

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.523 OF 2008

Vishal @ Shivaji Mahadeo Kamble.	]	
Age - 27 years, Occupation - Service,	]	
Residing at Bhavani Nagar, Taluka - Indapur,	]	
District - Pune.	]	
(at present lodged in Yerawada Central	]	
Jail at Pune).	]	... Appellant

Versus

1. The State of Maharashtra,	]	
(Baramati City Police Station,	]	
District - Pune),	]	
2. Mr. Ramchandra Mallappa Karnale,	]	
Age - Adult, Occupation - Service,	]	
Residing at Near Doordarshan Kendra,	]	
Behind Jinu Tyres, Opp. Maharaja Garden,	]	
Kolhapur Road, Sangli - 416416.	]	... Respondents

Mr. Prashant Gurav i/b Mr. Yogesh Sankpal for Appellant.
Mr. J. P. Yagnik, APP for State.

**CORAM :- NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON : OCTOBER 20, 2016
PRONOUNCED ON :- DECEMBER 16, 2016**

JUDGMENT (PER PRAKASH D. NAIK, J.) :-

1. The appellant (hereinafter referred to as 'accused' for the sake of convenience) has preferred this appeal challenging the

Judgment and Order dated 22/06/2007 passed by the Ad-hoc Additional Sessions Judge-1, Baramati, District Pune, in Sessions Case No.66 of 2004.

2. The accused was tried for the offences punishable under Sections 302, 201, 376, 445, 457 and 404 of the Indian Penal Code ('IPC').

3. The brief facts of the prosecution case are as follows :-

A) Deceased Manisha Ramchandra Karnale was the resident of Sangli. She had completed her graduation in BE (Electronics and Telecommunication). In the year 2003, she accepted the job in a company named Aanama Energies Pvt. Ltd., Pune. She was required to visit sites as part of her job. The employer of Manisha had taken job to install machinery of Parekh Food, Kurkumbh. Hence she was directed to join the work at Parekh Food, Kurkumbh, on 16/12/2003. Ajay Dumbre, Vikas Kattimani, Rakesh Jaiswal and Rakesh Supekar were the colleagues of Manisha. They were also directed to visit Parekh Food at Kurkumbh. Accordingly, they had resumed their duty on 15/12/2003. While working at Kurkumbh, Ajay Dumbre and his colleagues were staying at Hotel Neelam Palace at Baramati. He had changed the hotel and booked 3 rooms in Hotel Amardeep at Baramati. Deceased Manisha joined Ajay Dumbre and others on 16/12/2003. In the evening of 16/12/2003, Manisha and her colleagues came to Hotel Amardeep at Baramati. They had booked

Room Nos.206, 207 and 208 in the said hotel. Manisha occupied room No.207. Rakesh Supekar and Vikas Kattimani occupied Room No.206. Ajay Dumbre and Rakesh Jaiswal occupied Room No.208. From 16/12/2003 till 19/12/2003, Manisha and her colleagues used to leave Hotel Amardeep in the morning and used to return in the evening.

B) On 19/12/2003, deceased Manisha returned to Hotel Amardeep along with her colleagues at about 8.30 p.m. In the same night, Rakesh Supekar and Vikas Kattimani changed their room from Room No.206 to Room No.212 as TV and telephone of the said room was out of order.

C) After arrival in the hotel, Ajay Dumbre ordered dinner for 4 persons in Room No.208. Thereafter, he consumed liquor. In the same evening, there was a party of Trainee Pilots on the lawn of the hotel. Ramesh Supekar, Ajay Dumbre, Vikas Kattimani and Rakesh Jaiswal were watching the party from the window of Room No.208 and they were chitchatting. In the same night at about 11.30 p.m., Ajay Dumbre and Rakesh Jaiswal took their dinner. However, Rakesh Supekar did not take the meal. After dinner, the said 4 persons decided to have Paan, but due to late hours, they returned to their rooms and went to bed. Deceased Manisha took her dinner in the room. At about 12.45 in the midnight, Manisha asked the Manager on duty to connect a call to one cellphone. Accordingly, Manager gave call on the said cellphone number and Manisha had a conversation on

the said number from her room. In the midnight at about 1.45 a.m., one customer came to the hotel. He was allotted Room No.206 which was vacated by Rakesh Supekar and Vikas Kattimani.

D) On 20/12/2003 in the morning, Ajay Dumbre and his colleagues got ready and they decided to leave the hotel and return to Pune. Accordingly, Ajay Dumbre came to reception counter and asked Manager Shrinivas Kadam to prepare the bill. Ajay Dumbre made payment on behalf of the company. Ajay Dumbre, however, retained one room. Thereafter Ajay Dumbre asked the Manager to give call to Manisha. Manager gave call to Manisha, but there was no response from her room. Thereafter, Ajay Dumbre and his colleagues went to their respective rooms. On the way, Rakesh Supekar rang the door-bell of Manisha. She did not give response. Thereafter, Ajay Dumbre, through the window of Room No.208, entered into Room No.207. He found Manisha in a pool of blood. He raised shouts and opened the main door of the room. Thereafter, Rakesh Supekar entered into the room and saw Manisha. Both of them rushed to reception counter and informed the said fact to Manager Shrinivas Kadam.

E) Manager Shrinivas Kadam rushed to Room No.207. He found Manisha lying dead on her bed in a pool of blood. He immediately called police. PI Ashok Pawar rushed to Hotel Amardeep. He visited the room of Manisha. He prepared inquest panchanama of the dead body of Manisha and sent it for autopsy. Manager Shrinivas Kadam lodged complaint with the police.

F) On the basis of complaint, Crime No.158/2003 came to be registered with the concerned police station under Section 302 of IPC against unknown person. The investigation of the same was handed over to PI Harihar. The Investigating Officer ('I.O.') recorded statements of the staff members of hotel. The I.O. visited the scene of offence and prepared the detailed panchanama of the spot. The I.O. found bloodstains in the room and on the clothes of Manisha. There were bloodstains on towel, bed-sheet and pillow covers. The I.O. seized the clothes of Manisha found in that room as well as bed-sheet, two pillow covers and towel, under the panchanama. The I.O. also found some clothes of Manisha in the duct behind the bathroom. He also recovered a shirt from the electric room situated outside Room No.207 which was also seized under the panchanama.

G) During the course of investigation, initially, Ajay Dumbre and Rakesh Supekar were arrested by the police on 22/12/2003. They were remanded to police custody. The I.O. made inquiries with them. Since nothing incriminating was found against them, the I.O. submitted a report under Section 169 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') to the Court on 13/01/2014 and they were discharged from the case.

H) During the course of investigation, the I.O. learnt that the accused was working as a waiter in the said hotel. He worked till midnight of 19/12/2003. Thereafter, he did not resume duty without any intimation. The I.O. kept close watch on the house of the accused

at village Bhavaninagar. The I.O. also asked the telephone department to keep watch on the telephone number installed in the house of the accused. Accordingly, the telephone department installed Caller ID to know details of phone-calls received and dialed from the said telephone. In the midnight of 08/01/2004, a call was received on the said telephone installed in the house of the accused. On inquiry, it was revealed that the call was made from Margaon, Goa. Hence, I.O. directed ASI Dhavare to visit Margaon, Goa, to make further inquiries. Accordingly, ASI Dhavare visited Margaon Police Station. The constable of the police station accompanied ASI Dhavare in order to search the accused. The accused was found at Hotel Kandil at Margaon. He was arrested and brought to Margaon Police Station. Some injuries were noticed on the person of the accused. He was referred to the Government Hospital at Margaon for examination. Accordingly, the accused was examined in the Government Hospital at Margaon. On 11/01/2004, ASI Dhavare returned to Baramati and produced the accused before the I.O. The I.O. took the personal search of the accused. He was again referred for medical examination to Silver Jubilee Hospital at Baramati. Samples of blood, semen, nail clipping, pubic hair were drawn by the Medical Officer. The said samples were sent to Chemical Analyzer ('CA') for analysis.

I) On 13/01/2004, the accused made a voluntary statement and showed his willingness to point out the place where he had parked his Luna and the place where he had disposed of the ornaments of deceased Manisha. Accordingly, his statement was

recorded under panchanama. The accused led police party and panch witnesses to a parking place of Baramati ST Stand and produced the said vehicle. The same was seized under panchanama. Thereafter, the accused led the police party to Ratnagiri Railway Station and pointed out the place. However, nothing incriminating was recovered. The I.O. recorded statements of witnesses. He received CA reports. On completion of investigation, charge-sheet came to be filed against the accused in the Court of Judicial Magistrate First Class, Baramati.

J) As the offence punishable under Section 302 of IPC was triable by the Court of Sessions, the case of the accused was committed to the Court of Sessions, under Section 209 of Cr.P.C.

4. Charge for the offences punishable under Sections 302, 201, 376, 457 and 404 of IPC came to be framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried. The defence of the accused was of total denial.

5. The prosecution examined 30 witnesses. The defence has also examined solitary witness in support of the defence. The Trial Court recorded the evidence of the witnesses and thereafter the statement of the accused was recorded under Section 313 of Cr.P.C. After hearing the prosecution and the defence, the Trial Court was pleased to convict the accused.

6. In support of its case, as stated above, the prosecution examined 30 witnesses. The witnesses examined by the prosecution can be categorized as follows :-

a) The 1st group of witnesses examined by the prosecution were the employees of Hotel Amardeep. They are as follows :-

PW 5 - Shrinivas Kadam, PW 6 - Pandurang Gorakh, PW 7 - Ganesh Kashid, PW 8 - Amarsinh Gholap, PW 11 - Shivaji Sangale, PW 13 - Prabhakar Patil, PW 14 - Mahesh Jonjal and PW 20 - Balu Wandre.

b) The 2nd group of witnesses are the employees of Hotel Kandeel, viz. :-

PW 16 - Dattaram Sawant, PW 17 - Dhanjay Gaudamurty and PW 21 - Satish Patil.

c) The 3rd group of witnesses comprises of the panch witnesses, viz. :-

PW 3 - Raju Kamble and PW 4 - Sandeep Shinde.

d) The 4th group of witnesses are the colleagues of victim :-

PW 22 - Vikas Kattimani, PW 26 - Rakesh Supekar and PW 27 - Ajay Dumbre.

e) The 5th group consists of the Medical Officers, viz. :-

PW 9 - Dr. Sambhaji Kokane and PW 18 - Dr. Jitendra Doshi.

f) The 6th group of witnesses are as follows :-

PW 12 - Anil Godse, PW 23 - Yeshwant Parab and PW 24 - Ramchandra Karnale.

g) The 7th group of witnesses comprises of investigating machinery, viz. :-

PW 10 - ASI Anil Jadhav, PW 15 - PC Sandip Pant, PHC PW 19 - Dilip

Dhavare, PW 25 - API Suraj Halankar, PW 28 - API Ashok Pawar, PW 29 - PI Vitthal Harihar and PW 30 - Dy.SP (Retd.) Krishnaji Phadtare.

h) The defence has examined one witness as DW 1 - Smt. Kranti Jadhav.

