

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.328 OF 2000

The State of Maharashtra,
Through Police Station,
Purna, Dist-Parbhani.

...APPELLANT

VERSUS

Subhash s/o Balaji Kalbande,
Age-25 years, Occu:Agri.,
R/o-Mamdapur, Tq-Purna,
Dist-Parbhani.

...RESPONDENTS

...
Mr.R.V. Dasalkar, A.P.P. for Appellant- State.
Mr.R.N. Chavan Advocate with Mr. Vijay Sharma
Advocate for Respondent.
...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 22ND JUNE, 2017.

DATE OF PRONOUNCING JUDGMENT: 3RD JULY, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is preferred by the State
challenging the Judgment and order dated 19th

April, 2000, passed by the Additional Sessions Judge, Parbhani in Sessions Trial No.124 of 1999, thereby acquitting original accused No.1/ Respondent – Subhash s/o Balaji Kalbande from the offence punishable under Section 498-A and 302, and Section 302 read with 34 of the Indian Penal Code (in short "I.P. Code").

2. The prosecution case, in nut-shell, is as under :-

A) The informant Digamber s/o Vithoba Hilal, a teacher resident of Khambegaon, Tq-Loha, Dist-Nanded had lodged complaint in the police station, Purna on 28th April, 1999 complaining that his second daughter namely, Meerabai was given in marriage before two years to one Subhash Balaji Kalbande of village Mamdapur, Tq-Purna, Dist-Parbhani. At the time of marriage, Subhash was serving as a teacher in some private institution but he was not getting full salary there, so he wanted to start side business of purchasing

cotton. Therefore, he was asking his wife to bring Rs.40,000/- from her father. His parents, brothers and brother's wife all were ill-treating the deceased Meerabai since her marriage. Parents were saying that they did not get a good daughter-in-law. Mother-in-law used to say that Meerabai does not cook good, she gives reverse replies. Father-in-law and sister-in-laws were saying that she can not work in the field, and by using such teasing words and taunts they use to give cruel treatment to her. Every time his daughter Meerabai was demanding him amount. Informant Digamber further alleged that three-four times, Subhash had demanded him amount by coming to his village but he had not given him any amount.

B) On 27th April, 1999 at about 5.00 p.m. one person from Mamdapur had come and informed to the informant Digamber that his daughter Meerabai died and he went away. Then the informant and persons from the village went to Mamdapur. They reached in the field of the accused about 8.00

or 9.00 p.m. There he saw the dead body of his daughter. There was bleeding through an injury on her head. From other relatives in that village, he learnt that on that day all other family members in the house of the accused except Meerabai and her husband had gone out of station for attending some marriage. Meerabai and her husband Subhash had gone to the field and at about 12.00 noon there was talk in the village about her death, therefore, he complained that in the afternoon Subhash must have killed Meerabai by assaulting her by stick or stone on her head as the informant did not give the amount demanded by Subhash. On such complaint, police registered the crime. Complaint was lodged at about 4.15 a.m. Immediately, P.S.I. Gadekar taking investigation to himself, rushed to village Mamdapur, he went to the field of the accused. He saw the dead-body of Meerabai in the tin-shade. He made inquest panchnama and sent the dead body for postmortem. He carried out spot panchnama. The spot was shown by the accused Subhash, it was near the water-tank

which was near the Akhada in the field. On the spot, he found one wooden hammer called "Mogri" which was having blood stains, one plastic gunny cloth called "Chawale", it was also having blood stains, four stones were also seized from the spot, as it was having blood stains. He found blood fallen on the ground on the spot, so he seized blood mixed mud and other mud sample from the spot under the spot panchnama. Then he arrested the accused Subhash and Suresh in that evening. He recorded statement of witnesses.

