

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.366 OF 2013

Ganesh Balbhim Kshirsagar,
Age-26 years, Occu:Agril.,
R/o-Lohara, Tq-Lohara,
Dist-Osmanabad

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Satej S. Jadhav Advocate for Appellant.
Mr.S.W. Munde, A.P.P. for Respondent-State.
...

**CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.**

DATE OF RESERVING JUDGMENT : 11TH JULY, 2018.

DATE OF PRONOUNCING JUDGMENT: 18TH JULY, 2018.

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

1. This Appeal is directed against the

Judgment and order dated 17th August, 2013, passed by the Additional Sessions Judge, Omerga in Sessions Case No.11 of 2012, thereby convicting the accused-appellant - Ganesh Balbhim Kshirsagar for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer imprisonment for life and to pay fine of Rs.2,000/- (Rupees Two Thousand), and in default of payment of fine, to suffer rigorous imprisonment for three months. The trial Court also convicted the accused-appellant for the offence punishable under Section 201 of the I.P. Code and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (Rupees One Thousand), and in default of payment of fine, to suffer rigorous imprisonment for one month. Both the sentences were directed to be run concurrently. Hence this Appeal is filed by the Appellant challenging the conviction and sentence.

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

A) The accused-Appellant is originally resident of Lohara, Tq-Lohara, Dist-Osmanabad. He was married to deceased Akshata. After marriage, the accused along with his wife Akshata was staying at Chaufla Shikrapur, Pune. The accused was doing the work of supplying tiffins to the employees in the private company at Pune. However, his agreement with the company had expired and therefore, he became unemployed. The accused had no source of income, due to which, he addicted to consume liquor and indebted. Therefore, the accused was insisting his wife to bring money from her father and grand-father.

B) On 16th October, 2011, Balbhim Shivram Kshirsagar, resident of Lohara, at about 2.30 p.m., saw dead body of one unknown woman floating in the water of well in his field. Age of

said dead body was about 25 to 26 years. Said Balbhim Kshirsagar informed the said fact to Lohara police station. On the basis of information, A.D. No.29 of 2011 under Section 174 of the Code of Criminal Procedure came to be registered in Lohara police station. Police head constable Rajendra Jadhav had conducted inquiry of said A.D. During inquiry, he went to the said well and found dead body of a woman floating in the water. One liquor bottle of Royal Stag brand was also found on the spot. Mr. Jadhav seized said bottle in presence of the panchas. Then he took out said body from the well with the help of one Santosh Dube and Sheshrao Sarvade. Mr. Jadhav then prepared spot panchnama and also drawn inquest panchnama on the dead body. Thereafter he sent said dead body to the civil hospital, Lohara for postmortem. He received postmortem report on the next day and as per opinion of the doctor, the cause of death of said lady was "asphyxia due to strangulation". Therefore, Mr. Jadhav, police head

constable, lodged complaint of murder against unknown person and accordingly an offence was registered.

C) A.P.I. Mr. Andurkar then attached to Lohara police station had taken further investigation of said crime. Since the dead body was of unknown lady, Mr. Andurkar had got made announcement in the nearby villages on beat of drum for identification of the dead body and also published news in the news paper. Thereafter one Ashish Nannaware, who is brother of deceased and one Dinkar Gadhave went to Lohara police station, they identified photograph and clothes of the deceased. Accordingly, Mr. Andurkar recorded their statements. Then he arrested the accused on 4th November, 2011. During interrogation, the accused made disclosure statement that "Odhani/scarf" which was used for strangulation is thrown by him in the said well by tiding stone in it and he is ready to produce the said "Odhani". Accordingly,

the statement of accused was recorded in presence of two panchas. Then accused laid two panchas and police staff to the said well and one "Odhani" with stone was recovered from the said well which was seized by Mr. Andurkar under panchnama, in presence of two panchas.