7. The prosecution has relied upon the oral testimony of these aforesaid witnesses as well as various documents which were exhibited in evidence. The inquest panchanama (Exh.31), panchanama of Room Nos.208/212 (Exh.32) memorandum panchanama (Exh.33) and memorandum panchanama (Exh.34) were admitted by the defence under Section 294 of Cr.P.C. The prosecution also placed on record various CA reports in support of its case.

8. There is no eye witness to the incident of murder. The prosecution case, therefore, rests on circumstantial evidence. The prosecution has placed reliance upon the following circumstances to prove its case against the accused :-

- i) On 19/12/2003, the accused was on duty from 7.00 p.m. to 12 midnight as a waiter in the party on the lawn of the hotel,
- ii) The accused stayed in the hotel and did not go home in the said night after the party was over,
- iii) The accused absconded after the incident till he was arrested by police on 09/01/2004. He had obtained job in a different name.
- iv) Healed injuries were found on the person of the accused,

- v) Semen was found on the clothes of Manisha and the blood-group of the semen and of the accused is same.
- vi) Extra-judicial confession made by the accused before the hotel Manager,
- vii) Discovery of articles in pursuance of voluntary statement of the accused,
- viii) Non-explanation of circumstances which could have been explained by none other than the accused.

9. On appreciation of evidence, the Trial Court concluded that the prosecution has established the chain of circumstances to prove the guilt of the accused and therefore relying upon the said circumstantial evidence, the accused was convicted. The only circumstance which was disbelieved by the Trial Court is with regard to extra-judicial confession purportedly made by the accused before the hotel Manager.

10. The Trial Court was pleased to observe that the accused has not given plausible explanation to certain incriminating circumstances which ought to have been discarded by him by explaining the same. It is stated that the accused has merely denied the injury marks found on his body in his statement recorded under Section 313 of Cr.P.C. and did not give any sort of explanation as to how the said injuries were caused to him and therefore it was inferred that the prosecution has proved that the accused had sustained injuries about 20 days prior to his examination, for which he could not

tender any explanation as to how, when and in what circumstances he had sustained the injuries which left the marks on his body. The Trial Court has further observed that the prosecution has proved that the semen found on the clothes of the deceased was of 'AB' antigen and the accused is having the same blood-group. In that context, it was observed that, it was expected from the accused to explain the said circumstance. The Trial Court, therefore, placed strong reliance upon the aspect of non-explanation of circumstances which could have been explained by none except the accused. The Trial Court has opined that the prosecution is not required to prove the impossible but has to adduce best evidence which nature of that particular incident admits. However, once the initial burden is discharged, the onus shifts on the accused. He is obliged to disclose facts within his special knowledge in view of Section 106 of the Evidence Act. Falsity of the explanation can be considered to be providing a missing link which completes the chain of circumstances.

11. Vide Judgment and Order dated 22/06/2007, the learned Ad-hoc Additional Sessions Judge-1, Baramati, District - Pune, was pleased to convict the appellant/accused for the offence punishable under Section 302 of IPC and he was sentenced to suffer imprisonment for life and to pay a fine of Rs.3,000/-, in default of payment of fine, to suffer R.I. for six months. He was also convicted for the offence punishable under Section 201 of IPC and sentenced to suffer R.I. for three years and to pay a fine of Rs.1,000/-, in default of payment of fine, to suffer R.I. for three months. He was further

convicted for the offence punishable under Section 457 of IPC and sentenced to suffer R.I. for three years and to pay a fine of Rs.1,000/-, in default of payment of fine, to suffer R.I. for three months. He was acquitted of the offences punishable under Sections 376 and 404 of IPC. It was further directed that the accused is entitled to set off as per Section 428 of the Cr.P.C. for the period undergone by him in jail from 11/01/2004.

12. In the aforesaid circumstances, it would be trite to analyze the evidence placed on record by the prosecution through the witnesses examined before the Trial Court.

13. PW 5 - Shrinivas Kadam is the original complainant who lodged the F.I.R. He was serving as a Receptionist in Hotel Amardeep at Baramati. He deposed that on 16/12/2003, four persons of Aanama Company had come in the lodge for booking and they were allotted Room Nos.206, 207 and 208. Rakesh Supekar and Vikas Kattimani had occupied Room No.206. Deceased Manisha Karnale stayed in Room No.207 and the other colleagues Ajay Dumbre and Rakesh Jaiswal had occupied Room No.208. He further deposed that on 19/12/2003, Rakesh Supekar and Vikas Kattimani had left Room No.206 and went to stay in Room No.212. He further deposed that the accused was working as a waiter in Hotel Amardeep since May 2003. Prior to that also, he was working in the hotel. He also deposed that the accused used to remain absent and hence the owner of the hotel had terminated him from the work. He deposed that the

accused was on duty till 19/12/2003 and thereafter he did not join duty. He deposed that one Pandurang Gurav and accused were waiters to the party of Trainee Pilots which was celebrated on the lawn of the said hotel. On 20/12/2003, the witness joined his duty at 7.00 a.m. At that time, Ajay Dumbre, Rakesh Jaiswal, Vikas Kattimani and Rakesh Supekar approached him and told him that they were vacating the two rooms and will keep one room and asked him to settle the account. The witness gave a call in Room No.207 but there was no reply. The said persons had left for their rooms. After some time, Vikas Kattimani came to the witness and told him that madam had done something and Ajay Dumbre was weeping. The complainant and others then went to Room No.207. The door of the said room was opened by Ajay Dumbre and Rakesh Supekar by entering in the said room through the window after getting down from Room No.208. The deceased was lying dead in a pool of blood. She had sustained injuries on her person. The witness then called the police and thereafter the F.I.R. was registered. At the instance of the said witness, the police had seized one shirt from the electric room. In the cross-examination of the said witness, he has deposed that the accused was never attached for the room service and he was serving in the bar and restaurant of the hotel. He further deposed that before the incident, the accused used to remain absent frequently without informing the owner. He was terminated from the service. The accused used to remain absent for a period of 15 days to one month. The accused was insisting to the owner for enhancement of salary and the owner was not ready to enhance his salary and therefore the

accused used to remain absent from the work. The accused used to give explanation for his absence to the complainant that the salary was insufficient and he was searching for a new job. He further deposed that the accused had worked in about 15 to 20 hotels. He also deposed that he asked Ajay Dumbre as to how he opened the door of Room No.207 for which Ajay replied that he entered the said room through window and that he was knowing to enter the room through the window. He also deposed that hotel used to supply uniforms to the workers and there used to be name of the workers in ink on the shirt given to a particular worker. He admitted that there is no name of the accused on muddemal article shirt shown to him. There were material improvements in his evidence which were brought through the cross-examination by the defence. The witness admitted that he did not say to police that the accused was on duty till 19/12/2003 and thereafter he did not come on duty. He also did not state to police that one can see windows of Room Nos.206, 207 and 208 from the lawn. He also deposed that Room No.206 was occupied by a new person on 19/12/2003 after it was vacated by Rakesh Supekar and Vikas Kattimani. He also admitted that since beginning of December 2003, the accused used to say that he was planning to go to Goa for work since he would get good salary as those were the days of Christmas.

14. PW 6 - Pandurang Gorakh was working as a waiter at Hotel Amardeep. He deposed that he, along with the accused, was waiter in the party of Trainee Pilots which was organized on the lawn.

He deposed that Room Nos.206, 207 and 208 are visible from the lawn. The party was over by 11.45 p.m. He consumed liquor along with the accused after the party was over and then he went to his house and the accused was in the hotel. He also deposed that if the waiters are late in the night, they used to sleep in the staff room. In the cross-examination, he stated that his statements were recorded on 21/12/2003, 19/01/2004 and 27/03/2004. He admitted that he did not state to the police at the time of recording of above statements that the accused was in the hotel after he left the hotel in the night of 18/12/2003. He also admitted that he did not state to the police that if the workers are late in the night, they used to sleep in the hotel. He stated that nothing inside the room is visible from the lawn. He stated that prior to the incident, on many occasions, the accused used to remain absent in the hotel. Therefore he was removed from the work. He used to remain absent from duty sometimes for 8 days. About 15 days prior to the incident, the accused used to say that he was planning to go to Goa to work in hotel as one gets more tips there and there was insufficient salary in the hotel. Prior to the incident, the accused had worked in hotels at Goa, Kolhapur and other hotels at Baramati. PW 7 - Ganesh Kashid was also serving as a waiter in Hotel Amardeep at the relevant time. He was working in the beer bar of the hotel on 19/12/2003. After the party was over, the accused had come to take quarter of liquor and accordingly he had given the same and issued a bill. In the cross-examination, the said witness has stated that the police had recorded his statement on 24/12/2003, 12/01/2004 and 17/03/2004. In the statement dated 12/01/2004,

he disclosed to police about giving quarter of liquor to the accused. He also stated that in the statement dated 17/03/2004, he disclosed to the police that the accused did not come on duty on the next day. He admitted that even if the accused was late in the night, he used to go to his house. The accused was in the habit of remaining absent from duty. Therefore, he was terminated from the work.

15. PW 8 - Amarsinh Gholap is the partner of Hotel Amardeep and he was looking after the administration of the said hotel. He deposed that PW 6 and the accused were the waiters in the party of Trainee Pilots. In the cross-examination, he stated that he did not disclose to the police that they were maintaining register of workers. He did not state to the police that there are staff quarters to the workers behind the hotel. He did not state to the police that there are sliding windows to the hotel and there are no grills to the windows from outside. He did not state to the police that the accused was residing at Bhavani Nagar. He stated that prior to the incident, at several times, the accused was terminated from the work as he was insisting for more salary and was remaining absent from duty without informing them. He stated that he did not personally inquire with the family members of the accused why he did not go to the duty and he did not go to the house of the accused for that purpose. PW 11 - Shivaji Sangale was working as a Supervisor in the kitchen and store of Hotel Amardeep. He was on duty on the day when the incident took place. The accused was deployed as a waiter in the party of Trainee Pilots. After the party was over, the witness, the accused and

one Mahesh had consumed the liquor. He told the accused not to go home as he had consumed the excess liquor. They went to the staff quarters which are behind the hotel. The accused went away saying that he would go home and he came down the stairs of the staff quarters. In the cross-examination, however, the witness has stated that at about 12.15 to 12.30 in the night, he saw the accused near the gate of the staff quarters while going. From the said gate, one can go outside the hotel.

