

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.878 OF 2012

1) Shahaji Gopal Patil,	]	
Age : 30 Yrs., Occu.: Agriculture	]	
and Service,	]	
R/o. Kagil Budruk, Tal. Karveer,	]	
Dist. Kolhapur.	]	
	]	
2) Mr. Mahadev Dadu Aadsul	]	
Age : 49 Yrs., Occu.: Tempo Driver,	]	
R/o. Sarnobatwadi, Tal. Karveer,	]	
Dist. Kolhapur.	]	 Appellants /
	]	(Org. Accused
	]	Nos.1 & 2)

Versus

The State of Maharashtra	]	 Respondent
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Dr. Yug Mohit Chaudhary for Appellant No.1.

Mr. S.A. Ingawale for Appellant No.2.

Mrs. U.V. Kejriwal, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 5TH JANUARY, 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. This Appeal takes an exception to the Judgment of conviction recorded by the Additional Sessions Judge-4, Kolhapur. By the said Judgment dated 22nd June, 2012, the Appellant Nos.1 and 2, (Original

Accused Nos.1 and 2), stand convicted for the offences punishable under Sections 302 and 342 r/w. 34 of the Indian Penal Code, (*for short “the IPC”*), and sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.5,000/- each and, in default, to suffer Rigorous Imprisonment for one month on the first count and Rigorous Imprisonment for three months on the second count.

2. Facts, which are necessary, for deciding this Appeal may briefly be stated as follows :-

. One Sachin Sakharam Chougule, since deceased, and Appellant No.1-Shahaji Gopal Patil were childhood friends and residing nearby at village Kogil Budruk, Tal. Karveer, Dist. Kolhapur. Appellant No.1-Shahaji and Amruta (PW-21) were having love affair. Deceased Sachin acted as mediator for settling their marriage. Appellant No.2 and Original Accused No.3 are, respectively, the father and brother of Amruta (PW-21).

3. As per the Prosecution case, Appellant No.1 suspected illicit relations between deceased Sachin and his wife Amruta (PW-21) and on that count, he has confronted Sachin about two months prior to this incident.

4. On 30th October, 2009, Sachin had gone to Kolhapur to bring his Tata Sumo vehicle, which was given for repairs. He was supposed to be returning by evening. However, on 31st October, 2009, in the morning at about 7 a.m. to 8 a.m., one Niwas Ganapatil Takmare, Deputy Sarpanch of the Village (PW-8), informed Sachin's uncle – Vitthal Tukaram Chougule (PW-3) that dead-body of Sachin with several injuries on his person was found in his Tata Sumo vehicle at Kanjarbhat Vasti, near H.P. Gas Godown. Hence, Vitthal Chougule (PW-3) went to the spot along with the Deputy Sarpanch Niwas (PW-8). Police had already reached there on getting information and started carrying out Inquest and Spot Panchnama. Initially the information of the incident was given at Gandhi Nagar Police Station and thereafter Karveer Police Station.

5. The complaint of Vitthal Chougule (PW-3) came to be recorded at Karveer Police Station on the very day in the morning. In the said complaint, he expressed suspicion against Appellant No.1 of committing murder of Sachin on account of his suspicion of illicit relations between his wife Amruta (PW-21) and Sachin. Therefore, C.R. No.204 of 2009 came to be registered against the Appellant No.1 alone, initially, for the offence punishable under Section 302 of the IPC. On the next day, the supplementary statement of the Informant Vitthal Chougule (PW-3) came to be recorded, in which he stated that, considering the number of injuries

found on the dead-body of Sachin, it might be an act of more than one person and, therefore, he expressed suspicion against Appellant No.2 and Original Accused No.3 also for having committed murder of Sachin. The Appellant No.2 and Original Accused No.3 also came to be arrested accordingly.

6. During the course of investigation, statements of several witnesses came to be recorded on the point of alleged illicit relations between Sachin and Amruta (PW-21) and also on the point of last seen circumstance and recovery of blood stained clothes of the deceased and Appellant Nos.1 and 2 and incriminating articles including weapons of assault. Those articles were sent for chemical analysis. In the meanwhile, the Post Mortem Report revealed that the cause of Sachin's death was head injury sustained by him. Accordingly, the Post Mortem Report came to be collected and after due investigation, the Charge-Sheet came to be filed in the Court of Judicial Magistrate, First Class, Kolhapur. The case was committed to the Trial Court, which was registered as Sessions Case No.26 of 2010. Trial Court framed charge against all the three Accused for the offences punishable under Sections 302 and 342 r/w. 34 of the IPC. Accused pleaded not guilty and raised the defence of total denial.

