Salgaonkar

MANDIRA MILIND SALGAONKAR Digitally signed by MANDIRA MILIND SALGAONKAR Date: 2026.06.18 21:08:11 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.81 OF 2025

Mahendra Nimba Sonawane
Age : 26 years, R/o Vadner Khakrudi,
Tal.Malegaon, Dist. Nashik .. Appellant

Versus

The State of Maharashtra .. Respondent
(Through Manmad Police Station, Nashik)

...

Mr.Ganesh Gole with Mr.Ateet Shirodkar, Kunhan Makwana and Mr.Bhavin Jain for the Appellant.

Smt. Sangeeta Shinde, A.P.P. for the State/Respondent.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 09th JUNE, 2026
PRONOUNCED ON : 18th JUNE, 2026

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JUDGMENT (**Per Bharati Dangre, J.**)

1. Being aggrieved by the Judgment of the Additional Sessions Judge, Malegaon in Sessions Case No.50 of 2017, thereby convicting the Accused/Appellant- Mahendra Nimba Sonawane, aged 26 years for the offence punishable under Section 302 of the Indian Penal Code (for short, **"IPC"**) and sentencing him to undergo Rigorous Imprisonment (R.I.) for life and pay fine of Rs.50,000/-, in default to undergo R.I. for a term of one year, the present Appeal is filed.

By the very same judgment, the Appellant is also convicted for the offence punishable under Section 201 of IPC and is sentenced to undergo R.I. for a term of five years and to pay fine of Rs.10,000/-, in default to undergo further R.I. for three months. On being convicted under Section 404 of IPC, he is sentenced to undergo imprisonment for a period of one year and fine with default sentence.

On being convicted under Sections 302 and 201 of IPC, the substantive sentences are directed to run consecutively, whereas substantive sentence under Section 404 of IPC is directed to run concurrently.

2. The Appeal came to be admitted on 17/01/2005 and Advocate Ganesh Gole was appointed by the Court vide order dated 19/11/2024 and he continued to represent the Appellant, when the Appeal is listed before us.

Upon receipt of the record and proceedings with the paper-book, we have taken up the Appeal for hearing.

3. An F.I.R. came to be registered by Manmad Police Station on 13/01/2017 invoking Sections 302 and 201 of IPC, when Kisan Dhondiram Kale (PW 2), Police Head Constable/189 attached to Manmad City Police Station informed that while he reported for duty at 8.30 a.m. on 13/01/2017, he received a

phone call from Ashok Pandurang Pawar, Sarpanch of Nagapur (PW 1), that he had received information from one Deore sir from Daregaon, who while enroute on his motorcycle to Bhalur and when he stopped the bike for attending the nature's call, he saw one person lying in the ditch (नाली). Ashok Pawar (PW 1), therefore, accompanied him on the spot to find that the person was dead and his face was covered with black colour jerkin and next to him, a stone smeared with blood, cutter and a plastic gunny bag were lying. The blood was also scattered around on the spot.

Upon this information being received by PW 2, by informing his superiors, with the police staff present in the police station, they reached the spot and on removing the jerkin from the face of the dead body, it was, noted that the body was of a person between 40 to 45 years of age and he was assaulted on his face and his facial features, the nose and eyes were smashed and even his throat was slit. He was wearing a white-yellow lining shirt and grayish blue pant.

Attempts were made to identify the body with the aid of the people in the nearby locality, but his identity could not be established.

The complaint filed resulted into registration of the F.I.R. and the investigating machinery was set rolling. Rejendra Deore, who first saw the body, was examined as witness (PW 3) and it is he, who had informed Ashok Pawar (PW 1) about he noticing body and on his information, the officials of Manmad Police Station had reached the spot.

4. As a part of the investigation, inquest panchnama (Exhibit 74) was prepared and it is brought on record through PW 17-Kundlik Sapkale, who conducted some portion of investigation, being posted as Police Inspector at Manmad Police Station on the investigation being handed over to him. On registration of the F.I.R., he had reached the spot where the injured body of unknown person was lying. The spot panchnama was conducted by PW 17 and it record that the face of the deceased was completely mutilated and even on his neck, there was a grievous injury. Since the identity of the deceased could not be established, the blood was drawn from his body for DNA sampling and other parts of his body, including the nails, bones, hair etc. were collected. The panchnama was concluded on 13/01/2017.