16. PW 13 - Prabhakar Patil was working as Receptionist in Hotel Amardeep. He deposed that after the party of Trainee Pilots was over at about 12.00 in the night, he went to kitchen to take meals and at that time, he saw 3 persons, including the accused, taking meals outside the kitchen under the staircase. At about 12.45 hours, Manisha Karnale who was staying in Room No.207, had made a request for connecting a call to mobile phone number of outstation and accordingly he had connected the same. In the said night at about 1.45 a.m., one customer had come and he was allotted Room No.206 which was initially allotted to the persons of Aanama Company but which changed over to Room No.212. He also deposed that he visited the house of the accused to make inquiries as the accused was absent on duty and his wife told him that he had come to house at 6.00 a.m. on 20/12/2003 and then he went to his duty. In the cross-examination, he stated that his statements were recorded on 21/12/2003, 12/01/2004, 12/02/2004 and 30/03/2004. He did not state before the police that the accused and other waiters were taking

meals under the staircase after the party was over. He also did not state to the police that the persons from Aanama Company had changed their Room No.206 to Room No.212. For the first time on 30/03/2004, he disclosed to the police that Vishal Kamble was not on duty on 20/12/2003. He also disclosed to the police on that day that he had gone to the house of accused to make inquiries and his wife had disclosed him the information as deposed by him. He admitted that the accused was in the habit of remaining absent from duty without informing the employer. PW 14 - Mahesh Jonjal was working as a Computer Operator in Hotel Amardeep. On 19/12/2003, he was on duty. On that day, he received an order of coffee at about 7.00 p.m. from Room No.207 which was occupied by Manisha Karnale. He also received an order for dinner at about 10.45 p.m. from the said room and he directed the waiter to comply the said order. The party of Trainee Pilots was concluded at about 12.15 a.m. The accused came in the store-room along with two liquor bottles which were received by him from the guests as tip. He also took one bottle from the bar for which the witness issued a bill. He further deposed that the accused and Pandurang Gurav took their food below the staircase. The accused told him that he will sleep in the conference room and went away. In the cross-examination, the witness has stated that in the night of 19/12/2003 at about 10.45 p.m., he had received order of 2 plates of dinner from Room No.207. He has stated before the police that he has no idea as to how the bloodstains were found in Room Nos.208 and 212. He had also stated in his statement dated 11/03/2004 that he was working as a Computer Operator and hence

he was not concerned with the lodging rooms of the hotel. PW 20 - Balu Wandre was serving as a Watchman in Hotel Amardeep. He deposed that he was on duty on the day of incident. After the party was over, he took a round and entered into the hotel. While taking round at about 5.30 a.m., he went to the restaurant and at that time he saw the accused wearing his shoes. The accused told him that he got late on account of party and he stayed in the hotel. The accused also told him that he would return at 11.00 a.m. Thereafter, he opened the door of the gate of the hotel and the accused went away on the cycle. In the cross-examination, however, he stated that the duty of the Watchman is to stand near the gate and to take the rounds around the premises and it is not his duty to enter into the hotel. He stated that in his statement dated 21/12/2003, he had informed the police that after closing of hotel at 12.30 night, nobody entered into the hotel and nobody left the hotel. Although initially he denied that the police threatened and assaulted him and asked him to depose that in the early morning of 19/12/2003 at about 4.45 a.m., accused went out of the hotel and accordingly he deposed under the pressure of police, he further stated that during the investigation of the crime, once he was assaulted by the police and that he was assaulted in order to implicate the accused.

17. The next set of witnesses comprises of the employees of Hotel Kandil at Margaon, Goa, where, allegedly, the accused was employed by giving a different name. PW 16 - Dattaram Sawant was working in Hotel Kandil at Margaon. He deposed that on

10/01/2004, police from Baramati had visited the hotel. They approached Manager of the hotel Mr. Dhananjay Murty. The police arrested the accused by preparing the arrest panchanama. The said witness had acted as a panch for the arrest panchanama (Exh.68). In the cross-examination, he stated that he was not knowing how panchanama is prepared. He further stated that police prepared documents and told him that it is a panchanama and he was asked to sign on it. PW 17 - Dhanjay Gaudamurty was working as a Manager in Hotel Kandil at Goa. He stated that on 22/12/2003, the accused had come to his hotel seeking job. The accused gave his name as Vishal Jadhav. He also disclosed that he was working in Hotel Ayodhya at Kolhapur. The owner of the hotel gave a call to Hotel Ayodhya and made inquiry about Vishal Jadhav and then he appointed the accused in the hotel as a waiter. (From the said statement, it is apparent that the accused had given his name as Vishal Jadhav even in Hotel Ayodhya at Kolhapur.) The police visited the hotel on 10/01/2004 and showed a photograph of one person who was identified to be the accused. He produced register regarding the employment of the accused and pointed out the entries from the register. He also stated that the accused had injury on the base of index finger of right hand. In the cross-examination, he stated that he cannot read and write Marathi. He also stated that whatever he had deposed in Court, was not disclosed to anybody earlier and even to police. PW 21 - Satish Patil was working as waiter in Hotel Kandil. He deposed that about 15 days after joining duty, the accused disclosed to their Manager that he had raped and murdered one girl at

Baramati. He also stated that at the time of the said disclosure, their cook Gawade was also present. The accused was handed over to the police by the Manager. He admitted that the last week of December is heavy season for hotel business in Goa and that the waiters get more tips from customers. The defence has brought several material improvements from his cross-examination. He admitted that he did not disclose the alleged disclosure by the accused to anybody, including police, and he stated the same for the first time in Court. (From the evidence of PW 16, PW 17 and PW 21, it is apparent that the accused had given his name as Vishal Jadhav while employing himself in the said hotel. It is also pertinent to note that PW 17 is completely silent with regard to any extra-judicial confession being made by the accused to him, as deposed by PW 21.)

18. The next set of witnesses is in relation to the panchanamas recorded by the investigating agency. PW 1 - Ashok Gunjal is the panch for spot panchanama. The said witness did not support the prosecution and was declared hostile. However, he has admitted his signature on the panchanama and the labels. The panchanama was related to the seizure of articles from the spot of incident i.e. Room No.207, from where the articles like bed-sheet, pillow covers and garments of the victim were seized. The witness was cross-examined by the prosecution. He was also cross-examined by the defence. He reiterated that police did not read over the contents of panchanama and he was asked to sign the same. He also stated that the police had obtained his signatures on small pieces of paper. PW 2 - Sanjay More

is the panch witness for seizure of the clothes of the deceased which were produced by Police Constable Kamble. He was also a panch for seizure of attendance register kept at Hotel Kandil, vide panchanama. He deposed that at Sr.No.41 of the register, name of Vishal Jadhav was mentioned. In the cross-examination, he stated that he do not remember the number of cases in which he acted as a panch. PW 3 Raju Kamble is the panch witness for spot panchanama. He did not support the prosecution case and was declared hostile. The said panchanama was relating to recovery of seizure of the bed-sheet, pillow covers and clothes of the victim. PW 4 - Sandeep Shinde is another panch witness in relation to the arrest of the accused. He deposed that on 11/01/2004, he was called at City Police Station, Baramati, and informed that the accused is to be arrested and his clothes are to be seized. He noticed wounds of old injuries on the left shoulder, right portion of neck and near thumb of right hand and middle finger on the person of the accused. He also referred to seizure of clothes of the accused and his arrest. In the cross-examination, he stated that the accused was outside the lock-up and he was nude before him. He further stated that the clothes were packed in one parcel and they were sealed. The clothes were shown to the witness and at that time he stated that there are no labels of signatures of the panchas on them, and seal. He further stated that as the injuries on the person of the accused were reddish, he came to know that the same were the injuries.

19. The other group of witnesses examined by the prosecution are colleagues of deceased Manisha Karnale. Out of the said witnesses, two persons were initially suspected to be involved in the murder of the deceased. They were arrested. On account of lack of evidence, they were discharged from the case by invoking Section 169 of the Cr.P.C. PW 22 - Vikas Kattimani has deposed that he was employed with Aanama Energies Pvt. Ltd. Along with his colleagues, he went to Hotel Amardeep on 16/12/2003. He deposed that his colleague Ajay Dumbre and he occupied Room No.208 while Manisha was occupying Room No.207. The other two persons Rakesh Jaiswal and Rakesh Supekar were occupying Room No.206. He further deposed that on 20/12/2003, he, along with his colleagues, got ready for proceeding towards Kurkumbh. They asked Rakesh Supekar to bring Manisha and they were waiting for them at the counter. Rakesh Supekar informed them that Manisha was not responding. The receptionist gave a call to Manisha. She did not attend the phone. Meanwhile, he saw Ajay coming down in weeping condition. Thereafter all went to the room of Manisha. They entered the room. She had sustained injuries and she was dead. Thereafter, Manager of the hotel gave information to the police. In the cross-examination, he stated that it was not their plan to leave Hotel Amardeep on 20/12/2003. Ajay Dumbre and Manisha were having close relations. Ajay was in the habit of drinking liquor. In the night of 19/12/2003, Ajay had ordered liquor in his Room No.208 and he had consumed the same. After consuming liquor, Ajay had been to the room of Manisha. Ajay and Manisha had ordered dinner in Room No.207. At about

12.00 midnight, Ajay had ordered meal for him in Room No.208. He further stated that when he was about to sleep, Ajay was in his room. He stated that he did not wake up till morning. Ajay used to visit room of Manisha for chitchatting. When he asked Ajay the reason for weeping, Ajay disclosed him that he knocked the door of Manisha but he did not get response and hence he entered into the room of Manisha from window and found her dead. Thereafter he opened the door of the room from inside. He further deposed that once there was occasion to enter into the room of Manisha from his Room No.208 through window and Ajay knew the said fact. PW 26 - Rakesh Supekar has deposed that he was working with the aforesaid company as a driver. He had accompanied the other persons to Hotel Amardeep. He was occupying Room No.206 along with Rakesh Jaiswal. He deposed that he had changed his Room No.206. Ajay Dumbre ordered dinner for all 4 persons in Room No.208 and he consumed liquor. They all were chitchatting in Room No.208. Ajay, Vikas and Rakesh Jaiswal concluded their dinner at about 11.30 p.m. On 20/12/2003, Ajay came to their room in the morning. He told them that there was no water in his room and therefore took bath in their room and thereafter went to Room No.208. All of them proceeded to the ground floor. On the way, he rang the bell of Manisha but she did not open the door. Rakesh Jaiswal gave a call to Manisha on intercom. She did not attend the call. The witness and Ajay went to Room No.207 and rang the bell several times but there was no response. Ajay Dumbre entered into Room No.207 from the window which was adjacent to Room No.208. Ajay Dumbre opened

the door and he was weeping. The witness went inside the room and saw that Manisha was lying in a pool of blood. Thereafter, the Manager rushed to the room and informed the incident to police. The defence did not cross-examine the said witness.

