did not pay him any honorarium. He stated that he was at the police station for half an hour. He admitted that Police Officer Sable produced the clothes and PW-3 put his signature on the seizure panchanama. He denied that he has deposed false. He denied that he did not go to spot and nothing was seized in

his presence and the search of the person of the Appellant was not taken in his presence.

10. PW-4 Amol Kisan Andhale, attached to Shivajinagar Lohamarg Police Station since February 2018 has deposed that on 12th July 2018 from 9:00 P.M. to 9:00 A.M. on 13th July 2018, he was on duty at the Railway Station. He deposed that on 13th July 2018 at about 5:00 A.M., the Station Master announced for the police and accordingly he was called. He went to him and the Station Master told PW-4 that in front of the pump house at Platform No. 1 of the Railway Station one person was lying in injured condition. Thereafter the PW-4 went to the spot and found the said person (the deceased) alive. The deceased was injured and was lying on the bench and there was injury to his head. Blood was oozing from head injury and blood was accumulated on the floor also. PW-4 deposed that as the deceased was gravely injured, he dialed Phone No. 108 and called the ambulance. He took the deceased to Sassoon Hospital in an ambulance and admitted him in the said hospital. He filed a report with Senior Police Inspector of Shivajinagar Lohamarg Police Station.

11. In his cross-examination PW-4 admitted that his duty was to take rounds and conduct patrolling at the Railway Station, and Shivajinagar Lohamarg Police Station is at around 100 meters distance from the spot of the incident. He admitted that prior to the announcement by the Station Master, he had no knowledge about the incident. He admitted that on that day no other policemen were on duty with him. He stated that the Station Master did not come with him at the spot, and he admitted that he inquired with the Station Master as to how he

understood about the incident. He further admitted that he requested PW-2 and other persons who were present there to lift the injured and put the deceased in the ambulance. The clothes of the said persons were not stained with blood. His clothes were not stained with blood. He admitted that PW-2 and the complainant did not come with him in the ambulance to the Sassoon Hospital. At the time of admitting the deceased to the hospital, they did not tell the name of the deceased as Basavraj to the hospital. He further admitted that he could not state when the police recorded his statement, and he did not hand over the memo issued to him by the Station Master to the Investigating Officer (IO), and the IO also did not demand the said memo from him. He admitted that the deceased was admitted to Sassoon Hospital at around 6:00 A.M., and while admitting the deceased to the hospital, he and other employees of the ambulance were only present. He also admitted that when he took the deceased in the ambulance, other police officers had not come to the spot. He further admitted that he did not tell the IO that he had phoned for the ambulance on phone number 108, and for the first time in the cross-examination he has stated that he had called for an ambulance on phone number 108. He further admitted that in his statement he has not stated before the IO that the deceased was dead after 2-4 hours and today for the first time before the Court, he has stated this fact. He denied that he has deposed falsely on the say of the IO.

12. PW-5, Babu Nagesh Alzhende, is a labourer having a stall near the Railway Station. He has deposed that he is working as a labourer as well as a travel agent. He has further deposed that he is doing the said work in the area of

Shivajinagar Bus-stand and the Railway Station. He has deposed that he knew the deceased and also the Appellant. He has further deposed that they both were working on handcart stalls in the said area, due to which he knew them. He deposed that on 12th July 2018 at midnight, after he closed his ticket booking office, at about 12:30 A.M. in the night, he went to have tea at the stall of PW-7, one Mr. Ganesh Jadhav. He has further deposed that PW-7, and the Appellant were present there. He has deposed that at that time, the Appellant told him that he wanted to finish a person, and that he was to finish the deceased. He has further deposed that PW-7, and he persuaded him not to do such a thing, and that after having a cup of tea, he went to his house. He has further deposed that on the next day at about 5:00 A.M. in the morning, when he came out of his house, he met PW-2 and Vilas Kolekar near his house. He stated that his house is just in front of the Railway Station, and PW-2 and Vilas Kolekar had informed him that somebody had assaulted the deceased, and therefore, PW-5 went to the Railway Station. He has further deposed that he saw that blood was oozing from the nose, ear and mouth of the deceased. He thereafter informed the complainant about the said incident, and also, he went to the police. He has further deposed that the police took the deceased in an ambulance from the incident spot. He has further deposed that he got suspicious that the Appellant was involved in the incident as he had, on the previous night, spoken about the fact that he wanted to finish the deceased. He has further deposed that the Appellant did not meet him, and they were searching for him. On 13th July 2018, Vilas Kolekar told PW-5, that the Appellant had told him that he would kill the deceased. He stated that the

Appellant killed the deceased on account of Rs. 500/-, and the deceased died in the hospital on 16th July 2018. He has deposed that the police have recorded his statement and the Appellant is in court.

