

State of Maharashtra and Others Vs. Ajay Dayaram Gopnarayan and Others

State of Maharashtra and Others Vs. Ajay Dayaram Gopnarayan and Others

SooperKanoon Citation : sooperkanoon.com/1145021

Court : Mumbai Nagpur

Decided On : Jan-17-2014

Judge : A.B. Chaudhari & Z.a. Haq

Appeal No. : Criminal Confirmation Case No. 1 of 2013 & Criminal Appeal No.225 of 2013

Appellant : State of Maharashtra and Others

Respondent : Ajay Dayaram Gopnarayan and Others

Advocate for Def. : Mr. R.J. Mundhada

Judgement :

A.B. Chaudhari, J.

1. This is a Criminal Reference Registration No.1/2013 for confirmation of death sentence against accused no.1-Ajay Dayaram Gopnarayan.

2. Both the accused persons Ajay Dayaram Gopnarayan and Nitin Nandkishor Gudadhe have also preferred Criminal Appeal No.225/2013 praying for acquittal against judgment of conviction for offences punishable under section 302 and 392 of I.P.C. and accused no. 1-Ajay is sentenced to death while accused no.2-Nitin Gudadhe is sentenced to life imprisonment and to pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for six months.

Both the matters are taken up together for hearing and disposal. Hence, this common judgment.

FACTS

3. The prosecution case is that the deceased Vijayatai Vitthalrao Pund aged about 75 years, who was mother of PW1-Sunil Vitthalrao Pund, a practicing lawyer by profession at Amravati was residing in Venus Park area of Kanta Nagar, Amravati. The house was constructed by PW1-Sunil about 67 years before the date of incident by engaging a building contractor PW2-Dilip Lade and during the construction activity, accused no.1-Ajay and accused no.2 Nitin in turn were engaged by Dilip as Labourers. After construction of the house, accused no.1-Ajay on his request to PW1-Sunil, started residing in one room at one end of his house and was also doing the work of cleaning the courtyard, gardening work in the house, so also the sundry works like payments of electricity bills etc. He resided for about 1^{1/4} month. During the said period accused no.1-Ajay also used to earn by driving auto rickshaw and used to park his auto rickshaw in front of the house of PW1-Sunil. But then, he stayed only for 1^{1/4} month, 10 months prior to the date of incident and left the house. At the relevant time, PW1-Sunil's wife and son were residing at Nagpur. On the date of incident namely on 17.07.2008, PW1-Sunil came from the Court at about 2.30 p.m., took lunch and left for his village Porgavan, Tq. Morshi, Dist. Amravati with his driver in the car. Deceased Vijayatai was alone at home. PW1-Sunil locked the main gate of the compound though small gate beside it was open. PW3-Sunita went to the house of Vijayatai at about 3.30 p.m. as instructed by the neighbour Smt. Chaudhari and rung the door bell and gave calls to Vijayatai but she did not receive any response and at that time she saw one Luna parked in front of the house and a pair of footwear in front of the main door of the house. She then went back. At about 6.00 pm she met Tulsabai and told her about 'no response' and, therefore, both of them went and knocked the door and rung the bell but there was no response from inside. Tulsabai, therefore, went to rear side of the house to find that the backside door was open. She went inside from that door to see Vijayatai lying in a pool of blood and as such opened the door of the hall and started shouting and crying in frightened condition. Both of them informed the neighbours, Shri Nagalkar and

Shri Adhao and informed them about it. At about 6.55 p.m. PW1-Sunil came back from village Porgavhan to see that the crowd had gathered in front of his house. He went inside the house to find his mother lying in pool of blood with several injuries on neck, throat and head. He saw handle of the cupboard of his wife was bent though the cupboard was closed. He then lodged the report at Police Station Gadge Nagar. Dog squad was called, finger print expert was also called with photographer who took photographs. Inquest Panchanama and spot panchanama was conducted. The dead body was, thereafter, sent for post mortem. Investigation started and finally both the accused were traced and arrested and the evidence was collected. The chargesheet was filed in the Court. The trial was held. As many as 19 witnesses were examined by the prosecution. The defence was of total denial. The trial Court heard the parties, framed points for determination and recorded his findings holding that though there was no eye witness to the incident, the chain of circumstances was complete and as a result, recorded the judgment of conviction of both the accused persons. The trial Court found accused no.1-Ajay to be the person of unscrupulous character, who according to the trial court, took the advantage of the trust of the lady in him who for his intention to commit theft and robbery, committed brutal murder of the deceased Vijayatai. The trial Court, therefore, held him to be the person deserving death sentence and accused no.2-Nitin deserving life sentence. Hence this reference and appeal.

SUBMISSIONS:

4. Mr. S.S. Doifode, the learned A.P.P., in support of the reference for confirmation of death sentence and in his opposition to the appeal preferred by both the accused persons against the impugned judgment and order of conviction and sentence, made the following submissions.

(i) The judgment and order recorded by the trial court is fully supportable and justified on evidence and the findings recorded by the trial court for convicting the accused persons. There is no infirmity whatsoever in the impugned judgment and, therefore, the same is liable to be confirmed.

(ii) The learned A.P.P. as well as counsel for the respondents-accused took us through the entire evidence of the prosecution witnesses PW1 to PW19 that was tendered before the trial Court.

(iii) The prosecution proved the chain of circumstances beginning with accused nos.1 and 2 working as labourers with contractor PW2-Dilip when the house of PW1 Sunil was under construction in 2004. Accused no.1-Ajay, 10 months prior to the date of incident, resided in a room in the house of PW1-Sunil for about 1^{1/4} month and was doing domestic work. The prosecution also established the commission of theft of Luna bearing no. MH-27/M-4204 owned by PW9-Ravindra Gadari from the Treasury Office inasmuch as the said Luna was found at the house of the sister of the accused no.1-Ajay, upon discovery memorandum made by him.

(iv) The fact that the accused no.1-Ajay and accused no.2-Nitin had, at about 3.40 to 4.00 pm, were seen with Luna being parked by them near the compound of gate of PW1-Sunil and that they went inside the house upon the deceased opening the front door of the house in response to the ringing of bell has been firmly established by PW4-Balkrishna.

(v) The fact that the PW3-Sunita at about 4.00 pm went to the house of the deceased and rang the bell but there was no response and while going out, she found Luna parked in front of the house of the deceased, has been proved by her.