D) Then, Mr. Andurkar recorded statements of various witnesses and after due investigation, found that it is the accused who has committed murder of his wife Akshata, by strangulation and then threw her dead body in the well with intent to disappear the evidence of murder. After completing the investigation, police filed charge-sheet against the accused in the Court of J.M.F.C., Lohara. In due course, the case was committed to the Court of Sessions.

E) A charge for an offence punishable under Sections 302 and 201 of the I.P. Code was framed against the accused and the contents of the charge

were read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried, with the defence of total denial and that of false implication.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted the accused-appellant for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer imprisonment for life and to pay a fine, as afore-stated. The trial Court also convicted the accused-appellant for the offence punishable under Section 201 of the I.P. Code and sentenced him to suffer rigorous imprisonment for two years and to pay a fine, as afore-stated. Hence this Appeal by the Appellant.

4. Mr. Jadhav, learned counsel appearing for the accused-appellant, submitted that there was no eye witness to the incident and case of the prosecution is based only upon the circumstantial

evidence. There is no direct evidence against the accused. He further submitted that the chain of circumstances on which reliance was placed by the prosecution has not been established beyond reasonable doubt. In support of his submissions, learned counsel placed reliance upon the exposition of law by the Supreme Court in the case of Nar Singh vs. State of Haryana¹. Learned counsel submits that PW-2 Dr. Balaji Bidwe, who conducted autopsy on deceased Akshata, has admitted in cross-examination that he cannot definitely say as to whether in this case death is homicidal, suicidal or accidental. Therefore, the prosecution has failed to establish that this is a case of homicidal death and there is no other possibility, hence the accused deserves benefit of doubt. He further submits that no reliance can be placed upon the recovery of Odhani at the instance of accused, as the witness to recovery panchnama is interested witness. He further submits that the

¹ AIR 2015 S.C. 310

dead body was fully decomposed and therefore identification of dead body is not conclusive.

5. Learned counsel further submits that the prosecution failed to prove that the deceased was last seen in the company of the accused. Akshata was not in exclusive custody of the accused, when the incident took place. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Ashok vs. State of Maharashtra². Learned counsel further submits that confessional statement of the accused before the police cannot be read in the evidence, as while recording the statement under Section 313 of the Code of Criminal Procedure, the accused has reciled from his confessional statement and denied that he has given any confessional statement. Learned counsel further submits that already report was filed by the accused that his wife Akshata was missing, but no steps in that regard

² (2015) 4 S.C.C. 393

were taken by the Investigating Officer. It is submitted that though five bus tickets were found in the purse of deceased Akshata, the investigating officer has not carried out proper investigation about the said tickets. Learned counsel further submits that one note (Exhibit-32) written by deceased Akshata was found in the house, which leads to reasonable inference that Akshata might have committed suicide due to frustration. Learned counsel further submits that on the basis of circumstantial evidence if two views are possible, the view which favours the accused, needs to be taken. He further submits that the trial Court has not properly appreciated the evidence brought on record and came to the wrong conclusion. In support of his submissions, learned counsel also placed reliance upon the exposition of law in the case of Sawal Das vs. State of Bihar³, Sahabuddin and another vs. State

³ AIR 1974 S.C. 778

of Assam⁴, Ram Das vs. State of Maharashtra⁵ and Narendra Singh and another vs. State of M.P.⁶

6. Learned A.P.P. appearing for the State submits that though the case of the prosecution is based upon the circumstantial evidence, the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt. He further submits that the accused has made extra judicial confession before the investigating officer, wherein he has clearly admitted that he has killed his wife by throttling her neck and thrown her dead body in the well water. He further submits that after considering the entire evidence on record, the trial Court has convicted the accused, and the findings recorded by the trial Court are in consonance with the evidence brought on record. He therefore, submits that the Appeal may be dismissed.

