

MHKO010020822019



Received on :- 16/05/2019
 Registered on :- 17/05/2019
 Decided on :- 22/08/2025
 Duration :- Y. M. Ds.
 06 03 06

IN THE COURT OF SESSIONS JUDGE, KOLHAPUR,
AT KOLHAPUR

(Presided over by **Smt.Kavita B. Agrawal** –Sessions Judge)

Sessions Case No. 117/2019.

Exh.No. 135 /A

(C.R. No. 25/2019 at
 Kodoli Police Station,
 District : Kolhapur.)

Complainant	The State of Maharashtra	
Represented By	Shri. A. M. Peerzade and Shri. A. A. Mahadeshwar, Ld. APP for the State.	
Accused	1	Rohit Sambhaji Jadhav, Age 21 years, Occu. Labour, R/o. Borpadle, Tal. Panhala, Dist. Kolhapur.
	2	Rohit Suresh Jadhav, Age 20 years, Occu. Labour, R/o. Vaibhav Nagar, Kodoli, Tal. Panhala, Dist. Kolhapur.
Represented By	Shri. V. M. Khade, Learned Advocate. for accused Nos. 1 and 2,	

Date of offence	31/01/2019 to 01/02/2019
Date of FIR	01/02/2019
Date of Chargesheet	16/05/2019
Date of Framing of Charges	09/01/2020
Date of commencement of evidence	27/03/2023
Date on which judgment is reserved	14/08/2025
Date of the Judgment	22/08/2025

Date of the Sentencing Order, if any	---
--------------------------------------	-----

Accused Details

Sr. No.	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P. C.
1	Rohit Sambhaji Jadhav	03/02/2019	23/06/2020	U/s.302, and 201 r.w. 34 of IPC	Acquitted	01 Year 04 months 20 days.
2	Rohit Suresh Jadhav	03/02/2019	04/03/2020	U/s.302, and 201 r.w. 34 of IPC	Acquitted	01 Year 01 month 01 day.

A. List of prosecution witnesses:

Rank	Name	Exh. Nos.	Nature of Evidence
PW1	Jitendra Tanaji Lohar	58	Panch on seizure of cloths of deceased and seizure of motor cycle used in the offence.
PW2	Dattatraya Ganpati Kashid	61	Panch on memorandum of accused Nos. 1 and 2 and recovery panchanamas.
PW3	Pratap Raghunath Patil	65	Panch on memorandum of accused No. 1 and discovery panchanama.
PW4	Jalindar Bhagwan Patil	70	Employee working in the alleged country liquor shop.
PW5	Nilesh Jagannath Patil.	72	Witness who gave lift to the deceased on the date of incident.
PW6	Vaibhav Arjun Gavali.	74	Friend of the deceased who had seen deceased with accused prior to the incident.

PW7	Amol Sanjay Sinhasane.	77	Witness who has collected the CCTV footage from DVR of the day of incident.
PW8	Priyanka d/o. Jaysing Lohar.	85	Sister of deceased.
PW9	Kundlik Bhanudas Nikam.	86	Panch to the spot panchanama dt. 01/02/2019.
PW10	Sunny Sunder Karande.	91	Photographer who has snapped photographs P-1 to P-4 of deceased near lake.
PW11	PC Sachin Ganpati Waydande.	99	Police Constable who has issued hash value of the memory card.
PW12	Sampatrao Shamrao Patil.	106	Owner of country liquor shop.
PW13	Medical officer Dr. Nutan Gouri Takekar	109	M.O. Conducted P.M. on deceased.
PW14	Sanjiv Dattatraya Zade	114	Investigating officer.

A. Prosecution exhibits :

Sr. No.	Exh. Nos.	Description.
1	P-59/PW1	Seizure panchanama of the cloths of the deceased dt. 01/02/2019.
2.	P-60/PW1	Seizure panchanama of the motor cycle dt. 08/02/2019.
3.	P-62/PW2	Memorandum panchanama made by accused No. 2 Rohit Suresh Jadhav.
4.	P-62/A/ PW2	Seizure panchanama of the cloths of accused No. 2 and a mobile phone.
5.	P-63/PW2	Memorandum panchanama made by accused No. 1 Rohit Sambhaji Jadhav.

Sessions Case No. 117/2019 (J)

6.	P-63/A/ PW2	Seizure panchanama of the cloths of the accused No. 1 and a wallet.
7	P-66/PW3	Memorandum panchanama dt. 06/02/2019 made by accused No. 1 showing the spot of incidents.
8	P-67/PW3	Discovery and recovery panchanama dt. 06/02/2019.
9.	P-78/PW7	Certificate U/sec. 65-B of Evidence Act dt. 07/02/2019.
10.	P-87/PW9	Spot panchanama dt. 01/02/2019.
11.	P-88/PW9	Inquest panchanama of the dead body.
12.	P-100/ PW11	Hash value certificate dt. 05/02/2019.
13.	P-101/ PW11	Hash value certificate dt. 06/02/2019.
14.	P-102/ PW11	Hash value certificate dt. 07/02/2019.
15.	Exh. 104	CA Report dt. 29/03/2019 regarding blood sample . (Admitted)
16.	Exh. 105	CA Report dt. 29/03/2019 regarding Viscera. (Admitted).
17	P-110/ PW13	Post mortem report dt. 01/02/2019 of the deceased.
18	P-111/ PW13	Final cause of death certificate.
19.	P-115/ PW14	Report of Ajit Rajaram Patil dt. 01/02/2019.
20.	P-116/ PW14	Letter issued to the Medical officer by IO.
21.	P-117/1 and P-117/2	Arrest panchanamas of the accused Nos. 1 and 2.
22.	P-122/ PW14	CDR report of mobile number of deceased of Vodaphone company.
23.	P-123/ PW14	Death certificate of deceased Prasad Lohar.
24.	P-124/	Letter issued by JMFC, Panhala as

	PW14	regards recording of statement U/sec. 164 of Cr.P.C.
25.	P-125/ PW14	Statement U/sec. 164 of Cr.P.C. of Jalindhar Patil.

B. Defence exhibit : Nil.

C. Court Exhibits : Nil.

D. Material Objects :

Sr. No.	MO/ Article Nos.	Description
1.	MO1	Big Stone.
2.	MO2	Piece of white colour cloth.
3.	MO3	Soil Mixed with blood.
4.	MO4	Simple soil.
5.	MO5	Greenish Black colour T-shirt with horizontal line.
6.	MO6	Black Colour Track pant.
7.	MO7	Baniyan.
8.	MO8	Underwear.
9.	MO9	Black colour jerking.
10.	MO10	Army Pant
11.	MO11	Mobile hand set.
12.	MO12	White colour shirt.
13.	MO13	Black colour jean pant.
14.	MO14	Leather wallet.
15.	MO15	Small Stone.
16.	MO16	Hero Honda Splendor Plus Motor cycle bearing No. MH-09-EA-5410.
17.	P1 to P4	Photographs.
18.	M1 to M3	Spot Panchanama Photos, Memorandum panchanama photos and CCTV footage.

Offence U/Secs.302 and 201 R/w. 34 of the Indian Penal Code, 1860 ('IPC' for short).

– J U D G M E N T –

(Delivered on 22nd August, 2025)

The accused persons are charged for the offence of murder of Prashad Jaysing Lohar in furtherance of their common intention.