(vi) The fact that finger prints were found on the spot of the incident of accused no.2-Nitin Gudadhe, has also been established. So also, the recovery of pass books and cheques belonging to PW1-Sunil from accused no.2-Nitin Gudadhe was proved.

(vii) The recovery of stolen articles from both the accused persons were duly proved by the prosecution without any element of doubt.

(viii) The recovery of clothes belonging to PW1-Sunil from accused no.1-Ajay on 20.07.2008 was proved. There was further recovery of clothes of accused on which in one case human blood of group 'A' of deceased Vijayatai on the clothes

of accused no.1-Ajay was found.

(ix) The learned A.P.P. contended that the prosecution completely linked the circumstances and thus both the accused have rightly been found guilty for the offence of murder and robbery.

(x) With reference to the confirmation of death sentence, the learned A.P.P. argued that the observations made by the trial court in the judgment about the heinous crime committed by accused no.1 clearly indicate that the case at hand is the rarest of rare in the sense that accused no.1 Ajay destroyed the faith reposed by deceased Vijayatai in him since he was working as a domestic servant and committed her murder in a brutal manner. He, therefore, prayed for confirmation of death sentence to accused no.1 and life sentence to accused no.2. He also prayed for dismissal of appeal preferred by respondents accused nos. 1 and 2.

(xi) The learned A.P.P. relied on judgments in Sandeep..vs.. State of Uttar Pradesh; (2012) 3 SCC (Cri) 18; Earabhadrapa Alias Krishnappa..vs.. State of Maharashtra; (1983) 2 SCC 330 and Ram Singh ..vs.. State; AIR 1960 Allahabad 748 (V 47 C 214).

5. Per contra, Mr. R.J. Mundhada, learned counsel for the respondents-accused persons, submitted the written notes of arguments in support of his appeal and in opposition to the criminal reference for confirmation of death sentence and also filed copies of decisions of various courts. He made the following submissions:

(i) There is no direct evidence with the prosecution and reliance is placed by the prosecution only on the circumstantial evidence.

(ii) The circumstantial evidence tendered by the prosecution is very very weak and no conclusion of guilt of the accused persons can be drawn thereupon. The prosecution failed to complete the chain of circumstances which are required to be proved to the satisfaction of the Court in the light of several decisions of the Supreme Court on the said issue. The evidence of PW1-Sunil Pund, Advocate ought to have been rejected since he contradicted Exh.48 spot panchanama about two ladies purses lying on the bed and he admitted in the cross-examination

whether four bangles and rings were stained with blood or not. The FIR lodged by PW1-Sunil Exh.35 had the scoring of words with intention to commit theft therein at his instance thereby showing tampering of the FIR. In nutshell, the inference ought to have been drawn that nothing was stolen from the house of PW1Sunil.

(iii) The learned counsel for the respondent-accused nos. 1 and 2 invited our attention to various omissions in the cross-examination of PW1Sunil and argued that the material portion of his evidence in the examination-in-chief was by way of omission amounting to contradiction and was, therefore, liable to be rejected but the trial Court did not take care to give importance to the said discrepancy clearly demolishing the prosecution case.

(iv) The trial Court committed an error in holding that the articles allegedly recovered as stolen property were never proved to be the articles recovered at the instance of any of the accused persons. The evidence tendered by the prosecution for proving the alleged discovery/recovery does not establish recovery of articles allegedly stolen. The FIR did not state what articles were stolen and whether six cheque books were missing from his house and, therefore, there was clear improvement made by PW1Sunil and the prosecution in order to rope the accused persons in the crime.

(v) Exh.85 is a document prepared by the prosecution contrary to the truth. The alleged theft of two pants and two shirts of PW1-Sunil is also unbelievable since the same was an omission in the police statement and it is impossible to believe that the robbers would take away the clothes of PW1-Sunil.

(vi) The evidence of other witnesses and in particular PW4-Balkrishna, claiming to be the person who has last seen accused persons entering the house of the deceased, is the neighbour and cannot be relied upon. There are material omissions in the evidence which have been ignored by the trial court. The evidence of this witness, who appears to be the star witness of the prosecution, has totally been shaken in the cross-examination but the trial court has not carefully seen his evidence and in fact ought to have rejected the same. The trial Court has ignored the ratio of the judgment cited before the Court for rejecting the prosecution case on all the counts. Learned counsel for the respondents-accused

then urged this Court to peruse the written notes of arguments filed by him. Finally he prayed for acquittal of the respondent nos. 1 and 2.

CONSIDERATION:

6. We have perused and reappreciated the entire evidence of PW1 to PW19 so also all the documents proved by the prosecution. We have seen the impugned judgment and order of conviction and the reasons therefor. We have heard learned counsel for the rival parties at length. We have perused the written notes of arguments filed by the learned counsel for the respondents. We have also gone through the various decisions filed by counsel for both the parties. We proceed to deal with the present proceedings keeping in mind the principles laid down by the apex Court in the matter of conviction based on circumstantial evidence and the other relevant aspects arising in the present case.

7. PW1-Sunil deposed before the Court that on the date of incident, as usual he went to the court when his mother deceased-Vijayatai was alone in the house. He came back from the court at about 2.15 pm and went to his village at about 2.30 pm by motor car with his driver, leaving his mother alone in the house. At about 7.00 pm, he saw crowd in front of his house and saw his mother dead with bleeding injuries. He lodged the FIR with Police Station at Exh.35. Prima facie, he found theft in his house and articles missing. He found some ornaments; gold chain (Kanthi) weighing 3 Tola and pendant missing. His mother deceased Vijayatai used to wear the same on her person. We quote the following material from the evidence of PW1-Sunil.

