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CRIMINAL APPEAL NO. 968 OF 2005

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JUDGMENT (Per Davare, J.) :

1. Heard Mrs.Jakhade, learned counsel for the appellant/accused and Mrs.Deshmukh, learned A.P.P. for the respondent State.
2. By the present appeal, the appellant (hereinafter referred to as “the accused” for the sake of brevity) takes exception to the conviction and sentence imposed upon him by way of judgment and order dated 10.2.2005 rendered by APEAL968.05 the Additional Sessions Judge, Gadhinglaj, in Sessions Case No.8 of 2004 thereby convicting him for the offence punishable under Section 302 of Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.1000/-, in default of payment of fine to suffer simple imprisonment for two months.
3. The factual matrix of the prosecution case is as follows :- The accused, namely, Ravsaheb Shivappa Patil, resident of village Bhadgaon, Tal. Gadhinglaj, Dist.Kolhapur, has been charged for committal of murder of his sister, namely, Gourawwa by causing bodily injuries intentionally and knowingly to cause her death by means of sickle, in his house at Bhadgaon, Tal.Gadhinglaj, Dist. Kolhapur, on 12.3.2004 at about 13.30 hrs. Accused Ravsaheb has three brothers and four sisters and the first informant, namely, Danappa PW-1 is his brother and deceased Gourawwa is sister of accused as well as of first informant. Victim Gourawwa was deserted by her husband and since then she was residing in her parental house along with the accused at Bhadgaon. The accused had two she-buffaloes and deceased Gourawwa used to do household work as well as used to APEAL968.05 maintain she-buffaloes.
4. The incident occurred on 12.3.2004 at about 1.30 p.m. when quarrel took place between the accused and sister Gaurava on account of not offering water to she-buffaloes by her and on hearing shouts of Gourawwa, PW-2 Sushila Patil and PW-3 Sharawwa i.e. neighbours of the accused rushed to the house of the accused and entered into it and witnessed that Gourawwa was lying in a pool of blood nearby the fire- stone and she had sustained bleeding injuries over her head, arm and back and it was found that accused was armed with a sickle which he threw away and went out of the house. The incident was informed to PW-1 Danappa by PW-2 Sushila who also rushed to the house of the accused and noticed the dead body of Gourawwa lying in a pool of blood. Thereafter, PW-1 Danappa went to Gadhinglaj police station at about 15.15 hours where PW-8 police head constable, namely, Shri Shewale was on duty as P.S.O. to whom he narrated the incident and gave report which was reduced into writing by P.S.O. PW-8 Shewale and on the basis of the said report, F.I.R. Exh.17 was lodged and crime was registered under C.R. No.37 of 2004 for the offence punishable under Section 302 of Indian Penal Code against the accused and PW-10 P.S.I. attached to said police station took over further investigation of the said crime. APEAL968.05
5. It is the case of the prosecution that PW-10 P.S.I. Shivaji Bhosale went

to the place of incident at Bhadgaon and recorded inquest panchanama at Exh.11 of dead body of Gourawwa lying in the house of the accused and thereafter the said dead body was sent to Zilla Parishad Hospital, Gadhinglaj, for postmortem examination and PW-7 Dr.Mallikarjun Athani attached to the said hospital conducted the postmortem on the said dead body on 12.3.2004 and produced the postmortem notes at Exh.28 and also collected clotted blood of deceased for sampling purpose. Thereafter, PW-10 P.S.I. Shivaji Bhosale, drew the spot panchanama in presence of panch witness PW-6 Virupaksha Kodoli and samples of plain soil and blood stained soil were collected and seized and also the weapon i.e. sickle (Article 1) lying on the spot of incident was seized thereunder. PW-10 also recorded statement of witnesses on the said date. However, the accused was not traced on the very day and, therefore, search was made for him and he was arrested on the next day i.e. on 13.3.2004 at about 4.00 p.m. and his blood stained wearing clothes i.e. khaki shirt and half pant were seized under the arrest panchanama Exh.24 and he was referred to medical examination to Zilla Parishad Hospital, Gadhinglaj, along with letter Exh.38. Moreover, clothes of deceased APEAL968.05 were seized under the panchanama Exh.24 i.e. pink colour saree and blouse of blue colour and petticoat (Articles 4, 5 and 6). Moreover, on 16.3.2004, the accused was referred to Zilla Parishad Hospital, Gadhinglaj, along with letter Exh.38 and his blood sample was collected.

