

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPEAL NO. 318 OF 2020***

Jagdish @ Pintu Ratnakar Konherikar,  
Age: 29 Years, Occ.- Labour,  
R/o:840, North Kasba, Masre Galli,  
Solapur  
(At present : Yerwada Central Prison)  
Versus  
The State of Maharashtra

...Appellant  
(Org. Accused No.2)  
  
...Respondent

***WITH  
CRIMINAL APPEAL NO. 325 OF 2020***

Pradeep @ Deepak @ Deepu  
Prabhakar Mathpati,  
Age : 24 Yrs., Occ.-Nil,  
R/o. Shelgi, Solapur  
(At present: Yerwada Central Prison)  
Versus  
The State of Maharashtra

...Appellant  
(Ori.Accused No.3)  
  
...Respondent

***WITH  
CRIMINAL APPEAL NO. 335 OF 2020***

Pramod @ Kingbhai Prakash Swami,  
Age : 33 years, Occ.: Nil,  
Residing at Near Ambabai Temple,  
Ramwadi, Solapur  
(Presently at Solapur Central Jail)  
Versus  
The State of Maharashtra

...Appellant  
(Ori. Accused No.1)  
  
...Respondent

Mr. Mahesh Jethmalani, Sr. Advocate a/w Ms. Gunjan Mangla, Mr. Priyal Sarada i/b Mr. Ritesh Thobde for the Appellants

Mrs. P. P. Shinde, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &  
SHARMILA U. DESHMUKH, JJ.  
TUESDAY, 23<sup>rd</sup> AUGUST 2022**

**JUDGMENT (Per Revati Mohite Dere, J.) :**

1 By these appeals preferred under Section 374 of the Criminal Procedure Code ('Cr.P.C'), the appellants have impugned the judgment and order dated 31<sup>st</sup> January 2020 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 63/2014, by which the learned Judge was pleased to convict the appellants for the offences punishable under Sections 302, 120-B r/w 302, 34 of the Indian Penal Code and sentence them to suffer rigorous imprisonment for life and to pay fine of Rs. 2,000/- each and in default of payment of fine, to undergo simple imprisonment for two months each.

2 A few facts as are necessary to decide the appeals, are as under :

It is the prosecution case that on 13<sup>th</sup> October 2014, the informant-Shivling Shankar Parshetti had gone to Solapur on an Activa Motorcycle bearing No. MH-13/BC-5556, belonging to Gurunath Jagdev Katare (deceased). At about 4:00 p.m, the informant met Gurunath (deceased) and Santosh Reddy near Lokmangal Bank, Solapur. Gurunath (deceased) is stated to have told the informant to accompany him to his field. Accordingly, both, are stated to have gone to the field and returned at about 6:30 p.m, near Lokmangal Bank. It is further the prosecution case, that they went near Nabilal Nadaf Canteen at Gharkul Chowk, Santosh Tirshetti, Lingu Birajdar and Sidharam Zagalhante from Village Kumbhaji came there; and that they all had tea and discussed about the election.

According to the prosecution, at about 10:00 p.m, the informant and Gurunath (deceased) proceeded towards their houses on Activa; that Nabilal Nadaf followed them on the motorcycle; that while they were proceeding on the kachcha road, near Macheli Spinning Mills, three persons came from the opposite side; that one of

the said person was wearing black pant and white shirt, had wrapped his face with a black cloth and was having a sword in his hand; that the other two persons were standing behind him; that the person having a sword came running towards the informant and Gurunath (deceased); that while attempting to escape, the vehicle slipped and the informant and Gurunath (deceased) fell down; that the informant, in the headlights of the Activa and motorcycle, saw that all the assailants were having swords and that they were assaulting Gurunath (deceased) and Nabilal Nadaf with the said swords; that the informant ran towards the house of Gurunath (deceased), which was about half a kilometer away from the spot, and informed the family members about the said assault; that, on hearing the same, the informant and others rushed towards the spot of incident and found Gurunath (deceased) and Nabilal Nadaf lying in an injured condition. Both the injured were shifted to Solapur Hospital. It appears, that when the informant, with his other friend Ravi, went to the hospital, they learnt that Gurunath Katare had succumbed to the injuries.

