



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 179/2022.

Rahul Babanrao Bhad,
Aged about 30 years, Occupation -
Service, resident of Mudliyar Nagar,
Amravati.

... **APPELLANT.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Rajapeth,
District Amravati.

... **RESPONDENT.**

Ms R.P. Jog, Advocate for the Appellant.
Ms D. Sapkal, A.P.P. for the Respondent.

CORAM : NITIN B. SURYAWANSHI AND
M. W. CHANDWANI, JJ.

Closed for Judgment on : 24.01.2025.
Judgment Pronounced on : 04.03.2025.

JUDGMENT (PER NITIN B. SURYAWANSHI, J.) :

This appeal challenges the judgment of learned Sessions

Rgd.

Judge, Amravati in Sessions Case No.33/2018 thereby convicting appellant/accused under Section 302 of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay fine of Rs.5000/-.

2. Prosecution case in short is that, Pratiksha was elder daughter of informant – Murlidhar Eknath Mehatre. Accused was residing in Mudliyar Nagar at the house of his maternal uncle since childhood, which was at a distance of 5 to 6 houses from informant's house. Friendly relations between Pratiksha and accused since childhood, were converted into love affair. As Pratiksha wanted to marry accused, informant called accused and his relatives at home for marriage talks, but, horoscopes of Pratiksha and accused did not match, hence, the informant declined to perform marriage of Pratiksha with accused. Accused used to make phone calls and insisted that Pratiksha should marry him. After some days Pratiksha received a notice from the Family Court along with a marriage certificate showing solemnization of marriage between Pratiksha and accused. On enquiry by informant, Pratiksha denied performance of marriage

with the accused. She also stated that she has not signed any certificate. Informant alleged that accused used to insist for performing marriage, therefore, he and Pratiksha lodged various reports at Frezarpura Police Station, Rajapeth Police Station and Gadge Nagar Police Station.

On 23.11.2017, when he was working in the shop, he received a phone call from his neighbour Shewta Baiskar informing him that accused killed Pratiksha by stabbing her with knife. He was asked to come at Irvin Hospital, Amravati, therefore, he went to Irvin Hospital. His daughter was brought there in injured condition by Shewta Baiskar and Rajendra Yete. On enquiry with Shewta about the incident, she informed that accused has stabbed Pratiksha. Pratiksha was declared dead, therefore he lodged report against the accused making above allegations.

3. On the basis of the report lodged by informant, Crime No.828/2017 was registered, and on completion of investigation, charge-sheet was filed. Accused was charged under Section 302 of the Indian Penal Code. In support of its case, prosecution has examined 6

witnesses, and defence has examined one witness.

4. Defence of the accused is of total denial. According to him, he had a love affair with Pratiksha and her parents were against their affair. They got married on 10.10.2013. After marriage they stayed at his house. When Pratiksha's parents came to know about their marriage, she went to her maternal house to convince her parents. However, she did not return. He tried to contact her, but, she did not respond therefore, on 23.11.2017 he filed petition No.A-128/2017 for Restitution of Conjugal Rights at Family Court, Amravati. He had gone to Nagpur on 24.11.2017 in the afternoon. Police officer from Rajapeth Police Station informed him that on 23.11.2017 some unknown person has killed Pratiksha and he was called for enquiry. When he went to the police station, he came to know that he is made accused in the crime. He was arrested and his signatures were obtained on blank papers. His clothes were called from his house.

Since family of Pratiksha was against their marriage and they were trying hard to break their relations, they gave police

complaints against him. Pratiksha's uncle Shri Gajanan Mehatre is police officer and her parents had threatened him that if he does not severe relations with Pratiksha, he will be implicated in false offence. He has stated that he has no concern with the alleged offence and on the date of incident he had gone to Nagpur for his construction work. Since he had married with Pratiksha, Pratiksha's parents and relatives have implicated him in the present crime. The trial Court found appellant/accused guilty and convicted him as stated above. Hence, this appeal.

5. Heard learned Counsel for appellant/accused and learned A.P.P. for respondent / State. Perused record and citations relied by the respective parties.