02. The prosecution case, in short, is as follows :

a) It was on 01/02/2019, that one Ajit Patil has called Kodoli Police Station and informed that a dead body was seen near the lake of village Jakhale. Entry of the said information was taken in station diary. The investigating Officer (I.O.), PI Sanjeev Zade went to the spot and recorded the report of Ajit Patil. Offence was registered against unknown person for murder of unknown male deceased, aged between 20 to 30 years.

b) On the same day P.I. Zade, Investigating officer conducted the spot panchanama near lake Jakhale, in presence of two panchas. From the spot, a big stone smeared with blood was seized and blood samples were collected from the spot along with simple soil. Photographs were taken, inquest panchanama was conducted on the deceased at the spot itself. The deceased was having injury on forehead and there was bleeding. The dead body was sent for post-mortem to Sub District Hospital, Kodoli. After conducting inquest panchanma when the dead body was forwarded for autopsy, sister Priyanka Lohar identified

the deceased as her brother Prasad Jaysing Lohar. Investigating Officer, collected postmortem report. Viscera was sent to FSL, Kolhapur. After receiving the C. A. report, Medical Officer has given final cause of death. The P. M. note was issued in the name of deceased as he was later on identified. The cloths of the deceased were seized under panchanama. The statements of sister and father of the deceased and other material witnesses were recorded.

c) During investigation, from the statement of Vaibhav Gavali (PW6) it was transpired that, as he received phone call of Prasad he went to Vijay Chowk, Warananagar. There he saw Prasad Lohar along with accused Rohit Sambhaji Jadhav and Rohit Suresh Jadhav. He had some talk with Prasad and returned home. On the next day, he learnt about the murder of Prasad Lohar. On the basis of said statement and further investigation, IO Shri. Zade has arrested the accused persons on 03/02/2019 under the arrest panchanama. Offence U/Sec. 34 of IPC was added.

d) It is further prosecution case that, during his custody, Rohit Suresh Jadhav (accused No. 2) gave a memorandum statement on 05/02/2019 and showed his readiness to produce the clothes worn by him at the time of incident and the mobile of the deceased which was allegedly concealed by him. Accordingly, the memorandum statement was recorded. As a consequence, accused produced the mobile and clothes from his house situated at Vaibhavnagar and accordingly, the discovery panchanama was conducted in presence of panchas.

e) Similarly, on the same day, at the instance of Rohit Sambhaji Jadhav (accused No. 1) memorandum statement was recorded wherein he has showed his readiness to produce the clothes worn by him at the time of incident and wallet of the deceased allegedly concealed by him. In respect of the same, he has discovered the said articles from his house situated at Borpadale village. Accordingly, memorandum and discovery panchanama was recorded in presence of panchas.

f) On the next day i.e. on 06/02/2019, accused Rohit Sambhaji Jadhav gave memorandum statement and showed his readiness to show the liquor shop where he along with deceased and another accused consumed liquor and to show the place where the deceased was assaulted and where the dead body was thrown. As there was CCTV camera installed in the liquor shop, the CCTV footage was collected by I.O. Shri. Zade. From a ditch of village Jakhale he produced the small stone (MO15) which can be hold in hand. He showed the place where the dead body of Prasad was thrown which was near Ganesh Temple of village Jakhale. After recording statements, collecting Postmortem report and on completing other formalities, the Investigating Officer, filed charge sheet. Seized muddemal was forwarded for analysis to FSL, Kolhapur. CDR report of mobile of deceased Prasad was obtained and charge sheet came to be filed.

03. Charge-sheet was filed before J.M.F.C., Panhala (R.C.C.No. 31/2019). As the offence of murder is exclusively

triable by the Sessions Court, the case came to be committed to this court.

04. Charge (Exh.11) was framed against both the accused for the above offences. Accused pleaded not guilty and hence, the trial was commenced. The prosecution has examined in all fourteen witnesses and relied upon various documents and closed the evidence vide pursis (Exh.P-126).

05. Statements of the accused u/Sec.313 of the Code of Criminal Procedure are recorded (Exh.129 and 130). Defence of the accused persons is of total denial and false implication. Accused persons have not adduced any oral or documentary evidence in their defence.

06. Learned APP Shri. A. A. Mahadeshwar has argued at length and took me through the testimony of witness Vaibhav (PW6) (last seen together) and other material witnesses. The defence has not disputed the death of Prasad Lohar and the cause of death. Priyanka (PW8) (sister of the deceased) has identified the dead body of Prasad. It is argued that in case based on circumstantial evidence the last seen together theory plays an important role. In this context Ld. APP has thrown light on the testimony of witness Vaibhav (PW6). He argued that the last seen together theory has been proved by the prosecution. It is vehemently submitted that the presence of accused persons along with deceased Prasad is clearly seen in the CCTV footage obtained by the I.O. from the

country liquor shop of Sampat Patil (PW12). So also, the alleged recovery of CCTV footage from said shop is also proved through the witness Amol Sinhasane (PW7).

It is further argued that the accused persons have given the memorandum statement and produced the articles which were concealed by them with intention to screen themselves from the punishment and to conceal the identity of the deceased. The prosecution has proved the recovery of the clothes of the accused persons, mobile and wallet of the deceased through the witness Dattatray (PW2) and Pratap (PW3). The prosecution has proved the spot of incident through the panch witness Nikam (PW9) and Sunny Karande (PW10). It is vehemently submitted that the accused persons and the deceased were well known to each other and at the time of alleged incident all the three were under the influence of liquor. Therefore, it is possible that due to altercations between them the present incident has occurred. In view of the testimony of all the above witnesses and the material placed on record, the prosecution has proved the offence of murder against accused persons beyond reasonable doubt and hence Ld. APP prayed to convict them.

07. Per contra, Ld. Adv. Shri. V. M. Khade for both the accused has submitted that, in case of circumstantial evidence heavy burden lies on the prosecution to prove the prima facie facts i.e. last seen together, motive, spot panchanama, recovery and discovery at the hands of accused persons and seizure of clothes. However, the

prosecution has failed to prove each of the chain of circumstantial evidence. He further argued that the prosecution has much hampered on the testimony of Vaibhav (PW6) and pretended him to be a witness on last seen together theory. However, there was huge gap between accused last seen together till the discovery of dead body of Prasad. Therefore, the testimony of Vaibhav (PW6) is not of much importance to prove the last seen together theory. The prosecution has also examined the witness Jalindar Patil (PW4) employee of the liquor shop. However, this witness has not supported the case of the prosecution. Prosecution has also emphasis on the testimony of Dattatray (PW2) and Pratap (PW3) for the alleged recovery at the hands of accused persons. However, these witnesses have given major admissions. Thus, the recovery at the hands of accused persons is doubtful. Prosecution has not produced any documentary evidence to show that the alleged recovered mobile belongs to deceased Prasad or any documents pertaining to the ownership of the respective houses from where the same were seized. Therefore, the recovery is itself doubtful and does not inspire confidence.

It is further argued that prosecution has placed much reliance on the CCTV footage obtained from the country liquor shop of Sampat Patil (PW12). However, on careful perusal of said CCTV footage it can be said that the accused persons and deceased were only present at the relevant time in the shop and no altercations or dispute has arisen between them, so as to result into the murder of Prasad.

