

CRIMINAL APPEAL NO.366 OF 2015

Appellant

Respondent

DATE : 19th August 2020

JUDGMENT : (Per – Prakash D. Naik, J.) :-

1. The appellant-accused was prosecuted for offences punishable under Sections 302, 307, 392 r/w 397 of Indian Penal Code.
2. The brief facts of the prosecution case are as under :

(a) On 23rd February 2012 PW-1 Aasan Sukhwani went to office at his regular time at 10 am.. He was residing at Plot No.71, Sarnath Building, Breach Candy along with his wife Punita Sukhwani. At about 12 pm he sent his peon to pick up his lunch box. At 5.30 pm his son Ajay (PW-6) informed him that he has received phone call from his servant Ajit and he told him that noise of quarrel is coming from house of complainant-PW-1;

(b) Thereafter PW-1 and PW-6 started towards their house. PW-6 called Dr.Shashiprabha Bakre (PW-8) who is residing on 8th floor of their building and asked her to go and find out what is happening in his flat. PW-8 called Ajay after ten minutes and informed him that Punita Sukhwani is in pool of blood;

(c) PW-1 and PW-6 reached the flat. The main door was closed. PW-1 entered from the kitchen door. When he entered in the hall he saw flower pot and glass plates in broken condition and pieces of green bangles were lying there. His maid servant was sitting near bath room and her face was bleeding. There were injuries on her face. She was unable to speak. Another maid servant Shaila was standing there. She is the maid servant of Ajay. Clothes of Shaila were smeared with blood. PW-1 entered into bed room and he found his wife on floor. Blood was oozing from her mouth. He dialed 100 number;

(d) Police came on the spot. PW-1 informed them about the incident. His statement was recorded. FIR was registered on 23rd February 2012 at 22.40 pm against unknown person with Gamdevi Police Station vide CR No.49 of 2012 for offence under Section 302 of IPC. He did not mention the name of accused. Funeral of the deceased was performed;

(e) The appellant-accused was arrested on 24th February 2012. The statements of witnesses were recorded. On completing investigation charge sheet was filed for the offences punishable u/s.302, 307, 397 of IPC. The case was committed to the Court of Sessions.

3. The charge was framed against appellant on 11th October 2012 for offences u/s.307, 302, 392 r/w 397 of IPC.

4. The prosecution examined 27 witnesses viz. :

1.	PW-1 ,Aasan Hothchand Sukhwani, the husband of deceased at Exhibit-12;
2.	PW-2, Gopu Parimal Belani, the panch witness of spot-cum-inquest panchanama at Exhibit-16
3.	PW-3, Shalini Sundar Shetty, the panch witness of physical search panchanama of accused at Exhibit-19;
4.	PW-4, Mahesh Laxman Yamkar, the panch witness of seizure panchanama of cushion and keys at Exhibit-22;
5.	PW-5, Santoshi Harish Kotwal, the sister of accused at Exhibit-25;
6.	PW-6, Ajay Assan Sukhwani, son of deceased at Exhibit-26;
7.	PW-7, Deepak Mahadev Padelkar, the photographer, who had taken photographs of deceased body at Exhibit-29;
8.	PW-8, Dr.Shashiprabha Madhukar Bakre, neighbour of deceased at Exhibit-31;
9.	PW-9, Chandanmal Girdharilal Shah, the goldsmith, with whom the accused had mortgaged ear tops at Exhibit-32;
10.	PW-10, Dr.Vijay Z. Belani, the family doctor of deceased at Exhibit-34;
11.	PW-11, Govind Badri Chauhan, the cook of deceased at Exhibit-35;
12.	PW-12, Rajendra Shantaram Mhapuskar, the manager of Sarnath CHS at Exhibit-36;
13.	PW-13, Kalpana Udaykumar, maid servant of deceased at Exhibit-37;
14.	PW-14, Dr.Ashit Madhusudan Bhagwati, from whom the deceased

	had taken treatment for Chikun Guniya at Exhibit-38;
15.	PW-15, Avinash Hariom Gupta, independent witness at Exhibit-40;
16.	PW-16, Ramesh Anjeer Solkar, the cook of son of deceased i.e. Sushil Sukhwani at Exhibit-42;
17.	PW-17, Ramteerath Ramasare Chauhan, the cook of son of deceased i.e. Ajay Sukhwani at Exhibit-44;
18.	PW-18, Sahaban Ali Ansari, the panch witness of seizure panchanama of clothes at Exhibit-48;
19.	PW-19, Dr.Dinesh Sitaram Pawar, who has examined PW-13 Kalpana Udaykumar at Exhibit-52;
20.	PW-20, Sanjay Ramchandra Tawade, who had taken muddemal to C.A. from Gamdevi Police Station at Exhibit-54;
21.	PW-21, Dr.Waman Kedari Gaikwad, who has conducted postmortem of dead body of Punita Sukhwani at Exhibit-58;
22.	PW-22, API Mr.Sainath Kisan Mali, who had conducted house search panchanama of accused at Exhibit-65;
23.	PW-23, Ramji Narsi Jkarortra, who has developed the photographs of deceased at Exhibit-58;
24.	PW-24, Dr.Baban Shripati Shinde, who has examined the accused at Exhibit-72;
25.	PW-25, Sanjay Devraj Pillai, the Driver of son of deceased i.e. Sushil Sukhwani at Exhibit-75;
26.	PW-26, PSI Mr.Rahul Vishwasrao Deshmukh, the 1 st I.O. at Exhibit-76; and
27.	PW-27, PI Mr.Suresh Abhiman Chaudhary, the 2 nd I.O. at Exhibit-79.

5. The prosecution relied upon documents, such as, complaint of PW-1 at Exhibit-13, printed form of FIR at Exhibit-14, spot-cum-inquest panchanama at Exhibit-17, seizure panchanama of clothes of

accused at Exhibit-20, memorandum of panchanama at Exhibit-23, seizure panchanama of cushion and keys at Exhibit-24, carbon copy of receipt of ear tops mortgaging at goldsmith at Exhibit-33, affidavit of Dr.V.K.Gaikwad in respect of misplace of medical papers at Exhibit-39, statement of PW-16 u/s 164 of Cr.PC. at Exhibit-43, statement of PW-16 recorded u/s 164 of Cr.PC at Exhibit-45, affidavit of I.O about misplace of original postmortem report at Exhibit-47, signature of PW-18 on seizure panchanama dated 26.2.2012 at Exhibit-49, page nos.3,5,712 and 15 of medical papers of Kalpana Udaykumar (PW-13) at Exhibit-53 (colly), P.M.report at Exhibit-59, C.A.reports at Exhibit-60 (colly.), acknowledgement of PW-22 on order given by PI Mr.Chaudhary at Exhibit-66, report of house search panchanama of accused at Exhibit-67, signature of API Mr.Mali on house search panchanama (Exh.67) at Exhibit-67-A, bill of about Rs.290/- of photographs of deceased body at Exhibit-70, printouts of photographs of deceased at Exhibit-71 (colly.), medical report of accused at Exhibit-73, death certificate of Punita Sukhwani at Exhibit-77, ADR papers from page nos.213, 215 and 221 (referred during cross examination of PW-26) at Exhibit-78 (colly.), seizure panchanama of clothes of accused at Exhibit-80, forwarding letter to C.A at Exhibit-81, station diary entry at sr.no.46 dated 23.2.2012 at Exhibit-82 and evidence closure pursis at Exhibit-85.

6. The Trial Court gave a finding that the prosecution has proved the offence u/s 302, 307 and 392 r/w 397 of IPC against accused. By judgment and order dated 10th April 2014 the appellant was convicted for offence u/s 302 of IPC and sentenced to suffer rigorous imprisonment for life. She was also convicted for the offence u/s 307 of IPC and sentenced to suffer rigorous imprisonment for five

years with fine of Rs.10,000/- and in default to suffer rigorous imprisonment for six months. She was further convicted for the offence punishable u/s.392 r/w 397 of IPC and sentenced to suffer rigorous imprisonment for seven years. The sentences were directed to run concurrently. Set off was given u/s 428 of Cr.P.C to the extent of period of detention undergone by her.