6. Learned Counsel for accused assailed the conviction by arguing that first information received by Rajapeth Police Station about the incident is suppressed by the prosecution and at the instance of parents of Pratiksha, who had grudge against accused, with the help of API Gajanan Mehatre [brother of informant], the appellant

is framed in the present case. Evidence of alleged eye witness P.W.5 does not inspire confidence and though she was taken to Rajapeth Police Station immediately after the incident, no first information report at her instance was registered though she has disclosed the incident, since she did not name the accused, same was not brought on record by the prosecution. It is clear from the record that information about the incident was received by Rajapeth Police Station at about 1 to 1.30 p.m. on 23.11.2017 and API Gajanan Mehatre had proceeded to the spot and conducted spot panchnama, even before registration of first information report lodged by P.W.1 father of the deceased. This itself shows that the information of the incident was received by Rajapeth Police Station immediately after the incident. According to her panchas to all panchnamas are same. Memorandum statement recorded under Section 27 and recovery is not believable. Investigating Officer forwarded the weapon used in crime for analysis to Forensic Lab., after 8 days. Chemical Analysis report shows that results of blood group were inconclusive and only human blood was found on clothes of the deceased, accused and

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alleged on the murder weapon. Therefore she submits that prosecution has utterly failed to prove its case against the accused beyond reasonable doubt. Hence, accused is entitled for acquittal. In support of her contentions, she has relied on the following judgments.

- [1] Lalita Kumari vrs. Government of Uttar Pradesh.
(2014) 2 SCC 1.
- [2] Allarakha Habib Memon .vrs. State of Gujarat.
(2024) 9 SCC 546.
- [3] Raja Naykar .vrs. State of Chattisgarh.
(2024) 3 SCC 481.
- [4] Khema .vrs. State of Uttar Pradesh.
SIR 2022 SC 3765
- [5] Sharad Sarda .vrs. State of Maharashtra.
(1984) 4 SCC 116.
- [6] Vijay vrs. State of Maharashtra.
(2015) 2 Mh.L.J. (Cri) 383
- [7] Subramanya .vrs. State of Karnataka
2023 All SCR 669
- [8] Ravindra Singh .vrs. The State of Govt. of NCT Delhi.
(2023) 4 SCR 480.
- [9] Krishnegowda .vrs. State of Karnataka.
2017 (4) Scale 42
- [10] Mustkeem .vrs. State of Rajasthan.
(2011) 11 SCC 724.

7. Per contra, the learned A.P.P. by relying on judgment of Apex Court in cases of **State of Rajasthan .vrs. Tej Ram and others**

(1999) 3 SCC 507; Babasaheb Apparao Patil .vrs. State of Maharashtra - AIR 2009 SC 1461; Criminal Appeal No.2324/2014 decided on 04.07.2018 - (Prabhu Dayal .vrs. The State of Rajasthan) and Periyanaayasamy .vrs. Inspector of Police, Aandimadam Police Station - AIR 2015 SC 2374, submitted that there is evidence of eye witnesses P.W.5 which is corroborated by P.W.2 Doctor and P.W.3 Krishna. By relying on Prabhu Dayal [supra], she submits that merely because blood group could not be determined as results were inconclusive, no benefit can be given to the accused. According to her first information report, station diary entries, spot panchnama corroborates prosecution case, hence, non production of information received at first point of time about the incident would not make prosecution case doubtful.

8. We have perused the record with the assistance of learned Counsel for appellant and learned A.P.P. for respondent State.

9. Homicidal death of Pratiksha is proved by the prosecution by examining Dr.Pankaj Dive [P.W.2], who has conducted autopsy on

the dead body of Pratiksha on 23.11.2017. Postmortem was conducted at about 5 p.m. on the same day and it was concluded at 5.30p.m. Upon external examination, following injuries were noticed on Pratiksha's body :

- [A] Stab wound on left thigh near inguinal region measuring 2 inches x ½ cm. X 4 inches.
- [B] Stab injury on left breast measuring 2 inch x ½ cm x 4 inch.
- [C] Stab injury on lower lip measuring 2 inch x ½ cm x 1 inch.
- [D] Stab injury on left shoulder on back side measuring 2 inch x ½ cm x 3 inch.
- [E] Incised wound on left hand measuring 6 inch x 1 inch x 4 inch.
- [F] Incised wound on left ear running till neck measuring 2 inches.
- [G] Two stab injuries on abdomen measuring 2 inch x ½ cm x 4 inches.
- [H] Two stab injuries on right shoulder measuring 3 x 1 x 1 inch.