The prosecution has not brought on record any CDR details or tower locations of accused persons which shows presence at or near the spot to establish their involvement in the alleged crime. The CCTV footage is not obtained by following settled procedure of law. Thus, it cannot be relied upon. Motive behind the crime is also an important factor which is missing in the present case. The alleged discovery of the spot of incident under Section 27 of the Indian Evidence Act is hit by the provision of Sections 25 and 26 of the Indian Evidence Act, because the place discovered at the instance of accused is already known to the I.O. at the time of conducting spot panchanama. Thus, the prosecution has failed to prove each and every chain of circumstantial evidence to establish a complete chain pointing towards the guilt of the accused. It is vehemently submitted that accused persons are entitled for benefit of doubt and they shall be acquitted.

o8. In support of arguments Ld. Advocate for the accused relied on the following citations;

Sr.No.	Citation
1.	Ravishankar Tandon Vs. State of Chhattisgarh – 2024 ALL SCR (Cri) 1617.
2.	Pradeep Kumar Vs. State of Chhattisgarh – 2023 AIAR (Criminal) 348.
3.	Suryavir Vs. State of Haryana – 2022 AIAR (Criminal) 575.
4.	Ram Niwas Vs. State of Haryana – 2022 AIAR (Criminal) 923.
5.	State of Punjab Vs. Kewal Krishan – AIR 2023 Supreme Court, 3226.

6.	Sk. Yusuf Vs. State of W.B. - AIR 2011 Supreme Court, 2283.
7.	Padman Bibhar Vs. State of Odisha – AIR Online 2025 SC 372.
8.	Shankar V. Vs. State of Maharashtra – AIR 2023 SC (Cri) 993.
9.	Shatrughan Vs. State of Chhattisgarh – AIR Online 2023 SC 551.
10.	Mani Vs. State of T.N. AIR 2008 Supreme Court, 1021.
11.	Thammaraya and Others Vs. State of Karnataka - 2025 o Supreme (SC) 229.

I have anxiously gone through the citations and would refer relevant citations at appropriate places in the judgment. The settled principles of criminal law laid down therein are not disputed and the same are taken into consideration while appreciating the evidence brought on record while considering the oral, documentary, circumstantial and medical evidence brought on record.

09. Following points arise for my determination. My findings thereon are as under for the reasons given below:

Sr. No.	Points	Findings
1.	Whether prosecution proves that the death of Prasad Jaysing Lohar or or before 01/02/2019 was homicidal?	In the affirmative
2.	Whether prosecution proves that, in between 31/01/2019 at about 10 p.m. to 01/02/2019 about 2.30 p.m. on the road, near Kuran Talav, situated in village Jakhale, Tal. Panhala, Dist.	In the negative.

Sr. No.	Points	Findings
	Kolhapur, accused Nos. 1 and 2 in furtherance of their common intention, committed murder of Prasad Jaysing Lohar ?	
3.	Whether prosecution proves that, on the aforesaid date, time and place, accused Nos. 1 and 2 in furtherance of their common intention, caused evidence of the commission of the offence to disappear with the intention of screening from legal punishment ?	In the negative.
4.	Whether any other offences are proved ?	No.
5.	What order?	Acquitted as per final order.

- REASONS -

As to point No. 1 :-

10. Accused No. 1 and 2 are charged for the offence of committing murder of Prasad Lohar. Admittedly, the death of Prasad is not natural. As such, the burden lies on the prosecution to establish that death of Prasad was homicidal death.

11. The enquiry began on receiving a phone call from one Ajit Patil at Kodoli Police Station on 01/02/2019. The informant stated that a dead body of a male person was cited at about 2.30 p.m. near the lake of village Jakhale. Entry about the same was taken in the station diary and P.I.

Zade proceeded to the spot at about 3.15 p.m. Report dt. 01/02/2019 (Exh. 115) of informant Ajit Patil was recorded by him. When the informant Ajit went at the spot he saw the dead body of a male person aged approximately 20 to 30 years. Injury was caused to his head and face was smeared with blood. So also the big stone was smeared with blood and blood was also lying near the dead body. Prosecution has not examined the informant Ajit Patil for the reasons best known to it. However, his report (Exh.115) came to be exhibited through the I.O. Offence of murder was registered against unknown accused.

12. The photographs of the deceased were taken by the photographer S. S. Karande (PW10) which are at Article 'P1' to 'P4'. The said photographs were taken on the mobile and saved in memory card which was handed over to P.I. Zade on 06/02/2019. This witness has flatly denied the suggestion that he has neither gone to the spot, nor taken any photographs. There is no whisper in the testimony of this witness, nor during cross-examination as regards the time when the photographs were taken. As per the endorsement on the report (Exh.115) the offence was registered at about 17.24 hours i.e. 5.24 p.m. on 01/02/2019.

13. The enquiry officer P.I. Zade conducted the spot panchanama (Exh.87) near the bank of village Jakhale in presence of panchas including Kundlik (PW9) on 01/02/2019. From the spot a big stone MO1 was seized.

The sample of blood on the MO1, as well as samples of blood stained soil and simple soil were collected. The Enquiry Officer has also completed inquest panchanama (Exh.88) on the spot itself in presence of panchas. Deceased was having injury on his forehead and blood was oozing from his head and nose. No other incriminating articles were seized from the spot of incident or from the dead body. Dead body was forwarded to Sub District Hospital Kodoli for post mortem.

14. Medical Officer (M.O.) Dr. Nutun Takekar (PW13) was on duty at Sub District Hospital at Kodoli. The dead body was shifted there by Shri. K. S. Patil of Kodoli Police Station along with Form II-B and inquest panchanama. The carbon copy filed on record reveal that the dead body was of unknown male person aged between 20 to 30 years. The identification of deceased was established after initial investigation. Deceased was identified by the father Jaysing Lohar as to be his son Prasad Jaysing Lohar. As per the inquest panchanama (Exh. 88) the cause of death according to the police was head injury.

15. The M.O. (PW13) commenced the post mortem at about 8 p.m. and concluded the same at 10 p.m. on 1.2.2019. The deceased was male person of 20 years bearing green coloured T-shirt with black sleeves, white baniyan and black full pant and underwear. All the clothes of the deceased were soiled with mud and the T-shirt and

baniyan were smeared with mud and a Talisman (ताईत) was tied around his neck. There were no signs of decomposition and post mortem lividity was present on posterior aspect of the body. Rigor mortis was well marked all over the body. The skin over the upper limbs was peeled off (Injury no. 1 to 4). Abrasions were present on left arm, abdomen, chest, neck on left side, behind jaw angle (Injury Nos. 5 to 8).

Contused lacerated wound was found over left temporal region admeasuring 7 cm X 2 cm X 1 cm and the bleeding was present. (Injury No. 9).

Contusion over right cheek admeasuring 7 cm X 10 cm. (injury No.10) was present. So also, contusion and abrasions were present on neck, right cheek, forehead and chin. (injury No.11 and 12). CLW was present on right eye brow admeasuring 2 cm X 1 cm. (injury No. 13). Abrasions over right temporal region, forehead, nose and chin. (Injury Nos. 14 to 18). So also, fractures of nasal bones and fracture of skull bones i.e. left temporal frontal occipital and parietal region was seen. (injury No. 19)

On internal examination, contused lacerated injury under scalp present. Fracture of left temporal bone, left frontal bone and occipital and parietal bone was seen. Fracture seen at left temporal region admeasuring 7 cm. X 2 cm. which corresponds to external injury No. 9. Brain covering was found contused and lacerated and hemorrhagic.

