

Presented on : 05.04.2018

Registered on : 05.04.2018

Decided on : 29.04.2021

Duration : 03Y-00M-24D

**IN THE COURT OF SESSIONS JUDGE, HINGANGHAT,
DISTRICT, WARDHA.**

(Presided over by R.N.Majgaonkar, Addl. Sessions Judge)

....

Special (Atro.) Case No.1/2018
(CNR No.MHWR11000291-2018)

Ex.No.147

State of Maharashtra
Through Police Station Officer,
Hinganghat, Tah.-Hinganghat,
District Wardha

... **Prosecution**

Versus

Sandip Rajeram Bawane
Aged 30 yrs; Occup.-Labour
R/o Sakurli, Tah.Samudrapur,
Tah. Samudrapur, District Wardha.

... **Accused.**

**Offence Punishable Under Section 302, 201 of Indian Penal
Code and Section 3(1)(v) & 3(2)(vi) of the Scheduled Castes &
Scheduled Tribes (Prevention of Atrocities) Act, 1989**

Shri P.P.Soitkar & Shri D.M.Vaidya, APP for the State.
Shri Mayur Moon, Advocate for Accused.

....

J U D G M E N T

(Delivered on this day 29th April, 2021)

1. The accused face trial for the offence of committing murder of Akash @ Bhadya Daulatrao Shambharkar and

destroying the evidence with intention to screen himself from punishment knowing that deceased Akash belongs to Mahar community.

2. The abridged facts of the prosecution case are as under;

Asstt. Police Inspector Satishkumar Gangaram Khedekar was attached to Hinganghat Police Station as Police Sub-Inspector and was on duty on 19.1.2018. From the Police Control Room of Wardha telephonic information was received that a person by name Shubham Choudhari informed the Control Room by phone that, at village Sakurli there was murder of one person by name Shambharkar. PSI Khedekar gave the information to Police Inspector Shirtode. Accordingly two panch witnesses were summoned from Tahsil Office of Samudrapur and PSI Khedekar along with Police Inspector Shirtode and other staff proceeded to village Sakurli to the spot. P.I. Shirtode demanded the dog squad and forensic team from Wardha Head Quarter. In presence of two panch witnesses and in presence of the dog squad and forensic team, spot panchanama was initiated by PSI Khedekar. During the panchanama, photographs of the spot of the incident and dead-body were snapped by Naik P.C.Sachin Ghewande. The spot was shown by Lata Daulatrao Shambharkar, the mother of the victim Akash. From the spot some articles were seized and the inquest panchanama was also prepared of the dead-body. There were dragging marks from the spot upto the house of the accused and

also blood stains were found in that way of dragging. Hence, the panchanama of the courtyard of the house of accused was prepared in continuation and some incriminating articles were seized from the courtyard of the house of the accused which include the pair of chappal, the buttons of shirt, the wooden baton stained with blood. The dog squad prepared their separate report and forensic team prepared their separate report.

3. After the completion of the spot and inquest panchanamas the dead body was sent for post-mortem. Meanwhile the father of the deceased Daulat Shambharkar lodged the report with Hinganghat Police Station.

4. Informant Daulat reported that he resides at village Sakurli alongwith wife and two sons and a married daughter. Akash was elder son. Akash used to work on the country liquor distillery of one Bhaurao Kapte. Bhaurao was doing the said illegal business with the help of his daughter Manda Hazare. Akash used to stay over night at the house of Bhaurao on some occasions. Accused Sandip Bawane is also from the same village and he is having quarrelsome nature and prior to 6-7 years of the incident he had murdered his cousin Gajanan Bawane and was convicted, however acquitted in appeal. Since then he was saying the villagers that he would commit murder of 2-4 persons.

5. On 18.1.2018 deceased Akash demanded Rs.100/- from informant Daulat in order to attend the fair of village Taroda. Accordingly, he went to the fair at about 6.00 p.m. along with

Bhaurao Kapte and Manda Kapte. Akash didn't return to home hence informant Daulat went to the house of Bhaurao at about 11.00 p.m. and Akash was present there, hence he told Akash to go with him to their house. At that time Akash told him that he would come after some time. However, Akash didn't return to the home during the whole night. As Akash was having habit to stay overnight sometime at the house of Bhaurao, informant Daulat didn't take it serious.

6. On 19.1.2018 at about 6.00 a.m. in the morning he went to the Jungle along with she goats for grazing them. His son-in-law Sushil Gawande came there and informed him that Akash has been murdered and his body is lying in the field of Narayan Danave. Hence, he visited the spot and found the dead-body of Akash lying in prone position in the Nallah of field of Narayan Danave with injury on head. On observation of the spot, he found that the dead-body has been dragged there and there were blood stains on the way of dragging. Hence, he followed the said dragging way which ended in the courtyard of the house of accused. There were blood stains in the courtyard of the house of accused. However, the house of accused was locked. Hence, Daulat got doubted and visited house of Bhaurao Kapte and inquired with Bhaurao and Manda who told him that in the last night accused had come to their house and he took Akash with him. Therefore, Daulat lodged the report against accused as a result offence came to be registered bearing crime no.96/2018 for the offence punishable under Section 302 & 201 of IPC.

7. PSI Khedekar carried out investigation. He seized the clothes of deceased and medical samples and viscera produced before him by H.C. Borsare under panchanama. He recorded the statements of Daulat Shambharkar, Bhaurao Kapte, Manda Hajare and Vitthal Kapte and other. The accused was found at Badnera Amravati. Hence, he was brought to the Police Station on 20.1.2018. Accordingly, accused was arrested under panchanama. Mobile phones of accused were seized. Some injuries were found on the person of the accused, hence he was referred to the Sub-District Hospital, Hinganghat for medical examination and accordingly the injury report of accused was secured. During investigation samples of blood and hair of accused were obtained. On 25.1.2018 the sections for offence under the Atrocities Act were added hence further investigation was handed over to Sub-Divisional Police Officer Hinganghat.

