Sagar Magar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 163 OF 2023

Rakesh Ramesh Naukudkar … Appellant
Versus
State of Maharashtra. ... Respondent

Mr. Nitin Sejpal a/w Ms. Pooja Sejpal, Ms. Akshata Desai, Mr. Sahir Patel for Appellant.
Ms. Gauri S. Rao, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.

DATE : 11 SEPTEMBER 2026

PC :

1) This matter has been placed for speaking to the minutes to correct the date of the judgment. The Judgment was dictated in the open court on 2nd September 2026 and 3rd September 2026. It was completed on 3rd September 2026. Therefore, the date of the judgment is required to be mentioned as 3rd September 2026.

2) Accordingly, the correction be made in the judgment, and in the record. Amended copy of the Judgment be uploaded accordingly.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)

Corrected Judgment dated 3rd September 2026 :-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 163 OF 2023
WITH
INTERIM APPLICATION NO. 1002 OF 2026
IN
CRIMINAL APPEAL NO. 163 OF 2023

DATE OF THE JUDGMENT : 3rd SEPTEMBER 2026

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE SARANG V. KOTWAL :

THE HON'BLE MR. JUSTICE RANJITSINHA RAJA BHONSALE,:

. To be referred to the Law Reports or not? :

Transcribed by:
Ms. Supriya Ghule
Personal Assistant to Hon'ble Judge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 163 OF 2023
WITH
INTERIM APPLICATION NO. 1002 OF 2026
IN
CRIMINAL APPEAL NO. 163 OF 2023

Rakesh Ramesh Naukudkar,
Age : 40 years
R/o : Room No.29, Building No.65,
BDD Chawl, Bhagoji Waghmare Marg,
Worli, Mumbai.
(At present undergoing the sentence
imposed upon him at Mumbai
Central Prison, Mumbai.) ..Appellant

Versus

The State of Maharashtra
(At the instance of Senior
Inspector of Police, NRI,
Sagari Police Station vide
F.I.R. No. I-20 of 2016) ..Respondent

Mr. Nitin Sejpal with Ms. Pooja Sejpal, Ms. Akshata, Desai, Mr. Sahir Patel for the Appellant.
Ms. Gauri Rao, A.P.P., for the Respondent-State.

CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.

DATE : 3rd SEPTEMBER 2026

JUDGMENT [PER : SARANG V. KOTWAL, J] :-

1. The Appellant has challenged the Judgment and Order dated 10th January 2023 passed by the Additional Sessions Judge, Thane in Sessions Case No. 278 of 2016. The Appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code (IPC) and he was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for six months. He was also convicted for commission of offence punishable under Section 201 of the IPC and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for three months.

The substantive sentences were directed to run concurrently. The Appellant was granted set-off under Section 428 of Code of Criminal Procedure (Cr.P.C.).

2. Heard, Mr. Nitin Sejpal, learned Counsel for the Appellant and Ms. Gauri Rao, learned A.P.P., for the Respondent-State.

3. The prosecution case in brief is as follows :

The Appellant was having an extra marital affair. He wanted divorce from his wife Savita. She was not willing to give divorce. She was working at Kharghar. The Appellant was working at

Kalyan. As per their daily routine, the Appellant used to pick her up after their office and they used to come back to their residence at Worli on their motorcycle.

On 9th February 2016, the Appellant went to pick her up at Kharghar. According to the prosecution case, during that time he committed murder of his wife Savita. He attempted to cause death by strangulating her with a wire. He banged her head on the stony ground. He left the dead body within the jurisdiction of NRI Sagari Police Station. He came back to Worli. He pretended of making enquiry with the relatives. On the next day, he went to Kharghar Police Station informing them about his wife not returning home. Thereafter, he went to bring her photograph, on the way he went to NRI, Sagari Police Station and lodged a complaint regarding missing of his wife. The dead body of his wife was found in the evening on 10th February 2016. The Police suspected the Appellant. He was immediately arrested. The investigation was conducted. During investigation, the shop from where he had brought the wire was found, the CDR of the phone numbers used by the Appellant, his lady friend and his deceased wife were collected, different Panchnamas were conducted, statements of different witnesses were recorded and the charge-sheet was filed. One of the incriminating circumstances was finding of a handkerchief from dickey

of his two wheeler. The handkerchief had blood stains of AB group. The Appellant's blood group was A.