16. Viscera was preserved and opinion was reserved. Medical Officer (PW13) issued post mortem

report (Exh.110) on 01/02/2019. C.A. Reports are at Exh. 103 and 104. Genuineness of these CA reports is not disputed by the defence. Two samples pertaining to Exh. 103 were the blood of the deceased Prasad Jaysing Lohar. The CA report revealed that both the samples were containing 237 miligram of ethyl alcohol per 100 mililiter. The CA Report Exh. 104 was pertaining to the viscera of the deceased and it also revealed that the stomach and intestine of deceased contains 85 miligram and 152 miligram of Ethyl Alcohol per 100 gram respectively.

17. Medical Officer Dr. Nutan (PW13) has given Final Cause of Death Certificate (Exh.111). According to her, the final cause of death is 'Hemorrhage with multiple injuries'. She further opined that the injuries sustained by the deceased on the head and other parts of the body can be caused by assault by stones Article MO1 and MO15. The other injuries on the person of the deceased can be caused by assault of hard and blunt objects, so also, may be by stones Article MO1 and MO15.

18. During cross-examination Medical Officer Dr. Nutan (PW13) admitted that Rigor mortis was well marked in the body of deceased. It commences to develop after six hours of death and may develop up to 24 hours. In view of the contents of the Medical report that the rigor mortis was well marked it can be said that more than six hours have passed since the death of Prasad. The Medical Officer has admitted that the injuries sustained by the deceased can

also be caused in vehicular accident. However, nothing is brought on record in the spot panchanama (Exh. 87) or in view of the cross-examination of the panch witness Kundlik (PW9) that the deceased might have been hit and run over by any vehicle resulting into his death. Nowhere on the body of the deceased there are any impression of tyre marks and so also, there were no tyre marks present adjoining to the body on the spot. Moreover, the dead body was found on the bank of Jakhale lake and there was no road adjacent or near the said spot.

19. Moreover, the spot panchanama accompanied with photographs manifestly shows that the spot of incident is not the sandy place adjacent to the water body and thus, it rules out the probability that the tyre marks might have been wiped out by the water waves. In fact, it was hard land with red soil and the dried grass. Moreover, the blood stained triangular stone admeasuring 16X10X19 inch and weighing 30 kg. was smeared with blood was lying on the spot adjacent to the head of the deceased which speaks volumes. In case of vehicular accident the big stone would not be smeared with blood. So also, no vehicle can pass over the dead body or face with the big stone lying so close to the body of the deceased which was intact. In case if the death have been caused due to vehicular accident the stone would also have got crushed or there would have been some tyre marks near the stone. As the head of the deceased was not lying on the stone, there is no probability of the entire stone getting smeared with blood. Thus, the probability of

vehicular accident is ruled out. Taking into consideration the spot panchanama, inquest panchanama, post mortem report and attending circumstances it is manifestly clear that deceased Prasad has met with an homicidal death due to assault by the stone Article MO15 and there is no possibility of any vehicular accident. Hence, I answer **point No. 1 in the affirmative.**

As to point No. 2 and 3 :-

20. Admittedly, the case is based on circumstantial evidence. It is the prosecution case that accused Nos. 1 and 2 in furtherance of their common intention committed murder of Prasad and also caused evidence of the commission of the offence to disappear with intention to screen themselves from legal punishment. Thus, the prosecution evidence is to be evaluated to find out what chain of circumstances the prosecution has been successful to establish.

21. Ld. Defence counsel submitted that the case in hand is totally based on circumstantial evidence and to convict the accused the prosecution requires credible proof and a complete chain of circumstances. In support of his arguments he relied upon the decision in case of ***Thammaraya and another (cited supra)***, wherein it is held that, *“conviction based on circumstantial evidence requires credible proof and a complete chain of circumstances; failure to establish these leads to acquittal.”*

The 'last seen together theory' :-

22. Though it is established principle that conviction of accused cannot be solely based on the ground of 'last seen together theory' i.e. on the ground that the deceased was last seen alive in the company of accused which amounts to a circumstance against the accused, but it plays important role in cases when the time gap between the deceased last seen alive in the company of the accused and his death is small with no possibility of any other person being perpetrator of the crime. However, it only forms a single chain in the chain of circumstantial evidence to bring home the guilt of the accused. In this respect the Ld. Defence counsel has relied upon the case of **Sk. Yusuf Vs. State of W. B. (cited supra)**.

23. In the present case, the prosecution is heavily based on the -

- i) CCTV footage installed in liquor shop.
- ii) Oral testimony of Vaibhav (PW6) friend of the deceased.

24. In view of the above background it is necessary to scrutinize the “last seen together theory” of the prosecution. It has come in the testimony of sister Priyanka (PW8) that at the time of incident her brother was serving in private company namely Bill Tube situated at a distance of 2 kilometers from her village Pokhale. On 31/01/2019 at about 8.30 p.m. he left the house by stating that he was going to work place to submit some report. Her brother

Prasad was using Android mobile of Mobistar company. He used to keep wallet with Aadhar card and Pan card in it. During a phone call at 9.30 p.m. by her father to her brother, he replied that he would return within short time. Again at 11 p.m. he made a phone call to her and stated that he would return within few minutes. It is her further contention that at that time she heard the noise of other persons. However, through out the night her brother did not return. In the morning of 01/02/2019 she and her family members searched for brother Prasad in the village. In the evening Police Patil came to their house and enquired about her brother Prasad and showed one photograph on his WhatsApp. A dead body was lying on the ground with burn mark on the left leg. From this, she identified that the dead body was of her brother Prasad. So also, she identified the clothes on the person of the deceased to be that of her brother. She identified the clothes i.e. T-shirt having black and green strips MO5, Track pant MO6, Baniyan MO7, mobile of Mobistar MO11 and black wallet MO14 of the deceased.

25. It is to be seen as to how this witness sails through the test of cross-examination. Sister Priyanak (PW8) admitted that her brother used to consume liquor. However, she denied the suggestion that while returning from work place he daily used to go for dinner/party and consume liquor and only then used to return home. She states to have personally seen the dead body of her brother in the mortuary of Sub District Hospital, Kodoli. Sister

Priyanka (PW8) denied the suggestions pertaining to her contentions in her examination-in-chief. Thus, considering the above testimony of the sister Priyanak (PW8) it seems that defence was only doubting the testimony of the witness as regards presence of the clothes on the person of the deceased in the mortuary. It is nowhere disputed that, the Police Patil has shown the photograph of the dead body on the mobile. The copies of which are also filed on record P1 to P4. Thus, even if for the time being it is admitted that there were no clothes on the body of deceased in the mortuary, in view of specific burn marks on the left leg of the deceased the identification of the deceased as Prasad Lohar cannot be doubted. Moreover, the prosecution has brought on record the CCTV footage in which Prasad Lohar is seen with the said clothes alive. Thus, it can be inferred from the testimony of sister that deceased Prasad has left the house at about 8.30 p.m. on 31/01/2019 and he has talk to her and her father twice till 11 p.m. This stands corroborated by CDR details of the mobile Number 9767399898 of the deceased. The defence has nowhere disputed the mobile number of the deceased Prasad or the sister Priyanka.

26. As per the prosecution case Nilesh Patil (PW5) a Medical shop owner has given lift to the deceased Prasad in the night on 31/01/2019 at about 10 p.m. and dropped him at Vijay Chowk, Warna Nagar. His shop is situated at Pokhale and from there he dropped Prasad at Vijay Chowk and reached there within 10 to 15 minutes and went away.

Though during the cross-examination this witness admits that he is not resident of village Pokhale, but he is acquainted with most of the residents. He admitted that house of deceased Prasad is situated at a distance of 100 meter from his shop. He has denied the suggestion that on the given date and time he has not dropped the deceased at the Vijay Chowk. Thus, nothing material is brought on record to doubt the testimony of this witness.