13. In the cross-examination, PW-5 has admitted that he closed his ticket booking office and took tea at midnight and went to his house on 12th July 2018. He has further denied that vada pav and tea stalls in Shivajinagar area close at 11:00 P.M., and he has admitted that the said stalls close at 12:00 A.M. midnight. He further has admitted that he goes for his job in the morning at 9:00 A.M., and he later on opens his ticket-booking office at 7:00 P.M. He has admitted that during the daytime, he does the work given to him, and in the evening, he works in his ticket-booking office. He has admitted that he knew the deceased one year prior to the incident. He has also admitted that the deceased was working on the vada pav stall of the complainant, and they were on talking terms. He has denied that the deceased had told him that he had love affair with a girl by the name Deepa. However, he has denied that he saw any tattoo made on the chest of the deceased with the name Deepa on it. He has further admitted that the deceased did not tell him that due to his one-sided love affair with Deepa, family members of Deepa had beaten him, and therefore he had come to Pune. He has admitted that he saw the deceased in an injured condition at 5:00 A.M, when he went to the Railway Station, i.e., the spot where the incident had taken place, and he had injuries on his face. He has further admitted that the ambulance came to the spot at 5:15 A.M. in the morning. He stated that he, PW-2, Vilas Kolekar and the Policemen lifted the deceased and put him in the ambulance, and blood had not trickled on his clothes.

He further admitted that he did not know whether blood was trickled on the clothes of others. He also stated that PW-2 and Vilas Kolekar met him in a chowk at Shivajinagar. They met him at 9:00 A.M. They did not meet him prior to 9:00 A.M. He has further admitted that it was not that the first time he understood from them that the deceased was lying on the spot in injured condition at 9:00 A.M. Prior to Vilas Kolekar and PW-2 giving him information, he had no knowledge that the deceased was lying in an injured condition. He has further admitted that after the incident he went to the police station two times, and the police recorded his statement. His statement was recorded in the Court also. He further admitted that the police had told him about the offence, and four persons went by ambulance to the Sassoon hospital. He has admitted that these persons told the name of the deceased as Basavraj while admitting him in the hospital and at that time the deceased was unconscious. He has further admitted that while the deceased was taken in the ambulance, only one policeman was there with them and hence there were five people present and passengers were not gathered there. He has further admitted that he did not tell the police while recording his statement that on 13th July 2018 at 5:00 A.M. PW-2 and Vilas Kolekar met him when he was going to his house. He further admitted that he had told the police that his house was in front of the Railway Station, and also, he had informed the police about the incident. He had also informed the police that when he was made aware of the incident by PW-2 and Vilas Kolekar, he went to the Railway Station and saw the blood which was oozing out from the nose, ear, and mouth of the deceased and thereafter he went to the complainant. He further deposed that he did not tell the

Police that he had suspicion on the Appellant, as the Appellant had told him the previous night that he wanted to finish the deceased.

14. PW-6, PSI Anil Pachave in his cross-examination admitted that when he was on night shift duty in the police station, there were two other employees there with him. He admitted that prior to the arrival of the complainant for lodging his complaint, he had knowledge about one person lying injured at the Railway Station. He admitted that he understood about the incident when the complainant came to the police station to lodge the complaint at 6:00 P.M. on 13th July 2018. He also admitted that he had been to the spot of the incident from 5:00 P.M. to 5:30 P.M., and that since it a public place, there were people present there. He admitted that the complainant did not state that after closing his vada pav stall on 12th July 2018, he went to his home. He admitted that the complainant was in the police station for around an hour, and at that time, the signature of the complainant was obtained. He further admitted that after the crime was registered the investigation was handed over to PW-8, and that he did not feel it necessary to obtain permission from PW-8 to conduct an inquest panchnama. He admitted that he did not conduct a separate panchnama for in respect of the seizure of clothes. He admitted that he did not seize any other clothes other than a blanket from the spot of the incident. He further denied that he did not record the statement of the complainant as per his say. He admitted that he took entry into the station diary in respect of the information from the hospital that the deceased had died. He admitted that he did not see the station diary entry in the chargesheet. He admitted that he was at the spot of the incident for one hour. He denied that he conducted

incorrect panchnama. He also denied that he had prepared incorrect inquest panchnama. He denied that on 17th July 2018 he had issued incorrect report for DNA test. He denied that he had deposed falsely on the say of a higher authority.

15. PW-7 Ganesh Nivrutti Jadhav, who has a tea stall business outside the Railway Station, Pune, has deposed that he has been engaged in the tea-selling business from the year 2003. He further deposed that he is doing the tea-selling business from 10:00 P.M. to 5:00 A.M., and he had known the Appellant since 2003. He further deposed that he knew the deceased from one year prior to the incident, and the deceased was doing work of providing water at his tea stall. He also deposed that the deceased was doing similar work on other tea stalls and the Appellant also was doing the work of supplying water in other stalls. He deposed that on 12th July 2018 between 9:00 P.M. and 10:00 P.M. there was a quarrel between the deceased and the Appellant in front of Yevale Tea Shop. He deposed that he persuaded both of them and left the spot. He stated that on 13th July 2018 at about 12:00 A.M. at mid night the Appellant had come to meet him in a drunken state and said that he would kill the deceased. He further deposed that when the Appellant had come to meet him, PW-5 and others were waiting at his handcart and they once again persuaded the Appellant to not kill the deceased, and thereafter Appellant left his stall. He has further deposed that on the same morning on 13th July 2018 at 5:00 A.M. an ambulance came there and, in that ambulance, he saw that that the deceased was lying in a pool of blood and an injury to his head and a stone was lying beside him. He has deposed that thereafter the police arrived there, put the deceased in the ambulance and took him. Thereafter,

Vilas Kolekar came and told PW-7 that the Appellant killed the deceased. Thereafter, PW-7 went to the police station and narrated the incident. He has further deposed that his statement under Section 164 of the Code of Criminal Procedure was recorded in the Court and he had signed the same. PW-7 was shown some photographs, and he identified the photographs were of the deceased.

