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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.40 OF 2015

Saraswati w/o Ganpat Landge,
Age : 66 years, Occupation : Nil,
R/o Gawaligalli, Raviwar Peth,
Ambajogai, Tq.Ambajogai,
District Beed.

...APPELLANT/ ACCUSED

-versus-

The State of Maharashtra.
(Copy to be served on P.P.
High Court of Bombay,
Bench at Aurangabad)

...RESPONDENT

...

Shri Aniket Vagal, Advocate for the appellant/ accused.

Shri R.D. Sanap, APP for the respondent/ State.

...

**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

Reserved on :- 04th January, 2021

Pronounced on :- 19th January, 2021

JUDGMENT (Per Ravindra V. Ghuge, J.):-

1. By this appeal, the appellant/original accused, prays for

quashing and setting aside the judgment and order of conviction delivered by the learned Additional Sessions Judge, Ambajogai, District Beed dated 11.09.2014 in Sessions Case No.1/2014. By virtue of the said judgment, the appellant (Saraswati w/o Ganpat Landge) has been convicted for the offence of murdering her husband (Ganpat Landge), punishable under Section 302 of the Indian Penal Code. She has been sentenced to suffer imprisonment for life and pay a fine of Rs.1000/- or suffer rigorous imprisonment for two months.

2. We have heard the learned advocate for the appellant and the learned prosecutor on behalf of the prosecution. With their assistance, we have gone through the appeal paper book, the record and proceedings and the muddemal.

3. The prosecution has been successful in proving the charge leveled upon the accused on the basis of the following factors:-

(a) The deceased Ganpat Shankar Landge and his wife Saraswati, the appellant herein, were residing in Gaval Galli, Ravivar Peth, Ambajogai. They had five daughters and one son. All the daughters are married. An agricultural land admeasuring about 3 to 4 acres was in the name and in the possession of the deceased. Because of his constant quarrels with the appellant, he was intending to donate it to any religious trust/ Devasthan or a person, who would maintain him during his old age. This was said to be a primary reason for the quarrels between the couple.

(b) On 10.10.2013, early in the morning the deceased Ganpat Landge was found dead in his house. It was obviously an unnatural death. The appellant had herself traveled to the Police Station and made a statement that she had murdered her husband. On hearing this, the concerned Police Officer informed the Station House Officer Mr.Tribhuvan on telephone. He has taken such entry in the Station Diary. On receiving the telephonic message, Mr.Tribhuvan, who was on night duty at the Yogeshwari Temple, Ambajogai, proceeded to the place of incident along with some constables. He found the dead body of Ganpat with injuries on his head, face, all over the body and even his genitals. He found pieces of bangles, a wound plank, a blanket, an old bucket, a faint sky colour blouse and sky colour saree, at the spot. All these articles were stained with blood. Mr.Pradip Tribhuvan seized all those articles, collected simple earth and blood stained earth. He prepared the spot panchanama Exhibit-28, an inquest panchanama Exhibit-14 and referred the dead body for postmortem.

(c) Mr.Tribhuvan recorded the statements of Tukaram Ganpat Landge (PW-2), who is the son of the deceased. Tukaram narrated that there used to be frequent quarrels between his parents. On one occasion, his father had fractured the limb of his mother and in a subsequent fight, the appellant had fractured the limb of the deceased.

(d) He narrated that at about 09:00 PM on 09.10.2013, a quarrel

erupted between his parents on account of the agricultural land while they were taking meals. Though he requested them to stop quarreling, both were uncontrollable. Being fed up, Tukaram left his home and slept at the Bus Stand at Ambajogai. After about half an hour, he started feeling cold and he traveled to the house of his married sister Satyasheela Atmaram Vaidya, who was also residing at Ambajogai. He stayed with her in her residence that night.

(e) At about 06:40 AM on 10.10.2013, his sister woke him up and said that the Police had informed her that “Bai” (their mother) had killed “Anna” (their father). Both of them reached their house and saw a wooden plank in broken condition, their father lying dead on the ground with multiple injuries, there was blood splattered on the ground. Injuries were noticeable on his head, ear, upper and lower limbs and his genitals. By that time, the appellant/ their mother had reached the Police Station.

