

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1108 OF 2002

The State of Maharashtra)
...Appellant
(Orig. Complainant)

VERSUS

1. Sushila Vasant Patole,)
2. Santosh Bhagwan Patole)
Both residing at Village Solu)
Tal. Khed, Dist. Pune)
...Respondents
(Orig Accused)

Mr A.R.Patil, APP for the Appellant – State.
None for the Respondent.

CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.

DATE : OCTOBER 13, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. The instant appeal is filed at the instance of Appellant – State of Maharashtra challenging the judgment and order passed by the learned 2nd Ad-hoc Additional Sessions Judge, Pune, dated 21st March, 2002 in Sessions Case No. 452/2000 whereby the accused No. 1 Sushila Patole and Accused No. 2 Santosh Patole (the Respondents in the

present appeal) were acquitted of the offences punishable under Sections 302 read with 34, 363 read with 34 and 201 read with 34 of the Indian Penal Code (for short “**IPC**”)

2. The case of the prosecution can be summarized as under:

The couple i.e. Sushila Patole and her husband Vasant Patole resident of Solu, Tq. Khed, Dist. Pune was indulged in an activity of sale of illicit liquor. Vasant Patole (deceased) was a history-sheeter and suffered the punishment for the offences committed by him. It is alleged by the prosecution that Sushila Patole used to give threats to the residents to obtain money against the consumption of liquor. While Vasant Patole was lodged in prison, Sushila Patole developed an intimacy with accused No. 2 Santosh Patole and both of them were in an illicit relationship. When Vasant Patole returned back to his home after serving the sentence, the duo i.e. Sushila Patole and Santosh Patole found that he is hurdle in their illicit relationship and both of them decided to remove this obstacle so as to continue their illicit relationship. So as to give effect to the ill-intention, accused Sushila and Santosh Patole prepared a plan and accordingly on 04.06.2000 at about 8.00 pm both accused abducted

Vasant Patole from his residence and took him to the hill side and forcibly made him to consume liquor and when Vasant Patole was under influence of liquor accused Santosh caught him whereas, accused Sushila put rope around his neck and pressed the neck of deceased till death.

3. It is the case of the prosecution that accused no. 1 Sushila gave axe blows on vital part of the body of deceased i.e. on head and caused severe injuries. In order to screen themselves the duo burned the clothes and sleepers of deceased Vasant and concealed weapon used in the offence i.e. axe in the well. Thereafter, accused No. 1 Sushila herself went to Alandi Police Station and lodged a false complaint of abduction of her husband Vasant by three unknown persons. Initially the complaint was taken by Police Head Constable Mr. Shinde (PW 6) attached to the Alandi Police Station. Then Mr. Shinde (PW 6) handed over the investigation to PSI Nalawade (PW 7). As the investigating agency was set in motion, investigating officer Mr. Nalawade took necessary steps in the process of investigation such as recording the statement of witnesses and visited the places disclosed in view of statements. On finding the dead body, inquest panchanama was drawn. As the body was in decomposed condition the medical officer was called on the spot.

Postmortem was conducted, certain articles were seized such as apparels of the accused, an axe. These articles were forwarded to forensic laboratory for chemical analysis. CA reports were obtained. As the investigating officer was of the opinion that there is sufficient material against the accused persons, the charge-sheet was filed in the Court of learned JMFC. As the offences charged against the accused persons are being exclusively triable by the Court of Sessions, the learned JMFC committed the case to the Court of Sessions. The accused persons were exposed to the incriminating circumstance against them and were subjected to statement under Section 313 of the Code of Criminal Procedure. Accused persons pleaded not guilty and claimed trial. Learned Trial Judge on appreciation of evidence brought before the Court was unable to find the material sufficient and strong enough to connect the accused persons with the alleged offences. The learned Trial Judge thus, on appreciation of evidence arrived at a conclusion about the inadequacy of the evidence to hold the accused persons guilty and recorded the judgment and order of acquittal. Being aggrieved by the judgment and order of acquittal the appellant – State is before this Court by filing present Criminal Appeal.