In the postmortem report [Exh.20], he opined that the probable cause of death was “hypovolemic shock due to tear of the left lung”.

10. In cross he admitted that in the requisition [Exh.28] received by him from the police station asking him whether the injury

which were noticed in column no.17 of the postmortem report were caused by the means of a weapon – knife [Article ‘A’]. It is not mentioned that the weapon i.e. knife [Article ‘A’] was sent in unsealed state.

11. Murlidhar [P.W.1] - father of deceased is the informant has deposed in terms of the report [Exh.13]. First information report [Exh.14] was registered on the basis of report Exh.13. It is pertinent to note that in first information report in column no.3[b], it is mentioned that information about the incident was received at Rajapeth Police Station at 13.36 hours on 23.11.2017. The report Exh.13 is lodged by P.W.1 at 19.13 hours.

In cross-examination P.W.1 has stated that he read the contents of the notice received from Family Court and it is true that said notice was in respect of restitution of conjugal rights. He deposed that he did not know whether marriage of Pratiksha and Rahul was solemnized on 10.10.2013, as was mentioned in the marriage certificate [Exh.16]. He had enquired from Shewta about the incident at Irvin Hospital, as well.

12. It is clear from his evidence that he received information about assault on Pratiksha at 1 p.m. on 23.11.2017. Immediately he went to Irvin Hospital where he met Shewta, who has allegedly informed him about assault by the accused on Pratiksha, but, he went to lodge first information report only in the night. Prosecution has failed to explain the delay in lodging first information report.

13. P.W.5 Shewta is the star witness of prosecution, who claims to be an eye witness of the incident of assault on Pratiksha. She has deposed that she knows P.W.1, as she resides in front of his house. She was knowing Pratiksha and she used to accompany her frequently. She knew Rahul as whenever she went with Pratiksha outside the house, on 2-3 occasions he met Pratiksha and there was communication between Rahul and Pratiksha. On the date of incident also she had witnessed him. She further deposed that incident occurred on 23.11.2017 at about 11.30 a.m. to 12 noon. On that day, she accompanied Pratiksha for going to Onkar temple for taking darshan. They went on Pratiksha's two wheeler, Pratiksha was

driving it. Onkar temple is situated at Vrundawan colony, Sai Nagar. After they took darshan they waited for 5 to 10 minutes and again they started to return towards their house. On the way she was having some work, therefore, she called from her mobile phone and was talking on mobile phone. She realized that Pratiksha had again turned the vehicle towards the temple. She asked her why she has reversed the vehicle towards temple, Pratiksha disclosed that “kaku pathimagun Rahul Bhad yet ahe”. Rahul came from backside in fast speed. He was riding his vehicle parallel to their vehicle. She was facing opposite side, but, she had seen who is riding the vehicle in fast speed and it was Rahul. Thereafter Pratiksha slowed her vehicle, stopped the vehicle and parked it on side stand. She got down from the vehicle and was standing near by. Accused Rahul also stopped the vehicle and parked it. There was communication between Rahul and Pratiksha. Immediately Rahul took out a knife from his back pack, which was on his back, and gave blow of said knife on the person of Pratiksha. Pratiksha fell on the ground in bleeding condition and accused ran away from the spot. She shouted for help, and was requesting the

people who gathered there for help, but, nobody was coming forward to help. At that time one unknown person came on motorcycle. She requested him to help and asked him to take her to Onkar temple. He took her on motorcycle to Onkar temple. She asked Rajendra dada who was in the temple to help her and disclosed him about the assault on Pratiksha and he helped her. Thereafter, Rajendra, herself and one Sunita Pise came to the spot where Pratiksha was lying. Sunita Pise was a Doctor by profession and she tried to give first aid to Pratiksha. Rajendra stopped one car and injured was shifted in car, Rajendra and Sarita sat in car and took Pratiksha on their lap. She sat on front seat of the car. When they were proceeding towards hospital, she called Pratiksha's father and disclosed him that Rahul had given knife blow to Pratiksha and they were taking Pratiksha to hospital, and he should come to the hospital. They brought Pratiksha at Irvin Hospital. Her father had already reached there. Medical officer examined Pratiksha. Police took her at Rajapeth Police Station, where she came to know that Pratiksha is declared dead in the hospital. Thereafter she returned to her home. On next day, she was called at Rajapeth Police Station

by police and her statement was recorded. Again she was called by police after approximately one month, and thereafter, she went to the Court. Her statement [Exh.48] under Section 164 of the Code of Criminal Procedure was recorded in the Court as per her narration. She has stated that Pratiksha died due to assault by the accused by means of knife.