8. Sub-Divisional Police Office Bhimrao Tele got drawn the map of the spot through Circle Officer. He secured the opinion of the Medical Officer about the weapon i.e. wooden baton used for assault. He secured the caste-certificate of sister of deceased by name Dharti Shambharkar. He sent the muddemal article to F.S.L. Nagpur. He recorded the statements of witnesses. He secured the school leaving certificate of accused and secured the opinion of Medical Officer, Sub-District Hospital, Hinganghat regarding the injuries found on the person of accused and after completion of the investigation he filed the charge-sheet against accused.

9. The accused is in jail. As per the order of Hon'ble High

Court, Bombay, Bench at Nagpur, the trial is expedited against the accused. On securing the presence of accused, I framed the charge at Exh.9. The particulars of the offence were read over and explained to the accused in vernacular. The accused abjured the guilt and claimed the trial. His defence is of total denial and false implication.

10. The prosecution has examined in all 14 witnesses and closed the evidence by pursis vide Exh.137. The statement of accused came to be recorded at Exh.144 under Section 313 of Cr.P.C. The accused has not examined any defence witness.

11. Heard the learned Additional Public Prosecutor Shri D.M.Vaidya and learned advocate for accused Shri Mayur Moon.

12. The following points arise for my determination on which, I have recorded my findings for the reasons to follow;

Sr.No.	Points	Findings
1	Whether the prosecution proves that during the intervening night of 18.1.2018 and 19.1.2018 deceased Akash Daulat Shambharkar died of a homicidal death ?	In the affirmative.
2	Whether the prosecution proves that during the intervening night of 18.1.2018 and 19.1.2018 at village mouja Sakurli, Tah. Samudrapur accused committed murder by intentionally or knowingly causing death of Akash Daulat Shambharkar ?	In the affirmative.

3	Whether the prosecution proves that on the same date and at the same time and place the accused knowing that certain offence to wit murder of Akash Daulat Shambharkar punishable with death or imprisonment for life and fine has been committed, did for certain evidence of the said offence to disappear, to wit, moved the deceased Akash Shambharkar from near his house to the Nallah dug in the field of Narayan Danav with intention of screening himself from legal punishment ?	..	In the affirmative.
4	Whether the prosecution proves that on the same date and at the same time and place accused not being a member of Schedule Caste and Schedule Tribe committed an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more against the person Akash Daulat Shambharkar knowing that he is member of a Schedule Caste or Schedule Tribe and thereby committed the offence ?	..	In the negative.
5	Whether the prosecution proves that on the same date and at the same time and place the accused having reason to believe that offence has been committed and he is not the member of Schedule Caste and Schedule Tribe caused evidence of said offence to disappear with intention of screening himself from legal punishment or with intention to give any information respecting the said offence	..	In the negative.

	which he knows or has reason to believe to be false and thereby committed an offence ?		
6	What Order?	..	As per final Order.

R E A S O N S

13. The prosecution has examined following witnesses;

PW.1 – Pankaj Arunrao Moon with whom deceased was working at Exh.15.

PW.2 – Daulat Shrawan Shambharkar, the informant father of the deceased at Exh.18.

PW.3 – Amol Dnyaneshwar Shambharkar, the panch witness for spot and inquest panchanamas Exh.22.

PW.4 – Manda Mohan Hajare, who last seen together the accused and deceased at Exh.43.

PW.5 – Pawan Dharmaraj Ughale, the panch witness for seizure of the clothes Exh.45.

PW.6- Vijay Zibal Shende, panch witness for seizure of medical sample of deceased Exh.47

PW.7 –Nilesh Madhukarrao Jambhulkar the panch witness for seizure of clothes of accused at Exh.56.

PW.8 –Vitthal Bhaurao Kapte, who last seen together the deceased and accused Exh.56.

PW.9 –Dr. Vijay Yemraj Punghadkar, Medical Officer who carried out the post-mortem Exh.72.

PW.10 – Dr. Rashmi Avinash Khedekar, Medical Officer who examined the injuries on the person of accused Exh.83.

PW.11 - Ramesh Sudhakar Sonekar P.C. who deposited the muddemal articles to F.S.L. Nagpur Exh.89.

PW.12- Satishkumar Gangaram Khedekar, Investigating Officer at Exh.97.

PW.13- Bhimrao Savla Tele, S.D.P.O. the Investigating Officer at Exh.113.

PW.14 - Sachin Shivajirao Ghewande, N.P.C. who snapped the photographs Exh.134.

14. The prosecution has relied on the following documentary evidence ;

- 1) the complaint Ex.19,
- 2) F.I.R. Ex. 20,
- 3) summons to panch witnesses Exh.24 & 25,
- 4) Order of Tahsildar to panch witnesses Exh.23,
- 5) Inquest panchanama Exh.26,
- 6) Spot panchanama Exh.27,
- 7) Seizure panchanama of clothes of deceased Exh.102 & 103,
- 8) Seizure panchanama of medical sample of accused Exh.110,
- 9) Summons to panch witnesses for arrest panchabnama Exh.108,

- 10) Arrest panchanama Exh.104,
- 11) Post mortem report Exh.75,
- 12) Letter for medial opinion and medical opinion of the Medical Officer Exh.118 and 77 respectively,
- 13) The injury report of accused Exh.85,
- 14) The letter for medical opinion and medical opinion of injuries of accused Exh.86,
- 15) Duty pass for carrier of muddemal Exh.90,
- 16) Letter to the F.S.L. Nagpur, Exh.91,
- 17) The forensic report of forensic team Exh.98,
- 18) The report of the dog squad Exh.99
- 19) Duty pass of H.C. Borsare for receiving the dead body Exh.100,
- 20) Report to Medical Officer regarding post-mortem Exh.101,
- 21) Arrest form of accused Exh.105,
- 22) A letter to Medical Officer requiring medical sample of accused Exh.106,
- 23) Extract of case diary collectively Exh.107,
- 24) Summons to panch witness for seizure panchanama panchanama of medical samples of Exh.109,
- 25) Summons to panch witness for seizure panchanama of clothes of deceased Exh.111,