The informant, thereafter, lodged a report on 13<sup>th</sup> October 2014 with the Valsang Police Station. On the basis of the report, C.R. No. 160/2014 was registered for the alleged offences punishable under Sections 302 and 307 r/w 34 of the Indian Penal Code and under Section 135 of the Maharashtra Police act, against three unknown persons. Investigation commenced. Thereafter, investigation was transferred to State CID. During investigation, 10 mobile numbers were intercepted. On the basis of the same, i.e. conversation, the involvement of present appellants in the offence, was revealed. Pursuant to which, the appellants were arrested and weapons were recovered at the instance of the appellants. Confessional statement of accused No.3-Pradeep @ Deepak Mathpati was recorded before the Judicial Magistrate.

After completion of investigation, charge-sheet was filed against the appellants in the Court of Judicial Magistrate, First Class, Akkalkot. As the offence under Section 302 of the Indian Penal Code, was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, for trial.

Charges were framed against the appellants, to which, they pleaded not guilty and claimed to be tried. Defence of the appellants/accused was that of total denial and false implication.

The prosecution, in support of its case, examined 18 witnesses i.e. PW 1- Shivling Shankar Parshetti (informant); PW 2- Nabilal Ismail Shaikh (injured); PW 3-Shardabai Gurunath Katare (widow of the deceased); PW 4-Akash Gurunath Katare (son of the deceased); PW 5-Ajaykumar Subhash Sarangmath (Photographer); PW 6-Rajesh Sadashiv Waghmode (Panch to Seizure Panchanama); PW 7- Narayan Bajirao Nanaware (API); PW 8-Rahul Vasant Suryavanshi (Police Constable, who deposited the muddemal with the Forensic Science Laboratory); PW 9-Dayanand Pralhad Surwase (Panch to Seizure Panchanama of clothes of appellants/accused-Pradeep and Pramod); PW 10-Shital Vilasrao Raut (Inspector of Police, who secured Consumer Application Forms with respect to mobile sim-cards used by the appellants/accused); PW 11- Nahush Vivek Gowardhan (in whose name the mobile No.9822449995 was registered); PW 12-

Pravin Prakash Swami (in whose name the mobile No.8624903172 was registered); PW 13-Sunil Arjun Khedekar (who recorded the conversation of mobile No.8624903172); PW 14-Jitendra Anand Kadam (Addl.S.P, CID, Pune); PW 15-Mohan Shyamkaran Mansawale (Police Head Constable, Cuber Police Station, Solapur); PW 16-Dipak Sopanrao Pawar (Inspector of Police, who recorded the statement of the injured Nabilal Shaikh in the Hospital); PW 17-Mahadeo Shivrayya Birajdar (A.P.I, who collected blood samples of the appellants/accused) and PW 18-Krishnakant Srividyawasani Upadhyay (Superintendent of Police, Parbhani/I.O.).

Statements of the appellants/accused were recorded under Section 313 of the Cr.P.C. The appellants did not adduce any defence evidence.

3 After hearing the parties, the learned Sessions Judge, Solapur, convicted and sentenced the appellants as stated aforesaid in para 2.

