IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.549 OF 2018

Ganesh Bhatu Shinde (Patil)
Age: 27 years, Occu.: Labourer,
R/o. Jaishankar Colony, Mohadi-Upnagar,
Dhule. ..Appellant
(Ori. Accused No.1)

Versus

The State of Maharashtra ..Respondent

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Advocate for Appellant : Mr.Chaitanya Chandrakant Deshpande
APP for Respondent : Mrs.V.S.Choudhari

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 29 NOVEMBER, 2023
PRONOUNCED ON : 7 DECEMBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Judgment and order of conviction dated 18-07-2018 passed by the learned Sessions Judge, Dhule in Sessions Case No.124 of 2015 is hereby assailed by the convict Ganesh, thereby questioning legality, maintainability, sustainability of the judgment and praying to set aside the same.

STORY OF PROSECUTION IN BRIEF

2. PW3 Gaikwad, Police Patil of village Kundane passed information to Dhule Taluka Police Station on telephone regarding dead body lying in

abandoned condition on Dahyane road. On receipt of said information, Police visited the spot, prepared inquest and referred dead body for post mortem. Initially AD was registered. According to prosecution, as body was of unknown person, at the time of inquest, his body search was taken and some documents including medical papers were found, on the basis of which identity of deceased was got confirmed. Deceased was found to be Sunil Lakade and on enquiry with his brother Santosh, Police got a clue that there was dispute between appellant and deceased and regarding previous assault on deceased, crime was registered against appellant. In that backdrop, it is the story of the prosecution that, appellant had approached deceased on 14-08-2015 for compromising the matter and accordingly, deceased was taken to the Court but there deceased put up conditions which angered appellant and thereby he was taken, assaulted and his body was finally disposed of at a remote place which was finally spotted by Police Patil and then Police came in picture.

3. PW1 More, Police Head Constable lodged report resulting into registration of AD. However, after investigation by this witness and Police Officer Munde (PI), it was revealed that it was a case of murder. Accordingly, this witness lodged FIR and forwarded to PW12 Wadnere, who registered crime no.164 of 2015 for the offence under Sections 302, 201 r/w 34 of the IPC.

Further investigation was carried out by PW20 Jadhav (Dy.S.P.), who on conclusion of investigation, chargesheeted two accused i.e. present appellant Ganesh and one Punamchand Raghunath Patil and they both were tried by the learned Sessions Judge, who on appreciation of evidence, reached to conclusion that prosecution failed to prove guilt against accused no.2 Punamchand, but held accused no.1 i.e. present appellant guilty for offence under Sections 302 and 201 of the IPC consequently awarded punishment of imprisonment for life vide judgment dated 18-07-2018, which is now challenged before us by filing instant appeal.

4. In the trial Court, prosecution has examined in all 20 witnesses and also sought reliance on documentary evidence like FIR, inquest panchanama, post mortem, seizure panchanama, CA report etc. Defence denied to lead any evidence and chose to remain silent.

5. As appeal has been preferred invoking Section 374 of the Code of Criminal Procedure, we are called upon to re-appreciate, re-examine and re-analyze entire evidence adduced by prosecution in the trial Court and we accordingly undertook said exercise.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

In support of its case, prosecution has adduced evidence of in all 20 witness. Their status is as under :

PW1 Rajendra Vishwasrao More is Police Head Constable who made enquiry of the AD registered initially in the present case. His evidence is at Exh.29.

PW2 Narendra Madhav Upasani is Naib Tahsildar. He conducted test identification parade and prepared its panchanama Exh.38. His evidence is at Exh.34.

PW3 Dayanand Motiram Gaikwad is Police Patil of Kundane village. His evidence is at Exh.44.

PW4 Subhash Babaji Karne is pancha to seizure of clothes of deceased Sunil. His evidence is at Exh.45.

PW5 Dr.Kapileshwar Maganlal Chaudhari is Autopsy Doctor who conducted post mortem on dead body. His evidence is at Exh.48.

PW6 Prashant Satish Kakade is Pancha to spot panchanama Exh.51 and seizure panchanama of soil with and without blood and cement bricks. His evidence is at Exh.50.

PW7 Kishor Ramdas Khairnar is Pancha to seizure of shirt of accused and one matress (Godhadi). His evidence is at Exh.55.

PW8 Nilesh Rameshsingh More is PSI who prepared spot panchanama Exh.60. His evidence is at Exh.59.

PW9 Ashok Nimba Patil is Police Naik who prepared inquest panchanama Exh.62. His evidence is at Exh.61.