- 26) The order of Superintendent of Police Wardha to S.D.P.O. Hinganghat Exh.114,
- 27) Letter to the Circle Officer for map Exh.115,
- 28) Letter to the Talathi for 7/12 extract Exh.116,
- 29) 7/12 extract of field of Narayan Danav Exh.117;
- 30) Letter to the Sub-Divisional Officer, Hinganghat for caste certificate of deceased Exh.119,
- 31) Report of S.D.O. Hinganghat Exh.120,
- 32) Letter to F.S.L. Nagpur Exh.121 & 122,
- 32) Letter for domicile certificate of accused Exh.123,
- 33) Letter to collect the previous criminal case against accused at Exh.124,
- 34) Report of criminal cases against accused Exh.125,
- 35) Letter to Head Master of the School for school leaving certificate of accused Exh.129,
- 36) School leaving certificate of accused Exh.130,
- 37) Letter to the carrier and his report Exh.132 and 133 respectively,
- 38) The map of the spot Art.Q
- 39) In all 66 photographs at Exh.136 collectively,
- 40) The certificate u/sec.65B of Indian Evidence Act Exh.135,
- 41) The C.A. reports Exh.140 to 143.

15. The learned APP Shri D.M.Vaidya submitted on behalf of the prosecution that the case is based on circumstantial evidence, wherein motive is important. According to him the father of deceased Akash was threatened by accused prior to the incident on the ground that in a previous case for murder of cousin of accused, the accused was convicted due to the deposition of father of deceased Akash i.e. PW2 Daulat as a witness and because of that accused was undergoing sentence for about 8 years till he was acquitted by the Hon'ble High Court. Apart from that there was quarrel between deceased Akash and accused on the ground that somebody drained the barrels containing wash and liquor belonging to the accused and accused was of opinion that deceased Akash did the said act of draining the barrels, hence for both these reasons, there is motive behind crime.

16. He further submitted that informant PW2 Daulat lodged the report against the accused. As per the informant deceased Akash was lastly in the company of accused prior to the incident and this evidence has been corroborated by evidence of PW4 Manda Hajare and PW8 Vitthal Kapte who have last seen together, the deceased Akash leaving their house along with the accused. Moreover, the learned APP submitted that the incident has occurred in the courtyard of the house of accused and incriminating articles were recovered from the said spot. Moreover, there was dung-wash area in the courtyard of the house of accused with intention to remove or vanish the blood stains in the courtyard. According to him, it is the fact within the best

knowledge of accused as per section 106 of the Indian Evidence Act, however, accused has not given explanation to that effect. Therefore, the said circumstances and evidence points towards the accused.

17. He further submitted that the Medical Officer has found the injuries on the person of the deceased more particularly near the left ear and left side of the head. These injuries corroborates the internal injuries on the head of the deceased and the said injuries on the head are the cause of the death. He further submitted that Investigation Officer Tele (PW13) has collected the caste certificate of sister of the deceased and also the school leaving certificate of accused and these documents goes to show that deceased belonged to the Mahar community and the accused belonged to Bhoi community. Therefore, the offence under the provision of Atrocities Act has also been proved.

18. The learned Advocate for accused submitted that the informant has not stated in the FIR about the motive that in the earlier case against the accused he was witness and deposed against the accused resulting the conviction of the accused. Therefore, according to him the motive brought on record is after thought. Similarly, he submitted that in the FIR there is no mentioned about the quarrel between accused and the deceased and no mentioned about the draining of barrels containing wash and illicit liquor belonging to the accused. Therefore, according to him both the reasons for motive are afterthought .

19. Regarding the FIR, he submitted that Hinganghat Police had already received the information that there was murder of Akash Shambharkar, therefore, according to him the information about the incident was not cryptic information received by the police station. However, it was regarding the offence itself despite that no FIR was registered by Hinganghat Police immediately. By suggesting to the Investigating Officer, PSI Khedekar PW12, he submitted that the informant Daulat (PW2) has admitted that he lodged the report in the morning at about 9.00 to 9.30 a.m. However, as the said FIR was against some other accused, it was torn by PSI Khedekar and subsequently another FIR was recorded of informant Daulat. Therefore, according to him the investigation carried out on the basis of such FIR is not reliable. Regarding the first information received by the Police Station, he has relied on the case of **Mr. Remy Vaz Vs. State of Goa, 2014 ALL MR(Cri) 4703**. Regarding registration of the FIR as submitted above by him, he relied on the case of **Ganesh Bhavan Patel and another Vs. State of Maharashtra, 1979 Cr.L.J.51**.

20. The learned Advocate further submitted that false theory of last seen together is brought on record by prosecution. According to him informant Daulat has stated in his report that he went to the house of Bhaurao Kapte at about 11.00 p.m. where as Manda Hajare PW4 has stated that Daulat PW2 came to her house at about 8.00 to 8.30 p.m. Therefore, to create the false theory of last seen together the informant Daulat has subsequently changed

the time of his visit to the house of Bhaurao Kapte in his statement recorded subsequently. Therefore, there is no case of last seen together at all. In that respect he has relied on the case of **State of U.P. Vs. Arunkumar Gupta (2003) 2 SCC 202.**

21. Regarding the circumstantial evidence, he submitted that the time of death has not been mentioned in the post-mortem report. Similarly, the Investigating Officer PSI Khedekar has started the investigation by pre-deciding that present accused is the culprit. He further submitted that there is no evidence that the house from where some articles were seized belong to accused and accused was residing there. According to him the accused was residing in another house which is on the bank of the river. Moreover, he submitted that despite there are residential houses near the house of accused no statement were recorded of the witnesses by the Investigating Officer. Regarding the circumstantial evidence he has relied on the case of **Gambhir Vs. State of Maharashtra (1982) 2 SCC 351** and submitted that chain of circumstances is not established by the prosecution which points towards the accused as culprit.