4. Learned APP vehemently submitted that the learned Trial Judge committed an error in appreciation of evidence. Learned APP then submitted that the prosecution has brought before the Court a strong evidence in the form of witnesses and more particularly, Jaibai (PW 1) mother-in-law of Accused no.1 – Sushila and Komal (PW 3) daughter of deceased Vasant and step daughter of accused no.1 – Sushilas. Learned APP then submitted that the recovery of weapon axe at the instance of accused no. 2 Santosh is also an important evidence against the accused persons to connect the accused persons with crime. Learned APP then submitted that the medical evidence in the form of postmortem proved by Dr. M.R. Lele (PW 4) supports the case of prosecution about the homicidal death of deceased Vasant. Thus, learned APP prayed for setting aside the judgment and order of acquittal by allowing the appeal.

5. Though respondent duly served, none appears for the Respondent.

6. With the able assistance of learned APP, we have gone through the record i.e. evidence brought before the learned Trial Court.

7. At the outset, we may state that the case of prosecution against the accused persons is based on circumstantial evidence. It may not be out of place to refer oftenly quoted judgment of the Hon'ble the Apex Court in the cases of Sharad Biridichand Sarda Vs. State of Maharashtra¹ and Hanumant Govind Nargundkar and Anr. Vs. State of Madhya Pradesh².

8. It may not be out of place to refer to certain observations of the Hon'ble the Apex Court in the case of Hanumant Govind Nargundkar (supra) in paragraph 10:

11.

No direct evidence was adduced in proof of those facts. Reliance was placed by the prosecution and by the courts below on certain circumstances, and intrinsic evidence contained in the impugned document, Exhibit P-3A. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew.

1 AIR 1984 SC 1622

2 AIR 1952 SC 343

227), where he said :-

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

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 pendency 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. In spite of the forceful arguments addressed to us by the learned Advocate-General on behalf of the State we have not

been able to discover any such evidence either intrinsic within Exhibit P-3A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the above mentioned case.

9. We may also refer to certain observations/principles laid down by the Hon'ble the Apex Court in the case of Sharad Biridichand Sarda (supra), in paragraph 152 and 153:

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in [Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra](#)(¹) where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance

between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of 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, and

(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.

***153.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.*

10. In the present matter prosecution relies on the following circumstances against the accused persons, namely, 1) Lodgement of a false complaint at the instance of accused no. 1 Sushila Patole with an allegation that her husband Vasant Patole was abducted by three

unknown persons, 2) Accused no. 1 burned clothes of her husband Vasant Patole and compelled her son Ganesh and her step daughter Komal to throw away half burned clothes and sleepers in bushes outside the house, 3) Deceased Vasant was seen lastly in the company of accused nos. 1 and 2, 4. recovery of an axe at the instance of accused no. 2 Santosh, 4) Clothes of deceased and Santosh were found stained with human blood.

11. The prosecution in support of its case examined as many as 9 witnesses and documents, namely, various panchnamas, postmortem report and CA report were placed on record. As the case of prosecution against the accused persons is of commission of offence under Section 302 of IPC, the prerequisite would be of homicidal death. We may take this aspect for consideration firstly and would proceed then to consider the aspect as whether the prosecution was successful in proving the authorship of the crime by the accused persons.

12. As the case of prosecution initiates with a complaint lodged at the instance of accused no. 1 Sushila, it would be useful for our purposes to refer to evidence of police head constable Mr. Shinde (PW

6). Mr. Shinde (PW 6) stated before Court that he was working as Police Head Constable at Alandi Police Chowki under Chakan Police Station. On 06.06.2000 accused no. 1 Sushila Patole came to Alandi Police Station and lodged a complaint. He further states that he wrote the complaint as per her say and obtained the thumb impression of accused No. 1 Sushila Patole on the complaint. The complaint was then read over to her and was attested by Mr. Shinde (PW 6). PW 6 then deposed that he forwarded the complaint to Chakan Police Station to register the offence and accordingly Crime No. 86/2000 under Section 363, 451 read with 34 of the IPC was registered. The investigation was then handed over to PSI Shri. Nalawade (PW 7).