The body was thereafter forwarded for postmortem. PW 17 also called the photographer on the spot, who clicked four

photographs (Article U, V, W, S). The articles lying on the spot, including the stone, cutter, jacket and plastic gunny bag were seized during investigation.

5. On the body being forwarded for postmortem to the Civil Hospital, Nashik, Dr.Anand Pawar conducted the postmortem examination on 14/01/2017, the body being received on 13/01/2017 itself.

Dr.Pawar, being examined as PW 15 by the prosecution, brought on record the postmortem report (Exhibit 53) and the Postmortem Notes describe the features of the deceased, as it record that blood was oozing from mouth/nostrils/ears and the mouth was closed without protrusion of tongue. Column No.17 recorded the following injuries :-

> "1) Cut throat injury in the form of incised wound of size 12cmx3cmx5cm was present over front and right side of neck placed horizontally along the curve of neck.7cm below chin,9cm above supra-sternal notch in midline. On right side it was placed 5cm below angle of mandible.tailing of the wound was towards right. Structures involved were skin,subcutaneous tissue,strap muscles,major blood vessels cartilages and trachea. Effusion of blood was present in structures involved.
>
> 2) Laceration of size 13cmx5cm×Scalp deep was Present over Rt.Tempror-frontal region of Scalp 6 cm from midline, just lateral to Rt.eyebrow.
>
> 3) Laceration of size 4cm×2cmxScalp deep was present over Lt.Frontal region of scalp,just lateral to Lt.Eyebrow.

4) Reddish contused abrasion of size 8cm×6cm was Present over Rt.Cheek region, 3cm from midline.

5) Contusion of size 8cmx6cm was present over Occipito-parietal region of scalp.

Column No.19 recorded presence of sub scalpal hematoma in right temporo frontal and left fronto-temporo occipital region of scalp. The postmortem notes also recorded multiple communitated fracture in bilateral temporal, right side of frontal bone with effusion of blood at fracture margins. As far as clause 21 is concerned, the postmortem notes record thus :-

"stomach full of semi digested food particles alongwith watery fluid."

The probable cause of death as per the postmortem report indicated thus :-

"Combined effect of Cut Throat and multiple blunt injuries to Head and face which are sufficient to cause death in ordinary course of nature individually and collectively."

All injuries were described as ante mortem in nature and fresh in duration, whereas cut throat injury was opined to be caused by sharp edged weapon and the injuries to face and head being caused by blunt object/weapon. Time since death was assessed between 12 to 24 hours.

6. Before the postmortem commenced, the body was identified to be of one Bhausaheb Dashrath Chavan and the

prosecution relied upon the evidence of CCTV footage to establish the identity of the person.

Upon the body being discovered and an F.I.R. being registered, alleging his homicidal death, the investigating agency during the course of investigation, approached a nearby shop in Ambedkar Nagar Chowk, Manake compound, since the body was found lying nearby to assess the movement of persons and objects, as there was CCTV camera fitted in the shop.

On examining the CCTV footage by the Investigating Officer, two persons were located consuming liquor. The video footage from the CCTV was obtained in a hard disk by the investigating agency and PW 13-Hemant Adhav, who was in-charge of the CCTV system in the shop, converted it from the DVR into a pen drive of Scandisk company and the hard disk was drawn from the DVR, and the footage copied in two DVDs were handed over by PW 13 to the Investigating Officer. It is PW 13, who issued 65B certificate (Exh.44).

PW 13 when stepped into witness box, confirmed that he had issued 65B certificate that the panchnama of the DVD was conducted in his presence and he also identified the pen drive (Article R-1) in which the data was transmitted.

7. With this clue being collected from the CCTV footage, when it was noticed that one of the two persons seen in the footage was the deceased, the Investigating Officer during course of investigation, recorded the statement of one Subhash Jagan Ghuge (PW 5), who had seen two persons in drunk condition, when on 12/01/2017, at around 8 to 8.30 p.m., he was returning home after completing his agricultural work, at Karhi Road near his field. He enquired with the persons, as they were heavily drunk and the Accused informed him that he was working with one Mr.Kakad, who was Sarpanch of Karhi village. He, therefore, contacted Mr.Kakad on telephone and was informed that there were labours engaged by him, but he could not comment whether the person on the spot was his labour. He, therefore, asked the Accused to give the telephone number of his master and made a call on that number and person, who answered the phone, disclosed that he knew the Accused and he was told to let them go.