22. Regarding medical evidence he submitted that the time of death is not mentioned in post-mortem report. So also there are discrepancies regarding the injuries on the body of deceased and those mentioned in the post-mortem report. Similarly, he submitted that the Medical Officer who examined the accused has not given the proper age of the injuries sustained by the accused. According to him, the injuries were out of the accident of motor-

cycle of accused and they are falsely shown as injuries during the scuffle. Hence medical evidence is not acceptable. In that respect he has relied on the case of **Mohd. Zahid Vs. State of T.N. (1999) 6 SCC 120**. Regarding circumstantial evidence and last seen theory, the learned Advocate relied on the case of **Anant Bhujangrao Kulkarni Vs. State of Maharashtra, AIR 1993 SC 110** and submitted that accused could not be convicted the reason that dead-body was found in the courtyard of the house of accused and for last seen together, and the case of **Kanhaiyalal Vs. State of Rajasthan (2014) 4 SCC 715**. He has also relied on the case of **Satish Shrawan Hirudkar and another Vs. State of Maharashtra 2009 All MR (Cri) 1986**. Apart from last seen together something more to establish the guilt.

23. Regarding the caste of accused and deceased he submitted that caste certificate of accused is not at all brought on record. So also the caste certificate of deceased Akash is also not on record. The caste certificate of the sister of the deceased cannot be relied upon. Regarding the C.A. report he submitted that C.A. report is almost negative and not helpful to the prosecution.

AS TO POINT NO. 1 :

24. As per the evidence of panch witness Amol Shambharkar PW3 who is a Government servant, the dead body was found in a Nallah dug in the field of Narayn Danav and the Nallah was having width of about 7 feet and depth of about 4 feet. The dead body was found in a prone position and there were

injuries on the left side of head and on left ear and there were blood stains around the dead body and there were signs also that dead body was dragged from some other place to that place in the nallah. He also has given the details about the condition of the dead-body as he is the panch also for inquest panchanama which was simultaneously prepared at the time of spot panchanama. Apart from the account given by panch witness regarding the dead-body the inquest panchnama has mention of 10 injuries as stated by panch witness Shambharkar. Similarly, in the post-mortem report apart from other injury the injuries on the vital part of body are mentioned. The first injury which is external injury is lacerated wound present over left side of temporal region measuring 7 x 4 cm. and dip in wound, brownish to red in colour and bleeding was present. The said external injuries corresponded to the injuries under scalp contusion present over left side of temporal region of size 8 x 6 cm. brownish to red in colour. Injury no.2 is amputation of upper 2/3rd of left ear present with irregular margin of size 3 x 1.5 cm. red to brownish in colour. This injury corresponds to the skull- linear fracture present over left side of temporal region of size of 5 x 0.2 cm. and said injury also corresponds to injury no.1. The Medical Officer has opined that the cause of death was death due to head injury.

25. So far as the death of deceased Akash is concerned, there is defence of accused that the accused is falsely implicated in this crime and culprit is some other person. It is no where the defence of the accused that the death of deceased Akash was either

suicidal or accidental. Therefore, it is almost accepted by defence that the death of deceased Akash was homicidal death. Hence, I answer my finding point no.1 in the affirmative.

AS TO POINTS NO.2 & 3 :

26. There is no eye witness to the incident and hence the case is based on circumstantial evidence. In such cases motive plays important role as to what was the motive of the culprit behind commission of the offence. Similarly, the case is based on the last seen theory. Therefore, it is necessary to see whether the prosecution has established the chain of circumstances which beyond reasonable doubt points that accused is the author of the crime.

27. As per the evidence of Daulat PW2 the father of deceased Akash. The incident occurred on 18.1.2018. In the evening deceased Akash took Rs.100/- in order to attend the fair at village Taroda and accordingly he left for the fair. According to him deceased Akash attended the fair along with Bhaurao and Manda PW4. Hence, Akash initially went to the house of Bhaurao Kapte. As per the evidence of Daulat as deceased didn't return he went to the house of Bhaurao at about 8 to 8.30 p.m. to fetch Akash. However, Akash told him that he would come after some time. Hence, Daulat returned to his house. As Akash was having practice to stay overnight on some occasion at the house of Bhaurao Kapte, Daulat was under that impression and hence in the morning as usual he went to graze the she-goats in the jungle.

Therefore, he was intimidated by son-in-law Sushil Gawande about the murder of Akash and dead-body lying in the nallah in the field of Narayan Danav. Hence, he went to the spot and found the situation there and found that the dead body was dragged on the spot. Hence, he followed the path of dragging and found the blood stains on the said path and the marks of dragging ended in the courtyard of the house of accused. In the courtyard of the house of accused he found blood stains, therefore he got doubted and went to the house of Bhaurao to make inquiry about whereabouts of Akash during night. At that time Manda PW4 told him that after Daulat left the house accused Sandip came to her house and he took deceased Akash with him. Thereafter Daulat as per his evidence is of opinion that accused Sandip had murdered his son Akash. Hence, he went to the Police Station to lodge the report.

28. In the cross-examination, the time of visit of Daulat to the house of Bhaurao has been confronted and it is suggested to him that in the FIR, he has stated that he visited the house of Bhaurao at about 11.00 p.m. whereas Manda (PW4) has stated that Daulat came to her house at about 8.00 to 8.30 p.m. Regarding the difference in said time, the witness Daulat has subsequently corrected him and stated in his cross-examination that he went to the house of Bhaurao at about 8.00 p.m. Regarding the said timing, the learned Advocate for accused has relied on the case of Ganesh Patel Vs. State mentioned above wherein the witness was a labourer and the Hon'ble Supreme Court observed that even if he is a labourer he was having good

sense of time. Therefore, according the learned Advocate for accused Daulat had not at all visited the house of Bhaurao Kapte and because of that he is telling false time of visit to the house of Bhaurao Kapte. In that respect there is doubt as regard the visit of Daulat to the house of Bhaurao on the night of 18.1.2018. The scrutiny of evidence of Vitthal Kapte PW8 the brother of Manda PW4 is that they returned from the fair at about 8.00 p.m. and at that time Sandip Bawane i.e. accused came to his house and deceased Akash and Sandip left their house. This evidence shows that he has not whispered about the visit of Daulat to the house of Bhaurao i.e. father of Vitthal. However, PW4 Manda has stated that after 8.30 p.m. Daulat PW2 came to her house and told Akash to go with him to their house at that time Akash told him that he would come after some time. However, in my opinion this visit of Daulat to the house of Bhaurao Kapte is considered to be not reliable. I would like to mention here that there is evidence of Daulat PW2 that deceased Akash used to stay overnight at the house of Bhaurao on some occasion and this evidence is not challenged by the accused. Therefore, even if it is considered that Daulat has not visited the house of Bhaurao in the night that is not fatal to the prosecution case as it is one of the circumstances. Moreover, it is not the case that in presence of Daulat Sandip came there and took deceased Akash with him.