Perusal of record show that this witness was not subjected to cross-examination by the learned Counsel either appearing for accused no. 1 or for accused no. 2.

13. Now as the prosecution alleges that death of Vasant is homicidal under Section 302, it would be useful for our purposes to refer to the evidence of Dr. M.R. Lele (PW 4), the autopsy surgeon who had issued postmortem report (Exh. 29). Dr. M.R. Lele (PW 4) deposed

before the Court that on 08.06.2000 he was attached to primary health center, Alandi, Tq. Khed, Dist. Pune. A dead body of one Vasant Patole was brought to him by PSI Nalawade for postmortem examination. Dr. Lele (PW 4) started postmortem at about 2.35 pm and completed at about 4.35 pm on the same day. On examination, PW 4 noted the following injuries:

1. Right finger absent.
2. Rt. thumb absent.
3. Terminal half of the middle phalanges and 2nd, 3rd and 4th fingers absent.
4. Right fibula separated out.
5. Lt. Tibial tuberosity and patella seen.
6. Putrefaction all over the body.
7. Maggots studded.
8. Antemortem wounds seen over scalp, anterior middle, sickle shaped size 1 inch front to back as designed in para 16 of the memorandum of postmortem examination.
9. Quadrangular size 1 ½ inch x 1 inch.
10. Lt. Leg below tuberosity with left foot not found.
11. Left superior extremity intact with colour changes (blue to black).

He further deposed that he also noticed multiple fracture of

vault seen, buried into the underlying putrefactive brain (which is in a state of liquefaction necrosis) under the scalp which seems to be cut from sides and frontal scalp above right abrow below left eyebrow. He further deposed that he also noticed external denitelia both penis and scrotam are bolted with maggots moving around. PW 4 then deposed that he also noticed faint antemortem mark around the neck and no signs of drowning. Then he stated that on internal examination, he found following injuries:

1. Multiple fracture of vault.
2. Pieces buried into the liquefied brain tissue.
3. Skull fracture around only scalp flap seen cut around and above lt. Pinna above lt. Eyebrow below right eyebrow, above right pinna and vault mutilated pieces.

He further deposed that on examination he opined the probable cause of death as homicidal asphyxia and severe head injuries including fracture of vault 4 to 5 days back by more than one person. He accordingly recorded the P.M. memorandum Exh. 29.

This witness was subjected to cross-examination though we may refer to cross-examination in detail while appreciating the evidence in so far as authorship of crime is concerned. In our opinion the evidence

of Dr. Lele (PW 4) is sufficient and strong enough to hold that deceased Vasant died a homicidal death.

14. Now to consider the other important aspect as to the authorship of the crime and charges leveled against the accused persons are concerned, we now proceed to refer the other witnesses.

15. Smt. Jaibai Parshuram Patole (PW 1) is mother of deceased Vasant. Smt. Jaibai (PW 1) in her examination-in-chief states before Court that her husband Parshuram is sick and since last 3 to 4 years he is unable to move. She further deposed that she along with her husband is residing in the shed outside the house where her son Vasant is residing. Then she deposed that Vasant was residing with his wife Sushila and two male and one female children. Then she states that her son Vasant and accused no. 1 Sushila were doing bootlegging at village Solu and they used to quarrel. She further deposed that at the time of incident her husband was admitted in YCM Hospital, Pimpri and she was with her husband and came to know about the death of her son after 4-5 days of occurrence.

In the cross-examination, PW 1 admits that she herself

lodged a complaint against her son and one Raju from village Annapur on account of some monetary transaction arising out of sale of liquor.