(f) After recording of evidence and voluntary statement made by the appellant while being in police custody, the stone and the plank used to strike at the deceased Ganpat, were seized under the panchanama.

(g) After a complete trial, the Trial Court concluded that the appellant was guilty of murdering the deceased punishable under Section 302 of the Indian Penal Code. The appellant was, therefore, convicted and sentenced for the said offence.

4. The contention of the learned advocate for the appellant can be summarized as under :-

(a) Not a single prosecution witness has supported the case of the prosecution.

(b) PW-1 Sanjay Rangnath Landge, inquest panch, turned hostile.

(c) PW-2 Tukaram Ganpat Landge, the informant and son of the deceased, has also turned hostile.

(d) PW-3 Shrikrishna Panditrao Madke, was also declared hostile.

(e) PW-4 Dr.Ravikumar Murlidhar Kamble, working as House Officer at the Department of Forensic Medicine at SRT Medical College, Ambajogai had conducted the postmortem along with Dr.Rajesh Kachare. He has mentioned in his postmortem various types of injuries, which are as follows :-

“(1) *lacerated wound on right forehead, near mid line, vertical, irregular, 6 cm x 2 cm lower pole 1 cm above the middle end of right eye brow and upper pole is near the frontal hairline, margins irregular, reddish, evidence of bleeding seen.*

(2) *Lacerated wound 2 cm below the right eye on maxilla, horizontal, 4 cm x 1.5 cm, margins irregular, evidence of bleeding seen.*

(3) *Lacerated wound just behind the outer margin of right eye, 3 cm x 2 cm vertical in direction, bony deep, reddish, evidence of bleeding seen.*

(4) *Cruciate lacerated wound on right parieto occipital region, 7 cm from occipital protuberance 8 cm x 3 cm bony deep, margins irregular, reddish, evidence of bleeding seen.*

(5) *Lacerated wound of right ear, horizontal, completely dividing external ear into two pieces, size 3 cm long,*

irregular margins.

- (6) *Evidence of abraded contusion over right dorsum of hand, 3 cm x 2 cm reddish in colour, swelling present.*
 - (7) *Evidence of abraded contusion on left dorsum of hand, just near the base of left thumb, 2 cm x 1 cm, reddish.*
 - (8) *Abrasions multiple, irregular, small seen on left knee joint, varying in size and shape, reddish in colour.*
 - (9) *Abraded contusion present over right medical aspect of ankle joint, diffused reddish in colour, 4 cm x 3 cm.*
- All the injuries are recent and ante mortem in nature possible by impact of hard and blunt object.”*

(f) The evidence with regard to the external injuries revealed a tear of scrotal sac, right side near the mid line exposing right testicle and spermatic cord, with bleeding and an evidence of scratches on dorsal aspect. Contusion of both testis at spermatic cord was noticed. Evidence of haemorrhage was seen. On dissecting the penis, the shaft showed haemorrhage beneath the external injuries. On palpation, evidence of fracture of the nasal bone and fracture of right maxilla depress.

(g) After conducting the internal examination, following injuries were found :-

- “(1) *Evidence of haematoma under scalp, right temporal region, diffused involving temporalis muscle.*
 - (2) *Evidence of haematoma under scalp, below injury No.1, dark red in colour.*
 - (3) *Evidence of haematoma in left temporalis muscle, dark red in colour.*
 - (4) *Evidence of liner hairline fracture 4 cm long beneath injury No.4 on parietal bone, right side.*
 - (5) *Fracture of right supraorbital bone, just near the pituitary fossa.*
- Meninges and brain are congested and oedematous. Evidence of patechial haemorrhage and necrosis at*

places over right parieto temporal region of brain with evidence of subarachnoid haemorrhage. There were fracture to ribs Nos.4, 5 and 6 of right side, near costochondral junction with extra vasation of blood.”