In cross-examination she admitted that she was taken to police station by police after the incident to enquire with her about the incident. In next breath she has stated that on that day she was not enquired by the police about incident. She admitted that she had stated before the Magistrate that Rajapeth Police took her to Rajapeth Police Station after Pratiksha was taken to hospital and police enquired with her about the incident. In next breath again she volunteered that on that day police did not enquire with her. She came to know about death of Pratiksha in the police station. She did not try to intervene in the quarrel between Rahul and Pratiksha. She has not tried to give first aid to Pratiksha after accused ran away from the spot of incidence. She denied the suggestion that at the time of incident she was in Onkar

temple, and one unknown person killed Pratiksha, she subsequently came there and came to know about Pratiksha's death. She denied that as there were good relations between her and family of Pratiksha, and on say of parents of Pratiksha, she is deposing false against the accused.

14. Rajendra Yete [P.W.4] has deposed that Onkar temple is in his house and he looks after the day to day activities of said temple. The incident occurred on 23.11.2017 at about 12.30 to 12.45 p.m. On that day Pratiksha Mehatre and Shewta Baiskar had been to temple for darshan. They came on two wheeler. They left temple after taking darshan. After they left temple, he went inside the house and within 10 minutes Shewta came to his house, she was weeping. She told him that Pratiksha was assaulted by Rahul by knife and she is lying in pool of blood. He immediately went with Shewta. Pratiksha was lying at a distance of 500 to 600 feet from Onkar temple. Dr.Sunita Pise was at that time at temple and therefore, he also took her to the spot. They stopped one vehicle at the corner, and took Pratiksha to Irvin Hospital in said vehicle. In the meantime Shewta called Pratiksha's father and

informed him about the assault on Pratiksha. He was in hospital for 10 minutes. Medical officer in Irvin Hospital declared Pratiksha dead. Thereafter he returned home.

15. In cross-examination, he has stated that since last 8 years he is running a NGO namely 'Human Right Prashashan', which has an aim to help the people. He is using a cell phone. He is having list of phone numbers which are providing emergency services, including police station, ambulance etc. Intention to keep said phone numbers is to take help from them in case of emergency. He admitted that some time his NGO has to work in respect of criminal offence and he is aware about the criminal investigation. He is aware that any blood stained on clothes, soil etc., are important in criminal investigation. He denied that when he put Pratiksha in the vehicle, her injuries were bleeding. Slight blood stains had stuck to his shirt while lifting her and putting her in the vehicle. Police did not seize his clothes. He did not attempt to inform police immediately when Shewta approached him and narrated the incident. He attempted to inform the police, as police were already in Irvin Hospital. He denied that since he was not

present on the spot of incident, he did not immediately report to police. In re-examination by learned A.P.P., he has stated that he had burnt his clothes after he returned from the hospital, as he has to enter the temple.

16. PI Durgesh Tiwari [PW 6] has stated in his deposition that he knows API Gajanan Mehatre and PSI Manisha Samatkar, as they were working with him in Rajapeth Police Station. On the basis of report lodged by Murlidhar, Crime No.828/2017 was registered at Rajapeth Police Station under Section 302 of the Indian Penal Code. API Gajanan Mehatre has recorded said report and he has registered the offence accordingly. API Mehatre has also drawn spot panchnama. He received investigation of said crime on 24.11.2017. He received first information report, spot panchnama, inquest panchnama and arrest panchnama of accused along with necessary correspondence. The accused was arrested by PSI Pankaj Dhoke. Vide arrest panchnama [Exh.57]. At the time of arrest, some articles were found in black colour laptop bag of the accused i.e. adhar card, black sun goggle, one marriage certificate, one Samsung mobile phone,

photographs of accused and deceased 5 in number, stamp papers and one plastic cover which mentions price of knife and one bill of D-mart.

17. On 27.11.2017 while in police custody, the accused has shown his willingness to make statement and his memorandum statement [Exh.38] was recorded, wherein he has shown willingness to show the place where he has kept the weapon used in commission of offence. Accordingly accused took them at Samarthwadi. There were iron pipes at the road side and accused produced knife from said pipe. Accordingly recovery panchnama [Exh.39] was prepared. He also collected CCTV footage from a house near the spot of incident. He has conducted investigation and recorded statement of witnesses under Section 164, forwarded samples to forensic lab.