7. Learned counsel for appellant made following submissions :

(i) The case is based on circumstantial evidence as there is no eye witness to the incident. The prosecution has failed to establish the charge beyond all reasonable doubt;

(ii) The circumstances alleged by the prosecution are not complete for holding the appellant guilty for the charges levelled against her;

(iii) The appellant was not named as offender in the FIR. Subsequently the case was concocted against her;

(iv) The prosecution has failed to prove that in all probability, except the appellant, no other person is the author of crime in question;

(v) The disclosure panchanama of key at the instance of accused dated 27th February 2012 has been falsified by PW-1. On 28th February 2012 he was confronted with the key of house. According to PW-1, police did not visit his house on 27th February 2012. Police came to his house on 28th February 2012. Police showed him keys of house;

(vi) The seizure of cash amount from the possession of appellant cannot be considered as incriminating circumstance by any stretch of imagination;

(vii) There is inordinate delay in recording statements of prosecution witnesses which is not explained by the prosecution;

(viii) The prosecution has not produced the evidence collected by them in the form of CCTV footage;

(ix) PW-13 was the suspect in the crime. Her evidence does not inspire confidence. She has deposed that she left her native place post incident period and then reached in the city of Mumbai. The conduct of PW-13 is unnatural. There are contradictions in her evidence. There is delay in recording her statement;

(x) Original postmortem notes were not produced on record. The affidavit of medical officer is contrary to his evidence;

(xi) The prosecution has failed to establish the motive in commission of offence. The accused is being made scapegoat;

(xii) The prosecution was unable to trace out the source of hand gloves which were found in the house at the place of incident;

(xiii) On the bed no blood stains were found. The C.A reports on record do not form incriminating evidence against appellant;

(xiv) The blood found in the bed room was not sent to C.A for examination.

8. Learned APP submitted that there is strong circumstantial evidence against appellant. There is consistent evidence of witnesses showing involvement of appellant in the crime. Presence of appellant has been established by several witnesses at the place of incident. PW Nos.1, 6, 11, 12, 13 have proved that the appellant was present at the scene of offence and there was fight between the appellant and PW-13. PW-13 is the injured witness. She has supported prosecution case while establishing that accused was in flat and while she was confronted by PW-13, the accused assaulted her. The version of PW-13 is supported by medical officer who had examined her and also from the injury certificate/medical case papers relating to the injuries sustained by her. The motive for committing crime is established. The cash amount was recovered from the appellant. The keys of cupboard where the amount was lying is recovered at the instance of appellant. The past conduct of the appellant shows that she was involved in theft. The evidence on record also establishes that appellant was in need of money as her husband was externed. The appellant had sustained injury to her thumb which also shows that she is the author of crime. The appellant is not working in the house of PW-1 and there was no reason for her to remain present in the premises. The C.A reports disclose that blood found at the place of incident was human. The blood in the nail clippings of the deceased is human blood. Hence, prosecution has succeeded in establishing all the circumstances to prove the guilt of appellant-accused.

9. We have scrutinized the evidence on record to test whether prosecution has established the circumstances from which inference

of guilt can be drawn. In the case of circumstantial evidence the circumstances should be of definite tendency unerringly pointing towards guilt of accused. The circumstances taken jointly should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non else and it should be incapable of explanation of any other hypothesis than that of guilt of the accused.

10. In the case of **Gian Mahtani Vs. State of Maharashtra (AIR-1971-SC-1898)**, the Hon'ble Supreme Court has observed as follows :

“According to the system of jurisprudence which we follow, conclusion cannot be based on suspicion nor on the conscience of the Court being morally satisfied about the complicity of an accused person. He can be convicted and sentenced only if the prosecution proves its case beyond all reasonable doubt.”

11. In the case of **Anil Shamrao Sute and another Vs. State of Maharashtra (2013-Cri.Law Journal-2223)**, the Hon'ble Supreme Court was pleased to observe that suspicion howsoever strong cannot take place of proof. Clear and impeccable evidence is necessary to convict the accused.

12. The evidence of the witnesses examined by the prosecution can be classified into six groups. The first group would comprise husband and the son of deceased viz PW-1 and PW-6. The second group relates to the persons who had visited the spot of incident after crime viz PW Nos.8,11,12,13,16,17 and 25. The third group is of panch witnesses viz PW Nos.2,3,4 and 18. The fourth group shall consist of medical officers who had examined the deceased, injured

witnesses and the accused viz PW Nos.10,14,19,21 and 24. The fifth group relates to alleged motive attributed to the accused viz PW Nos.5, 9 and 15. The sixth group relates to investigation of the case and would be consisting of evidence of PW Nos.7, 20, 22, 23, 26 and 27.

13. PW-1 Aasan Sukhwani is the husband of deceased. He has deposed that on the day of incident he had been to his office. Kalpana is working in house as maid servant. Cook Govind is also working in his house. He has two sons Sushil and Ajay. Ajay is staying in flat no.72 on 7th floor. The complainant and his wife Punita (deceased) was residing in flat no.72 on the 7th floor. Son Sushil is occupying flat no.62 on the 6th floor. On 23rd February 2012 at about 5.30 am his son Ajay (PW-6) informed him that he has received a call from his servant Ajit informing that noise is coming from flat no.71 and the door is closed from inside and they cannot enter. PW nos.1 and 6 left together towards their home. In the mean time, PW-6 called Dr.Shashiprabha Bakre (PW-8) and told her to visit their flat and ascertain the situation. After some time PW-8 called PW-6 and informed him that Punita is in pool of blood. PW nos.1 and 6 reached the flat. The main door was closed. They entered from the kitchen door. In the hall he noticed that flower pot and glass plates were lying in broken condition. There was lot of blood and blood stains on the floor. Pieces of bangles were also lying on the floor. The maid servant was sitting near bath room. Her face was bleeding. She could not speak. Other maid servant Shaila (accused) was standing near her. She is maid servant of his son Ajay. The clothes of Shaila were blood stained. His wife was lying on the floor and blood was oozing from her mouth and head. He called

Police. The police came. He told them about the incident. His statement was recorded as FIR. On 26th February 2012 he went to police station. He did not find the keys of cupboard of his wife. Police told him that they found Rs.20,800/- from the accused. His wife used to keep Rs.20,000/- to Rs.30,000/- in her cupboard for household expenses. His wife was suffering from Chikun-Gunia since last 2 to 3 months. Construction work was going on near the building and there was noise and hence nobody can hear her if called. He identified the articles lying at the place of incident. In the cross examination he deposed that when the spot panchanama and inquest panchanama was conducted, the maid servant Kalpana was present. Police made inquiries with her. His son Sushil had came on the spot after 15-20 minutes. His cook Govind was not there when he reached the flat. It may have happened that before he entered the flat, the guard and cook Govind had been to the flat. The guard and cook Govind may have entered the flat from another door. The guard entered the house with him and the cook may be inside the flat. He had not questioned Govind when he was in the flat. He did not state name of any person in his complaint. Police inquired about the incident with his son Ajay. He gave information to police at his house. Police recorded it on the spot. Police inspected his house before recording his statement. Police came to his house on 28th February 2012. They showed him keys of his house. On 27th February 2012 Police did not search his house and did not take charge of any article. Police came to house on 28th February 2012. They showed her keys of house.

14. PW-6 Ajay Sukhwani is the son of deceased. He is occupying flat on the 7th floor. He stated that his brother is staying on 6th floor.