C) It is the further case of the prosecution that on 1st May, 1999 accused Subhash while in custody gave statement that he had kept the "Janole", by which he had hit his wife and killed her on the Mandav in the field and was ready to produce it, so his memorandum statement was recorded. Then accused Subhash led the police and panchas to his field and produced one wooden "Janole" (a wooden part of the plough). It was seized under panchnama. Thereafter, again on 5th

May, 1999 accused Subhash stated before panchas while in custody that he was ready to give the Banyan which he was wearing at the time of the incident and which he has kept in the Kud of the Mandav. Accordingly, his memorandum statement was recorded and then he led police and panchas to his field and produced one Banyan kept in the Kud of the Mandav, which was having blood stains. It was seized under panchnama.

D) While sending the dead-body for postmortem, police had requested for the blood sample of the deceased to know her blood group. Police had also send the accused Subhash to the medical officer for drawing his blood sample to know his blood group. Doctor had given the viscera of the deceased. Police had sent all the seized articles and articles given by the medical officer for analysis to C.A. Police obtained postmortem report wherein doctor had opined the cause of death as " Due to Haemorrhagic Shock due to head injury". On receipt of C.A. report, it was

revealed that Muddemal "Janole" and the Banyan articles recovered at the instance of accused Subhash were found blood stains of blood group 'AB' which is the blood group of deceased Meerabai, therefore, concluding that accused Subhash must have committed murder of Meerabai, police had preferred the charge-sheet against the accused for committing offence punishable under Section 498-A and 302 read with 34 of the I.P. Code.

E) A charge for an offence punishable under Sections 498-A, 302 read with Section 34 of the I.P. Code was framed against the accused and the same was explained to them. The accused persons pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted all the accused i.e. accused Nos.1 to 6 from the offences with which they were charged,

Hence this Appeal is preferred by the State challenging the acquittal of original accused No.1- Subhsh s/o Balaji Kalbande.

4. Heard learned A.P.P. appearing for the State and learned counsel appearing for Respondent/ accused No.1, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. The prosecution examined PW-7 Dr. Babu Gulab Shaikh. He deposed that he was working as medical officer, Rural (P.H.C.) Hospital, Purna. On 28th April, 1999, the witness himself and Dr. Rodge had performed postmortem examination on the dead body of Meerabai Kalbande. They had prepared their postmortem notes Exhibit 43. He deposed that they observed lacerated wound over head on right side on occipital region. Its size was 5 cm. X 3

cm. wide X 1/2 cm. deep., oblique irregular margins, and it was caused by hard and blunt object. It was ante-mortem wound, the same is mentioned in Column No.17 of the postmortem notes. There was evidence of haematoma seen under the scalp - deep, corresponding wound, size 2 X 2 cm. It is mentioned in Column No.19/1. Brain matter was congested. Evidence of haematoma seen under the brain matter in the occipital region on right side corresponding to the external injury, size 3 X 3 cm., mentioned in Column No.19(iii) of the postmortem notes.

. PW-7 Dr. Babu Shaikh further deposed that the probable cause of death was due to "haemorrhagic shock due to head injury". There was no other injury found on the dead body. The Muddemal Article A "Janole" was shown to him which was the hard and blunt object. He deposed that the injury was possible by that instrument, and if a blow given by the said instrument, same result would occur. He deposed that patient died because

of the said injury. He had preserved viscera as per the request of police. Police requested for obtaining blood of the deceased for determining the blood group. Accordingly, he had handed over those articles to police in a sealed condition.

. During the course of cross-examination, PW-7 Dr. Babu Shaikh stated that Muddemal Article "Janole" was not shown to him by police at any time. He stated that in this case death had occurred within three hours of last meal of deceased. The death was instantaneously possible because of the said injury. From injury exact object cannot be determined and only nature of the object viz. hard and blunt, that can be determined. There was no fracture of bone. He stated that he cannot say if there is single right oblique injury on occipital region, the same is possible by fall. The lady was carrying foetus of 26 to 28 weeks. This was advance stage of pregnancy. He admitted that if one falls forcefully, on a hard substance, occurrence of

said single injury mentioned in Column No.17 is also possible.