4 (2012) 13 S.C.C. 213

5 AIR 1977 S.C. 1164

6 AIR 2004 S.C. 3249

7. First we will consider the medical evidence. The prosecution has examined PW-2 Dr. Balaji Sambhajirao Bidwe. He deposed that on 17th October, 2011, he was working as a medical officer in Rural Hospital, Lohara. When initially dead body was referred to the hospital by police station, Lohara, it was unknown. He has conducted postmortem on the dead body which was of 25 years female. Punjabee dress was on the dead body and the clothes were wet with water. Condition of body was well nourished moderately built, old and decomposed. Rigour mortis were well developed all over body. PM lividity present over face, neck loins, thighs and lower extremities. Eyes were swollen, tongue protruding, mouth was open, teeth were intact. He found ligature marks all around neck below thyroid cartilage of breadth 4 cm. Said injury was ante-mortem. In his opinion, cause of death was "due to asphyxia due to strangulation". Accordingly he had issued PM

report (Exhibit-23). He further deposed that this is a case of homicidal death. The injury shown in Column No.17 of PM report may be possible by strangulation, by seized article-18 (Odhani/scarf). Tongue protruding presents in case of strangulation.

. During the course of cross-examination, PW-2 Dr. Balaji Bidwe admitted that in case of manual strangulation by other, there will be fracture of larynx, trachea and hyoid bone. He further admits that in such case scratches and bruises on face and neck also appear. He further stated that there may be death in case of accidental strangulation. It may happen that in case if highly intoxicated person sitting nearby well and while falling in the well loosing balance and if the scarf around his neck is pressed by jerk to his both hands, in that case wind pipe of his neck may block and he may die. He further admits that in such type of case, it may be an

accidental death. He further admits that in this case, he cannot say definitely whether it was homicidal or suicidal death.

8. Thus after careful perusal of entire evidence of PW-2 Dr. Balaji Bidwe it is clear that during the course of cross examination, he has specifically admitted that in the present case, he cannot say definitely whether it was homicidal or suicidal death. This is the only medical evidence. Thus, we find considerable force in the argument advanced by learned counsel appearing for the Appellant that the prosecution has failed to establish conclusively that death of Akshata was homicidal. PW-2 Dr. Balaji Bidwe has not ruled out the possibility of suicidal or accidental death.

9. The prosecution has examined PW-1 Rajendra Nilappa Jadhav, police head constable, who has drawn to the spot panchnama and inquest

panchnama. He deposed that on 16th October, 2011, ASI of Lohara police station registered accidental death and handed over further inquiry to him. Then he along with police constable Rathod, went to the spot of incident. They went near the well and found that dead body of one lady was floating in the water. Bottle of liquor having brand of Royal Stag was found on the spot. He seized said bottle in presence of panchas. Spot Panchnama (Exhibit-18) was carried out. Then he took out said dead body with the help of others and drawn inquest panchnama (Exhibit-19) on the dead body. Then he sent said dead body to civil hospital, Lohara for post-mortem. Since it was a night time, post-mortem was conducted on the next day morning. After post-mortem, doctor opined that she was killed by strangulation. Then on 18th October, 2011, he lodged complaint (Exhibit-20) against unknown person under Section 302 and 201 of I.P. Code. Thus, it is clear from the evidence of PW-1 Rajendra Jadhav, that, initially a complaint was

lodged against unknown person.

10. The prosecution has examined PW-3 Mahendra Dinkar Gade. He deposed that on 6th November 2011, he himself and Manoj Nannaware were called by Lohara police station. At that time, accused Ganesh Kshirsagar was in police lock-up. One Andurkar was police inspector. The accused made a statement that Chockleti black colour Odhani tied with 3 Kgs. stone is thrown by him in the well, near one field. He further deposed that the accused stated that he is ready to produce the same. Mr. Andurkar prepared panchnama of this fact. Then said panchnama (Exhibit-27) was read over to them, then they put their signatures on it. Then accused, both panchas and Mr. Andurkar went near well. Then accused took out Odhani and stone from the well. Police prepared panchnama (Exhibit-28) of the same and seized said articles. He identified seized Odhani and stone, Article 18 and 19 respectively, to be same. He further

deposed that on the same day in the evening at about 6.00 p.m., Dinesh Kshirsagar, brother of the accused has produced Karnaphule, Nokia mobile, Painjan, Chockleti colour sandals, three finger rings, cash amount Rs.1843/- and one purse, in Lohara police station. Police seized all the articles and prepared panchnama (Exhibit-29). The said panchnama bears his signature. Thereafter one motorcycle was seized by police in police chowki under panchnama (Exhibit-30).

