

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal APPEAL NOS. 5/2016 & 6/2016.

Criminal Appeal No.5/2016

KHOMU KASAR BAHADUR RAUL
Major in age, Native of Nepal,
C/o Shivshankar Vishvakarma
Oitem, Taliegao, Tiswadi Taluka,
Goa.
Presently lodged as Conviction
Prisoner at Central Jail, Colvale,
Bardez, Goa.

Appellant

Versus

1. S T A T E
(Through P.I.Panaji Police Station,
Panaji, Goa)
2. PUBLIC PROSECUTOR
High Court of Bombay at Goa,
Altinho, Panaji Goa.

Respondents

...

Shri S.G. Desai, Senior Advocate with Shri Anoop Gaonkar,
Advocate for the Appellant..
Shri Pravin Faldessai, Additional Public Prosecutor for the
respondents.

Criminal Appeal No.6/2016

YESHORI KESHAV BAHADUR RAUL
Wife of Khomu Kasar Bahadur Raul
Major in age, Native of Nepal,
C/o Shivshankar Vishvakarma
Oitem, Taliegao, Tiswadi Taluka,
Goa.
Presently lodged as Conviction
Prisoner at Central Jail, Colvale,
Bardez, Goa.

Appellant

Versus

2. S T A T E
(Through P.I.Panaji Police Station,
Panaji, Goa)
2. PUBLIC PROSECUTOR
High Court of Bombay at Goa,
Altinho, Panaji Goa.

Respondents

...

Shri S.G. Dessai, Senior Advocate with Shri Anoop Gaonkar, Advocate for the appellant..
Shri Pravin Faldessai, Additional Public Prosecutor for the respondents.

**CORAM: C.V.BHADANG &
PRITHVIRAJ K.CHAVAN, JJ.
RESERVED ON : 6.10.2017.
PRONOUNCED ON :10.10.2017.**

JUDGMENT (Per Prithviraj K.Chavan, J.):

1. These two appeals by the husband and wife arise out of the judgment and order of conviction dated 29.5.2015 passed by the Sessions Judge, Panaji, wherein both are convicted under Section 302 read with Section 34 of Indian Penal Code and have been sentenced to undergo an imprisonment for life and a fine of Rs.10,000/- each, in default to undergo simple imprisonment for three months.

2. The prosecution case, as emerged from the record, can be summarised as follows:-

Appellants are husband and wife. Deceased Premkumar Khadka (for short "deceased") was the brother-in-law

of appellant no.1 (brother of appellant no.2). The appellants are residing in a rented room of PW 6 – Shivshankar Vishwakarma. The deceased was a native of Nepal. He arrived at the house of the appellants on 3.1.2012. Appellant no.1 and the deceased had alcohol and dinner on 4.1.2012. After dinner, they went to sleep in the same room at about 23.00 hours. The appellants slept on a bed; whereas the deceased slept on the floor of the said room. It is the case of the prosecution that when appellant no.1 woke up in the morning of 5.1.2012, he noticed that the deceased was still sleeping. He thought that the deceased must have been under the influence of liquor, consumed during previous night. The appellants, after finishing their morning routine, left for their respective jobs.

3. Appellant no.1 returned to the room around 11.00 hours from his work only to notice that the deceased was still sleeping and, therefore, he went to wake him up. As there was no response and the deceased was motion-less, he called his wife (appellant no.2) and also informed the neighbours. Somebody had called the police.

4. PW 11 – P.S.I. Baban Pawar Zipro received a call from a mobile phone. He was informed about a dead body of a person lying in a room at Oitem Teliegao. The caller gave his name as

Prakash Oli and the name of the deceased as Premkumar. PW 11 - Baban Pawar Zipro effected necessary entries in the Station Diary and informed the Incharge of the Police Station. He registered UD No.04/2012, under Section 174 of the Code of Criminal Procedure and left for the spot along with staff.