PW10 Surekha Sunil Lakade is wife of the deceased. Her evidence is at Exh.67.

PW11 Pravin Sadashiv Patil is Police Constable who took photographs of the dead body. His evidence is at Exh.72.

PW12 Anil Gangadhar Wadnere is Police Inspector who registered crime no.164 of 2015 for offence under Sections 302, 210 read with 34 of the IPC. His evidence is at Exh.89.

PW13 Yogesh @ Dadu Arun Khairnar is friend of PW18 Walmik. His evidence is at Exh.112.

PW14 Gokul Shankar Patil (PSI) registered crime no.95 of 2015 for offence under Section 326 of the IPC in respect of previous assault on deceased.

PW15 Purushottam Shravan Mahajan is Advocate. His evidence is at Exh.115.

PW16 Dr.Sangita Motiram Gavit is the Doctor who made endorsement that the patient is conscious to give statement to Police on 19-07-2015 in respect of previous assault. Her evidence is at Exh.117.

PW17 Kalusing Huraji Padavi is Police Head Constable who recorded statement of Sunil on 19-07-2015 in respect of previous assault. His evidence is at Exh.119.

PW18 Walmik Jibhau Patil is owner of tea stall. His evidence is at Exh.122.

PW19 Sharad Ginyandeo Dubale is 5th Jt. C.J.J.D. and J.M.F.C., Dhule who recorded statement of PW18 Walmik under Section 164 of the Cr.P.C..

PW20 Himmat Hindurao Jadhav is Dy.S.P. is the Investigating Officer. His evidence is at Exh.175.

HOMICIDAL DEATH

6. There being charge of Sections 302 and 201 of the IPC, it is necessary to be seen whether in the trial Court prosecution has established death of Sunil to be nothing but homicidal.

It seems that to prove the above aspect, prosecution has examined PW5 Dr.Chaudhari, Autopsy Doctor, who in his evidence at Exh.48 narrated the condition of the dead body. He noted following external and internal injuries on the body :

External Injuries :

1) Lacerated injury – present over right side occipital region extends from midline towards right side; size – 05 cm x 01 cm x bone deep, obliquely placed.

2) Lacerated injury – present over right side occipital region, 01 cm below and right to injury no.(1); size – 02 cm x 01 cm x bone deep, obliquely placed.

3) Lacerated injury – present over right side occipital region, 01 cm above injury no.(1), size – 03 cm x 0.5 cm x muscle deep, obliquely placed.

4) Black eye contusion – present over left eye; size – 03 cm x 02 cm, blue.

5) Lacerated injury – present over frontal region in midline; size – 03 cm x 1.5 cm x bone deep obliquely placed.

6) Multiple contused abrasions – over right lumbar region of abdomen; size – 0.5 cm x 0.5 cm to 03 cm x 03 cm, dark red.

7) Crush injury – present all over left foot great toe and over all the four toes. Underlying bones fractured at multiple places.

Internal Injuries :

Head – Under-scalp hematoma present over frontal and over both parietal regions of scalp.

Skull – 1) Comminuted fracture of size – 2.5 cm x 01 cm present over frontal bone which extends backwards as linear fracture through parietal bones in midline.

2) Comminuted fracture of size – 2.5 cm x 01 cm present over right posterior parietal and occipital bones.

3) Base of skull fractured on right side posterior cranial fossa.

Brain - Membranes – Congested.

Brain – Congested and edematous, 1240 gm.

Subdural hemorrhage and subarachnoid hemorrhage present all over the brain.

It is the opinion of the Autopsy Doctor that above injuries are ante mortem in nature and cause of death was “head injury”.

Above witness is subjected to **cross-examination** and there are questions like failure to note time since death and whether injuries are possible in a vehicular accident, which he answered in affirmative. He flatly denied that injuries noticed and noted by him are possible on account of fall. He is asked whether he handed over clothes of deceased to Police and he answered it in affirmative by giving buckle number of Police Head Constable.

It seems from above material that defence tried to put up a case of possibility of vehicular accident. However, even in our opinion as like learned trial Judge, there are no tale-tell sings or circumstances suggesting vehicular accident. Autopsy Doctor has not noticed any grazing marks and even there is no clear suggestion that head injury is possible on account of fall and landing on a blunt and hard object. Therefore, from all such available evidence, it can safely be recorded that death of Sunil was homicidal one.

