

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 247 OF 2017

Anil s/o Kundlik Korde,
Age 37 years, Occupation Nil,
R/o Jarud Tq. Dist. Beed.

...Appellant

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station, Beed (Rural)
Tq. Dist. Beed.

...Respondent

Mr. N. D. Sonawane, Advocate for appellant.
Smt. V. S. Choudhary, Addl. Public Prosecutor, for respondent/
State.

WITH

CRIMINAL APPEAL NO. 416 OF 2016

Gorakh Laxman Chadar,
Age 47 years, Occupation Agri.,
R/o Bhatsangavi Tq. Dist. Beed.

...Appellant

Versus

1) The State of Maharashtra,
Through : Police Inspector of Rural
Police Station, Beed Dist. Beed.

2) Data s/o Bhagwan Dhere,
Age 36 years, Occupation Agri.,
R/o Mangewadi Tq. Patoda
Dist. Beed.

...Respondents

Mr. A. L. Kanade, Advocate for appellant.
Smt. V. S. Choudhary, Addl. Public Prosecutor, for respondent/

State.

Mr. A. M. Gaikwad, Advocate for respondent No.2.

WITH

CRIMINAL APPEAL NO. 375 OF 2016

Sitabai w/o Narayan Dahe,
Age 40 years, Occupation Household,
R/o Dhanora Road, Beed.
Tq. Dist. Beed.

...Appellant

Versus

The State of Maharashtra.

...Respondent

Mr. A. S. Radikar, Advocate for appellant.
Smt. V. S. Choudhary, Addl. Public Prosecutor, for respondent/
State.

**CORAM : T. V. NALAWADE, AND
SMT. VIBHA KANKANWADI, JJ**

**Date of reserving
the Judgment : 24th September, 2018.**

**Date of pronouncing
the Judgment : 24th November, 2018.**

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. All these appeals have been filed to challenge the Judgment and order passed in Sessions Case No. 37 of 2015 by learned Sessions Judge, Beed dated 06-05-2016, and therefore they are proposed to be disposed of by this common Judgment.

2. Criminal Appeal No. 247 of 2017 is filed by original accused No.1. He has been held guilty and convicted for the offences punishable under Section 302 read with 34 of the Indian Penal Code. He has also been held guilty for committing offence punishable under Section 201 of Indian Penal Code. Criminal Appeal No. 375 of 2016 is filed by original accused No.2. She has been also held guilty of committing offence punishable under Section 302, 201 read with 34 of the Indian Penal Code. Criminal Appeal No. 416 of 2016 has been filed by one Gorakh Chadar, who is the father of deceased Vaijnath, against original accused No.3 who has been acquitted from the charge of offence punishable under Section 302, 201 read with 34 of Indian Penal Code. All the parties are referred to as per their nomenclature before the trial Court.

3. The prosecution has come with a case that ;

Accused No.1 was working in Dhaba run by one Kishan Borwade under the name and style as "Sindphana Dhaba" on Beed to Bhat-Sangvi road. Deceased Vaijnath Chadar was an auto rickshaw driver. He used to visit the said Dhaba occasionally. He developed acquaintance with accused No.1. It is the prosecution story that, though accused No.1 was a married person, he had illicit relations with accused No.2 who was residing at Govind Nagar, Beed. Accused No.2 was having a daughter by name Jyoti who was of

marriageable age. Deceased used to visit the house of accused No.2 with accused No.1 and then he developed love relation with Jyoti. Deceased Vaijnath and Jyoti were desirous of performing marriage but it was opposed by accused No.1 and 2. It is also the prosecution story that, deceased Vaijnath was frequently visiting and insisting accused No.1 and 2 that they should give permission to his marriage with Jyoti. Accused No.2 had contacted the relatives of deceased and told them that they should give an understanding to deceased not to harass her or her daughter otherwise he would be killed.