16. In his cross-examination PW-7 has admitted that he did not have a license to run the tea stall during the whole night and police used to shut the hotels and stalls after 11:00 P.M. He also admitted that the deceased had a habit of drinking liquor, and that he was a resident of Karnataka State. He stated that he did not know whether the deceased had made a tattoo of the name Deepa on his chest. He also admitted that he did not know whether the deceased loved Deepa. He further stated that he did not know whether the relatives of Deepa had beaten the deceased and that he had one-sided love with Deepa, and because of that the deceased had come to Pune. He denied that as the deceased had a habit of drinking liquor, he was always quarreling with others. He further admitted that prior to the Appellant coming to his stall, PW-5 had come there half an hour before the Appellant. He admitted that he had no license of municipal corporation in respect of running the tea stall. He admitted that the Pune Lohamarga (Railway) Police Station is near the Railway Station and denied that he had any acquaintance with the police. He deposed that Yewale Tea shop is at the distance of around 40 feet from his tea stall. He admitted that the crowd of customers at his tea stall was reduced after Yewale tea shop had started. He admitted that he and other persons were there for settling the quarrel between the deceased and the Appellant. He

denied that the police had told him about the incident. He admitted that prior to the arrival of the ambulance, he had no knowledge about the incident. He admitted that prior to arrival of ambulance, there was crowd of commuters to and from the Railway Station, but he had not given attention towards them. He admitted that on 13th July 2018 also there was a crowd of commuters from and to railway station, however, he did not give attention whether anybody of his acquaintances was in the said crowd. As soon as the ambulance came, he went there and found that two policemen were there, and many people had gathered there. He stated that there was blood where the deceased was lying and also the blood was oozing from his head. He admitted that the police and 2-4 boys who were present there, lifted the deceased and put him in the ambulance. He admitted that he cannot state as to how many injuries were caused to the head of the deceased. He stated that the deceased was put on a Chaddar (blanket) and thereafter he was put in the ambulance. Therefore, no blood stains were present on the clothes of the persons who had lifted him. He admitted that his statement was not reduced into writing immediately when he went to the police station. He narrated the incident to the police, but he did not know the name of that police officer. He admitted that he was in the police station from about 10:00 A.M. to 10:15 A.M. He admitted that after the departure of the ambulance he did not go to police station and after 7-8 days of the incident, the police called him. He admitted that he cannot state the name of policeman and he did not go to the court for recording statement on the same day. He further admitted that he does not remember whether he had stated to the police that the deceased was also doing the

work of supplying water to other stall holders. He admitted that he had stated to the police that the Appellant had said that he would beat the deceased. He further could not assign any reason as to why police did not mention the same into his statement. He also admitted that he had told the police that customers were present at his stall when the Appellant had come to him. He stated that on that day it did not happen that PW-5 had come after arrival of the Appellant, and prior to his arrival on the spot there was Chaddar on the person of the deceased. He cannot assign any reason as to why it is not mentioned in his statement that the police asked whether anybody knows the deceased and he said that he knew him as he was coming to his tea stall. PW-7 had told to the police that Vilas Kolekar came, and he stated that the Appellant killed the deceased. He cannot assign any reason as to why it is not mentioned in his statement recorded by the police. He denied that he has deposed falsely that on 12th July 2018 in the night there was a quarrel in between the deceased and the Appellant and he persuaded them. He denied that he has deposed falsely that on 13th July 2018 at about 12:00 A.M. at midnight the Appellant had come to his stall and stated that he would cause the murder of the deceased. He denied that he has deposed falsely that at that time PW-5 was present there and they persuaded the Appellant and then the Appellant left his stall. He denied that he has deposed falsely that on 13th July 2018 during morning at about 5:00 A.M. one ambulance came there and then he went to see what has happened and saw that the deceased was lying in a pool of blood and he was then taken in the ambulance. He denied that he has deposed falsely that in the morning Vilas Kolekar came and told that the Appellant killed the deceased by

hitting a stone on his head.

17. PW-8, Mr. Amar Trimbak Kadam, who was an Assistant Police Inspector (API) attached to Pune Lohamarga (Railway) Police Station deposed that on 14th July 2018 the investigation of CR No. 775/2018 under Section 302 of IPC was handed over to him and on the same day i.e. on 14th July 2018 he arrested the Appellant from Shivajinagar area. He further deposed that at the time of arrest the Appellant was wearing a black t-shirt having red belts/stripes on it, and a pant, and that there were blood stains on the Appellant's t-shirt. He stated that the Appellant was then brought to the police station and his arrest panchanama was conducted, and thereafter the Appellant's clothes were seized and a seizure panchanama was conducted/ prepared. Upon being shown the arrest panchanama, he further stated that the arrest panchanama bears his signature and the signatures of panchas. The Muddemal Property consisted of Earth wrapped in paper (with blood), Earth wrapped in paper (with no blood detected), the blanket, the Cement block, black T-shirt, a black track pant, a white half shirt (cut and torn), and a blue full jeans pant. He further deposed that part of the muddemal property, i.e., the black-coloured t-shirt and pant were seen and identified by him, and the contents thereof were correct. He deposed that he produced the Appellant before the court and obtained Police Custody Remand (PCR) of the Appellant till 16th July 2018. PW-8 further stated that, during the treatment of the deceased, the head constable bearing Buckle No. 233 had recovered the deceased's clothes, which were a blue-coloured jeans pant and a white-coloured half shirt having blood stains on it, and had seized them. Upon being shown the seizure panchnama for the above-