7. Now let us see whether as claimed by prosecution, appellant before the Court is author of alleged fatal injuries and consequently responsible for death of Sunil. Admittedly, here there is no direct evidence and case is based on circumstantial evidence. Going by the story of prosecution, it seems that following circumstances are pressed into service by prosecution in support of its case.

Firstly - Motive

Secondly – Last seen together

Thirdly – Blood on the article brick, blood stains on shirt of accused as well as quilt matching with the blood group of deceased. DNA evidence.

8. Before testing the evidence to ascertain whether so called circumstances enumerated above are proved firmly and cogently by prosecution and whether the circumstances put-forth form a complete chain ruling out the innocence of

accused and unerringly pointing out to his guilt, we propose to give a brief account of settled legal position regarding manner of assessment of evidence when the case is based on circumstantial evidence. Since the landmark case of ***Hanumant Govind Nirgudkar and another v. State of M.P.***, AIR 1952 SC 343 followed by water shedding judgments in the case of ***Shivaji Sahebrao Bobade v. State of Maharashtra,*** AIR 1973 SC 2622; ***Sharad B. Sarda v. State of Maharashtra,*** AIR 1984 SC 1622; ***Padala Veera Reddy v. State of Andhra Pradesh,*** 1989 (Suppl.2) SCC 706; and ***State (NCT of Delhi) v. Navjyot Sandhu @ Afsan Guru,*** **2005 (11) SCC 600**, five golden principles are enunciated which are as follows:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions,

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

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

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

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

9. Similarly, while conducting criminal trial, court is also expected to bear in mind the cardinal principles of criminal jurisprudence that **firstly**, fundamental burden of proving the case is always on the prosecution; **secondly**, fouler the crime, greater the degree of proof; **thirdly**, prosecution must prove its case beyond reasonable doubt; **fourthly**, accused "must be" and not merely "may be" guilty of the offence and the distance between "must be" and "may be" should not be long and divide conjectures from sure conclusion; **fifthly**, suspicion however strong, never takes place of proof; and lastly, court must ensure that miscarriage of justice is avoided and if facts and circumstances of the case so demand, benefit of doubt should go to the accused, provided it is fair doubt based on reasons and common sense.

The above principles are derivative of several landmark cases like **Bhagirath v. State of M.P.**, *AIR 1976 SC 975*; ***Shankarlal Dixit v. State of Maharashtra,*** *AIR 1981 SC 765* and ***Dhananjoy Chaterjee @ Dhana v. State of W.B.,*** *(1994) 2 SCC 220.*

SUBMISSIONS

On behalf of appellant :

10. Learned Counsel for the appellant would strenuously submit that apparently implication is in absence of trustworthy, reliable evidence. He

pointed out that case being based on circumstantial evidence, prosecution was expected to establish each of the circumstances beyond reasonable doubt but it has failed to do that. He pointed out that as many as 20 witnesses are examined, but most of the witnesses are Panchas, Police Patil and medical experts. He submitted that the star witness for prosecution is PW18 Walmik, who was said to be an eye witness, however, it is pointed out that he himself resiled while in witness box and has thereby not supported the prosecution rendering it more weak.

11. Learned Counsel brought to our notice backdrop of relations between deceased and accused to attack case of prosecution that prosecution has utterly failed to show genesis and motive behind the occurrence as according to him, though accused Ganesh and deceased had previous animosity and case was filed by deceased, they had subsequently ironed out their differences and so the dispute had already been resolved. That prosecution own witness **PW15** Purushottam spoke about the same and thus, it is submitted that very motive itself was not in existence at the time of incident.

12. He would next submit that deceased had left the house on 14-08-2015 in the morning and his dead body was found in the evening at the spot which was near a National Highway. That there is no material regarding dead body being transported on motorcycle from one spot to another spot as alleged by

prosecution. Further there is no trustworthy evidence on behalf of prosecution to show that appellant was the only person in the company of deceased. He pointed out that according to prosecution witness, deceased and appellant had been to the District Court, Dhule in the afternoon at around 01:00 p.m. on 14-08-2015, however he further pointed out that dead body was spotted in the evening at around 09:30 p.m. and therefore, according to learned Counsel there is huge time gap between so called accompaniment of appellant with deceased and deceased found dead. He further pointed out that even Autopsy Doctor had failed to ascribe time since death even by approximation and resultantly he would submit that theory of last seen together which is put-forth by prosecution cannot be applied here.

