

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.274 OF 2013**

Babu s/o.Mahadya Swami,  
Age 39 Years, Occ. Labour,  
R/o. Pokhrani (N), Taluka and  
District Parbhani.

**APPELLANT**

[Original accused]

**VERSUS**

The State of Maharashtra

**RESPONDENT**

...

Mrs.Sabahat T. Kazi [Appointed], Advocate for  
the appellant

Mr.K.D.Munde, APP for the Respondent/State

...

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

Reserved on : 12.07.2017

Pronounced on : 28.07.2017

**JUDGMENT:** (Per S.S.Shinde, J.):

1. This Appeal is filed by the appellant-accused, challenging the judgment and order of conviction passed by the Ad-hoc Additional Sessions Judge, Gangakhed, dated 18<sup>th</sup> December, 2012 in S.T. No.03/2012, thereby convicting the appellant for the offence punishable under Section 302 of the

Indian Penal Code and sentenced to suffer imprisonment for life and shall also pay fine of Rs.2000/- [Rs. Two Thousand only], in default to suffer R.I. for two months.

2. The prosecution case in nutshell is as under:

A report was lodged by Virbhadra Shewalkar on 13<sup>th</sup> September, 2011, at Gangakhed Police Station, making allegations that accused Babu Swami had killed his wife Shivkanya, the sister of the informant. According to the informant, the marriage of his sister was performed with the accused prior to 8 years of the date of the incident. They had one son, namely Samadhan, who is residing with his grandmother at village Wadgaon. The accused and his wife Shivkanya [hereinafter referred as 'deceased'] were residing in rented house at Gangakhed. It was alleged that when the deceased used to visit

her parental house, she used to make complaints that her husband is addicted to liquor, and used to make demand of money, and also used to beat her. Eight days prior to lodging of the FIR, she had come to the house of the informant, and made complaint against her husband. On 13<sup>th</sup> September, 2011, the informant received message from the neighbour of his sister that Shivkanya is dead, and her dead body is lying in a pool of blood in her house. The informant and his parents rushed to Gangakhed; they saw the dead body of the deceased in Civil Hospital, Gangakhed. The informant received information from the Police that the accused had given blows of stone crusher [khalbatta] on the head and face of his wife and killed her. It was also informed that after death of his wife, accused went to the Police Station, and made disclosure about the offence committed by him.

3. According to the prosecution case, the Police Head Constable, Mr. Jawale, was working as P.S.O. at Gangakhed Police Station. On 13<sup>th</sup> September, 2011, at about 6.30 hours, accused went to the Police Station, he told his name, place of residence and gave information that he has killed his wife. In order to ascertain the truth, the then P.S.O. and other Police Officers went to the spot, and found dead body of deceased lying in the pool of blood in the house of accused. The information was given immediately to the concerned Police Officers. They took the accused to his house, which was situated in Vetali Galli of Gangakhed. The PSI Mr. Lamture called panchas. After identification of dead body, the inquest panchnama was prepared, and the dead body was sent for postmortem. The brother of deceased lodged the complaint. On the basis of said complaint, crime was registered and PSI

Mr.Lamture was entrusted the investigation of crime bearing No.169/2011. According to the Investigating Officer, the accused appeared before the Police Station, and gave confession that he had killed his wife. But he was shouting and talking irrelevant, so he was sent for medical examination to Sub District Hospital, Gangakhed, from where he was referred to Civil Hospital, Ambajogai, where his sister was taking care of accused. After receiving relevant papers of investigation, the Investigating Officer visited the spot of incident, prepared panchnama, seized the stone crusher lying on the spot, and the samples of cement lying on the ground floor were collected by him. He called photographer and obtained photographs of the dead body and situation on the spot. The Investigating Officer recorded the statements of the witnesses. The clothes of deceased were seized. The accused came to be

arrested and his clothes were seized. All seized articles were sent to Forensic Laboratory at Aurangabad. The Investigating Officer collected necessary documents from the concerned Hospital. After collecting sufficient evidence, he filed charge-sheet in the concerned Court. The offence being triable by the Court of Session, the case was committed as per Section 209 of the Criminal Procedure Code to the said Court.

4. The trial Court framed the charge under Section 302 of the Indian Penal Code. It was read over to the accused in vernacular. He pleaded not guilty and claimed to be tried. His defence was of total denial.