6. To prove its case, the prosecution has examined PW-1 Digamber Vithoba. He deposed that Meerabai (deceased) was his daughter. She was given in marriage to Subhash Vyankatrao Kalbande. She died on 27th April, 1999. She was murdered. Two years prior to it, her marriage with Subhash took place. After marriage she went for cohabitation to village Mamdapur, Tq-Purna. When his daughter went for cohabitation to her husband's house, that time his parents, brother Suresh, his wife Nilawati and another brother Ram used to reside with her husband. His daughter was ill-treated. The accused were demanding amount from him, they used to demand Rs.40,000/- for doing business of cotton. Subhash (accused No.1) was doing the service in Sanstha and he was not getting salary and therefore for doing side business, he was demanding Rs.40,000/- to the witness. The parents-in-law of Meerabai used to

say that she was not knowing house-hold work, cooking, and her sister-in-law was also saying that Meerabai did not work properly in the field. Her father-in-law used to say that they did not get a good daughter-in-law. Mother-in-law used to say that Meerabai gives reverse replies. Therefore, accused used to give mental cruel treatment to his daughter. His daughter used to tell him about the same. Subhash had demanded Rs.40,000/- from PW-1 Digamber and he made demand for three times. Subhash had demanded the amount coming to the village of witness at Khambegaon.

. PW-1 Digamber further deposed that on 27th April, 1999, in the evening one person came from Mamdapur and told him that Meerabai died. Therefore, along with relatives and villagers he went to Mamdapur and from there they went to the field. His daughter Meerabai was lying dead and she had sustained injury on her head. Thereafter he lodged complaint in the police station. He deposed that Subhash has murdered his daughter.

The other accused also ill-treated his daughter mentally and they instigated Subhash to commit her murder.

. During the course of his cross-examination, PW-1 Digamber admitted that Subhash is having 10 to 12 acres agricultural land and he irrigates the said land from Godavarai river. Subhash is educated upto M.A. B.Ed. He stated that he did not know if Subhash was getting Rs.4000/- towards salary and was serving in Laxminagar school. He stated that he cannot say on what dates, Subhash had came to him for demanding amount. During the life time of Meerabai, he had nowhere lodged any complaint about ill-treatment which she was facing that time. For the first time in the complaint he had disclosed about the ill-treatment to Meerabai. Though his daughter had told him about the ill-treatment to her and Subhash had demanded amount, he did not make any enquiry by going to Mamdapur. He stated that his daughter was lying dead near the tank of water in

the field. There are stones lying near the tank. She was lying dead on those stones. His daughter had sustained only one injury on the backside of her head. He stated that when they reached to village Mamdapur, that time the family members of the house of Subhash were not present there and they had gone for marriage and had not returned. Only Subhash and his wife did not go for the marriage. He stated that he does not know personally how the incident had occurred.

7. Prosecution has examined PW-2 Suresh Ramrao Hilal. He deposed that he knows complainant and his daughter Meerabai. She was given in marriage at village Mamdapur. His father-in-law's house is also at Mamdapur. His marriage took place before four years. He used to visit his in-law's house at Mamdapur. After the marriage, Meerabai had gone to her husband's house for cohabitation. When Meerabai used to come to her father's house, she used to tell that she was not being treated well by her in-laws and she was also saying that

her husband was demanding Rs.40,000/- for doing business.

. PW-2 Suresh further deposed that one day prior to the incident he had gone to Mamdapur at the house of his father-in-law. On the next day in the morning, he had to go for marriage at Asola. For going to marriage, he was going towards Maroti temple where the trucks were parked. There Subhash and Meerabai met him on the way, they were going towards their field. He asked them to come for marriage, but Subhash said that they were not coming for marriage and his brother would attend the marriage. Then they went away towards the field. He then went for marriage and after attending marriage he went to Khambegaon straightway. There he learnt that Meerabai died.