Thereafter, he lit a bonfire and he sat alongwith the two persons for a while and he lead them to Manmad Road and returned home.

During the course of the enquiry on the phone, PW 5 came to know that the two persons were Mahendra Sonawane

and Bhausaheb Chavan. On the next day, the news of murder spread in the village and when he was shown the photograph by the police, he disclosed that he had met the person on the earlier night and he was taken near Shivneri Dhaba, where the body of Bhausaheb Chavan, the deceased was lying. The person, who was accompanying the deceased, was identified as the accused present in the Court by PW 5 during his deposition.

8. The investigating agency did not merely rely upon the material collected by them, but also conducted DNA analysis of the blood of the deceased and compared the same with DNA samples collected from his children, Vaishali and Samadhan Bhausaheb Chavan. The report from the DNA analysis confirmed that the person, who was done to death was Bhausaheb Dashrath Chavan, and for this purpose the prosecution has examined the Analyser from the Forensic Science Laboratory, Kalina, Mr.Sunil Sonawane as PW 18, who had submitted a report of his analysis, which was exhibited during the course of trial as Exhibit 87.

9. It is on the basis of the aforesaid evidence led before the Additional Sessions Judge, a finding of guilt was recorded. The Appellant is found guilty of committing an offence punishable

under Section 302 alongwith Section 201 of IPC and has been convicted for the offence punishable under Section 302 for having done Bhausaheb Chavan to death in the intervening night between 12/01/2017 and 13/01/2017.

10. The prosecution has based its case upon the chain of circumstances, once it was established that Bhausaheb Dashrath Chavan died a homicidal death. His body was noticed near a nala on 13/01/2017 at around 8.00 a.m. by PW 3-Rajendra Deore, the face being covered with jacket, but noticing that the person was not alive, PW 3 informed PW 1-Ashok Pawar (Sarpanch), who in turn informed PW 2-Kisan Kale (Police Headconstable), who on ascertaining the facts, registered the F.I.R.

As per the prosecution case, on 12/01/2017 at around 6.00 p.m., Bhausaheb Chavan was seen in the company of Mahendra Sonawane, the Accused, and they were seen together in the country liquor shop belonging to one Fulvani. The CCTV footage was collected from the DVD and it was transmitted from the hard disk to a pen drive. This process was carried out by executing a panchnama, which bear the signature of the Investigating Officer, Mr.Patil (PW 16). The hard disk (Exhibit 61), which was received and seized, was

used for the purpose of investigation and from the said hard disk, with the assistance of PW 13, the data was transferred into the CD and pen drive. PW 13 issued a 65B certificate, certifying that CCTV footage of T.K.Fulvani wine shop, Manmad was lawfully stored and generated from the computer device, which was maintained in electronic form. He also certified that contents in the DVD is the footage information from the computer and the hard disk of the DVR is under the control of M/s National Telecom on whose behalf PW 13 , was authorised to issue certificate under Section 65B.

The panchnama also set out the procedure by which the data was transferred from the hard disk to the pen drive and how it was copied and, thereafter, sealed and transmitted as Muddemal.

11. The Investigating Officer forwarded the pen drive and the DVD alongwith the photographs of the accused for forensic analysis to ascertain whether the two persons are same. Similarly, the articles seized from the spot were also forwarded for analysis. However, the report of the Chemical Analyser in this regard was not secured before the trial and, therefore, not presented for establishing the guilt of the Accused. However, the learned trial Judge, on the basis of the

other surrounding circumstances pointing out to the guilt of the Accused, relied upon the same, since they formed a chain, which invariably led to the conclusion that it is the Accused, who has caused the death of Bhausaheb Chavan, whose body was found on 13/01/2017,

12. As per the inquest panchnama and the postmortem report, the body which was found and which is proved to be of Bhausaheb Chavan on the basis of the DNA analysis of the samples from the tooth of the deceased and that of his children, suffered a cut throat injury in form of incised wound over front and right side of neck. In addition, there were two laceration wounds; one over the right tempror-frontal region of the scalp and another over left frontal region of scalp. There was also a contusion of 8cm X 6cm over occipito-parietal region of scalp.