27. It is the prosecution case that deceased along with both the accused persons has visited the country liquor shop of Sampat Patil situated at Warna Nagar, Tal. Panhala on 31/01/2019. Jalindar Bhagwan Patil (PW4) was serving in the said liquor shop. His duty hours were from 9.30 p.m. to 11 a.m. of the next day. He was continuously present on his duty even in the night of 31/01/2019. He was not remembering any specific incident at about 10.30 p.m. of that day. He has learnt about the murder committed in village Pokhale. As the owner Sampat Patil of the liquor shop used to stay outside, he has installed CCTV cameras in the shop. Even on 31/01/2019 the said CCTV cameras was in working condition. Police has also come to said shop and enquired with him and has seen the CCTV footage. However, he did not supported the prosecution case that both the accused came in the shop along with deceased, consumed the liquor and went away. He fail to identify the accused persons before the Court and denied the entire prosecution case in that regard and that deceased and both accused left the shop at about 10.30 p.m.

28. Though Jalindar (PW4) has not supported the prosecution case about seeing the deceased in the company of both the accused persons he candidly admitted that the CCTV camera was installed in the shop and that the same was in working condition and the police has enquired with him and also visited the shop and seen the CCTV footage. This testimony of the witness has remained unchallenged during the cross-examination. So also, Sampatrao Patil (PW12) owner of the said country liquor shop, though not present in the shop on that day, but stated that CCTV cameras were installed in his liquor shop and that the same was in working condition and the police had enquired with him and also visited the shop and seen the CCTV footage. Thus, the same can be admitted and relied upon by prosecution.

29. Now the question remains as to whether the accused are the same persons who accompanied deceased in the shop or not can be established by the contents of the CCTV footage.

30. Memory Card Article M3 on which said CCTV Footage were pasted contains two sets of video recording. Those were run in the Court hall on the device of the dais. So also, before giving this judgment this Court has played the video from the memory card with the help of card reader. I have prepared a script of said video recording as follows.

Initially, accused No. 2 wearing jacket and track pant entered into liquor shop at about 10.03 p.m.. Subsequently accused No. 1 wearing white colour shirt followed him. Both accused persons purchased liquor and consumed it in the shop itself. They have talks with each other.

At about 10.09 p.m. accused No. 2 left the liquor shop, while accused No. 1 was present in the shop. Immediately at about 10.10 p.m. deceased Prasad entered into the liquor shop. At that time accused No. 1 also left shop by crossing him. In said liquor shop deceased Prasad purchased liquor and by talking on mobile phone he left the shop at about 10.13 p.m. Customers were continuously coming and going.

After some time at about 10.36 p.m. accused No. 1 along with deceased Prasad entered into the liquor shop. Some talks took place between them. At about 10.37 p.m. accused No. 2 entered into liquor shop and joined the company of accused No. 1 and deceased. Deceased Prasad consumed liquor in shop. They talk with each other, took a parcel of liquor. At about 10.39 p.m. deceased as well as both accused left the shop. and left the talks took place between them.

31. To prove the contents of CCTV footage prosecution has examined Amol Sinhasane (PW7). He is diploma holder in computer Hardware and networking. He has knowledge about collecting CCTV footage and transferring the same from DVR to pen drive or memory card. On 07/02/2019, Kodoli Police called him at Police

station and asked him to collect the CCTV footage of the liquor shop of Sampat Patil (PW12) situated at Warna Nagar, Kodoli.

Accordingly, he went at the shop, collected CCTV footage from DVR of the evening of 31/01/2019 from approximately 10 p.m. to 11 p.m. on the Memory card provided by P.C. Sachin Waidande (PW11). He has issued certificate (Exh. 78) U/sec. 65-B of the Indian Evidence Act and handed over the said memory card to P.C. Waidande (PW11).

32. During cross-examinations questions were put to this witness pertaining to the memory card, whether it was already empty or not and not recording the company name of the CCTV camera or that of the DVR. No doubt the above details are not mentioned in the certificate U/section 65-B of the Evidence Act, however the hash value and size of the video is mentioned in the certificate and it is pertinent to note that in the said video the deceased appearing live along with both the accused persons containing the reference of date and time. In such circumstances it cannot be said that the video recording is forged or subsequently prepared because one of the character i.e. deceased has already died. The testimony of Jalindar (PW4) and Sampatrao (PW12) remained unshattered as regarding working condition of cameras in the liquor shop. Nothing is brought on record to infer any tampering with the contents of CCTV footage. In the above circumstances this court has no doubt as regards the

contents of the CCTV footage. Same is scientific evidence created without any human interference and find to be true, cogent and reliable.

33. To corroborate and support the evidence of Amol Sinhasane (PW7), prosecution has examined P.C. Sachin Waydande (PW11) who has obtained hash value of the CCTV footage of the country liquor shop of Shri. Sampat Patil.

34. Moreover, the defence has nowhere suggested to any of the witness about tampering of video recording. It is pertinent to note that in the CCTV footage the actual incident of murder or assault is not captured. However, only the deceased is seen in the company of both the accused persons in the liquor shop purchasing a parcel of liquor and leaving together. The video is free of any tampering and this court has no hesitation to place explicit reliance on the same being scientific evidence, prepared without human interference. Hence, it is proved that at about 10.39 p.m. deceased as well as both accused left the country liquor shop of Sampat Patil (PW12).

35. In view of the above oral and documentary evidence brought on record coupled with untampered CCTV footage this court has no hesitation to hold that the deceased was last seen alive in the company of both the accused approximately 10.39 p.m of 31/01/2019 at the country liquor shop of Sampat Patil at Vijay Chowk at

Warna Nagar. Thus, prosecution has succeeded in establishing a chain of circumstantial evidence i.e. last seen together theory. However, further evidence is required to be appreciated to see whether this evidence is sufficient to connect the accused exclusively with the murder of Prasad.

36. Surprisingly, Sanjiv Zade (PW14) I.O. has not deposed as regards the topography of the spot of incident, the country liquor shop or the residence of accused and deceased. Nothing is brought on record in the testimony of I.O. or any of the prosecution witnesses as regards the distance of the country liquor shop from the Jakhale lake where the dead body was found and the house of the deceased. So also, during the cross-examination defence has not brought on record the topography of both the villages or the spot of incident. In such circumstances, this court was constrained to rely on the google map to approximately calculate the distance between relevant places.

37. As per prosecution story, Ajit Patil, the Police Patil has first received information from one Prakash Pandurang Chougule about dead body lying near lake of village Jakhale at about 2.30 p.m. of 01/02/2019. Autopsy was performed on the deceased. Latter on the said dead body was identified by the father and sister to be that of son and brother as Prasad Jaysing Lohar. As per above discussion deceased Prasad as well as accused left the liquor shop on 31/01/2019 at about 10.39 p.m. Thus, there

is huge gap of about 16 hours between last seen together and tracing out of the dead body of Prasad. So also, the dead body was found near Jakhale Lake which is situated at a distance of approximately 6 to 7 kilometer from Warna Nagar. The intimation of the offence was given to Kodoli police station at about 5.25 p.m. of 01/02/2019. The said place of incident i.e. Kuran lake situated at village Jakhale is at a distance of 12 kilometer from the police station as per the printed FIR. The country liquor shop is situated at Vijay Chowk of Warna Nagar. The distance of the place of incident and the said country liquor shop might be around 6 to 7 kilometers. Thus, heavy burden lies on the prosecution to establish the involvement of the accused persons in the homicidal death of Prasad.