After completion of investigation, the charge-sheet was filed. During trial, the prosecution examined 23 witnesses, including the panchas, brother and sister of the deceased, the Medical Officer, co-workers of the Appellant and the deceased and Police Officers.

4. The defence of the Appellant was of total denial. He gave statement under Section 313 of Cr.P.C. According to him, he and his wife had left their house at Worli on 9th February 2016 at about 8.00 a.m. He left Savita at Vashi signal. He went to Dombivali to attend his work. At about 6.00 p.m., Savita called him on his telephone informing him that her office time was over. She had called him from her office at Kharghar. The Appellant started from his office and reached Vashi bus stop at 7.10 p.m. He made a phone call to Savita but her mobile was switched off. He waited there for about one hour, then he went back to Worli. According to him, one year prior to this incident, she had gone to her parental house at Bhusaval with their son. On one occasion prior to the incident she had gone to Matheran without informing anyone. At that time, she had switched off her phone. The Appellant waited for her till about 11.00 a.m. on 10th February 2016. He contacted Savita's relatives but there was no clue; therefore, he went to the Police Station

and gave the statement. On 10th February 2016 in the evening, the Officers of NRI, Sagari Police Station made a phone call to him and informed him that Savita's dead body was found on a road near NRI complex and DPS High School. He had fallen on the dead body, therefore, there was blood on his hands. He wiped it with a handkerchief. On 11th February 2016, he was arrested at about 8.00 p.m. He further stated in his statement that, he had not purchased the wire. The handkerchief was taken from him and it was shown recovered from his motorcycle. There was no dispute with his wife.

5. The learned trial Judge considered the evidence and the defence. He held that, the prosecution had proved the motive. He held that, the Appellant's conduct was indicating his guilt. The blood found on the handkerchief shows his complicity. The last known location of the deceased and the Appellant was at Kharghar. The Appellant had purchased a wire from shop of PW-5. There was an injury to the hand of the Appellant. He was having an affair with PW-11. The deceased was refusing to give him a divorce. All these circumstances were considered together by the learned trial Judge to hold that, the prosecution had proved its case against the Appellant beyond reasonable doubt.

As mentioned by the learned trial Judge and also by the learned Counsel for the parties before us, this is the case based on

circumstantial evidence. There are no eye witnesses to the incident.

6. PW 1 Police Hawaldar Suryakant Baraskar was attached to NRI, Sagari Police Station. He was on duty between 9.00 p.m. on 9th February 2016 till 9.00 a.m. on 10th February 2016 as Police Station Officer. At about 5.00 p.m. on 10th February 2016, he was on patrolling duty when they reached near Delhi Public School near NRI safety wall. They found a dead body of a woman. There was mud on the head. The blood was oozing from her nose. One purse was lying near her side. They took search of her purse. Aadhaar card of the Appellant was found inside. He informed PSI Pawar of his Police Station. He in turn, told him that the Appellant had already lodged a missing complaint at Kharghar Police Station bearing No. 13 of 2016. PW 1 went back to the Police Station and lodged ADR No. 8 of 2016. It is produced on record at Exhibit-19. The ADR was registered at about 9.00 p.m. The dead body was found at about 7.00 p.m. The distance between the spot of the incident and NRI Sagari Police Station is a 5 minutes ride by a vehicle. The ADR was registered against an unknown person. The ADR substantially corroborates his evidence.

7. PW 2 PSI Namdeo Pawar was attached to NRI Sagari Police Station. He deposed that, the Appellant came to the Police Station at about 4.00 p.m. He informed the Police that, his wife had not returned

home since the evening of 9th February 2016 and that he had lodged a missing complaint at Kharghar Police Station on 10th February 2016 bearing No. 13 of 2016. PW 2 recorded this information in a rough register. PH Baraskar informed him at about 7.00 p.m. that, the dead body of the Appellant's wife was found. PW 2 and other Police Officers went to the spot. They saw the dead body lying at the spot. There were crushed stones near her face. There were marks of strangulation on her neck. He prepared the spot panchnama. Her purse, a black coloured mobile phone without sim card was recovered. The Aadhaar card of the Appellant was also recovered from her purse. The dead body was taken to the NMMC hospital. An Inquest Panchnama was conducted. He discussed the matter with the Senior Police Inspector, on his advice he registered an FIR bearing C.R. No. 20 of 2016 against the Appellant. A copy of the FIR is produced on record at Exhibit-25.