4 Perused the papers. Mr. Jethmalani, learned counsel appearing for the appellants submitted that none of the eye-witnesses, nor the witnesses with respect to motive or conspiracy have supported the prosecution case and as such, neither motive nor conspiracy has been proved by the prosecution. He submits that since the eye-witnesses have turned hostile, the ocular evidence has also gone unsupported. As far as recovery of weapons is concerned, the said weapons were recovered after a long time gap i.e. about 50 days from the date of incident and that too, from an open place, rendering the recovery of weapons suspect. He further submits that the trial Court has convicted the appellants, essentially on the basis of the confessional statement (Exhibit 258) made by accused No. 3-Pradeep @ Deepak @ Deepu Prabhakar Mathpati, recorded by the learned Magistrate, Akkalkot. He submits that the confession does not satisfy the test of voluntariness and truthfulness and as such, cannot be relied upon. In support of the said submission, learned senior counsel relied on the judgments of the Apex Court in the cases of *Chandran vs. State*



*of Tamil Nadu*<sup>1</sup>, *Dhananjaya Reddy vs. State of Karnataka*<sup>2</sup>, *Babubhai Parmar vs. State of Gujarat*<sup>3</sup>, *Parmananda Pegu vs. State of Assam*<sup>4</sup>, *State of UP vs. Singhara Singh & Ors.*<sup>5</sup> and *Murugan & Anr. vs. State*<sup>6</sup>.

He submits that the said confession was retracted by the said accused and that the learned Judge ought not to have convicted the appellants on the basis of the sole confession, in the absence of any corroboration to the same.

5 Ms. Shinde, learned A.P.P supported the impugned judgment and order and submitted that no interference was warranted.

6 Perused the evidence with the assistance of the learned counsel for the respective parties. Prosecution, in support of its case, has relied on direct as well as circumstantial evidence.

---

1 (1978) 4 SCC 90  
2 (2001) 4 SCC 9  
3 (2006) 12 SCC 268  
4 (2004) 7 SCC 779  
5 AIR 1964 SC 358  
6 (2006) 1 CTC 821

7           According to the prosecution, two persons i.e. PW 1- Shivling (informant) and PW 2-Nabilal (injured) had witnessed the incident of assault on Gurunath (deceased) and that infact, PW 2-Nabilal himself was injured in the said assault. Admittedly, the three persons who are alleged to have assaulted Gurunath, were unknown. Admittedly, the test identification parade was not held in the said case. At the time of recording of the evidence, both, PW 1- Shivling (informant) and PW 2-Nabilal (injured) were declared hostile by the prosecution; as they did not support the prosecution case. Thus, the appellants were not identified by the said witnesses in the Court. Thus, the ocular evidence that the appellants assaulted Gurunath (deceased) could not be proved by the prosecution, through the said witnesses.

8           As far as motive is concerned, the prosecution examined PW 3-Shardabai Katare and PW 4-Akash Katare wife and son of

Gurunath (deceased) respectively, to prove the same. Admittedly, the said witnesses have resiled from their statements and were declared hostile by the prosecution and hence, the motive also could not be proved, as the said witnesses did not support the prosecution case.

9 PW5-Ajaykumar, was examined by the prosecution to prove conspiracy. The said witness was also declared hostile by the prosecution, inasmuch as, the said witness resiled from his statement and did not support the prosecution case.

10 Thus, what appears from the aforesaid is that the prosecution was unable to establish, (i) ocular evidence, that it was the appellants who assaulted Gurunath; (ii) motive for the appellants to assault Gurunath; and (iii) conspiracy to kill Gurunath.

11 As far as recovery of weapons and clothes at the instance of the appellants is concerned, the prosecution, in support thereof, examined PW6-Rajesh and PW 9-Dayanand. PW6-Rajesh has deposed

about recovery of a *sattur* at the instance of accused No.1-Pramod @ Kingbhai on 3<sup>rd</sup> December 2014; recovery of sword at the instance of accused No.2-Jagdish @ Pintu on 4<sup>th</sup> December 2014 and recovery of a tooth- weapon at the instance of respondent No. 3 on 4<sup>th</sup> December 2014.

12           A perusal of the cross-examination of the said witness i.e. PW 6-Rajesh, reveals that he has admitted that it was the police who told him that the accused was going to take out a *sattur* and that panchanama has to be prepared and that one accused was going to pull out a sword and another accused, a tooth-weapon.