5. The prosecution examined in all 17 witnesses. After full-fledged trial, the trial Court convicted the appellant for the offence punishable under Section 302 of the

IPC. Hence this Appeal filed by the appellant—accused.

6. Heard the learned counsel appearing for the appellant—accused, and the learned APP appearing for the respondent—State. The learned counsel appearing for the appellant submits that it has come in the evidence of PW-1, Virbhadra Maroti Shewalkar, brother of deceased i.e. the informant, that there was dispute between the accused and the deceased on account of demand of money, and the accused used to suspect her chastity, but PW-1, Virbhadra, has failed to point out any specific incident of the ill-treatment. PW-1, Virbhadra, has stated in his examination in chief that the marriage of the deceased was performed with the accused prior to 8 years, it means the couple by that time might have settled in their life. In his cross-examination, he has admitted that he

did not lodge any complaint/FIR in the Police Station about the ill-treatment at the hands of the accused. There is delay in lodging the FIR. The FIR is lodged on 13<sup>th</sup> September, 2011, at 12.30 p.m., and the incident has occurred at 4.00 a.m.

7. It is further submitted that PW-2, Maroti Swami, father of the deceased, has admitted in his cross examination that he never lodged any complaint to the Police about the harassment caused to the deceased, and he did not make enquiry with neighbours of the deceased, in respect of the incident of killing of her daughter. He did not make any enquiry with the neighbour, who had given the information on phone about the incident. It is submitted that the prosecution has failed to prove that there is motive behind committing the murder of deceased. The law contemplates that motive plays vital role in

the case rests upon circumstantial evidence. It is submitted that the accused has made extra-judicial confession before PW-3 Sachin Bhadarge, PW-4 Kailash Javale, PW-9 Ramkishan Mundhe and PW-17 Vithal Lamture. The extra judicial confession is very weak piece of evidence, and if it is made before the Police Officer then it is not admissible in law. It has come in the evidence of PW-3 Sachin Bhadarge and PW-4 Kailash Javale that only Constable Bhadarge and Mundhe went to the spot along with the accused. PW-17, Mr.Lamture, stated in his deposition that he went to Vetat Galli where the house of the accused is situate, along with ASI Mundhe. It means there is contradiction in the version of these two witnesses on the point of visit to the house of accused. It is submitted that PW-3 Sachin Bhadarge, PW-4 Kailash Javale, PW-9 Ramkishan Mundhe and PW-17 Lamture, all are the Police Officers, who have stated in

their depositions that they found blood stains on the shirt and trouser of the accused. Still they did not seize the clothes of the accused. They seized the clothes of accused at the time of arrest i.e. on 4<sup>th</sup> October, 2011. PW-15, Kondiba Musale, is the panch witness of the panchnama of seizure of clothes of the accused. He has been declared as hostile. It appears from the seizure panchnama that the clothes of accused have been seized on 4<sup>th</sup> October, 2011, and thereafter, on 16<sup>th</sup> October, 2011, it was sent to Chemical Analyzer at Aurangabad. The incident occurred on 13<sup>th</sup> September, 2011, and they have sent the clothes for analysis on 16<sup>th</sup> October, 2011. Thus, there is delay of more than one month. The prosecution has failed to establish the complete chain of circumstantial evidence.

8. It is further submitted that it has

come in the evidence of PW-17 i.e. Investigating Officer, that there is delay of 10 days in recording the statement of the Police Constables i.e PW-3-Sachin Bhadarge and PW-4-Kailash Javale. PW-17, Lamture, has admitted in his cross examination that he prepared panchnama about the seizure of stone, stone crusher and scabs of cement plaster before he received the copy of FIR. It appears from the inquest panchnama that the inquest panchnama is also drawn before filing of the FIR. The FIR is lodged at 12.30 p.m. and inquest panchnama is drawn at 9.00 a.m. to 10.00 a.m. Even PW-7, Umakant Ganacharya, is the panch of the inquest panchnama. He turned hostile, and did not support the prosecution case. As such, the link in the chain of circumstantial evidence is missing. It is submitted that it has come in the evidence of PW-17, Lamture, that he arrested the accused on 4<sup>th</sup> October, 2011.