- (h) Satyasheela has not been examined by the prosecution.
- (i) It is completely unclear as to who actually killed the deceased.
- (j) There was no evidence to establish that Satyasheela had visited the house of the deceased in the morning on 10.10.2013 and that the accused informed her about the death of her father.
- (k) The appellant informed the Police that she had committed the murder of her husband. However, such confession before the Police Officer is inadmissible in law.
- (l) The SHO to whom such confession was allegedly made by the appellant, was not examined before the Trial Court.
- (m) The FIR is completely untrue and it runs contrary to the deposition of PW-1.
- (n) The contents of the FIR are contrary to the deposition of PW-1.
- (o) The alleged motive behind such killing was 03 acres of land owned by the deceased Ganpat and he used to frequently threaten that he would donate the land to a trust, but would not allow the accused to keep the land.

(p) The deceased had allegedly made the arrangements for donating the land to a trust.

(q) The panch witness PW-5 Shriram Narsu Shevale had denied that the seizure of clothes under Section 27 of the Indian Evidence Act was not done in his presence.

(r) PW-6, a panch witness to the voluntary statement of the appellant, turned hostile by stating that the said statement was written by the police and he had only signed it. He denied that he had accompanied the appellant for conducting the search at her residence under Section 27 of the Indian Evidence Act. PW-6 had signed the panchanamas exhibits 31 and 32 without the police reading out it's contents to the said witness.

(s) PW-7 is the Investigating Officer, who has falsely stated that the appellant made a voluntary statement.

(t) Reliance is placed on the judgment of the learned Division Bench of this Court at the Principal Seat dated 24.07.2014 delivered in Criminal Appeal No.682/2012 filed by ***Rekha Sitaram Chavan vs. State of Maharashtra***, to support the contention that when the appellant was sleeping in an adjacent bedroom along with her son PW-2, it is impossible that the appellant could have killed the deceased without the son waking up.

(u) Five out of seven witnesses have turned hostile and vital witnesses for the prosecution have not supported it's case.

(v) When PW-2, son of the deceased, was residing with the appellant by sleeping in her room and the deceased was sleeping alone in the adjacent room, Section 106 of the Indian Evidence Act would not be applicable.

(w) The theory of the prosecution that the appellant, after brutally attacking the deceased and causing him grievous injuries with the use of a stone, wooden plank, stick and by crushing his genitals, had electrocuted the deceased, is not proved as there is no evidence of an electric shock having been given to the deceased.

(x) A 65 year old village lady could not have lifted an 8 kilogram stone to assault the deceased.

(y) The stone was not found at the scene as per the spot panchanama.

(z) Discovery of the stone on the next date is completely falsified as the panch has not supported the case of the prosecution and no such stone was found at the spot when the spot panchanama was conducted.

(za) When PW-2 Tukaram opened the room as a part of Section 27 discovery, the procedure of sealing the room was not followed. This means that a stone and a wire were found planted in another room to which there was an access from the room in which the deceased was found killed.

(zb) PW-2 had denied that the complaint Exhibit-16 was recorded

by the I.O. Mr.Tribhuvan, before the Court and no statement made to the police could be admissible in evidence.

(zc) Hence, the conclusions of the Trial Court are unsustainable.

5. The learned prosecutor has strenuously supported the impugned judgment and his submissions can be summarized as under :-

(a) The son of the deceased/ PW-2 in this case, himself filed a complaint on 10.10.2013 (Exhibit-16) alleging that his mother, the appellant herein, had murdered his father Ganpat Landge.

(b) The appellant herself went to the Police Station on 10.10.2013 and narrated her story of daily quarrels with her husband, due to which, she murdered her husband.

(c) A specific motive behind the murder, is that the three acres of agricultural land which was owned by the deceased, was being donated by him.

(d) Due to the constant quarrels between the deceased and the appellant, the deceased had threatened that he would register the agricultural land in somebody's name by donating it to a person or to a temple trust.

(e) The prosecution has examined seven witnesses out of which, five witnesses have turned hostile.

(f) PW-1 hostile witness Sanjay Rangnath Landge, who is the

inquest panch, resiled from his statement and in his deposition at exhibit 13, he stated that he was not present for the panchanama. He has then stated that he had signed the inquest panchanama in a hospital. But, he identified his signature.