4. It is the further prosecution story that, deceased had visited the house of accused No.2 on 05-12-2014 and had a quarrel with accused No.1 and 2 on the count of proposed marriage between him and Jyoti. At that time; both the accused persons i.e. accused No.1 and 2 forced him to drink liquor in which they had mixed insecticide namely Rogor and the mixing was without the knowledge of deceased. As a result of consumption of such liquor, deceased expired. While making him to drink liquor the accused persons had used force resulting in injury to the deceased. After deceased expired, accused No.1 and 3 put the dead body in fertilizer bag (polythene bag used for storing fertilizers), and it was taken on motorcycle during night hours. The said fertilizer bag containing the dead body was dumped in a hilly area situated near pond known as Khandi Pazar Talav which was in Charatha Shivar. Thereafter the

accused No.2 disposed of the liquor bottle, insecticide bottle in an open space nearby to her house.

5. PSI Gulab Khan Pathan was on Bandobast duty at Pali on 06-12-2014. He received information about the dead body, and therefore, visited the spot with his staff and panchas. He executed panchanama of that spot and then carried out the inquest panchanama. He had seized articles from that place, and thereafter, sent the dead body for post mortem. He lodged First Information Report against unknown person. At the time of search of the person of the deceased, they found his identity card disclosing his name, and therefore, the fact was informed to his relatives. It is further prosecution story that, API Bharat Raut had received information about the involvement of accused No.2 and therefore he made inquiry with her. She had then showed accused No.3 as well as accused No.1. All the three accused persons were then arrested by API Sanjeev Raut. Thereafter, while in police custody accused No.1 and 2 gave disclosure and they discovered fertilizer bag, the liquor bottle and pesticide bottle in presence of panchas respectively. The seized articles, including the viscera, which was preserved for analysis, were sent to the chemical analyzer. Statements of the witnesses were recorded. Two mobile phones were seized. Call details were fetched and after the completion of the investigation, charge-sheet was filed.

6. After the accused persons were produced before the learned trial Court, charge was framed. The contents of the charge were read over and explained to them in vernacular, they pleaded not guilty. Prosecution has examined in all 20 witnesses in order to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Sessions Judge has held the accused No.1 and 2 guilty of committing offence punishable under Section 302 read with 34 of the Indian Penal Code. They have been sentenced to suffer imprisonment for life and to pay fine of Rs.2000/-, in default, to suffer rigorous imprisonment for six months for committing offence punishable under Section 302 read with 34 of the Indian Penal Code. Further they have been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/-, in default, to suffer rigorous imprisonment for three months for committing offence punishable under Section 201 read with 34 of the Indian Penal Code. Accused No.3 has been acquitted from all the charges, hence these appeals have been filed.

7. Heard learned advocate Mr. N. D. Sonawane for appellant in Criminal Appeal No. 247 of 2017, Advocate Mr. A. S. Radikar for appellant in Criminal Appeal No. 375 of 2016, learned advocate Mr. A. L. Kanade for appellant in Criminal Appeal No. 416 of 2016 and learned Addl. Public Prosecutor Ms. V. S. Choudhary for State in all

the appeals. Perused the record and proceedings.

8. It has been vehemently argued on behalf of original accused No.1 that, the prosecution has come with a case that, there was love affair between deceased and daughter of accused No.2 and the marriage proposal by deceased was opposed by accused No.2. According to the prosecution deceased was called in the house of accused No.2 on 05-12-2014. Accused No.1 and 3 were called at that place, thereafter Rogor was mixed with alcohol and it was administered to deceased or he was made to consume the same. The prosecution has not disclosed as to where Jyoti was during all these events. She has not been examined by the prosecution for the reasons best known to it. The prosecution case is based on circumstantial evidence, and therefore, as laid down in ***State of U.P. Versus Shyam Behari and Anr.***, reported in ***2009 AIR (SCW) 5258***, such evidence should satisfy three tests namely ;

"(1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established :

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else."