6. Thereafter on 24.3.2004, police personnel sent seizure Muddemal property for examination purpose through the career PW-9 Shankar Baburao Mene along with forwarding letter Exh.39. The sample bottle of blood of deceased had also been collected from the Medical Officer, Zilla Parishad Hospital, Gadhinglaj, by issuing a letter Exh.31 on 24.3.2004. PW-10 P.S.I. also collected postmortem report and cause of death certificate. Accordingly, after completion of investigation, charge-sheet was filed against the accused, before the J.M.F.C., Gadhinglaj and the said case was committed to the Court of Sessions, Gadhinglaj, since it was exclusively triable by the said Court. Subsequently, chemical analyzer's reports were received from the A.C.A. Pune, which are produced at Exhs.40 to 42, respectively. Accordingly, learned Additional Sessions Judge framed the charge against the accused on 6.12.2004 at Exh.5 for the offence punishable under Section 302 of Indian Penal Code. However, the accused pleaded not guilty and claimed to be tried. APEAL968.05
7. To substantiate the charge levelled against the accused, the prosecution examined as many as 10 witnesses as mentioned below :- PW-1 Danappa S. Patil - first informant - brother of accused and victim. PW-2 Sushila Patil, the neighbour of the accused - arrived at the scene of the offence soon after the incident. PW-3 Sharava Mallappa Patil - arrived at the scene of the offence soon after the incident and stated that accused was armed with sickle. PW-4 Vijaykumar Mallappa Kodoli - person residing opposite to the house of the accused who saw accused going with the blood stained clothes. PW-5 Basavraj Shankar Magdum - shopkeeper in front

of the house of the accused - turned hostile. PW-6 Virupaksha Somappa Kodoli - panch witness to spot panchyanama Exh.23 and panchanama Exh.24. PW-7 Dr.Mallikarjun Virupaksha Athani - postmortem doctor. PW-8 Nivrutti Shankare Shewale - Police Head Constable who recorded F.I.R. Exh.17. PW-9 Shankar Baburao Mene - Police Naik - carrier. PW-10 Shivaji Jaywant Bhosale - Investigating Officer.

8. The defence of the accused is of total denial and he stated that he has been implicated in the present case falsely and, therefore, he claimed to be tried. The accused neither examined himself on oath nor examined any defence APEAL968.05 witnesses. After appreciating and analyzing the evidence on record and also considering the rival submissions advanced by learned counsel for the accused and learned A.P.P. for the State, the learned Trial Court convicted and sentenced the accused for the offence punishable under Section 302 of Indian Penal Code as mentioned herein above. Being aggrieved and dissatisfied by the said conviction and sentence, the accused has challenged the same in the present appeal and prayed for quashment thereof.
9. Learned counsel for the accused canvassed that there is no direct evidence against the accused and the prosecution case rests upon circumstantial evidence. The homicidal death of victim Gourawwa has not been disputed but since there is no direct evidence and since the prosecution has adduced/produced circumstantial evidence, the motive assumes the prime importance but the prosecution has failed to prove the motive against the accused. Moreover, it is submitted that, while drawing the spot panchanama, recovery of blood stained sickle was made from the scene of offence and same was sent to the Chemical Analyzer for examination purpose and the chemical analyzer's report indicates that it bore human blood of "B" group. Blood group of the victim Gourawwa is also of "B" group as well as APEAL968.05 the blood group of accused is also of "B" group, and hence, the said evidence does not lead the prosecution case to logical end against the accused to connect the accused with the crime. It is also submitted that although PW-3 Sharawwa stated the presence of the accused on the spot after the occurrence of the incident, she was not confronted with the police statement in the cross-examination, but few suggestions were given to her, which were obviously denied by her. It is also argued by learned counsel for the accused that PW-7 Dr.Athani nowhere states in his deposition that injuries caused to the victim were sufficient to cause death in the ordinary course of nature. It is further submitted that PW-5 Basavraj did not support the case of the prosecution and turned hostile. According to learned counsel for the accused, no finger prints on the sickle were obtained during the course of investigation, and in fact, real weapon was not seized by the investigating agency. Learned counsel for the accused further argued that it was not the pre-planned assault by the accused upon the victim and there was no enmity between accused and the victim. In fact, they were related as brother and sister. In the alternative, it is submitted that there was no pre-meditation and accused