38. In the above circumstances, prosecution has to establish as to what has transpired since 10.39 p.m. of 31/01/2019 to 2.30 p.m. afternoon of 01/02/2019 and that the accused and accused were only the perpetrators of the crime. It is pertinent to note that not only there is huge time gap between the last seen together and sighting of the dead body of the deceased Prasad. There is also distance of about 8 to 10 kilometers between the spot where from the dead body was recovered and the accused last seen together at the country liquor shop.

39. In this regard the prosecution has examined the friend Vaibhav (PW6) of the deceased who has allegedly met the deceased when he was in the company of accused

persons. If one closely scrutinize the testimony of Vaibhav, it is his contention that at about 9.45 p.m. he was taking dinner at Shriram Hotel where he received call of Prasad (deceased) who called this witness at Vijay Chowk at Warna Nagar. There he met deceased Prasad in the company of both the accused. Prasad asked him for liquor but he refused. However, in view of specific and real evidence in the form of CCTV footage it is manifestly clear that the deceased has visited the shop at about 10.10 p.m. In this context if one peruse CDR report it is seen that deceased has made a call to this witness Vaibhav (PW6) at 10.21 p.m. By that time the deceased has already once entered in the liquor shop consumed peg of liquor and came out of the shop. At that time accused No. 1 has entered the said shop, later on all the three were seen in the shop both accused and deceased at about 10.36 p.m. As Shriram hotel is situated at Bahirewadi near Warna Nagar and the said witness might have reached within 5 to 10 minutes there. Thus, the probability that he might have met deceased and both the accused cannot be ruled out. However, this witness has not specifically stated so.

Admissions by Vaibhav -

40. Vaibhav (PW6) has admitted that at the time when he met Prasad he was not knowing the names of the accused persons. Subsequently, he learnt their names from the police. He has not revealed the phone number from which he received call of Prasad. So also, he has not revealed to have seen both accused with deceased on

01/02/2019 i.e. next day. There is vague statement of this witness that he has met deceased and both accused at Vijay Chowk. He does not speak of exact place and time when and where he met them. He nowhere speaks that accused were carrying parcel of liquor. Thus, his testimony taken together with the contents of the CCTV footage it is manifestly clear that this witness has no occasion to meet Prasad after he left the liquor shop in the company of both the accused persons along with parcel of liquor.

41. To connect the chain of circumstances the prosecution has not examined any witness who had seen the deceased Prasad and both accused going together after 10.39 p.m. of 31/01/2019. Both accused were arrested on 03.02.2019. However, to prove the other chain of circumstances, the prosecution has examined Jitendra (PW1), Dattatray (PW2) and Pratap (PW3) who are the pancha witnesses in whose presence memorandum, and recovery cum discovery panchanamas were carried out.

Memorandum and Recoveries :-

42. Dattatray (PW2) Panch witness was present at Kodoli Police Station on 05/02/2019 at about 12.30 a.m. At that time 'accused Jadhav' revealed that he has concealed some articles as regards the offence at his house and he is ready to produce the same. Memorandum panchanama (Exh.62) was recorded. Accused took panchas, police to Vaibhavnagar, Kodoli at his house. There his mother was present in the said house. Accused produced

one bag and took out the cloths one jerking MO9, Army Pant MO10 and one mobile MO11 from it. Police recovered the same under recovery panchanama (Exh.62). As per contents of panchanama (Exh.62) the mobile is of Mobistar company belonging to deceased Prasad. The clothes MO9 and MO10 are of accused No. 2.

43. Dattatray (PW2) further deposed that after returning to the police station, police called other accused Rohit Jadhav (accused No. 1). Said accused also showed his readiness to show some articles which were concealed at his house. Accordingly, police recorded memorandum panchanama (Exh.63). Accused took panchas and police at his house situated at village Borpadale. Grandmother of the accused was present in the house. Accused produced one bag from the second room and took out clothes i.e. shirt MO12 and a pant MO13 and a wallet MO14 from said bag. Said wallet was containing Pan Card, Aadhar card etc. of Prasad Jaysing Lohar. As per contents of the panchanamas (Exh. 63 and 63-A) the wallet MO14 is belonging to deceased Prasad and clothes white shirt MO12 and black jeans MO13 are belonging to accused Rohit Sambhaji Jadhav. Sister has identified wallet and mobile of deceased.

44. During cross-examination Dattatray (PW2) admitted that when they reached at police station, police stated that they have to go to Borpadale and Kodoli village as regards the panchanama. Prior to leaving police station,

police has not offered their personal search. So also, police has not taken his personal search or that of other panch. He has not directly talked with the accused persons at the police station. When they went at Kodoli as well as Borpadale, police has not obtained the documents as regards the ownership of the houses. This witness has not stated specific names of the accused who have produced the above said articles. He has only stated that accused Jadhav and accused Rohit Jadhav have produced above said articles. So also, from the cross-examination it seems that the police before preparing panchanamas have disclosed that where they have to go for recovery.

45. The clothes worn by both the accused on the relevant day of incident on verification from the CCTV footage is found to be correct. So also, the deceased is seen talking on mobile handset. The deceased has made payment at the liquor shop however, no wallet is visible in the CCTV footage. However, the seizure of mobile handset from one accused and wallet of the deceased from the other accused is suspicious. The prosecution has failed to take necessary precautions of giving personal search at the time of conducting recovery panchanamas as small articles like wallet and mobile can easily be carried in packets. So also, the witness has candidly admitted that prior to recording of memorandum statement police has already intimated him that they have to go to village Kodoli and Borpadale. This itself is suggestive that the probability of planting of mobile handset and wallet during the seizure panchanama of

clothes cannot be ruled out. The testimony of witness is silent about obtaining of the signature or thumb impression of the respective accused persons at the respective houses. there is no substantive and reliable documentary evidence brought on record as regards the ownership of the houses from where the alleged recovery were made. As such, no explicit reliance can be placed on the memorandum and recovery panchanamas specially as regards recovery of wallet and mobile handset.

46. To prove the memorandum panchanama (Exh. 66) and discovery panchanama (Exh.67) prosecution has examined Pratap Patil (PW3). On 06/02/2019 he and other pancha was present at Kodoli Police Station. Accused Rohit Sambhaji Jadhav gave memorandum statement (Exh. 66) showed his readiness to show the places at which he has visited as regards the offence. Accordingly, accused took them at Vijay Chowk at liquor shop, then to Bahirewadi to Jakhale road, took out one stone (MO15) having blood stains, police seized the same. Then accused took them near Jakhale-Kuran lake and stated that there the incident of assault took place. There were some blood stains in the soil at the spot. Accordingly, the discovery panchanama (Exh.67) was recorded.

47. During cross-examination panch witness Pratap (PW3) admitted that the name of the accused was disclosed by police and not by accused. He was having knowledge before going to panchanama that one dead body was seen

near the Jakhale-Kuran lake. There was no direct talk between himself and accused. Thus, his evidence is also doubtful. The police were already knowing the spot situated near Jakhale lake as the dead body was first spotted there and recovered from the said spot. As the said spot was already known to the Investigating agency, revealing of the same at the instance of accused is of no use and does not fall within the ambit of Section 27 of the Indian Evidence Act.