Though the accused was easily available before the Police for arrest, still there was delay of 22 days occurred in arresting the accused/appellant. It is submitted that PW-5 Vanita Yeshwantkar, PW-8 Kalawati Tak, PW-12 Arunabai Kumale and PW-13 Manorama Menkudle are the neighbours of the deceased. These witnesses have turned hostile. It has come in the evidence of PW-5 Vanita Yeshwantkar that the portion marked 'A', 'B', 'C', 'D' and 'E' are not recorded as per the say. During her cross examination, she stated that she cannot assign any reason as to why the Police recorded such portion in her statement. It is submitted that PW-7, Umakant Ganacharya, also stated that portion marked 'A' in his statement is not true and correct. He cannot assign any reason as to why the police had recorded said portion in his statement. It is submitted that PW-12, Arunabai Kumale, also stated that portion marked 'A' in her police

statement is not correct. She cannot assign any reason as to why it is written in her statement by the police. In her cross examination, PW-12 Arunabai stated that the Police did not record her statement, only her signature was obtained on the document. It is submitted that PW-13, Manorama, also stated that portion marked 'A' and 'B' in her statement was not correct. Therefore, there are omissions in the statements of these witnesses. During the cross examination of PW-17, he has stated that as per the say of the witnesses, he recorded their statements. The prosecution has failed to examine the Medical Officer, who had conducted the postmortem. It appears from the postmortem report; the cause of death is stated by the Medical Officer due to head injury. However, viscera and blood was preserved, final opinion was supposed to be given after receipt of C.A. report of viscera and blood.

Still the prosecution has not taken any efforts to examine the important witness i.e. Medical Officer.

9. It is further submitted that as per the record of Analyzer, the blood detected on Exhibit Nos.1, 2, 4, 5 and 6 is human. Exhibit Nos.4, 5 and 6 are stained with blood of group 'B'. The blood of deceased was also sent for analysis, and it shows that her blood group is 'B'. However, the prosecution did not send the blood sample of the accused for analysis, and for finding out blood group of accused. It is submitted that PW-14, Suhas Pathak, photographer, has admitted in his cross examination that at the time of taking the snap, he was not aware whether other photographers are present or not. He has admitted in his cross examination that the photographs are used to be corrected or altered with the help of photo-shop software

if there is demand of customer. Such kind of corrections or alterations can be done. He has failed to produce the memory card before the Court. It has come in the evidence of PW-14, Suhas Pathak that he was called for snapping photographs by the Investigating Officer. When he was asked to produce the receipts and bill, he failed to produce the same before the Court. The prosecution case rests upon the circumstantial evidence. But it appears from perusal of the entire record that the circumstantial evidence as well as documentary evidence is not sufficient to prove the prosecution case. The panch of an inquest panchnama and seizure panchnama, turned hostile. The photographer admitted in his cross examination that at the request of the customer, he can easily alter or change the photographs with the help of software.

10. Learned APP appearing for the

respondent—State invites our attention to the findings recorded by the trial Court, and also the notes of evidence, and submits that the prosecution has proved the case beyond reasonable doubt. All the circumstances are brought on record by the prosecution in the nature of proving the spot of the incident, the fact that during night of the alleged incident, the appellant and deceased Shivkanya were only present in the house. There is evidence of PW-5 Vanita Yeshwantkar, PW-8 Kalawati Tak, PW-12 Arunabai Kumale and PW-13 Manorama Menkudle on record, through which the prosecution has proved the presence of appellant in the house at the time of incident. The clothes of the appellant were seized. Those were sent to the Chemical Analyzer. The C.A. report clearly shows that human blood was detected on those clothes. Hence, the learned APP appearing for the respondent—State submits that the appeal may

be dismissed.

11. We have given careful consideration to the submissions of the learned counsel appearing for the appellant-accused, and the learned APP appearing for the respondent-State. With their able assistance, we have perused the entire evidence. The prosecution relied upon as many as 6 circumstances, which are appreciated by the trial Court, and ultimate conviction of the appellant has been recorded. The said circumstances are as under:

- i] Accused was residing with his wife in the house of Menkudale, situated in Vetral lane at Gangakhed when the incident occurred.
- ii] except the accused and his wife, nobody was present in the home in fateful night;
- iii] The incident occurred in the house of accused in early morning at or

before 4.00 a.m. so there is least possibility of any eye witness.

iv] The dead body of wife of accused found lying in the pool of blood in the house;

v] The deceased had injuries on vital part of her body and it has been brought on record that the crush injury observed on her head, face, nose, dislocation of teeth, had occurred due to assault by stone crusher, which was easily available in the house of accused;

vi] The panchnama of spot, seizure of weapon and reports of chemical analysis are pointing out the guilt of accused.