5. When he visited the scene of occurrence, he noted nothing suspicious in the room. He conducted an inquest panchanama of the dead body in presence of witnesses - Shrikar Lokre and Vijaykumar Verma. He noticed vomit near the dead body. He also noticed blood coming from the mouth and a bruise mark on the tip of the nose of the deceased. The deceased was wearing a black coloured beads neck-less around his neck and there was slight compression marks around the neck. After drawing spot panchanama, PW 11 - Baban Pawar Zipro referred the dead body for post-mortem at G.M.C.Bambolim. An F.I.R. was registered against the appellants, vide FIR No.07/12 under Section 302 read with Section 34 of IPC on 6.1.2012. The spot panchanama is at Ex.15. The clothes of the deceased were seized by drawing the seizure panchanama, which is at Ex.24 in presence of PW 2 - Dharmaprasad Oli, who is also a relative of the deceased and the appellants. PW 7 -Parag Phadte is a Civil Draftsman, who was summoned to draw a sketch of the scene of occurrence, which is proved at Ex.56 collectively. PW 9 - Shrikar

Lokre and Vijaykumar Verma are the witnesses on inquest panchanama (Ex.65).

6. PW 10 - Madhu Sagun, a Professor in the G.M.C. conducted autopsy on 6.1.2012. According to him, on the basis of ante-mortem injuries noticed by him, more particularly, the ligature mark around the neck which indicated that it was a case of homicidal death, which had occurred within six hours, as according to him, it was a death due to asphyxia as a result of compression of mouth, neck and nose, in view of the injury nos.1, 2 and 3. The autopsy report is at Ex.68. The Investigating Officer forwarded viscera and other muddemal articles for chemical analysis. He recorded the statements of the witnesses, arrested the appellants and after investigation laid a chargesheet under Section 302 read with Section 34 of IPC in the Court of JMFC.

7. After committal of the case to the Court of Sessions, the learned Sessions Judge, after hearing the prosecution and the defence, framed a Charge against the appellants under Section 302 read with Section 34 of IPC. The appellants abjured the guilt. During trial, the prosecution examined 14 witnesses to substantiate the charge against the appellants.

8. The defence of the appellants was denial of the commission of the offence alleged. The appellants in their written statement under Section 313 (5) of Cr.P.C. State that the deceased did visit their room on 4.1.2012 and after dinner slept in the room itself. However, on the next morning PW 8 – Ajay Raul found the door open when he returned from the night duty. It is stated that the deceased was married with the sister of appellant no.1 and he was the brother of appellant no.2 and, therefore, the relations were quite cordial and that they have been made scapegoat in the case by the Investigating officer. Wife of the deceased (sister of appellant no.1) was examined as a defence witness.

9. The learned Sessions Judge, after going through the evidence of the prosecution witnesses and after hearing the prosecution and defence, arrived at a conclusion that from the circumstances on record, it has been sufficiently established that the deceased was "last seen together" with the appellants and his death occurred in the room of the appellants and, therefore, they are responsible for causing death of the deceased. However, the learned Sessions Judge has found that the prosecution has failed to prove any motive behind the offence but went on to observe that it being a case of circumstantial evidence, yet there is positive evidence against the appellants which is cogent and

reliable and, therefore, the question of motive is not that important.

10. We have heard Shri Dessai, learned Senior Counsel for the appellants and Shri Pravin Faldessai, learned Additional Public Prosecutor for the respondents-State.

11. The learned Senior Counsel for the appellants took us through the evidence of the prosecution witnesses, more particularly, through the evidence of PW 8 - Ajay Raul, who testified that after completing his night duty when he returned to the room of the appellants on the next day morning at 6.30 a.m. the door was found open when he pushed it and noticed the deceased sleeping on the floor and the appellants were on the bed. It is argued that if that be so and also, in view of the fact, as deposed to by the prosecution witnesses, that the relations between the appellants and the deceased were cordial, there was no question of the appellants committing murder of the deceased. Merely because the deceased was found dead in the room of the appellants, sans motive, it cannot be said that the appellants had any common intention, more particularly, appellant no.2, who is real sister of the deceased to eliminate him. The learned Senior Counsel placed a useful reliance on a case law reported in **(1984) 4 SCC 116 (Sharad Birdhichand Sarda Vs. State of**

Maharashtra) on the aspect of circumstantial evidence and **Sarwan Singh Rattan Singh Vs. State of Punjab** reported in **AIR 1957 SC 637**. The learned Senior Counsel has also argued that the conduct of the appellant nos.1 and 2 throughout is also a relevant and important factor as neither they left the spot nor tried to destroy the evidence. Had they been involved in the crime, they would not have remained on the spot.