His parents are residing opposite his flat on the same floor. The name of the cook working with him is Ramthirth. The names of other two servants are Ajit and Shaila. Shaila comes for part time job. She is also working as part time servant in the house of his brother. She was not working in his parents house. He received call from his servant Ajit at about 5.30 pm on 23rd February 2012 and he informed that some noise of shout and fighting is coming from house of his parents. He called his father. Both left the office and left for home. He called PW-8 and requested her to go and check his mother. PW-8 gave a call and told him that her mother is no more. He reached the place of incident at 6 pm. The building manager, driver and others were present. He saw Kalpana (PW-13) with bleeding injuries. Her clothes were torn and hair were scattered. He saw Shaila. In the hall he noticed broken pieces of glass, ceramic glass plates with blood stains and blood on the floor. His mother was lying in bed room on the floor. There were some marks on her neck. He asked Shaila what she was doing there and she replied that Kalpana had killed his mother and she has done nothing. Police told him that they have seized Rs.20,800/- from accused. On 27th February 2012 Police came with accused and cupboard keys were recovered from her from the bottom of flower pot. Pillow was also recovered from her. His statement was recovered by police on 27th February 2012. He identified the articles which were lying at the spot of incident. In the cross examination he stated that on 23rd February 2012 he met police. Police made inquiries with him. Police examined the entire room. Police did not ask him whether anything is missing from the house. They had not asked him about particular object. He knows Gopu Bilani. On the next date of incident he went to police station. On 23rd, 24th and 25th February 2012 police visited

his house. The police did not show the amount of Rs.20,800/- in his house. On 24th February 2012 police made inquiries with him but his statement was not recorded. The house was cleaned on 24th February 2012.

15. PW-8 Dr.Shashiprabha Bakre, is residing on 8th and 9th floors of the building. She deposed that she received call from PW-6 and hence she checked his mother and informed him that she is dead. When she visited the place of incident, the servants were standing in front of gate. She told them to open door. The driver, manager of society and other persons were present. She went inside. One woman was standing in the house. She asked her about Memsahab. The woman showed finger towards bed room. Mrs.Sukhwani was lying on the floor. She asked the name to the lady standing there. She disclosed her name as Shaila. On examining Mrs.Sukhwani she noticed that she was dead. She inquired with lady about broken glasses and blood lying at the place of incident. The lady showed finger towards servant room. She told that lady came towards her and to save herself she threw flower pot on her face. It hit the head of domestic servant. Hence blood was lying there. Ajay servant was standing there and speaking to Ajay. She spoke to Ajay and told him that his mother is no more. In the cross-examination she stated that four persons must be outside the house when she visited the house of Mrs.Sukhwani on the date of incident. The door was closed. She do not know whether it was closed from inside. When she was waiting there, she did not see anybody coming within the flat. She did not see anybody entering inside the flat. Nobody entered the flat in her presence. She did not hear any cry or sound of quarrel from the house of deceased. Shaila was not known to her. She was not of her acquaintance.

16. PW-11 Govind was working as servant in the house of PW-1 prior to two months from the date of incident. He does the work of cooking. He works from 7am to 2 pm and 9.05 pm to 9.30 pm. In between he takes rest at the parking area. At the time of incident Kalpana, himself and Smt.Sukhwani were there. The incident took place on 23rd February 2012. When he entered the house he saw two ladies fighting with each other and they were pulling hair of each other. He was scared and ran away. He called Teerth Maharaj who was servant of Ajay Sukhwani. Even he was scared and ran away. He told about the incident to watchman. When he came back he found the door was closed. The supervisor took the keys from Sushil Sukhwani and entered the house. Shaila and Kalpana were quarreling with each other. His statement was recorded on 26th February 2012. In the cross examination he deposed that his statement was recorded in the house of Mr.Sukhwani. He did not have any proof that he was working in the house of Sukhwani, but Mrs.Sukhwani used to take his signature when she used to give him salary. He had stated in his statement that another lady was Shaila. He cannot assign any reason why it is not mentioned in his statement dated 26th February 2012. He had stated before the Magistrate that another lady was Shaila. He cannot assign any reason why it is not mentioned in his statement before the Magistrate. After entrance there was a hall. It is adjacent to kitchen. There was another door for kitchen. The person from outside can enter the kitchen without entering the hall. There was one main door. After entering the hall, there was bed room of Mrs.Sukhwani. There were two doors to the kitchen. One door opens in the hall. There was servant' door to enter the kitchen. He informed the police whatever was known to him about the incident on 23rd February 2012. At that time police

recorded his statement. He was called at the police station. He cannot say for how many days he was detained in police station. The police took him on 23rd, 25th and 26th February 2012. He visited the police station for four days.

17. PW-12 Rajendra Mhapuskar is working in Sarnath building since last fourteen years. He is Estate Manager. He knows families who are residing in the society. The cook of Ajay was Ramtirth. Govind Maharaj was cook in the house of Aasan Sukhwani. Ajit was working as sweeper and Shaila Kamble was also working with Ajay Sukhwani. He went to flat no.71 along with driver on the day of incident. The door was not opening. Mr.Sukhwani instructed him to take key from 6th floor. He went to 6th floor. Ramesh took permission to hand over keys and he came on the 7th floor. Ramesh opened the door with keys. They entered into the house. They saw Kalpana and accused pulling hair of each other. Kalpana was bleeding. Her clothes were torn. Both of them were shouting. Rajesh Patel opened the door of the bed room. Madam was lying near bed. Rajesh called Mr.Sukhwani on mobile phone. Mr.Sukhwani told that he had called Dr.Mrs.Bakre. She came there and told them that Mrs.Sukhwani is no more. Thereafter Mr.Aasan Sukhwani came there. Police arrived. Thereafter he left the flat. In the cross-examination he stated that police never called him at the police station in this case. The police never showed him any accused or money for identification. He did not give details to police on 23rd February 2012 about the incident. His statement was not recorded on 25th and 26th February 2012. Police met him on 27th February 2012 on 7th floor in the flat and recorded his statement. He was on duty from 23rd to 27th February 2012. He do not remember whether he saw Shaila in the flat at that

time. Prior to 27th February 2012, police asked the basic information to him. He gave basic information to them. It was on the day of incident. At that time police had recorded his statement roughly. There are 23 flats in the building. He knows the names of servants working in the building. He is not the resident of building. The CCTV cameras are installed in the building. The control panel of the CCTV is in the building. The police asked about the CCTV footage. The police verified it and CD was given to the police. The main entrance of the building is covered in CCTV. The CCTV is on for 24 hours. He had seen the CCTV footage.

18. PW-13 Kalpana Udaykumar is the star witness to the prosecution case. According to her she was staying at Mumbai and working at Sarnath Building with father of Sushil. She was doing household work as maid servant. She was staying in Sarnath Building for the whole day. One person was there for cooking. On the day of incident, due to pain in hand she took medicine and was sleeping. She heard the door bail. She did not open the door. Her mistress told her that she would see and told her to sleep. She used to call her at 4 pm for making tea. On that day she did not call her. She heard the noise and came out from the place of bath room near the kitchen. She saw Shaila. She asked her how she came in the house. Shaila pulled her hair and took her near the window and told her to jump from the window. She slapped her on face and hit her head on wall. She kicked her on chest. She assaulted her mercilessly. She hit on her face and head by glass plate. She told her to allow her to go out. She caught her. She told Bhaiyya to bring some persons as the accused assaulted her. Bhaiyya brought 2 to 4 persons and came inside. Police took her to hospital. She was

hospitalized for three days. Her statement was recorded in the hospital. The complainant visited the hospital. In the cross-examination she stated that she came to know about the name of accused after the incident from other persons. She also came to know that accused was working with Ajay. She has stated before the Magistrate that she came to know about the name of accused after the incident. Police told her the name of Shaila. She went to police station after 10 to 15 days from the incident. Police inquired her about the incident. She told police about the incident. Police recorded her statement. She do not know in which language the statement was recorded. She do not know the contents of her statement. She did not read the statement. She has not stated in her statement that she saw lady coming out from the room of her madam. If it is stated in her statement, it is incorrect. She do not know the name of her mistress. She do not know the name of her husband. She knows name of her son Sushil. He is staying on 6th floor. She was in the hospital for three days. Police were besides her in the hospital. Police did not allow her to go anywhere. Police inquired with her on the first day in the hospital. Her statement was recorded by police. Police inquired with her on the second day in the hospital. Police recorded her statement. On the third day also police recorded her statement. She do not know whether any statements were read over to her by police. She does not know whether her statement was recorded correctly by police. Her relative is staying in the house of Sushil. Her name is Shanti. She was called by Shanti from her native place. She came to Mumbai on 24th February 2012. She came by Gitanjali Express. Shanti came on station to receive her. It took two days for her to reach Mumbai from her native place. She left her native place on 22nd February 2012. She was taken to police

station and thereafter to the Court. She did not see anybody assaulting her mistress. She did not see anybody going inside room of her mistress. She did not see anybody coming inside the flat. There is only one entrance to the flat. There is a hall after entrance. One door of the kitchen opens in hall and another is of bed room. There is only one door to enter into kitchen. There were three bed rooms and one kitchen in the flat. She did not see madam lying in the bed room. She did not enter the said room. She did not peep inside the room nor anybody disclosed to her what transpired in the room. She did not say anything to Doctor. The police did not show her any articles. The police did not seize anything from the house in her presence. The police did not obtain her finger prints. They obtained her thumb impression. She did not know name of Bhaiyaa. She did not know the names of persons to whom he brought. She cannot give description of Bhaiyaa and persons whom he had brought. She is illiterate. She do not know the date. She cannot state the period of her work in the house of father of Sushil. She has stated in front of Court that she came by Gitanjali Express on 22nd February 2012 and reached Mumbai on 24th February 2012.