assaulted the victim due to sudden quarrel, and there was no previous complaint against the accused, and hence, it is APEAL968.05 submitted that prosecution has failed to make out the case against the accused for the offence punishable under Section 302 of Indian Penal Code and, therefore, it is submitted that the conviction and sentence imposed upon him thereof deserves to be quashed and set aside and offence is required to be reduced to Section 304 (Part I) of Indian Penal Code and the accused deserves to be convicted and sentenced thereunder by allowing the present appeal partly. Mrs. Jakhade, learned counsel for the accused relied upon the judicial pronouncement of the Apex Court in the case of State of M. P. v/s Deshraj, reported in A.I.R. 2004 SC 2764. Paragraph 9 of the said judgment reads as follows:- “9. Applying the factual scenario noticed by the Trial Court and the High Court, more particularly, the fact that there was fight between accused and the deceased and the injured witnesses, and the injuries came to be inflicted in course of sudden quarrel, it would be appropriate to convict the respondents 2 to 10 under Section 304, Part II, I.P.C. Custodial sentence of 8 years would meet the ends of justice.”

10. Per contra, learned A.P.P. opposed the present appeal vehemently and placed reliance on the evidence of PW-1 Danappa Patil, PW-2 Sushila Patil, PW-3 Sharawwa Patil, PW-4 Vijaykumar Kodoli and PW-5 Basavraj Magdum and submitted that the evidence of said five witnesses clearly APEAL968.05 establishes that due to the quarrel between the victim and the present accused, PW-2 Sushila and PW-3 Sharawwa immediately rushed to the house of the accused and PW-3 Sharawwa, after entering into the house of the accused, witnessed that the accused was armed with sickle and deceased Gourawwa was lying in a pool of blood. Moreover, PW-3 also instructed PW-2 Sushila Patil to inform about the same to PW-1 Danappa, who, after calling by PW-2, rushed to the scene of offence and witnessed that deceased was lying in a pool of blood and PW-2 disclosed about the assault on the victim Gourawwa by accused. Thereafter, PW-1 Danappa went to the village Police Patil and subsequently proceeded to the police station Gadhinglaj and logged the report.
11. It is also submitted that the evidence of PW-4 Virupaksha Kodoli also supports the prosecution version and testimony of PW-5 Basavraj Magdum corroborates with the incident after occurrence about witnessing the victim lying in the pool of blood and throwing the sickle and leaving the house. According to the learned A.P.P., the medical evidence also supports the case of the prosecution and in all six incised wounds were noticed on the person of the victim which were ant-mortem injuries and PW-7 Dr. Athani also gave his opinion about the probability of causing injuries by APEAL968.05 means of sickle. Moreover, learned A.P.P. further submitted that it is significant to note that the accused left the house immediately after occurrence of the incident and he came to be arrested on the next day which indicates the conduct as well as guilty mind of the accused. It is further submitted by learned A.P.P. that the accused did

not attend the funeral of victim Gourawwa and the said conduct is also relevant in respect of the complicity in the crime. It is further argued by the learned A.P.P., that it has come in the evidence, that there used to be quarrels on the ground of work and the said quarrels were on account of not offering water to the she- buffaloes which is the motive behind the crime, which has been established by the prosecution. Moreover, PW-3 Sharawwa saw the accused soon after the incident. Accordingly, it is submitted that the medical evidence as well as the ocular evidence and recovery of weapon on the spot and chemical analyzer's report thereof, clearly establish that the accused is the perpetrator of crime and, therefore, learned A.P.P. urged that the present appeal be dismissed.