13           As far as recovery of *sattur* at the instance of accused No. 1- Pramod @ Kingbhai is concerned, the same was recovered from a common latrine, accessible to all; sword and clothes, at the instance of the accused No.2-Jagdish @ Pintu were recovered not from his house, but, from a house owned by Nagesh Chavan and occupied by a lady; and tooth weapon at the instance of accused No.3- Pradeep @ Deepak

@ Deepu Mathpati, from the terrace of the house, owned by one-Nirmala Chand Shetty. Mere recovery of weapons is not sufficient. What has to be proved by the prosecution is that the said weapons were used in the commission of offence.

14 As noted above, the eye-witnesses having turned hostile, the prosecution could not establish that the said weapons were used in the commission of the offence. Admittedly, no blood stains were found on the said weapons recovered from all the appellants, in addition to clothes, at the instance of respondent No.2, so as to connect the said weapons and clothes, which were recovered, with the offence.

15 As far as recovery of burnt clothes allegedly of accused No.1-Pramod @ Kingbhai Swami, and ash, at the instance of accused No.1-Pramod @ Kingbhai Swami, are concerned, the question of either identifying them or finding blood stains on them does not arise and as such, the same is not of any assistance to the prosecution.

16 It also appears that prosecution, although had collected CDR records, had not proved the said records by cogent and legal evidence. The learned trial Judge, in his judgment in paragraph 47, has observed thus:

*“47.PW 10 Shital Vilasrao Raut was attached to CID Pune. He had secured CAF form in respect of mobile SIM cards used by the accused. On 09.04.2014, he had sent samples of seized conversation for forensic examination. According to PW 14 Jitendra Anand Kadam, he had secured voice sample of the accused under panchanama Exh. 211 and sent the same to the CA. In the cross examination, PW 10 admitted that he had not seized mobile handset of any of the accused. The mobile SIM cards, conversation of which were intercepted, are not in the names of any of the accused. These cards were not found in the possession of any of the accused. None of the consumer application forms is in the name of any of the accused. Even if it is assumed that voice samples of the accused persons were taken, but there is nothing to show that the voice intercepted by the investigation agency and voice samples are of the one and same person as the voice sample analyses results are not on record. This point of voice sample can not be useful to the prosecution.”*

17 It appears that although some conversation was intercepted, the prosecution has not established that the voice in the said conversation was that of the accused No.3-Pradeep @ Deepak @

Deepu Mathpati, and in the absence of the same, no reliance can be placed on the said conversation. It is the prosecution case, that the appellants were using mobiles standing in someone else's name i.e. PW 11-Nahush Gowardhan and PW 12-Pravin Swami, and hence, it was necessary for the prosecution to adduce evidence, that the voice intercepted was that of the accused No.3-Pradeep @ Deepak @ Deepu Mathpati or that the said phones were being used by the appellants.

18            Thus, the CDR records collected by the police during the course of investigation have not been proved by the prosecution and as such, the trial Court has rightly not placed reliance upon the same.

19            It appears that the main evidence on which the trial judge recorded the conviction was the confession made by accused No.3-Pradeep @ Deepak @ Deepu Mathpati before the learned Judicial Magistrate First Class on 9<sup>th</sup> December 2014 and 10<sup>th</sup> December 2014.

20 Mr. Jethmalani, learned senior counsel for the appellants, strenuously urged that recording of a confession is not an empty formality and that it was incumbent on the Magistrate to satisfy himself that the confession made, was made voluntarily. In support of the said submission, learned senior counsel relied on question No. 13 on page 817 and the endorsement at the foot of the confession at page 824. The same read thus:

*“Question No. 13. - Why are you making a confession ?  
Answer. - Yes.”*

Endorsement at the foot of the confession :

*“Certified that the above confession was recorded in my presence and hearing and the record contains a full and true account of the statement made by the accused.”*