. During the course of cross-examination, PW-3 Mahendra Gade stated that deceased Akshata was daughter of his real sister. Dinkar Mahadeo Gadhve is his father. He further admitted that Hanmant Kisan Nannaware is husband of his sister. He further admits that Manoj Nannaware (another panch to seizure panchnamas Exhibit-27, 28, 29 and 30) is his cousin brother-in-law.

. PW-3 Mahendra Gade further admits that

on 6th November, 2011, his signatures were obtained by police on two panchnamas, in the police station. Besides these two panchnamas, his signature on seizure panchnama of motorcycle was also obtained by the police. He further admits that his signatures on all the panchnamas were obtained in the police station.

11. Thus, upon careful perusal of the evidence of PW-3 Mahendra Gade, it is crystal clear that he is close relative of deceased Akshata. Another panch to the seizure panchnamas Exhibit-27 to 30, namely Manoj Nannaware is also relative of deceased Akshata. PW-3 Mahendra Gade has specifically admitted in his cross-examination that, his signatures on all seizure panchnamas, including seizure panchnama of Odhani, were obtained in the police station itself. It is pertinent to note that the dead body of Akshata was recovered on 16th October, 2011, and the Odhani was alleged to be recovered at the instance

of the Appellant on 6th November, 2011, almost 20 days after the incident. Thus, it is difficult to believe that really the Odhani was recovered from the well, at the instance of the accused.

12. The prosecution examined PW-4 Ashish Hanumant Nannaware. He deposed that Akshata was his sister. She was married to Ganesh Kshirsagar, resident of Lohara. After marriage, she had gone along with Ganesh at Chaufula-Sikhrapur, Pune. Ganesh was supplying tiffin to the employees in private company. His sister was studying in 2nd year B.Sc. in Wadiya College, Pune. On expiry of the agreement with the company, Ganesh became unemployed. He further deposed that Ganesh used to assault his sister and insisting her to bring money from her father and grand-father. His sister had informed this fact to him on phone. He further deposed that on 16th October, 2011, he was present in Toramba village. On that day announcement was made on beat of drum that a dead body of unknown

lady was lying in the well of Balbhim Kshirsagar. Therefore, he himself and his father went to Lohara police station. Police showed clothes to him and he said that the same belong to his sister. Then he made an inquiry with his maternal uncle and relatives about his sister on telephone, but they told that she did not come to them. Thereafter he himself and his grand-father went to police station and his grand-father told to police that she was his grand-daughter. He further deposed that Ganesh has killed his sister by strangulation by Odhani and thrown in the well.

. During the course of cross-examination, PW-4 Ashish Nannaware admitted that his sister Akshata was favourite of his mother. He has denied the suggestion that because of death of his mother, Akshata was mentally disturbed and therefore she habituated to consume liquor. He further denied that she has attempted to commit suicide. However, he admitted that his grand-

father has performed marriage of Akshata with Ganesh, as he is their close relative. He further stated that on 16th October, 2011, they did not lodge complaint in police station that accused has killed his sister Akshata. One document at Sr. No. D-68 of charge-sheet was shown to the witness and asked about handwriting of said document. Witness stated that it was not handwriting of Akshata. Since the said document was referred in cross-examination, the trial Court exhibited the said document as Exhibit-32. He further stated that he had not made any complaint against accused about assaulting by him to his sister.