12. In order to deal with the submissions advanced by the learned counsel for the parties effectively, it is necessary to advert to the evidence on record, and coming to the medical evidence adduced/produced by the prosecution in respect of homicidal death of victim Gourawwa, PW-7 Dr.Athani stated APEAL968.05 in his deposition that he conducted postmortem on the dead body of Gourawwa on 12.3.2004 between 6.30 p.m. to 7.35 p.m. and while conducting postmortem, he noticed the following injuries thereon :-

- (1) Incised wound present left parietal area vertically placed, 3"x1" muscle deep skull bone fracture present.
- (2) Incised wound present left ear lobule obliquely placed, skin with muscle flap everted, clotted blood present.
- (3) Incised wound present left occipital area lower are L-shape 3"x2" muscle deep clotted blood present.
- (4) Incised wound present extending from mid-level of right scapular up-to mid-level of left scapular horizontally placed 8"x2", 3" depth, muscle deep clotted blood present.
- (5) Incised wound present on left-arm laterally, vertically placed 3"x1" muscle deep clotted blood present.
- (6) Incised wound present in left writ joint dorsally, laterally, horizontally placed 1"x1/2", muscle deep, clotted blood present. All the above said injuries are ante-mortem in nature. APEAL968.05 In his opinion, the cause of death is due to haemorrhagic and neurogenic shock due to injury to vital organ brain with the fracture of the skull with multiple injuries. Accordingly, he prepared the postmortem report which is produced at Exh.

28. He also stated that all the ante-mortem injury Nos.1 to 6 can be caused by means of weapon, a sickle (Article No.1). He further stated that, prior to preparations of postmortem notes, he had issued an advance cause of death certificate which is produced at Exh.29 and the injury certificate of the accused is marked as Exh.30. In the cross-examination, he admitted that he has not opined the time of death in postmortem report and stated that the death might have been caused within 12 to 24 hours since the rigor

mortis were absent. He also stated that rigor mortis starts developing after six hours after the death. He further stated that the weapon i.e. sickle was never presented before him to seek an opinion for the cause of death. He also stated that he collected blood of the deceased and sent it to Gadhinglaj police station but admitted that he has no evidence to show that the said blood sample was sealed.

29. It is amply clear from the aforesaid medical evidence of PW-7 Dr.Athani and postmortem notes Exh.20, that deceased Gourawwa sustained six incised wounds as stated therein which were ante-mortem injuries and injury No.1 was APEAL968.05 on left parietal area, whereas Injury No.3 was occipital area and Injury No.4 was present extending from mid-level of right scapular up-to mid-level of left scapular horizontally placed and cause of death is given as due to haemorrhagic and neoragenic shock due to injury to vital organ brain with the fracture of the skull with multiple injuries. Hence, it is amply clear that deceased met with the homicidal death. However, it is material to note that PW-7 Dr.Athani nowhere stated in his deposition that the said injuries were sufficient to cause death of victim in the ordinary course of nature.
30. PW-1 Danappa Patil i.e. brother of the accused and victim as well as the first informant, has stated that deceased Gourawwa was his sister and accused Ravsaheb was his younger brother. Although deceased Gourawwa was married, she was deserted by her husband and was residing with accused at his house at Bhadgaon. Accused Ravsaheb was also married but he had given divorce to his wife, namely, Sarojini. The accused was having two she-buffaloes and Gourawwa was maintaining them. Accused Ravsaheb also used to abuse Gourawwa on some trifle issues. Moreover, the accused had no job at the relevant time. On 12.3.2004 at about 1.30 p.m. when he was at home, PW-2 Sushila and PW-3 Sharawwa came to his house and informed APEAL968.05 him that accused assaulted victim Gourawwa by means of sickle on the cause of not taking she-buffaloes for watering, hence, he rushed to see Gourawwa and found her in a pool of blood in the kitchen-room and blood was oozing from the wounds. Therefore, he went to Village Police Patil but he was not present, hence, he approached Gadhinglaj police station and gave report, which is treated as F.I.R. Exh.17. Thereafter, the police personnel arrived at the place of incident. Gourawwa was removed to Zilla Parishad Hospital, Gadhinglaj. After conducting postmortem, dead body was given into their custody and they performed the last rites on the dead body at Bhadgaon. In the cross-examination, he stated that he was not aware about the relations of Gourawwa and accused Ravsaheb prior to his arrival at Bhadgaon from Mumbai. His house was about 500 ft. from the house of the accused. He stated that he did not know whether accused Ravsaheb was suffering from mental illness and also availed treatment at Miraj as well as he did not know whether the accused was removed from the service on account of his mental illness. He further stated that Gourawwa died instantly on the spot in the house. He categorically stated that police arrived at Bhadgaon