16. Kum. Komal (PW 2) is claimed as the star witness of prosecution. PW 2 is a child witness and age of PW while tendering her evidence before the Court was of 11 years. Learned Trial Court on ascertaining that the witness gives rational answers to its questions proceeded with recording the oral testimony of this witness. PW 2 deposed before Court that on Sunday her father returned to home after consuming liquor from Dhaba. She further deposed that at that time accused no. 1 Sushila and accused no. 2 Santosh were with her father Vasant. Then her father Vasant went in village to bring tester. She further deposed that at that time her mother Sushila and Santosh were in the house and her mother had brought rope. She further deposed that her mother Sushila asked her to go and see her father, accordingly she went outside the house but as the father did not return to the house thereafter, she along with her brothers sat outside the house. PW 2 further deposed that Sushila told accused Santosh to put piece of rope in his pocket. Thereafter her father came there along with tester.

She further deposed that accused Santosh told her father that both of them to go for dinner at Dhaba and accordingly they proceeded towards Dhaba. After considerable long period accused Santosh alone came to the house thereafter accused Santosh and Accused Sushila kept children inside the house and latched the door from the outside and went away. After sometime mother Sushila came and opened the door. Then all of them slept inside the house. On the next day morning at about 8.00 am when she woke up she along with her mother Sushila gone outside the house for easing. PW 2 further deposed that she asked her mother as to why she had burned the clothes of father in the night time, to which her mother Sushila replied that her father himself burned the clothes. Then her mother asked her to throw the burned clothes and chappal of her father outside the house. Then she and her brother Ganesh have thrown the articles near the bushes. Thereafter her mother left for Pune and told PW 2 that she is going to her maternal uncle's place. She then stated that her father was not seen since then.

PW 2 was subjected to cross-examination. Some important admissions emerged in the cross-examination of PW 2. PW 2 deposed that police have recorded her statement on the next day of incident when

they had been to their house. She also admits that her statement was recorded when her mother Sushila had already lodged the report with the police. She further deposed that after recording her statement on the next date of incident police did not turn up for further inquiry with her. She further admits that her father at many times after consuming liquor used to be away from the house for 2 to 3 days. She also admits that her father was doing liquor business on the road side leading to Talegaon Dabhade.

17. Atul Lonkar (PW 3) is the panch witness to the recovery panchanama Exh. 27. PW 3 deposed before the Court that on 08.07.2000 at about 11.30 am he was called by the police authority and in his presence accused agreed to disclose the place and led the police party along with panchas to the spot of incident i.e. well. The accused then got down in the well and took out one axe from the well water. Then he led the panchas and police party to a nearby tree and took out piece of rope from branch of tree.

18. As already we have referred to the evidence of Dr. Lele (PW 4) while considering the aspect of homicidal death of the deceased, we may again refer to the evidence of Dr. Lele. In the cross-examination, Dr.

Lele admits that the postmortem was actually conducted at village Solu. Then he further deposed that injuries noticed to the head are possibly caused by sickle shape weapon only. Dr. Lele further stated that injury no. 3 to the head as recorded in column no. 16 of the memorandum is not possible by weapon like axe. He further deposed that injuries noticed are caused by more than one weapon.(Emphasis supplied).

19. Dnyandeo Baban Patole (PW 5) is cousin of deceased Vasant. He deposed before the Court that on 6th day of last year at about 7.00 p.m he and another lady by name Smt. Darekar accompanied accused no. 1 Sushila to Alandi police chowki. He then stated that accused no. 1 Sushila lodged complaint in the police station. He further deposed that the next day police came to the house of Vasant and recorded panchanama of the house. Then along with the police patil as well accused no. 1 Sushila he proceeded to a place where the dead body of Vasant was lying. He then identified the body. He also provides the reasons for identification, namely, tattoo on the hand of deceased Vasant. He further stated that after one month again the police reached the village along with Accused no. 2 Santosh and PW 5 along with police party and accused no. 1 proceeded towards a well. He was asked by the

police sub-inspector to get down in the well and accordingly, he got down in the well and traced out axe from the water and the same was handed over to the PSI. Then he identified the weapon axe.