13. He would further submit that according to prosecution, after being done to death, deceased was taken on a motorcycle by placing the body in a quilt and wrapping it and taking it for miles and then being dumped, but there is no evidence even in that regard and nobody has seen the lengthy travel allegedly undertaken. He also found fault on the manner of investigation and lapses on the part of investigation and according to him, it being a serious case, it was bounden duty of investigating machinery to gather positive evidence which would only establish involvement of accused alone, but here said possibility has been negated as there is weak or no incriminating evidence on record. Further according to him, there are several serious doubts about the

prosecution case on the points of recovery of clothes of accused, recovery of cement brick allegedly put to use as weapon, failure to establish the exact spot of alleged assault. According to him, merely to solve the case, investigating machinery has developed a case and implicated appellant. That unfortunately even the learned trial Judge has straightaway accepted the weak circumstances and also recorded conviction. Therefore, he would submit that there is total non-application of mind and improper appreciation of evidence as well as legal position. For all above reasons, he prayed to allow the appeal by setting aside the impugned judgment.

On behalf of State :

14. In answer to above, learned APP for the State would submit that though case is based on circumstantial evidence, all circumstances put-forth in trial Court have been cogently and firmly proved. Evidence of prosecution witnesses has remained unshaken. Motive has been proved. Theory of last seen together is also proved by examining PW10 Surekha, very wife of deceased and PW15 Purushottam. Deceased was taken by the appellant to the tea stall of PW18 Walmik. Though this witness unfortunately did not support prosecution and turned hostile, his entire evidence need not to discarded and so much part of his evidence, which supports prosecution, can definitely be gone into and this is what precisely learned trial Judge has done. Therefore, as guilt is cogently proved, she prays to dismiss the appeal for want of merits.

ANALYSIS OF PROSECUTION EVIDENCE

15. The sum and substance of prosecution case is that appellant herein, while in company of one person, had assaulted deceased, of which complaint was lodged and crime was duly registered. Appellant wanted the matter to be withdrawn and so had approached deceased and accordingly, it was agreed to compromise the matter in the Court and they also duly went to the Court. But according to prosecution, deceased put conditions for withdrawal that he should know the details and name of unknown person allegedly accompanying appellant at the time of previous incident and hence the matter of compromise did not proceed. It is further case of prosecution that, while in company of each other, at the tea stall of PW18 Walmik, after getting drunk, deceased abused appellant in filthy language, which angered him and he assaulted deceased with cement brick on the head and killed him. Hence, the charge.

16. It transpires that as PW18 Walmik, so called direct evidence, having resiled and not supported prosecution, only the circumstantial evidence adduced by prosecution remained for prosecution. The circumstances which are pressed into service are as under :

I) Motive

II) Last seen together

III) Recovery discovery of article brick, blood stained clothes of appellant.

FIRST CIRCUMSTANCE - MOTIVE

17. Previous incident of assault on deceased by appellant resulted into registration of crime against appellant. Since then there was animosity and further, deceased putting up conditions for withdrawal had also allegedly angered appellant. Coupled with this, deceased allegedly abused appellant in filthy language and hence, deceased was hit repeatedly by appellant by means of cement brick.

Here with above theory, prosecution has examined PW18 Walmik, who runs a tea stall, and on the day of occurrence i.e. 14-08-2015, both original accused and deceased had visited his tea stall and there actual assault was said to be carried out. However, during trial, this star witness PW18 Walmik, who was party to alleged abuse and assault, seems to have not supported prosecution and therefore, very motive behind the occurrence got knocked off at trial stage itself. This witness has not supported prosecution and denied visit of appellant and deceased to his tea stall or any occurrence of assault and deceased being transported in dead condition on motorcycle by use of quilt borrowed from him. No doubt there is evidence regarding previous case filed by deceased against present appellant and even Investigating Officer admits about previous animosity between accused and deceased, that case is of July 2015. The incident in question has taken place on 14-08-2015. When very prosecution case is that appellant had approached deceased on night of 13-08-2015 for amicable settlement and compromise and deceased having

accompanied appellant next day to the Court for compromise, it is doubtful whether animosity was existing and whether there was further motive to do away with deceased. There is no positive evidence in support of the case of prosecution regarding deceased putting up certain conditions for withdrawal except the evidence of PW15 Purushottam, who is an Advocate. Signature of appellant was already obtained by Advocate on Vakalatnama, which suggests that matter was about to be resolved. There is little, weak or no legally acceptable evidence regarding motive to kill deceased. Hence, this circumstance is very weak in nature.