at the scene of offence and again returned to police station and then again took him to Bhadgaon and, therefore, the F.I.R. APEAL968.05 came to be recorded at police station, but the contents of F.I.R. disclose that when he arrived at the scene of offence, he noticed that the accused threw sickle on floor and went away. Omission was taken out in respect of his approach to Village Police Patil, amounting to improvement in his testimony.

31. Considering the testimony of PW-1 Danappa i.e. the first informant, it is apparent that he arrived on the scene of offence immediately after the occurrence thereof on the information received of the assault by the accused upon victim Gourawwa from PW-2 Sushila and PW-3 Sharawwa. However, he nowhere states in his testimony that when he arrived at the scene of the evidence, the accused was present there. Defence tried to put up the case that accused was suffering from mental illness and had availed treatment therefor at the relevant time, but the witness expressed his ignorance therefor. He categorically stated that victim died instantly on the spot in the house. His testimony relates to lodging of the F.I.R. Exh.17 after the occurrence of the incident and also reflects that the witness was not knowing about the relations between deceased Gourawwa and accused Ravsaheb prior to his arrival from Mumbai to Bhadgaon, but accused used to abuse deceased Gourawwa APEAL968.05 on some trifling matters. Although there are some discrepancies in the testimony of PW-1 and the contents of F.I.R. Exh.17, the said testimony deserves to be accepted in respect of lodging of the F.I.R. on 12.3.2004 and setting the criminal law into motion.
32. PW-2 Sushila, who is a neighbour of the accused, stated that accused was not doing any work but he used to give threats to victim Gourawwa. She also stated that, on 12.3.2004, at about 1.30 p.m., quarrel took place between victim Gourawwa and accused on account of offering water to she-buffaloes. She further stated that, when she was in her house, she heard cries of Gourawwa as "Aai Ga Mello". Then her mother-in-law PW-3 Sharawwa rushed into the house of the accused. PW-2 Sushila also followed and PW-3 Sharawwa told her that accused was armed with sickle and then they called PW-1 Danappa from his house who entered into the house of the accused and thereafter went to police station. She noticed that, victim Gourawwa was lying in a pool of blood. Thereafter, police personnel arrived. In the cross-examination, defence put its case that accused was suffering from mental illness and he was taking treatment at Miraj, but she stated that she was unaware of it. Omission was taken up in her cross-examination in respect of accused APEAL968.05 armed with sickle amounting to improvement in her testimony.
33. Accordingly, the testimony of PW-2 Sushila reveals that, on hearing shouts of victim Gourawwa, she followed PW-3 Sharawwa into the house of the accused. Pertinently, she had nowhere stated in the deposition that she witnessed the accused armed with sickle, however, she stated that PW-3 told her that accused was armed with sickle which, in fact, amounted to omission in her police statement and improvement in her testimony



as aforesaid. Hence, the testimony of PW-2 Sushila does not bring on record that the accused was armed with sickle. She further stated that she witnessed Gourawwa lying in pool of blood. Pertinently, there is no whisper in the testimony of PW-2 Sushila from her own knowledge in respect of presence of the accused at the place of incident and her testimony is silent in respect of assault by accused upon victim Gourawwa by sickle. The accused put his defence to the said witness that he was suffering from mental illness and was taking treatment at Miraj, but PW-2 expressed her unawareness in that respect. Accordingly, the deposition of PW-2 Sushila cannot be of any aid and assistance to the case of the prosecution in respect of occurrence of the incident and even regarding the presence APEAL968.05 of the accused at the place of incident after its occurrence.