In the cross-examination at the instance of Accused no. 2 only this witness stated that his house as well house of Smt. Darekar are at distance of 1000 ft. to the house of deceased. He denied the suggestion that police had already informed him that they had to attach axe.

20. Then the last witness is Manik Damodhar Nalawade (PW 7). PW 7 deposed before the Court that he was attached to Alandi outpost since 26.04.2000. Accused no. 1 Sushila lodged complaint on 06.06.2000. Then he stated that the complaint was given to him for investigation and in the process of investigation he recorded the statement of Dnyanoba Baban Patole and other witnesses on 06.06.2000. He states about the preparation of panchanama i.e. place of incident on 07.06.2000 Exh. 20. He makes a reference to inquest panchanama of the dead body of Vasant Exh. 9 and a reference to postmortem conducted by Dr. Lele (PW 4) at the place where body was lying. He states about clothes of deceased were attached under panchanama Exh. 10 on 08.06.2000. He further states about the

addition of the offence under Section 302 of IPC, recording of statements of four witnesses on 08.06.2000 and effecting arrest of accused no. 1 on 10.06.2000. Recording of statement of PW 1 – Sushila and other two witnesses on 11.06.2000. Effecting arrest of accused no. 2 on 06.07.2000. Recovery of axe at the instance of accused no. 2 Santosh on 08.07.2000 Exh. 27. Then he states about the forwarding the articles to chemical analyzer.

In the cross-examination, PW 7 admits that deceased Vasant was arrested two to three months prior to the incident and he was giving threats to the villagers. He then gives a very important statement in the cross-examination that when he made inquiry with PW 2 – Komal about the offence on 07.06.2000, she did not give any information to him. Then he further stated in cross-examination that when he went to the house of accused no. 1 Sushila on 07.06.2000 her three children were present in the house and at that day he did not record the statement of Komal, Yogesh and Ganesh. He states that by calling PW 1 – Jaibai in Alandi police outpost he recorded her statement on 11.06.2000. Then he states that on 03.06.2000 PW 1 - Jaibai had made complaint against deceased Vasant for harassing her. Then the omissions in the version of

PW 2 – Komal are brought on record. In cross-examination this witness made categorical statement that the dead body which was found at the place as per panchanama Exh. 18 was not capable of identification and there was only underwear on that body.

21. Now when PW 7 – Mr. Nalawade makes a categorical statement that the dead body was decomposed and unidentified as such, the identification of the corpus then raises a serious doubt. The prosecution on this aspect relies on the version of PW 5 who has stated in his examination-in-chief that he could identify the dead body of Vasant because the name was tattooed on his hand. On perusal of the inquest panchanam it reveals that the right hand of the dead body was subjected to the animal bites and it was only a bony piece. The inquest panchanama then refers to the tattoos on the wrist of the left hand with certain names in Marathi. Then again it refers that back portion of the body was subjected to the animal bites. In view of this fact it becomes every difficult to accept the evidence of the prosecution in respect of identification of the dead body.

22. On going through the above referred evidence, we find that

though the prosecution claims that there are more than one circumstance against the accused person (we have referred to those circumstances in the earlier part of the judgment), none of these circumstance is established and proved against the accused persons. We also find that the prosecution was unable to establish the link between these circumstances so as to point out unerringly the authorship of the crime. The prosecution made an attempt to submit before the Trial Court that the accused no. 1 Sushila lodged a false complaint about the missing of her husband Vasant and his abduction by three unknown persons. Merely because accused no. 1 Sushila failed to inform PW 1 – Jaibai about the missing of Vasant or failed to inform missing of Vasant to neighbors cannot be a circumstance against the accused no. 1. It has come on record in the evidence through Dnaynoba Patole (PW 5) who accompanied accused no. 1 Sushila to Alandi Police outpost for lodging missing report refers to a lady, namely, Smt. Darekar and states that PW 5 himself and Smt. Darekar accompanied accused no. 1 Sushila to lodge missing complaint at Alandi outpost.