(g) PW-2 Tukaram, son of the deceased and the appellant, was the first informant, who also turned hostile. In his deposition at exhibit-15, he has stated that his father was habituated to playing cards and used to spend money by taking loans from others. On the date of the incident, he and his mother were in a single bedroom and the deceased father slept in another room. In the morning, his mother woke up prior to him and she saw her husband in a dead condition. PW-2 does not know how it happened as he and his mother had slept in one room and there was a road to their room which was closed in the night. He sent his mother to the Police Station.

(h) PW-3, Shrikrishna Madke, was a neighbourer of the deceased. He has stated in his deposition at exhibit-18 that there were daily quarrels in between the husband and wife. He claimed that he returned back home at about 10:00 PM and does not know what happened inside the house. In the early morning, he saw a crowd of people who had gathered in front of the house of the deceased. He has no knowledge as to why the police had recorded a statement allegedly uttered by him that the people who are gathered were discussing that the appellant had killed her husband.

(i) PW-4, Dr.Ravikumar Kamble, Autopsy Surgeon, has stated in his deposition that he was along with Dr.Kachare and both have conducted the postmortem. The cause of death is due to head injury with testicular injury and therefore, was homicidal in nature. He denied that such type of injuries cannot be caused if a person falls on the stone wall.

(j) PW-5, Shriram Narsu Shewale, panch witness of the seizure of clothes under Section 27 of the Indian Evidence Act, has deposed at exhibit-27 that he was not present for the panchanama, though the signature appearing on the panchanama is his. He has turned hostile.

(k) PW-6, Himmat Bhagurao Kale, has stated in his deposition that he signed the panchanama because the police asked him to sign.

(l) PW-7, Pradip Tribhuvan, Investigating Officer, deposed that he prepared the spot panchanama, inquest panchanama and recorded the statement of the complainant. He also prepared the seizure panchanama. The dead body was found in the house of the appellant. The deceased threatened of donating his agricultural land. There used to be frequent quarrels between the two. The appellant had made a voluntary statement while in police custody.

(m) The postmortem report was proved and the opinion of the doctor is that the deceased met a homicidal death.

(n) The C.A. report indicates that the blood was detected on the dhoti, kopari, broken wooden plank, saree and blouse. Samples of earth

were taken into two packets. The stone used for smashing the head of the deceased also had blood stains. The blood detected on exhibits 1 to 6 and 8 is human blood. The blood group of the stains on exhibits 3, 6 and 8 could not be determined as the results were inconclusive.

(o) The deceased and the appellant were alone in their room and therefore, Section 106 of the Indian Evidence Act would become applicable. It is for the appellant/ accused to explain as to how the deceased died when both of them were together.

(p) Blood stained articles and blood stained clothes of the deceased were found on the spot of the crime.

(q) The Trial Court has rightly appreciated the evidence and the conviction does not call for any interference.

(r) The prosecutor, therefore, prays that this appeal against the conviction be dismissed with costs.

WHETHER, THE DEATH OF THE DECEASED WAS
HOMICIDAL?

6. The appellant, wife of the deceased, is alleged to have used an eight kilogram stone and a “polpat” for striking the deceased on his head. She is also alleged to have twisted his private parts so badly that he suffered grievous injuries. She is also charged with having electrocuted her husband in order to ensure that he dies.

7. The spot panchanama indicates that there were several blood stains in the room in which, the deceased was sleeping. There is an internal door from his room to the room on the backside, which is said to have been occupied by the appellant and her son.

8. PW-4, the doctor who conducted the postmortem, has narrated the injuries suffered by the deceased. These injuries, as well as the cause of death, have been reproduced herein above. It is, thus, obvious that the cause of death would indicate that the deceased did not suffer a natural or suicidal death. His death, therefore, can be described as being homicidal.