mentioned clothes, he further deposed that it bears his signature and signature of the panchas, and the contents thereof were correct. He deposed that he could identify the clothes of the deceased, which were shown to him and they were the same. He further deposed that on 14th July 2018 he had recorded the statement of PW-2, Abdul Bagwan. He further deposed that the deceased had died on 16th July 2018, and therefore, Section 302 of IPC was added and upon being shown copies of letters to that effect, i.e. one copy for entry to the station diary and another for application to the JMFC for adding Section 302 of the IPC, he identified the said documents and deposed that they bore his signature, and that the contents thereof are correct. He further deposed that on 17th July 2018 he recorded the statements of PW-5 Babu Nagesh Alzhende and PW-7 Ganesh Nivrutti Jadhav, and on 19th July 2018 he sent the serum bone of the deceased for chemical examination and the blood samples of the deceased for examination. Upon being shown copies of the letters to that effect, he identified the said documents and stated that they bear his signature and that the contents thereof are correct. He further stated that on the same day, i.e, 19th July 2018 he sent another muddemal for chemical analysis, and when he was shown the letter to that effect, he admitted that it bears his signature, and that the contents therein were correct. He further deposed that on 30th July 2018 he forwarded a letter to the Court to record statements of witnesses under Section 164 of the Code of Criminal Procedure, and that the said statements have been included in the chargesheet in sealed packet. A letter to that effect was shown to him and he admitted that it bears his signature and that the contents thereof are correct. He also stated that he can identify the Appellant and that later the

investigation was handed over by him to the Sub-Divisional Police Office (SDPO) at that time, Mr. Nandkumar Gulabrao Ghorpade.

18. During the cross-examination PW-8 admitted that he understood/ came to know about the incident on 14th July 2018 in the morning, and that he did not visit the spot immediately. He deposed that PW-2 at the time of recording his statement, had stated that his name was Abdul Mohammad Bagwan. He further deposed that PW-2 in his statement did not state that after taking a meal he and Vilas Kolekar returned back at 4:00 A.M. He further stated that PW-2 did not state in his statement that PW-2 was going home. He further stated that PW-2 did not disclose that when he and Vilas Kolekar had met the Appellant when they were going to the house of PW-1. He stated that he had recorded the statement of PW-5 as per his say. He admitted that PW-5 did not state before him that Vilas Kolekar and PW-4 met the Appellant when he came out of his house. He further admitted that PW-5 did not state before him that his house is in front of the Railway Station. He also admitted that PW-5 did not state in his statement that blood was oozing from the nose, ear and mouth of the deceased, and thereafter he went with the complainant. He admitted that PW-5 did not state in his statement that he took search of the Appellant. He further admitted that PW-7 did not disclose in his statement that the Appellant was doing the work of supplying water to other stalls. He also admitted that PW-7 did not state that the Appellant was under the influence of liquor and stated that he would beat the deceased. He further admitted that PW-7 did not state that Vilas Kolekar told him that the Appellant killed the deceased. He further admitted that he did not feel it necessary to trace the

Appellant through a dog squad. He further admitted that he did not feel it necessary to obtain fingerprints of the Appellant and that he did not investigate about the incident with the people travelling in the train. He stated that he had taken efforts to ascertain the native place of the deceased and also admitted that he personally did not inform Sassoon Hospital as to the name of the deceased. He denied the suggestion that he had falsely deposed that he had sent the seized muddemal and the bone of the deceased for chemical analysis. He stated that the statement under Section 164 of the Code of Criminal Procedure of witness Vilas Vimanna Kolekar was not recorded and that he had not recorded his statement. He admitted that it is mentioned in letter (Exhibit-32 of the Paperbook File) of that the subject thereof was to add Section 302 of the IPC in addition to Sections 306 and 506 of the IPC. He further denied the suggestion that he had not recorded statements of witnesses as per their say. He denied the suggestion that he had not seized the clothes of the Appellant. He further denied the suggestion that he had carried out a false investigation and deposed falsely.

19. PW-9, one Nandkumar Gulabrao Ghorpade, who was a Sub-Divisional Police Officer in Shivajinagar Railway Station deposed that the investigation CR No.775/2018 was handed over to him after around 21st or 22nd July 2018. He stated that he had recorded the supplementary statement of the complainant, and on 11th August 2018 and on 3rd September 2018 he had recorded the statements of a total of 5 witnesses. He further stated that after the completion of the investigation by him, he had filed the charge-sheet along with CA Report. During his cross-examination, he admitted that the native place of the deceased could not

be ascertained in the investigation, and that he had seen the injury certificate. He admitted that he felt that the incident was not accident. He also admitted that he had recorded the statement of PW-4, who had stated that “blood was oozing from the head of deceased and blood was accumulated on the floor”. PW-9, in the deposition further admitted that this fact was omitted in the statement of PW-4, and the said fact remained to be mentioned inadvertently. He also admitted that he did not demand the memo which was supplied by the station master to PW-4. PW-9 further denied that he had recorded the statement of PW-4 as per his say, and that he did not take witnesses to the Court to record their statements under Section 164 of the CrPC. He further denied that the charge-sheet filed by him against the Accused was false.