18. During cross, he stated that he has produced station diary extract dated 23.11.2014, 24.11.2017, 27.11.2017, 01.12.2017 and 05.12.2017. He admitted that station diary is an important part of investigation and all activities carried out during investigation are

entered in the station diary. Entries regarding present crime taken on 23.11.2017 are also taken in the station diary. He admitted that same panchas are used for all the panchnamas from 24.11.2017 to 05.12.2017. In seizure memo [Exh.35] about motorcycle, it is not mentioned that from which place said motorcycle was seized. He admitted that the object behind sealing of articles is that there should not be any type of tampering with the articles. He also admitted that Exh.37 no where shows that from which place the accused had produced his clothes. He also admitted that after writing description of the articles it is not mentioned that articles were sealed at the spot immediately. Though the accused was arrested on 24.11.2017, his clothes were seized on 25.11.2017. It was possible for him to seize the clothes on 24.11.2017 after arrest. He volunteered that he was busy in investigation. He denied that he has shown to have seized clothes on 25.11.2017, as he sprinkled blood on the clothes of accused.

He has admitted that seized articles are to be sent to C.A. analysis immediately to secure their evidentiary value. He seized weapon on 27.11.2017 and it was forwarded to C.A. on 04.12.2017

i.e. after 8 days. He failed to give any explanation as to why knife was sent to C.A. after 8 days. He denied that he obtained human blood, sprinkled it on the knife to falsely implicate the accused, and therefore, it was sent to C.A. late. Accused was arrested on 24.11.2017 and his PCR was obtained on the same day, but, accused did not disclose anything between the period from 24.11.2017 to 26.11.2017. He admitted that name of the spot from where panchnama of recovery is made has to be mentioned in the panchnama. Place of seizure is adjacent to highway. He however, denied that it is an open place. He further admitted that in memorandum statement [Exh.38], it is not mentioned that the accused was giving voluntary statement. It is also not mentioned in Exh.38 that he informed the accused that the voluntary statement of the accused can be used against him and he has right to keep silence.

19. He further admitted that he is aware about the police inform book which is maintained at general hospital. He has received the police inform book about present incident. In the police inform book spot of incident is mentioned as Sai Mandir, Sai Nagar. He had

verified entries of said book.

20. During investigation he collected marriage certificate of the deceased and accused, extract of Notary [Exh.78 – about marriage of accused and deceased], copy of affidavits sworn by deceased and accused before Notary in respect of their marriage executed on 10.10.2013, photographs of marriage. Since these documents were photocopy, it was given 'Article E'. He had recorded statement of witnesses from which it was revealed that marriage between deceased and accused was performed as per Hindu rites and religion on 10.10.2013. It was also revealed that accused Rahul has filed HMP No.A-128/2017 in the Family Court, Amravati. From photographs collected during investigation, it was revealed that the deceased seemed to be happy.

21. He further admitted that on 23.11.2017 when dead body was taken in Irvin Hospital, P.W.5 Shewta was taken to the police station for making enquiry. He denied that on the basis of enquiry made with PW 5, first information report was registered in the police

station. He admitted that when any information is received by police station about serious offence, then said information is forwarded to police control room for immediate action. Personally he did not forward any information to police control room about said incident. He did not know whether police control room has forwarded said information to I-car unit. He denied the suggestion that during investigation it was revealed to him that police control room has received information that unknown boy has stabbed a girl with knife. From three photographs [Exh.54], it is seen that two persons are on the vehicle covering their face by scarf. Omissions from the evidence of P.W.1 were proved through this witness. He denied that he has suppressed first information report lodged by P.W.5 Shewta on the date of incident.

22. In re-examination he has stated that he recorded statement of Shewta and Rajendra on 24.11.2017. He has taken entry in station diary on 01.12.2017 that he had to record statement of these witnesses under Section 164 of the Criminal Procedure Code. He has taken entry in station diary on 05.12.2017, as he was to record statement of

witness under Section 164 of the Criminal Procedure Code. In cross, he admitted that he had not mentioned about both the entries that statement of the witnesses under Section 164 of Criminal Procedure Code are to be recorded.