The cause of death, according to the postmortem report, was on account of the cut throat and multiple blunt injuries to head and face and they were opined to be sufficient to cause death in ordinary course of nature individually and collectively.

A stone with blood stains was lying nearby and the inquest panchnama reveal that the deceased was hit by the

stone and his facial features were completely battered and this can be seen from the photographs, which are brought on record as Articles V and W before the trial Court.

Bhausaheb Chavan was done to death by hitting of the stone, as he had sustained injuries on the face as well as the head, as the postmortem report also revealed multiple communitated fractures of the frontal bone and the presence of contusion over the occipito-parietal region of the scalp with the blood oozing from mouth/nostrils/ears clearly lead to an inference that he was hit by the hard and blunt object. The injury on neck of Bhausaheb, according to PW 15, was caused by sharp edged weapon, whereas the injury to the head and face was caused by blunt object/weapon.

In addition to the stone smeared with blood, a cutter (Article E) found on the spot, was seized and when PW 15 was confronted with the said cutter, he opined that the throat injury is possible with the same and the other injuries, described in the postmortem report, are possible by the stone (Article B), which was shown to him.

Though Mr.Gole, counsel for the Appellant, has pointed out to us that in the cross-examination PW 15 had admitted that the dead body was completely disfigured beyond

recognition, we had an opportunity of perusing the photographs of the body to find that except the portion of the eyes and the nose, the upper portion of the face i.e. the temporal portion and the portion below the lips i.e. the chin is clearly visible and since the prosecution has established that he was Bhausaheb by carrying out a comparative analysis through DNA sampling, the said submission become irrelevant.

13. In order to establish the chain of events, the prosecution has relied upon the evidence of Afroz Tamboli (PW 10), who deposed that he was indulged in selling of cutlery and on 12/01/2017, one boy aged 20 to 25 years, approached him and purchased a cutter.

PW 10 identified the person, who has purchased the cutter from him, before the Nayab Tahsildar in the test identification parade. He was also confronted with the cutter (Article E) that was seized from the spot and he identified the said cutter to be the one purchased by the Accused to whom he had identified in the test identification parade.

When he was specifically cross examined on the aspect as to how did he remember the said person who had purchased a cutter, he specifically stated that there was some quibble

over the price of the cutter and though he had quoted the price as Rs.15/-, at the end, he offered Rs.5/-. Though subjected to exhaustive cross-examination, PW 10 did not dither from his version and reiterated that the Accused was the same person, who purchased the cutter from him and Article E was the cutter, which was purchased from him and this cutter was found lying next to the body of the deceased.

14. When the Accused was arrested on 14/01/2017 by PW 16-Gajendra Patil vide arrest panchnama (Exhibit 71), there is reference to his medical examination. Prior to his arrest, the Accused was taken to Dr.Sandip Ghongade (PW 6), a Medical Officer in Government Hospital, Manmad and while on duty on 14/01/2017, the police brought one Mahendra Sonawane for medical examination. He examined the Accused and found one CLW on his left forearm with five stitches, and according to him, the injury could have been caused by the impact of sharp object, though it was simple and was two days old. On examining the person present before him, Injury Certificate was issued by him on 14/01/2017, where he mentioned about the injury on the forearm.

One more circumstance and a relevant one, on which the prosecution rely is, evidence of Dr.Nilesh Jadhav (PW 8) to

whom the Accused approached in the intervening night of 12/01/2017 and 13/01/2017. PW 8 deposed that a patient in age group of 25 to 27 years, came to his hospital with injury on his left hand and responding to the query of the Court, he stated that the injury sustained by him must have been caused three to four hours before.

As per Dr.Jadhav, the injury could have been caused by a sharp weapon. He administered 4 to 5 stitches to the wound and gave him some medicine. Dr.Jadhav identified the Accused as a person, who visited him in the hospital in the early hours of 13/01/2017 to whom he had treated. When he was specifically asked as to why he did not report the matter, the Doctor responded by stating that since the injury was minuscule in nature and also superficial, and hence he did not deem it necessary to report to the police.

Corresponding to the evidence of PW 8, PW 6 deposed that before arrest, when the Accused was brought for medical examination, he found five stitches, suturing the CLW injury on his left forearm.