7. At the time of trial, the Prosecution examined, as many as, 35 witnesses. The Trial Court relied upon the said evidence as regards Appellant Nos.1 and 2 and convicted and sentenced them as stated above. However, as regards Accused No.3-the father of Amruta, the Trial Court did not find any incriminating material coming against him and hence acquitted him of both the charges. Prosecution has not preferred any Appeal challenging his acquittal.

8. This Judgment and Order of the Trial Court is being assailed in this Appeal by Mr. Chaudhary, the learned Counsel for the Appellants, on several counts. In the first place, it is submitted that the entire case of Prosecution is based on the circumstantial evidence alone, as there is no eye witness to the incident. The exact time of death is also not ascertained or confirmed by the Prosecution. The two circumstances relied upon by the Prosecution to bring home the guilt of the Appellants, i.e. (i) the motive to kill the deceased on account of the alleged illicit relations between the deceased Sachin and Amruta (PW-21), (ii) deceased Sachin and Appellant No.1 last seen together, are neither established by satisfactory evidence nor they are either individually or collectively sufficient to prove the guilt of the Appellants for any of the offences charged against them.

9. As regards third circumstance of recovery of the weapons of assault, it is submitted by the learned Counsel for defence that the weapons recovered are not proved to be connected to the occurrence or used in the incident. There is also no authorship of concealment of the said weapons. The weapons are alleged to be recovered at the instance of Appellant No.2 and except this single circumstance, there is absolutely no iota of incriminating material against the Appellant No.2. Majority of the witnesses examined by the Prosecution are either formal or interested and some of them are declared hostile, having not supported the Prosecution case.

10. According to Mr. Chaudhary, the learned counsel for the Appellants, the entire Judgment of the Trial Court is based on the surmises and conjunctures, without there being any legal evidence on record and, therefore, it deserves to be quashed and set aside.

11. Per contra, Mrs. Kejriwal, the learned A.P.P. for the Respondent-State, has tried to support the impugned Judgment of the Trial Court by submitting that though the case is based on the circumstantial evidence, the three incriminating circumstances alleged by the Prosecution against the Appellants stand proved. There was sufficient motive for the

Appellants to commit the murder of Sachin. This motive is established by the Prosecution by examining number of witnesses. The evidence on record, according to Mrs. Kejriwal, the learned A.P.P., also proves the circumstance of Appellant No.1 and Sachin being last seen together just few hours before the incident and, lastly, there is recovery of the blood stained clothes of Sachin and Appellant Nos.1 and 2 and also recovery of the weapons used in the offence. According to her, these circumstances, if taken together, form a chain so complete that it is difficult to escape from the conclusion that Appellant Nos.1 and 2 are guilty of the offences charged and proved against them. In her opinion, the case stands on solid footing and hence no interference is warranted in the impugned Judgment of the Trial Court.

12. We have given our thoughtful consideration to the submissions advanced at the Bar. The first and foremost aspect which we bear in mind and on the basis whereof we proceed to analyze the evidence is that, this case is based on the circumstantial evidence alone. There is no eye witness to the incident. As regards the case based on circumstantial evidence, the law is well crystallized as long back as in the year 1952, when the Hon'ble Supreme Court has, in the case of ***Hanumant Govind Nurgundkar V/s. State of M.P., AIR 1952 SC 343***, and subsequently in

the case of ***Sharad Birdhichand Sarda V/s. State of Maharashtra, AIR 1984 SC 1622***, laid down that *“in cases where the evidence is of a circumstantial nature, it is well to remember that the circumstances from which the conclusion of guilt is to be drawn should be in the first instance fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of circumstances so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities, the act must have been done by the accused and none else.”*

13. Keeping in mind this well settled legal position, we proceed to appreciate the evidence on record in respect of the three circumstances on which Prosecution is relying viz. (i) the motive, (ii) last seen together and (iii) recovery of incriminating articles.