9. Similar view was also taken in, ***Sk. Yusuf Versus State of West Bengal***, reported in **2011 (11) SCC 754**, and ***Sahadevan and Anr. Versus State of Tamil Nadu***, reported in **2012 CrLJ (SC) 3014**. In order to prove the said circumstantial evidence the prosecution has relied on the testimony of P.W.9 Karbhari Chadar who was the uncle of the deceased and is stated to have seen the accused No.1 taking the fertilizer bag on his motorcycle. The other circumstance is the discovery under Section 27 of the Indian Evidence Act. The scrutiny of the said evidence would show that, they are not at all reliable and have not been proved to the extent of beyond reasonable doubt. In fact the testimony of P.W.9 Karbhari Chadar is not wholly believed by the learned trial Court. After so many days of incident, he has stated that he had seen accused No.1 on motorcycle taking fertilizer bag with an unknown person. In clear words in his examination he has stated that, there was no suspicion in his mind at that time. He has not disclosed the said fact to anybody that, he had seen something carried by accused No.1 in a fertilizer bag with unknown person at night time. His so called discovery of so many days raises doubt. The inspection of the house of accused No.2 would show that, no incriminating article was found from the house. As regards evidence in the form of discovery is concerned, accused No.1 is said to have discovered the fertilizer bag. It is stated that, it was disposed of near petrol pump in

Ukhanda Shivar. The description of the fertilizer bag would show that, it was not smelling any insecticide nor it had blood stains.

10. Further submission is made that it is stated that, threads of the said fertilizer bag were found on the dead body and those threads are matched with the threads of the fertilizer bag. Such evidence is rather unbelievable. The post mortem report dated 06-12-2014 shows that, no alcohol was found in the stomach of deceased. So also the Chemical Analysis report does not say that, there were traces of alcohol in the blood of the deceased. The Chemical Analysis report shows that, traces of Rogor were found on the clothes of accused No.1 but in that respect the fact that is required to be noted is that, the accused No.1 was arrested on 07-12-2014 and his clothes are stated to have been seized after two days. It is rather impossible that with the traces of Rogor on his person, the accused No.1 would have put the same clothes on his person for about two days.

11. Further submission is that prosecution has not adduced any evidence to show that, accused No.1 had gone to the house of accused No.2 on that particular day at particular time. Nobody has been examined to show that, he had seen the accused No.1 bringing fertilizer bag from the house of accused No.2. Even the investigating officer has not produced any concrete evidence on

record to show that what was the exact relation between accused No.1 and 2. Merely because the witnesses were saying that he had illicit relations with accused No.2, that fact cannot be taken as gospel truth. In fact there was no motive for accused No.1 to commit murder of deceased Vajinath. Jyoti was not his daughter. There was no reason for him to oppose the marriage proposal given by the deceased to Jyoti. In that respect testimony of Jyoti would have been important but she has been kept away from the witness box. No positive evidence has been led regarding the glasses which are stated to be seized from the house of accused No.2. There was no recovery of mobile from accused No.1. There is no evidence regarding purchase of liquor or Rogor by him. Under such circumstance when there was absolutely no evidence to connect him with the crime, he ought to have been acquitted.

12. It has been submitted on behalf of original accused No.2 that, she is adopting the arguments advanced by accused No.1 on the point of circumstantial evidence. The piece of evidence which is against accused No.2 is that she had mobile having Sim Card of Vodaphone. However, those call details by itself will not prove commission of any offence. As per the prosecution story in all three glasses as well as motorcycle were seized from the house of accused No.2 but the report in respect of glasses that is traces in the glass have not been produced by the prosecution. Thus when there is

suppression of evidence, it cannot be stated that, accused No.2 had committed any offence in furtherance of common intention.

13. The learned advocate for the informant / father of the deceased has stated that, in presence of panchas accused No.1 has made a statement at Exhibit 45 that, accused No.3 was with accused No.2 at the relevant time. His presence cannot be said to be without any intention. He has taken active part and the said statement of accused No.2 is admissible. Even at the time of discovery when discovery was at the instance of accused No.2 in which she had disclosed the involvement of accused No.3. Presence of an unknown person with accused No.1 has been disclosed by P.W.9 Karbhari. When evidence showed that, accused No.3 had also taken active part in the commission of the crime, he ought to have been held guilty of committing murder and then causing the evidence to disappear.