20. PW 27 - Ajay Dumbre has deposed that he had accompanied the other persons at Hotel Amardeep. He was employed with Aanama Energies Pvt. Ltd. He was working as Senior Executive in the said company. On 16/12/2003, he, along with others, went to Hotel Amardeep and booked 3 rooms. On 19/12/2003, they left the hotel in the morning and returned in the evening. Manisha went to Room No.207. He consumed liquor and was watching party on the lawn. Since he received call, he came down near the counter. Thereafter he returned to the room and all of them were chitchatting in the room. Rakesh Supekar went to the room of Manisha and stayed there for some time. Thereafter, the witness went to the said room and called Rakesh Supekar. Rakesh Jaiswal was also in the room of Manisha. Thereafter, all of them went to Room No.208. On the next day i.e. 20/12/2003, since there was no hot water, the witness went to Room No.212. They proceeded to the counter. Rakesh Supekar rang the door-bell of Manisha. Rakesh Jaiswal gave a call to Manisha but there was no response. Hence, the witness and Rakesh Supekar went to the room of Manisha. Since she did not respond to the door-bell, the witness went to his room and from the window of his room, proceeded towards the room of Manisha. He went inside the room from the window and saw Manisha lying in a pool of blood. He came

out of the room. Rakesh Jaiswal was standing outside the room. Then both of them shouted and informed the incident to the Manager. Thereafter the police were intimated about the incident. In the cross-examination, he feigned ignorance about the order of dinner placed by Manisha for the said witness and herself. His statement was recorded on 17/05/2004. He admitted that he had an idea regarding entering in Room No.207. He did not find bolts of sliding doors of windows of Room Nos.207 and 208 lying on the floor. The witness volunteered that after recording of inquest panchanama and spot panchanama, he was taken to Room No.208 by the police. He further deposed that the police broke the bolt of the window and also put bloodstained finger prints on the wall.

21. The prosecution examined PW 12 - Anil Godse who was working as a Telephone Officer, PW 23 - Yeshwant Parab, a telephone booth owner at Margaon, Goa and PW 24 - Ramchandra Karnale, father of the deceased. PW 12 deposed in regard to the fact about the telephone installed at the residence of the accused being kept under observation by installing Caller ID. He also deposed that on 08/01/2004, a call was received on the said telephone which was traced to Goa. PW 23 has stated that the accused had come to his telephone booth for making a call. However in the cross-examination, he stated that in the bill produced by him with regard to the call, there is no name of his shop. PW 24 has deposed that he is the father of the deceased. He stated that in his first statement, he had expressed suspicion over the colleagues of Manisha viz. Ajay Dumbre,

Rakesh Jaiswal, Vikas Kattimani and Rakesh Supekar. He admitted that in his statement dated 19/05/2004, he had asked the police to carry out investigation in respect of bloodstains found in Room Nos.208 and 212 and about the damaged bolts of windows in respective rooms. He further deposed that he had expressed displeasure on the investigation carried out by Baramati City Police Station and had prayed for investigation by CID. He gave an application to the Home Minister for investigation of crime by the CID. He also admitted that since the police had released colleagues of Manisha, he had demanded investigation by the CID.

22. The prosecution relied upon the evidence of medical officers viz. PW 9 - Dr. Sambhaji Kokane and PW 18 - Dr. Jitendra Doshi. PW 9 conducted the post-mortem on the deceased. He deposed that on external examination, he noticed injuries on the nostrils, chin and on the face. He also noted the human bite mark, tooth marks over the upper part of left scapular region. He deposed that no external injury was found on the genital region and scanty bleeding was present. He deposed that the death was caused due to asphyxia due to strangulation. He stated that except the bite marks, rest of the injuries could be caused by hard and blunt object like fist blows. There can be laryngeal cartilage fracture due to pressing of the said region by hands. There can be multiple peticheal haemorrhage if there is sudden violent asphyxia, as mentioned in Column No.20 of the post-mortem notes. He also noticed semi-digested food. He opined that the victim had died 4 hours after the last meal and that

rigor mortis was present all over the body. On the said basis, he stated that the victim had died more than 12 hours prior to the post-mortem examination. He did not notice any ligature marks around the neck. The injuries on the face and neck are the symptoms of throttling. He further deposed that he had given written opinion by letter dated 03/03/2004 that there is no rape or forceful intercourse. The possibility of rape should be ruled out. In the cross-examination, the witness stated that as per Column No.17 of the post-mortem report, he is supposed to mention edges and causes of injury. He has not mentioned the same in the post-mortem report. PW 18 had deposed that the accused was brought before him by the police for examination and thereafter he was examined by the said witness. He noticed following injuries on his person :-

- (1) Healed abrasion below index finger of right hand having size of 1cm X 1.½ cm. There was a scab formation seen.
- (2) Healed abrasion over left hand middle finger first digit from proxima. It was linear and 1 cm in length. It was healed and scab formation seen.
- (3) Healed abrasions over right shoulder and scapular region, having size of 3cm X 3cm. The said injury was healed.
- (4) Abrasion over right side of clavical region having size of 3cm X ½ cm. It was also healed.

He further stated that the age of the injuries was about 20 days. Injury Nos.(1) to (4) could be possible by hard and blunt object. Injury No.(2) could be possible by human bite. Injury Nos.(3) and (4) could be possible by nail scratching. Injury No.1 could be possible if a

person wears ring and gives punch to other. In the cross-examination, the witness deposed that before examination of the witness, police had disclosed him the alleged incident. He stated that the injuries found on the person of the accused could be possible while working in any place. He also stated that as police had narrated him the incident, he gave his opinion regarding the cause of Injury Nos.(1) to (4).

23. The investigation was conducted by several police personnel of Baramati and Margaon, Goa. The team of the police involved in the investigation was examined by the prosecution as PW 10, PW 15, PW 19, PW 25, PW 28, PW 29 and PW 30. PW 10 - Anil Jadhav was working as ASI in Bhavaninagar outpost coming under Walchandnagar Police Station. PW 29 gave him instructions to keep a watch on the accused and help him for investigation. The witnesses collected the telephone number installed at the resident of the accused. The wife of the accused informed that she had received a call from the accused from Bangalore. On ascertaining, it was found that the call was made from Goa. He forwarded the information to PW 29. He was instructed to go to Goa with the staff by private vehicle for the purpose of investigation. On 09/01/2004, the witness reached Goa. He traced out the telephone booth from where the call was made. Thereafter they approached the local police station. On search, it was found that the accused was working in Hotel Kandil. They proceeded to the said hotel and apprehended the accused. He noticed injuries on his hand. The accused was arrested after preparing the panchanama of arrest. He was taken to Madgaon Police

Station. He was referred for medical examination. The accused was brought to Baramati City Police Station on 11/01/2004. In the cross-examination, he stated that his statement was recorded on 11/02/2004. In the statement, he did not state that he had been to Madgaon Police Station and that he took the help of the said police station and that he received information from PHC Dhavare that the accused was found in Hotel Kandil. He did not state in his statement that the accused was working in the said hotel intimating himself as Vishal Jadhav and that he noticed injuries on the hand of the accused or that he was sent for medical examination. He also did not refer to regarding the arrest panchanama. He also stated that they did not obtain warrant from the Court at Goa to carry the accused to Baramati. There was no entry in the station diary of Walchandnagar Police Station that he had gone to Madgaon. He further deposed that on 11/01/2004 and till his statement was recorded, PW 29 did not inquire with him about the investigation in respect to arrest of the accused. His statement was recorded for the first time on 11/02/2004. PW 15 - Sandip Pant, Police Head Constable, was attached to Madgaon Police Station. He had assisted PW 10 while arresting the accused at Hotel Kandil. PW 19 - Dilip Dhavare is a Police Head Constable attached to Walchandnagar Police Station. He had accompanied PW 10 for investigation at Goa. In the cross-examination, he stated that in his report to Madgaon Police Station, he had mentioned that the accused was in the habit of changing his name and he was working at different places. PW 25 - Suraj Halankar was a PSI attached to Madgaon Police Station. He provided the staff

attached to his police station to PW 10 for the purpose of tracing and arresting the accused. In the cross-examination, he stated that there is no entry in the station diary regarding departure of PHC Dhavare along with the accused. He did not feel it necessary to make such entry. He stated that PHC Dhavare had given written request to him. However, PHC Dhavare did not give him letter issued either by the I.O. or Sr.P.I. of Baramati City Police Station. He received information about the incident in Hotel Amardeep and hence he visited the said hotel. He visited the scene of offence in Room No.,207. He recorded the complaint of PW 5.