. During the course of his cross-examination, PW-2 Suresh stated that Hanumantrao is his real maternal uncle and also father-in-law. He was invited for attending the marriage. He

stated that they about 100 persons had gone for that marriage. The marriage was at about 11.00 a.m. He was knowing all of them but he can identify 15 out of them. He stated that as he is driver, he rarely used to reside at his village and he used to remain on tour and rarely used to visit the house of Kalbande. The relations between him and Digrambarrao were good. Digamberrao is his distant uncle. On the day of incident when Subhash and Meerabai met him while they were going to their fields, he had no talks with Meerabai. When Meerbai and Subhash met him, he did not pay attention if anybody also was present there. The way to the field of Subhash is from the Maroti temple. He stated that about 25 to 30 persons were there where he met Meerabai near the truck. He denied the suggestion that his father-in-law Hanumantrao and accused persons were having dispute between them and they were on cross-terms and they were having enmity. He denied that his father-in-law and he himself had instigated father of Meerbai to lodge the false complaint.

8. PW-3 Parashram Kerba Hilal is a panch witness to seizure panchnama of "Janole" recovered at the instance of accused Subhash. During his cross-examination, he stated that such instruments "Janole" are in the village. He stated that panchnama was not bearing the signature of Subhash as it was not obtained. PW-4 Eknath Tolba Paul is a panch to seizure panchnama of Banyan recovered at the instance of accused Subhash. PW-5 Santosh Shriprakash Jaiswal, is a police constable who carried the Muddemal articles in this crime to Chemical Analyzer, Aurangabad. PW-6 Ramrao Patilba Gadekar, P.S.I., police station, Purna, was the investigating officer. He deposed about the manner in which he has carried out the investigation of the crime.

9. To prove the allegations of the ill-treatment, cruelty subjected to Meerabai and the alleged demand, the prosecution has mainly relied upon the oral testimony of PW-1 Digamber Vithoba,

father of Meerabai. Upon careful perusal of the evidence of PW-1 Digamber, it appears that he has made general allegations that accused persons used to ill-treat Meerabai on the trifle grounds that she was unable to cook the food properly and was not able to do the agricultural work properly and so on. Neither any specific date nor specific incident is mentioned by PW-1 Digamber when Meerabai was subjected to cruelty. He admitted that during the life time of Meerabai, he never filed any complaint about ill-treatment to her, before any authority, including police. Regarding the demand also PW-1 Digamber has made general allegations. No specific date or month has been mentioned by him when the alleged demand was made. In his cross-examination, defence has brought on record that accused Subhash was serving as a teacher in a school. PW-1 Digamber admitted in his cross-examination that Subhash is having 10 to 12 acres irrigated agricultural land. Thus, the defence has brought on record that financial position of accused Subhash was so sound and

therefore the allegations of demand are not well founded. The trial Court has rightly observed that, for the first time the complainant is making allegations about the harassment to his daughter by the in-laws, that too are very vague in nature, not supported by any independent evidence such as any neighbour of the accused, nor there are any circumstances to support the version of the complainant, and in absence of the same, it is difficult to rely on his testimony in the circumstances of the case. The trial Court has further observed that, there is scope to believe that the informant is making such allegations because of death of his daughter, as it has come in the statement of accused No.1 Subhash under Section 313 of Cr.P.C. that since two years prior to the death of his wife he was having permanent job as a teacher and he was getting salary to the tune of Rs.4000/-, so he had no reason to demand any amount to his father-in-law for doing any business in cotton.

