

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO.421 OF 1997**

Ramchandra Bhiva Bhuwad,]
Aged about years, Occ:]
Service, at present residing at]
and at present undergoing sentence]
at Mumbai Central Prison, Mumbai] Appellant
(Original Accused No.1)

Versus

THE STATE OF MAHARASHTRA]
(At the instance of Senior]
Inspector of Police, Jogeshwari]
Police Station, Vide C.R. No.87]
of 1993)] Respondents

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Mr. S.R. Pasbola a/w Mr. Karl Rustom Khan, Advocates for the Appellant.

Ms. S.V. Sonawane, Additional Public Prosecutor, for the Respondent-State.

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**CORAM : S. S. SHINDE &
 PRIVTHVIRAJ K. CHAVAN, JJ.**

RESERVED ON: 2ND DECEMBER, 2019.

PRONOUNCED ON: 12TH DECEMBER, 2019.

JUDGMENT:[Per Prithviraj K. Chavan, Judge]:

Feeling aggrieved with and dissatisfied by the judgment of conviction passed by the learned Additional Sessions Judge,

Greater Mumbai, thereby, convicting the appellant under section 302 of the Indian Penal Code (for short 'I.P.C'), sentencing him to suffer rigorous imprisonment for life, the present appeal has been preferred, amongst following facts and grounds.

2. Briefly stated, the prosecution story is as follows:

On 12th April, 1993, at about 13 hours, information was received by Jogeshwari Police Station that a dead body of an unknown woman was lying near a streamlet (nala), Chacha Nagar Service Road, Jogeshwari (East). A station diary entry was effected and PW.8-Dattatraya Patil along with P.S.I Sawant and other staff rushed to the said place. A gunny bag was lying near the streamlet. On opening the same, a dead body of a woman was noticed. There were signs of injuries on her person. Her tongue was protruding out. An First Information Report (for short 'F.I.R') came to be registered on the basis of the statement given by PW.8- Dattatraya Patil which is proved at Exhibit 19. An offence came to be registered vide C.R. No.87 of 1993 under section 302 r/w 201 of the I.P.C against unknown persons.

3. Two Panch witnesses were summoned, in whose presence, an inquest was drawn. The deceased was without legs. She was wearing a Saffron coloured blouse, white coloured petticoat,

underwear and brassiere. A handkerchief was also found lying near her body. The Police had also noticed two jute clothes, two ropes and one big stone which came to be recovered under the panchnama. The deceased had plastic bangles with gold coating and red glass bangles. There was a pair of earrings. All the articles were seized under panchanama (**Exhibit 7**) and marked as Articles-1 to 12. When the Panchanama was being drawn, accused No.2 (who came to be acquitted by the trial Court) came at the scene and identified the deceased as her sister namely, Anusaya Shinde. The dead body was sent for postmortem.

4. On 12th April, 1993 itself, son of accused No.2 was also arrested by the Police along with the present appellant. Son of the appellant, being juvenile was sent to the Juvenile Court from where he came to be acquitted after the trial.

5. During the personal search of the appellant, the currency note of Rs.100/-, a railway season ticket, School Identity Card, a telephone diary and key was found. The clothes on the person of the appellant were seized vide Panchnama **Exhibit 14**.

6. It is the case of the prosecution that during the course of the investigation, the appellant made a statement, pursuant to

which, the Investigating Officer went to the house of the appellant. At the instance of the appellant, door of the house was opened with a key. The appellant produced a saffron coloured saree, two artificial legs and a stick from the loft of the house. Appellant is also said to have produced one half pant, cream coloured underwear and banyan (vest). The articles were marked as Articles-13 to 20. The appellant thereafter led the Police team to the streamlet from where the dead body of the deceased Anusaya Shinde was earlier recovered by the Police.

7. After recording the statements of the witnesses and after receipt of the postmortem report **Exhibit-16** and C.A report **Exhibit 21**, a charge-sheet came to be filed in the Court of Metropolitan Magistrate, 12th Court, Andheri on 3rd August, 1993. It being a case exclusively triable by the Court of Sessions, it was committed to the City Civil and Sessions Court, Mumbai.