24. PW 29 - Vitthal Harihar is the I.O. attached to Baramati City Police Station who has carried out major part of the investigation before the same was handed over to another I.O. He took charge of the investigation of the crime on 20/12/2003. He visited the scene of offence. He recorded spot panchanama. He noticed that there was a sliding window having glass panes. There were no grills to the said window. The bolt of the sliding window was removed and it was lying on the floor. There was one stain on glass pane appearing to be of blood. There was a duct behind the bathroom. He inspected the same and found clothes and undergarments in the duct. They were stained with blood. He seized bedsheet, two pillow covers, kurta, salwar, odhani, brassier, petticoat and towel. He noticed long hair on the Southern side of the room. The sketch of the spot was prepared. He visited Room Nos.208 and 212 and recorded panchanama. He recorded the statements of witnesses. On 22/12/2003, he arrested

Ajay Dumbre and Rakesh Supekar on suspicion. He conducted investigation and collected documents. On 03/01/2004, his investigation revealed that one of the waiters of the hotel viz. Vishal Kamble, was missing from the date of the incident. The accused was not found at his residence. Therefore, they kept watch on the residence of the accused. The telephone was kept under observation. Thereafter, the accused was arrested at Madgaon, Goa. He referred to the statement made by the accused leading to discovery and the investigation conducted by him. On 06/03/2004, he handed over the investigation to State CID Officer as per the directions. In the cross-examination, he deposed that he had maintained case-diary of the crime but did not bring the same with him. He did not refer Ajay Dumbre, Rakesh Supekar, Rakesh Jaiswal and Vikas Kattimani to medical examination on 20/12/2003. He arrested Ajay Dumbre and Rakesh Supekar on suspicion. He noticed bloodstains in Room No.208 and therefore he had suspicion over Ajay Dumbre and Rakesh Supekar. He also noticed bloodstain in Room No.212. The said stain was on a pillar. There was no suspicion over Vikas Kattimani and Rakesh Jaiswal and therefore they were not arrested. He admitted that Ajay Dumbre, Rakesh Supekar, Rakesh Jaiswal and Vikas Kattimani did not give satisfactory explanation about the bloodstains found in Room Nos.208 and 212. During the entire investigation, he did not get satisfactory explanation as to how there were bloodstains in Room Nos.208 and 212. He submitted report under Section 169 of the Cr.P.C. to the Court for discharging the arrested accused persons. He admitted that at the time of report under Section 169, he had not

received CA reports of Ajay Dumbre and Rakesh Supekar. He also admitted that extract of case-diary was not enclosed to report under Section 169. He did not enclose any document along with report under Section 169. He deposed that he had called finger print expert for Room No.207 who inspected the spot but he did not receive the report. The lock of the sliding door was fixed from inside the room and there was no possibility of removal of lock from outside. He inspected Room No.208 only to find out finger print or foot print of culprits. He did also inspected Room No.207 to see whether there were any finger prints or foot prints. He did not inquire whether Hotel Amardeep had maintained visitors register. He admitted that nobody had given information for first 10 days as to when accused Vishal Kamble left the hotel after the alleged incident. He had seen the attendance register of waiters on 31/12/2003. He seized the said register on 12/02/2004. He had no documentary evidence to show that he had obtained the attendance register from the complainant on 21/12/2003. It was found that one Madhura Bhusari was the owner of the seized Luna. He did not make inquiry with her. On 23/01/2004, he submitted a report to JMFC, Baramati, that the accused wanted to make confessional statement. Accordingly, the accused was produced before the Magistrate on 05/02/2004 but he refused to make confessional statement. He came to know that father of the deceased had given complaint about his investigation. Thereafter, the investigation was handed over to State CID. He came to know that the deceased had given a call in the midnight of 20/12/2003 on one mobile phone. He made inquiry in that regard

but could not get the name of the mobile owner. He did not collect information regarding mobile phone from the local exchange.

25. PW 30 - Krishnaji Phadtare was working as a Dy.S.P. in State Crime Branch. The investigation was handed over to him on 06/03/2004. He made inquiries with the colleagues of deceased Manisha. He also interrogated the accused on 24/03/2004. He recorded statements of witnesses. In the cross-examination, he stated that he had referred Ajay Dumbre for sample of blood along with his report. However, copy of the said report is not enclosed in the charge-sheet. He did not take the blood samples of Kattimani and Jaiswal to rule out their involvement in the crime. He had maintained the case-diary but the same was not produced in this case.

26. On the basis of the aforesaid evidence, the Trial Court concluded that the chain of circumstances involving the accused was proved by the prosecution. As stated above, other than the evidence adduced by the prosecution, the Court has drawn adverse inference against the accused for not explaining certain circumstances which complete the link of circumstantial evidence, as opined by the Trial Court.

27. Mr. Prashant Gurav, learned Counsel for appellant / accused, submitted that the prosecution has failed to prove its case beyond reasonable doubt. He submitted that the circumstances relied upon by the prosecution are not sufficient to prove the guilt of the

accused. The prosecution has not established the chain or link leading to the involvement of the accused in the crime. The evidence of the prosecution witnesses also explains the defence of the accused. He submitted that no adverse inference could be drawn against the accused on the basis of the injuries found on his person or from the CA report, non-attendance of the accused for work from 20/12/2003 at Hotel Amardeep, change of name while being employed at Hotel Kandil. He submitted that the prosecution has failed to put forth any cogent evidence showing that the accused had entered into the premises viz. Room No.207 for committing the alleged crime. He further submitted that the accused has been falsely implicated in the crime by exonerating the real culprits. The conduct of the colleagues of deceased Manisha was suspicious. He submitted that two of them were arrested by the police and were subsequently discharged under Section 169 of the Cr.P.C. The said persons were subsequently examined as witnesses. The evidence of the said witnesses shows that they were trying to suppress the truth and their conduct was suspicious. He submitted that the prosecution has not been able to investigate about the finding of bloodstains in Room Nos.208 and 212 and about the broken bolts of the window panes of Room Nos.207 and 208. He submitted that the accused is entitled for benefit of doubt.

28. The learned Counsel for appellant / accused placed reliance upon the following decisions in support of his case :-

- (i) ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹,
- (ii) ***Basavraj Malakappa Koli Vs. The State of Maharashtra***²,
- (iii) ***Gian Mahtani Vs. State of Maharashtra, etc.***,³
- (iv) ***Gambhir Vs. State of Maharashtra***⁴,
- (v) ***Anil Shamrao Sute and Anr. Vs. State of Maharashtra***⁵

29. Mr. J. P. Yagnik, learned APP for State, countered the submissions of the defence. He submitted that there is voluminous evidence against the appellant / accused to prove his guilt. The prosecution has been able to prove the circumstances to establish the guilt of the accused. He submitted that the Trial Court has dealt with all the circumstances in detail while convicting the accused and there is no reason to interfere in the impugned Judgment. He submitted that the case is based on circumstantial evidence which has been fully established and the conclusion is that the accused has committed the crime. He submitted that the conduct of the accused and non-explanation of circumstances establishes the involvement of the accused in the crime. He relied upon the evidence of the employees of Hotel Amardeep and Hotel Kandil. According to him, the evidence of the said witnesses shows that the accused was in Hotel Amardeep on the date of the incident and had disappeared after the incident. The evidence further shows that without informing anybody, he stayed in Hotel Kandil by changing his name. He also strongly relied upon the

1 1984 Supreme Court Cases (Cri) 487 : (1984) 4 SCC 116

2 (1999) Vol. 101(1) Bom.L.R. 266

3 AIR 1971 SUPREME COURT 1898

4 1982 Supreme Court Cases (Cri) 431

5 2913 CRI.L.J. 2223 (SUPREME COURT)

circumstance that there were injuries on his person which were opined to have caused 20 days prior to his arrest, by the Medical Officer. He also pointed out the CA report in relation to the semen found on the clothes of Manisha and the blood-group of semen of the accused. He also submitted that there is recovery of articles in pursuance to the statement of the accused. He also relied upon Section 106 of the Evidence Act and submitted that the accused was bound to tender explanation on circumstances which could have been explained by him and no other person. He, therefore, submitted that the prosecution has been able to prove its case beyond doubt and therefore the Trial Court has rightly convicted the accused for the said offence.

30. The prosecution has proved homicidal death of Manisha, but there is no direct evidence to connect the accused with the crime and the prosecution case rests on circumstantial evidence. The law is well-settled when it relates to the case of circumstantial evidence. In our considered opinion, the following 3 conditions are required to be satisfied :-

- (i) The circumstances from which an inference of guilt is sought to be drawn, must be proved by cogent and reliable evidence;
- (ii) The circumstances should be of definite tendency unerringly pointing towards the guilt of the accused;
- (iii) The circumstances taken jointly should form a chain so complete that there is no escape from the conclusion that

within all human probability, the crime was committed by the accused and none else and it should be incapable of explanation of any other hypothesis than that of the guilt of the accused.

31. The prosecution is strongly relying upon the circumstances narrated hereinabove. On the basis of the evidence discussed hereinabove, the Trial Court has concluded that the prosecution has succeeded in proving the chain of circumstances that the accused is guilty of the commission of alleged offences. The Trial Court, therefore, convicted him for such offences. We have scrutinized the evidence on record which is in the nature of oral evidence adduced by the witnesses as well as the documentary evidence exhibited at the instance of the prosecution. We have also gone through the defence of the accused and the evidence of solitary defence witness examined at the instance of the accused. The exceptional feature of the present case is that initially two persons were arrested as suspects on the basis of the suspicious circumstances inferring their involvement in the crime. The two suspects were Ajay Dumbre and Rakesh Supekar. They were arrested on 22/12/2003. They were produced before the Court for remand showing their involvement in the crime. They were remanded to custody. The I.O. PW 29 has stated that on 03/01/2004, it was noticed that one of the waiters had stopped attending the work at Hotel Amardeep from 20/12/2003. The said waiter was allegedly the present accused. He was arrested on 11/01/2004. On 13/01/2004, PW 29 submitted an application to the Court under

Section 169 of Cr.P.C. stating that the earlier arrested accused were not involved the crime and they should be discharged. The said accused persons were in custody from 22/12/2003 till 13/01/2004. Therefore, without making any inroads by investigating into the role of the present accused in the crime, after his arrest on 11/01/2004, within two days, the report under Section 169 of Cr.P.C. was submitted. PW 29 has stated that along with the said report, he did not annex any document. More particularly, the case-diary in relation to the said crime was not part of the report under Section 169 of Cr.P.C. (Exh.110). The prosecution is completely silent as to under what circumstances, the investigating machinery formed an opinion that the earlier accused were not involved and there is no strong evidence to implicate the present accused in the crime. At that point of time, except the fact that the accused did not report to his duty at Hotel Amardeep from the next day of the incident and that he employed himself in the hotel at Goa without intimating the officials of Hotel Amardeep, was the only circumstance to apprehend him in the present crime. On perusal of the evidence adduced by the witnesses and the documents on record, the prosecution has not been able to explain certain circumstances which infer the involvement of some other person in the crime other than the present accused. PW 29 has admitted that he did not get any satisfactory explanation from the inmates of Room Nos.208 and 212 as to how there were bloodstains in the said rooms. He admitted that till the time when he conducted investigation, he did not find any clue as to the reason for existence of bloodstains in the said rooms. The investigating

machinery has also failed to explain as to how and in what manner bolt of the window panes of Room No.207 were broken and were lying in the room. The said bolts were in the inner side of the window panes and the same could have been broken by entering into the room. No investigation was made as to under what circumstances they were broken and who broke them. The admitted fact reflecting in the evidence of the witnesses is that, the two witnesses who were the suspects and were initially arrested and entered in the room on their own, one of them had admittedly made entry in Room No.207 from the window. It is also an admitted position that the said witnesses who were under the clouds of suspicion, were knowing that the entry can be made from the window of Room No.207. Another glaring feature which requires to be considered is that the entry to Room No.207 via the window of Room No.207 can be made either from the window of Room No.206 or Room No.208, as per the evidence led by the prosecution. The prosecution has failed to establish that the accused had made the entry from the front door. There is no cogent evidence to establish the fact that the accused had made an entry into the room either from the front door or from the window. The evidence falls short to bring the accused at the door of Room No.207. When the prosecution fails to establish the entry of the accused at the scene of offence, the other circumstances will be a weak link to nail the accused. PW 27, the earlier suspect, had deposed that he had an idea regarding entry into Room No.207 through the window of Room Nos.207 and 208. He did not find bolts of sliding doors of window of Room Nos.207 and 208 on the floor.