19. PW-16 Ramesh Solkar is working with Sushil Sukhwani as cook. According to him on 23rd February 2012 he went for work at 5.15 pm. Manager Rajan De'costa and driver came to the house at about 5.45 pm. They told him that some noise was coming from flat no.71 and they asked him whether he was having key of the said flat. He called madam. She told him that the keys are lying in the house. He went with manager De'costa and driver Rajesh. Flat was opened with keys. He saw Kalpana and Shaila pulling their hair and there were blood stains on the floor. He called madam and told her

that Shaila and Kalpana were fighting and that there was blood on the floor. In the cross-examination he stated that for the first time in the Court he is deposing name of Kalpana. On 23rd February 2012 he saw police. He did not disclose anything to police on 23rd February 2012. He did not go to police station on his own to give information of the incident. The police inquired with him for the first time on 26th February 2012. He was staying in the same building from 23rd to 26th February 2012. He was not called at the police station before 26th February 2012. He cannot assign any reason as to why name of Kalpana is not mentioned in his statement. He knows Kalpana from two months prior to the incident. His statement was recorded on 26th February 2012. He cannot assign reason why name of Kalpana is not mentioned in the statement given before the Magistrate. He cannot assign any reason why it is not mentioned in his statement that he called Bhabhi and she told him to take the keys and go along with them. He did not know whether madam was in the house. He did not see the door of bed room. He did not call madam (deceased). He did not see madam in the bed room on that day. He came to know about the deceased from others. He was not working in the said flat. PW-17 Ramteerth Chauhan deposed that he is working as cook in the house of PW-6. Accused was working with PW-6. Govind told him that Shaila and Kalpana are quarreling. He went there and saw them quarreling. He entered flat No.71 through kitchen door. The door of kitchen was closed due to air pressure. He told the watchman and manager. They came there. Keys were brought. Thereafter he did not enter the flat and learnt about death of Memsahab. His statement was recorded in Court. Since 23rd February 2013 to 21st March 2013 he was working as same place. During this period police did not ask him to give statement. He went

to Court thrice. HE did not go to bed room on the day of incident in flat no.71. There are two doors to enter flat no.71. Police inquired with him on 23rd February 2012. His statement was recorded by police on 23rd February 2012. He do not have any documentary proof in respect of his working with Sukhwani.

20. PW-25 Sanjay Pillai is driver of Sushil Sukhwani. He stated that Shaila Kamble used to come to house of Aasan Sukhwani. He is working there since 12 years. Shaila Kamble is working at house of Sushil since five years. She used to come for work at about 12 noon and leave at 1 pm. At about 3 pm, he visited house of Punita for bringing key of Sushil Sukhwani. She opened the door. Shaila was sitting on the staircase. Thereafter he went to 6th floor. He had not seen Shaila. Police made inquiry with him on 27th February 2012 and recorded his statement. He was in Sarnath building from 6 pm to 9 pm on the date of incident. During this period police came to Sarnath Building. On that day police did not inquire with him about the incident. He did not feel that he is having some important information and he should inform it to police. On 24th, 25th and 26th February 2012 he was on duty. On 24th February 2012 police came at Sarnath Building and visited flat no.71. Police took search of house on 24th February 2012. On 24th February police brought Shaila at Sarnath Building and took her in flat no.71. On 25th and 26th February 2012 police had brought accused Shaila. On 27th February police came at Sarnath Building and called him at flat no.71. Police recorded his statement. Aasan, Sushil and Ajay Sukhwani were present in flat no.71 when police came. On 27th February 2012 Shaila was brought by police at flat at about 9.30 pm.. Police recorded his statement. The panchanama of seizure of keys was going on.

21. The next group comprises of panch witnesses PW Nos.2,3,4 and 18. PW-2 Gopu Belani was called on 23rd February 2012 at flat no.71, 7th floor, Sarnath Building to act as panch. Spot panchanama was recorded. He noticed glass pieces scattered on the floor. The pieces of bangles and ceramic plate having blood stains on it, flower bot in broken condition having blood stains and white colour glass in broken condition were found at the place of incident. One lady was present. There were injuries on the body of deceased. Blood was lying on the floor. The deceased was examined. The body was sent to J.J.Hospital for postmortem. Panchanama was recorded (Exhibit-17). In the cross-examination he stated that he cannot assign reason why presence of ladies is not shown in the panchanama. He do not know whether police seized one cushion from the spot. He was in flat for about two and half hours. It is not correct to say that there were fresh injury mark on the body of deceased. There was no injury marks on the body. He cannot assign reason why it is mentioned in the panchanama that there were no injury marks on the body.

PW-3 Shalini Shetty acted as panch for arrest panchanama dated 24th February 2012 (Exhibit-20). According to her, the accused was brought to police station. She gave her name as Shaila. There was bleeding injury near thumb. It was fresh. Police seized her clothes and seized Rs.20,800/- from her undergarment. In the cross she deposed that there is no reference of arrest of accused in the panchanama. She cannot assign any reason why it is mentioned on the panchanama as arrest panchanama. She acted as panch in other cases. She gave evidence before the Court. She cannot identify notes if it is mixed up with other notes. There is no specific reason to identify the notes in Court.

PW-4 Mahesh Yamkar acted as panch witness for alleged recovery of cushion and keys of cupboard. He stated that the accused disclosed that she is ready to produce the pillow/cushion and key. The accused then proceeded to flat no.71. PW-6 opened the door. The accused took them in bed room of flat. She produced one square cushion and bunch of keys from a vase. Police seized the cushion and keys. In the cross he deposed that police told him about the spot of incident. Police told him that spot panchanama was conducted by them. He do not know whether the signature of person named Ajay was obtained on panchanama. There was one door to the bed room. The blood stains were not there in the bed room. Ajay was present in the hall.

PW-18 Sahaban Ansari is a panch witness for seizure of clothes of Kalpana. She stated that the clothes were already kept at police station. She was shown the articles. She identified articles viz saree, blouse and petticoat. She cannot read Marathi. The contents of panchanama were not read over to her. She do not know the panchanama which was read over to her. Police recorded her name and address and showed her the clothes. The paper was not written in her presence. Police obtained her signature on the said paper. At the instance of learned APP, the witness was declared hostile and permission was granted to cross-examine the witness. In the cross conducted by the APP, the witness stated that it is not correct that one lady Kalpana produced the clothes at the police station. Police seized the clothes. They sealed it and labeled it. In the cross conducted by defense advocate, she stated that clothes were kept on the table. The panchanama was already prepared and police put her name in the blank space. She do not remember what was read over to her by police. She was asked to sign the paper by police. She

signed it. The clothes were not produced by any lady and not seized in her presence.