29. The evidence of Daulat PW2 regarding the attendance of fair by deceased Akash is corroborated by evidence of PW4 Manda Hajare and PW8 Vithal Kapte. According to her on the day

of incident she along with her brother Vitthal and Akash went to attend the fair at village Taroda and they left at about 6.00 p.m. and returned at about 8.30 p.m. Similarly, Vitthal Kapte PW8 has stated that he along with his sister Manda and deceased Akash attended the fair at village Taroda and they returned at about 8.00 p.m. This evidence that deceased Akash was in the company of Manda and Vitthal Kapte to attend the fair has not been denied or rebutted by the defence. Therefore, it is one of the circumstances proved by the prosecution that prior to the incident deceased Akash was in the company of Manda PW4 and Vitthal PW8 to attend the fair at village Taroda.

30. Manda PW4 has stated that when they returned from the fair at about 8.30 p.m., thereafter Sandip i.e. accused came there and he told Akash to go with him to the house of Sandip and thereafter Sandip took Akash to his house. Similarly, Vitthal PW8 has stated that Sandip came to his house and thereafter deceased Akash and Sandip went towards the house of Sandip. At that time Sandip told Akash to left him to his house. Therefore, as per the case of the prosecution, Manda PW4 and Vitthal PW8 have last seen together Akash with accused Sandip.

31. There are minor discrepancies in the evidence of Manda, who in her statement has stated that accused Sandip caught hold the collar of shirt of deceased Akash and took him with him. Moreover, Manda has stated in her cross-examination that her statement was not read over to her by police and therefore, she didn't know what was written in her statement. I

would like to mention here that Manda as well as Vitthal are the rustic village persons. Admittedly, Manda was in the illegal business of manufacturing liquor, therefore, considering the status of the witness, minor discrepancies are bound to occur in their evidence. It is not denied by defence that deceased Akash attended the fair of Taroda along with Manda PW4 and Vitthal PW8. In cross-examination Manda has stated that they returned from the fair by auto-rickshaw generally therefore, there is every possibility that auto-rickshaw was taken to the house of Manda and hence Akash also alighted there from the auto-rickshaw. Hence, presence of Akash in the house of Manda prior to the incident is natural. Moreover, it is not the case that without any reason deceased Akash was present in the house of Manda Kapte so as to create the false theory of last seen together. In the case of State of UP Vs. Arunkumar mentioned above the Hon'ble Supreme Court has disbelieved the evidence of PW2 Chandraprakash to whose shop deceased allegedly visited just prior to the incident and left with the accused on the scooter of the accused and also the evidence of PW3 Leeladhar who allegedly last seen the deceased entering in the house of accused along with accused. Leeladhar voluntarily has not disclosed said fact to police immediately. The Hon'ble Supreme Court also disbelieved the evidence of both these witnesses because they were interested witnesses and belonging to the same Biradari of PW1 Satyapal who is the father of deceased and PW2 Chandraparaksh was taking extra ordinary interest in the investigation.

32. In our case, it is not the case that Manda PW4 and Vitthal PW8 belong to the same Biradari of Daulat PW2. Moreover, there is event of attending the fair at village Taroda by PW4 Manda, PW8 Vitthal and deceased Akash together. Under such circumstances, their evidence cannot be disbelieved. Hence, they are the reliable witnesses whose evidence is credible.

33. It is important to note here that though Daulat PW2 found that there were blood stains in the courtyard of the house of accused Sandip and some other incriminating articles apart from the dragging marks. He has not made up his mind immediately that accused Sandip is the culprit. However, he got doubt about the death of Akash and hence he visited house of Bhaurao where he was told that on the last night Sandip had been to the house of Bhaurao and he took Akash with him and thereafter only Dault PW2 lodged the report against accused Sandip. Therefore, this conduct of Daulat is also important which is supporting to the prosecution case. Therefore, in my opinion, deceased Akash was last seen together with the accused by PW4 Manda and PW8 Daulat.

34. The death of deceased Akash had occurred during the intervening night of 18.1.2018 and 19.1.2018. It is to be noted here that as per the evidence of Daulat his son-in-law Sushil came to the jungle at about 7.30 to 8.00 a.m. to inform about the murder of deceased Akash. The learned Advocate for accused has vehemently argued that the time of death of deceased Akash is not at all mentioned in the post-mortem report. Therefore, the theory

of last seen together is not probable. He has relied on the case of Gambhir Vs. State of Maharashtra mentioned above. However, in that case the dead-bodies were recovered after 3-4 days of the incident and dead-bodies were in decomposed condition. Hence, there is considerable time gap between last seen together and recovery of dead-bodies. However, in our case the dead-body of deceased Akash was immediately found in the morning. Therefore, the case relied upon Gambhir is not applicable to the case of our hand. So also the time of death of Akash cannot be given much importance as the incident has occurred some where after 8.00 to 8.30 p.m. of 18.1.2018 and before the morning of 19.1.2018. Therefore, it is clear that the death of deceased Akash took place in intervening night of 18.1.2018 and 19.1.2018.