Surprisingly, he volunteered to say that, after inquest panchanama and spot panchanama, police took him to Room No.208. They broke the bolt of the window and put bloodstained finger print on the wall. PW 29, the Investigating Officer, stated that there was no grill to the window of Room No.207. The bolt of the sliding was removed and it was lying on the floor and there was one stain appearing to be of blood on glass pane.

32. The prosecution has examined the employees of Hotel Amardeep in respect of its case. The said witnesses were examined with a view to prove the fact that the accused was employed at the said hotel as waiter. He was deputed as a waiter at the party hosted by the Trainee Pilots on the lawn of the hotel. He attended the work on 19/12/2003, he stayed back in the hotel in the night of 19/12/2003, he had an occasion to see Room No.207 from the lawn, he stopped attending the work from 20/12/2003. This evidence, according to the prosecution, shows that the accused was available in the premises on the night of 19/12/2003 and had stopped coming from 20/12/2003 without intimating any of his colleagues, from which the inference can be drawn that after committing the alleged crime, he has absconded. From the cross-examination, the defence has been able to bring on record that the accused was in the habit of working at various places on account of insufficient salary. He had changed several jobs. At the earlier point of time also, he had left the job and joined some other hotel and that he used to remain absent from the job. There is consistent evidence in that regard qua the said

witnesses. One of the witnesses has also stated that the accused had expressed his intention for going to Goa for job in the month of December as there were chances of getting more tips in the hotels at Goa. Thus, the theory of the prosecution that the accused had left the job without informing anybody all of a sudden on 20/12/2003 after the alleged incident in a suspicious manner, does not inspire confidence. The aforesaid aspect about the habit of the accused was brought on record through the witnesses examined by the prosecution itself. The evidence of these witnesses also suffers from material improvements.

33. PW 5 has deposed that since May 2003, the accused was working in the hotel as a waiter. Prior to that also, he was working in the hotel. As he used to remain absent, owner of the hotel had terminated him from the work. He also deposed that before the incident, the accused used to remain absent frequently without informing the owner and he was terminated from the service. He further deposed that the accused used to remain absent for a period of 15 days to one month and he was insisting to the owner for enhancement of salary and the owner was not ready to enhance his salary. Therefore also, the accused used to remain absent from the work. The accused used to explain his absence by stating that the salary is insufficient and he was searching new job. He also deposed that besides Hotel Amardeep, the accused had worked in 15 to 20 other hotels. PW 6 has deposed that prior to the incident, on many occasions, the accused used to remain absent in the hotel and

therefore he was removed from the work. He used to remain absent from duty sometimes for 8 days. About 15 days prior to the incident, the accused used to say that he was planning to go to Goa for work in hotel as one gets more tips and there is insufficient salary in the hotel. Prior to the incident, the accused had worked in hotels at Goa, Kolhapur and other hotels at Baramati. PW 7 has also stated that the accused was in the habit of remaining absent from the duty and therefore he was terminated from the work. PW 8 stated that prior to the incident, at several times, the accused was terminated from the work as he was insisting for more salary and was remaining absent from duty without informing them. PW 13 has deposed that the accused was in the habit of remaining absent from duty without informing the employer. From the aforesaid evidence which has come on record through the cross-examination of the prosecution witnesses and which has remained unchallenged at the instance of the prosecution, it is established that the accused was working at various places without even intimating and had expressed his desire to join the hotel at Goa for better earning. It is stated by the prosecution witnesses that the accused had worked at several hotels. Taking into consideration the versions of the witnesses in relation to the conduct of the accused remaining absent and working at different places, no adverse inference could be drawn on the said issue against him. It is further noted that the evidence of PW 17 refers to the fact that the accused had approached Hotel Kandil for job in the name of Vishal Jadhav. The said witness has stated that the inquiries were made with another hotel viz. Hotel Ayodhya wherein the accused had previously

worked and on the basis of the said inquiry, the accused was employed in Hotel Kandil. It is obvious that the inquiry was made with Hotel Ayodhya whether the person by name Vishal Jadhav had worked with the said hotel. This fortifies the stand of the accused that he also has his name as Vishal Jadhav which was given at another hotel and it is not for the first time that the said name was mentioned in Hotel Kandil. The defence witness examined by the accused has also proved the said fact which could have been discarded by the prosecution. DW 1 is the wife of the accused. In her evidence, she has stated that she was married to the accused on 05/05/2001 at Sangli. She placed on record the marriage invitation card which is exhibited in evidence as Exh.118. She also placed on record the identity card of the accused issued by E.S.I. Corporation which was exhibited as Exh.119. From the contents of the said document, it appears that the accused was wearing a name Vishal @ Shivaji Kamble @ Jadhav. The defence witness was cross-examined by the learned Prosecutor but the prosecution did not succeed in demolishing evidence of the said witness. It is pertinent to note that the employees of Hotel Amardeep had stated in their evidence that the accused had informed them that he had intentions of going to Goa for getting more tips. This demolishes the circumstance put forth by the prosecution that the accused has absconded after the murder till he was arrested by police on 09/01/2004 and obtained job in different name.

34. The prosecution has relied upon the same set of witnesses to show that in the night of 19/12/2003, the accused had stayed in

the hotel. The prosecution was trying to establish that the accused, by staying in the hotel, had committed the said crime. By taking the help of the other circumstances, the prosecution endeavoured and tried to establish the involvement of the accused in commission of the crime. However, as stated above, there is nothing on record to establish the case of the prosecution beyond doubt that the present accused is the person who had entered into Room No.207 and committed the alleged crime. As far as the stay of the accused in the hotel premises in the fateful night, there is no strong evidence to prove the said fact. In fact, the witnesses give contrary versions which create doubt about the veracity of their evidence. PW 6 has stated that after the party on the lawn was over, he had consumed liquor along with the accused and they had taken the meal under the staircase of the restaurant. He stated that he went to his house and the accused was in the hotel. He also stated that if the waiters are late in the night, they used to sleep in the staff room of the hotel. Except the bald statement, there is nothing to corroborate the version of the said witness that the accused had stayed in the hotel. The witness has admittedly left for his residence and he did not know what had happened thereafter. It is also pertinent to note that in the cross-examination, he stated that he had not stated to the police at the time of recording of his statement that the accused was in the hotel after he left the hotel on the fateful day. He also did not state to the police that if the workers are late in the night, they used to sleep in the hotel. PW 7 has deposed that after the party was over, the accused had come to take a quarter of liquor which was given to him and he issued the bill accordingly. The said

witness deposed that even if the accused was late in the hotel in the night, he used to go to his house. PW 14 has deposed that after the party was over, the accused met him. He took one bottle from the bar for which he issued the bill in the next day morning. He also stated that the accused and Pandurang Gurav took their food below the staircase in front of the kitchen. He told the accused to sleep in the hotel instead of going home as he was drunk. He deposed that he, along with the accused, went to the staff room but it was closed. At that time, the accused told him that he will sleep in the conference room and went away. The witness and Shivaji Sangle slept in the staff room. From the evidence of the said witness, it is apparent that the accused did not sleep in the staff room and only stated that he will sleep in the conference room. There is no cogent evidence to establish that he slept in the conference room. The evidence is also contrary to the evidence of the other witnesses. The statement of the said witness was recorded on 18/03/2004. PW 20 has deposed that he was working as a watchman in the hotel. His evidence is shaky. It is difficult to accept that he entered the hotel premises while his duty as a watchman is to be at the gate. According to him, he took rounds around the hotel and then entered into the hotel. At about 5.30 a.m., he entered into the hotel, he went to the restaurant. At that time, he saw the accused wearing shoes. The accused told him that he got late due to party and hence he stayed in the hotel. He also told him that he would return at about 11.00 a.m. The witness opened the gate of the hotel and the accused left on the cycle. He admitted that his duty was to stand at the gate or to take rounds around the premises. He

admitted that in the statement before the police recorded on 21/12/2003, he stated that after closing the hotel at 12.30 night, nobody had entered into the hotel and nobody had left the hotel. He also deposed that during the investigation, he was assaulted by the police in order to implicate the accused. The evidence of this witness does not inspire confidence. It also reveals that he was assaulted with a view to implicate the present accused in the crime. The deposition is also contrary to the earlier statement that nobody had entered nor exited from the premises on the date of the incident. PW 11 has deposed that after the party was over, he, along with the accused and Mahesh Jawanjal (PW 14) had consumed liquor. Thereafter they went to staff quarters which are behind the hotel. He further deposed that Vishal Kamble went away saying that he would go home. The accused came down the stairs of the staff quarters and the witness did not know where did Vishal Kamble go thereafter; whereas as seen earlier, PW 14 had stated that the accused had left to sleep in the conference room. Thus, the evidence of these witnesses is contrary to each other. PW 11 has further deposed in the cross-examination that at about 12.15 to 12.30 in the night, he saw the accused near the gate of the staff quarters while going. He further deposed that from the said gate, one can go outside the hotel. Thus, the evidence of the witnesses examined by the prosecution is contrary to each other. The evidence has not established the fact beyond doubt that the accused had stayed in the hotel premises in the fateful night and did not go home in the said night after the party was over.

35. The prosecution has also relied upon the fact that the healed injuries were found on the person of the accused which were also referred to by some of the witnesses while arresting the accused. The Trial Court has also drawn an adverse inference against the accused by stating that he has not explained the injuries on his person. The Trial Court has invoked Section 106 of the Evidence Act to draw the said inference and used the said circumstance against the accused for convicting him. The Trial Court is misdirected in understanding the scope of Section 106 of the Evidence Act. The basic burden is upon the prosecution to prove its case. If that duty is not discharged by the prosecution, the burden does not shift upon the accused to tender an explanation. Apart from that, the prosecution is relying upon the evidence of PW 18 who had purportedly examined the accused. The said witness stated that the injuries were found on the persons of the accused. The witness has also stated that the injuries are 20 days old and were caused by hard and blunt object. He also deposed that the injuries are possible if a person gives fist blows by wearing ring in the finger. He also stated that the injuries therein were possible by nail scratching. On scanning the evidence of the said witness, it is apparent that the witness has given the details of cause of the injuries on the basis of the information supplied by the police by narrating the alleged incident. The witness has stated in the cross-examination that the police had narrated him the incident and he gave his opinion regarding the cause of Injury Nos.(1) to (4). It is therefore apparent that the opinion is influenced by the incident narrated by the police and in the light of the facts narrated to him, the

witness has given the cause of every injury in detail. If the witness had examined the injured person, at the most, it was expected that he would give the details about the nature of injuries found on the body of the injured person. It is also pertinent to note that the said witness has categorically mentioned that the injuries shown on the person of the accused could be possible while working in any place. Therefore, circumstance of purported healed injuries on the person of accused do not inspire confidence to infer the guilt of accused.