20. PW-10, Dr. Vijay Tarachand Jadhav attached to B.J. Medical College, Sassoon Hospital, Pune as an Associate Professor, deposed that on 17th July 2018 the dead body of an unknown person was brought by PW-6 at 12:30 A.M. midnight along with an inquest panchanama and a police requisition form for post-mortem. PW-10 along with Dr. S.V. Vidhate and Dr. H.R. Thube conducted postmortem examination on the said dead body on 17th July 2018 between 10:00 A.M. and 11.00 A.M. As per police requisition and clinical papers of the hospital record, there was an alleged history of assault for which the deceased was admitted in the hospital, but in spite of treatment he died on 16th July 2018 at 12:15 P.M. He further deposed that during the post-mortem the doctors found injuries on the body of the deceased, and as mentioned in column no. 17 of the post-mortem report., the following injuries were found on the body:

- “i) Contused abrasion of 4cmx2cm over right parieto occipital region 5cm lateral from midline of skull with brown scab;
- ii) Contused abrasion of 5cmx2cm with brown scab present over left cheek 3cm below left eye;
- iii) Contused abrasion of 3cmx2cm with brown scab present over left side of forehead just above left eyebrow;
- iv) Abrasion of 2cmx1cm with brown scab over left eyebrow;
- v) Therapeutic wound of puncture of central I.V line over right upper chest just infraclavicular with single stitch in situ.”

He further deposed that all the injuries in column nos. 17 and 19 are antemortem, and he also deposed that internal injuries were found as detailed in column no. 19 of the postmortem report, which read thus:

Head:

- i) Under scalp hematoma of 10cmx6cm, muscle deep over left fronto parieto occipital region, dark red.
- ii) Under scalp hematoma of 7cmx4cm, muscle deep over right parieto temporal region, dark red.

Brain -

- i) Subdural hemorrhage present diffusely over right parieto temporal, left parieto occipital, over cerebellum region of brain,
- ii) Sub arachnoid hemorrhage present bilaterally over parieto occipital and over temporal region, dark red.
- iii) Multiple contusions present over right parieto occipital, left temporal, parietal region, dark red.”

Brain soft and edematous -

Walls, ribs, cartilages intact no rib fracture.

Pleura – intact 100 cc bilateral straw color fluid present.

Larynx – Intact Mucosa congested

Right & left lungs – Both lungs intact, congested, heavy with lower lobes shows consolidations

Pericardium – Intact. Minimal pericardial fluid seen.

Heart with weight – Intact, Coronary ostia intact, patent A-V and semilunar valves intact, patent.”

He further deposed that the opinion given as to the cause of death is death due to

head injury (unnatural). The post-mortem report which has been shown to him is in the handwriting of Dr. Thube and bears the signature of PW-10. He deposed that these injuries were sufficient for causing death in ordinary course of nature. He deposed that the external injuries nos. 1, 2, 3, and 4 were corresponding to the internal injuries mentioned in column no. 19. He further deposed that the age of the injuries was within 3 to 4 days before the time of death and may be caused by a hard and blunt object, and that the said injuries are possible by stone. He deposed that the medical notification of death certificate was issued immediately after the post-mortem. He stated that when the notification was shown to him, he deposed that it bears the signatures of him, Dr. Vidhate, and Dr. Thube, and the contents are correct. He further deposed that the police informed by letter to Sassoon Hospital about the name of the deceased, and thereafter the name of the deceased has been mentioned on the post-mortem report. Further, when the copy of the letter dated, 15th July 2018 was shown to him, he identified the same and deposed that the contents thereof are correct. He further deposed that in the post-mortem report he has mentioned identification mark of the deceased. He also stated that sternum bone piece for DNA examination was taken out.

21. In the cross-examination PW-10 has admitted that injuries nos. 1 to 4 in column no. 17 and corresponding injuries are not possible if a person fell from a running train. He admitted that on the date of post-mortem examination it was the dead body of an unknown person. Therefore, they did not write the name in notification of death. He admitted that in the notification of death, the age of the deceased is mentioned as 40 years. He admitted that there is over-writing at the

place of the Medico-Legal Post-Mortem (MLPM) number in notification of death. He denied that he had mentioned the name of the deceased as Basavraj in the post-mortem report on the say of the police. He denied that all the injuries are possible in the accident and he has deposed falsely on the say of police. He admitted that on 17th July 2018 they had treated the dead body of an unknown person, and it is mentioned accordingly in the post-mortem report and the notification of death. He admitted that on 17th July 2018, the name of the deceased as Basavraj was not mentioned in the post-mortem report. He denied that he has deposed falsely.

22. Mr. Mandar Soman, learned Counsel for the Appellant would submit the present case is based fully on circumstantial evidence. He submits that the evidence on record even remotely does not establish that the Appellant is the only person who has caused the murder of the deceased much less that it's proved beyond reasonable doubt that the Appellant had committed the murder of the deceased. It was his submission that as the entire case rests on circumstantial evidence, and a broken chain of events does not conclusively prove that the murder was committed by the Appellant. It is his submission that it is an admitted position that there was absolutely no evidence to connect the Appellant to the actual incident of murder and the alleged assault of hitting the deceased with a cement block of 8.5 kgs, which allegedly occurred at 5:00 A.M. on 13th July 2018 at Platform No. 1 of the Railway Station. He submitted that the Prosecution has heavily relied on the "last seen together theory", and the prior quarrel between the Appellant and the deceased, which again was on the basis of the deposition of the Complainant that he had witnessed a quarrel/scuffle on 12th July 2018 at 9:45 pm

between the Appellant and the deceased.