23. Defence examined Umesh Banubakode [D.W.1] Assistant photographer serving in Police Commissioner's Office. He has stated that he is serving at Police Commissioner's office in I-car unit as Assistant Photographer since 2015. Police made enquiry with him regarding incident dated 23.11.2017. He was present in the office. During afternoon hours his unit received a phone call from control room informing that one incident had occurred at Sai Nagar area and they require I-car unit. Said incident was regarding one boy had stabbed one girl and there was blood on the spot of incident and therefore, they were called. Accordingly he along with unit reached at the spot of incident. He clicked photographs of the spot. Police made enquiry with him after the incident.

24. Defence with permission of the Court declared him hostile

and cross examined him. In cross, he admitted that CRO had informed him that in the jurisdiction of Rajapeth Police Station in the vicinity of Sai Nagar in Vrindavan Vihar No.2, near house of A.B.Wankhede, some unknown person has stabbed one girl and he was asked to come along with I-car unit. The said information was received by him approximately at about 15.00 to 15.30 hours. His statement was recorded accordingly. In cross by learned A.P.P., he has stated that CRO means Control Room Officer. The message which was received from CRO every time is not in the form of detail message.

25. On careful scrutiny of prosecution evidence, it is clear that there are serious flaws in prosecution case. According to prosecution, the incident of assault on Pratiksha by Rahul took place in between 11.30 a.m. to 12 noon and the same is witnessed by P.W.5, who claims that Rahul gave a single blow of knife to Pratiksha. In her statement [Exh.48], under Section 164 of the Criminal Procedure Code also she has categorically stated that Rahul gave a knife blow on

Pratiksha's shoulder. If we consider the medical evidence, P.W.2 Dr.Pankaj has found eight stab wounds and two incise wounds on Pratiksha's body.

Non-disclosure of other injuries, except the injury on Pratiksha's shoulder creates serious doubt on the testimony of P.W.5, and it appears that she has not witnessed the incident.

26. Conduct of P.W.5 is also not natural. She neither tried to intervene during the assault, nor gave any first aid to Pratiksha after accused ran away from the spot of incident. It has come in her evidence that she has immediately informed the incident to Pratiksha's father. When P.W.5 reached hospital along with Pratiksha, she was taken to Rajapeth Police Station but no enquiry was made from her about the incident. But, she has admitted that she has stated before the Magistrate that Rajapeth Police took her to Rajapeth Police Station after Pratiksha was taken to hospital and police had enquired with her about the incident. These admissions render her evidence doubtful. If enquiry of the incident was made with her, then she would have

definitely disclosed that accused assaulted Pratiksha. On the basis of said disclosure, first information report would have been registered at that point of time only. Non registration of first information report at the instance of P.W.5 further creates a serious doubt about the prosecution case. It appears that either she has not witnessed the incident or as accused has not assaulted Pratiksha, she has not disclosed his name as assailant during enquiry. Her evidence therefore, does not inspire confidence.

27. It has come in the evidence of Investigating Officer, PI Tiwari (P.W.6), that API Gajanan Mehatre, brother of P.W.1 informant Murlidhar was working at Rajapeth Police Station at the relevant time and he has recorded the report [Exh.13] lodged by P.W.1 and first information report [Exh.14]. API Mehatre has also drawn spot panchnama.

It is pertinent to note that spot panchnama (Exh.34) was conducted during the period between 16.25 to 17.30 hours. It is mentioned in the spot panchnama that as per station diary sana no.25/17, spot panchnama was being conducted. It is necessary to

mention here that number '25/17' appears to be over written, particularly number '2'. The spot is shown by Rajendra Yete [P.W.4]. It is stated in spot panchanma that on the spot on 23.11.2027 at 12.45 p.m. one person has killed Pratiksha by stabbing her.

28. From the evidence brought on record by prosecution, it is clear that information about the incident was already received with Rajapeth Police Station at 13.36 hours, but, the prosecution has deliberately suppressed said information and the station diary entry of the same. On receipt of information of the incident API Mehatre proceeded to the spot and conducted spot panchnama [Exh.34]. Considering the evidence of P.W.1, P.W.5 and P.W.6 and documents brought on record it is clear that the information of incident was already received by Rajapeth Police Station at 13.36 hours immediately after the incident. However, the said information is deliberately suppressed by the prosecution and therefore, it is clear that prosecution has suppressed genesis of the crime, hence, adverse inference needs to be drawn against the prosecution and benefit of doubt needs to be given to the accused.