36. The another circumstance used by the prosecution is that the semen found on the clothes of Manisha and the blood-group of semen of accused is same. The CA report in relation to the blood-group of accused shows that it was of 'AB' group. The report of the semen found on the clothes of the deceased shows that it was of 'AB' antigen. The prosecution, therefore, had drawn the inference that the accused was involved in commission of the said crime. First of all, the evidence about the recovery or seizure of the clothes of the victim is doubtful. The panch witness has not supported the prosecution case. It is further submitted that unless the prosecution proves that the accused had entered into the premises for committing the crime, no weightage can be given to such an evidence. It is not the case of the prosecution that there was a sexual assault on the deceased. The medical report submitted by the doctor shows that there was no forceful intercourse. It also states that the possibility of rape is ruled out. PW 30 has deposed that, he had not take blood sample of Kattimani and Jaiswal to rule out their involvement. In these

circumstances, it would be dangerous to place reliance on such circumstance to convict the accused for the said crime.

37. The conduct of the colleagues of the deceased was highly suspicious. The evidence on record speaks volumes of doubts about the conduct of the said persons. It is pertinent to note that PW 26 and PW 27 were the prime suspects in commission of crime. After the alleged incident, the circumstances show a strong suspicion against the said persons. The said witnesses were arrested by the police on 22/12/2003. The accused did not attend the work from 20/12/2003. Despite that, the suspicion continued against PW 26 and PW 27. Surprisingly, as per the evidence of I.O., on the basis of the fact that the accused was not attending the work, he earlier arrested accused were released by filing an application under Section 169 of the Cr.P.C. The release of the said accused by giving such an application also creates doubt about the conduct of the I.O. In the cross-examination, he admitted that he did not annex the case-diary to the application under Section 169 of the Cr.P.C. Initially when they were arrested, they were produced for remand and the police had made out a case of their involvement in the crime. Suddenly, the wheels of the investigation changed the direction. The I.O. had also failed to produce the case-diary in the Court during the course of evidence. On scanning the evidence of the witnesses who were earlier implicated as accused, as well as PW 22, it is apparent that they were hiding the truth. The fact remains that PW 26 and PW 27 had close relationship with the deceased, as stated by PW 22. It is also required to note that

PW 27 had entered into Room No.207 where the deceased was staying and found dead. It is also on record that PW 27 was aware that there is a way out for entering into Room No.207 through the window of Room No.207. The said witness was staying in Room No.208. PW 26 is another prime suspect who also entered into the room after PW 27 had made entry through the window of Room No.207. The police did not carry out investigation in relation to bolts of the window pane of Room No.207 which were removed and lying on the floor. The question which arises is if there were bolts to the window panes of Room No.207, how the window could be opened. The fact that the windows could be opened would mean that someone had removed the bolts of the window before that. The investigating machinery has not done any efforts to investigate the said aspect, may be it was a deliberate attempt to suppress the truth. It is obvious that the bolts were removed from inside Room No.207 and the person who had entered through the window was aware that the bolts were removed. PW 27 has surprisingly tried to defend himself during the course of evidence. He has stated that he did not find the bolts of sliding doors of window of Room Nos.207 and 208 lying on the floor. He has also stated that after the inquest panchanama and spot panchanama, police took him in Room No.208, they broke the bolt of the window and also put bloodstained finger prints on the wall. It is clear that the said witness was trying to defend himself by blaming the police authority for breaking of bolts and for planting bloodstains on walls. It is obvious that he was trying to give an explanation for saving his skin as bloodstains were found in Room No.208 and the

bolts of window in Room No.207 as well as Room No.208 were broken. The questions which arise for consideration are, why he gave that explanation, who broke the bolts, how the bloodstains were found in Room No.208, why he was required to defend himself. Apparently, it appears that the said witness had a guilty mind and tried to tender an explanation for the incriminating circumstance which probably he felt, showed his involvement. PW 22, in his evidence, has stated that PW 27 was very close to deceased Manisha. He also stated that PW 27 and Manisha had ordered dinner in Room No.207. However, thereafter, PW 27 had order dinner in Room No.208. He also stated that PW 27 informed him that he entered into the room of Manisha from the window and found her dead and thereafter he opened the door of the room from inside. He also stated that once there was an occasion to enter into the room of Manisha from Room No.208 through the window and PW 27 was aware of the said fact. From the evidence of PW 26 who was also a prime suspect and was arrested, it is seen that PW 27 had entered into Room No.207 from the window which was adjacent to Room No.208 and opened the door from inside when the deceased was found dead in the room. PW 27 who was also arrested initially in the said crime, has reiterated the versions of PW 22 and PW 26. He admitted that he had entered into the room since Manisha did not respond to the door-bell and found her dead in Room No.207. He admitted that Manisha had ordered meal for him and herself but he went to his room and placed the order for meal for himself. As stated above, he deposed that he did not find the bolts of sliding doors of window of Room Nos.207

and 208 lying on the floor. From the nature of the evidence of these witnesses, it can be seen that the acts and movements of the said witnesses are suspicious. They were trying to suppress the truth. It appears that the investigating machinery had diverted the investigation although it started with arrest of PW 26 and PW 27. The fourth person who was the colleague of deceased Manisha namely Rakesh Jaiswal has not been examined by the prosecution. It is pertinent to note that the bloodstains were found in Room Nos.208 and 212. The investigating machinery could not find out the reason for the said bloodstains in the said rooms. It is also necessary to note that PW 5 has stated that although the room was booked from 16/12/2003 till 30/12/2003, PW 27 had stated on the day of the incident that except one room, they were checking out two rooms from the said hotel. This creates suspicion about the version of PW 22, PW 26 and PW 27. It is also to be noted that the bloodstains were also found on the clothes of one of the witnesses out of the said 3 witnesses. There was no plan to leave the hotel earlier and it was not clear as to why PW 27 had intimated PW 5 that the two rooms are being vacated.

38. The father of the deceased i.e. PW 24 has stated that he was not happy with the investigation conducted by the police exonerating the colleagues of Manisha. He had expressed suspicion over the said persons. He had requested the investigating machinery to carry out the investigation in respect of the bloodstains found in Room Nos.208 and 212 and about the damaged bolts of windows in

Room Nos.207 and 208. The I.O. PW 29 has stated that the investigation was transferred after the complaint of PW 24. He further stated that he had arrested PW 26 and PW 27 in the said crime and they were discharged on the basis of the application by him under Section 160 of the Cr.P.C. on 13/01/2004. From his evidence, it has come on record that the bolt of the sliding was removed and it was lying on the floor and there was one stain on glass pane appearing to be of blood. It also appears from his evidence that he has not produced the case-diary in the Court. He had noticed bloodstains in Room No.208 and had suspicion on PW 26 and PW 27. He also noticed bloodstains in Room No.212. He had categorically stated that he did not get any satisfactory explanation as to why the bloodstains were found in Room Nos.208 and 212. He also did not enclose the extract of case-diary along with the report under Section 169 of the Cr.P.C. exonerating PW 26 and PW 27. It is also disclosed that finger print expert had inspected the spot but he did not receive any report. The lock of the sliding door was fixed from inside the room and there was no possibility of removal of lock from outside. He also stated that nobody had given information within first 10 days of the investigation as to when the accused had left the hotel after the incident although he had seen the attendance register of waiters on 21/12/2003. He seized the said register on 12/02/2004. The Luna which was recovered was belonging to one Madhura Bhusari. The said witness did not make any inquiry with her. It is also disclosed that although the accused made statement with regard to the ornaments of the deceased, nothing was recovered. The uniform - shirt used by accused

was recovered from the electric room. However, from the evidence of the employee of Hotel Amardeep, it is brought on record that there was no name of the accused on the said shirt although it was the practice to write names of the employees by ink on the uniform.

39. On scanning the evidence, it is apparent that the evidence relied upon by the prosecution is not full-proof. The evidence on record does not establish the case beyond all reasonable doubts against the appellant / accused. Considering the oral evidence adduced by the prosecution as well as the defence evidence and the cross-examination of the witnesses, the benefit of doubt will have to be given to the accused. It is the settled law when it comes to circumstantial evidence that the circumstance should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one supposed to be proved. There must be a chain of evidence far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show within all human probability the act must have been done by the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

40. In the case of ***Gian Mahtani Vs. State of Maharashtra, etc.*** (*supra*), the Apex Court has observed as follows :-

“.....according to the system of jurisprudence which we follow, conviction cannot be based on suspicion nor on

the conscience of the court being morally satisfied about the complicity of an accused person. He can be convicted and sentenced only if the prosecution proves its case beyond all reasonable doubt.”

41. In the case of **Anil Shamrao Sute and Anr. Vs. State of Maharashtra** (*supra*) the Supreme Court was pleased to observe that suspicion however strong, cannot place of proof. Clear and impeccable evidence is necessary to convict the person.

42. In the case of **Gambhir Vs. State of Maharashtra**, the Apex Court, in para 9 of the said decision, has observed as follows :-

“9. It has already been pointed out that there is no direct evidence of eye witness in this case and the case is based only on circumstantial evidence. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests : (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. The circumstantial evidence in

order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

43. The *locus classicus* of the decision of the Supreme Court is the one rendered in case of ***Hanumant Govind Nargundkar and another v. State of Madhya Pradesh***⁶, it was observed as follows:-

“In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge , where he said :-

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from

⁶ A.I.R. 1952 Supreme Court 343

which the conclusion of guilt is to be drawn should in the first instance be 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 evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

44. In the case of *Shivaji Sahabrao Bobade and Anr. Vs. State of Maharashtra*⁷, the Supreme Court is pleased to observe in para 19 that it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

45. In the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra* (*supra*), which is another landmark decision of the Apex Court on appreciation of circumstantial evidence as well as other principles of criminal jurisprudence, the Court had referred to the

⁷ 1973 (2) SCC 793

earlier decisions of Hanumant's case and Shivaji Bobade's case and on analysis of the said decisions, it was observed that the following conditions must be fulfilled before a case against an accused can be said to be fully established :-

- (i) **The circumstances from which an conclusion of guilt is to be drawn, should be fully established;**
- (ii) **The facts so established, should be consistent with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty;**
- (iii) **The circumstances should be of a conclusive nature and tendency;**
- (iv) **They should exclude every possible hypothesis except the one to be proved;**
- (v) **There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion that in human probability, the act must have been done by the accused.**

These five golden principles constitute the panchsheel proof of a case based on circumstantial evidence.