12. So far aforesaid circumstance nos. (i) and (ii) are concerned, it has been brought on record by the prosecution through PW-13 Manorama Menkudale that she has her own house in Vetali Galli. Her son and daughter-in-law resides with her. She stated that

prior to 6 months before the incident, Shivkanya Swami [deceased] came to her for asking the premises on rent basis. She had given part of the portion of her house on rent basis to the accused and deceased Shivkanya. She stated that they started residing at first floor. The appellant was addicted to liquor. She got message at about 8.00 O'clock that Shivkanya died. However, she deposed that she does not know how Shivkanya died. She deposed that it did not happen that the accused beat to his wife, and Shivkanya started crying at about 4.00 a.m. It appears that the said witness was declared hostile, and thereafter, the learned APP cross-examined her. During her cross examination, she stated that she did not tell that the accused was addicted to liquor and he used to beat Shivkanya. She further stated that she saw the dead body of Shivkanya was lying in the pool of blood. However, she

denied that she heard cries of Shivkanya or that she saw the accused going out from the house. She stated that stone crusher was lying near the deceased. On the day of incident, children of accused were not at home. The deceased and accused were at home at the time of incident. Shivkanya was good in nature. She used to do labour work and family members were dependents upon her. She further stated that she does not know whether accused was in his house or not, on the day of incident.

Upon careful perusal of the evidence of this witness, and in particular her cross examination, wherein she stated that she saw the dead body of Shivknaya lying in the pool of blood, and on the day of incident the children of accused were not at home. It has been proved by the prosecution that the nature of Shivkanya was good. However, so far

as the presence of the accused in the house at the relevant time has been denied by her. Though at one breath she stated that the deceased and accused were at home at the time of incident; however, she stated in her cross examination that she did not know whether the accused was in his house or not on the day of incident. Therefore, the dead body of Shivkanya was lying in the pool of blood and the children were not at home during that night, has been brought on record by the prosecution.

13. The prosecution examined Arunabai Nilesh Kumale as PW-12. She stated in her evidence that she was residing in the room at ground floor, and the deceased Shivkanya was residing on first floor. The neighbours awaken her, and thereafter, she went to the house of deceased. She saw the dead body of Shivkanya and the blood fallen on the ground.

Accused Babu was residing with Shivkanya. However, she specifically denied that at about 4.00 a.m. on the day of incident, she heard shouts of woman on the first floor of her house. But she felt that it was usual quarrel of deceased and her husband Babu, who always used to beat her under the influence of liquor and after sometime when she was grooming, she saw the accused Babu going out from the house.

14. It appears that this witness was declared hostile, and the learned APP cross examined her. She stated that after incident the Police made enquiry with her. She stated that it is not true that when in the morning the accused was going out of his house, she asked him as to what happened, then he told that he had killed his wife by means of stone crusher. She stated that it is not true that accused told in the presence of police that

he was suspecting character of Shivkanaya and he committed her murder. She further stated that the children of accused were sent to his village and on 12<sup>th</sup> September, 2011, only the accused and his wife were present in the house. She further stated that it is not true that the accused is addicted of bad vices and due to his pressure, she is deposing false. She stated that the police did not record her statement and only her signature was obtained on the document. Therefore, it appears that her evidence before the Court is the improvement inasmuch as her statement was not recorded by the Police as per her narration, and only her signature was obtained on the blank paper.

15. The prosecution examined Vanita Chandrakant Yeshwantkar as PW-5. She knows Shivkanya. Shivkanya was her neighbour. Shivkanya was residing in the house of

Menkudale. Her husband was residing with her. PW-5, Vanita, stated that Shivkanya died, however, she does not know as to cause of her death. She was declared hostile. During her cross examination, she stated that she saw Shivkanya lying in the pool of blood in dead condition. She did not see mobile lying near deceased. She stated that she did not inform the relatives of deceased Virbhadra about her death. She also did not give information to neighbours. She further stated that it is not true to say that she saw stone crusher having stained with blood lying near the dead body. Many persons were gathered near the dead body. She stated that portion marked 'A', 'B' and 'C' in her police statement, is not true and correct. She cannot assign any reason as to why the police recorded such portion in her statement. She denied that she told before the Police that she heard noise of shouting of Shivkanya when her husband was

assaulting her by stone crusher. Therefore, her evidence, at the most, can be useful to the prosecution to the extent that Shivkanya was residing in the house of Menkudale with appellant, and she saw the dead body of Shivkanya lying in the pool of blood.