23. Further, he submitted that there was a considerable time gap between the quarrel/scuffle that took place at 9:45 P.M. the previous day, and the discovery of the body of the deceased, which was found at the Railway platform which is openly accessible to many people, and hence the Prosecution has failed to establish a complete and unbroken chain of circumstances that conclusively points only to the guilt of the Appellant and rules out any other hypothesis. It is further his submission that the initial police records, including the FIR and the inquest panchanama shows that the deceased was unidentified. The deceased was initially identified solely on the basis of a tattoo bearing the name “Deepa” on his chest, and the name “Basavraj” was introduced in the Prosecution’s story at a much later stage. This, according to the learned counsel on behalf of the Appellant creates grave ambiguity in establishing the identity of the deceased, and strikes at the root of the Prosecution’s case, and does not conclusively prove that the murder was committed by the Appellant. Further, learned counsel on behalf of the Appellant also pointed out the discrepancies insofar as the depositions made by certain witnesses in respect of the incident of murder of the deceased, which are summarized as follows: -

i. It was submitted that the Complainant i.e. PW-1 Sachin Algude had deposed that the Appellant had given death threats to the deceased at 9:45 p.m. on 12th July 2018. However, he had admitted in his cross-examination that despite the Railway Station being a crowded public space, with on duty police on patrol he did not intervene nor did he report about these death threats given by the Appellant to the deceased to the police at that night itself.

ii. He further submitted that even the deposition of PW-2 Abdul Bagwan who is the central witness for the extra-judicial confession, claims that he met the Appellant, and the Appellant confessed of taking revenge by smashing the deceased's head. However, in the cross-examination it is seen that PW-2, despite hearing a confession to the brutal murder, did not immediately inform about the same to the police, and this kind of silence on the part of PW-2 was highly unnatural for a normal human being.

iii. Insofar as the deposition of PW-7 Ganesh Jadhav is concerned, learned counsel on behalf of the Appellant submitted that the Appellant came to his tea stall at midnight muttering angrily that he intended to kill the deceased. However, there is an unexplained delay in recording the statement by the investigating officer, which makes the story of PW-7 only a way to fill the gaps in the circumstantial chain.

iv. He further submitted that it is a settled principle of law that an extra-judicial confession is a weak piece of evidence, and the confession made to PW-2 suffers from material discrepancies regarding the exact time of the meeting. Therefore, the entire conduct of the witnesses and the delay in recording the statements without any independent strong corroboration goes to the very root of the matter, making the allegation of murder against the Appellant a weak allegation.

v. It was further submitted that the inconsistencies go to the root of the matter and prove that the Prosecution's case rests on circumstantial evidence. Further, there were no eye witnesses who had seen the Appellant kill the deceased

with a cement block/stone, and it is only on the theory of scuffle which took place on the prior night where the Appellant had threatened to kill the deceased, that a case has been made out that the murder has been committed by the Appellant.

vi. In conclusion, learned counsel on behalf of the Appellant submitted that it was the Prosecution's case that the brutal murder was committed over a trivial unpaid loan of Rs. 500/-, and this according to him was a highly disproportionate and improbable motive to kill a person. It was his submission that that the Appellant has successfully brought on record that the deceased had a tattoo on his chest named "Deepa", which gives rise to a high probability that the murder was a result of a one-sided love affair which had gone foul or a violent dispute between the deceased and the unknown woman named Deepa. He, therefore, submitted that the investigating officers, PW-6 Anil Pachave, PW -8 Amar Kadam, and PW-9 Nandkumar Ghorpade had completely failed to investigate this crucial angle and suppressed a valid alternative hypothesis which could prove the innocence of the Appellant.

24. Learned counsel on behalf of the Prosecution Ms. Sharmila Kaushik, Assistant Public Prosecutor for the State submitted that the Prosecution had rightly carried out the investigations to come to a conclusion that the Appellant had committed the murder of the deceased. She further submitted that the shirt of the deceased was soaked in blood, and the blood of the Appellant which was tested by the Regional Forensic Laboratory, State of Maharashtra and the report given by A.A. Kamathe, Assistant Chemical Analyzer showed the blood groups of the Appellant as A+, and the blood found on the deceased was also A+, and hence it

proved the fact that the murder of the deceased was committed by the Appellant. She further submitted that the Appellant had made extra-judicial confessions and declaration of his intent to kill the deceased to witnesses PW-2 i.e. Abdul Razzak Bagwan and PW-7, i.e., Ganesh Jadhav prior to the aforesaid incident. Thereafter the I.O. conducted the spot panchanama, seizing the blood-stained clothes of the deceased, and also samples of soil mixed with blood, and a blackish white colored cement stone of the weight 8.5 kgs, having blood stains on it. Thereafter, the panchanama in respect of seizure of clothes was also drawn up in presence of panch witnesses on 14th July 2018, and an inquest panchanama was also made, wherein the dead body of the deceased was identified by the Complainant, and post-mortem was ordered to be conducted. It is her submission that in the post-mortem report dated 17th July 2018, which was prepared by PW-10, the cause of death was a head injury caused by a hard and blunt object, and therefore the case of the Prosecution has been proved that the Appellant killed the deceased by hitting him on his head by the cement block.