8. The appellant appeared before the learned Additional Sessions Judge. A charge was framed against him and his wife Kalawati under sections 302, 201 r/w section 34 of the I.P.C. It was read over and explained to the appellant and his wife in vernacular to which both of them pleaded not guilty and claimed to be tried.

9. In support of its case, the prosecution examined as many as eight witnesses. Defence of the appellant, as emerged from the line of the cross-examination as well as from the statement under section 313 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'), is that they have been falsely implicated in this case. No defence evidence came to be adduced on their behalf.

10. The learned Additional Sessions Judge, after going through the evidence of prosecution witnesses and after hearing the prosecution and defence found that the prosecution has proved its case against the appellant beyond reasonable doubts and, therefore, by the impugned judgment convicted him of the offences punishable under section 302 and 201 of the I.P.C and sentenced him to suffer rigorous imprisonment for life, *inter alia*, imposed a fine of Rs.500/- in default, to undergo rigorous imprisonment for three months. The learned Additional Sessions Judge, however, acquitted accused No.2 i.e wife of the appellant of all the charges.

11. We heard Mr. Pasbola, learned Counsel for the appellant. It is contended by Mr. Pasbola that the prosecution case is based on circumstantial evidence, however, the prosecution has failed to establish the entire link connecting the material evidence on record and, therefore, it is a fit case in which the appellant is required to be

acquitted. It is submitted by Mr. Pasbola that the prosecution has failed to establish as to whether coir rope was, in fact, purchased by the appellant from the shop of P.W.1, as P.W.1 has failed to identify the appellant. It is further contended that the prosecution has failed to establish discovery under section 27 of the Indian Evidence Act, 1872 (for short 'Evidence Act') in so far as the artificial legs of the deceased, stick and blood stained cloths are concerned. As a matter of fact, it is vehemently urged that the prosecution has failed to bring on record motive behind the offence. Moreover, there is absolutely no evidence on the point of "last seen together".

12. Mr. Pasbola drew our attention to a very glaring aspect that as per the autopsy report, rigor mortis was absent. The dead body was found near the service road which is an open streamlet (nala). There is no convincing evidence on record as to how the dead body reached at the streamlet when the deceased had no legs. The blood reports are inconclusive. There is a delay of 53 days in sending the articles to the Chemical Analyst. There is nothing on record brought out by the prosecution that the appellant and the deceased were residing together. Mr. Pasbola questioned as to how the wife came to be acquitted on the basis of the same evidence upon which the husband came to be convicted by the trial Court, significantly in the light of the fact that there is section 34 of the

I.P.C. As such, the learned Counsel prayed for acquitting the appellant of the charge framed against him.

13. On the other hand, Ms. Sonawane, learned Additional Public Prosecutor supported the impugned judgment. She drew our attention to a N.C complaint lodged by the deceased against the appellant, which, according to her was a motive behind the offence. It is contended by Ms. Sonawane that the discovery panchanama, the N.C report and other statements, if considered conjointly, would indicate that there was every reason for the appellant to eliminate the deceased. She also took us through the autopsy report by contending that it has been established by the prosecution that the deceased died a homicidal death. It is also submitted that the C.A report does indicate that there was a human blood over the articles. There is evidence of PW.1 indicating that the coir rope was purchased by the appellant. When asked, the learned Additional Public Prosecutor submitted that the prosecution has not challenged the acquittal of the wife of the appellant. As such, the learned Additional Public Prosecutor contends that the appeal is *sans* merits and, therefore, needs to be dismissed.