34. PW-3 Sharawwa, who is mother-in-law of PW-2 Sushila, has stated that there was quarrel between Ravsaheb and Gourawwa on account of offering of water to she-buffaloes and then she heard shout as "Aai Ga Mello" from Gourawwa and, therefore, she rushed towards the room of the accused and found that Gourawwa was lying in the pool of blood in the house and accused was present there. Thereafter, she and PW-2 Sushila went to PW-1 Danappa to inform him. PW-1 Danappa also came there and witnessed the scene in the house and thereafter went to the police station. In the cross-examination, she stated that her relation with the accused are cordial. The accused was present in the house prior to the incident since morning. Suggestion was given to her that she has not heard the sound of Gourawwa and even not witnessed Gourawwa lying in the pool of blood and accused was present but the same was denied by her.
35. Testimony of PW-3 Sharawwa categorically refers to the presence of the accused at the spot of the incident after its occurrence and further stated that she noticed that Gourawwa was lying in the pool of blood. However, she has not stated that accused was armed with sickle. Apart from APEAL968.05 that, the presence of the accused at the place of occurrence of the incident has been established in her deposition. Moreover, the said testimony has not been shattered in the cross-examination. Hence, the said deposition of PW-3 Sharawwa deserves to be accepted as reliable and trustworthy testimony.
36. PW-4 Vijaykumar Kodoli stated that he was residing in the house situated on 100 ft. away from the house of the accused on the eastern side. On the date of incident, he was sitting over the Ota of his house. At about 1.35 p.m., he witnessed Ravsaheb while going out of the village. He was wearing khaki shirt and under-pant which were blood stained. He identified the said shirt and pant as Article Nos.7 and 8 in the Court. In the cross-examination, he has stated that he was working as lecturer in Jagruti Junior College, Gadhinglaj and the working hours were from 7.00 a.m. to 12.00 noon and he returned to Bhadgaon at 12.30 hours on the date of the incident. Omission was taken out in respect of description of the clothes given by him amounting to omission in his testimony in the cross-

examination but the same could be elicited beyond that. Considering the testimony of PW-4, it is apparent that he saw the accused while going out of the village at about 1.30 to 1.45 p.m. i.e. APEAL968.05 after occurrence of the incident and his clothes were blood stained. His testimony could not be demolished in the cross-examination and the time brought in the cross-examination supports the prosecution case. He has categorically stated that he saw the accused going out of the village and his clothes were blood stained and the said evidence amounts to incriminating evidence against the accused and his testimony also is required to be accepted as trustworthy testimony.