. In this regard, the prosecution has also relied upon the evidence of PW-2 Suresh Hilal. He deposed that when Meerabai used to come to her father's house, she used to tell them that she was not being treated well by her in-laws. However, this witness has also made general allegations about the ill-treatment given to Meerabai and no any specific incident is stated by him. Furthermore this witness is relative of PW-1 Digamber and thus is an interested witness. The defence has brought on record that father-in-law of this witness and accused were on cross-terms and therefore possibility of PW-2 Suresh deposing falsely at the instance of his father-in-law, cannot be ruled out. The trial Court has rightly observed that, this witness Suresh was a driver. He admitted that as he is driver, he rarely used to reside at village Khambegaon and so chances of Meerabai telling him about any ill-treatment to her whenever she visited the house of her father, are very rare. He could not tell exactly when Meerabai told so to him and what he did after she

told him about ill-treatment to her.

10. It is the case of the prosecution that on 27th April, 1999 accused Subhash and his wife Meerabai had gone in the field, and in the field accused Subhash had assaulted Meerabai on her head from backside by a wooden part of plough called "Janole" and due to said head injury, she died on the spot. The prosecution has examined PW-2 Suresh Hilal who had lastly seen deceased Meerabai in the company of accused Subhash when they were proceeding towards their field. PW-2 Suresh admitted in his cross-examination that about 25-30 persons were there where he met Meerabai near the truck, which was going towards Asola village for marriage. As stated above, this witness PW-2 Suresh is an interested witness. He stated that about 100 persons has gone for that marriage. But to prove the 'last seen' theory the prosecution has examined this solitary witness and there is no corroboration to the deposition of this witness, though as per the prosecution case, at the

relevant time so many persons were present when PW-2 Suresh lastly seen deceased Meerabai in the company of accused Subhash. PW-2 Suresh stated that in the morning hours i.e. at about 8.00 to 9.00 a.m. he saw Meerabai in the company of accused Subhash, and as per the prosecution case, the alleged incident had taken place at about 12.00 noon. In our considered view, the said time gap is wide, and therefore said circumstance of 'last seen' cannot be relied upon. The Supreme Court in the case of Shyamal Ghosh vs. State of W.B.¹, on the basis of the evidence in that case, in Para 74 of the Judgment, observed that reasonableness of the time gap is of some significance. If the time gap is very large, then it is not only difficult but may not even be proper for the Court to infer that the accused had been last seen alive with the deceased and the former, thus, was responsible for commission of the offence.

1 (2012) 7 S.C.C. 646

. The Supreme Court in the case Rambraksh alias Jalim vs. State of Chhatisgarh² held that, it is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

11. The Supreme Court in the case of Inderjit Singh and another vs. State of Punjab³, supra, in

2 A.I.R. 2016 S.C. 2381

3 A.I.R. 1991 S.C. 1674

Para-2 of the Judgment held that:-

"2. After giving our careful consideration, we are unable to agree with the Courts below. These circumstances are not sufficient to establish guilt of the accused. It is well settled that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Among the circumstances relied upon by the prosecution, in the light of these principles we find that except the circumstance No.1, the other circumstances are not incriminating. In number of cases it has been held that the only circumstance namely that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the accused. It is no doubt true that deceased's death was homicidal but since there is no direct witness connecting any of the appellants with the crime we should fall back on the circumstantial evidence and we are of the view that circumstances relied upon by the prosecution are hardly

sufficient to establish the guilt of the accused. The circumstance, i.e. the accused also had no enmity between the accused and the deceased and the witness would also show that the accused also had no enmity against the deceased. Therefore, this circumstance is neutral. However, now coming to the recovery of the gun, the High Court has acquitted him of that charge. The only relevant circumstance as pointed above is that the appellants and the deceased left the house together in a friendly manner for bird-shooting. It is needless to say that no conviction can be passed on this sole circumstance. In the result, the convictions and sentences awarded by the Courts below are set aside. The appeal is allowed. The appellants be set at liberty."