14. Learned advocate appearing for accused No.3 submitted that, though it is stated that, accused No.1 has stated that accused No.3 was also involved in the crime, yet there is no evidentiary value to this statement, and therefore he has been rightly acquitted.

15. The learned Addl. Public Prosecutor submitted that, the bottle of Rogor as well as the bottle of liquor has been recovered at the instance of accused No.2. The corresponding evidence is in respect

of Chemical Analysis report. It is stated that, threads of fertilizer bag were found on the dead body. They were gathered and sent for Chemical Analysis. The call record would show that, accused No.2 was using two mobiles of different companies. It can be seen from the CDR that, there were multiple calls between 01.12 p.m. to 05.12 p.m. In respect of motive for accused No. 1, it can be seen from the evidence that all the people of that village knew the fact that there was illicit relation between accused No.1 and 2. Further link has been established in the form of P.W.9 Karbhari who was the uncle of the deceased, P.W.10 Kisan Borwade, Dhaba owner had stated that, deceased used to come to his Dhaba and used to have a talk with accused No.1. Statement of Jyoti was recorded but unfortunately she has not been examined, that does not affect the prosecution case. Even accused No.3 was also involved in the crime because it would have been impossible for accused No.1 to take the dead body which was kept in the fertilizer bag on motorcycle and then dump it near the Pazar Talav.

16. With the backdrop of these submissions, we are required to see the medical evidence first. P.W. 17 Dr. Dr. Mahadev Chinchole had conducted the post mortem. He had found three injuries at the time of external examination. One was abrasion over right neck, another was abrasion over face lateral canthous of eye on left side, and according to the post mortem these two are the ante mortem

injuries, and third was abrasion over right chest which is stated to be post mortem injury. He has also done the internal examination which showed that, major organs were congested. Another fact that is required to be simultaneously considered is that, in the inquest panchanama as well as the panchanama of the spot where the dead body was found showed that, there was a strong smell to the body. The said fact is also noted in post mortem report. Further it also says that, the clothes of the deceased were soiled with omitting and dry. He had preserved the viscera and had initially given the post mortem report Exhibit 68 and after the Chemical Analysis report was perused, the final certificate has been given on 28-01-2016 stating that, the probable cause of death is "Cardeorespiratory arrest due to organo- phosphorous insecticide dimethoate (Rogor) poisoning". In his cross-examination he has stated that, the provisional death certificate was issued without expressing any opinion regarding probable cause of death. The fact of homicidal death is not much disputed in the cross-examination. Therefore, on the basis of the medical evidence it can be certainly said that, death of Vaijnath was homicidal in nature. Now it is required to be seen as to whether the accused were the authors of the crime.

17. P.W. 9 Karbhari Chadar and P.W.11 Balnath Chadar have stated that, accused No.2 is the wife of accused No.1. As per the prosecution there is illicit relation between accused No.1 and 2.

These witnesses at once stretch say that she is wife and at another place another witness says that she is the second wife. However, it appears that, the said information of these witnesses is hearsay. They are all related to the deceased. No independent witness has been examined in order to prove the exact relationship between the accused No.1 and 2.

18. As per the testimony of P.W.9 Karbhari Chadar, P.W.10 Borwade, P.W.11 Balnath Chadar and P.W.12 Ravindra, there was love affair between Jyoti and deceased and it was not approved by accused No.1 and 2. Unless the relationship between accused No.1 and 2 is proved, it cannot be said that there was a reason for accused No.1 to oppose the love affair between deceased and Jyoti. Even if for the sake of arguments it is accepted that, he had the reason to oppose their relationship, we are required to see whether he could have joined hands with other accused persons in eliminating deceased. As regards accused No.3 is concerned, nobody has stated that he has any kind of relationship with accused No.1 and 2 and he could have also joined the hands of accused No.1 and 2 in committing the crime. In other words, what was the motive for accused No.3 to join hands of accused No.1 and 2, has not been disclosed by these witnesses. It will not be out of place to mention here that the other witnesses are either the panch witnesses or police witnesses or nodal officers in order to prove the other pieces