22. The next group comprises of the medical officers. PW-10 Dr.Vijay Belani was called by Dr.Anita Sukhwani on 23rd February 2012 since her mother-in-law was lying at home in pool of blood. He noticed that blood was scattered in the living room and in the passage with broken glass and other ceramic things. He examined Smt.Punita Sukhwani and pronounced her as dead. He issued certificate Article-16. In the cross-examination he stated that he was at the place of incident for 20-25 minutes. He cannot say how many persons were there in the flat. History was not given to him when he was called. Before examining the body history was given to him. PW-14 Dr.Ashit Bhagwati treated the deceased in the past. She was suffering from Chikun-Gunia. She was advised bed rest. She had limited activities due to her illness and there was no high resistance power. Police did not take record from him and he did not produce it. PW-19 Dr.Dinesh Pawar examined Kalpana PW-13. He was attached to J.J.Hospital as Resident Doctor. According to him Kalpana was admitted on 24th February 2020 to the hospital. She had given history that she was assaulted by known person at house of mistress at 4 pm.. She was having injury at her right cheek and forehead. She complained of giddiness. There was no major injury in C.T.scan. He produced medical papers. Some of the pages are in his handwriting. The said pages were marked as Exh.53 (colly.). The patient was referred from Nair Hospital. Medical papers were same. In cross it was deposed that on page no.2 the date is changed from 23-2-2012 to 24-2-2012. Whenever medico-legal case comes, an entry is made in EPR register. The said number is reflected in

hospital record. The injury mark noted by him is possible by fall on hard surface. Police did not show any broken glass plate or ceramic plate to him to ascertain the probable cause of injury. He is not personally aware about what history was given and what treatment was given in hospital. Exhibit-53 contains medical case paper of J.J.Hospital recording history provided during examination of PW-13 that patient was assaulted by house mistress by broken plate at around 4.00 p.m..

PW-21 Dr.Waman Gaikwad is the Medical Officer attached to J.J.Postmortem Centre. He conducted postmortem on the deceased. He received ADR and inquest panchanama. It was noted in the inquest panchanama that injuries were caused by sharp weapon. When he examined he found that injuries were not caused by sharp weapon. On external examination of the body he found that rigor mortis was present. Eyes were closed. He noticed contusions on body. He also noticed abrasions. The cause of death ascertained from the injuries was asphyxia due to smothering and strangulation. He prepared postmortem report in his hand writing. After going through viscera report he came to the conclusion that death was due to asphyxia due to smothering and strangulation. Bleeding from ear, nose and mouth are signs of smothering. There was complete ligature mark around her neck. There is possibility of fracture of ribs because of smothering pressure on the chest at the time of strangulation or smothering. Smothering can be caused due to pressure by pillow or any cloth on mouth and nose. Abrasions and contusions are possible due to struggle. In the cross he deposed that original postmortem report is misplaced by him. When he received the summons he came to know that original postmortem notes are

misplaced. The original postmortem notes were with clerk Mr.Dilip Kalgutkar of Medico-Legal Department. On 20th April 2012 he received the original medical notes from Mr.Kalgutkar. He received the summons on 3rd June 2013. He did not lodge any complaint with police station about missing postmortem notes. He did not inform about same to the higher officers. He cannot say whether it was misplaced. The affidavit was drafted by his lawyer. He did not read the affidavit before signing it. He did not know the contents of the affidavit. PW-24 Dr.Baban Shinde examined the accused. He was attached to Nagpada Police Hospital. On 24th February 2020 the accused was brought before him. The history given by accused was that she along with one Bengali lady were working in the house of Mrs.Sukhwani. Mrs.Sukhwani was murdered on 24th February 2012 at 3.30 pm by bangali lady. There was scuffle between bengali lady and Shaila Kamble and during the scuffle she sustained injuries over her body. The injuries were described. Injury no.1 is incise wound 2cm x 0.2 cm left thumb and left index finger. Injury no.2 is teeth mark on upper limb, injury no.3 is nail mark over left wrist, injury no.4 are two nail marks over left arm and injury no.5 were nail marks on neck. The cause of injury no.1 was hard and sharp object. The cause of injury no.2 is human teeth bite, injury nos.3 to 5 were human finger nails. The age of injuries were within 24 hours. In the cross he stated that he did not find any foreign particles in the nail clippings.

23. Prosecution case is that motive could be attributed to the accused to commit crime through evidence of PW nos.5, 9 and 15. PW-5 Santoshi Kotwal is the sister of accused. She stated that husband of the accused was externed. She received call from her

sister and called her at Breach Candy Hospital at her work place otherwise police will arrest her. She went to the house on 7th floor. The door was open and police were present. Her sister was there. Police recorded her statement. In cross she stated that she gave money which she received from Bhishi to her sister before the incident. The amount was Rs.20,800/-. Police showed her the amount when she went to police station. She told police that Rs.20,000/- is amount from her bhishi and Rs.800/- were for expenses. In the re-examination she stated that there is no signature on the notes to identify them and there is no specific identification mark. Since the notes were shown to her in the Court, she stated that same notes were given to her. In further cross she stated that she gave Rs.20,000/- from bhishi and Rs.800/- as expenses and the said notes were shown to her at police station.

24. PW-9 Chandanmal Shah is a goldsmith. According to him he has a shop named Padmavati Jewellers. He is doing business of mortgage of gold. On 8th December 2011 Shaila came to his shop and brought four ear tops for mortgage. He gave receipt. He produced the carbon copy of the receipt book. In cross he stated that Shaila was not shown to him at police station. He cannot identify the accused with certainty. The ear tops mortgaged with him has no connection with this crime. After 23rd February 2012 she did not mortgage anything.

PW-15 Avinash Gupta has deposed that accused was working in his house as maid servant for three and half years during the period from 2003-2006. She was removed in 2006 as she had stolen Rs.1,000/-. On humanitarian ground no complaint was lodged

against her. She was working at few places in his building. In cross it is deposed that on 28th February 2011 he met police for the first time. He came to know about the arrest of accused on 24th February 2012. He did not inform police on that day but informed it to Mr. Sukhwani. He informed about accused to Sushil Sukhwani. Police came to his house. He came to know about death of Punita Sukhwani. On 20th November 2006 theft was committed by accused. His mother and sister were present in the house.

25. PW-23 Ramji Karotra is doing business of xerox. He is having colour printer and black and white printer. He gave prints of the photographs. In December-2012 police from Gamdevi Police Station gave job of developing the photographs. He gave 58 photographs.

26. PW-7 Deepak Padelkar is the Head Constable attached to Gamdevi Police Station. He went to the spot. He took 58 photographs of spot by digital camera. PW-20 Sanjay Tawade is Head Constable attached to Gamdevi Police Station. On 9th March 2012 he took muddamal to chemical analyzer. He took samples to Kalina. After giving samples he received acknowledgement. He does not know since when the articles were in custody of Investigating Officer. He saw the articles for the first time in the store room when they were brought by the Investigating Officer. He does not know from where the articles were brought. PW-22 Sainath Mali is the API attached to Gamdevi Police Station. On 1st March 2012 PI. Chaudhary gave him order in writing for conducting search of house of accused and record statement of neighbours and inquiry about bhishi. The husband of accused was not there and his whereabouts were not known. He prepared house search

panchanama. In the cross he stated that nothing was found in connection with the offence from the house search. He cannot state names of witnesses though statements were recorded by him.

27. PW-26 Rahul Deshmukh was attached to Gamdevi Police Station as PSI. He received call from control room that one lady is lying in injured condition at Sarnath Building. He went to the spot. He went to flat no.71. One person was standing there. He asked his name. He was Aasan Sukhwani. He told that his wife is lying in injured condition. He noticed blood, pieces of flower pot and glass plate lying in the house. There were blood stains on the wall and cupboard. One lady was sitting in the corner of hall. She was injured. Another lady was standing. The owner of the flat told that one of them is Kalpana and the other one is maid servant of his son Shaila Kamble. The door of the bed room was open. One mobile was lying on the bed. The sim card of the phone was lying out and one door bail was there. One lady was lying near the cot on the floor. He called panch witnesses. The panchanama was recorded. The articles were collected. The family doctor examined the victim and declared her dead. Death certificate was issued. The body was sent for postmortem. The accused was arrested. On her physical search cash was found in her undergarment. He recorded statement of Aasan Sukhwani and treated it as FIR. In cross he stated that he cannot prepare two panchanamas at a time. Exhibit-17 is the inquest-cum-spot panchanama. As per instructions of senior officers on the spot he added some facts in panchanama. He cannot assign reason why the original panchanama was not filed before the Court. From the opinion received from the control room, cognizable offence was disclosed. No crime was registered. When he made inquiries