12. As per the prosecution case, the alleged incident took place in the field of accused Subhash and except Meerabai and her husband accused Subhash, no one was present at the spot of incident. In this case, there is no independent eye witness. Since the case in hand is based upon the circumstantial evidence, it would be gainful to reproduce herein below the parameters / guiding

factors laid down by the Supreme Court, while appreciating the circumstantial evidence, in the case of Hanuman Govind Nargundkar and another Vs. State of M.P.⁴, which are consistently followed in subsequent pronouncements by the Supreme Court and the various High Courts. In the said judgment, it is held thus:

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

4 AIR 1952 SC 343

13. The trial Court has observed that Meerabai was pregnant and at the relevant time she was carrying foetus of 26 to 28 weeks. There is possibility that because of pre-eclamsic-toximia, she might have got convulsions and had fallen on stones near the water-tank in the field. It has come in the spot panchnama that there were stones near the water-tank and she might have sustained the said injury and because of bleeding through it she had gone in shock, this possibility was not ruled out by the prosecution. The possibility of accidental death was not wiped out by the prosecution. The trial Court after considering the entire evidence brought on record by the prosecution, held that prosecution had failed to bring any guilt to any of the accused and acquitted all the accused persons of the charges levelled against them.

14. As per the prosecution case, dead body of Meerabai was found lying on the stones, near water

tank in the field. PW-7 Dr. Babu Shaik admitted in his cross-examination that, if one falls forcefully on a hard substance, occurrence of the said single injury mentioned in Column No.17 of the post-mortem notes is also possible. Thus the possibility of accidental death of Meerabai cannot be ruled out. Upon independent scrutiny and re-appreciation of entire evidence brought on record by the prosecution, it clearly emerges that, there are serious omissions, contradictions and improvements in the evidence of prosecution witnesses which goes to the root of the prosecution case and makes said evidence unworthy and unreliable. We are therefore of the view that, the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such. The view taken by the trial Court is plausible view. The Supreme Court in the case of Muralidhar alias Gidda and another Vs. State of Karnataka⁵ in para 12 held thus:-

5. 2014 [4] Mh.L.J.[Cri.] 353

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu Vs. State*, AIR 1954 SC 1, *Madan Mohan Singh Vs. State of U.P.*, AIR 1954 SC 637, *Atley Vs. State of U.P.*, AIR 1955 SC 807, *Aher Raja Khima Vs. State of Saurashtra*, AIR 1956 SC 217, *Balbir Singh Vs. State of Punjab*, AIR 1957 SC 216, *M.G. Agarwal Vs. State of Maharashtra*, AIR 1963 SC 200, *Noor Khan Vs. State of Rajasthan*, AIR 1964 SC 286, *Khedu Mohton Vs. State of Bihar*, [1970] 2 SCC 450, *Shivaji Sahabrao Bobade Vs. State of Maharashtra*, [1973] 2 SCC 793, *Lekha Yadav Vs. State of Bihar*, [1973] 2 SCC 424, *Khem Karan Vs. State of U.P.*, [1974] 4 SCC 603, *Bishan Singh Vs. State of Punjab*, [1974] 3 SCC 288, *Umedbhai Jadavbhai Vs. State of Gujarat*, [1978] 1 SCC 228, *K. Gopal Reddy Vs. State of A.P.*, [1979] 1 SCC 355, *Tota Singh Vs. State of Punjab*, [1987] 2 SCC 529, *Ram Kumar Vs. State of Haryana*, 1995 Supp [1] SCC 248, *Madan Lal Vs. State of J & K*, [1997] 7 SCC 677, *Sambasivan Vs. State of Kerala*, [1998] 5 SCC 412, *Bhagwan Singh Vs. State of M.P.* [2002] 4 SCC 85, *Harijana Thirupala Vs. Public Prosecutor, High Court of A.P.*, [2002] 6 SCC 470, *C. Antony Vs. K.G. Raghavan Nair*, [2003] 1 SCC 1, *State of*

Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view.

of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and (iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

[Underlines added]

15. Therefore, in the light of discussion herein above, there is no merit in the Appeal filed by the State. The Criminal Appeal stands dismissed. Bail bond, if any, stands cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]