œ.....Gold Kanthi which my mother used to wear is appearing in her photograph. I can identify gold Kanthi which my mother used to wear. Gold Kanthi and P endol from the Muddemal property at Sr.No.18 is now shown to me belongs to my mother, it is now marked at Article No.11. Gold Kanthi at Article No.11 now shown to me and the Kanthi appearing in the photograph at Article No.10 is the same. I can identify my shirts and pant those were stolen. Two half Manila of white colour at Sr.Nos.14 and 17 from Muddemal property now shown to me they belong to me. Those half Manila are now marked at Article Nos. 12 and 13. My missing pant was of white colour, but it is not there in the Muddemal property. I know Accused

no.1 Ajay, he used to work with me. The construction of my house commenced in the year 2004, that time Accused no.1 Ajay was working with the contractor. After construction of my house commenced in the year 2004 that time Accused no.1 Ajay was working with the contractor. After construction of my house Accused no.1 Ajay used to come at my house intermittently. AT that time he used to clean the courtyard of my house as well as he used to do the work of gardening. Ten months prior to this incident Accused no.1 Ajay had come to my house. He was in need of shelter and work. I provided one room to Accused no.1 Ajay for his residence. He used to do the sundry work at my house. The room given to Accused no.1 Ajay was adjoining to my Deoghar and it was having a door opening towards the courtyard. Accused no.1 Ajay stayed in my room for about 1 and one 1/4th month. He used to carry our electric bills for payment. Accused no.1 Ajay used to drive his Auto-rickshaw and he used to keep his Auto-rickshaw in front in my house. One pair of footwear was found near my house but it was not belonging to me or my family. Accused No.1 Ajay is present in the Court today.?

8. We have perused the cross-examination of this witness very carefully. We find that the omissions brought in the cross-examination mostly relate to the statements in the FIR. Since, it is the well settled law that the FIR is not an encyclopedia and since the report Exh.35 was immediately lodged with Police Station after his arrival at his house from his village, we do not expect him to tell each and every details in the FIR. We, thereafter, reject the submissions made by learned counsel for the respondent-accused about the omissions in his FIR brought in the cross-examination. However, insofar as the important portion of his evidence about accused no.1 working in his house during the construction of house and thereafter for about 1 1/4 month and missing of several articles as quoted by us above duly identified by him before the Court and missing from the person of the deceased is an evidence which is fully believable and we do not find any discrepancy in the evidence of PW1-Sunil. At any rate, PW1-Sunil is not an eye witness. He deposed before the Court and is the most natural witness insofar as the circumstances, which were required to be proved by him have been duly proved. We have no doubt that whatever is deposed by PW1-Sunil, is worth and is with full credence and relevant for finding out the complicity of respondents-accused. The FIR Exh.35 which was lodged immediately after the incident, fully

corroborates his evidence before the Court.

9. The next witness is PW2-Dilip, the building contractor who deposed thus:

œI know Accused No.1 Ajay and Accused No.2 Nitin. They worked with me. Accused nos. 1 and 2 are not before the court today. Accused Nos.1 and 2 worked as labourers with me. I know Dr. Tote from Amravati. The construction of his hospital was done by me. At that time Accused No.1 Ajay worked with me as a labourer. I know Advocate Sunil Pund. Before five to six years I constructed his house. At that time Accused No.1 Ajay and Accused No.2 Nitin worked with me as labourers.?

10. The aforesaid evidence of PW2-Dilip is very material evidence about accused no.1-Ajay and accused no.2-Nitin working with him as labourers. He has clearly deposed that when construction of the house of PW1-Sunil was being carried out, both the accused nos.1 and 2 were working with him as labourers. We have perused the cross-examination of this witness. We find that the said material evidence, which we have quoted, has not at all been shaken by the defence. This clearly shows that accused nos.1 and 2 were working on the site of construction of the house of PW1-Sunil. The evidence of PW1-Sunil is also corroborated by this witness, who is an independent witness.

11. The next witness examined by the prosecution is PW3-Sunita. She deposed that she does household work in the colony. The deceased Vijayatai had come to the house of neighbour, Smt. Chaudhari and had kept a message for Sunita to visit her. At about 3.20 pm, she went to the house of Vijayatai. She went inside through the compound gate and rang the door bell and also gave a call to Vijayatai, however, she did not receive any response. She saw one Luna in front of the gate of the compound wall and a pair of footwear. As she did not get any response, she went back. At about 6.00 pm she met Tulsabai, cook of Vijayatai the deceased and both of them went to the house of Vijayatai and again rang the door bell and also knocked the door but none opened the door and there was no response. Tulsabai, thereafter, went to the rear side of the house and entered from the rear door and raised a cry and rushed towards the road. From the evidence of this witness, it is clearly established that Luna was parked in front of the gate of

the compound wall and a pair of the footwear was lying and that there was no response despite door being knocked and the bell being rung. It is also established that the rear side gate was opened and Tulsabai made entry from that gate to find the deceased lying. We have perused the cross-examination of this witness. The material evidence about the parking of Luna in front of the gate and the compound wall is intact and has not been shaken in the cross-examination i.e. all the circumstances which this witness has firmly proved.

12. The next witness PW4-Balkrishna is the most important witness of the prosecution and, therefore, we have carefully reappreciated his evidence. He is resident of the same colony and he knows PW1-Sunil Pund since his house is at a distance of 5060 ft. of his house or rather his house is in front of the house of this witness. He then deposed thus in his cross-examination:

œ2. Incident is dated 1772008. My office hours are from 10.30 a.m. to 4.30 p.m. On the day of incident I returned home in between 3.45 pm. And 4.00 p.m. I was to collect some documents as I being a patient of diabetes I returned home for taking food. When I reached to the gate of my house I saw two young persons proceeding away by the Luna of green colour. They kept their Luna near the compound gate of Adv. Pund. Then they went inside the premises of Adv. Pund and they had pushed the door bell of Adv. Pund. Mother of Adv. Pund had opened the door of the house. Thereafter, they went inside the house of Adv. Pund.

3. ..Out of those two young persons I can identify Gopnarayan. The witness has identified Accused No.1 Gopnarayan sitting in the court. Before 10 to 11 months of this incident Accused No.1 Gopnarayan was residing in the house of Adv. Pund. Accused No.1 was having auto-rickshaw and at that time he used to keep his auto-rickshaw near the house of Adv. Pund. Accused No.1 used to clean the courtyard of the house of Adv. Pund, therefore, he was known to me. The witness had identified Accused No.2 and he says that Accused No.2 is amongst those two young persons . I can identify Luna used by those two young persons that day if shown to me.?