37. PW-6 Virupaksha Kodoli, a panch to the spot panchanama and arrest panchanama, stated that on 12.3.2004, the spot panchanama was prepared in his presence and blood was lying on the floor of the house and blood stained soil and plain soil thereupon were seized under the spot panchanama Exh.23. Moreover, he also stated that, a sickle was lying on the spot of incident which was earlier taken into custody by the police personnel under the spot panchanama Exh.23 as Article No.1. Thereafter, he was called to the police station and accused was present there and his clothes i.e. khaki shirt and under-pant which were stained with blood, were seized under the panchanama Exh. 24 and he identified the said articles as Article Nos.7 and 8, respectively, in the Court. Moreover, he further stated that clothes of the deceased which were stained with blood i.e. APEAL968.05 saree, blouse and petti-coat were also seized under the panchanama Exh.25 in his presence. He identified articles as Article Nos.4 and 5 in the Court. During the course of cross-examination, nothing beneficial to the case of the accused could be elicited from the witness, hence, testimony of PW-6 is required to be accepted in respect of seizure of the aforesaid articles/clothes.
38. We have perused the oral, documentary and medical evidence adduced/produced by the prosecution and also heard the submissions advanced by learned counsel for respective parties anxiously and perused the judicial pronouncement relied upon by the learned counsel for the appellant/accused and there is no doubt that the victim Gourawwa met with the homicidal death and injury Nos.1, 3 and 4 sustained by her were on the vital part of her body and her cause of death is due to haemorrhagic and neoragenic shock due to injury to vital organ brain with the fracture of the skull with multiple injuries and all the said injuries caused to the deceased i.e. Sr.Nos.1 to 6 were caused by means of sickle i.e. Article No.1 as stated by Dr.Athani PW-7. However, the question arises whether the prosecution has made out a case against the accused for the offence punishable under Section 302 of Indian Penal Code. In the APEAL968.05 said context it has come in the evidence that the sudden quarrel took place between the accused and victim on the trifle issue of non-watering of she-buffaloes by Gourawwa and in fact victim Gourawwa and accused are related to each other as sister and brother and since Gourawwa was deserted by her husband, she was residing

with her brother i.e. accused and further it has nowhere reflected in the evidence that accused committed murder of the victim Gourawwa with pre-meditation. Moreover, PW-1 Danappa and PW-2 Sushila have not witnessed the actual happening of the incident and they arrived at the scene of the incident after it had occurred and they do not refer to the presence of the accused at the place of the incident after it has occurred. She also has not witnessed the assault by the accused upon the victim but she categorically stated about the presence of accused at the place of incident after its occurrence. Moreover, PW-4 Virupaksha Kodoli also saw the accused going out of the village at about 1.30 to 1.45 p.m. wearing blood stained clothes which were seized under the panchanama later on, as stated by PW-8 Virupaksha Kodoli. Moreover, PW-3 Sharawwa also made a statement in the deposition that accused was armed with sickle. Pertinently, testimony of PW-7 Dr.Athani is silent in respect of the very aspect of injuries sustained by victim that whether they were APEAL968.05 sufficient to cause death of the victim in the ordinary course of nature. Moreover, it is amply clear that the incident occurred out of the sudden quarrel between victim and accused as aforesaid, and apparently, there was no premeditation behind the death of the victim at the hands of the accused.

39. Hence, having comprehensive view of the matter, we are of the considered opinion that the assault inflicted by the accused upon the victim allegedly by sickle, was not preplanned and, more particularly, considering the medical evidence on record, we have no hesitation to arrive at the conclusion that the prosecution has made out a case against the accused under Section 304 (Part I) of Indian Penal Code and not under the offence punishable under Section 302 of Indian Penal Code and, therefore, the present appeal deserves to be allowed partly and the conviction and sentence imposed upon the accused for the offence punishable under Section 302 of Indian Penal Code, deserves to be quashed and set aside and instead, the accused is required to be convicted for the offence punishable under Section 304 (Part I) of Indian Penal Code and considering the facts and circumstances of the case, sentence of 10 years rigorous imprisonment and fine of Rs.2000/- in default to suffer further rigorous imprisonment for three months, shall APEAL968.05 meet the ends of justice.
40. In the result, the present appeal is allowed partly and the conviction and sentence imposed upon the appellant/ accused for the offence punishable under Section 302 of Indian Penal Code stands quashed and set aside, and instead, the accused is convicted for the offence punishable under Section 304 (Part I) of Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years and also directed to pay fine of Rs.2000/-, and in default of payment of fine, to suffer further rigorous imprisonment for three months. The order passed by the learned trial Judge in respect of the set off of substantive sentence and the disposal of Muddemal property stands confirmed.
41. The appeal is disposed of in the aforesaid terms. (SHRIHARI P. DAVARE,

J. ) (A.P.LAVANDE, J. ) APEAL968.05