14. However, before entering into the arena of appreciating evidence relating to these three circumstances, it would be appropriate to put on

record the fact that the death of Sachin is homicidal in nature is not disputed by defence either in Trial Court or in Appeal. Otherwise also, it is sufficiently proved on record. In addition to the Inquest Panchnama (Exhibit-17), which shows presence of several injuries on the body of deceased Sachin, there is Post Mortem Report (Exhibit-88) and the evidence of Dr. Reshma Paygonda Patil (PW-29), who has conducted autopsy, which proves that there were as many as 26 external injuries and 3 corresponding internal injuries found on the dead body. According to the opinion of Dr. Reshma Patil (PW-29), the cause of the death was the head injury, which was sufficient in the ordinary course of nature to cause the death and there is not much cross-examination of Dr. Reshma Patil (PW-29) as regards homicidal nature of the death. Mr. Chaudhary, the learned counsel for the Appellants, has also fairly conceded that Appellants are not disputing that the cause of the death is homicidal in nature.

15. The real question for consideration is *“who is or are the authors of the injuries found on the person of the deceased which had ultimately resulted into the cause of his death?”* In this respect the circumstances relied upon by the Prosecution can be categorized as follows :-

- (a) On 30th October, 2009, Sachin went to Kolhapur to bring his Tata Sumo vehicle and he was supposed to return by evening or at-least by night, but he did not return and on the next day, his dead-body was found in his Tata Sumo vehicle, lying in an injured condition.
- (b) Sachin was allegedly having illicit relations with Amruta (PW-21), the wife of the Appellant No.1 and the Appellant No.1, being aware of the same, was very much annoyed with her and also with Sachin. Hence, with the assistance of Appellant No.2 and Original Accused No.3, the father and brother of Amruta (PW-21), respectively, he committed murder of Sachin. According to the Prosecution, this circumstance is sufficient to constitute motive for the offence.
- (c) The next circumstance on which the Prosecution is placing reliance is that on the night of 30th October, 2009, between 10 p.m. to 12:30 a.m.,

some of the witnesses saw the deceased and Appellant No.1 in front of H.P. Gas Godown at Sarnobatwadi, while they were chit-chatting with each other near Tata Sumo vehicle of Sachin.

(d) Prosecution has also placed reliance on the circumstance that on 31st October, 2009, in between 2:45 a.m. to 3:00 a.m., some witnesses saw Appellant No.1 returning to his village on his motor cycle hurriedly and on the next morning, when Sachin's mother made enquiry with Appellant No.1 about whereabouts of her son Sachin, the Appellant No.1 told her that he will return upto 8:30 a.m., but it did not happen.

(e) The further circumstance on which the Prosecution wants to place reliance is that on the day of incident, Appellant No.1 was repeatedly making enquiry about Sachin. He has made such phone call to the mother of deceased Sachin and some other witnesses also and, therefore, as

per the Prosecution case, Appellant No.1 was very keen to find out deceased Sachin so as to eliminate him.

- (f) The last circumstance on which the Prosecution is placing reliance is about recovery of the blood stained clothes of Appellant Nos.1 and 2 and also recovery of the weapons of assault at the instance of Appellant No.2, under Section 27 of the Evidence Act.

16. These circumstances can be discussed under three major headings
(i) the motive on the part of the Appellants to eliminate deceased Sachin;
(ii) the circumstance of last seen together and (iii) recovery of the incriminating material.

17. At this stage, it may be stated that though the Prosecution has examined as many as 36 witnesses, several of them, exactly speaking 1/3rd or 12 of them, have not supported the Prosecution case. They are, namely, Umesh Ankush Patil (PW-10), Raghunath Tukaram Ganeshcharya (PW-12), Chandar Krishna Kamble (PW-13), Anjum

Mahammad Shaikh (PW-14), Rajesh Dinkar Gharal (PW-17), Kiran Tukaram Aadsul (PW-19), Dr. Vijaykumar Sangondappa Bagadi (PW-20), Amruta Shahaji Patil (PW-21), Shankar Mahadev Chavan (PW-23), Abhijeet Aappaso Borwade (PW-24), Sunita Mahadev Aadsul (PW-26) and Kumar Bhupal Patil (PW-28). They are declared hostile and cross-examined by the learned A.P.P., but nothing worthwhile elicited in their cross-examination in support of Prosecution case out of the remaining.