12. On the other hand, the learned Additional Public Prosecutor, supported the impugned judgment of conviction by stating that from the circumstances proved on record and in view of Section 106 of the Indian Evidence Act, the prosecution has proved beyond doubt that the deceased was murdered by none other than the appellants in the light of the fact that they especially had a knowledge as to how the deceased died in their room. The appellants have not discharged the said burden.

13. The entire case of the prosecution revolves around circumstantial evidence. There is no eye witness to the incident in question. The learned Sessions Judge, in the impugned judgment and order, has framed four circumstances, however, broadly, there can be only two circumstances; namely, the "last seen theory" which may include burden under Section 106 of the Indian Evidence Act on the appellants as admittedly the dead

body was found in their room and secondly, motive behind committing the offence. There cannot be a circumstance of homicidal death as proof of homicidal death is a pre-requisite for an offence under Section 302 of IPC. The learned Sessions Judge has erroneously framed 'homicidal death' as one of the circumstances. Be that as it may.

14. Undisputedly, the deceased died a homicidal death, which has been substantiated from the inquest panchanama (Ex.24) and from the evidence of PW 10 - Madhu Sagun, who conducted post-mortem of the deceased. According to this witness, the deceased was a well built person of 5 feet height. Both eyes were closed with sub-conjunctival hemorrhage from both the eyes. There was no corneal opacities. There was a bruise on upper lip with contusions with mucosal aspect on right middle aspect of the upper lip, which was of red colour. Also, there was bruising contusions of 3 x 2 cms. over mucosal gingival aspects of mid-lower lip. Tip of tongue was tightly caught between upper and lower teeth. There were food particles seen over nostrils. There was bruise of 1/4th x 1/4th cms. over tip of nose. Nasal cartilage was reddish.

15. He had also noticed the following external injuries:-

"1. a patterned pressure abrasion of the

ligature mark seen around the neck having circumferential length of 39 cms. and a width of 2 & ½ cms. This mark was placed transversely around the neck. Over the neck front, it was situated below thyroid cartilage 10 cms. below chin mentis and 4 cms. above supra sternal notch. On the right side of the neck, it is situated 7 cms., below right angle of mandible and 6 cms., below right mastoid process. On the left side of neck it is situated 6 cm. Below left angle of mandible and 5 cms., below left mastoid process. Over nape of neck, it is situated 2 & ½ cms., below scalp hairline. It was more prominent over front and back of neck and also on left side of the neck. The base of the mark was pale in colour with red, fresh ecchymosed margin. Base of the mark shows vertically placed equidistant pattern rectangular type of imprint mark seen super imposed with another ½ cm width while band type of imprint seen transversely placed and running around the neck. More prominent also on the front of neck. Over the right posterior angle of neck there is a transversely curved imprint mark of 5 cms. X ½ cm., seen within the base of this mark. There was underlying extravasation of blood. There was underlying extravasation of blood . This injury was a ligature mark and ante mortem in nature.

2. Bruise, red with swelling with 1 x 1 cm. over

upper lip right mid aspect.

3. *Bruise red of $\frac{1}{4} \times \frac{1}{4}$ cm. over tip of nose.
(Internal findings of injury nos. 2 and 3 have already been described).*

4. *grazed abrasion red 2×2 cms. over outer aspect of left forearm upper $\frac{1}{3}^{\text{rd}}$ just below the elbow.*

5. *grazed abrasion red 2×2 cms. over outer aspect of left forearm upper $\frac{1}{3}^{\text{rd}}$.*

6. *grazed abrasion red 3×2 cms. over right knee front.*

7. *grazed abrasion red 3×2 cms. over left knee front.*

8. *grazed abrasion red 2×2 cms. over lower leg lower $\frac{1}{3}^{\text{rd}}$ front aspect.*

9. *grazed abrasion red 3×2 cms. over outer aspect of left knee.*

Injury nos. 2 to 9 were caused by blunt object or weapon and were ante mortem in nature and fresh at the time of death".

Internal examination findings are recorded on page nos. 5 and 6 in which extravasations of external injuries were seen at relevant internal organs such as thyroid at neck

and petichial hemorrhages for the lungs. There was solid food particle of 105 gms with rice and curry like matter was present in stomach with some fermented like colour.