Both the Medical Officers have deposed in sync about the timing of the injury and that the cause of the injury, would have been a sharp object. PW 6, in fact had issued an MLC

though PW 8 had only put the stitches and gave some medicine, but he identified the Accused during the test identification parade conducted before PW 11-Kantilal Wagh.

15. In order to establish the chain of circumstances, the prosecution has also relied upon is the evidence of two witnesses; the one who had seen the Accused in the company of the deceased i.e. PW 5 and the one who has seen the Accused all alone within a short gap of timeline, when they were seen together i.e. PW 14.

PW 5-Subhash Ghuge came across two persons at around 8.00 to 8.30 p.m. and this is the time after they had left the place, where they had consumed liquor where they were seen at around 6.00 p.m. As per PW 5, they were drunk liquor and when enquiries were made with them, they disclosed their names as Mahendra Sonawane and Bhausaheb Chavan.

After the dead body was found, when the police started enquiry and they came across PW 5 and the photo of the body was shown, he identified it to be of one of the person, whom he had met with one another, the earlier night i.e. 12/01/2017. He was taken to the place where the body was found near, Shivneri Dhaba and he identified the said person to be the one amongst the two, who were seen by him on 12/01/2017 near

his field on Karhi Road in inebriated condition. He denied all the suggestions put to him that he was deposing falsely and he reiterated that when he enquired from their employer, he could gain knowledge that the two persons were Mahendra Sonawane and Bhausaheb Chavan.

He also identified the Accused, who was present in the Court and whom he met the previous night. As per version of PW 5 he sat for a while with the two persons near the bonfire and he showed them the way to Manmad as they were in inebriated condition, and since, he had spent some time with them, he could identify the Accused.

16. At a point of time subsequent when PW 5-Subhadh Ghuge had seen the Accused and deceased together, at around 10.15 to 10.30 p.m. on 12/01/2017, Vicky Francis (PW 14) while sitted outside kirana shop, saw one unknown person rushing from Bhalur Road. Obviously, he was thought of being a thief, an enquiry was made with him by PW 14 and one Vishal Darade. He had sustained injury on his left hand and had tied a handkerchief to the same, which had blood stains. PW 14 also gave the descriptions of the clothes worn by him and further deposed that when the enquiries were made with him, he disclosed his name as Mahendra Nimba Sonawane and

when he was enquired about the injury, he told them that he was a tractor driver and since he fell on the trolley, he sustained the injury and he was proceeding to the hospital.

Vicky Francis identified the person, whom he saw on 12/01/2017 having sustained an injury and with whom he had conversation and was told how he had sustained the injury. His statement was recorded by the police for the purpose of investigation on 13/01/2017 and he denied the suggestion that he had never came across the accused person.

17. Another incriminating circumstance which fit into the chain of circumstances, which point out to the guilt of the Accused, is the recovery of the articles belonging to the deceased from the Accused and for this purpose, prosecution has relied upon the discovery panchnama under Section 27 of the Indian Evidence Act and one of the panchas to the spot panchnama, namely Arun Hunde has proved the same by stepping into the witness box as PW 7.

The memorandum panchnama (Exhibit 21), led to the recovery of a packet containing some currency notes, of which the numbers were noted when the panchnama was prepared. It also include an Election Card of Bhausaheb Chavan with a passport photograph and also a diary with red colour cover

with certain names and phone numbers being inscribed belonging to the deceased. There is also a recovery of two passport size photographs of Bhausaheb Dashrath Chavan as well as a visiting card of Shiv Gorakshay Mobile Shopee and photo as well as one white colour mobile phone of Snexian 2022 make without a SIM card (Article I).

PW 7 deposed that upon the willingness being shown by the Accused while he was in police custody, to lead to certain articles, which he had concealed, he was called to act as a panch alongwith one more panch witness and the Accused in the company of the police team proceeded towards Vadner Khakurdi by police vehicle. When they reached Morder road, the Accused took the team to one house stating that it was his house and after entering into the house, he pulled out a bundle (गाठोडे) from behind the wall and from it, he took out a mobile, money (Rs.400/-), one handkerchief and clothes. The memorandum panchnama has listed the articles, which included the clothes of the Accused and some of his own documents, including a medical prescription in his name.