13. Thus, oral testimony of PW-4 Ashish Nannaware reveals that police showed clothes to him and he said that the same belong to his sister. This witness nowhere says that dead body was shown to him and he identified the same to be of his sister. PW-4 Ashish has not stated specifically on which date he has visited the

police station. It is significant to note that identification of dead body is doubtful. The dead body was highly decomposed. In the investigation papers, there is a statement of one Shrishailya Baburao Mitkari (at page No.188 of the original Record and Proceedings), working as peon in Lohara Grampanchayat. He has categorically stated that as per the letter received from police station Lohara, he along with three others, have took out the dead body of one unknown lady from Rural Hospital, Lohara and performed the funeral of said unknown lady on 17th October, 2011. Thus, statement of said Mitkari shows that till 17th October, 2011, the dead body of said lady was unidentified, and in such unidentified condition, her funeral was performed. PW-4 Ashish Nannaware further stated that on 16th October, 2011, when they received information that his sister Akshata died, he did not lodge complaint in police station that accused has killed his sister Akshata. He was shown one document attached with the charge-sheet

at Sr. No. D-68. He denied that the said document was in the handwriting of his sister Akshata. Relying upon this letter Exhibit-32 the defence has tried to bring on record that due to sudden death of her mother, mental condition of Akshata was not sound and therefore, the possibility of suicidal death cannot be ruled out. It is the case of defence that said note (chit) was written by Akshata before her death and the same was kept in the house. The defence has produced on record further part of Exhibit-32, which, according to the defence, bears signature of Akshata. The gist of Exhibit-32 is that due to frequent quarrel between the couple and sudden death of her mother, mental condition of Akshata was not sound and therefore Akshata decided to commit suicide. Relying upon the text of Exhibit-32 it is tried to suggest by the defence that, Akshata might have committed suicide. The same is even corroborated by PW-2 Dr. Balaji Bidwe. He specifically admitted in his cross-examination that in this case he

cannot say definitely whether it was homicidal death or suicidal death. Learned counsel appearing for the Appellant argued that the investigating officer has not sent the said chit Exhibit-32 to handwriting expert, in order to examine whether it was really written by deceased Akshata or not, and thus the investigating officer has not carried out the investigation in proper manner.

14. PW-5 Hanmant Kishan Nannaware is father of Akshata. He turned hostile and did not support the prosecution case. Therefore, his evidence is of no use to the prosecution.

15. PW-6 Ajij Mohammad Hussen Andurkar is the investigating officer of this crime. In his examination-in-chief, he has deposed about the manner in which he has carried out the investigation. During the course of cross-examination, PW-6 Ajij Andurkar denied the suggestion that during investigation it was

discovered that deceased Akshata had written some letters prior to her death. When Exhibit-32 was shown to him, he stated that he has not seized said document, however he has received said document from Shikrapur police station and therefore he has filed the same along with charge-sheet. He has made inquiry as to whether the documents like Exhibit-32 are also in existence or not. He did not try to obtain original copy of Exhibit-32. He denied that during investigation he came to know that Akshata had written another part of Exhibit-32 and that in the said document Akshata had mentioned about committal of suicide and therefore he has not seized the same.

16. Though seizure panchnama Exhibit-29 shows that along with golden ornaments and some cash, five bus tickets were also found in the purse of deceased Akshata. Nothing has been brought on record by the prosecution showing that the investigating officer has made any inquiry about

said five bus tickets to find out from where Akshata had started her journey and at which destination she had reached. The missing report was already filed by the accused stating that his wife Akshata was missing. The investigating officer has not taken any immediate steps to find out Akshata.

17. First of all the prosecution has not conclusively proved that Akshata died homicidal death. As already observed, PW-2 Dr. Balaji Bidwe, who conducted autopsy on dead body of Akshata, has categorically admitted in cross-examination that, he cannot definitely say as to whether in this case death is homicidal, suicidal or accidental. Therefore, the prosecution has failed to establish that this is a case of homicidal death and there is not at all any other possibility. Secondly, the prosecution has not brought on record any evidence to show that deceased Akshata was last seen in the company of accused Ganesh within the proximity of

time and date of the incident. It is the case of the prosecution that after marriage, Akshata had gone along with her husband Ganesh to reside at Chaufula-Sikhrapur, Pune. However, the dead body of Akshata was found in the well situated at Lohara, Dist-Osmanabad. The prosecution has not brought on record any evidence to show that soon before the incident, Akshata was seen in the company of the accused. In the case of Ashok vs. State of Maharashtra, cited supra, in Para-20 of the Judgment, observed as under:-