16. Both autopsy Surgeons opined that approximate time since death was within six hours of last solid food intake and within 24 hours of preservation of the dead body at the GMC Morgue. He further opined that the cause of death was asphyxia as a result of compression of neck, mouth and nose, vide injury nod. 1, 2 and 3 respectively, which were ante-mortem in nature and fresh at the time of death. It is also categorically testified by PW 10 - Madhu Sagun that injury no.1 in the form of ligature mark is possible by a leather belt if the same is entangled around the neck. He further volunteered that the said belt was pressed over the beads of the necklace and, therefore, there was an impression of beads appearing on the neck.

17. Once it has been proved that the deceased died a homicidal death, the next important question would be whether the appellants can be said to be responsible for intentionally and knowingly causing the death of deceased as admittedly the deceased had visited their house on 4.1.2012 where he had consumed liquor and food along with appellant no.1 and spent intervening night of 4.1.2012 and 5.1.2012 at their house? The

appellants have also admitted the fact of deceased spending night in their house in the statements under Section 313 of the Code of Criminal Procedure, however, their defence was of false implication. According to the prosecution, it has proved the "last seen together" theory and further that the appellants have failed to discharge the burden under Section 106 of the Evidence Act. The law is well settled on the important aspect of "last seen together" theory by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 (4) SCC 116**, wherein the golden principles culled out based on circumstantial evidence can be enumerate as follows:-

"1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude every possible hypothesis except the one to be proved.

5. There must be a chain of evidence so complete as

not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

18. It would, therefore, be essential to scrutinise the evidence adduced by the prosecution in view of aforesaid principles.

19. PW 2 - Dharmaprasad Oli, who is also a relative of the deceased and the appellants and acted as a panch witness on the inquest panchanama testified that on 5.1.2012 at about 1.30 p.m., he received a phone call from his brother Prakash Oli, who informed about the death of deceased Premkumar. When he reached the house he noticed that the deceased lying in a supine position and the appellants were also present over there. PW 3 - Tej Vikarm, who is the cousin of the deceased testified that on 5.1.2012 around 11.00 a.m., he received phone call from appellant no.1 stating that the deceased had been to his house on the previous day and thereafter he was found dead in the house. He also apprised PW 3 - Tej Vikarm that he and deceased had consumed liquor and that the deceased had already consumed liquor when he arrived at his house. When this witness reached the house of the appellant from Bicholim he noticed a crowd in front of the room. On entering the room, he noticed the deceased

lying in the room. He, therefore, contacted the Police Station, Panaji and informed about the incident.

20. Almost all the prosecution witnesses especially the relatives of the deceased and the appellants including the defence witness namely the real sister of appellant no.1 and the wife of the deceased categorically deposed that the relations between the appellants and the deceased were very cordial right from their childhood not only as close relatives but as friends which, at the first place, totally rules out any motive behind the commission of the offence. It is the contention of the appellants that after consuming liquor and having dinner on the night of 4.1.2012 they had a long conversation. Thereafter, the appellants slept on the bed situated in a small room, which was admeasuring about 2.93 metres x 3.96 metres, as per the evidence of PW 7 - Parag Phadte, who works as a Draftsman in PWD and had drawn the sketch of the spot as per the request of the Investigating Officer. According to the appellants, they woke up early in the morning. Appellant no.1 brushed his teeth and thereafter both of them left the house after taking their breakfast for their work at about 8.00 a.m.

21. PW 8 - Ajay Raul, who is the brother of appellant no.1, has also supported the case of the appellants by deposing

that the deceased had visited the house of his brother in the evening hours on 4.1.2012. He left for duty at around 9.00 p.m. as he was working as Security Guard at a bungalow in Dona Paula area. According to PW 8 - Ajay Raul, when he returned from duty on the next morning at around 6.30 a.m. and when he pushed the door, the same was found open. He noticed the appellants sleeping on the bed and the deceased sleeping on the floor. After having his breakfast, he left the house at around 7.00 a.m. to attend his duty at Dona Paula. If the door was already opened from inside, the possibility of an intruder in the house cannot be totally ruled out, which circumstance cannot be easily brushed aside. At about 12.00 hours, he received phone call from appellant no.1 that the deceased was giving no response when appellant no.1 tried to wake him up and, therefore, called this witness immediately. From the evidence of this witness, it appears that when he returned home early in the morning, the appellants as well as the deceased were sleeping in the room. It is pertinent to note that as per the appellants when they returned back from their respective work, they noticed the deceased still sleeping on the floor. This conduct of the appellants returning from the work speaks volumes and would indicate that perhaps they were not the real assailants for the simple reason that had they been involved in the offence, normally they would not have returned back; rather they would have attempted to conceal