The recovery of the personalized items belonging to the deceased i.e. the Election Card, his passport size photographs as well as the mobile phone without SIM card, which he had

concealed in his own house after commission of crime is the incriminating circumstance, which complete the chain of circumstances, with the starting point of the Accused drinking liquor with the deceased in Fulvani country liquor shop at 18.02 hours, thereafter the two being seen together between 8.00 to 8.30 p.m. by PW 5-Subhash Ghuge and then the Accused seen alone by PW 14-Vicky Francis between 10.15 to 10.30 p.m. with an injury to his hand, who was seen running away from Bhalur Road.

The aforesaid circumstances with reference to the specific timelines and the fact that the body of the deceased was found in a ditch closer to the place where they were last seen together on the next date i.e. in the morning of 13/01/2017, the burden was on the Accused to establish as to how and when the Accused parted company from the deceased, but unfortunately when the circumstance of last seen was considered to be an incriminating circumstance and pressed by the prosecution before the trial Judge, he did not adopt any specific stand nor did he lead any evidence to the contrary.

Based upon the aforesaid circumstances, the trial Judge was perfectly justified in construing the chain of

circumstances sufficient enough to establish that Mahendra Nimba Sonawane, who was last seen in the company of Bhausaheb Chavan between 8.00 to 8.30 p.m. on 12/01/2017 and that Bhausaheb Chavan was found dead at 8 o'clock on 13/01/2017 by PW 3, based on the theory of last seen and with all other incriminating circumstances collected by the prosecution during the course of investigation, including the recovery of the articles belonging to the deceased Bhausaheb from Mahendra as well as no explanation being offered about the injury sustained by him and which was opined to be an injury sustained before two hours by PW 8 and two days before by PW 6, who examined the Accused prior to his arrest on 14/01/2017, in our view the chain of circumstances has been conclusively established by the prosecution, which only lead to the guilt of Mahendra Sonawane, which has been rightly appreciated by the trial Judge, resulting into his conviction.

18. The prosecution has established its case through cogent and reliable evidence brought on record through the witnesses and based on the principle of law laid down by the Apex Court in the case of ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra***[1], where the Apex Court had clearly laid down the five foundational factors which should be met before convicting

1 (1984) 4 SCC 116

an accused on circumstantial evidence, the trial Judge has found the test to be satisfied.

The five factors established being (i) Cogent Establishment - the circumstances from which the conclusion of guilt is drawn must be fully and cogently established; (ii) Definite Tendency - the facts so established must be consistent only with the hypothesis of the guilt of the accused leading no room for other explanations; (iii) Unbroken Chain - the circumstances should cumulatively form a chain so complete that there is no escape from the conclusion that with all human probability, the crime was committed by the accused and none else; (iv) Exclusion of Evidence - the evidence must be incapable of explanation or any other hypothesis than that of the guilt of the accused and (v) Complete and Conclusive - the circumstances must be of conclusive nature unerringly pointing out to the guilt of the accused.

All the aforesaid five circumstances having been clearly established by the prosecution to which we have referred to and on perusal of the impugned judgment, we have found that on appreciation of evidence led before the trial Court, the trial Court has relied upon the circumstantial evidence which clearly fit into parameters laid down in ***Sharad Sarda*** (supra).

19. We find that the trial Judge has rightly appreciated the chain of circumstances and applied the ‘last seen theory’ to be one of the circumstances, the theory being rooted in the Indian Evidence Act, 1872 and once the prosecution has established that the deceased was last seen alive in the company of the Accused, the onus shift on the Accused to explain the circumstances of his final movements with the victim as those facts are exclusively within his knowledge. The Accused has, however, failed to discharge the burden of establishing as to what are the course of events which took place after the deceased parted the company with the Accused and this fact exclusively within his knowledge, could have rebutted the case of the prosecution. In any case, by virtue of Section 114 of the Evidence Act, where the Court is empowered to presume the existence of certain facts, based on natural human behaviour and if the accused fails to provide an explanation, the Court is entitled to logically infer the involvement of the accused. If the Accused and deceased were seen together in inebriated condition so much so that it is PW 5, who had to show them the way towards Manmad, but they were conscious enough to disclose their own identity, as according to PW 5, they disclosed their names and within a short span of two hours,

PW 14 saw Accused running alone in the opposite direction with an injury being sustained on his hand, with he offering an explanation that since he hit the trolley, he sustained the injury, but the Doctors examining him, however, deposing that the injury was on account of sharp weapon and cutter being a sharp weapon, which was found lying on the spot, it can be well presumed that the injury was sustained by him in the scuffle, as in the statement under Section 313, the Accused has failed to offer any explanation as to how he had sustained the injury.