TESTIMONY OF SEVEN WITNESSES

9. PW-1, Sanjay Rangnath Landge, panch witness, turned hostile. He has stated that he was not present for the panchanama. He, however, identified his signature as panch No.2 and has then stated that he signed the panchanama at the hospital where, he had gone to see the deceased, who was from his brotherhood. With the leave of the Court, the learned prosecutor cross-examined PW-1, who stated that he had not seen the dead body and the panchanama was not prepared in his presence. Per contra, the panchanama Exhibit-14 indicates that PW-1 was called upon to be a panch. Without any demur, he has signed the panchanama on 10.10.2013. It is obvious that, in between 10.10.2013 till 29.04.2014,

when his deposition was recorded, some developments must have taken place. Considering the observations of the Honourable Apex Court in ***State through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda, (2012) 8 SCC 450*** and ***Mallikarjun and others vs. State of Karnataka, (2019) 8 SCC 359***, either he has been won over or threatened etc.. Nevertheless, such conduct of a panch witness cannot be countenanced.

10. PW-2, Tukaram Ganpatrao Landge, is the first informant. He is the son of the deceased (father) and appellant/ accused (mother). In his deposition at exhibit-15, he has specifically stated that there are three rooms in the house. On the date of the incident, he had gone to sleep in one room along with his mother and his father slept in another room. In the morning, he was woken up by his mother, who informed him that she saw his father lying dead. PW-2 has stated that he does not know what has happened and the police have obtained his signature by saying that the body is sent for postmortem. He has then admitted his signature appearing on the complaint dated 10.10.2013 at exhibit-16. He then flatly denied in his cross-examination that there were quarrels between his parents or that they had grievously hurt each other in their previous fights. Though his father had three acres of land, he denied that his father intended to donate the land to a temple or to a person who would look after his father. He then denied that he had ever left his residence on the date of the incident or that he had traveled to the house of his sister

Satyasheela and stayed there. He also denied that his mother had confessed to him that she killed the deceased with a stone, fodder cutter or by pressing his private parts or by electrocuting him.

11. PW-2 then further stated that there are two rooms on the backside of his house and one room in the front portion which is deserted (probably PW-2 desired to state that the said room could not be locked or secured). He claimed that his parents were living very happily. His father used to come home late in the night and used to enter the room through the “deserted wall”. He admitted that he had sent his mother to the police station and he went to the house of his sister. The two backside rooms have doors and that his deceased father fell down while entering into the room through the “deserted wall”. The Trial Court has declared PW-2, a hostile witness.

12. PW-3, Shrikrishna Panditrao Madke, lives in front of the house of the deceased. He stated that there used to be daily quarrels between the deceased and the appellant. Upon being declared hostile, the learned prosecutor cross-examined him. He stated that early in the morning he saw a crowd of people having gathered in front of the house of the deceased. His testimony is of no assistance to the case of the prosecution.

13. PW-4, Dr.Ravikumar Kamble, has deposed at exhibit-25 and has narrated the injuries suffered by the deceased, which have been reproduced herein above. He has also described the injuries to external

genitals and at other parts of the body. He has also narrated the injuries on internal examination, which have also been reproduced above. The cause of death is said to be due to head injury with testicular injury and which is homicidal in nature. Barring the injuries to the testis, he has stated that other injuries can be caused by hard and blunt object such as a stone or wooden log. In his cross-examination, he has opined that an old lady can cause such type of injuries. Such injuries cannot be caused if a person falls on a stony wall.

14. We have applied our mind to the injuries that the deceased has suffered. We seriously doubt as to whether, a 65 years old lady could have picked up a large stone weighing about 8 kilograms to be carried into the room and to be dropped on the face of the sleeping deceased. We also doubt whether, this lady could have caused all the injuries as have been described, to the genitals of the deceased. The deceased is also said to have been given an electric shock allegedly by the appellant old lady.

15. It requires no debate that the statements made to the police have no evidenciary value. The prosecution claims that the admission by the appellant of having murdered her husband, given to her son PW-2, is an extra-judicial confession. Though the prosecution has made such a submission, we do not find that such alleged extra-judicial confession has been proved before the Trial Court. A high degree of proof is required for proving an extra-judicial confession.