48. As per the prosecution case when the deceased along with both the accused were proceeding by the motor cycle bearing No. MH-09-EA-5410 (owned by brother of accused No. 2), on the way the deceased was assaulted by means of small stone MO15 which was recovered at the instance of accused No. 1 from the side of the road of Jakhale mile stone and it was having blood stains. However, the big stone Article MO1 was already seized from the spot of incident situated near Jakhale lake. Surprisingly the Investigating officer has not thought it necessary to sent those stones or their scrapping for chemical analysis. Surprisingly, if the small stone was having blood stains and both the accused and deceased were proceeding on the motor cycle there ought to be some blood stains on the clothes of the both the accused or either of them or even on the motor cycle. However, blood stains were not found on any of the clothes of the accused persons or on the motor cycle.

49. The deceased was lying in the pool of blood near Jakhale-Kuran lake and there was heavy bleeding and the big stone was also smeared with blood, but still not a drop of blood was found on the clothes of any of the accused persons. The seized clothes are the same clothes which were worn by the accused persons on the date of incident as is seen in the CCTV footage. There is no reference as regards the blue T-shirt of the accused No. 2 as to why the same was not recovered. Thus, though the accused persons were last seen in the company of the deceased at the liquor shop there is no iota of cogent, convincing and reliable evidence to show that the accused were accompanying the deceased while leaving the liquor shop or they were seen proceeding towards Jakhale lake.

50. Jitendra (PW1) in his examination-in-chief deposed that on 01/02/2019 police seized clothes of deceased i.e. Greenish Black colour T-shirt with horizontal line MO5, Black colour track pant MO6, Baniyan MO7 and Underwear MO8 in his presence vide seizure panchanama (Exh.59). So also, on 08/02/2019 Nikhil Jadhav the brother of Rohit Suresh Jadhav produced two wheeler of Hero Honda Splendor Plus bearing No. MH-09-EA-5410 in his presence which was seized by police in his presence vide seizure panchanama (Exh.60).

51. The seizure of clothes of the deceased and the identity cannot be disputed as the said clothes are seen to be worn by the deceased in the CCTV footage. Though

seizure of motor cycle is admitted there is no incriminating material to show that the deceased was proceeding with both the accused by the said motor cycle or that any tyre marks of the said motor cycle were present at the spot or blood stains were found on the it to show use of the alleged motor cycle in committing the crime. Under such circumstances, disclosure statement by accused U/sec. 27 of Indian Evidence Act, allegedly led to recovery of above said articles is doubtful.

52. Sanjiv Zade (PW14) Investigating Officer though stated about details of investigation, has not stated specifically how he has learnt that accused are the suspects and on what basis the accused were arrested on 03/02/2019. He has conducted the spot panchanama at the bank of Jakhale lake where the unknown dead body was first found in the afternoon of 01/02/2019. He has also conducted inquest panchanama, sent the dead body for autopsy, seized the clothes of the deceased which were produced by PHC Patil under seizure panchanama (Exh.59). It is his contention that when the unknown dead body was sent for autopsy the deceased was identified by his sister Priyanka (PW8). However, testimony of this witness is silent as to how the names of the accused were revealed and on what basis both the accused were arrested on 03/02/2019. He has conducted the memorandum and seizure panchanams at the instance of accused persons and contended that apart from their clothes, wallet as well as the mobile hand set were also seized from the residence of

the accused persons. The CCTV footage from the country liquor shop was seized on 6.2.2019. Investigation officer has completed other formalities of investigation and filed chargesheet. As discussed above, I.O. has not deposed as regards the topography of the spot of incident, the country liquor shop and the residence of the accused persons and deceased.

53. During cross-examination Zade (PW14) I.O. admitted that he has not produced any extract of lock up register to show that on 05/02/2019 both accused were taken out of lockup. He has failed to produce the extract of the lock up register though he contends that on the same day on 05/02/2019 both the accused one after another taken out of lock up and their alleged memorandum and recovery was conducted. This witness has admitted that in recovery panchanama (Exh.62A) there is no reference as regards his personal search was given to accused. He has not filed on record any documents pertaining ownership of the houses from where the recovery of articles was done at the instance of accused persons. He admitted that there is no reference as to how many rooms were in the alleged houses from where the recovery was made. Further admitted that there is no reference in the lock up register that accused Rohit Sambhaji Jadhav was taken out of lockup on 06/02/2019. So also, the CCTV footage was not recovered under the panchanama. He has not taken DVR of liquor shop in his custody. This witness further admitted that prior to conducting the memorandum panchanama

(Exh.66) he has already visited the spot near Jakhale lake from where the dead body of Prasad was found. He has not sent big and small stones (MO1 and MO15) to the Medical Officer who has conducted postmortem to seek his opinion. Most important, he has not conducted the Identification parade as regards identification of both accused from witness Vaibhav Gavali (PW6). Under such circumstances, the testimony of Investigation officer is not of much help to the prosecution case and does not take it any further beyond the fact that the deceased was seen together in the company of both the accused persons prior to 12 to 15 hours of tracing out of the dead body of Prasad. As such, the alleged recovery and discovery panchanamas conducted by the I.O. as regards wallet and the mobile hand set is shrouded with suspicion. As the place where the dead body of Prasad was lying was already known to the I.O., no purpose is served by conducting the discovery panchanama of the said spot at the instance of accused.

Motive -

54. It is submitted by the Ld. defence counsel that to prove the guilt of accused persons, one of the most important aspect is to prove the motive of the accused to commit the murder. In support of his argument he has relied upon case of **Shatrughan Vs. State of Chhattisgarh – AIR 2023 SC (Cri) 1221**, wherein it is held that -

“Once there is no eye witness of the incident the prosecution will have to establish a motive for the commission of the crime in as much as in a case of direct evidence, motive may not have a major role.

If there is no motive setup or proved and there are direct eye witness, motive may lose its importance, but in the present case as admittedly no one has seen the occurrence, the motive has an important role to play.”

55. In the present case also, the prosecution has not examined any witness regarding motive behind the murder of Prasad. Admittedly, there is no eye witness to the incident. So also, Investigation officer or sister of the accused has not deposed about any previous enmity or motive on the part of the accused persons to commit murder of Prasad. The prosecution case is miserably lacking on this aspect. Motive is totally absent. It is not the prosecution case that there was any previous enmity or dispute between the accused and deceased. Hence, prosecution has failed to bring on record any iota of evidence as regards motive behind the murder of Prasad.

56. Apart from the above, in view of the CCTV footage and also on considering the evidence of friend Vaibhav (PW6), there is nothing brought on record to show that any dispute or oral altercations has taken place between the deceased and the accused persons. The CCTV footage definitely shows that the accused were acquainted with deceased and they are seen talking to each other. However, nothing is brought as regards the accused in the testimony of the sister of the deceased or friend of the deceased. In fact, Vaibhav (PW6) was also colleague of the deceased as they were working at same place and motive, if

any, would be known to him. Moreover, prosecution as well as the I.O. has not tried to check the CCTV footage of previous dates to see whether the deceased was regularly visiting the country liquor shop and in whose company he used to visit the liquor shop. This would have thrown some light on the motive behind the crime. Hence, the ratio laid down in above said case law is squarely applicable to the present case in hand and the prosecution case is miserably lacking in as regards the motive which also plays vital role as this case is entirely based on circumstantial evidence.