of evidence. Therefore, the above said four witnesses were the only persons who could have explain the motive for accused No.3. Without any evidence inference cannot be drawn that he had helped accused No.1 and 2 while committing murder and then disposing of the dead body by putting it in fertilizer bag and transporting it on the motorcycle of accused No.1. Therefore, at this stage itself a finding can be given that the prosecution has not proved involvement of accused No.3, and therefore the trial Court has rightly acquitted accused No.3. The appeal filed by the father of the deceased challenging the acquittal of accused No.3 deserves to be dismissed *in limine*.

19. P.W.9 Karbhari Chadar, P.W.11 Balnath Chadar and P.W.12 Ravindra Vaidya who are the uncle and cousin of deceased have stated that, accused No.1 and 2 had opposed the marriage of Jyoti with deceased and deceased was visiting frequently to the house of accused No.2. P.W.9 Karbhari has stated that, three to four days prior to the incident he had received call from accused No.1 stating that, he should ask deceased Vajinath not to visit his house otherwise he would be killed. Except his said statement there is nothing on record. The Investigating Officer has not collected his phone number and has not produced on record the call details. In fact the witness was not even sure as to exactly on which day he had received phone call from accused No.1 and at what time. He

has also not stated as to whether he had conveyed the sentiments of accused No.1 to Vaijnath or not. That means, even P.W.9 Karbhari did not take whatever accused No.1 had allegedly conveyed to him, seriously. Therefore, we cannot give any kind of importance nor it can be connected to the death of Vaijnath.

20. P.W.11 Balnath Chadar and P.W.12 Ravindra Vaidya have also harped upon the fact that there was love affair between Jyoti and Vaijnath. Except their bare statement there is nothing on record. The best witness to say all these things was Jyoti. Though her statement has been recorded, she has not been examined. Therefore, benefit of this fact should go to the accused persons.

21. P.W.9 Karbhari Chadar has also been posed as the witness who had seen accused No.1 going along with one unknown person and carrying white fertilizer bag and proceeding towards Charata at about 09.00 p.m. on 05-12-2014. It is to be noted that, he says that, he was on duty at a farm at that time. In his cross-examination he has stated that, he was doing his duty at a goat shed which was at a distance of about 20 to 25 feet from the road side. In cross-examination he had also stated that, he had not expressed any doubt against anybody because he says that he had also seen the dead body near Khandi i.e. Pazar Talav at about 4.30- to 5.00 p.m. That means, he had in fact not even taken the fact

that accused No.1 was carrying something on his motorcycle seriously but now he wants to connect the same with the crime. The witness appears to be a very chance witness. He has not produced anything on record to show that, he was serving as watchman at the goat shed.

22. All these four witnesses i.e. P.W.9 Karbhari Chadar, P.W.10 Borwade, P.W.11 Balnath Chadar and P.W.12 Ravindra Vaidya have tried to say that, accused No.1 and 2 were annoyed with the behaviour of Vaijnath, and therefore, they intended to eliminated him. However, nobody has stated that, parents of Vaijnath were anyway involved in the talks of marriage or they had the idea about the alleged behaviour of Vaijnath. If at all behaviour of Vaijnath was troubling accused No.1 and 2, especially accused No.2, then naturally she would have contacted parents of Vaijnath and not the uncles. Now the father of the deceased has come forward to file appeal but he was not examined before the trial Court. Under such circumstance a doubt is created as to whether the parents of deceased had the knowledge about the alleged love affair between Vaijnath and Jyoti or not. Further fact has come in the evidence of uncles and cousin of deceased that, the caste of deceased was different from the caste of Jyoti. It is stated that, it was the reason for which there was opposition by accused No.1 and No.2. It has not come on record that, in spite of differences of caste, Vaijnath

and his family were intending to accept Jyoti. Under such circumstance the alleged motive that has been projected appears to be concocted.