14. To substantiate the charge, prosecution examined in all eight witnesses. The entire case revolves around circumstantial

evidence. The law relating to circumstantial evidence is well settled. It is expected of a Judge, while dealing with the matter rests on circumstantial evidence to tread cautiously so that conjunctures or surmises should not be allowed to creep into. Sometimes, circumstances are so strong that one tempts to feel as if the prosecution has proved its case beyond reasonable doubts. It has to be kept in mind that merely because the circumstances are quite strong, it would not take place of proof. The law on circumstantial evidence is well settled. The Hon'ble Supreme Court, in a well known judgment of Sharad Birdhichand Sarda Vs. State of Maharashtra, reported in AIR 1984 Supreme Court 1622 culled out golden principles based on circumstantial evidence which can be enumerated 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”.*

15. We shall have to scrutinize and scan the evidence of the prosecution witnesses to ascertain as to whether these five golden principles have been scrupulously applicable to the case in hand.

16. Indubitably, Anushaya Shinde died a homicidal death. P.W.7- Dr. Rajaram Marathe who was attached to Additional Coroner's Court at Juhu as a Coroner's Surgeon received a dead body of a Hindu female aged about 35 years. It was forwarded by Jogeshwari Police Station with A.D.P No.77 of 1993. It was brought on 12th April, 1993, however, postmortem was effected on 14th April, 1993 between 3.00 p.m and 4.00 p.m. Condition of the dead body was average and cold. The rigor mortis was absent. The body was decomposed. No postmortem lividity was seen. Eyes and mouth were closed. Tongue was protruding. The blood was oozing from mouth and nose. Right eye was having subcoastal. Left eye was normal.

17. P.W.7- Dr. Rajaram Marathe noticed following external antemortem injuries;-

- [1] Contused mouth 17 x 1.5 c.m on anterior and right side of neck over larynx obligely;
- [2] Contusion 4x1.5 c.m below the chin;
- [3] contusion 6x4 cm on left zygoma;
- [4] contusion 2x1 cm on middle forehead;
- [5] C.L.W x 1.5 c.m x bone deep on left temporal region.

18. On internal examination, he found following injuries;

[1] Depressed fracture on left temporal bone 3x2 cms, subsosal haemorrhage on left temporal lobe rest of brain is congested;

[2] Subcataneus hemorrhage beneath neck skin all over anteriorly, tracheal and cricued cartiges is fractyrem layrnx abd tracheal wall hemorrhage with internal haxmaton in walls. Both lungs are congested with patechial hemorrhage present. Heart shows pathological hemorrhages;

[3] Stomach contents 200 c.c semi digested food. Small intestine contents semi digested food. Large intestine contents partly loaded.

19. According to Dr. Rajaram Marathe, cause of death was asphyxia due to throttling. Postmortem report is in the handwriting of this witness which is proved at **Exhibit 16**. It is however, testified by Dr. Rajaram Marathe that injury No.5 in Column No.17 of the postmortem report corresponds to the injury on skull. Injury Nos. 1 and 2 corresponds to the injury mentioned in Column No.20 whereas injury Nos. 3 and 4 in Column No.17 do not have any corresponding injury internally. It is further testified that external injury Nos. 1 and 2 in column No.17 and internal injury mentioned in Column No.20 are caused due to throttling. According to him, if the dead body is lying in the water, it will be decomposed within 24 hours. If it is not lying in the water then it will take more than 24 hours to decompose.

He made it clear that the body was not decomposed when it was brought to the Coronary Court on 12th April, 1993 at 5.30 p.m till postmortem was performed on 14th April, 1993 at 3.00 p.m because it was kept in a Freezer.

20. The witness had forwarded blood and nail clipping for chemical analysis. The reports of the Chemical Analysis are negative which are proved at **Exhibit 17 colly**. The defence declined to cross-examine the expert.

21. Thus, it can be seen from the testimony of P.W.7- Dr. Rajaram Marathe that it was a homicidal death resulting from asphyxia due to throttling. It is not the evidence of P.W.7-Rajaram Marathe that the coir ropes were used for strangulating the deceased. There is no evidence that those ropes were used or could have been used for strangulating the deceased.

22. Once, we have returned our findings that it was a homicidal death, what is required to be seen is as to whether the appellant had caused death of the deceased by doing an act with the intention of causing death or with a knowledge that he is likely by his act to cause death?