35. The panch witness PW3 Amol Shambharkar has given the detail account of the spot. Apart from the situation on the spot where the dead body was found. He has stated that there were dragging marks and on the path of dragging there were blood stains, hence they walked towards the dragging marks and on that basis they came to the house of accused and those dragging marks ended there,. According to him on the backside of house of accused, there were also dragging mark and there was a pit and one damaged door plank was lying on the said pit and there was one pair of brown colour chappal. One stone with red stains on it was found. In the courtyard of the house one button of shirt was found. It was also found that there was dung-wash to the ground of courtyard and on that dragging marks were found. In the

furnace one wooden rafter and four pieces of fire wood and buttun and other articles were found and on the said rafter and pieces of fire wood, there were blood stains. The rafter was broken and on the one end of the rafter hair were found stuck on it. The pair of chappal and wooden rafters and fire wood were seized. Samples of blood found on those articles were also taken. The dog of dog squad was given the smell of pair of chappal and on that basis the dog proceeded towards the spot where the dead body was found. No doubt, the evidence of dog squad is weak piece of evidence. However, it is a relevant fact to the fact in issue. This witness has identified all the articles before the court. So also he has stated that the house of accused which was locked was also inspected by broke opening the lock. However, nothing incriminating was found. This evidence of panch witness corroborates to the spot panchanama (Exh.27). So also the evidence of Daulat PW2 who also went on the spot and found the dragging marks which ended towards the house of accused Sandip corroborates the evidence of panch witness and panchanama of spot (Exh.27).

36. PW12 Satishkumar Khedekar who is the Investigating Officer carried out spot panchanama has given the details account of the situation on the spot. He has stated that an attempt was made to destroy the evidence by washing the blood stains in the courtyard of the house of accused and by throwing the dead-body in the nallah in the field of Narayn Danav.

37. So far as the spot of the incident is concerned, I would like to mention here that it is within the best knowledge of the

accused who resides in the said house to explain the circumstances which were found in the premises of his house and which were incriminating circumstances against him. However, in the statement under section 313 of Cr.P.C., the accused has only stated that the said circumstances are false. I would like to mention here that if there would have been other culprit, he would not have attempted to dung-wash the courtyard of house of accused which was good opportunity to implicate the accused in the crime. Therefore, the conduct of accused to remove the blood stains by dung-wash which were in the courtyard of the house and dragging the dead body to other place shows that the accused is the culprit.

38. Therefore, in my opinion the deceased was last seen together in the company of accused and it has been proved by the prosecution beyond all reasonable doubt.

39. So far as the circumstances are concerned, the deceased Akash just prior to the incident attended the fair of village Taroda along with Manda PW5 and Vitthal PW8. Moreover, they returned to the house of Manda by auto-rickshaw. The accused went to the house of Manda and took the deceased with him. Since then deceased was not found and his dead-body was found in the morning. The house of accused was locked where he was residing. The blood stained articles were found in the courtyard of the house of accused. These are the circumstances so far proved by the prosecution.

40. The accused was arrested on 20.1.2018 at Badnera of

Amravati. Though the panch witness on arrest panchanama, PW7 Nilesh Jambhulkar has not supported the prosecution case. The accused has been arrested by arrest panchanama (Exh.104) prepared by Investigating Officer Khedekar PW12 which bears the signature of accused. It was found that there were injuries on the person of the accused. Hence, he was referred for medical examination to Sub-District Hospital, Hinganghat where Medical Officer Dr. Rashmi Khilekar PW10 examined the accused and issued the injury certificate (Exh.85).

41. Dr. Khilekar PW10 has found the following injuries on the person of accused -

- (i) Contusion on right elbow blackish in colour and the age of injury was within 48-70 hours and injury was caused by hard and blunt object;
- (ii) Bruises on left hand blackish in colour, age was within 48 hours caused by fine rough surface;
- (iii) Abrasion on right knuckle having age of within 48 hours probably caused by the nails;
- (iv) Abrasion on left forehead blackish in colour caused by rough surface;
- (v) Bruises on right leg blackish in colour caused more than 48 hours by rough surface.

As per her opinion given on Exh.86, the injuries might have caused during scuffle.

42. It is defence of the accused in his statement under section 313 of Cr.P.C. that he met with an accident by his motor-cycle and during that accident he sustained the above injuries. However, the Medical Officer Dr. Rashmi Khilekar PW10 has stated that the above injuries are possible during the scuffle. The learned Advocate for accused in cross-examination of Dr.Khilekar has not questioned her or suggested her that such a type of injuries are caused to the accused during a motor vehicular accident of his motor-cycle. Moreover, one injury to the accused is on right elbow another on left hand, third one on right knuckles, fourth one is on left forehead and last one is on right leg. Considering the said injuries it is not possible that they are caused in a vehicular accident. Therefore, it is a relevant piece of evidence which suggests that accused had sustained the injuries during the scuffle with deceased Akash.

43. So far as the seizure of medical samples and clothes on the person of deceased Akash Shambharkar are concerned, panch witness Pawan Kubde PW5 has not supported the prosecution case. Similarly, he has not supported the seizure panchanama of arrest of accused and seizure of T-shirt of blue colour and lower of black colour and one mobile phone handset. Similarly he has not supported the seizure panchanama of hair and blood sample of accused. However, I would like to mention here that PSI Khedekar PW12 has seized the clothes of deceased, viscera and medical samples produced before him by H.C.Borsare under panchanama (Exh.102) which is re-sealing panchanama of the said articles and

the de-sealing panchanama of clothes of deceased vide Exh.103. Similarly, he prepared the arrest panchanama vide Exh.104 of the accused which bears signature of accused also. Similarly, the medical samples of accused were seized under panchanama (Exh.110). The evidence of PSI Khedekar in that respect cannot be disbelieved. Moreover, PW2 Daulat in his evidence has stated that there was a shirt of blue colour with checks on the person of deceased Akash. Moreover, it is the evidence of panch witness Amol Shambharkar PW3 that a button of shirt was found in the courtyard of the house of the accused. The C.A. report vide Exh.143 shows that the button labeled as Exh.3 during the chemical analysis tallied with the button stitched to the full shirt Exh.21. Therefore, it is a corroborative piece of evidence. Moreover, as per the C.A. report human blood was found on the wooden rafter and four pieces of fire wood seized from the courtyard of the house of accused. Moreover, on the blood stains collected on the cloth piece human blood was found so also the earth collected as sample was found with human blood. Similarly, human blood was found on full shirt of the deceased. So also human blood was found on the T-shirt of the accused. Though the report regarding the blood groups of blood found on these articles is inconclusive and blood group of accused is 'A'. Whereas blood group of deceased Akash was 'O', despite that it is incriminating circumstance that human blood was found on those articles which were most collected and seized from the courtyard of the house of accused. Hence, it is incriminating circumstances against the accused.