In the cross-examination he stated that, the distance between the spot of the incident and the Police Station was half km. He had not verified the call based on the IMEI number. The IMEI numbers were found from the spot. He had lodged the FIR on 11th February 2016 at about 4.45 p.m. The ADR is produced at Exhibit-22, it was regarding the missing of the deceased Savita. The spot panchanama has been produced on record at Exhibit-23, it was conducted between 9.30 p.m.

and 10.15 p.m. on 10th February 2016. The FIR substantially corroborates his evidence. However, the FIR was lodged against an unknown person. Though he had stated in the deposition that, the FIR was lodged against the Appellant, the FIR itself shows that, it was against an unknown person which is a major discrepancy between his deposition and the FIR.

8. PW 3 Police Naik Lalit Mahajan was attached to NRI Sagari Police Station. His evidence is similar to that of PW 1 and PW 2.

9. PW 4 Rutika Chavan was co-worker of the deceased. She was working in the same office as that of the deceased. She deposed that, the deceased had appeared tense. She told this witness that, the Appellant was having an extra marital relationship with another person. On 9th February 2016, she and the deceased left their office at 6.15 p.m. They went to a beauty parlour. Savita received a phone call from her husband. He told her that, he would come to pick her up at Kharghar. Savita told this fact to this witness. PW 4 then went away. They had left the beauty parlour at about 6.45 p.m. The next day when she reached the office, the office was closed, the keys were with the deceased but she had not come to the office. She made a phone call to their employer Mangesh Deshpande who came there and opened the office at about 11.00 a.m. The Appellant came to their office asking for his wife.

In the cross-examination, she deposed that their office was at Kharghar. The deceased was residing at Worli. The deceased had not shared anything else except making the grievance that the Appellant was having an extra marital relationship.

10. PW 6 Mangesh Deshpande was the employer of the deceased. He deposed that, the deceased was working with him as a computer operator. She used to come to the office by train from Vashi to Kharghar. The Appellant used to drop her off and receive her at Vashi. On 10th February 2016, the deceased did not come to open the office. On the same day, at about 11.00 a.m., the Appellant came asking for his wife.

In the cross-examination, he could not explain as to why the Police did not mention that, the Appellant used to pick and drop the deceased at Vashi station.

11. PW 8 Dattaram Nikam was co-worker of the Appellant. He deposed that, he was working as a service manager at their branch at Kalyan. The Appellant was working with him. The Appellant was a service advisor. The job profile of the Appellant was to take an inventory of the vehicles of the customers and provide services. On 9th February 2016, the Appellant came at about 9.21 a.m. and left the office at about

6.30 p.m.

In the cross-examination he accepted that, the Appellant was in the office till 6.30 p.m.

12. PW 5 Rajkumar Chapalot was a shop owner. According to the prosecution case, the Appellant had purchased the wire from his shop. He deposed that, on 9th February 2016, one customer came to his shop and purchased 4 meters of wire. It was a 4 square M.M. Polycab company wire. PW 5 had cut it from the box. The purchaser cut it into two pieces and went away. On 12th February 2016, the Police came to his shop. He was out of the station. He returned on 16th February 2016. The Police made an enquiry with him. He took the remaining wire from the box to the Police Station. He deposed that, he could identify the person who had purchased the wire. He identified the Appellant. He could not identify the wire purchased from his shop.

In the cross-examination, he admitted that, the person who had come to the shop to purchase the wire was not known to him. Importantly, he admitted that, the Police had shown the Appellant to him and that he identified the Appellant in the presence of the Police. He also admitted that, he told the Police that, the said person had purchased 4 meter of wire from his shop. He had no documentary

evidence to show that, the Appellant had purchased the wire from his shop.