23. The prosecution examined P.W.1- Devchand Malde. He was running a grocery shop at Jogeshwari. He was called by the Police on 12th April, 1993 itself. According to this witness, on 11th April, 1993, a customer had been to his shop who had purchased coir ropes. He sold two bundles of coir ropes. Each bundle consisted of three meters. When he was asked to identify the person who had purchased the coir ropes, he answered that he does not recollect whether accused sitting in the dock was the same person or otherwise. He testified that a person was shown to him at the Police Station who had purchased two bundles of coir ropes from him. His evidence further indicates that on that day, only one person had bought two bundles of coir ropes. He reiterated that he does not recollect whether he was accused or someone else.

24. The learned Special Public Prosecutor sought permission to cross-examine the witness, as he turned hostile. Interestingly, when he was cross-examined by the learned Public Prosecutor, he immediately took a “U” turn by testifying that it was the accused sitting in the dock who had bought two bundles of coir ropes. He further admits that it was the same person who was present at the Police Station when his statement was recorded.

25. The witness took another somersault when he was cross-examined by the learned Counsel for the appellant by stating that he could not recollect as to whether the accused was the person who had purchased the coir rope from his shop. He further testified that on that day, there were about 7 to 8 customers who had visited his Shop. He could not recollect description of any of them. His evidence to the effect that on 11th April, 1993, only one person had been to his shop for purchasing two bundles of coir ropes proved to be an omission, of course material, for which he could not assign any reason as to why it was not recorded in his statement.

26. PW.1-Devchand Malde further dealt a fatal blow to the prosecution story that he was not certain as to whether it was the appellant who had bought two bundles of coir ropes from his shop. He admits that at the time of recording his statement, the appellant was not shown to him.

27. Thus, the very crucial circumstance fell on the ground as the prosecution has failed to prove that the appellant had purchased coir rope from the shop of the PW.1-Devchand Malde, which, according to the prosecution, was used for strangulating deceased Anusaya Shinde.

28. The next circumstantial evidence is in the form of discovery of articles under section 27 of the Evidence Act at the instance of the appellant. P.W. 3-Sachin Ardekar is the Panch witness examined by the prosecution to that effect. Panchanamas are proved at Exhibit 9, 9-A and 9-B. Evidence of P.W.3-Sachin indicates that he was called at Jogeshwari Police Station on 12th April, 1993 at 5.30 p.m. The appellant was present over there who was handcuffed. He was in Police custody. He testified that the appellant had stated before him and another Panch that he will show place of offence and also the place where he had kept saree, artificial legs and the stick along with clothes. Accordingly, the memorandum Panchnama was drawn by the Police. His signature was obtained over it. The Panchanama is at Exhibit 9.

29. Thereafter, along with the Police and Panch witnesses, the appellant led the Police team in a Police Jeep to Chacha Nagar locality. The appellant asked to stop the Jeep in the said locality. The appellant got down from the Jeep and led them to his house situated at Sharma Chawl, Francis Wadi, Jogeshwari, Mumbai.

30. P.W. 3-Sachin noticed that door of the house was closed with a lock. The appellant took the key from the Police and opened the door of his house. Thereafter, the appellant entered into his

room followed by the Police team and this witness. The appellant put on the light and thereafter climbed on the loft of the room. He took out a saffron coloured saree which was kept in an empty box of a Television. He handed it over to the Police. He also took out two artificial legs and stick which were kept behind the said empty box and handed it over to the Police. He had produced two half pants and a banyan (vest) with sleeves. All the aforesaid articles were taken charge of by the Police in the presence of this witness. The articles were separately wrapped in a khaki coloured paper and sealed by the Police by affixing labels. Accordingly, a Panchnama was drawn.