their presence or destroy the evidence. On the contrary, appellant no.1 telephonically informed his brother PW 8 - Ajay Raul and others of the incident. The learned Sessions Judge appears to have misdirected himself by observing that the door of the room was latched from inside in total ignorance of PW 8 - Ajay Raul. The prosecution has, therefore, failed to establish this important circumstance.

22. No doubt, the deceased was in the company of the appellants with whom he had dinner and also consumed liquor with appellant no.1 would not in itself indicate that the appellants were involved in the murder. The conduct of the appellants while leaving the room early in the morning without waking the deceased up is quite obvious as on the earlier night he had consumed liquor and, therefore, according to the appellants, they allowed him to sleep and left for their respective work. This particular circumstance does not exclude every possible hypothesis and gives scope for some doubt or suspicion creeping in as it being a case of circumstantial evidence every possible hypothesis consistent with innocence should be excluded. The possibility of another person entering into the room during night hours, therefore, cannot be totally ruled out in the light of the fact that there was no reason for the appellants to keep the door of the room open from inside had they been real culprits. The

prosecution has not explained this aspect.

23. Appellant no.2 is the real sister of the deceased; whereas the widow of the deceased is the real sister of appellant no.1. Widow of the deceased who came to be examined as a defence witness made it crystal clear that the deceased and appellant no.1 were childhood friends and, in fact, it was appellant no.1, who arranged her marriage with the deceased. She also deposed that the relations between the deceased and appellant no.1 were very cordial and friendly since beginning.

24. Section 106 of Indian Evidence Act contemplates that when any fact is especially within the knowledge of any person, the burden of proving that the fact is upon him. The Hon'ble Supreme Court in various cases while dealing with the aspect of "last seen together" has observed that if a person was last seen with the deceased, he must offer an explanation as to how and when he parted company. The explanation must appear to the Court to be probable and satisfactorily. If he does so, he must be held to have discharged his burden. But if he fails to offer explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him under Section 106 of Indian Evidence Act. Here in the case at hand, after having dinner, the appellants and the deceased went to bed. On the next

morning the appellants after having their breakfast, left the house and returned back. On the basis of this circumstance, it can be safely inferred that after going to the bed till the next afternoon the appellants were not aware of the fact that the deceased in fact had died in their house. The door of the room was also not bolted from inside. Thus, the appellants had parted the company of the deceased in the morning till then they were unaware about his death. Had there been any common intention or pre-arranged plan of the appellants in eliminating the deceased during the night hours itself, they would not have returned back to their room. The appellants have, therefore, discharged the burden in view of their statements under Section 313 of Cr.P.C. which finds full corroboration from the testimony of PW 8 – Ajay Raul. The explanation offered by the appellants can be said to be probable and acceptable.

25. It is a settled principles of law that in a case, which rests on a circumstantial evidence, if the accused fails to offer any reasonable explanation in discharge of the burden as per section 106 of Evidence Act, that may provide an additional link in the chain of circumstances proved against him. However, Section 106 of the Indian Evidence Act, does not shift the burden of proving a criminal charge, which is always upon the prosecution. The learned Sessions Judge, in the impugned judgment, on one

hand, while discussing the motive as one of the circumstances reached a conclusion that the prosecution has failed to prove any specific motive behind the commission of the offence by the appellants but accepts that the prosecution has adduced positive, cogent and reliable evidence and, therefore, the question of motive lost its importance. This observation of the learned Sessions Judge is erroneous in the light of the discussion made hereinabove, who has failed to correctly appreciate the evidence. In cases of circumstantial evidence, motive assumes significance for the reason that absence of motive would put the Court on its guard and cause it to scrutinise each piece of evidence closely in order to ensure that suspicion, omission or conjectures do not take place of proof. As discussed herein above, there are suspicious circumstances and the evidence is neither cogent nor reliable and, therefore, sans motive, it would be difficult to hold the appellants guilty for committing the murder of the deceased.