13. PW 7 Bhagirathi Jaiswal had made photocopies of the deceased's photo. He deposed that, on 10th February 2016, at about 12.00 p.m., one person came to his shop to make copies. But this witness could not identify the Appellant before the Court.

14. PW 9 Rahul Pagare was examined as a panch. He deposed that, the Appellant told them that he had purchased a wire from a particular shop. The panchnama is produced on record at Exhibit-58. The panchnama mentions that, the Appellant had shown the shop. The Police Constable Mhatre went inside the shop and procured the wire. However, this story is different from the prosecution case because PW 5 has stated that, he had produced the remaining wire at the Police Station. There are other statements in the panchnama which are in the nature of confession but those statements are inadmissible; because those statements have not led to the discovery of any fact or any article and they were made while the Appellant was in the custody of the Police.

15. PW 10 Sanjay Madane, Police Head Constable was attached to Kharghar Police Station. The Appellant came to their Police Station

on 10th February 2016 and informed them that his wife was missing since the previous day. He informed the Police that, he was to meet his wife at about 7.00 p.m. as per their routine. He tried to contact her through her mobile phone but her mobile phone was switched off. He was waiting for his wife during the entire night but she did not return. Even earlier she had gone missing. He had contacted the relatives but there was no clue. Therefore, he lodged report regarding the missing of his wife. The said complaint regarding missing of his wife is produced on record at Exhibit 69. The said Exhibit shows that, the complaint was registered at 4.50 p.m. on 10th February 2016 at Kharghar Police Station.

In the cross-examination he deposed that, he asked the Appellant to bring photographs of his wife. He returned to the Police Station with the photographs. He was at the Police Station till 5.00 p.m. PW 10 received a telephonic message from Sagari Police Station that, the dead body of the missing woman was found in their jurisdiction.

16. PW 12 Satkar Koli was a professional photographer. He was called by the Police to the spot where the dead body was lying. He took photographs of the spot and the dead body. He produced those photographs on record at Exhibit 75. He also produced a certificate under Section 65-B of the Evidence Act. He then deposed about the

Appellant demonstrating the events during the actual incident. However, that portion is clearly inadmissible. The Appellant was in the custody of the Police.

17. PW 11 was a lady with whom the Appellant was having an affair as per the prosecution case. She deposed that, while she was working at Millennium Toyota, she met the Appellant who was working there as a service advisor. They became friends. Their friendship turned into a love relationship. After few days, she started working for a different company but they still kept in touch. After some days, she came to know that, the Appellant was a married man and that he had a son. After that, she started avoiding his calls. According to her, the Appellant proposed marriage to her but she refused his proposal. She came to know that, the Appellant was arrested in connection with the murder of his wife.

In the cross-examination she deposed that, she was working at Millennium company at Mira Road. The Appellant was residing at Worli but when she came to know about his marital status, she stopped communicating with him.

18. PW 13 Yogesh Patil was the brother of the deceased. He deposed that, after the marriage of Savita with the Appellant, she used

to make complaint regarding the Appellant. She used to say that, the Appellant did not give her food. PW 13 used to recharge her mobile phone. She and her son had come to Jalgoan and stayed there for a few days. When she returned back to Mira Road where she was residing with the Appellant initially, she came to know that, the Appellant had locked the room and had left from there. Savita informed this witness that, the Appellant was having an affair. On 10th February 2016, he received a telephonic message from the Appellant. He enquired whether Savita had come to their place at Jalgaon. On 10th February 2016 itself the Appellant lodged a complaint regarding the missing of Savita. The Appellant informed this witness's elder sister that, Savita had met with an accident. In the meantime, he received a message from the Police that, Savita's dead body was found. Then this witness and other family members rushed to the hospital. Police informed him that, the Appellant had committed the murder because he was having an affair with another lady.

In the cross-examination he deposed that, he received the message about 9.00 a.m to 10 a.m. He called his elder sister Rekha and informed her about Savita. Rekha was residing at Mira Road. He admitted that, he left Jalgaon when he came to know that Savita had passed away.