29. In Lalita Kumari [supra], the Apex Court has observed as under :

“97. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154[1] is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157[1]] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154[1] of the Code or otherwise under Section 157[1] of the Code is obligatory. The obligation to register FIR has inherent advantages :

97.1. ...

97.2. ...

97.3. ...

97.4.(d) It leads to less manipulation in criminal cases and lessens incidents of “antedated” FIR or deliberately delayed FIR.

98. In Thulia Kali v. State of T.N.(1972) 3 SCC 393, this Court held as under (SCC p.397, para 12)

“12. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of

corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

The above observations support the defence of accused.

30. In case at hand, it has come on record that marriage between Rahul and Pratiksha was already solemnized in the year 2013, though her parents were against it. Rahul has filed proceeding

for restitution of conjugal rights and he was prosecuting the same. Pratiksha's father (P.W.1) was against the union of Pratiksha and Rahul. It appears that with the help of his brother API Gajanan Mehatre he has implicated accused Rahul in the present case. In the light of above observations, the accused is entitled for benefit of doubt.

31. The memorandum of statement [Exh.38] and recovery panchnama [Exh.39] are also of no help to the prosecution, for the reason that though the accused is arrested on 24.11.2017, the weapon is seized from him on 27.11.2017. It was forwarded for chemical analyzation after 8 days on 04.12.2017. As per admission given by P.W.6 it is neither mentioned in memorandum statement that accused has voluntarily given statement, nor it is mentioned that the investigating officer has informed the accused that his voluntary statement can be used against him, and he has right to keep silence. Recovery of alleged weapon is from open place. P.W.2 Pankaj Diwan to whom the weapon i.e. knife [Article-A] was sent for opinion, has admitted in his cross-examination that it is not mentioned in the requisition that the weapon i.e. knife was sent in sealed condition.

Rgd.

Seized articles were not sealed by the investigating officer. No explanation is given by the investigating officer as to why on the date of arrest i.e. 24.11.2017, clothes of accused were not seized and they were seized on the next day.

32. Perusal of the C.A. report [Exhs.23 to 26] shows that the blood detected on clothes of the deceased, accused, as well as on knife was human blood. However, the blood group could not be determined as the results were inconclusive.

In Allarakha Habib Memon [supra] having disbelieved the evidence of eye witness, though human blood was found on the weapon, it is held “*..this by itself does not establish the guilt of the appellant unless the same was connected with murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of Mustkeem was not sufficient for test as the same had already disintegrated.*”

33. As regards disclosure statement, in Allarakha Habib

Memon [supra] it is observed by Apex Court that :

“44. On a perusal of the deposition of the Investigating Officer(PW18), we find his evidence on the aspect of disclosure statements made by the accused-appellant leading to the recoveries to be totally perfunctory and unacceptable. The witness did not elaborate upon the words spoken by the accused-appellant at the time of making the disclosure statements.

45. On a threadbare analysis of the entire record, we do not find that the prosecution examined any witness who had deposed about the link evidence/safe custody of the mudammal articles right from the time they were received at the police station and seized till the time the same reached the FSL. Hence, otherwise also, the FSL report (Exhibits 111-115) pales into insignificance. Investigating Officer(PW-18) deposed that he arrested the accused persons. A detailed enquiry was made from all three accused-appellants, and they were examined for the injuries found on their bodies. Thereafter, all the accused-appellants conveyed their willingness to show the place of the offence and thereafter, panchnama as per Section 27 of the Evidence Act was prepared. Since the place of incident was also known to police, this disclosure is irrelevant. Search of the houses of the accused-appellant was undertaken in presence of the panch witnesses and a big knife was seized from the house of the accused Mohmedfaruk @ Palak, vide panchnama(Exhibit-

52).

46. Hence, we are of the firm view that neither the disclosure statements made by the accused were proved as per law nor the same resulted into any discovery which could be accepted as incriminating inasmuch as the requisite link evidence was never presented by the prosecution so as to establish that the recovered articles remained in the self-safe condition from the date of the seizure till the same reached the FSL.”

34. The Hon’ble Apex Court in its judgment in case of Mustkeem [supra] has observed as under :

“27. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.”