31. The appellant thereafter led the Police team and Panchas on service road near an electric pole. He took them near the streamlet and showed the place where he had abandoned the dead body in the streamlet (nala). Panchanama of the said facts was drawn which is marked as **Exhibit-9A and Exhibit 9B.**

32. P.W.3-Sachin has duly identified all the articles shown to him during his examination. The testimony of this witness is required to be accepted with a pinch of salt for a few reasons. The object of Section 27 of the Evidence Act has not been precisely attracted herein. The object of this section is to admit evidence which is

relevant to the matter under inquiry, namely guilt of the accused and not to admit evidence which is not relevant to that matter. The discovery of a material object is of no relevance to the question whether the accused is guilty of the offence charged against him, unless it is connected with the offence. It can be seen from the evidence of this witness that except the stick, rest of the articles discovered at the instance of the appellant are not material, in the sense, they are not relevant in the given set of facts. The evidence to that effect is not relevant to be considered. Even otherwise, the prosecution has not been able to establish any link between the saffron coloured saree, two half pants, banyan and even to some extent the two artificial legs, though it is the case of the prosecution that deceased had no legs. It is significant to note that the prosecution has not proved that two artificial legs i.e prosthetic, in fact were of the deceased. The prosecution could have linked the said material evidence by asking specific question to PW. 7-Dr. Rajaram Marathe who effected postmortem of the dead body of Anusaya Shinde. Be that as it may.

33. It is, therefore, connection of the things discovered which renders its discovery a relevant fact. The connection between the offence and the articles discovered can be established by evidence other than the statement leading to the discovery but that

does not exclude proof of the connection by the statement itself. It cannot be lost sight of that what is expected of the prosecution is to prove only source of the information as relates distinctly to the fact thereby discovery.

34. If the evidence of P.W.3- Sachin is scrutinized, it can be seen that the statement alleged to have been given by the appellant was not voluntary as he was handcuffed by the Police. His evidence further indicates that the Police interrogated the appellant in their presence which is *ex facie* against the very object of section 27 as it cannot be said to be a voluntary statement made by the appellant while in the Police custody. It is quite surprising to note that key of the appellant's house was taken from the possession of Police man which necessarily meant that the Police already knew the house of the appellant and it was merely a farce to say that the accused led the Police team to his house of which neither the Police nor this witness was aware of. The very object of section 27 is frustrated. No sane man will believe that the Police were not aware of the address of the appellant where he alleged to have concealed the articles seized by the Police in the presence of this witness. More so, P.W.3- Sachin admits that the Police did not inquire about ownership of the room. Thus, the alleged discovery at the instance of the appellant was not at all voluntary and must have been made under duress,

pressure or threat. It would be, thus, not admissible even in the light of Article 20 of the Constitution of India.

35. Since the Investigating Agency has failed to prove the room, from where the articles were discovered, belongs to the appellant and that the appellant himself had concealed those articles, there is hardly any reason to accept the evidence to that effect which needs to be discarded. The learned Trial Judge has failed to appreciate the aforesaid aspects in the proper perspective and thereby reached an erroneous conclusion in basing conviction on the basis of such evidence.

36. Articles described in Exhibit-9-A were not sealed in the presence of PW.3- Sachin. Moreover, those articles, though seized on 12th April, 1993, were sent to the Chemical Analyzer on 5th June, 1993, thereby inviting suspicion as to whether the same articles were forwarded to the Chemical Analyzer or there was tampering of the same during the interregnum.

37. It is noteworthy that the Chemical Analyzer's report **Exhibit 21** did not advance the prosecution case inasmuch as, there was no blood noticed on one of the half pants, whereas blood noticed on the saree, half pant and banyan could not be determined. Dehors

of any conclusive evidence as regards the blood on those articles, the said recovery by itself is of no consequence.

38. There is no evidence, much less, believable and acceptable evidence on record to indicate that saree belonged to the deceased Anusaya and half pant and banyan belonged to the appellant.

39. The prosecution has not adduced any evidence on record to show that deceased Anusaya was last seen together alive with the appellant. There is no evidence indicating that the appellant, by sharing common intention with his wife caused the evidence of the crime to disappear, namely, clandestinely concealing the dead body of the deceased Anusaya in a bag and thrown it near the streamlet. There is no evidence to show that the artificial legs, in fact, belonged to the deceased and that they were concealed by the appellant.