26. It is the case of the prosecution that the appellants in furtherance of their common intention eliminated the deceased. Section 34 of IPC contemplates a constructive liability wherein there is participation of more than one person in an offence. The main feature of this Section is the actual participation of more than one person, who must be physically present at the actual commission of the offence, acting in concert in pursuance of a

pre-arranged plan. There is no iota of evidence against appellant no.2 whose conduct otherwise ought to have been restraining her husband - appellant no.1 from killing her real brother. This is significant in the light of the admitted fact that the relations were absolutely cordial. There is no question of appellant no.2 sharing any common intention with the husband as there is nothing to suggest to that effect. If appellant no.2 had a pre-arranged plan with her husband to kill her brother, she perhaps would not have allowed the dead body to remain in the room itself for the whole night till 12 O'clock on the next day. The benefit of doubt, therefore, needs to be given to both of them. The presence of appellant no.2 on the spot, by itself, cannot prove common intention. The inference regarding common intention is required to be deduced from all the relevant circumstances. There is neither any evidence in the form of actual assistance to appellant no.1 nor any evidence to show that she had any knowledge about the alleged act of her husband.

27. There is no doubt that the deceased died due to strangulation, in view of the fact of ligature mark on his neck which resulted into asphyxia. However, the prosecution has failed to establish that it was appellant no.1 who had voluntarily produced his belt with which he alleged to have strangled the deceased. PW 4 Ziya Khazi, who acted as panch witness deposed

that on 19.1.2012 that is about 15 days after the incident, he was called at Panaji Police Station and was asked to sign a document. The appellants were not shown to them. He signed the document without knowing its contents nor anything was explained to him. Though, this witness has turned hostile, the prosecution has failed to elicit anything from him to suggest that he gave false evidence because the disclosure panchanama (Ex.52) indicates that it was recorded on 19.1.2012. In his cross-examination by the defence, he deposed that a belt and a pant were already packed in an envelope as informed by them to a policeman and thereafter they were asked to sign the envelope. There was no occasion for the witnesses to see the belt or pant. The prosecution has, thus, failed to prove the discovery under Section 27 of the Evidence Act.

28. Strangely enough PW 14 - Uttam Raul Desai, a Police Inspector attached to Panaji Town Police Station, testified that on 19.1.2012 he conducted disclosure panchanama in presence of two panch witnesses namely PW 4 - Ziya Khazi and PW 5 - Sheikh Abdulla. It is not his evidence that the appellants were in police custody nor there is any evidence to show that the appellant no.1 volunteered to give a statement, which is in clear breach of Section 27 of the Evidence Act. He further deposed that appellant no.1 disclosed that the belt used by him for commission of

offence was attached by the doctor during his examination, along with his clothes, which means the belt was not produced by the appellant. There is no evidence as to whether the Investigating Officer had thereafter attempted to collect the said belt from the Medical Officer. If there was no belt produced by the appellant on 19.1.2012 then the evidence of PW 4 Ziya Khazi that they were asked to sign a sealed envelope appears to be true as the signature must have been obtained on some envelopes. Therefore, the prosecution has failed to prove the discovery under Section 27 of the Indian Evidence Act.

29. There is no doubt and its a matter of regret that the murder of the deceased should go unpunished. There may be an element of truth in what the prosecution story suggests, however, considering all the facts and circumstances on record as a whole and in view of several lacunae, the prosecution story may be true but between "may be true" and "must be true" there is inevitably a long distance to travel and whole of this distance must be covered by legal, reliable and unimpeachable evidence in which, the prosecution has miserably failed.

30. We are, therefore, of the considered view, that the prosecution has failed to bring home the guilt of the appellants due to which they are entitled for a benefit of doubt. The

impugned judgment of conviction, therefore, warrants interference in appeal. We, therefore, pass the following order:-

Order

1. Criminal Appeal Nos.5/2016 and 6/2016 are allowed.
2. The appellants are acquitted of the offence punishable under Section 302 read with Section 34 of IPC.
3. Fine amount, if paid, be refunded to the appellants.
4. The appellants be set at liberty forthwith, if not required, in any other case.
5. The order as regards disposal of muddemal property is maintained.

PRITHVIRAJ K.CHAVAN, J.

C.V.BHADANG, J.

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