SECOND CIRCUMSTANCE – LAST SEEN TOGETHER

18. According to prosecution, appellant was the last person in the company of deceased. He had taken deceased from his house and thereafter, deceased did not return alive but was spotted lying dead near National Highway No.3. In support of above case, prosecution has heavily relied on testimony of PW10 Surekha, wife of deceased and PW15 Purushottam.

PW10 Surekha, wife of deceased, in her evidence at Exh.67 deposed that on 13-08-2015 appellant had approached her husband to their house at 11:00 p.m. and had talks about withdrawing the case and further according to her, on the next morning i.e. on 14-08-2015, another person entered the house and took her husband while appellant was waiting outside the house on a motorcycle and then they took her husband on that motorcycle. Thereafter, her

husband did not return and she directly received a phone call from Civil Hospital where she saw his dead body. According to her, her husband was done to death by appellant for filing case against him.

In her **cross-examination** she is questioned about surroundings of house, names of residents, house numbers, names of neighbours, distance between her house and the Police Station. She answered that Police never visited her house. She is questioned about admission of her husband in the previous incident of which crime was registered and she is asked whether deceased had caused signature on a written paper. She answered that she was not called to identify the person who had taken her husband out of house on 14-08-2015. According to her, after the incident of 14-08-2015, she was called on 15-08-2015 to Police Station.

19. Another witness on above circumstance is **PW15** Purushottam, a lawyer in his evidence at Exh.115 deposed that on 14-08-2015 while he was sitting in District Court premises, at around 01:00 p.m. to 01:30 p.m. appellant Ganesh, deceased Sunil and uncle of appellant had approached him and told about offence registered against him at Mohadi Police Station and that he seeks anticipatory bail in that case. He stated that he obtained signature on Vakalatnama and directed appellant to seek copy of the FIR and that uncle of Ganesh was supposed to pay fees. He further deposed that deceased put a condition that if appellant tells the name of person who had beaten him, only

then he would compromise the matter and thereafter, those persons went away. He claims that on subsequent day, he came across newspaper item regarding murder of Sunil. He identified appellant in the Court.

In **cross-examination** he answered that Police did not seize Vakalatnama. He admitted that he looked after Court matters of appellant. He denied that there was dispute with appellant regarding payment of fees. He admitted that he has not received Court summons in writing. Omission is brought regarding informing Police that he was sitting in a tin shed. Rest is all denial.

20. On critically evaluating the testimonies of both above witnesses, it is emerging that since morning of 14-08-2015 deceased was in the company of appellant and evidence of PW15 Purushottam suggests that they were together alongwith another person in the District Court Dhule premises at around 01:00 p.m. PW15 Purushottam spoke about deceased and appellant coming, appellant signing Vakalatnama and he also spoke about deceased putting up a condition that he should know who was the unknown person accompanying appellant when deceased was assaulted previously. Only so much of the evidence has come on record in the evidence of PW15 Purushottam. After leaving Court premises, where deceased, appellant and third person went, whether they went together or not and in which direction, has not come on record. Star witness PW18 Walmik, who claims to have seen the assault, has

retracted and not supported prosecution. Therefore, since 01:00 p.m. on 14-08-2015 till deceased being found dead at around 09:30 p.m., in whose company deceased was, has not come on record because there is nothing further suggesting appellant and deceased together till the late evening of 14-08-2015. Almost over 8 to 9 hours after leaving Court premises, dead body has been found in abandoned condition near National Highway No.3. Even Autopsy Doctor has not computed time since death.

Therefore, taking into consideration the lengthy hours of last seen together and deceased found dead, in our opinion, it would be unsafe to attribute said head injuries to appellant. Had PW18 Walmik supported, there would have been some force in the allegations raised by prosecution. But after resilement of star witness, case of prosecution has been rendered weak. The proximity of time since last seen together and deceased found dead being considerably huge, it is improper to connect appellant with death of Sunil.

THIRD CIRCUMSTANCE - RECOVERY DISCOVERY OF ARTICLE BRICK, BLOOD STAINED CLOTHES OF APPELLANT

21. Case of prosecution is that after being done to death, dead body of Sunil was carried in a quilt from the tea stall of PW18 Walmik on a motorcycle by appellant and unknown person and then thrown in Kundane Shivar near National Highway. Evidence does not suggest exact distance between tea stall of PW18 Walmik and said spot where dead body was found lying in abandoned condition. Admittedly, there is no distinct evidence of body being

transported between above two spots. As stated above PW18 Walmik has already declared hostile.