44. So far as the motive is concerned, Sub-Divisional Police Officer Tele PW13 has collected the information of criminal antecedents of accused which shows that a crime bearing no. 237/2007 was registered against the accused for the offence punishable under sec.302 r/w 34 of I.P.C. and in that case accused was convicted with life imprisonment. However, in an appeal before the Hon'ble High Court he came to be acquitted. However, this is relevant fact and piece of evidence which corroborates the evidence of Daulat PW2 who has stated that due to his deposition as witness in the previous case against the accused, the accused came to be convicted and thereafter accused was threatening him that he would kill 2-4 persons. Moreover, it is the evidence of Daulat PW2 that accused was having quarrelsome behaviour. Therefore, in my opinion this is one of the motives to commit the crime.

45. Another motive as per the prosecution case is that accused has grudged against deceased Akash that he had drained the barrels containing wash and liquor belonging to accused. In that respect Daulat has stated in his evidence. The prosecution has examined Pankaj Moon PW1 to prove the said motive. As per the evidence of Pankaj Moon he knows deceased as well as accused and deceased used to work with him to manufacture illicit liquor. However, he has denied that prior to four months of the incident, there was quarrel between accused on one side and deceased and he himself on the other side. He has denied that accused alleged both of them that they drained the barrels of liquor and wash

belonging to the accused. However, he has admitted that prior to four months of the incident accused had seen Akash and him sitting in the house of Pankaj. Though he has denied the quarrel, he has admitted that since the said incident Akash discontinued working with Pankaj. Under such circumstances considering some admission by this witness, though he is hostile, his entire evidence cannot be thrown up. Therefore, it is also proved that accused was having motive against deceased Akash. Hence in my opinion motive is proved by the prosecution.

46. The learned Advocate has submitted that though the information in detail was received by the Police Station on a telephone by one Shubham Choudhari, no FIR was registered by the police. Moreover, he submitted that Daulat PW2 has admitted that he lodged the FIR with Police at about 9.30 to 10.30 a.m. and another FIR at about 2.00 to 3.00 p.m. He submitted that the first FIR lodged by Daulat PW2 was against some other accused which was torn by PSI Khedekar PW12 and fresh FIR of Daulat PW2 was registered. Therefore, according to him the investigation based on such FIR is defective and as earlier FIR was not registered on the basis of the information of Shubham Choudhari the prosecution case cannot be believed. In that respect he has relied on the case of Mr. Remy Vaz Vs. State of Goa mentioned above in which benefit of doubt was given to the accused as FIR was not registered on the basis of telephonic message which was not a cryptic message. So also he has relied on the case of Ganesh Patel Vs. State mentioned supra and submitted that information of commission of cognizable

offence was received by police despite that immediate FIR was not registered. In regard to the above submission, I would like to mention that Shubham Choudhari gave the information to the police control room at Wardha that there was murder of one Shambharkar. Thus, the information was not given to Hinganghat Police. Moreover, the station diary entry vide Exh.107 shows that information was received from police control room of Wardha and it was noted in station diary at about 9.31 a.m. Under such circumstances it is not the case that Hinganghat police received the detail information from Shubham Choudhari about the commission of cognizable offence. On the contrary I would like to mention here that PSI Khedekar PW12 and PI Shirtode immediately proceeded towards the spot. Hence, the non-registration of the FIR immediately is not possible in this case as the information was not directly received by Hinganghat Police. Moreover, though Daulat PW2 has stated that he lodged the FIR at about 9.30 to 10.00 a.m. and again at 2.00 p.m. to 3.00 p.m. His evidence goes to show that from the spot he went to the house of Bhaurao Kapte and after confirming that deceased Akash left the house of Bhaurao in the company of accused. Then he went to the Police Station to lodge the report. The printed FIR vide Exh.20 shows that the information was received at about 9.31 a.m. No doubt Daulat PW2 has stated that he lodged the report at about 9.30 to 10.00 a.m., the crime was registered at about 4.19 p.m. I would like to mention here that informant has lodged the report in the morning itself. However, as PSI Khedekar as well as PI Shirtode who is the incharge of the Police Station had been to the

spot and they were on the spot till afternoon as the PSI Khedekar PW12 has stated in his cross-examination that on 19.1.2018 he returned to the Police Station from the spot at about 3.50 p.m. Therefore, it clears that crime was registered after PSI Khedekar and PI Shirtode returned to the Police Station. Though Daulat PW2 has given the evidence that on two occasions he registered the complaint in that respect I would like to mention here that he is a rustic village person and therefore he might have given two timings one of lodging the complaint and another of registering the crime. In that respect I would like to rely on the case of State of Madhya Pradesh Vs. Mansingh and others (2003) 10 SCC 414, the Hon'ble Supreme Court has observed in para 15 that -

“Merely because there was some change in time of the lodging of the FIR, that does not per se render the prosecution version vulnerable. At the most, the requirement was a careful analysis of evidence, which has been done by the trial court”.

47. Therefore, in my opinion there is no infirmity regarding the registering the FIR and the offence. Hence, the cases relied on by the learned Advocate of accused in that respect are not applicable.

48. The learned Advocate for accused relied on the case of Mohd. Zahid Vs. State of T.N. mentioned above. However, the facts in the said case are altogether different. Hence, the said case is not applicable.

49. The learned Advocate has relied on the case of Anant Kulkarni Vs. State (supra) in which the dead-body was found near the portion of building of accused and hence it was disbelieved. However, in our case the dead-body was not found near the house of accused. However, it was a dragged and thrown in the nallah which was at some distance from the house of accused. Moreover, some incriminating articles were found in the courtyard of the house of accused. Therefore, the case relied upon by the learned Advocate is not applicable. In the case of Kanhayalal Vs. State of Rajashtan (supra), there is the lonely circumstance that deceased was gone with accused and last seen with the. But in our case there are so many other circumstance apart from last seen together. Hence, this case is also not applicable. In the case of Satish Hirudkar Vs. State (supra) it is observed that apart from last seen theory there must be other circumstances to establish connectivity between the accused and crime. In our case, it is not the only evidence of last seen together but so many other circumstances which points towards the guilt of the accused.