16. PW-5, Shriram Narsu Shewale, was a panch witness with relation to the seizure of clothes and articles at the spot. He, identically as PW-1, has identified his signature on the spot panchanama and has claimed that he was not present for the panchanama. He has identified his signature on the seizure panchanama (exhibit 29) and denied his presence. In his cross-examination, as permitted by the Trial Court upon being declared hostile, he has denied that pieces of bangles, wooden log, blanket, pillow, saree, and blouse were lying in the room or that those articles were seized by the police under the panchanama. The appellant is his relative and he had signed the panchanama without reading it. He denied that the clothes of the deceased were seized under the panchanama in his presence. Unfortunately, the prosecutor has not properly cross-examined PW-5 so as to expose his somersault and taking a stand which would defeat the justice dispensation system. Considering the law laid down in *Sanjeev Nanda* and *Mallikarjun* (supra), the conduct of PW-5 cannot be countenanced.

17. PW-6, Himmat Bhagurao Kale, claimed that he was present in the police station, Ambajogai on 11.10.2013. The police asked him to sign the panchanama. Accordingly, he signed it and identified his two signatures on exhibits 31 and 32. Upon being declared hostile, the learned prosecutor cross examined him. He denied that the appellant was present at the police station or that the appellant has made a voluntary statement

that she would hand over the stone and wire from her house. He denied that the statement of the appellant was reduced into writing and thereafter, PW-6 has signed it. He then admitted that the appellant was his relative. This is yet another case of a witness turning hostile, which has facilitated an advantage to the appellant.

18. PW-7, Pradip Tribhuvan, is the Investigating Officer. He has stated that the appellant/ accused had come to his police station and had admitted of having murdered her husband. The I.O. rushed to the spot and prepared the spot panchanama. The panchanama (exhibit-28) was identified by the PW-7. It bears the signatures of the panchas. Pieces of bangles, a wooden log, a blackish colour blanket, old bucket, faint sky colour blouse, sky colour saree stained with blood and a sample of blood stained earth, were seized in the panchanama. He identified the complaint (exhibit 16) and his signature along with that of the complainant. It also carried the endorsement and signature of a PSO. The clothes of the deceased were seized after the postmortem and a panchanama (exhibit-29) was prepared.

19. PW-7 then contended that the appellant had made a voluntary statement. The appellant had stated that she will handover the stone and wire. The investigation team and the appellant proceeded to her house. She handed over the stone kept behind the steel tank. She herself handed over a wire kept in the middle room. The muddemal articles and

clothes were sent to the forensic laboratory for examination. In cross-examination, PW-7 denied that the appellant and her son PW-2 were residing in a tin room.

20. Considering the deposition of witnesses, it is obvious that doubt has been created as to whether, PW-2 had gone to sleep for the night with his sister Satyasheela and that it was only the deceased and the appellant, who were alone in the room in which the crime was committed. Section 106 of the Indian Evidence Act is, therefore, not applicable to this case. Five out of seven witnesses have turned hostile and have not made any statement which could have been accepted as being a corroboration to the evidence brought on record by the prosecution, in the light of the judgments in *Yomeshbhai Pranshankar Bhatt vs. State of Gujarat, (2011) 6 SCC 312*, *Rameshbhai Mohanbhai Koli and others vs. State of Gujrat, 2011 AIR SCW 378* and *Veer Singh and others vs. State of Uttar Pradesh, (2014) 2 SCC 455*. Even a little portion of the testimony favouring the prosecution and being corroborated by other pieces of evidence, found in the testimonies of these hostile witnesses, could be used as substantive evidence. The Honourable Supreme Court has crystallized the law in a catena of judgments that even a part of the testimony of a hostile witness supporting the case of the prosecution.

21. We, therefore, find that the conclusion of the Trial Court that the quarrels between the appellant and the deceased were proved from

the evidence of PW-2 and PW-3 on the basis of the FIR, is unacceptable. The FIR cannot be used as substantive piece of evidence. The story of a neighbour (PW-3) as regards daily quarrels between the two, is held to be sufficient evidence to prove the said fact, when, PW-2 has introduced a totally different theory before the Trial Court.