Prosecution has come with a case that spot where incident took place was behind tea stall of PW18 Walmik and from said spot, earth with and without blood stains, broken pieces of brick, which were also blood stained, were seized vide panchanama Exh.51 in presence of PW6 Prashant. This witness deposed that spot was shown to them by PW18 Walmik, but this so called eye witness PW18 Walmik has not supported prosecution. Be it so, vide said spot panchanama Exh.51, Police has seized two pieces of a single brick, plain earth and earth with blood for analysis on 16-08-2015.

Vide Exh.53 present appellant Ganesh is shown to be arrested. On 19-08-2015 clothes on his person at the time of incident were said to be recovered upon disclosure memorandum under Section 27 of the Indian Evidence Act while he was in custody. PW7 Kishor, panch to said memorandum and recovery, deposed that appellant took them towards Kundane Phata on Dahyane road and after crossing 100 feet from the said road, appellant showed spot. He brought out a shirt and one mattress from the thorny bushes. According to pancha, article 15 - mattress (Godhadi) and article 16 - shirt were seized by drawing panchanama and kept in a envelop. In seizure panchanama Exh.56, there is reference of seizure of above clothes but with blood stains. However, PW7 Kishor, who claims to be party to the disclosure memorandum and seizure of shirt, has not specifically deposed

about accused handing over blood stained article 15 – mattress (Godhadi) or article 16 - shirt to be carrying blood. Apparently, this panchanama was drawn on 19-08-2015. It is pertinent to note that dead body was said to be lying in abandoned condition, wrapped in a quilt, but when dead body was taken in custody after inquest and sent for post mortem, panchanama of that spot seems to not have been drawn. No quilt which was used for wrapping dead body, which was brought from tea stall of PW18 Walmik also seems to have been seized. Be it so, according to prosecution, entire seizure done on 16-08-2015 and 19-08-2015 seems to be despatched to the Chemical Analyzer on 06-09-2015 i.e. after more than two weeks. However, till its despatch, there is nothing on record to show that the seizure was intact in sealed condition ruling out possibility of its tampering. Chemical Analysis report Exh.187 on analysis of earth, clothes, pieces of cement brick shows that there is blood over it, but unless blood group of both accused and deceased is detected, mere finding blood on articles like clothes, quilt and pieces of brick is of no significance. Even when the blood was said to be appearing on two brick pieces, the exercise of matching both the pieces to establish it to be a part of only one brick, has not been admittedly conducted by investigating machinery and there is clear admission to that extent by Investigating Officer PW20 Jadhav.

Consequently, here Pancha to seizure of clothes, quilt is silent about availability of blood stains and even Pancha to seizure of pieces of brick is

unable to give detail description of brick, its size, colour. Even PW20 Jadhav, Investigating Officer in cross-examination has admitted that colour of the brick, and dimension of the pieces are not reflected in the panchanama. Entire seizure of above articles is no doubt caused from open space accessible to all. Even otherwise mere detection of blood stains on seizure itself is not sufficient to connect appellant with the same.

22. In the light of above material on record, mere identification of accused on the strength of DNA report is itself not sufficient as there has to be incriminating evidence against appellant to connect him with death, but we have not noticed any incriminating material and circumstances on re-appreciation and re-evaluation of evidence.

SUMMATION

23. To sum up, motive is not cogently established. So called direct eye witness PW18 Walmik has not supported prosecution, circumstances of last seen together, recovery and scientific evidence cannot be held to be itself sufficient to connect the appellant. On same set of evidence, learned trial Judge has already acquitted accused no.2. Principle of law is settled that, graver the offence, stronger has to be the proof. Here there is no strong incriminating reliable and trustworthy evidence either oral or circumstantial and therefore, benefit of doubt ought to have been extended by learned trial

Judge. However, learned trial Judge having failed to do so, appellant succeeds. Accordingly, we proceed to pass following order :

ORDER

I) Criminal Appeal stands allowed.

II) The conviction awarded to the appellant **Ganesh Bhatu Shinde (Patil)** in Sessions Case No.124 of 2015 by the learned Sessions Judge, Dhule on 18-07-2018 for the offence punishable under Sections 302 and 201 of the Indian Penal Code, stands quashed and set aside.

III) The appellant stands acquitted of the offence punishable under Sections 302 and 201 of the Indian Penal Code.

IV) The appellant be set at liberty, if not required in any other case.

V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI) We clarify that there is no change as regards the order in respect of disposal of muddemal.

(ABHAY S. WAGHWASE, J.) **(SMT. VIBHA KANKANWADI, J.)**

SPT