19. PW 15 Kavita Patil was the sister of the deceased Savita. She was also residing in Jalgaon. Her evidence is similar to the evidence of PW 13 Yogesh Patil, her brother.

In the cross-examination, she admitted that Savita's son was residing with the Appellant's parents. She herself never tried to meet him. She did not know where the Appellant's parents were residing.

20. PW 14 Dr. Sanjay Yamgar had conducted the postmortem examination. The Post-mortem Notes are placed on record at Exhibit 95. There were 7 external injuries noted. The main injury was an abraded contusion over the right forehead. There was one linear abrasion over the neck. There were other contusions on the shoulders. The cause of death was mentioned as head injury due to attempted throttling. PW 14 had collected blood, hair, nail, swab of private parts and viscera from the dead body.

In the cross-examination, he admitted that, the cause of death was not due to throttling; it was because of the head injury. According to him, that injury could be caused due to a hard and blunt object and also if the head was banged on the wall.

21. PW 16 Police Naik Satish Guge had carried the seized

articles to the FSL, on 22nd February 2016.

22. PW 17 Prembhai Mhatre was a panch, but he was declared hostile. He did not support the prosecution case. He was panch for the recovery of the articles found on the dead body. The panchnama was produced on record at Exhibit 109 because when he was cross-examined by the learned APP, he accepted that, the Police had shown the clothes of the deceased and some articles and they had prepared a panchnama in his presence. The panchnama shows that, the mangalsutra, earrings, other rings and a watch were recovered.

23. PW 18 Vikrant Shelke was vice president of the Appellant's company. He deposed that, the Appellant attended the duty from 9.21 a.m. till 7.00 p.m. on 9th February 2016. He deposed about the telephone number used by the Appellant. It was 9167770221.

24. PW 19 Dr. Pramila Mane had examined the Appellant after his arrest and she had found an abrasion over the Appellant's right hand. There was swelling of the size 1 X 1 cm. The injury was simple in nature. According to her, the injury was possibly caused by falling on a hard and rough surface. It was caused more than 6 hours before he was brought to her hospital by the Police at 10.15 p.m. on 11th February 2015.

In the cross-examination she admitted that, the injury mentioned in the Medical Certificate produced by her at Exhibit-130 are possible for a car mechanic.

25. PW 20 Manoj Patil was a Nodal Officer working with Bharti Airtel. He produced the CDR of the mobile phone number 9004910476 which was used by Savita.

26. PW 21 Baby John was a Nodal officer attached to Tata Tele Services. Surprisingly, through this witness, the phone number of PW 11 were produced on record at Exhibit 145, but we find that it was of a different company i.e., Aircel, and PW 21 could not have produced details about that phone number. Therefore, the prosecution has not established the contact details between the Appellant and PW 11.

27. PW 22 Pramod Shinde was attached to NRI Sagari Police Station as API. He conducted the investigation in the offence i.e. C.R. No. 20/2016 registered at NRI, Sagari Police Station from 11th February 2016 onwards. He arrested the Appellant under a panchnama. It is produced on record at Exhibit 156. He deposed about the investigation carried out by him regarding seizure of the clothes and articles of the deceased, collected the information about phone number, seizure of handkerchief, seizure of box of wire and rest of the investigation carried

out by him.

In the cross-examination he admitted that, he suspected the Appellant only on the basis of the CDR. He recorded statements of the relatives of the deceased after he had arrested the Appellant. None of the witnesses had narrated about the specific date or month on which the Appellant had allegedly ill-treated the deceased. He accepted that, the box of wire purchased from PW 5 was not shown to the Medical Officer.

28. PW 23 Changdeo Godse was a Nodal Officer working with Vodafone. He produced the information regarding the mobile phone number 9167770221 purportedly used by the Appellant on 9th February 2016 and 10th February 2016.