50. The evidence can be oral evidence, documentary evidence and circumstantial evidence. Circumstantial evidence pertains to those relevant facts the chain of which is successfully completed is sufficient to draw inference about the fact in issue. In our case the fact in issue is the murder of Akash. After considering the above discussion it is clear that there are so many strong circumstances which are proved by the prosecution and which are sufficient to draw inference that accused is the only culprit and

author of the crime.

51. The photographs of spot of the incident and dead-body were snapped by Sachin Ghevande Police Naik PW14 and they are duly proved by certificate under section 65B of Evidence Act vide Exh.135. The photographs collectively at Exh.136 speaks a volume about the circumstances and situation on the spot. The photographs are corroborative piece of evidence and strong circumstance against the accused.

52. The accused has committed brutal murder of Akash and the injury caused on the temporal region of left side of head with skull, linear fracture over left side of temporal region is sufficient in ordinary course of nature to cause death of deceased Akash. The brutal murder of Akash goes to show the intention of the accused to kill Akash and intention was supported by the motive of accused. Hence, the offence under section 302 of I.P.C. is proved against him.

53. The accused after committing murder of Akash threw his dead-body in the nallah of one Narayan Danav which is at some distance from his house in order to destroy the evidence so also he dung washed the area of his courtyard in order to remove or destroy the blood stains. Hence, the offence under section 201 of IPC is also proved.

AS TO POINTS NO.4 & 5 :

54. Sub Division Police Officer Tele PW13 has collected the

caste certificate of sister of deceased Akash and only the school leaving certificate of accused which documents are not sufficient to hold that accused belongs to Bhoi community and Akash belonged to Mahar community. Hence, the offence punishable under sec.3(2)(v) and sec.3(2)(vi) of Atrocities Act are not proved against the accused. Hence, I answer my findings to points no.4 & 5 in the negative.

55. I held the accused guilty for the offence punishable under section 302 and 201 of I.P.C. However, at this juncture I take a pause to hear the accused and the learned Advocate for accused and the learned APP regarding the quantum of sentence. It is to be noted here that due to the lockdown on account of COVID-19 pandemic and as the accused is in jail at Nagpur, he is not brought today. However, as per the intimation given to the jail authority they are ready to produce the accused through video conferencing. Therefore, the accused can be heard regarding the sentence.

56. The learned APP Shri Vaidya submitted that the deceased Akash was young boy of 23 years. He is the second son of his parents and the accused has brutally murdered him. Hence, considering the seriousness of offence punishment of life imprisonment may be awarded.

57. The learned Advocate for accused Shri Mayur Moon submitted that the age of the accused is 33 years. He has old aged mother, wife and two children to maintain. Therefore, lenient view

may be taken.

58. The accused is produced on Video conferencing by Constable Shailesh Utkalwar. Both have no complaint about the audio and video of the conferencing. I heard the accused regarding the sentence. He submitted that the case is false and he has been implicated in the case. He was also implicated in similar case of murder previously. He has done no offence. He has two small children and a wife and old aged mother to maintain, therefore, lenient view may be taken.

59. The punishment provided for the offence under section 302 IPC is with death or imprisonment for life and shall also be liable to fine. The punishment provided for the offence under section 201 IPC where capital punishment is provided for the main offence is with imprisonment either description for a term which may extent to 7 years and shall also be liable to fine.

60. There are no arguments on behalf of the learned APP regarding awarding death penalty and according to him it is not the rarest of rare case. The circumstances show that it is not a rarest of rare case to attract the capital punishment. However, the alternate punishment is with imprisonment for life. The accused has committed brutal murder of deceased Akash. While considering the case of accused for lenient view, it is necessary to consider the case from the view point of victim and his parents. The victim was of young age of 23 age. He was brutally murdered. While committing the crime, the accused was supposed to consider

the young age of victim as well as regarding his own family. However, he has not consider all these things. The criminal offence is against the State, therefore, there must be a message in the society regarding such culprits to avoid the occurrence of such offences in future. Under such circumstances, it is not the case falling under the culpable homicide not amounting to murder and there is no such defence on behalf of the accused, therefore, punishment with imprisonment for life is the proper punishment according to me for the offence punishable under section 302 of I.P.C. and fine of Rs.5000/- is proper punishment.

61. Similarly, considering the seriousness of offence and the manner in which accused attempted to destroy the evidence, punishment of 7 years with rigorous imprisonment and fine of Rs.3000/- is proper for the offence under section 201 of I.P.C.

62. The accused deserves to be acquitted of the offence punishable under sec. 3(2)(v) and sec.3(2)(vi) of the Atrocities Act. Hence I pass the following order.

Order

1) The accused Sandip Rajeram Bawane is hereby convicted as per Section 235(2) of Code of Criminal Procedure,1973 for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine to undergo rigorous imprisonment for six months.

2) The accused is hereby convicted as per section 235(2) of the Code of Criminal Procedure for the offence punishable under section 201 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.3000/-. In default of payment of fine to undergo rigorous imprisonment for three months.

3) Both the sentences shall run concurrently.

4) The accused is hereby acquitted under section 235(1) of Cr.P.C. of the offence punishable 3(2)(v) and 3(2)(vi) the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,1989.

5) The muddemal articles except the mobile phone and SIM card of the accused being useless and worthless, be destroyed after the period of appeal is over.

6) The mobile phone instrument of accused be auctioned in public auction and the sale proceeds be deposited to the Government and the SIM card be deposited with service provider for disposal as per rules after the period of appeal is over.

7) The set off be given to accused as per section 428 of Cr.P.C. of the period for which he is already in jail.

8) The copy of judgment and order be given free of costs to the accused as per section 363 of Cr.P.C.

Dictated and declared in open Court.

Dt.29.04.2021

(R.N.Majgaonkar)
Additional Sessions Judge,
Hinganghat.