with Aasan Sukhwani, cognizable offence was disclosed. The statement was not recorded immediately. After watching the spot, cognizable offence was disclosed. At that time he did not lodge the complaint. He inquired about the incident with Shaila on the spot. When he inquired with Kalpana and Shaila, cognizable offence was disclosed. No statement was recorded and no crime was registered. An ADR was registered. If no complaint is lodged by anybody and there is suspicion about death, then the ADR is registered. The inquest panchanama is drawn in ADR. After recording the statement ADR is registered. Nobody was ready to give statement at that time. Without recording the statement of anybody, the ADR was registered. In ADR papers statement of Aasan Sukhwani is there. Probably ADR papers are prepared on 24th February 2012. The date on page no.214 is changed as 24th February 2012. On 23rd February 2012 he recorded the statement of Sushil. He cannot say whether he recorded the statement of Sushil before registering the crime. His statement was recorded in hospital. The crime was registered at 22.40 hours on 23rd February 2012. The ADR papers were prepared before registration of crime. At the place of incident he came to know about the facts of incident. The dog squad was called at the spot. He do not remember the direction the dog squad took the said unit. The finger experts were called at the spot. They took search in presence of panch witnesses. He cannot say whether the finger prints were taken from the spot and whether panchanama of finger prints was prepared. The search of room was taken. He has not filed station diary in the Court. The officers of Crime Branch were present at the spot. After death of lady, he told Aasan Sukhwani to lodge the complaint. He was disturbed and was not in a position to lodge the complaint and hence ADR was registered. He mentioned the names

of accused as suspected person. In the proforma name of Shaila is not mentioned. It is not mentioned in the complaint that Aasan Sukhwani has suspicion against Shaila. He did not record any supplementary statement on this point. Nobody told him to record statement of Aasan Sukhwani.

28. PW-27 Suresh Choudhary was attached to Gamdevi Police Station. He received information from control room on 23-2-2012 about murder in Sarnath Building near Sophia College. He sent PSI Deshmukh on the spot. He himself went on spot at 6.30 p.m.. The complainant and his son were present at the spot. Two ladies were also there and their clothes were smeared with blood. One lady was lying in the bed room. The pieces of flower pots were lying there. The spot panchanama was conducted and ADR was registered. He made inquiries with the ladies who were standing there. The injured lady named Kalpana was sent to Nair Hospital for treatment. Other lady was taken to police station for inquiry. The accused was the lady who was taken to police station. PW-1 gave complaint and PSI Deshmukh recorded his statement and registered Crime No.49 of 2012. The crime was registered against unknown person. Investigation was handed over to him. On 26-2-2012 statement of Kalpana was recorded. The clothes of Kalpana were seized. The statement of seven witnesses were recorded. On the statement of Kalpana, offence u/s 307 of IPC is disclosed and the said section was added to the crime. On 27-2-2012 statement of Chandanmal Shah was recorded. The accused gave statement before panch witnesses that she is ready to produce the key of the cupboard. She produced the key from flower vase under thermocol. She showed the cushion by which crime was committed. The statement of Sushil was

recorded on 28-2-2012. House search of the accused was conducted on 1-3-2012. Letter was given to MTNL for call details of land line telephone of Mr.Aasan Sukhwani from flat nos.71 and 72. The information about call details could not be secured. On 14-3-2012 he gave letter to Magistrate Court for recording statement u./s 164 of Cr.PC of PW Nos.13, 16 and 17. The call details of sister of accused were collected. The charge sheet was filed for the offence under Sections 302, 307, 397 of IPC. In the cross-examination he deposed that he has not brought case diary with him. He did not receive original postmortem notes at the time of charge sheet. The doctor had informed that original postmortem notes would be produced at the time of evidence. The original postmortem notes are not produced till date. In the extract of station diary entry at sr.no.46 dated 23-2-2012, the name of deceased was not disclosed. He made inquiry with PW-1 on the date of incident but his statement was not recorded at the spot of incident. Cognizable offence was disclosed at the time of inquest panchanama. Inquiry was made with Kalpana on the spot. She gave information. She was scared and not in a position to give statement. Inquiry was made with accused on the spot. She gave answers to the questions. Her statement was not recorded at that time. The finger prints were present at the spot of incident. The dog squad was there. The dog squad did not go outside room. Nothing was disclosed in the report of dog squad and in the finger print expert. He was also suspecting Kalpana. At the time of giving complaint the complainant did not suspect any one of the ladies who were there. He did not file medical papers of Kalpana from Nair hospital. There was watch on Kalpana by police. The station diary entry was made after arrest of accused. It is not mentioned in the station diary that there were injuries found on the

person of accused at the time of her arrest and alternative clothes were arranged for her and money was found with her and that the clothes were seized from her person. It is stated in the muddemal register but he has not brought the same in Court. PSI Deshmukh prepared two spot-cum-inquest panchanama. The original is misplaced. There is no station diary about the misplacement of panchanama and it is not reported to senior officers. There was no handle on the outer side of both the doors. There were two doors for the flat. One was main door and the other was for servants. He called the experts to collect finger prints but nothing was found to them. During search he found hand gloves on the spot. It was not found from the custody of accused. The gloves were not of inmates of the house. He inquired about the hand gloves during investigation. He did not find any proof for the hand gloves. During investigation he felt that the hand gloves were used at the time of crime. The hand gloves found on the spot did not reveal to him that it was a crime by professional criminal. No nexus was established about the hand gloves and the accused. The cash seized during the personal search of the accused was not shown to the complainant. He did not feel it necessary to show it to the complainant. The cash is not claimed by the complainant till today. The house search was not conducted during the spot panchanama. He did not ask the complainant to verify the valuables and cash in their house at the time of conducting panchanama. While conducting spot panchanama, motive for the crime was not disclosed. The complainant did not verify the valuables and cash at the time of spot panchanama. There was blood in the bed room. It was on the floor. He did not collect the samples of the blood which was lying on the floor. NO possible injury marks were found on the body. He cannot

say whether the blood which was lying on the floor, was of deceased or someone else. The blood was lying at one place at the bed room within the range of one feet. It was lying on the floor. It was the blood of the deceased. The blood was not sent to chemical analyzer. The articles in the bed room were scattered. The cupboard was locked and closed and it was not verified whether the articles in the cupboard were scattered. The blood was not on the body and cushion. He did not seize any articles, such as, bed sheet or cushion on the spot. The pillow was taken after disclosure by the accused. At the time of spot panchanama, he found pillow in the bed room. He did not find any objectionable marks on the pillow. The accused was interrogated on 23-2-2012 and 24-2-2012. When the complainant gave supplementary statement on 27-2-2012 and disclosed about keys, he interrogated the accused about the keys. He came to know about the missing keys on 26-2-2012. He did not send key to expert as it was identified by the complainant and family members. The key was identified by PW-6 on the next day. On the next day he showed it to PW-1 in his house at about 11 am to 12 noon. At that time he recorded his supplementary statement. The key was already sealed at the time of recovery panchanama in a transparent carry bag and it was showed in sealed condition. The panchanama of recovery is not in his handwriting. PW-11 has not stated that other lady was Shaila Kamble. He did not mention name of Shaila Kamble. During investigation it was revealed that CCTV camera was installed in the society. On the date of incident cameras were functional. He collected the hard-disk of CCTV footage during investigation. He had seen the CCTV footage. He did not feel it necessary to collect the CCTV footage since the accused was arrested from house. PW-16 did not mention in his statement that Shaila and

Kalpana were quarreling and that Kalpana was working there. The statement of Ramthirth Chouhan was recorded on 26-2-2012. He was not available from 23-2-2012 to 25-2-2012. He sent articles to chemical analyzer. They were handed over to Sanjay Tawade. He has not produced the extract of malkhana register before Court. There were three flats of Sukhwani family in the building. The flat of PW-1 was on the seventh floor. The adjacent flat was of his son. The other son's flat was on sixth floor. They had cordial relations. They were having independent servants and drivers. There was no restriction on any of the servants of any of the houses to go to each others houses. During investigation he did not find that there was dispute amongst servants. He did not send blood samples for DNA. The blood lying on the spot was not of accused.

29. On completion of recording of evidence of witnesses, the statement of accused was recorded u/s 313 of Cr.PC (Exhibit-86). The accused had denied all the circumstances put to her.