29. This in short is the evidence led by the Prosecution.

30. The learned Counsel for the Appellant made the following submissions :-

Shri. Nitin Sejpal, learned Counsel for the Appellant submitted that, the case is based purely on circumstantial evidence. None of the circumstances is proved beyond reasonable doubt. The chain of circumstances is not complete. The learned Judge erred in holding that, all the circumstances were proved. He submitted that, the

Prosecution had alleged that there was motive to commit murder, but it has not proved that the Appellant was in touch with PW 11. The telephone record produced on record does not establish that they were constantly in touch; because the call data record and the phone number of PW 11 are not produced on record. PW 21 was not concerned with the telephone service provider of PW 11's phone number and, therefore, her call data record and the fact that she was using that particular phone are not proved.

The other motive is that, the Appellant was ill-treating the deceased, which is also not proved. None of the relatives of the deceased had made any such grievance in the past. Their statements were recorded only after the Appellant was arrested. They had not made any efforts to come to Mumbai to take part in the search for the deceased on 10th February 2016. They came to Mumbai only after the Police informed them that the dead body was found. The circumstance of seizing the handkerchief which was proved to have blood of AB group, is not an incriminating circumstance because the Prosecution has not proved that the deceased was having blood of AB group. The Appellant's conduct was quite normal. The learned Judge erred in holding that, his conduct was unnatural. The evidence in the nature of the demonstration of the incident is admissible because the Appellant

was in Police Custody. Evidence in the nature of confession in Police Custody was inadmissible. It was not in the presence of any Magistrate. The seizure of the handkerchief is doubtful. The Panchas were not examined. The shopkeeper admits that, the Police had shown the Appellant to him and, therefore, his identification of the Appellant is not acceptable. There is doubt as to how and when the wire from PW 5 was seized by the Police. The motive alleged is very weak. The PW 11 has deposed that, she had severed the relationship. There is nothing further to show that, either the deceased or the Appellant had taken any steps to address this issue.

31. The learned A.P.P., Ms. Gauri Rao, on the other hand, submitted that the Prosecution has proved the motive beyond reasonable doubt. PW 11 had deposed that, in spite of her telling the Appellant that she did not want to continue with their relationship, the Appellant had proposed marriage to her. The conduct of the Appellant is unnatural. It is difficult to accept that, in spite of knowing that the deceased was missing, he came back home at Worli and spent a peaceful night between 9th and 10th February 2016. He had no reason to go to NRI, Sagari Police Station. PW 4 had deposed that the deceased had told her that the Appellant used to come to pick her up, therefore, the Appellant was the natural suspect. The time when he left his

company on 9th February 2016 matches with the time when the deceased was expecting him to meet her. She submitted that, the Appellant has not explained the blood on the handkerchief. His own blood group was A and, therefore, the finding of blood of a different blood group is an incriminating circumstance and only the Appellant could have explained that circumstance.

32. We have considered these submissions. The learned Judge had enumerated the circumstances against the Appellant. In short, the circumstances are motive, the time when she went missing, the conduct of the Appellant during the night, deliberately giving a complaint at Kharghar Police Station to mislead the Police, non-explanation as to why he approached NRI Sagari Police Station, finding of the dead body matching the allegations and timing of the incident, blood on the handkerchief of the Appellant, the CDR of phone numbers, recovery of wire and injury on the hand.

33. As far as motive is concerned, there is evidence of PW 11. It shows that, there was a love relationship between the Appellant and PW 11, but there is no definite material that they were continuously in touch in and around the period of the incident, as mentioned earlier. The record of the phone number of PW 11 is not properly proved by the prosecution by examining the service provider of the phone number

used by PW 11. In any case, motive is a weak circumstance which the Prosecution has brought on record. It is not connected with the other parts of the chain of the circumstances. The motive is not proved beyond reasonable doubt and, in any case, it is a weak piece of evidence in this case.

34. Finding of blood of AB group on the handkerchief of the Appellant is also not an incriminating circumstance. In this case, the Prosecution has failed to prove that the blood group of the deceased was AB. Unless there was a connection between the blood found on the handkerchief with the blood of the deceased, it cannot be termed as an incriminating circumstance. The panchas of this recovery panchnama are not examined. The reference to seizure of this handkerchief is at Exhibit 161, which was a seizure form in respect of the search. It mentions that, handkerchief was found behind the engine of the Appellant's motorcycle. It was not recovered at the instance of the Appellant pursuant to the memorandum statement given by the Appellant. This recovery was effected on 11th February 2016. The handkerchief was not concealed anywhere, it was simply kept on the engine. Therefore, this is also a weak piece of evidence.