23. PW 7 fails to provide any reason as to why the statement of Smt. Darekar was not recorded when Smt. Darekar also accompanied

PW 5 and Sushila while lodging a missing complaint at Alandi Police Station. The prosecution though heavily relied on the version of PW 2 – Komal the child witness and step daughter of accused no. 1 – Sushila and daughter of deceased Vasant, her evidence is full of omissions. At the cost of repetition, we may state here that the police authorities visited to the house of accused no.1 on 07.06.2000 and spot panchanama is also drawn on the same day. PW 7 admits in the cross-examination that on 07.06.2000 Komal, Yogesh and Ganesh were present in the house but he did not record the statement of Komal on 07.06.2000 and her statement was recorded nearly after a month i.e. on 05.07.2000. It is also important to note that accused no. 1 asked accused no. 2 to keep rope in his pocket and PW 2 asking her as to why she burned clothes of her father and accused no. 1 asking Komal and Ganesh to throw the burned clothes in nearby bushes appears on record by way of omission. The oral testimony of star witness PW 2 Komal also washes out the theory of prosecution of last seen.

There is no convincing reason coming forth as to why this star witness PW 2 – Komal failed to narrate the material facts on 05.06.2000 when the police authority visited the house of the accused

no. 1 Sushila and what prompted PW 2 to narrate all these facts after one month i.e. on 05.07.2000 when her statement was recorded.

24. Reliance was placed on the following material to support last seen theory i.e. accused no. 2 Santosh asking the deceased Vasant that they should go for dinner at Dhaba. Then Santosh alone coming to the house and then Santosh and accused Sushila after sometime leaving the house keeping the children inside the house and latching the door from house, now even considering this aspect there is nothing on record to show that deceased was in company of accused nos. 1 and 2 soon before his death. In absence of such material, merely the statement that firstly the accused no. 1 left the house of the deceased along with deceased for having a dinner at Dhaba and then after sometime accused no. 1 and 2 left the house by keeping the children inside the house is not the material sufficient enough to hold the accused persons guilty of the offence charged against them. At the most this would be a material for raising suspicion against the accused persons.

25. It is the settled position of law reflected in various judgments of this Court as well as the Hon'ble the Apex Court that the suspicion

however strong it may, cannot take place of legal proof and only on suspicion without there being any legal proof it would be unsafe to award conviction and such conviction would be unsustainable in the eyes of law.

26. The other material in the form of evidence of medical officer Dr. Lele (PW 4) is also an important material. On perusal of the evidence of Dr. Lele (PW 4) it reveals that on internal examination Dr. Lele found injury no. 3 i.e. Skull fracture around only scalp flap seen cut around and above lt. Pinna above lt. Eyebrow below right eyebrow, above right pinna and vault mutilated pieces. PW 4 further states that the injury no.3 to the head is not possible by a weapon like axe. He also admits in clear words that injuries noticed by him are caused by more than 1 weapon.

Now in the backdrop of this material, the case of prosecution of an alleged recovery of weapon i.e. axe that too after one month of the incident from a well miserably fails to support the prosecution case. Inquest panchanama also refers to the decomposed dead body having various injuries including fracture to the skull.

27. The prosecution also made an attempt to place reliance on the material, namely, CA report in support of its case, but even this material falls too short to support the case of prosecution and the learned Trial Judge was justified in observing that the CA report Exh. 39 shows that axe did not contain blood stains nor the rope allegedly used in commission of offence. CA report Exh. 36 to 39 do not show that whose blood was on the clothes of the deceased as the blood group of the deceased is not determined in view of the fact that the body was decomposed.

28. Thus, we are of the opinion that considering the material brought on record by the prosecution and looking it to by any angle falls too short to connect the accused persons with commission of crime. In view of so many missing links it will not be possible to hold that the accused persons and the accused persons only and none else committed the crime.

29. Considering this facts, the accused persons were certainly entitled for benefit of doubt. The learned Trial Judge committed no error in appreciation of evidence. We are unable to find either any illegality or

any perversity in the judgment of the learned Trial Court. Resultantly, criminal appeal being meritless, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)