23. Now turning towards what had allegedly happened on that day; it is stated that, Vaijnath was called in the house of accused No.2. In order to prove this fact and also the fact that there were many calls in between deceased and accused No.2, the call details have been produced and they have been got proved through P.W. 18 Ravi Pardeshi, the Nodal Officer of Vodaphone company and P.W.19 Makrand Vidhans, the Nodal Officer of Telenor Company. Even if for the sake of arguments it is accepted that, there were previous calls between deceased and accused No.1, we cannot infer anything from the same. Both the mobiles which have been seized in this case are seized from accused No.2 and none of mobile is seized from accused No.1. P.W.19 Makrand Vidhans has given call details of phone No. 8625928391 which was standing in the name of accused No.2. According to him, his customer had received call of total 14 seconds at 7.23 hours on 01-12-2014 from the cell No. 9730383303. It is to be noted that, he has given call details of 9764866367. That phone number was also allotted to accused No.2. Mobile phone was seized from the spot where the dead body was found, however its number has not been mentioned in panchanama (Exhibit 31). On the contrary it is specifically stated that, there was no Sim Card in the

said mobile. The testimony of P.W.15 API Bharat Raut and P.W.20 API Sanjeev Raut does not say that, they had made enquiry regarding the missing Sim Card. What was the mobile number of the deceased has not been told, therefore there is absolutely no evidence to support the contention of the prosecution that, accused No.1 or accused No.2 had called deceased to the house of accused No.2.

24. P.W.15 API Bharat Raut has stated that, he had received information secretly on 06-12-2014 that, accused No.2 with accused No.1 and one more person had killed Vaijnath and they had carried the dead body on motorcycle. On this information he tried to search the house of accused No.2 but he found that, her house was locked. He got the information that, she went out of station. Thereafter, he visited her house on 07-12-2014 at about 08.00 hours and then she disclosed whereabouts of accused No.1. House of accused No.2 is stated to have been searched on 07-12-2014 in presence of panchas by P.W.20 API Sanjeev Raut. Important point to be noted is that, nothing incriminating has been found from that house. Neither P.W.15 API Bharat Raut nor P.W.20 API Sanjeev Raut have disclosed that when they had received concrete information on 06-12-2014 itself why they waited accused No.2 to come back. They could have taken search by breaking open the house in presence of panchas. Thus, except the alleged statement made before the police which is

inadmissible in nature, there is nothing on record to show that, accused No.1 and 2 had forcibly administered alcohol mixed with Rogor in the house of accused No.2.

25. The only incriminating circumstance on which it appears that, the learned trial Court has convicted accused No.1 and 2 are the discovery panchanamas. P.W.7 Dnyandev Gawali is the panch to the memorandum and discovery made by accused No.2 (Exhibit 45). It is stated that, she had disclosed the Rogor bottle as well as another glass bottle of 750 ml. with label Officer's Choice. It is stated that, both these articles were discovered by her from a open place near her house towards southern side from 'Vedi Babul' bush. The most important fact is that, there is no evidence to show that, the glasses which were allegedly seized from the house of accused No.2 were also not sent for the opinion of the fingerprint expert. It is stated in the panchanama that a statement was made by accused No. 2 that she had washed those glasses. But in order to have a cross check they ought to have been sent for the opinion of the fingerprint expert. Even if for the sake of arguments it is accepted that, the said discovery has been proved by prosecution under Section 27 of the Indian Evidence Act, that only circumstance cannot lead to her conviction because the entire chain cannot be said to have been proved only on the basis of one circumstance.