13. The above evidence is material evidence. This witness has recognised both the accused persons as the persons who entered the house of the deceased in

the afternoon between 3.45 to 4.00 pm. On the deceased Vijayatai opening the door of the house in response to the bell being rung by them. We have perused the cross-examination of this witness on the aforesaid very material evidence about the accused persons entering the house after parking the Luna bike at the house of the deceased. The cross-examination does not show any discrepancy to demolish the aforesaid portion which is very material. On the contrary, minor omissions as to the exact time of return at home from his college or about he being a patient of diabetes cannot be the reason for rejecting the sworn testimony which is otherwise believable. Merely because he is a neighbour, he cannot be disbelieved. On the contrary, he is the most natural witness who happened to come to his home at the relevant time. The evidence that he had come back to his house in the afternoon at about 4.00 pm and saw both the accused persons going on Luna and then parking the same in front of the house of PW1-Sunil and then entering the house by pressing the door bell and the deceased Vijayatai opening the door both of them entering the house through the door was all seen by this witness and that part is not an omission as contended by learned counsel for the respondents-accused persons. It is only about the time of the omissions that has been brought but that is also not correct since the time mentioned is 4.00 pm for return at the house and that he had come for collecting some important documents which is also not an omission as we have checked the same from the record. There is whatsoever no explanation in the statement under section 313 Cr.P.C. by both the accused persons as to why they entered the house by pressing doorbell because within a short time thereafter Vijayatai was found brutally murdered.

14. To sum up, the evidence of PW4-Balkrishna as aforesaid has not at all been shaken and we are satisfied about the credibility of the evidence who is the immediate neighbour and saw both the accused persons and identified both of them in the court in his evidence as quoted by us above. We have no manner of doubt that the evidence of this witness must be believed.

15. The next witness is PW5-Tulsabai. PW5-Tulsabai is a witness who did not get any response when she went with Sunita and thus entered the house from the rear side to find the deceased lying.

16. PW6 Vijay Chandak, is also an important witness on the question of the discovery made by accused no.1-Ajay. We quote relevant portion from his evidence as under:

œ.....It was about 2.45 to 3.00 p.m. Police Inspector, two constables and one other person were there. I was asked to hear the statement of the said person to act as panch. I gave consent to it. Other panch had also come there. On interrogation, said person told his name as Ajay Gopnarayan. He disclosed that he kept the bag containing clothes at the house of his sister situated at Naya Akola and he would point out the said bag. The statement made by said person was recorded by police in my presence. His statement now shown to me is the same, it bears my signature, it is at Exh.57. It is also signed by Ajay Gopnarayan and other panch witness. Thereafter, myself, other panch, Ajay Gopnarayan and police went to Naya Akola by a Jeep. We reached Naya Akola within 10 to 12 minutes. Ajay Gopnarayan showed house of his sister. He gave call to his sister, accordingly his sister came out of the house. He had asked his sister to bring the bag kept by him inside her house. Accordingly, she brought the bag and gave it to Ajay Gopnarayan. Ajay Gopnarayan took out clothes from the said bag and they were handed over to police. Three white shirts, three Pants, one Lungi were in the said bag. I can identify those clothes if shown to me. Those clothes were seized and sealed by police. Two Shirts and one Pant were having blood stains. Seizure panchanama was prepared by police, and it bears my signature. Seizure panchanama now shown to me is the same, it is at Exh.58. The witness has identified Accused Ajay Gopnarayan sitting in the court. A Shirt at Sr.No.27 in Muddemal invoice, which is at Article No.14 and Pants at Sr.No. 28 and 29 in Muddemal invoice, which are at Article No. 15 and 16 are the same. The Shirts at Sr.No.14 and 17 in Muddemal invoice which are marked at Article No.12 and 13 are the same. The bag at Sr.No. 30 in Muddemal invoice, and the Lungi at Sr.No. 26 in Muddemal invoice are the same. They are now marked as Article No. 21 and 22 respectively.?

17. The above evidence of this witness in clear terms shows that there was discovery by accused no.1-Ajay of the very important articles clearly establishing the complicity of accused no.1-Ajay. PW6-Vijay is an independent witness and has

nothing to do with the either side. He travelled with police party and accused no.1-Ajay to the house of his sister in Naya Akola and at his instance, the articles were discovered. We have perused cross-examination of this witness and we find that the evidence of this independent witness has not been shattered and on the contrary, the clothes discovered by him were seized by police. The submission made by learned counsel for the accused that the process of sealing was done at Gadge Nagar Police Station and, therefore, this Panchanama should be disbelieved does not appeal to us. We have carefully examined the submissions made by the counsel for respondents-accused persons. We find that all the articles which were found upon discovery made by accused persons, were brought to the Police Station and documents were scribed and sealing was done. That may be an irregularity error but then we do not think that the same should be taken as if the documents were manipulated and sealing was not done. We do not find force in the said submission. Upon reading the recovery panchanama Exh.58 read with Exh.69 carefully we find that the same stolen Luna was attached from the house of his sister Sau. Suryakanta Sawai situated at Naya Akola where accused no.1-Ajay took them upon making discovery memorandum statement. These documents Exh.58 and 69 cannot be read in isolation to hold that discovery/recovery was not proved as contended by the learned counsel for the accused.

18. PW7-Rajendra Baitule is the next witness who is a goldsmith. Though, this witness hesitantly supported the prosecution but whatsoever worth; his evidence can be believed. The portion from his evidence in the examination-in-chief that the accused Nitin was brought by police to his shop and identified that he was the very person who had come to his shop earlier but since he had no receipt of the ornaments, which he wanted to sell, he had not purchased the same is not shaken in the cross-examination. He agreed that he had not purchased the articles from the accused for want of receipt and, therefore, the accused approached the another goldsmith. The evidence that it was accused no.2, who offered to sell the ornaments to him and that he had refused to purchase the ornaments from him because he had no receipt of the ornaments, inspires confidence. We have checked cross-examination of this witness and we do not find that the material evidence has at all been shaken in the cross-examination. From his evidence, it is

clear that accused no.2-Nitin had visited the shop of this witness offering to sell ornaments with him but since he had no receipt, this witness declined to purchase the ornaments from him and that was in the month of July 2008. This evidence having gone unchallenged, it was for the accused no.2-Nitin to give a satisfactory explanation to this evidence in his statement under Section 313 of the Cr.P.C., which he did not do.

19. We have then PW8-Vinod, a Motor Mechanic, who deposed about Luna being brought at his shop for repairs. Accused no.1-Ajay then confirmed the possession of Luna with accused no.1-Ajay and nothing more.