ANALYSIS

25. On examining the evidence on record, we find that the case of the Prosecution against the Appellant is purely on circumstantial evidence. The Prosecution relied on the statements of the Complainant and the extra-judicial confessions, wherein the only case made out against the Appellant is that he and the deceased had an altercation on the night of 12th July 2018, i.e., one day prior to the incident in respect of a money dispute. This is the only theory on which the Prosecution seeks to make out a case against the Appellant to hold him guilty of

murder.

26. On examining the evidence on record we observe that there are several discrepancies and contradictions. The following discussion would aid our conclusion: -

i. In the deposition of PW-10 i.e. Dr. Vijay Jadhav, Associate Professor, B.J. Medical College, Sassoon Hospital, Pune, who prepared the post-mortem report of the deceased, in his deposition has stated that the police by a letter dated 15th July 2018 marked as Article – F (not exhibited) informed PW-10 about the name of the deceased. However, in the cross-examination PW-10 has stated that on the date of post-mortem, i.e., 17th July 2018, post-mortem of an unknown person was carried out, PW-10. PW-10 also admitted that on 17th July 2018, they had treated the dead body of the unknown person, and the same was mentioned by them in the post-mortem report. On a perusal of the post-mortem report, it is clear that when it was signed by PW-10 along with Dr. S.S. Vidhate and Dr. H.R. Thube. Hence the deceased was categorized/identified as an unknown male and the name Basavraj was inserted subsequently. In fact, PW-10 in his cross-examination had admitted that there was overwriting in the MLPM Number. Further, the name of the deceased was inserted by Dr. S.B. Punpale subsequently in the post-mortem report, when the said doctor was not part of the post-mortem team. This shows that the *post facto* insertion of the name of the deceased in the post-mortem report would cast a shadow of doubt on its authenticity and validity. The reliance by the Prosecution on this piece of evidence strikes at the very root of matter and cannot be relied upon.

ii. Insofar as the deposition of PW-10 Dr. Vijay Jadhav, the autopsy surgeon, the prosecution intended to support its case on its version on the actual cause of death of the deceased was on account of the Appellant being hit by a stone or by a fall. In the post-mortem report, PW-10 opined that the cause of death was a head injury caused by hard and blunt object, and the post-mortem report categorically stated that he had 5 external head injuries with 3 internal injuries. However, the post-mortem report shows that there was no palpable fracture noted, and that could give rise to an inference that the injuries may have been sustained by a fall rather than intentional violence of hitting with a cement block. However, the relevancy of this evidence is faint much less conclusive for proving the guilt of the accused.

iii. In so far as the deposition of PW-1, i.e., the Complainant is concerned, he deposed that he witnessed a heated quarrel between the Appellant and the deceased on 12th July 2018 around 09:45 P.M. near Yewale tea stall regarding Rs. 500/-, which was lent by the Appellant to the deceased which the deceased was not returning. It has come in the deposition of PW_1 that he heard that the Appellant threatened to kill the deceased for such reason. However, it was only after a long gap of almost 7 to 8 hours, that he went to the police station to lodge an FIR in respect of the incident, after he saw the deceased unconscious and soaked in blood. He made the complaint against the Appellant on the basis of the information received by him from PW-5 Babu Alzhende, that the Appellant had hit the stone on the deceased's head, which was in fact never witnessed by PW-5.

iv. Insofar as the evidence of PW-2 Abdul Bagwan is concerned,

he deposed that the Appellant met him on the night of the incident and confessed to taking revenge and hitting the deceased with a heavy stone/cement block on his head. However, in the cross-examination, despite admitting that he had heard about the murder confession, he did not immediately inform the police about the said incident and instead went to the house of the Complainant, telling him that the deceased was lying on the station. As to why PW-2, to whom the extra-judicial confession was made, chose not to complain to the police station, strikes to the weak prosecution that has been made out against the Appellant to bring him to books. In any event, such extra judicial confession cannot be of any aid to the prosecution unless the same was to be supported by concrete corroborative evidence. There is no such corroboration whatsoever which would give any credence to the version of PW-1 and PW-2. In such context, we note the legal position. The Supreme Court, while dealing with the issue of extra-judicial confession and circumstantial evidence in the case of Ramu Appa Mahapatra v. State of Maharashtra¹ has held as follows-

“18. Before we analyse the evidence of the above witnesses, it is necessary to briefly examine the law relating to extra-judicial confession as the present is a case of extra-judicial confession allegedly made by the accused before PW 1 and PW 3 which were endorsed by PW 4 and PW 6.

19. Extra-judicial confession of an offence made by the accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the accused before or immediately after the incident; human blood being found on the clothes or person of the accused which matches with that of the accused; leading to discovery, recovery of weapon, etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the

¹ (2025) 3 SCC 565

incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.

20. In *State of Rajasthan v. Raja Ram*-, this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity. As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts voluntary and circumstances of each case judged in the light of Section 24 of the Evidence Act, 1872 (briefly "the Evidence Act" hereinafter). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

21. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The words spoken by the witness should be clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extrajudicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

22. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.

23. In Sansar Chand v. State of Rajasthan, this Court accepted the admissibility of extra-judicial confession and held that there is no absolute rule that an extra-judicial confession can never be the basis of a conviction although ordinarily an extra-judicial confession should be corroborated by some other material.

24. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan v. State of T.N. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. That apart, in a case of circumstantial evidence where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. However, the confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the veracity of the witness to whom it has been made.

25. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows: (Sahadevan case, SCC p. 410, para 14)

"14. It is a settled principle of criminal jurisprudence that extrajudicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration."