"20. From the above discussion, we conclude that the prosecution has not brought any clinching evidence in support of the last seen together theory so as to shift the burden of proof on the appellant-accused. In light of this, the prosecution has evidently failed to prove the guilt of the appellant-accused beyond doubt. Therefore, the appeal is allowed and the judgment and order passed by the

High Court as also by the trial Court are set aside. The appellant is directed to be released forthwith if not required in connection with any other case."

18. In the present case also, the prosecution has not brought on record any clinching evidence to establish that deceased Akshata was last seen in the company of accused Ganesh within the proximity of time and date of the incident, so as to shift the burden of proof on the appellant-accused as per Section 106 of the Evidence Act.

19. So far as the recovery of Odhani/scarf at the instance of accused is concerned, PW-3 Mahendra Gade, panch to recovery panchnama of Odhani, is close relative of deceased Akshata. Further he has specifically admitted in cross-examination, that his signatures on all panchnamas were obtained in the police station itself. Therefore, it is difficult to accept whether said

Odhani was really recovered at the instance of accused.

20. So far as the confession of the accused recorded by the in-charge police station officer when he was in custody is concerned, while recording the statement under Section 313 of the Code of Criminal Procedure, the accused has specifically stated that he has not given any confessional statement before the police. Therefore, no reliance can be placed on said alleged confessional statement. The Supreme Court in the case of case of Sahadevan and another vs. State of T.N.⁷, in Para 12 of the Judgment, observed as under:-

"12. There is no doubt that in the present case, there is no eye-witness. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly

7 A.I.R. 2012 S.C. 2435

point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration."

21. Admittedly, in the present case there is no eye witness and entire prosecution case is based upon circumstantial evidence. In the present case chain of circumstances is not all

established. The Supreme Court in the case of Hanuman Govind Nargundkar and another vs. State of M.P.⁸, held thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

8 AIR 1952 S.C. 343

22. In the light of discussion in foregoing paragraphs, we are of the considered view that the entire prosecution rests upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient and convincing so as to prove the offence against the Appellant beyond reasonable doubt. In the case of Sharad Birdhichand Sarda vs. State of Maharashtra⁹, the Supreme Court 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 to be born in mind that the case in hand is a case of circumstantial evidence and if two views are possible on the evidence on record, one pointing to the guilt of the accused and other his

⁹ (1984) 4 S.C.C. 166

innocence, the accused is entitled to have the benefit of one which is favourable to him.

23. It is to be noted here that the probable defence taken by the accused cannot be lost sight of. It is the defence of the accused that since sudden death of the mother of Akshata, she was mentally disturbed and therefore she has committed suicide, and that he has been falsely implicated in the crime.

24. The prosecution has utterly failed to brought on record any positive act on the part of the appellant to connect him with the crime. The case of the prosecution is surrounded by suspicious circumstances. Therefore, an inevitable conclusion is that the Appellant is entitled for the benefit of of doubt. Hence we pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The impugned Judgment and order dated 17th August, 2013, passed by the Additional Sessions Judge, Omerga in Sessions Case No. 11 of 2012 convicting and sentencing the Appellant - Ganesh Balbhim Kshirsagar for the offence punishable under Section 302, Section 201 of the Indian Penal Code, is quashed and set aside.

(III) The Appellant is acquitted of the offence punishable under Section 302, Section 201 of the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellant.

(IV) The Appellant - Ganesh Balbhim Kshirsagar is in jail, he be set at liberty forthwith, if not required in any other case.

(V) The Appellant shall furnish Personal Bond of Rs.15,000/- and surety in like amount under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Omerga.

[V.K. JADHAV, J.]

[S.S. SHINDE, J.]

asb/JUL18