20. PW9-Ravindra Gadari, is owner of the said Luna which was stolen from the Treasury Office. He identified the Luna about which he had lodged the report of theft with Police Station. We quote his evidence from para (1) thus:

œ1. I am doing service in Agricultural Office, Amravati. I used to attend my office by using Luna. I had purchased the said Luna in the year 2000. The documents of said Luna are with me. Said Luna is of green colour and having the number MH27/M4204. My Luna was stolen during last three years. On 17.7.2008, I went to treasury office for submitting bills of my office. I went to treasury office with my Luna at 11.00 a.m. After keeping Luna at the stand of treasury office, I went inside the treasury office. I came out of treasury office at 4.00 p.m. I did not see my Luna at the stand of treasury office. I made inquiry in the vicinity and I went to Police Station on the next day. Police had asked me to make inquiry regarding Luna for two days. Then I lodged report to Gadge Nagar Police Station on 19th. Said Luna is now with me. Today, I have brought said Luna in the Court. 2. and 3.

4. I had taken my Luna on supratnana from the court. I had submitted copies of documents regarding my Luna in the court. Form No. 23 from the remand paper is shown to the witnesses. This document is referred by the defence counsel in cross-examination, therefore, it has been marked at Exh.67. Witness says that chassis and engine number of his Luna are there in Exh.67. In my Police statement I have stated that chassis number of my Luna as BK03023041 and engine number as BK13027978....?

The Luna that was seized at the instance of the accused no.1-Ajay from the house of his sister on discovery, was clearly identified by this witness which is clear from para 4 of the cross examination with the same Engine No. and Chassis No. It is, thus, clear that accused Ajay had committed theft of the said Luna belonging to this witness and post commission of the offences had gone to the house of his sister at Naya Akola stands firmly established by the prosecution.

We have perused his cross-examination. The submission that the report in respect of that Luna was lodged after the incident of murder does not appeal to us because there is evidence to show that the Police Station Officer had asked him to search the Luna for two days and then lodge report with Police Station and that he had actually searched his Luna with his friend but could not find it and hence he lodged the report. We do not think this witness would lodge a false report about the theft of his Luna in order to involve the accused persons in the absence of any enmity against them nor there is any suggestion to the effect that he was influenced by police to do so.

21. The next witness is PW10 Nandkumar who deposed about the personal search of both accused persons. This witness proved document Exh.69 about which we have already made a discussion that though the documentation was made in the Crime Branch Office in respect of both accused persons; the same was in consequence to the discovery memorandum and the visit to the site where incriminating articles against them were found upon their personal search. At any rate, he is an independent witness. Exh69 describes the injury on the person of accused no.1-Ajay, which were found upon his personal search. We quote the following portion of the injuries from the said document Exh.69 thus:

œOn making minute inspection of person of above accused, it is observed that there are injuries at three places on the left neck and at one place below the left ear. A mark like that of scratch is visible on the left side portion below the jaw. Similarly, mark of abrasion is visible on his left elbow. A cut injury to the extent of two centimeters is visible on inner portion of first phalange of his right thumb. Similarly, a scratch-mark is visible on the portion between the said thumb and forefinger.?

22. Exh.70 is another document in respect of the injuries. We quote following portion from the said document in respect of the accused no.2-Nitin about injury:

œ(1) Mark of injuries visible (on his person), viz. On the left cheek on the portion below the right ear, below left ear, on the left side portion below the jaw, on the left elbow on right thumb and on middle portion of fore finger. The medical examination is being done in order to know as to with what object and before what period the said injuries are caused.?

23. PW11-Dr. Pallavi examined both the accused persons and issued certificate Exh.73 and 74 about injury. Though, injuries are in the nature of abrasion on the person and were examined on the date of arrest itself namely on 19.07.2008, the accused persons did not say a word in their statement under Section 313 of the Cr.P.C. about the cause of the injuries. The learned counsel for the accused invited our attention to the injury certificate Exh.135, 136 and contended that on 20.07.2008, there were no injuries on the person of the accused persons. We have examined the said submission and we find that the evidence about their medical examination on 19.07.2008 by PW11 Dr. Pallavi has not been seriously challenged. The examination after more than 24 hours on 20.07.2008 of both the accused showing no injuries may not show the presence of abrasions due to softening of the abrasions or for want of careful examination thereof. This is all the more so because the accused no.2 was examined by PW11-Dr. Pallavi on the very date of arrest and she found abrasions and noted the same. There is no reason why her sworn testimony should be disbelieved.

24. PW13-Ashish Raut also discovered the articles at the instance of accused no.2-Nitin Gudadhe which he had hidden. We quote his evidence as under:

œ1. Before two years I was called by Police to act as a panch. Accordingly, I went to Gadge Nagar Police Station. Police and one person were present there. Said person was interrogated by Police in my presence. He has admitted to point out gold Kanthi that was kept by him in the rear side of his house situated at Reosa. Said person told his name as Nitin Gudadhe resident of Reosa. Said person made the said statement in my presence and in presence of Sudhakar Wighe. His statement was recorded by Police and they obtained our signatures on it. His

statement was also signed by him and the Police Inspector. Memorandum statement now shown to me is the same, it bears my signature, it is at Exh.78. Thereafter, myself another panch, Nitin Gudadhe and Police went to Reosa by jeep. After going to village Reosa Nitin Gudadhe has asked to stop the jeep. Thereafter, he took us to his house by foot. He then went to the rear side of his house and he took out a plastic packet kept under the heap of stones. One gold Kanthi and two gold Chains were in the said plastic packet. One Pearl Necklace was also there in the plastic packet.

2. Those articles were seized by Police in my presence. The description of those articles given in seizure panchanama is correct. Seizure panchanama now shown to me is the same, it is signed by me and another panch. The seizure panchanama is at Exh.79. I can identify those articles. Gold Kanthi at Article No.11 and the ornaments of Bentac at Article No. 18 before the Court now shown to me are the same. Pearl Necklace includes in the ornaments of Bentac at Article No. 18. After the seizure of those articles we went to Police Station. On the way to Police Station, Police were interrogating Nitin Gudadhe. At that time Nitin Gudadhe told that he had thrown one Purse near Power House situated on Morshi road. He admitted to point out the said Purse. After going to Police Station his memorandum statement was accordingly recorded by Police. His memorandum statement bears my signature. His memorandum statement is at Exh.80. Memorandum statement was recorded by Police as per his version.