22. The Trial Court has concluded that though the panch witnesses have not supported the prosecution, the admission of the appellant in her statement under Section 313 that the bangle pieces, a wooden plank, a blanket, a blouse, a saree, were found at the place of the incident, is significant. The blood stains appearing on her clothes have been explained by her by saying that she has lifted the body of the deceased and therefore, since the appellant was alone with the deceased, she has to explain as to how the incident had occurred.

23. We find such conclusion to be unsustainable since PW-2 has clearly stated that he had gone to sleep in one room along with his mother (appellant) and the deceased (father) was sleeping in an adjacent room. We, however, agree with the Trial Court only on one count and which is, that the learned prosecutor has not properly or skillfully cross-examined the hostile witnesses and it appears that he has halfheartedly and casually conducted the cross-examination. Even the photographs of the dead body and the interiors of the room, though clicked, were not proved by the prosecution. The articles were sent to the forensic laboratory and yet, the

carrier of such articles was not examined by the prosecution. Though the first information was said to have been given by the appellant herself by reaching the police station, which was entered in the station diary by the SHO and though the extract of the station diary was produced on record, the said SHO was not examined and the extract of the station diary was not even exhibited, much less it's contents being proved.

24. Notwithstanding the factual position as above, the Trial Court has held that the charge against the appellant is proved as articles and clothes were stained with blood and the deceased and the appellant were all alone in a room in the house.

25. It is now a crystallized position of law that if the case of the prosecution appears to be improbable or a doubt has been created on the basis of the evidence available or if two views are possible, the view in favour of the accused has to be accepted and the benefit of doubt has to be given to the accused. Keeping in view that the prosecution has conducted the trial in a casual and halfhearted manner, five out of seven witnesses have turned hostile and as material witnesses have not been examined, that we are constrained to grant the benefit of doubt to the appellant/ accused and order her acquittal.

26. In the result, this Criminal Appeal is allowed. The impugned judgment and order dated 11.09.2014 in Sessions Case No.1/2014 is quashed and set aside. The appellant/ accused (Saraswati Ganpat

Landge), who is about 75 years of age today, is hereby acquitted from the charge of committing an offence punishable under Section 302 of the Indian Penal Code. The amount of fine of Rs.1000/-, if deposited by the appellant/ accused, shall stand refunded to her. The muddemal property be destroyed after the appeal period is over. The record and proceedings be returned back to the Sessions Court.

27. Before parting, as has been observed by us in a judgment delivered in the *State of Maharashtra vs. Krishna Sitaram Pawar, Criminal Confirmation Case No.2/2020* decided on 22.12.2020 and keeping in view the law laid down in *Ramji Duda Makwana vs. The State of Maharashtra, 1994 Cri.L.J. 1987 (Bombay High Court)* and *State through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda, (2012) 8 SCC 450*, we find it appropriate to hold that we cannot turn a blind eye to the menace of hostile witnesses and we cannot find ourselves helpless as against the conduct of the hostile witnesses. Less said the better, insofar as the learned prosecutor is concerned, who has taken no efforts in conducting the trial efficiently. We are finding practically in every case before us that day by day, the list of hostile witnesses is getting enlarged and the witnesses are getting emboldened in turning hostile for the reasons which can be speculated and perceived. The reasons for turning hostile could include threats, coercion and pressure tactics. However, it is a matter of a great concern if the witnesses turn hostile for extraneous considerations and

such hostile witnesses begin to believe that they are far beyond the reach of the arms of law. This would not only be a serious ailment/ disease to the justice dispensation system, but could as well be cancerous to the rule of law and the justice delivery system. Though the respect for law cannot be ensured by the threat of legal action, the time has come to initiate action against hostile witnesses in all such cases so as to send out a message loud and clear to the society at large that the witnesses becoming hostile cannot be ignored or pardoned.

28. As such, we direct the Trial Court to initiate the action under Section 340 of the Code of Criminal Procedure against all hostile witnesses in this case.

29. A copy of this judgment be forwarded to the learned Principal District & Sessions Judges in the State of Maharashtra for being circulated to all Additional District & Sessions Judges and Judicial Officers so as to apprise them as regards the action to be initiated against the hostile witnesses in appropriate cases.

kps

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)