46. The Trial Court has held the circumstance of non-explanation of circumstances which could have been explained by none except the accused. The Court proceeded with assumption that the prosecution has established circumstance nos.(iv) and (v) against the accused and it was incumbent upon him to explain the same

which he did not. The Trial Court invoked Section 106 of Evidence Act to draw an adverse inference against the accused. It was observed that falsity of the explanation can be considered to be providing missing link which completes the chain of circumstances.

It is pertinent to note that the Trial Judge has misdirected himself in drawing the said inferences. Firstly, there are many circumstances which are on record for which investigating machinery could not get clue and remained unsolved. The accused was charged for committing offence of rape and murder. He was also charged for misappropriation of property possessed by the deceased. The charge framed by the Trial Court states that the accused caused certain evidence to disappear by throwing the bloodstained clothes outside the window. It was further stated that the accused committed rape, murder and misappropriated the property of victim. The prosecution has not established charge of rape for which the accused is acquitted. The Medical Officer has opined that rape is ruled out. There was no recovery of any property of the deceased and the charge under Section 404 has failed and the accused has been acquitted. Thus, the motive for commission of crime for which the accused was charged has not been established. As analyzed hereinabove, the prosecution has not been able to bring cogent evidence to establish presence of accused at the scene of offence. There is no evidence that the accused was found in close proximity with the place of incident or last seen together with the victim. **It is well settled that the prosecution must stand or fall on its own legs and it cannot drive any strength from weakness of the defence.** Where various links in a chain are in themselves

complete, then a false plea or false defence may be caved in to aid only to lend assurance to the Court. Before using the additional link, it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not a law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supported by a false plea.

In the case of *Deonandan Mishra Vs. State of Bihar*⁸, the Apex Court has observed as follows :-

“In a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation such absence of explanation would itself be an additional link which complete the chain.”

47. The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. These principles were laid down in various cases by the Apex Court viz. *Anant Chintaman Lagu V. State of Bombay*⁹, *Lagu case*¹⁰ as also the principles enunciated by the Apex Court in *Hanumant case*¹¹ have been uniformly and consistently followed in all later decisions of the Hon'ble Apex Court without any single exception. To quote a few cases –

⁸ AIR 1955 SC 801

⁹ (1960) 2 SCR 460 : AIR 1960 SC 500 : 1960 Cri LJ 682

¹⁰ (1960) 2 SCR 460 : AIR 1960 SC 500 : 1960 Cri LJ 682

¹¹ 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

*Tufail case*¹², *Ramgopal case*¹³, *Chandrakant Nyalchand Seth Vs. State of Bombay*¹⁴, *Dharambir Singh v. State of Punjab*¹⁵. There are a number of other cases where although *Hanumant case* has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed vs. Delhi Administration*¹⁶, *Mohan Lal Pangasa vs. State of U.P.*¹⁷, *Shankarlal Gyarsilal Dixit v. State of Maharashtra*¹⁸ and *M. G. Agarwal v. State of Maharashtra*¹⁹ – a five-Judge Bench decision.

48. The Apex Court, in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra* (*supra*) has observed as follows :-

“It will be seen that this Court while taking into consideration the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :-

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

¹² (1969) 3 SCC 198 : 1970 SCC (Cri) 55

¹³ AIR 1972 SC 636 : (1972) 2 SCC 625

¹⁴ Criminal Appeal No.120 of 1957, decided on February 19, 1958

¹⁵ Criminal Appeal No.98 of 1958, decided on November 4, 1958

¹⁶ (1974) 2 SCR 694, 696 : (1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200

¹⁷ AIR 1974 SC 1144, 1146 : (1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645

¹⁸ (1981) 2 SCR 384, 390 : (1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : 1981 Cri LJ 325

¹⁹ (1963) 2 SCR 405, 419 : AIR 1963 SC 200 : (1963) 1 Cri LJ 235

- (2) *the said circumstance points to the guilt of the accused with reasonable definiteness, and*
- (3) *the circumstance is in proximity to the time and situation.”*

49. The learned Counsel for appellant / accused submitted that in the event this Court acquits the appellant, he may be awarded compensation for undergoing the detention in relation to the present proceedings. He submitted that the appellant has remained in custody for a long period of time and he is entitled for compensation for being falsely implicated in the proceedings and continued to be in custody which would amount to illegal detention. He placed reliance upon the decision of the Supreme Court in the case of ***Rudul Sah Vs. State of Bihar and Anr.***²⁰

50. We have considered the submissions of both the sides. We have scrutinized the evidence in great detail. From the nature of evidence, we are of the opinion that the benefit of doubt has to be given to the appellant / accused. The reason for arriving at such a conclusion is spelt out in the analysis of evidence made by us in the earlier paras of this Judgment. The prosecution has relied upon several circumstances. The evidence of the witnesses examined by the prosecution itself discards most of the circumstances on account of the able cross-examination by the defence Counsel. We have observed earlier that certain suspicious circumstances have not been explained

²⁰ (1983) 4 SCC 141

by the prosecution and there was no in-depth investigation in that regard. It is also noted that the salient feature of the present case is that the thread of suspicion was immediately upon the colleagues of the deceased which was fortified by their conduct and two of them were arrested. It is not our endeavour to give a finding that the accused is innocent and somebody else should be convicted. However, the entire evidence adduced by the prosecution creates doubt about the involvement of the appellant and therefore the benefit of doubt will have to be given to the appellant. The prosecution has proceeded with the motive of sexual assault (rape) and then the motive of theft of jewellery of the deceased. The theory of rape was ruled out by the prosecution itself. There was no recovery of any articles in the nature of jewellery at the instance of the appellant. The Trial Court has invoked Section 106 of the Evidence Act and indicted the appellant for not explaining the circumstances. However, taking into consideration that the case was based on circumstantial evidence, it is difficult to arrive at a conclusion that the circumstances taken jointly form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. There is no strong evidence that the only hypothesis which can be drawn is that of guilt of the appellant / accused. Even if it is assumed that there are some clues showing the accused under scanner of involvement and some circumstances showing him innocent, the benefit of doubt would go to the accused. It is well settled that whereon the evidence on two possibilities are available or open, one which goes in favour of the

prosecution and the other which benefits the accused, the accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram Vs. State of Himachal Pradesh*²¹, the Supreme Court made the following observations :-

“Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two view are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

In the light of the several judicial pronouncements, which are quoted hereinabove, we are of the opinion that the appellant cannot be convicted for the alleged crime.

51. As far as the submission of the learned Counsel for appellant that in the event of acquittal, compensation should be awarded to the appellant, it has to be observed that powers under Section 250 of the Cr.P.C. cannot be exercised in favour of the appellant. Section 250 of the Cr.P.C. reads as follows :-

250. Compensation for accusation without reasonable cause.

(1) If, in any case instituted upon complaint or upon

²¹ (1973) 2 SCC 808

information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub- section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a

period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860). shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him: Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub- section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub- section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) *The provisions of this section apply to summons-cases as well as to warrant-cases.*”

The said provision relates to the compensation for accusation without reasonable cause. The accused was allegedly apprehended on the basis of the fact that he discontinued for work from 29/12/2003 and his whereabouts were not known. Thereafter, allegedly, he was arrested and the prosecution then purportedly collected some evidence which, accordingly to the investigating machinery, was sufficient to involve the accused in the alleged crime. We have already observed that the accused is entitled for benefit of doubt. It is difficult to state at this stage that there was *mala fide* in impleading the appellant as accused. A reference can be made to the decision of the Supreme Court in the case of ***State of Rajasthan Vs. Jainudeen Shekh and Another***²². The Hon'ble Supreme Court, in the said case, has observed that the prosecution has falsely implicated the accused, there is no material whatsoever to show that the prosecution has deliberately roped in the accused and there is no *mala fide* or malice in prosecuting the accused. In the case of ***Hardeep Singh Vs. State of Madhya Pradesh***²³, the Supreme Court had occasion to deal with grant of compensation for prosecution of an accused. The accused therein was prosecuted for the offence punishable under Section 420 of the IPC. He was handcuffed by the police and his photographs were published in the local newspapers while he was being handcuffed. He was acquitted after 12 years. It was noted that during the pendency of the said proceedings, the sister of the accused

22 (2016) 1 Supreme Court Cases 514

23 (2012) 1 SCC 748

had died due to shock. The trial was delayed. In view of the circumstances, the High Court had granted him compensation as the accused was unnecessarily handcuffed which had affected his dignity as a human being and there were were unfortunate tragic consequences. It is only in the said circumstances, the compensation was awarded, which Judgment was confirmed by the Hon'ble Supreme Court. Such a situation is not existing in the present case. In the circumstances, we are not inclined to grant compensation to the appellant as prayed for. The decision relied upon by the appellant is not applicable in the present case.

52. In view of the aforesaid observations, the accused is entitled for acquittal and therefore we set aside the Judgment and Order of conviction passed by the Trial Court for the said offences. Hence we pass the following order :-

ORDER

- (i) The appeal is allowed.
- (ii) The Judgment and Order dated 22/06/2007 passed by the Ad-hoc Additional Sessions Judge-1, Baramati, District Pune, in Sessions Case No.66 of 2004 convicting the appellant / accused for the offence punishable under Section 302 of IPC and sentencing him to suffer imprisonment for life and to pay a fine of Rs.3,000/-; in default of payment of fine, sentencing to suffer further R.I. for 6 months, as well as for the offence punishable under Section 201 of the IPC and sentencing him to suffer R.I.

for 3 years and to pay a fine of Rs.1,000/-; in default, sentencing him to suffer R.I. for 3 months; so also for the offence punishable under Section 457 of the IPC and sentencing him to suffer R.I. for 3 years and to pay a fine of Rs.1,000/-; in default of payment fine, sentencing him to suffer R.I. for 3 months, is hereby set aside and the appellant / accused is acquitted.

- (iii) The appellant may be released forthwith from jail wherever he is detained, unless he is required in any other case.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)