3. Thereafter, myself, Sudhakar Wighe, Nitin Gudadhe and Police went to Power House situated on Morshi road. Nitin Gudadhe pointed out the spot in front of Power House. Purse was not found on the said spot, however, two bank passbooks and one cheque book were found there. Those bank passbooks and cheque book were seized by Police. Seizure panchanama now shown to me is the same, it bears my signature, it is at Exh.81. Bank passbooks and cheque book before the Court at Article no.17 are the same. Person who made the memorandum statements that day is present in the Court, he is the Accused No.2 in this case. Then we went to Police Station. In the Police Police Station the clothes worn by Nitin Gudadhe were seized. Seizure panchanama of his clothes was prepared by Police in my presence. Seizure panchanama of his clothes bears

my signature, it is at Exh.82. I can identify those clothes if shown to me.?

25. We have perused the cross-examination of this witness and we do not find any infirmity in the evidence of this witness who has deposed honestly on the discovery of various articles from accused no.2-Nitin though the Panchanama was ultimately prepared at the Police Station but then we have already found that only the documentation was done at the police station which does not mean that the accused were not taken to the spot where the discovery was made under the recovery Panchanama Exhs.81 and 82.

26. The report of the Chemical Analyser shows that the blood group of the deceased Vijayatai was œA?, from the various blood stained articles seized from the spot. The report Exh.105 shows article 14 seized from the accused no.1 with human blood and articles 15 and 16 seized from accused no.2 were also having human blood. Article 16 is having blood group œA? of the deceased. The blood group of the accused no.2 Nitin has not been determined. The blood group of accused no.1-Ajay Exh.107 is œA?. It is not the case of accused no.1-Ajay that there was bleeding injury at any point of time from his person on any of the articles seized from him. It was for him to explain the existence of human blood on article 14 seized from him so also for accused no.1-Nitin from whom articles 15 and 16 both blood stained were seized. They did not explain anything.

27. The learned counsel for the respondent-accused invited our attention to Exh.88, which was admitted by accused persons and thus exhibited. They were issued pursuant to Exh.87 requisition given by police officer to the Medical Officer, General Hospital, Amravati. On perusal of these two documents, which are purportedly showing the blood group reports of accused no.1 Ajay and Nitin as œO? positive and œB? positive respectively, we find that these two reports Exh.88 or two pieces of papers at record page nos. 168 and 170 are almost of the size of 1/8th of the full scape paper torn out of the printed form in the hospital that too in different handwriting and without any endorsement or signature or certification from anybody mentioning the blood groups of accused persons as aforesaid. There is no stamp of hospital anywhere nor any details as to who determined their blood groups and how. They are torn pieces of the printed papers. It is true that

these two pieces of printed paper were produced by the prosecution with Exh.77 but then it is for the Court whether to accept or not the same as legal evidence. The reason is that it is not clear who determined blood group and whose handwriting it is. These two pieces of papers have been admitted by the defence and, therefore, exhibited purportedly with reference to Section 294 of Cr.P.C. in a most casual manner.

28. Section 294 of the Cr.P.C. reads thus:

œ294. No formal proof of certain documents(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person by whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.?

The aforesaid section was introduced by amendment after year 1970. Section 294 Cr.P.C. was enacted with a view that the prosecution evidence may be shortened and the prosecution may not be required to prove the documents which are admitted by accused persons. The intention of the Legislature was not to bind the accused persons or force him to admit or deny the genuineness of the documents produced by the prosecution that is why the Court would not be justified in passing the order directing accused to admit or deny the documents, obviously since it would violate Article 20

(3) of the Constitution of India. Be that as it may, the question that arises for our consideration relates to the procedure, which must be followed while insisting for

admission or denial of the genuineness of the documents. To our mind, Section 294

(1) in particular providing for insertion of the description of the document in the list to be prepared either by the prosecution or the accused for calling upon either party to admit or deny the genuineness of the documents must be held to be mandatory. In other words, for making use of or for asking for effective operation of section 294 (1),

(2) or (3), the particulars of such documents must be included in the list. In other words, the documents which are not included in the list contemplated by Section 294

(1) cannot be put forth for admission or denial nor can be exhibited or read in evidence without proof as contemplated by Section 294

(3) of the Cr.P.C. This is to prevent either the prosecution or the accused to push a document for clandestinely exhibiting it by admission and then read in evidence. We, therefore, reiterate that under section 294 (1),

(2) and (3), only the documents included in the list either by the prosecution or the accused and submitted for admission or denial can be processed for putting the sanctity as legal evidence contemplated by Section 294

(3) and not the documents which are not included in the list by either of the party.

Let us now turn to the case at hand. The case at hand is typical example of such lapse on the part of the Presiding Officer as well as ministerial staff of the Sessions Court. The documents Exh.87 and 88 were never included in the list Exh.22 submitted by the prosecution under section 294 (1) of the Cr.P.C. that was given to the accused for admission or denial. We have carefully perused the list, which was prepared and submitted to the Court by the prosecution with a notice to the accused for admission and denial under section 294 Cr.P.C. but we find that the documents Exh.87 and 88 (two pages) are not to be found in the list. Perusal of the record clearly shows that the Presiding Officer or the ministerial staff of the Court exhibited Exhs.87 and 88 without verifying whether Exh.87 and 88 were

included in the list filed by the prosecution merely because counsel for the accused admitted Exhs. 87 and 88. Thus, there is a blatant violation of the aforesaid procedure elucidated by us above. It is said, the prosecution is a 'handmaid' of justice. In our opinion, that is not always so, as in the instant case, the provisions of Section 294 (1) and (2) being mandatory. To sum up, we hold that Exhs.87 and 88 cannot be read in evidence as contemplated by Section 294 (3) and, therefore, we reject these documents Exh.87 and 88.

29. This Court has observed in large number of Sessions Trials having perused the original records of the cases that the notice under section 294 (1) is given by the prosecutors before the Court in a format prepared by them as per their whims. It is also found that such applications are also tendered handwritten and lists are submitted to the Court and the Court has been accepting the said lists mechanically and going ahead with the hearing and orders on Section 294 (1) application. Thus, both the prosecutor as well as Presiding Officer of the Court, ministerial staff and in cases where counsel for the accused gives such application, none cares to see that the format of list under section Section 294(2) has been prescribed. In Criminal Manual Chapter VI para 32, such a form is prescribed which reads thus:

œAdmission of certain documents directly in evidence without formal proof.