18. Out of the remaining, some witnesses are quite formal like Bharat Pandurang Takmare (PW-1), the Panch to the Inquest Panchnama (Exhibit-17); the Deputy Sarpanch-Niwas (PW-8), who has given information of seeing the dead-body; Police Constable Shankar Vishnu Patil (PW-30), who carried muddemal articles to C.A.; Police Constable Atmadas Kamble (PW-31) and Head Constable Prakash Patil (PW-32), who made station diary entries. Rameshwar Ramkrishna Raut (PW-34), Judicial Magistrate, First Class, who has recorded statements of some of the witnesses under Section 164 of the Code of Criminal Procedure and Datta Shantaram Angre (PW-35), Nodal Officer of Tata Cellular, who has produced Call Detail Record (Exhibit-144) of the calls exchanged on mobile of Appellant No.1 and other witnesses.

(A) MOTIVE

19. The first circumstance relied upon by Prosecution is the motive on the part of the Appellant Nos.1, 2 and Original Accused No.3 to eliminate deceased. The Prosecution case, as spelt out by some of these witnesses, is to the effect that Sachin and Amruta (PW-21), wife of the Appellant No.1, were having illicit relations, which Appellant No.1 came to know about and, therefore, he was having grudge against Sachin. Once he has also confronted Sachin about it.

20. The material evidence on this aspect was naturally that of Amruta especially because she has been examined by the Prosecution as Witness No.21. However, as was expected, she has not supported the Prosecution case at all. She has outrightly denied even the fact that deceased has acted as mediator in her marriage with Appellant No.1 or the house of Sachin is adjacent to her house. Hence nothing worthwhile is elicited in her cross-examination to prove the Prosecution case on this aspect.

21. The Prosecution has, therefore, relied on the evidence of the mother of the deceased, namely, Sulochana Sakharam Chougule (PW-25)

and his sister, namely, Sarika Balasaheb Patil, (PW-27). They are on the point that, both, deceased and Appellant No.1 were class-mates. They were good friends and on visiting terms with each other. Sachin has acted as mediator for settling the marriage between Amruta (PW-21) and Appellant No.1, when they were having their love affair, as members of Appellant No.1's family were opposing their marriage.

22. According to the evidence of both these witnesses, after the marriage of Appellant No.1 and Amruta, Sachin started having illicit relations with Amruta. It has to be stated that they have made this general statement without specifying the incidents as to when they came across such instances which gave rise to suspicion in their mind about illicit relations between Sachin and Amruta. No doubt, Sarika (PW-27) has stated that she has seen Amruta and her brother Sachin talking with each other, but, needless to say, that this evidence does not go either in favour of the Prosecution or in favour of the Appellants as both of them were knowing each other fairly well. The material aspect of their evidence is that, even though allegedly there were such illicit relations between Sachin and Amruta (PW-21), these witnesses have not stated that the relations between deceased Sachin and Appellant No.1 were ever spoiled on that count till the end.

23. On the aspect of motive, the Prosecution has also examined Mahadeo Nivrutti Chougule (PW-5) to bring on record that in August, 2009, at about 4:00 p.m., when he was going towards his field and passing in front of the shop of Tanaji Shivappa Koli, he heard hot exchange of words between Appellant No.1 and Amruta on the ground that Amruta was talking to Sachin when she had, in fact, come to talk with her parents. According to the evidence of this witness, Appellant No.1 had slapped Amruta (PW-21) and dragged her. He has further deposed that he and the shop owner Tanaji Shivappa Koli along with one Laxman Vishnu Patil tried to give understanding to Appellant No.1, but Appellant No.1 said that he will make Sachin face the consequences for the same.

24. This alleged incident has taken place about three months prior to the incident. It is unbelievable that when Amruta was knowing very well that Appellant No.1 was standing behind her, she would talk with Sachin on phone. Moreover, assuming that whatever he has stated is true, the fact remains that thereafter also, as per the admitted position on record, the relations between Sachin and the Appellant No.1 remained cordial. Therefore, this incident can hardly be considered as supporting material for Prosecution to prove the alleged motive.

25. The next witness examined by the Prosecution on this aspect is Ravindra Prakash Chougule (PW-18). According to him, two months prior to the incident, when, along with the Sachin, he was drinking tea at the Tea Stall, Appellant No.1 came there and asked Sachin what were the relations between him and his wife Amruta (PW-21). Thereupon, Sachin told him that he was Appellant No.1's friend and how can he keep such relations with his wife. Thereafter all of them went in their own way. It is unbelievable that Appellant No.1 would ask Sachin about his relations with his wife and then simplicitor believe Sachin when he said that there were no such relations. Nothing further has happened on that day or thereafter.