26. Prosecution is also relying on the testimony of P.W.8 Ramkisan Pokale who is the panch to the memorandum and discovery by accused No.1 (Exhibit 47). According to this witness and the prosecution story that accused No.1 has led the discovery of the fertilizer bag from a place near a petrol pump within Ukhanda Shivar. P.W.8 Ramkisan Pokale has stated that, after accused alighted from the vehicle near petrol pump, he went in eastern direction and at a distance about 100 meters there was a Nala with grass and a tree called 'Tembhurni'. From a place nearby that tree accused No.1 produced the fertilizer bag. It is stated that, it was hand stitched and torn by the side. Again at the cost of repetition it can be said that, if we consider that this discovery is proved yet when other pieces of evidence are not proved; only one circumstance cannot lead to the conviction of accused No.1. Much stress has been given by learned Addl. Public Prosecutor on the point that the threads which were found on the persons of dead body matched with the threads of the fertilizer bag. Prosecution has not come with a case that the said bag was having some unique material which could not have been found with any other fertilizer bag. Such kind of evidence cannot be equated to the DNA test which has its own scientific value. C.A. Report (Exhibit 90) would show that, Article No.8 was polythene gunny bag and Article 10 was whitish polythene thread in a polythene put in a packet. The analysis shows that, general and

specific chemical testing does not reveal any poison on Exhibits 08 and 10. As aforesaid the clothes of the deceased were stated to be having vomitus. How it could not have come with the contact with the polythene bag and then how there is no poisonous substance in the polythene bag is a question. Therefore, the said discovery even if for the sake of arguments it is accepted to be proved, yet does not establish any connection between the crime and the fact of death.

27. None of the neighbouring persons to the house of accused No.2 have been examined in order to show that, at least one of them were seen in the house of accused at the relevant time. P.W.16 Baliram Panchal was stated to be tenant of accused No.2. He has turned hostile. He was basically examined on the point that, there was love affair between Jyoti and deceased. It was not tried to be extracted from him that, either accused No.1, 3 and deceased were seen by him at that relevant point of time in the house of or around the house of accused No.2.

28. There is absolutely no evidence collected by the investigating officer as to from where the liquor was purchased, from where the Rogor bottle was purchased so as to connect the accused with the crime. Under such circumstance taking into consideration the principles laid down in respect of circumstantial evidence, in the above said rulings, it can be stated that the prosecution had

established guilt of accused No.1 as well as accused No.2. The learned trial Court has not appreciated the evidence properly and it appears that he got swayed away with the apparent discovery by accused No.1 and 2 and the testimony of P.W.9 Karbhari Chadar. The learned trial Court did not follow the principles laid down in the aforesaid decisions by Hon'ble Apex Court in order to assess circumstantial evidence. Under such circumstance the appeals filed by accused No.1 and 2 deserves to be allowed. For the aforesaid reasons, following order : -

ORDER

- 1) Criminal Appeal No. 247 of 2017 filed by accused No.1 Anil s/o Kundlik Korde is hereby allowed.
- 2) Conviction awarded to accused No.1 – appellant Anil s/o Kundlik Korde in Criminal Appeal No. 247 of 2017, in Sessions Case No. 37 of 2015, for the offences punishable under Section 302, 201 read with 34 of Indian Penal Code by learned Sessions Judge, Beed, on 06-05-2016 is hereby quashed and set aside.
- 3) Fine amount, if any, paid by him be refunded to him after the appeal period is over.
- 4) Criminal Appeal No. 375 of 2016 filed by accused No.2 – appellant Sitabai w/o Narayan Dahe is hereby allowed.

- 5) Conviction awarded to accused No.2 – appellant Sitabai w/o Narayan Dahe in Criminal Appeal No. 375 of 2016, in Sessions Case No. 37 of 2015, for the offences punishable under Section 302, 201 read with 34 of Indian Penal Code by learned Sessions Judge, Beed, on 06-05-2016 is hereby quashed and set aside.
- 6) Fine amount, if any, paid by her be refunded to her after the appeal period is over.
- 7) Criminal Appeal No. 416 of 2016 is hereby dismissed.
- 8) Both the appellants, that is, appellants in Criminal Appeal No. 247 of 2017 and 375 of 2016 to execute P.R. Bond of Rs.15,000/- each (fifteen thousand) and surety of like amount in compliance of Section 437-A of Code of Criminal Procedure.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vj gawade/-.