30. The Trial Court recorded the findings that death of Punita Sukhwani is homicidal. The accused committed murder of Punita on 23-2-2012 between 3.30 to 5.00 p.m. at flat no.71, Sarnath Building, Breach Candy, Mumbai by intentionally or knowingly causing death of Punita and thereby committed offence punishable u/s 302 of IPC. The accused committed the act of assaulting the witness Kalpana Udaykumar by broken pieces of glass with such intention or knowledge and under such circumstances that had the act of accused caused death of witness Kalpana, the accused would have been guilty of murder and she caused her to the witness Kalpana and committed offence u/s 307 of IPC. The accused robbed cash of Rs.20,000/-

belonging to Punita Sukhwani and committed offence u/s.392 r/w 397 of IPC. The accused was sentenced to undergo imprisonment as stated hereinabove.

31. The following circumstances were held to be proved against accused while convicting the appellant-accused :

- (i) presence of the appellant in the house of deceased when she was alone;
- (ii) reply of accused to PW-1 when he asked her about her presence;
- (iii) recovery of Rs.20,800/- from the person of accused after her arrest;
- (iv) recovery of key and cushion at the instance of accused;
- (v) previous instance of theft when she was in need of money;
- (vi) mortgage of gold tops when she was in need of money which is admitted by her in the statement u/s 313 of Cr.PC;
- (vii) try to commit murder by assaulting Kalpana with flower pot and ceramic dish.

32. On detail analysis of the evidence before the Court, we find that there were serious discrepancies in the evidence adduced by the prosecution. We find that right from inception, the conduct of witnesses is suspicious. The investigation suffers from loopholes. The investigating agency is biased against accused. There is suppression of material which is adverse to the defense. There is delay in recording statements of witnesses. The implication of the appellant in the crime is apparently after thought. there was no

suspicion against appellant immediately after incident. Vital witnesses were not examined creating doubt about the prosecution case. Missing of original documents which created suspicion about conduct of witnesses and investigating agency. There is reason to believe that some other person had entered into the premises where the incident took place. There are serious lapses in investigation. Hand gloves were found at the scene of offence. Undisputedly the hand gloves could not be connected with the accused. Assuming that presence of appellant is established at the scene of crime, it does not prove that the appellant is the author of crime. It is pertinent to note that presence of PW-13 Kalpana was also established at the scene of offence. If there is doubt as to who had committed the crime, the benefit must accrue to the accused. There was no reason to implicate the appellant as responsible for murder of Punita Sukhwani or attempting to commit murder of PW-13. In the absence of authentic, reliable and cogent evidence, accused cannot be convicted. The motive attributed to the appellant is weak. The FIR was lodged by PW-1 against unknown person. Thus, evidence adduced by the prosecution does not inspire confidence to come to the conclusion that the appellant has committed murder of the deceased or that she has assaulted PW-13 or that she has committed robbery in the house of deceased.

33. The incident had occurred on 23-2-2012 probably between 3.30 pm and 5. pm. as alleged by the prosecution. The deceased Punita Sukhwani was residing in flat no.71 along with her husband Aasan (PW-1). The flat is situated on the seventh floor of Sarnath Building at Breach Candy. The adjacent flat no.72 belongs to Ajay (PW-6) who is son of PW-1 and the deceased. The third flat is

situated on the sixth floor bearing flat no.62 which belongs to Sushil who is the son of PW-1 and the deceased. Various witnesses examined during the trial and those who were not chosen to be examined were working with PW Nos.1, 6 and Sushil Sukhwani. From the evidence of the witnesses with regards to the description of flat premises where the alleged incident had occurred, it appears that the flat consists of main door and servant door. On entering the flat there is a living room and on the other side there is a bed room. The pieces of bangles, glass plate, flower pot were found in the hall. Blood was found in the hall. Hand gloves were found in the flat. The deceased was lying near the cot in the bed room. Blood was noticed in the bed room on the floor.

34. PW-11 Govind Chouhan is working as cook with PW-1. PW-12 Rajendra Mhapuskar is working in Sarnath Building as manager. PW-13 Kalpana Udaykumar was working as maid servant with PW-1 and deceased. PW-16 Ramesh Solkar is working as cook with Sushil Sukhwani. PW-7 Ramthirth Chouhan is working as cook with Ajay.

35. The story as put forth by the prosecution is that PW-13 Kalpana is working as maid servant with PW-1 and deceased. She was in the house. She was sleeping. She heard ringing of door bell. Her mistress told her that she would open the door. PW-13 continued to sleep. When she woke up she found accused in the premises. She questioned her. The accused assaulted her, threatened her as a result of which she sustained injuries. The accused tried to kill her with a view to exit from the premises. PW-13 was not aware that Punita Sukhwani is lying dead in the the bed room. She did not witness accused assaulting Punita or coming out from the bed room. Thus, as per her version, the accused was present in the flat. The

accused was found present in the flat and that she was assaulting by accused. PW-11 Govind cook, works in two shifts has deposed that when he visited the flat of PW-1 for work he noticed PW-13 and accused were fighting. He was scared and came out. He told the watchman about the incident and then again went to the spot. The door was closed. The supervisor came and keys were brought from PW-17 Ramthirth. PW-17 came at the spot. The door was opened by him with the keys. PW-12 Rajendra was also present. He is working as manager in the building. They entered into the premises and found that accused and PW-13 were present. Blood was lying on the floor. Punita was in an injured condition in the bed room. Information was given to PW-6. PW-8 Dr.Bakre who is the friend of the deceased then came at the spot. She examined the deceased and found that she is dead. She gave information about it to PW-6. She left the premises. PW Nos.1 and 6 had left together towards the place of incident after getting information from servant. As per evidence of these witnesses, PW-6 received information from his servant Ajit about commotion in the flat. Hence PW-6 informed PW-8 to ascertain the situation. When P?W-1 and PW-6 reached the spot, the main door was closed. They entered from the kitchen door. They noticed presence of PW-13 and the accused at the spot. PW-13 had sustained injuries. Blood was smeared on her clothes. It is relevant to note that according to PW-1 when he came at the spot the main door was closed and he had to enter from kitchen door. It is not clear whether the kitchen door used to remain open and there was access to the servants from the kitchen door at every point of time. It is also not clear as to how the main door was closed when PW Nos.1 and 6 reached the spot since before they reached the spot, keys were brought by PW-16 and the door was opened noticing the

situation in the flat and Punita Sukhwani was seen lying dead in the flat.

36. Taking the prosecution case as it is, at the most presence of the appellant was disclosed in the premises when the alleged incident had occurred. However, there is no evidence beyond reasonable doubt to establish that she is the person who killed Punita or assaulted PW-13. It is relevant to note that accused did not try to run away from the place of incident. It is not that she was apprehended by witnesses. she was not allowed to leave the premises. Even after visit of PW nos.1 and 6, the demeanor and conduct of the accused was normal. There was nothing to indicate that she is involved in the crime of killing the deceased. Even PW nos.1 and 6 or any witnesses who had visited the premises did not suspect that accused has killed Punita. It was the version of PW-13 that the accused assaulted her. However, even she has not seen accused assaulting Punita. Her version is that she is not aware of what has happened in the bed room with Punita. Thus, there is no reason to subsequently infer that appellant is the author of crime. It is also relevant to note that although information was received by PW-6 from his servant Ajit, he has not been examined. The other son of PW-1 and deceased Sushil from whose house the keys of flat were brought from the sixth floor, has not been examined. Evidence of PW-1 discloses that Sushil has reached the spot after PW nos.1 and 6 had reached the place of incident. It is not clear where was Sushil at that time when the incident took place. Keys were brought from his house. Why he has not been examined by the prosecution. Where he was at the time of incident. The flat of Ajay is adjacent to the flat of PW-1. However, no other family member from his house had come forward to find out the situation at the place of incident and