40. It is pertinent to note that the Muddemal Register **Exhibit 22** maintained by the Investigating Agency itself has dealt a blow to its case, for, the said Muddemal Register diminished the veracity of the prosecution case regarding recovery of the key during the personal search of the appellant.

41. Astonishingly, Exhibit 22 which is the extract of Muddemal register, although finds a mention of the articles which were taken charge of by the Investigating Officer during personal search of the appellant (Exhibit 14), there is no mention of the key allegedly recovered from the person of the appellant. When the learned trial Judge acquitted wife of the appellant on the basis of the same evidence, it is difficult to fathom how the same evidence can be used to convict the appellant when it is a precise case of the prosecution that the appellant and his wife, in furtherance of their common intention, committed murder of the deceased Anusaya.

42. The learned trial Judge has erred in considering the material evidence of P.W.3- Sachin in its correct perspective, so as to say that key was with the Police Officer and not with the appellant. The planting of the articles in the house of the appellant, therefore, cannot be totally ruled out. There is no evidence on record to indicate that the copy of the Panchnama was furnished to the appellant.

43. Mr. Pasbola, learned Counsel for the appellant has rightly placed a useful reliance on a decision of the Supreme Court in the case of State Vs. Motiya reported in 1955 Cri. L.J 835. It would be apposite to refer paragraphs 7 and 8 of the judgment which is

ratio decidendi of the said case.

7. *“Learned Counsel for Motia accused has raised a number of objections about this evidence against Motia. In the first place, he points out that there is no evidence to show that after the various articles had been recovered from the possession of Motia, they were kept sealed so that it was not possible for any one to sprinkle blood stains on them while they were in the custody of the police and before they were sent for examination by the Chemical Examiner. We must point out that this lacuna in the prosecution evidence is there. Whenever it is desired by the prosecution that certain articles, which have been recovered from accused persons are to be identified, or are to be sent to the Chemical Examiner for analysis, it is necessary that the officer recovering the articles should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the identification is over, or till the articles are sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the police later put human blood on the articles in order to implicate the accused. It is, therefore, necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the Chemical Examiner the seals remained intact. This evidence is missing in this case. It is, of course, not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken, the argument raised on behalf of the accused that this might have been done remains unrefuted. Under these circumstances, we find that we cannot place the same*

reliance on the discovery of blood stains on these various articles as we would have done if necessary precautions had been taken.

8. Another point that has been urged is that though it is proved that these articles were recovered from the possession of the accused, and that they are the articles which are before the court, there is no proof that these were the particular articles which were sent to the Chemical Examiner for examination. We must say again that this lacuna also remains. Evidence should | have been produced that the articles recovered from Motia accused were sent to the Chemical 'Examiner. All that the letter of the Chemical Examiner, Ex. M 33 shows that a parcel containing certain things was received by him; but there is nothing to show that these are the very things which were recovered from Motia's possession. Here again we do not say that the things sent to the Chemical Examiner were not those which had been recovered from Motia. In all probability they were. But there is nothing on the record to meet the argument on behalf of Motia that the articles sent to the Chemical Examiner were not the same which were recovered from his possession". (Emphasis supplied)

44. In the case at hand, there was a delay of about 53 days in sending the articles to the Chemical Analyzer. What has been held by the Hon'ble Supreme Court in the ruling cited supra is that when certain articles are seized by the Investigating Officer from the possession of the accused persons, they are required to be identified and sealed immediately. There shall be evidence about immediate

sealing of the articles as well as evidence to the effect that the seals were not tampered with till the identification is over or till the articles are sent to the Chemical Analyzer. In the absence of such precaution, it would always be open to the accused to say that the Police later put human blood on the articles in order to implicate the accused. As already discussed hereinabove, no such evidence is forthcoming nor there is any plausible explanation for the inordinate delay which renders recovery and sealing as well as sending the articles to the Chemical Analyzer, doubtful.