21 He submits that the Magistrate, after noticing the answer given by the appellant-Pradeep @ Deepak @ Deepu Mathpati ought to have probed further whether the confession so made was being made voluntarily and was free from influence, coercion, or force. He



submits that in the absence of the same, the said confession cannot be relied upon, inasmuch as, it cannot be said that the said confession was made voluntarily. He submits that the endorsement at the foot of the confession does not show, that the Magistrate was satisfied that the confession was `voluntarily' made, hence, vitiating the confession so recorded. There appears to be some substance in the said submission. In this context, it would be apposite to reproduce sub-section (4) of Section 164 of the Cr.P.C in this connection. Section 164(4) mandates as under :

*“164. Recording of confessions and statements.*

*(1) to (3) .....*

*(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-" I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was **voluntarily** made. It was taken in my presence and hearing, and was read over to the person making it and*

*admitted by him to be correct, and it contains a full and true account of the statement made by him.*

*(5) & (6) .....*”

22           It is thus evident from the aforesaid that Section 281 of the Code prescribes the mode of examination of the accused and subsection (5) thereof, provides *“It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, .....*”.

23           The Apex Court in a catena of cases has observed that the function of the Magistrate in recording confession under Section 164 of the Code is a very solemn act, which the Magistrate is obliged to perform by taking due care, to ensure that all the requirements of Section 164 are fully satisfied; that the Magistrate recording such a statement should not adopt a casual approach; that besides ensuring that the confessional statement made before him is voluntary and without pressure, the Magistrate must record the confession in the manner laid down by the Section; that the omission to comply with the mandatory provisions, one of such being, as incorporated in sub-

section (4) of Section 164 is likely to render the confessional statement inadmissible. The fact that Section 164(4) is mandatory and that its non-compliance renders the confession inadmissible in evidence, is held by the Apex Court in the cases of *Dhananjaya Reddy (supra)* and *Kehar Singh & Ors. vs. State (Delhi Admn.)*<sup>7</sup>. In the said judgments, it is also held that such a defect cannot be cured under Section 463 of the Code and that non-compliance of the same, renders the confession inadmissible or unreliable.

24 In view of the aforesaid, the question that now arises for consideration in the present appeals is, whether there is compliance of sub-section (4) of Section 164, which is held to be mandatory in nature. As noted above, in para 20, the learned Magistrate asked a question to the appellant/original accused No.3-Pradeep @ Deepak @ Deepu Mathpati, “*Why are you making a confession?*”, to which the appellant answered ‘Yes’, and at the foot of the confession, the Magistrate has not recorded his subjective satisfaction with respect to the ‘voluntariness’ of the said confession, rendering the confession

---

7 1988 AIR 1883

inadmissible. Having regard to the response of the appellant to the Question, it was incumbent on the learned Magistrate to put further questions to the said appellant so as to satisfy himself that the said confession was being made voluntarily. The importance of strict compliance of Section 164(4) of the Code can hardly be understated, inasmuch as, a conviction can be based on the sole confession of an accused, if it is found to be truthful and voluntary.

25           The Apex Court in the case of *Shivappa vs. State of Karnataka*<sup>8</sup>, has, in paras 6, 7 and 8 observed thus :

*“6. From the plain language of Section 164 CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 CrPC, it is manifest that the said provisions emphasis an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 CrPC. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would*

---

8 (1995) 2 SCC 76

*not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 CrPC and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.*

7. *The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 CrPC and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with.*

8. *From a perusal of the evidence of PW 17, Shri Shitappa, Additional Munsif Magistrate, we find that though he had administered the caution to the appellant that he was not bound to make a statement and that if he did make a statement that may be used against him as evidence but PW 17 did not disclose to the appellant that he was a Magistrate and that the confession was being recorded by him in that capacity nor made any enquiry to find out whether he had been influenced by anyone to make the confession. PW 17 stated during his deposition in court: "I have not stated to the accused that I am a Magistrate" and further admitted: "I have not asked the accused as to whether the police have induced them (Chithavani) to give the statement." The Magistrate, PW 17 also admitted that "at the time of recording the statement*