26. The Prosecution has further examined Umesh Ankush Patil (PW-10) to prove these alleged illicit relations, but he has not supported the Prosecution case on this material aspect. Even Dr. Vijaykumar Sangondappa Bagadi (PW-20), who is examined by the Prosecution to prove that Amruta (PW-21) has come to his Dispensary with complaint of the bleeding, has also not supported the Prosecution case. It is also not explained in which way his evidence was relevant. Though Prosecution has further examined Daulat Vishwas Raut (PW-22), the owner of Vishwatej Lodge, and Shankar Mahadev Chavan (PW-23), where, as per

Prosecution case, said Amruta and Sachin had gone, they have also not supporting Prosecution case.

27. Thus, as regards the alleged motive, the evidence of the Prosecution Witnesses fails to inspire confidence in judicial mind. Moreover, accepting their evidence as it is also, Prosecution has failed to establish what was the immediate cause for the Appellant Nos.1 and 2 to commit murder of the deceased. Whatever has happened, as per the evidence on record, was much prior i.e. about two months before the incident and thereafter also the relations between Sachin and Appellant No.1 continued to be cordial. Neither the mother nor the sister of deceased Sachin suspected any foul play when the Appellant No.1 made enquiry of Sachin on the day of incident. Thus, the Prosecution has failed to prove the presence of the alleged motive and also the genesis of the incident. It is true that the motive by itself is not a deciding factor. However, when the case is based on the circumstantial evidence, motive assumes significance, which in this case the Prosecution has failed to establish satisfactorily.

(B) LAST SEEN TOGETHER :

28. The second circumstance relied upon by the Prosecution is that of Appellant No.1 and deceased Sachin being last seen together few hours before his death. To prove this circumstance, the Prosecution has relied on the evidence of Pundlik Tukaram Chougule (PW-4) and Kedari Ganpati Koundade (PW-9), who have stated that on 30th October, 2009, when, after finishing his work, they were returning at 12:30 in the night, they came across Appellant No.1 on his motor cycle. However, without talking with them, Appellant No.1 went away in hurry and on the next day they came to know about murder of Sachin.

29. In our opinion, Appellant No.1 is residing in the same area or in the vicinity thereof, there is nothing unnatural if these witnesses found Appellant No.1 returning to his house. Therefore, their evidence is of absolutely no help.

30. The Prosecution has then placed reliance on the evidence of Sandeep Balaso Takmare (PW-7), who has seen Sachin on his motor cycle proceeding from Kolhapur. As he has seen Sachin at about 4:00 p.m., that is not of much significance.

31. Then there is evidence of Sandeep Shivaji Patil (PW-11). According to him, he was waiting near Tavade Hotel at about 10 p.m. to 10:15 p.m. He was travelling on Pune-Bangalore National Highway in the tempo of one Eknath Patil. At that time, he saw Sachin and Appellant No.1 standing and chit-chatting on the road in front of Dr. Kole Hospital. He gave acquaintance to them and left. In his cross-examination, he has admitted that Dr. Kole Hospital is inside from the road. When a person is proceeding in the tempo, he hardly gets an opportunity to observe. In the cross-examination, he has improved by stating that the tempo was stopped near the Hospital of Dr. Kole for alighting the passengers, but this fact is not disclosed in his statement.

32. Raghunath Tukaram Ganeshcharya (PW-12) and Chandar Krishna Kamble (PW-13) are also examined on the same point that they saw deceased Sachin and Appellant No.1 chit-chatting near H.P. Gas Godown at Sarnobatwadi, but both of them have not supported the Prosecution case.

33. That brings us to the evidence of Popat Pandurang Lad (PW-15). According to him, on 30th October, 2009, he had gone to Gandhinagar for purchasing material for his business. Then he went to Petrol Pump

Rajarampuri via Sarnobatwadi to bring his money from Madhukar Yavaluje. He waited there for about two hours, but Madhukar Yavaluje did not turn up. Hence, at about 12 in the mid-night, he went away towards his village. When he came near H.P. Gas Godown, it was about 1:15 a.m. to 12:30 a.m. and then he saw Sachin and Appellant No.1 standing and chit-chatting with each other. In the cross-examination, it is brought on record that, both, he and Madhukar Yavaluje were having mobile phones. Therefore, it does not appear probable that he will wait for two hours for Madhukar Yavaluje to turn up and Madhukar Yavaluje not turning up ultimately.