16. The prosecution examined Kalawati Subhash Tak as PW-8. She stated that she knows the accused Babu. However, she does not know, where the accused was residing in the year 2011. She knew Shivkanya by face. She used to talk with her while passing through road. Shivkanya told her that 'Maze sakwan bagha'. She did not know that, Shivkanya died. She does not know about cause of death of Shivkanya. It did not happen that the accused had called this witness in his house, at that time Shivkanya told her that accused always used to make quarrel with her, and he was addicted to drink liquor and suspect

about her character. She was declared hostile. The learned APP cross-examined her. During her cross examination, she stated that the portion marked 'A' in her statement was not stated by her.

17. PW-5 Vanita, PW-8 Kalawati, PW-12 Arunabai and PW-13 Manorama are the prosecution witnesses, on which the prosecution had placed heavy reliance to prove the circumstance nos.(i) to (v) mentioned herein above. If the evidence of these witnesses is considered carefully, so far circumstance no.(ii) that except the accused and his wife, nobody was present in the home in fateful night is not proved by the prosecution beyond reasonable doubt. There is evidence of only PW-12 Arunabai Kumale wherein she stated that during morning hours of the alleged incident she felt that it was usual quarrel of deceased and her

husband Babu, who always used to beat Shivkanya under influence of liquor and after sometime when she was grooming, she saw the accused Babu going out from the house. There is no corroboration to her evidence that 'she saw the accused Babu going out from the house'. Though she reiterated in her cross examination that only the accused and his wife were present in the house. Her version in the cross examination is not consistent with her evidence in the examination in chief. She stated that the Police did not record her statement, and only her signature was obtained on the document. Therefore, in absence of any corroboration to her evidence, it is not safe to rely upon her evidence.

18. Though PW-13, Manorama, stated in her cross examination at one breath that on the day of incident, the accused was at home; however, further in her cross examination she

stated that she did not know whether accused was in his house or not, on the day of incident. There is no any other evidence, which would suggest that prior to the said incident or after the said incident, some witnesses have seen the accused in the house or going out of the house. Therefore, though the prosecution is successful in proving that the appellant with his wife Shivkanya was residing in the house of Menkudale on the fateful night; children were not in the house and the dead body of Shivkanya was lying in the pool of blood, nevertheless the evidence brought on record by the prosecution is not sufficient, and cogent, which can inspire confidence to accept the case of the prosecution that the accused was present during night of the said incident in the house, and the possibility of assaulting Shivkanya by any other person was completely ruled out by the prosecution. Therefore, so

far circumstance nos.(i), (iii), (iv) and (v) are concerned, though those circumstances are proved by the prosecution to some extent, however, the prosecution is not able to connect the accused with the commission of crime. Therefore, so far circumstance nos. (ii) and (iii) i.e. except the accused and his wife, nobody was present in the home in fateful night, and that the incident occurred in the house of accused in early morning at 4.00 a.m. are concerned, those have not been proved by the prosecution beyond reasonable doubt.

19. So far circumstance no. (vi) i.e. the panchnama of spot, seizure of weapon and reports of chemical analysis is concerned, the alleged incident had taken place on 13<sup>th</sup> September, 2011, and the accused was arrested on 4<sup>th</sup> October, 2011, and the alleged seizure of clothes and actual sending of clothes was

done by the police on 16<sup>th</sup> October, 2011. Admittedly, the blood of accused was not sent so as to determine his blood group. Such type of belated recovery of clothes, seizure of clothes and sending of such clothes without taking any precaution, loses its significance and such recovery cannot be believed. The prosecution has not examined the Medical Officer, who conducted the postmortem of the deceased Shivkanya. Therefore, the prosecution case to connect the appellant with the commission of offence i.e. murder of Shivkanya, based upon the circumstantial evidence shall necessarily fail.