*of the accused no police or police officials were in the open court. I cannot tell as to whether the police or police officials were present in the vicinity of the court!'. From the memorandum prepared by the Munsif Magistrate, PW 17 as also from his deposition recorded in court it is further revealed that the Magistrate did, not lend any assurance to the appellant that he would not be sent back to the police custody in case he did not make the confessional statement. Circle Police Inspector Shivappa Shanwar, PW 25 admitted that the sub-jail, the office of the Circle Police Inspector and the police station are situated in the same premises. No contemporaneous record has been placed on the record to show that the appellant had actually been kept in the sub-jail, as ordered by the Magistrate on 21-7-1986 and that the was out of the zone of influence by the police keeping in view the location of the sub- jail and the police station. The prosecution did not lead any evidence to show that any jail authority actually produced the appellant on 22-7-1986 before the Magistrate. That apart, neither on 21-7-1986 nor on 22-7- 1986 did the Munsif Magistrate, PW 17 question the appellant as, to why he wanted to make the confession or as to what had prompted him to make the confession. It appears to us quite obvious that the Munsif Magistrate, PW 17 did not make any serious attempt to ascertain the voluntary character of the confessional statement. The, failure of the Magistrate to make a real endeavour to ascertain the voluntary character of the confession, impels us to hold that the evidence on the record does not establish that the confessional statement of the appellant recorded under [Section 164 CrPC](#) was voluntary. The cryptic manner of holding the enquiry to ascertain the voluntary nature of the confession has left much to be desired and has detracted materially from the evidentiary value of the confessional statement. It would, thus, neither be prudent nor safe to act*

*upon the confessional statement of the appellant. Under these circumstances, the confessional statement was required to be ruled out of consideration to determine the guilt of the appellant. Both the trial court and the High Court, which convicted the appellant only on the basis of the so-called confessional statement of the appellant, fell in complete error in placing reliance upon that statement and convicting the appellant on the basis thereof. Since, the confessional statement of the appellant is the only piece of evidence relied upon by the prosecution to connect the appellant with the crime, his conviction cannot be sustained.”*

26           Having regard to the judicial pronouncements as stated aforesaid, we are afraid that we cannot place implicit reliance on the said confession, that, it was made voluntarily by the appellant-Pradeep @ Deepak @ Deepu Mathpati. The failure of the Magistrate to make a real endeavour to ascertain the voluntary character of the confession impels us to hold that the evidence on record does not establish that the confessional statement of the appellant-Mathpati recorded under Section 164 of the Code was voluntary and as such, it would not be prudent, nor safe, to act upon the same. From the plain language of Section 164 Cr.P.C. and the rules and guidelines framed by the High Court (Criminal Manual) regarding the recording of confessional



statements of an accused under Section 164 Cr.P.C, it is manifest that the said provisions emphasize on inquiry by the Magistrate to ascertain the voluntary nature of the confession. Compliance with the statutory provision is mandatory, which should be in letter and spirit and not in a routine and mechanical manner. Under these circumstances, we are constrained to exclude the said confessional statement of appellant-Mathpati, for determining the guilt of the appellants, since, as observed above, the confessional statement is the only piece of evidence to connect the appellants with the aforesaid crime. Even otherwise, the said confession relied upon, is a retracted confession. We are, therefore, afraid that the conviction recorded by the trial Court, cannot be sustained. Accordingly, the following order :

**ORDER**

- (i) The appeals are allowed.
- (ii) The impugned judgment and order dated 31st January 2020 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 63/2015, is hereby quashed and set-aside and the appellants are acquitted of the offences under

Sections 302, 120-B r/w Section 34 of the Indian Penal Code.

The bail bonds of the appellants stand cancelled.

(iii) The appellants be set at liberty forthwith, if not required in any other case. Fine amount, if paid, be refunded to the appellants.

(iv) Accordingly, the appeals are disposed of.

27 All concerned to act on the authenticated copy of this order.

**SHARMILA U. DESHMUKH, J.**

**REVATI MOHITE DERE, J.**