32. Attention of the Magistrates and Judges is invited to Section 294 of the Code of Criminal Procedure, 1973, according to which the particulars of the documents filed before the Court shall be included in a list, in the prescribed form given below, and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such documents and if the genuineness of any document is not disputed such document may be read in evidence in any inquiry, trial or other proceedings, without proof of the signature of the person to whom it purports to be signed which, however, the Court may in List of documents filed beforeCourt

*Prosecution

By the *accused.

Sr No	Particulars of the documents with dates	Pages	Whether original certified copy	By whom prepared
-------	---	-------	---------------------------------	------------------

30. We are not only amazed but are anxious since the said format prescribed by para 32 quoted above is not at all being used either by prosecution or by accused or by the Presiding Officer of the Court and that is the reason why the prosecution or the counsel for the accused have been preparing format and the list contemplated by Section 294 (1) as per their own whims. We deprecate such a practice since according to us the format provided by para 32 is prescribed with precision and none of the parties should be allowed to have the format of their own. We also deprecate the practice of exhibiting the documents not included in the list under Section 294 (2) and in this case Exhs.87 and 88 which were not included in the list Exh.22 contemplated by Section 294 (2) Cr.P.C. We direct the Registry to send the copy of paras 27 to 29 with cover page of this judgment to the Registrar General for being circulated to the Magistrates and the trial Judges. We also direct the Registry to send the copy thereof to the Principal Secretary, Law and Judiciary, Mantralaya, Mumbai who may supply the printed format of list u/s 294 (2) Cr.P.C. to the prosecutors in the courts of Magistrates and the Judges, also by putting on website.

31. At any rate, according to us, these documents Exhs. 87 and 88 cannot be said to have been proved in accordance with law and will have to be ignored. Even if these documents under Exh.87 and 88 are taken into consideration, they are of no help to the defence inasmuch as they show different blood groups than the blood group of the deceased and, therefore, no foundation can be laid by the defence on the basis of Exh.88 which would, in no manner, support the defence. We, therefore, find that the forensic evidence has been duly proved and it shows the clear cut complicity of both the accused persons.

32. PW18-Devidas is Finger Print Expert. Learned counsel for the accused criticized the manner in which the finger prints and the photographs were taken, so also the approach of Supervising Officers, who approved the report of finger prints

as that of accused no.2-Nitin. We quote the evidence of PW18-Devidas, which reads thus:

œ.....I then compared the finger prints of the accused with the fit chance print. The chance print which was found fit when I compared with the prints of the hands of accused sent by the police, I found that the chance print tallied with the left print palm of accused Nitin. I then prepared my opinion on 2472008. Exh.124 is the same. My opinion has been approved by Deputy Director Finger Prints, Nagpur. To that effect, I received a letter. That letter was addressed to police station Gadge Nagar and copy was given to me. The copy which I received is marked at Exh.125. At the office of Deputy Director Finger Prints, Nagpur as per procedure my opinion was reexamined and thereafter the Deputy Director approved my opinion. The committee approved my opinion. The endorsement to that effect is on Exh.124. While comparing the chance prints and the impressions of the hands of accused I took the enlargement thereof. I have produced those enlargements. They are marked at Exhs. 126 and 127. I marked the characteristic thereon. I had shown nine characteristic in the enlargements by giving number. I have prepared the statement of reasoning thereon which is marked at Exh.128. As per my opinion the print of accused Nitin tallied with the chance print.

(2) It is my say that the finger prints of one person never tally with the finger prints of any another person. These finger prints of a person never change.?

33. We have perused the cross-examination of this witness. We have also applied our mind to the expert opinion on the finger prints. We do not find anything in the cross-examination to reject the evidence of this witness on the proof of finger prints of accused no.2-Nitin. The minor nature of discrepancy in the certification by higher authorities after examination pointed to us by counsel for the accused persons also does not impress us since there is no material discrepancy in the drawing of finger prints and examination thereof and the conclusion arrived at namely that the finger prints collected from the spot matched with accused no.2-Nitin's finger prints. The submission that no injuries were mentioned in the arrest Panchanama of accused persons also does not impress us since for independently recording the finger prints that would not be relevant and it is clear

that by itself would not create any doubt. At any rate, there is evidence of PW4-Balkrishna and recovery of bloodstained articles as against accused no.2-Nitin which we have believed.

34. To conclude, upon making detailed reappreciation of the evidence and discussion as above, we find that the following list of circumstances have been duly established by the prosecution without leaving any manner of doubt and which have been rightly culled out by the trial Court and we quote the same as under:

œ(1) Accused No.1 was seen on 16.7.2008 passing through the nearby vicinity of the house of complainant.

(2) Accused No.1 and 2 were seen by PW4 when he came to his home at around 3.45 to 4.00 p.m. The accused were seen lastly parking Luna in front the house of complainant entering in the premises, ringing the door bell and opening of the door by the deceased, who took the accused persons inside the house.

(3) PW5 went to the house of deceased and saw Luna was standing near compound gate and she got no response from inside.

(4) At around 6.00 to 6.30 p.m. deceased was found lying dead in a pool of blood by PW3 and 5.

(5) The idol of god was lying on the way in back door when PW5 entered inside the house.

(6) The idols were also found scattered on the back side open space of the house of complainant.

(7) PW8 motor mechanic corroborated that the Accused No.1 had brought Luna to him in repair.

(8) P.W.9 was the owner of the Luna used by the accused in the crime.

(9) The blood stained clothes of the accused persons seized from them.

(10) The blood stained Kanthi seized at the instance of the Accused No.2 and the recovery of pass books, cheque books from the place shown by the Accused No.2.

(11) The chance print collected from steel almirah from inside the house of complainant tallied with those of the palm print impression of the Accused No.2.

(12) Accused No.2 had gone to Daryapur to the shop of PW7 to sell some golden ornaments.

(13) Accused not explaining incriminating circumstances as proved by the prosecution.