45. So far as motive is concerned, it is the *sine qua non* where the prosecution case rests on circumstantial evidence. Ms. Sonawane, the learned Additional Public Prosecutor drew our attention to the N.C complaint alleged to have been lodged by the deceased Anusaya Shinde on 19th November, 1992 which is at **Exhibit 12**. It transpires that there was a petty domestic quarrel as far as back on 11th February, 1992. The incident in question alleged to have occurred on 12th April, 1993 i.e after more than a year and therefore, it would be farfetched to say that it provided a motive to the appellant to commit an offence, particularly in the light of the fact that the deceased Anusaya was real sister of the appellant's wife who reached the spot when she came to know about the dead body of the deceased sister. It is significant to note in the light of the

fact that there is no evidence led by the prosecution that deceased Anusaya Shinde was residing with the appellant and his wife at the time of the incident. It is pertinent to note that the defence of the appellant is that he along with his wife was residing at a different place than that of the place from where the articles were recovered by the Police.

46. Going back to the aspect of motive, which is something which prompts a person to form an opinion or intention to do certain illegal acts or even a legal act by illegal means with a view to achieve that intention. From the entire circumstances and evidence on record, there is absolutely nothing from which it can be inferred that there was any motive for the appellant to eliminate the deceased Anusaya Shinde. It is not even the case of the prosecution that there was any dispute on account of any immovable property between the deceased and her sister i.e wife of the appellant.

47. The conduct of the appellant's wife rushing to the spot where the dead body was lying is indicative of the fact that perhaps she might not be knowing about death of the deceased. Had she been party to the act of murder of her sister, ordinarily, she would not have rushed and identified the dead body.

48. P.W.4-Shreedhar Khambe is a resident of Francis Wadi who runs a Chit Fund Company along with some partners. He is a resident of the same chawl. He knew deceased Anusaya Shinde. According to him, deceased Anusaya Shinde was in need of money and she approached him on 11th March, 1992 and requested for a loan of Rs.2,000/-. P.W.4-Shreedhar asked her to come on the following day. She did not come, however, he learnt that she had died. P.W.4-Shreedhar categorically testified that he does not know where and with whom Anuasya was staying. The evidence of this witness is of no assistance to the prosecution in showing that she was residing with the appellant.

49. P.W.5-Ashokrao Kakad is witness who had registered N.C. No.3670/92 lodged by deceased Anusaya at Jogeshwari Police Station on 19th November, 1992. She had a quarrel with the appellant for some domestic reasons and that she was assaulted by the appellant with fist blows. She sustained injury to her left hand, and, therefore, she was sent for medical treatment to the Hospital. P.W.5-Ashokrao summoned the appellant to the Police Station and warned him. He was booked under the provisions of the Bombay Police Act. It is testified by this witness that Anusaya was handicapped and was walking with artificial legs. As already stated above, it was an incident more than a year ago and that itself would

not be a motive for the appellant to go to the extent of eliminating the deceased.

50. None of the circumstances have been established by cogent, convincing and positive evidence nor there is any complete chain to suggest that it was none other than the appellant who is responsible for causing death of the deceased. The circumstances brought on record are neither in proximity to the time and the situation.

51. The learned trial Judge has overlooked and ignored the aforesaid material inconsistencies and discrepancies in the prosecution case while arriving at an erroneous conclusion that the prosecution has proved its case beyond reasonable doubts. The impugned judgment suffers from irregularities and is based on surmises and conjectures which needs to be quashed and set aside.

52. Upshot of the aforesaid discussion is that the impugned judgment and order of conviction needs to be quashed and set aside.

Now, to the order:-

The appellant is acquitted of the offences punishable under sections 302 and 201 of the I.P.C.

The appellant be released forthwith, if not required in any other case.

The appellant's bail bond stands cancelled.

Fine amount, if recovered, be refunded to the appellant.

The order as regards disposal of the Muddemal property is maintained.

The appellant shall furnish fresh PR bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Registrar (Judicial) of this Court in view of Section 437 (A) of the Cr.PC.

The appeal stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]

[S.S. SHINDE, J.]