34. In our opinion, even if the evidence of all these witnesses is accepted at its face value without looking into their cross-examination, it merely proves that Sachin and Appellant No.1 were found together chit-chatting. None of them is saying that there was any hot exchange of words between them. None of them is further saying that Appellant No.1 was assaulting or using any weapon to cause injury to Sachin. Now when admittedly the relations between Sachin and Appellant No.1 were cordial till the end, the mere fact that they were seen chit-chatting together on that night does not make any difference to the outcome of the case. This circumstance in that way is not at all helping the Prosecution to prove the involvement of the Appellant No.1 in the incident.

(C) RECOVERY OF WEAPONS AND BLOOD STAINED CLOTHES :-

35. The last circumstance on which the Prosecution is relying upon is about recovery of the weapons at the instance of Appellant No.2. Anil Keshav Malavi (PW-2) is the Panch Witness to the said recovery along with PS Ashok Jain (PW-33), the Investigating Officer. The recovery is under Section 27 of the Evidence Act and it pertains to that of tommy and wheels spanner, which, according to the Prosecution case, were used by the Appellant Nos.1 and 2 for inflicting injuries on the deceased Sachin.

36. There is also Seizure Panchanama of the clothes of the Appellant Nos.1 and 2 vide Exhibits "22" and "23". As per the Prosecution case, blood stains were found on the weapons and also on the clothes of the Appellant Nos.1 and 2. However, as per C.A. Report, the results of the blood group found on the said clothes and weapons were inconclusive. Hence, it cannot be said to be positively established that these are the same weapons which were used in the commission of the offence for assaulting Sachin or the blood stains found on the clothes of Appellant Nos.1 and 2 were that of blood group of deceased Sachin.

37. It is pertinent to note that none of the witness, who has seen deceased with Appellant No.1 chit-chatting, has stated which clothes Appellant No.1 was wearing at the time of incident and the clothes produced before the Court are the same clothes which were found to be blood stained, recovered and sent to C.A. The Prosecution has failed to establish the necessary nexus between the two. Whatever evidence is produced on record on this aspect is not taken to its logical conclusion. As a result thereof, even the recovery of these clothes is of no significance.

38. The Call Detail Record proved through the evidence of Witness No.35 Datta Angre is again not in the nature of incriminating evidence, because there was nothing unnatural in Appellant No.1 making phone calls to Sachin or finding out his whereabouts as till then both of them were on cordial terms.

39. As a matter of fact, as regards Appellant No.2, there is absolutely no iota of evidence on record, except for the recovery of these alleged weapons which are not proved to be used in the commission of the offence. Even the bare perusal of the evidence of PW-3 Informant-Vitthal Chougule goes to show that Appellant No.2 and Original Accused No.3 were implicated merely on the assumption that the extensive injuries found on the body of the deceased were not possible due to the assault

by one person and, therefore, suspicion was raised that Appellant No.2 and Original Accused No.3 also might have participated in the incident. Thus, their involvement is merely on the ground of suspicion and no convincing or reliable single piece of evidence is brought on record to implicate them.

40. As regards Appellant No.1 also, none of the three circumstances on which Prosecution is relying upon, that of motive, last seen together and the recovery of incriminating articles, are proved with satisfactory evidence and none of the circumstance, even if taken individually or collectively together, go to form a chain so complete that no other inference, except that of the guilt of the Appellant No.1, can be drawn from the said circumstances. In case of circumstantial evidence, the burden on the Prosecution is quite heavy to prove each of the circumstance relied upon by it with satisfactory evidence and those circumstances then have to be of conclusive nature and unerring tendency so as to be totally inconsistent with the innocence of accused. They should not be explainable by any other hypothesis except that of the guilt of the accused.

41. In the present case, the Prosecution has not succeeded in doing so. Several missing links and gaps are left open in the case put up by

Prosecution, as a result of which it becomes difficult to uphold the Judgment of the Trial Court holding the guilt of the Appellant Nos.1 and 2 to be proved beyond reasonable doubt. The evidence on record being in the nature of surmises and conjunctures, the benefit of doubt cannot be withheld from Appellant Nos.1 and 2. The impugned Judgment of the Trial Court, therefore, requires to be set aside.

42. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellants is hereby quashed and set aside and the appellants are acquitted of the offence with which they were charged and convicted. Fine, if paid by them, be refunded to them. Since the appellant no.1 - Shahaji Gopal Patil is in jail, he be released forthwith, if not required in any other case. Bail bonds of appellant no.2 – Mahadev Dadu Aadsul stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]