20. The trial Court placed reliance upon the alleged confessional statements by the appellant-accused before the various Police Officers, and to that effect there is discussion in para no.30 of the impugned

judgment, and the trial Court concluded that the evidence adduced by PW3, PW-4, PW-9, PW-16 and PW-17 is sufficient to hold that accused gave extra judicial confession in their presence and in accordance with information given by him, the dead body of his wife was found lying in the home. It is unfortunate that, the aforesaid findings recorded by the trial Court are against settled principles of law. The Supreme Court in the case of *Indra Dalal Vs. State of Haryana*<sup>1</sup> placing reliance on earlier pronouncements of the Supreme Court, held that the conviction cannot be based upon confessional statements given by the appellant-accused before the Police Officer when he is in police custody.

21. In the present case, no reasons are placed on record by the prosecution explaining that why the accused was not

---

1 2015 ALL SCR 2836

arrested even after 20 days of the incident though he was available. Therefore, no reliance can be placed whatsoever on the confessional statements given by the appellant before the said Police Officers.

22. So far appreciation of the circumstantial evidence is concerned, the law is well settled. The Supreme court in the case of **Hanuman Govind Nargundkar and another Vs. State of M.P.**<sup>2</sup>, 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*

---

2 AIR 1952 SC 343

*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.*

23. The Supreme Court in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***<sup>3</sup> has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. It is also to be borne in mind that the case in hand is a case of circumstantial evidence and if two views

---

<sup>3</sup> (1984) 4 SCC 166

are possible on the evidence on record, one pointing to the guilt of the accused and other his innocence, the accused is entitled to have the benefit of one which is favourable to him.

24. The Supreme Court in the case of *Shankarala Gyarasilal Dixit Vs. State of Maharashtra*<sup>4</sup> in para 13 held thus:

*13. Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such*

---

<sup>4</sup> AIR 1981 SC 765

*a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.*

After discussing the circumstances brought on record and the evidence available therein, in the case of *Shankarala Gyarasilal Dixit [supra]* the Supreme Court observed that though 12 circumstances have been relied upon by the prosecution, the important circumstance is that the appellant therein was present in the house, was not proved by the prosecution. Therefore, in the facts of that case Supreme court held in para 26 that the crucial link in the chain of circumstances is the presence of the appellant in his house at the time when the dead body of Sunita was discovered. Once that link snaps, the entire case would have to rest on slender tit-bits here and there. This discussion disposes of the second part of the

4<sup>th</sup> circumstance, part of the 5<sup>th</sup> circumstance and circumstances (6) and (7). The Supreme Court acquitted the appellant therein.

In the present case also, the prosecution has not proved beyond reasonable doubt that the appellant was seen during night in the house by the prosecution witnesses or while committing the alleged incident or that soon after the incident, he left the house. In absence of such cogent, sufficient and convincing evidence, the crucial link in the chain of circumstances, the presence of the appellant in his house at the time of incident is snapped, and therefore, the benefit of doubt in favour of the appellant deserves to be extended.

25. In the light of discussion in the foregoing paragraphs, an inevitable conclusion is that the appellant is entitled

for the benefit of doubt. Hence, we pass the following order:

**ORDER**

- i] The Criminal Appeal is allowed.
- ii] The impugned judgment and order dated 18<sup>th</sup> December, 2012, passed by the Ad-hoc Additional Sessions Judge, Gangakhed in S.T.No.3 of 2012, convicting and sentencing the accused-Babu Mahadya Swami, for the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.
- iii] The appellant-Babu Mahadya Swami is acquitted of the offence punishable under Section 302 of the Indian Penal Code. Fine amount, if deposited as per impugned judgment and order, be refunded to the appellant.
- iv] The appellant-Babu Mahadya Swami is in jail, he be set at liberty forthwith, if not required in any other case.

- v] The appellant—Babu Mahadya Swami shall furnish the bail bonds of Rs.15,000/- and surety of like amount under Section 437-A of the Criminal Procedure Code before the concerned trial Court at Gangakhed.
- vi] Since Mrs. Sabahat T. Kazi, the learned counsel is appointed to prosecute the cause of the appellant, namely Babu Mahadya Swami, we quantify her fees Rs.7000/-.

**[ S . M . GAVHANE ]**  
**JUDGE**

**[ S . S . SHINDE ]**  
**JUDGE**