35. The next circumstance alleged by the prosecution is about the recovery of the wire from the shop of PW 5. As mentioned earlier,

there is doubt about the manner in which the wire was recovered. At one point, one of the panchas, PW 9 Rahul Pagare had stated that, the Appellant had led them to the shop from where the wire was seized. However, PW 5 himself had stated that, he was informed by his wife that the Police were making enquiries on that day. He was out of station. He came back after a few days and then he produced the wire in the Police Station. Therefore, the seizure of the wire is also not proved. There is no further connecting evidence in the form of expert analysis to show that it was the same wire from which a 6 ft. piece was cut and sold to the Appellant and that those pieces were found near the body. PW 5 has accepted that, the Police had shown the Appellant to him. All these circumstances raised suspicion against the Prosecution's case. Therefore, this circumstance is also not proved by the Prosecution beyond reasonable doubt.

36. The other circumstance is regarding the ill-treatment meted out to the deceased by the Appellant. In that connection, the Prosecution has examined PW 13 and PW 15. They were the brother and sister of the deceased. However, they had not mentioned any specific instance of an ill-treatment. Their statements were recorded after the Appellant was arrested. Their own conduct does not inspire confidence. They had not taken any steps to search for the deceased

during the entire day of 10th February 2016. They had not rushed to Mumbai to join in the search for the deceased.

37. The learned APP criticised the conduct of the Appellant of going back to his house at Worli and not making efforts to look for the deceased during the entire night. However, the evidence shows that he waited for his wife at Vashi bus stop for quite some time. Her phone was not reachable, therefore, he had no option but to return home at Worli. Once he came back on his two wheeler from Worli, he waited for her to return. His defence is that, in the past also, on a few occasions, the deceased had left the house without informing him. In any case, on the next morning, he immediately called the brother and sister of the deceased at Jalgoan. When he came to know that she had not reached Jalgaon, he went back to Kharghar Police Station and informed them. Therefore, we do not find anything unusual in his conduct. After that, he was asked to get the photographs which took some time. In the meantime, he had attended some work in the office. On his way back, he went to NRI Sagari Police Station and made enquiries. The dead body was ultimately found within the jurisdiction of NRI Sagari Police Station. It is difficult to believe that, he offered clues to the Police Station within whose jurisdiction the dead body was lying. We do not find the conduct of the Appellant to be incriminating against him.

38. As mentioned earlier, the telephone records are not properly proved, and there is nothing to show that the record was incriminating.

39. The injury on his hand did not unerringly point only to the hypothesis of having suffered the injuries during the incident. The nature of his job was related to the service of the vehicles and, therefore, it was not unusual. The handset used by the deceased was found near the spot. However, there was no sim card. The sim card was not recovered.

40. Thus, it can be seen that the Prosecution has failed to prove each of these circumstances beyond reasonable doubt. The Prosecution has not proved that the chain of circumstances points unerringly to the guilt of the accused and to no other hypothesis. In this case, the Appellant deserves benefit of doubt and, therefore, the impugned Judgment and Order are required to be set aside. Hence, the following Order :-

ORDER

(i) The Appeal is allowed.

(ii) The Judgment and Order dated 10th January 2023 passed by the Additional Sessions Judge, Thane in

Sessions Case No. 278 of 2016 is set aside.

(iii) The Appellant is acquitted from all the charges.

(iv) The Appellant be released forthwith if not required in any other case.

(v) Before being released, the Appellant shall execute a PR bond in the sum of Rs. 15,000/- in consonance with Section 481 of BNSS to ensure his availability in case, Appeal against acquittal is preferred.

(vi) The Appeal is disposed of in the aforesaid terms.

(vii) With the disposal of the Appeal, the connected Application is also disposed of.

(RANJITSINHA RAJA BHONSALE, J.) **(SARANG V. KOTWAL, J.)**

SAGAR SANTOSH MAGAR
Digitally signed by SAGAR SANTOSH MAGAR
Date: 2026.09.11 18:50:57 +0530