In the wake of the aforesaid, since the prosecution has established its case beyond reasonable doubt and discharged its burden, we find that the Additional Sessions Judge has committed no error in recording a finding of guilt under Sections 302 and 201 of IPC.

Recovery of the money and the mobile phone from the Accused, which belong to the deceased, has also established the motive of the Accused to rob the deceased and in an attempt to attain his object, the deceased has been done to death.

20. One more aspect on the imposition of sentence which is noted by us in the impugned judgment, is that the accused/appellant is convicted for the offence punishable

under Sections 302 of IPC and he is sentenced to undergo imprisonment for life and to pay fine and in case of default undergo further R.I.

On he being convicted for the offence punishable under Section 201 of IPC, he is sentenced to undergo rigorous imprisonment for a term of 5 years along with fine and a default sentence if the fine is not paid. In addition, there is also a conviction of the accused under Section 404 of IPC and for which he is sentenced to undergo R.I for one year and fine with a default clause.

In paragraph nos. 4 and 5 the impugned judgment direct thus:-

> "4. The substantive sentences of imprisonment for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 shall run consecutively (one after other).
>
> 5. The substantive sentence of imprisonment for the offence punishable under Section 404 of the Indian Penal Code, 1860 shall run concurrently with the sentences awarded for the other offences."

21. We find that while issuing a direction for the substantive sentences of imprisonment to run consecutively on being convicted under Section 302 and 201 of IPC, we do not find any specific reason assigned.

No doubt, it is the discretion of the Court to specify how the sentences imposed, on conviction in one trial for two or

more offences shall run and it is permissible to direct that the punishments when consisting of imprisonment to commence one after the expiration of other in such order as the Court may direct by virtue of Section 31 of the Code of Criminal Procedure, 1973, unless the Court directs that the punishments shall run concurrently.

By virtue of sub-section (2) of Section 31, in the case of consecutive sentences, it is prescribed that it is not necessary for the Court only on account of the aggregate punishment for several offences being in excess of the punishment which it is competent to inflict on conviction for a single offence, to sent the offender for trial before the higher court.

By virtue of a proviso appended, it is imperative for the sentencing court to take note of the fact that the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to inflict for a single offence.

22. The impugned judgment has directed the substantive sentence of imprisonment for the offences punishable under Section 302, 201 to run consequently (one after another) though it is not clearly prescribed as to whether the imprisonment for life, being the punishment imposed on being convicted for committing an offence punishable under Section

302 shall run first or the imprisonment for a fix term on being convicted under Section 201 shall run first.

In this regard, we are guided by the observations of the Hon'ble Apex in case of ***Muthuramalingam & Ors, vs. State Represented by Inspector of Police***[2] and paragraph no. 35, which reads thus:-

> "35. We may, while parting, deal with yet another dimension of this case argued before us, namely, whether the court can direct life sentence and term to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The trial court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 CrPC. The court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 CrPC. The converse however may not be true for if the court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the court below calls for any modification or alteration is a matter with which we are not concerned. The regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs."

23. Since we find that going by paragraph 4 of the impugned judgment the sentence of imprisonment for the offence punishable under Section 302 has been placed ahead of the sentence to undergo on being convicted under Section 201,

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applying the aforesaid principle laid down by the Apex Court, since it is not permissible to direct that the accused shall undergo the term sentence of imprisonment after the sentence of imprisonment for life, we deem it appropriate to modify direction no.4 in the impugned judgment and substitute the same by directing that the substantive sentence of the imprisonment for offence punishable under Section 302 and 201 shall run concurrently.

24. With the aforesaid modification in the sentence to be undergone by the accused/appellant, and by upholding the finding of conviction on all three counts namely Section 302, 201 and Section 404 of IPC, we modify the impugned judgment to the extent that the substantive sentences of imprisonment imposed on the accused, on being convicted for the aforesaid offences shall run concurrently.

In the aforesaid manner, the Appeal is partly allowed and disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**