The circumstances show that when P.W.5 went to the house of deceased the accused were inside the house and by noticing somebody ringing the door bell they ran away from the back door hurriedly, however prior to that the deceased was already killed. P.M. report explains the time of death after 34 hours of meal. Thus the accused in the afternoon at around 4.00 p.m. after having lunch by the deceased killed her. Thereafter there is no evidence of entry of any body else inside the house besides the entry of P.W.5 who noticed deceased in a pool of blood.?

We are in full agreement with the conclusions drawn by the trial court about the aforesaid chain of the circumstances being duly proved and that the prosecution succeeded in proving its case beyond any doubt.

35. We have no manner of doubt that it were the accused persons who committed such a heinous crime of robbery and murder for petty gains. We are fully convinced that it were accused Ajay and Nitin, who fully knowing the timings of the loneliness of the deceased Vijayatai in the house in the afternoon made a plan and entered the house taking advantage of accused Ajay's proximity with the family of the deceased Vijayatai. By betraying the trust reposed in Ajay, they entered her house, the deceased having no slightest inclination about their intention to commit robbery and her murder. We, therefore, hold both accused guilty of commission of offence under section 392 and 302 of the I.P.C.

36. The next question is about the confirmation of imposition of sentence of death to accused no.1 awarded by the trial Court. We have carefully examined the said issue about sentence in the light of the various decisions cited by learned counsel for the rival parties.

37. We find that the learned trial Judge has referred to several decisions for infliction of death sentence on accused no.1-Ajay. We have perused those decisions. The reasons furnished by trial court for inflicting the death sentence are to be found in para 111. We quote the same as under:

œ(111) There are no mitigating circumstances coming before the court as against the Accused No.1. He is an adult, was 32 years old at the time of offence, made the deceased to trust him. Nothing about his mental or financial status is shown, no enmity or rivalry is seen, instigating him to commit murder. To sum up the Accused no.1.

(1) has committed the murder along with Accused No.2 in extremely brutal, gruesome, diabolic manner so as to arouse intense and extreme indignation of the community.

(2) has murdered deceased for his gain evincing total depravity and meanness.

(3) has murdered an old, unprotected helpless woman who trusted him and who was a well known eminent personality respected by the community.

(4) had cooked plan, and executed in broad day light.

(5) created terror in the society. Murder is a heinous crime. If offence is proved punishment is imprisonment for life. The law has again categorized the murders in common and uncommon categories. Uncommonness depends upon the factual matrix of each case, but it must be affecting the community. Judicial notice of the fact can be taken that the state machinery is trying to take measures for the safety of old citizens inside their homes.?

38. We have perused the latest decisions of the apex Court in the case of Sandeep..vs.. State of Uttar Pradesh; (2012) 3 SCC (Cri) 18. We quote para 71

and 72 from the said decision thus:

œ71. In order to appreciate the principle in a nutshell, what is stated in Haresh Mohandas Rajput (supra) can be usefully referred to which reads as under: (SCC pp. 6364, para 20)

œ20. The rarest of rare case? comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of œthe rarest of the rare case?. There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society e.g. crime committed for power of political ambition or indulging in organized criminal activities, death sentence should be awarded.?

72. It is, therefore, well-settled that awarding of life sentence is the rule, death is an exception. The application of the rarest of rare case principle is dependent upon and differs from case to case. However, the principles laid down earlier and restated in the various decisions of this Court referred to above can be broadly stated that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner touching the conscience of everyone and thereby disturb the moral fibre of the society would call for imposition of capital punishment in order to ensure that it acts as a deterrent.?

39. We then find that though we are convinced that the case of the prosecution based on the evidence displayed, established the commission of offences by the accused nos. 1 and 2, without any iota of doubt; we are of the considered opinion, that still the case at hand does not fall within the four corners of the principle of the rarest of the rare' case. Such incidents of murder of old persons take place for robbery. But then it is not the case of the prosecution that accused no.1-Ajay is a professional robberer or that there are any criminal antecedents with him. There is nothing on record to show that besides committing robbery, he had any intention or any other special interest to kill the old lady, the deceased Vijayatai. Further, there is nothing to show that he would be a menace to the society. At the same time considering the plight of the helpless old woman of about 75 years, who was brutally killed and the manner in which she was done to death by causing multiple injuries on vital parts of her body with a big knife, respondent no.1 does not deserve any leniency particularly because he enjoyed the position of trust of the deceased Vijayatai but still committed the robbery and murder.

40. In the case of SwamyShraddananda..vs.. State of Karnataka; (2008) 13 SCC 767 while setting aside the sentence of death penalty and awarding life imprisonment, it was ordained that in order to serve the ends of justice, the appellant therein should not be released from the prison till the end of his life.

41. In Ramraj..vs.. State of Chattisgarh; (2010) 1 SCC 573, while setting aside the death sentence, the Supreme Court directed that the accused therein shall serve minimum sentence for a period of 20 years including remission and would not be released on completion of 14 years imprisonment.

42. We, on similar lines, strongly feel that the appellant-accused no.1 Ajay should serve minimum sentence of 30 years with remissions while the accused no.2-Nitin should serve minimum period of 20 years with remissions.

43. We, therefore, pass the following order.

ORDER

(i) Criminal Appeal No. 225/2013 filed by accused no.1 Ajay Dayaram Gopnarayan and accused no.2 Nitin Nadkishor Gudadhe is dismissed.

(ii) Criminal Confirmation Case No. 1/2013 for confirmation of death sentence is answered as follows:

(a) The judgment and order of trial court dated 01.03.2013 holding the appellants-accused no.1-Ajay Dayaram Gopnarayan and accused no.2-Nitin Nandkishore Gudadhe, guilty for the offences punishable under sections 302 and 392 of the I.P.C. and convicting accused nos. 1 and 2 for the offences punishable under sections 302 and 392 of the IPC is confirmed.

(b) The award of death sentence to accused no.1-Ajay Dayaram Gopnarayan, imposed by the trial court is set aside and in its place, it is ordered that the accused no.1-Ajay Dayaram Gopnarayan shall undergo imprisonment for a period of 30 years with remissions.

(c) Accused no.2-Nitin Nandkishore Gudadhe, is sentenced to undergo imprisonment for life and shall undergo sentence of minimum 20 years with remissions for both the offences punishable under sections 302 and 392 of the I.P.C.

(iii) All the sentences shall run concurrently for all the aforesaid offences.

(iv) Both the accused persons are entitled to set off under section 428 of the Code of Criminal Procedure.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com