Conclusion :-

57. It is pertinent to note here that, to connect both the the accused with the murder of Prasad, the prosecution has not proved the long gap of about 15 hours between last seen together and finding of dead body of deceased Prasad. As such, there is no complete chain of circumstantial evidence and the important links after the CCTV footage since 10.39 p.m. of 31/01/2019 are missing. There is even not a single witness examined from the liquor shop or Vijay Chowk to putforth that the deceased has accompanied both the accused by their motor cycle and proceeded towards village Jakhale. Testimony of Vaibhav in this regards is totally silent. In fact, apart from his omnibus statement that he has met Prasad and seen the accused in his company at Vijay Chowk nothing is brought to corroborate his testimony. Probability that, he was a planted witness to show that he has visited Vijay Chowk, met deceased and seen both the accused persons, cannot be ruled out. As

such, there is no cogent evidence to show that beyond the shop of country liquor the deceased was in the company of the accused persons and that they were proceeding by the alleged motor cycle.

58. Further more, the prosecution has not produced any CDR details of the mobile number of the accused to prove that in between 10.40 p.m. of 31/01/2019 till 01/02/2019 till 2.30 p.m. the accused were present at or nearby the spot of incident of village Jakhale. So also, the CDR details of mobile of deceased were not collected beyond 11 p.m. There is nothing in the testimony of sister Priyanka (PW8) whether she has made phone call to Prasad in the late night or in the early morning of 01/02/2019 and what was the result. So also, testimony of Priyanka (PW8) is silent as to what efforts she or her family members have taken since the morning of 01/02/2019 and what exactly they learnt. In a natural course the conduct of remaining silent is doubtful. The prosecution has failed to examine Prakash Chougule to establish the important link as to when the dead body was first sighted. So also prosecution failed to examine Ajit Patil, Police Patil how the identity of deceased was established. So also, as per the CDR report the deceased has talked for longest period with the mobile No. 09370311517 for 359 seconds at 21.49 hours on 31/01/2019. However, the I.O. has brought nothing on record as to whose number this was and what was the nature of talks.

59. So also, prosecution has not examined any of the witness who had seen the accused and deceased Prasad together after 10.40 p.m. of 31/01/2019. The prosecution has also not brought on record that the clothes of accused were blood stained or the soil of the spot was present on the Chappals or on the clothes of the accused persons. As such, there is no iota of circumstantial or real evidence to connect the accused persons either with the spot of incident or with the murder of Prasad since 10.40 p.m. of 31/01/2019.

60. Further more, the prosecution has not produced CDR details of the accused persons of 31/01/2019 and 01/02/2019. So also, prosecution has not filed on record the tower locations of their mobiles so as to establish their present at or near the spot of incident. Hence, it creates suspicion about the prosecution story. As such, the prosecution has failed to prove circumstantial evidence to form the complete chain to establish the factum of murder of accused at the hands of accused and accused only. Motive is totally absent. So also prior or after conduct of the accused has not brought on record by the prosecution.

61. Defence counsel has referred various case laws in respect of circumstantial evidence. In these referred case laws, landmark case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, is referred. The ratio and principles laid down in above cited cases is that :-

“There has to be a chain of evidence so complete so as not to leave any reasonable ground for a 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. The circumstances should be of a conclusive nature and tendency. The circumstances should exclude every possible hypothesis except the one to be proved. The accused 'must be' and not merely 'may be' guilty before a Court can convict. It is also held that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is."

62. Considering the above golden rules as regards circumstantial evidence the prosecution has miserably failed to establish beyond reasonable doubt a complete chain of circumstantial evidence against the accused persons to prove the offence of murder of Prasad or causing disappearance of the evidence. Under such circumstances, the ratio and principles laid down in the case laws (cited supra) regarding circumstantial evidence relied upon by the defence are applicable to the case in hand. Some other case laws relied upon by the defence are not relevant, as the facts therein are totally different and ratio is not directly applicable. In the present case, this court find neither the chain of circumstances to have been completely established, nor the guilt of accused and accused alone, having committed the crime has been proven, much less beyond reasonable doubt. Apart from the singular piece of circumstantial evidence against both the accused i.e. they were last seen in the company of the deceased at the country liquor shop, no other chain of circumstantial

evidence is brought on record. Accused cannot be convicted merely on the basis of suspicion, however strong it may be cannot take place of proof. Moreover, this fact assume further importance on account of absence of proof of motive. Under such circumstances, prosecution has failed to prove the offence against the accused persons beyond reasonable doubt. **Hence, I answer point Nos. 2 and 3 in the negative.**

Disposal of Muddemal :-

63. The Muddemal Object No. 1 big stone, MO2 piece of clothe, MO3 soil mixed with blood, MO4 simple soil, MO5 to MO10, MO12 and MO13 are the clothes of the victim and accused and MO15 small stone, required to be destroyed after appeal period is over. The Muddemal Object No. 11 mobile hand set is required to be returned to its registered owner. If it is not claimed, it is required to be sold in public auction and sale proceed be credited to the Government, after appeal period is over. Muddemal Object No. 14 wallet containing documents, is required to be returned to the family members of the deceased Prasad Jaysing Lohar, after appeal period is over. If the same is not claimed, it be destroyed after expiry of appeal period is over. The order of this Court dtd. 05/12/2020 of handing over custody of MO16 Hero Splendor Plus motorcycle bearing No.MH-09-EA-5410 to its registered owner is required to be confirmed.

As to point No. 4 and 5 :-

64. Considering all the above mentioned discussions and facts and circumstances, accused No. 1 Rohit Sambhaji Jadhav and No. 2 Rohit Suresh Jadhav are entitled for acquittal. No offence as stated above or any other offence is proved to have been committed by the accused. Hence, I answer points accordingly and proceed to pass the following order –

– ORDER –

1. Accused **Rohit Sambhaji Jadhav and Rohit Suresh Jadhav** are acquitted under section 235 (1) of the Code of Criminal Procedure of the offences punishable U/Secs. 302, 201 of the Indian Penal Code.
2. Bail bonds of the accused stand cancelled.
3. The accused Nos. 1 and 2 shall execute bail bonds under Section 437-A of the Code of Criminal Procedure, in the sum of Rs.15,000/- by each of them with one solvent surety in the like amount to appear before the higher Court. The said bail bonds shall be in force for six months.
4. The Muddemal Object No. 1 big stone, MO2 piece of clothe, MO3 soil mixed with blood, MO4 simple soil, MO5 to MO10, MO12 and MO13 are the clothes of the victim and accused and MO15 small stone, be destroyed after one year, after expiry of appeal period.

5. The Muddemal Object No. 11 mobile hand set be returned to its registered owner, if unclaimed, it be sold in public auction and sale proceed be credited to the Government, after appeal period is over.
6. Muddemal Object No. 14 wallet containing documents, be returned to the family members of the deceased Prasad Jaysing Lohar, after appeal period is over. If unclaimed be destroyed after one year, after expiry of appeal period.
7. If any appeal is preferred, said muddemal properties be disposed of as per directions of appellate court.
8. The order of this Court dtd. 05/12/2020 of handing over custody of MO16 Hero Splendor Plus motorcycle bearing No.MH-09-EA-5410 to its registered owner is hereby confirmed.
9. Copy of this judgment be sent to the District Magistrate, Kolhapur vide Section 365 of Cr.P.C. The District Magistrate, Kolhapur shall submit compliance report to this court.
10. Sessions Case No.117/2019 stands disposed of.
(Pronounced in open court).

**Date : 22/08/2025.
Kolhapur.**

**(Smt. Kavita B. Agrawal)
Sessions Judge, Kolhapur.**