35. In Raja Naykar the Apex Court has held as under :

“16. As per the FSL report, the blood stains found on the dagger were of human blood. However,

the FSL report does not show that the blood found on the dagger was of the blood group of the deceased. Apart from that, even the serological report is not available.

17.

18. *Another circumstance relied on by the Trial Judge is with regard to recovery of blood-stained clothes on a Memorandum of the appellant. The said clothes were recovered from the house of the appellant's sister-in-law. The alleged incident is of 21st October 2009, whereas the recovery was made on 25th October, 2009. It is difficult to believe that a person committing the crime would keep the clothes in the house of his sister-in-law for four days.*

19. *It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased. In the case of Mustkeem alias Sirajudeen v. State of Rajasthan, this Court held that sole circumstance of recovery of blood-stained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of blood-stained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt.*

20. *As already discussed hereinabove, merely*

on the basis of suspicion, conviction would not be tenable. It is the duty of the prosecution to prove beyond all reasonable doubt that it is only the accused and the accused alone who has committed the crime. We find that the prosecution has utterly failed to do so.”

The aforesaid observations are squarely applicable to the facts of the present case and they support the defence of accused.

36. In State of Rajasthan .vrs. Teja Ram [supra], in the facts of that case the Apex Court has held that -

“25. Failure of the serologist to detect the rigin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin ? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.”

37. In Prabhu Dayal [supra], Apex Court has observed that :

“12. The reports of the Forensic Science Laboratory as well as those of the Ballistic Experts have been perused by us. The 20 Forensic Science Laboratory report discloses that the samples collected from the scene of the offence had bloodstains of human origin. However, since the bloodstains were disintegrated by the time the bloodstains were examined by the Forensic Science Laboratory, the blood group could not be determined. For the same, the accused cannot be unpunished, more particularly when the bloodstains were found of human origin.

In State of Rajasthan v. Teja Ram, (1999) 3 SCC 507, this Court concluded that even when the origin of the blood cannot be determined, it does not necessarily prove fatal to the case of the prosecution.”

The aforesaid observations of the Apex Court are in the facts of that cases. In the case at hand for non-sealing the articles relating to recovery of clothes of accused and alleged weapon and for forwarding it belatedly to the forensic lab, prosecution case is rendered doubtful, hence, these observations are of no help to the prosecution case.

38. In case of Periyanaagayasamy [suspra], it is held that sole eye

witness was shown to be on enemical terms towards the accused and even if there is a difference between ocular and medical evidence, that cannot be a ground to acquit the accused. The Apex Court therefore, confirmed the conviction awarded to the accused. This decision is rendered in different facts and is of no assistance to the prosecution.

39. In Babasaheb Apparao Patil [supra], it is held that merely because eye witnesses instead of reporting the incident to police went to the house of his uncle, his conduct cannot be said to be unnatural and the same does not impair creditworthiness of his evidence.

There cannot be any dispute about the aforesaid proposition, however, as observed above, in the present case the evidence of P.W.5 alleged eye witnesses does not inspire confidence, hence, this citation is also of no help to the prosecution.

40. In Sharad Sarda [supra], it is held that - “if the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt.” .. *“It is well settled that where on the basis of*

evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram .vrs. State of Himachal Pradesh (AIR 1973 SC 2773), this Court made the following observations : Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

41. From over all appreciation of evidence available on record, we are of the considered view that testimony of P.W.4 and P.W.5 is not reliable, and prosecution has failed to lead convincing evidence to establish the guilt of the accused beyond reasonable doubt, so as to hold the accused responsible for the crime. Hence, the conviction of the accused recorded by the trial Court and the sentence awarded to him is unsustainable. The appellant/accused deserves to be acquitted

by giving him benefit of doubt. Hence the following order.

ORDER

1. Criminal Appeal is allowed.
2. The conviction of appellant/accused under Section 302 awarded by the Sessions Judge, Amravati in Sessions Trial No.33/2018 dated 20.01.2021 is hereby quashed and set aside. He is acquitted of offence punishable under Section 302 of the Indian Penal Code.
3. The appellant/accused be released forthwith, if not required in any other case.
4. Muddemal property be dealt with in accordance with law.
5. Appellant to execute bail bonds in terms of Section 437 of the Criminal Procedure Code.

JUDGE

JUDGE