26. Upon an indepth analysis of judicial precedents, this Court in Sahadevan® summed up the principles which would make an extrajudicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused: (SCC pp. 412-13, para 16)

"16. ... (i) The extra-judicial confession is weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further

corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

(Emphasis supplied)

v. Now coming to the evidence of PW-5, who was a travel agent/labourer, who in his deposition, he has contradicted the statement made by PW-2, wherein PW-2 deposed he had met PW-5 and the Appellant on the day of the incident, i.e., on 13th July 2018 in the early hours of morning. However, PW-5 has deposed that on the said morning, the Appellant did not meet him, and they were taking search of him. He in fact deposed that Mr. Vilas Kolekar had told him that the Appellant had killed Basavraj. He also deposed that the Appellant had killed the deceased on the cause of Rs. 500/-. However, in the cross-examination, PW-5 had admitted that in his statement recorded, he did not make any statement that the Appellant killed the deceased on the cause of Rs. 500/- and this statement was made first time in Court. He also admitted that he did not tell before the statement in the court that Vilas Kolekar told him that the Appellant had killed the deceased.

vi. Insofar as the deposition of PW-7 Ganesh Jadhav is concerned, we find that though the said witness deposed that he knew about the scuffle/quarrel between the deceased and the Appellant in front of Yewale Tea Shop, yet his statement was recorded by the police after a long delay. The police had recorded his statement late, inasmuch as the alleged offence was committed on 13th July 2018 and PW-7's statement was recorded on 18th September 2018

(Exhibit-10) and hence the statement of PW-7 was recorded after a long delay of 67 days would be a very weak evidence to be any basis to bring home the guilt of the Appellant. We are in agreement with the submission made by learned Counsel on behalf of the Appellant that the same was taken only to fill the gaps in the circumstantial chain to create evidence.

27. On a consideration of the evidence, where the case of the prosecution rests on circumstantial evidence, it is difficult to reach a conclusion that the circumstances in any manner are pointed towards the Appellant to record that it is only the Appellant who has committed the offence of which he stands charged. It is only on the theory of scuffle which took place on the prior night where the Appellant had threatened to kill the deceased, that a case has been made out that the murder has been committed by the Appellant.

28. It is further our view that the prosecution has failed to prove that a brutal murder could be committed by the Appellant over a trivial unpaid loan of Rs. 500/- and the same was supported by any evidence pointing its finger only towards the accused and none else.

29. We are also perplexed to note that if the Appellant was allegedly killed at Platform No. 1 of the Railway Station being a public place, no CCTV footage could be gathered by the Investigating Officer as rightly contended on behalf of the Appellant. We are therefore of the view that there are no circumstances to prove beyond reasonable doubt that the Appellant had committed the murder of the deceased.

30. We are also of the clear opinion that the name of 'Deepa' being tattooed

on the chest of the deceased on the basis of which some theory to bring about a relation between the Appellant and unknown Deepa and that her relatives and friends having a grudge against the Appellant so as to kill him, find no legs to stand in the evidence. In the first place, there is no evidence whatsoever much less of the nature which would support the case of the prosecution that the murder of the deceased was committed for any such reason and much less to connect the Appellant to such murder on such vague, omnibus and totally unreliable and untrustworthy evidence.

31. We are further of the view that the learned Additional Sessions Judge, Pune in the impugned judgment dated 27th May 2021 has erred in appreciating the evidence that a complete chain of circumstances had been completed successfully to prove the guilt of the Appellant. The learned Additional Sessions Judge has in fact brushed aside the inconsistencies in the depositions of the witnesses, and held that minor omissions or discrepancies in the statements of witnesses are not fatal to the prosecution's case, and has erred in holding that the variance in the statements of PW-2, PW-3, and PW-4 are not in respect of material points.

32. The learned Additional Sessions Judge further has categorically held that on the day of post-mortem, the name of deceased 'Basavraj' was not mentioned in the said report, and the same was inserted only on 6th September 2018 with the initial of the Head of the Department of B.J. Medical College and Sassoon Hospital, however, and in spite of that has held that the post-mortem report is not doubtful. We are, therefore, of the view that the learned Additional Sessions Judge, Pune has failed to take into consideration these glaring loopholes/contradictions in the

prosecution's case, and further did not consider the inconsistencies as noted by us in paragraph 26 above, before convicting the Appellant under Section 302 of the Indian Penal Code. The Judgment dated 27th May 2021 passed by the learned Additional Sessions Judge, Pune is, therefore, liable to be quashed and set aside.

33. In the light of the above discussion, in our opinion, the prosecution has miserably failed to prove the guilt of the Appellant/accused of having committed murder of deceased Basavraj. The reasons as also the findings as recorded by the learned Sessions Judge, in our opinion, cannot be sustained when tested on the evidence on record. The impugned judgment and order passed by the learned Sessions Judge would be required to be quashed and set aside and the Appellant/accused is required to be acquitted for having committed an offence punishable under Section 302 of the IPC.

ORDER

- i. Appeal is allowed and the conviction and sentence of the Appellant by way of impugned order is hereby quashed and set aside, and the Appellant is acquitted of the offence for which he was charged and convicted.
- ii. Fine, if paid by the Appellant, be refunded to him. Since the Appellant is in jail, he be released forthwith, if not required in any other case.
- iii. Muddemal which was taken at the time of investigation be destroyed after the Appeal period has expired against this judgment.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)