none had been examined by the prosecution. PW-1 had not suspected involvement of appellant. He found that Punita was lying on the floor and blood was oozing from her mouth and head. He called police. There were no traces of blood on the bed, bed sheet and pillow. The prosecution case is that death of the deceased was caused by smothering and strangulation and that the pillow was used in the crime. The pillow was subsequently recovered at the instance of accused. However, there is no iota of evidence to indicate that pillow was used in commission of crime by the accused. PW-1 did not suspect that it was a case of robbery. He did not notice from the situation of the bed room or in the flat that there was any attempt of robbery. He did not ascertain from the cupboard whether anything is missing. He did not notice that keys of cupboard of the deceased were missing. Although accused and PW-13 were present at the scene of offence, none of them were implicated as accused in FIR. Police team who visited the premises, did not suspect involvement of appellant in the crime. Govind (PW-11) is working as cook in two shifts. He had entered into premises. He did not suspect that appellant is involved in commission of murder. There is no evidence to establish that appellant had entered into bed room and assaulted the deceased Punita or that the deceased was assaulted in the premises by appellant-accused. PW-1 had admitted that he has not stated the name of any person in his complaint. PW-6 was also present with him. He did not suspect involvement of appellant in crime. According to PW-1, police came to house on 28th February 2012. They showed him keys of house. Police did not come on 27th February 2012 and he did not go to police station on 27th February 2012. Whereas, according to PW-6 police came with accused on 27th February 2012 and keys of cupboard and pillow was recovered from

her. The alleged panchanama of recovery was recorded on 27th February 2012. Thus, the evidence of these witnesses is contradicting. There is serious doubt about said recovery. In the FIR it is stated that two ladies including the appellant were present in the premises, however, she was not named as an accused. From the evidence of Investigating Officer PW-27 it is revealed that robbery was not reflected as a motive for committing crime at the inception. From the evidence, apparently, the decision to implead the appellant as an accused was after thought. False attempt was made to show recovery of the amount from her and to attribute motive to her and for commission of crime by examining some witnesses. Several statements of the complainant were recorded. Supplementary statements were recorded on 26-2-2012 and 28-2-2012. PW-6 saw Kalpana in injured condition. He saw broken pieces of glass in the hall. He also saw blood. He has not stated that there was any blood on the clothes of accused. Accused was working as a servant with PW-6. The flat of PW-6 is adjacent to premises of deceased. PW-27 has deposed that relations between the servants working with PW Nos.1, 6 and Sushil were cordial and they used to visit each other. Accused was working with PW-6 as well as Sushil. According to him, the key was recovered from the bottom of flower pot. From the evidence it has appeared that on the date of incident when spot panchanama was recovered, the premises were searched. Nothing incriminating was found. The things which were scattered in the premises were placed in order. Key of the cupboard was not found hidden. The complainant in the complaint or PW-6 in his statement did not suspect robbery. It was not suspected that money belonging to the deceased was taken away by some person. The amount is not claimed by the witnesses. The amount was not shown to the

witnesses. PW-5 is the sister of accused. She stated that amount was handed over to accused by her. It is also pertinent to note that incident had occurred on 23-2-2012. The accused was arrested on 24-2-2012. It is difficult to believe that she would hide the amount in her undergarment till she is arrested. Apart from that, evidence of sister of the accused was examined to establish motive. She was the prosecution witness. Thus, to establish that the appellant has committed the crime and that robbery was the motive, the evidence of PW nos.1 and 6 and other witnesses is insufficient. PW-2 is the panch witness for spot panchanama. In his evidence he has referred to presence of lady present in the Court as the lady who was at the spot. There is no reference of the presence of appellant-accused in the spot panchanama. Articles, samples of blood were taken by police from the spot. Surprisingly although blood was noticed in the bed room, the sample of blood was not collected. He could not assign reason why presence of ladies is not shown in the panchanama. Panchanama Exhibit-17 mentions that deceased was lying in the bed room. Blood was oozing from her head. However, during investigation there was no attempt to collect the same and forward the same to chemical analyzer. PW-3 is the panch witness for arrest of appellant. In the panchanama there is no reference to the arrest of accused. The currency notes were allegedly found in the possession of accused. She stated that there is no specific identification on the notes and there is no specific reason to identify the notes. PW-4 is the panch witness for recovery of pillow and key at the instance of accused. The pillow was lying at the place right from the inception. When police visited the premises and when spot panchanama was recorded, the pillow was obviously available on the bed.

37. The evidence of PW-9 who is a goldsmith and with whom ear tops were mortgaged, does not support the prosecution in any manner. The said fact has no link with the present crime. That cannot be a circumstance to establish the motive. PW-5 Santoshi Kotwal is the sister of the accused. She had stated that the husband of the accused was extorted. Probably the prosecution intended to examine her to show that accused was in need of money. However, the witnesses have supported the accused stating that he had handed over the amount from bhisi to the accused. PW-15 has referred to alleged incident of theft committed by accused in 2006. No complaint was lodged. He came to know about arrest on 24th February 2012. Police came to his house on 28th February 2012. No reliance can be placed on such evidence to convict the appellant.

38. PW-8 is the neighbour of deceased. She visited the flat and found that Punita Sukhwani was dead. PW-14 Dr.Bhagwati was treating the victim for Chikun-Gunia. Their evidence is not incriminating against appellant. PW-10 Dr.Belani examined the deceased and declared her dead.

39. PW-11 Govind Chouhan saw two ladies fighting. His statement do not refer to another lady as Shaila (accused). His statement was recorded on 26-2-2012. The evidence of PW Nos.11, 12, 16 and 17 at the most refers to the fact that the accused and Kalpana were present in the premises. Their evidence nowhere leads to the conclusion that the appellant has committed the crime of murder.

40. The conduct of PW-13 is highly suspicious. She was present in the premises. She had sustained injuries. In her evidence she stated that she came to Mumbai on 24-2-2012. She left on 22-2-2012. From the evidence of investigating machinery it is apparent that her involvement was suspected. She was hospitalized. She was under scanner. She was not allowed to go anywhere. Thus, the complainant, PW-6 and the investigating machinery was not sure about the involvement of appellant as the author of crime. The needle of suspicion was also against PW-13. However, the appellant was shown as accused and the material was allegedly collected subsequently to show that she is involved in crime. From the evidence of PW-13 it can be seen that according to her she was sleeping in the house. She heard the noise and came out and saw accused. There was scuffle between them. She was assaulted by glass plate. She told Bhaiyya to bring some persons as the accused had assaulted her. Govind (PW-11) has been referred to as Bhaiyya. PW-11 did not state that PW-13 told him to bring some persons. She was treated for injuries. Her statement was recorded by police. Although she was working with PW-1 and accused was working with PW-6 and Sunil, she was not knowing name of the appellant. She came to know her name from other persons. Police told her name of the accused. In the statement u/s 164 she stated that she came to know the name of accused after the incident. She stated that she went to police station after 10 to 15 days. At that time she told police about the incident. Police recorded her statement. She do not know the contents of the statement. She did not read the statement. When her evidence was recorded an interpreter was brought before the Court as the witness is from Kolkata and since she does not

understand Hindi and cannot speak in Hindi. The interpreter knew Bengali language and he could interpret it in Marathi. It is pertinent to note that statement of this witness was exhibited in evidence as Exhibit-83A. It is dated 3-5-2012. The incident is of date 23-2-2012. This statement is recorded in Marathi. After recording her alleged statement in Marathi, it is allegedly explained to her in Hindi. As stated above, she does not understand Hindi or Marathi and hence services of interpreter were engaged at the time of recording evidence. The statement is recorded belatedly. She has referred to the deceased as mistress. She did not see anybody assaulting the deceased. She did not see anybody going inside the room of deceased or coming inside the flat. There is only one entrance to the flat. She did not peep inside the bed room nor anybody disclosed her what had transpired in the bed room. The police did not show her articles. Nothing was seized in her presence from the house. Her finger prints were not obtained. She did not know the name of Bhaiyaa and name of persons to whom he brought. She cannot give description of Bhaiyaa. Thus, this witness was not knowing any other person present including accused. PW-19 Dr.Pawar has examined PW-13. He has brought medical papers of J.J.Hospital. He admitted that there overwriting with regards to the date of 23-2-2012 to 24-2-2012 in the medical case papers of J.J.Hospital. From these documents it appears that history was provided during examination of PW-13 that assault was by house mistress by broken plate at around 4 pm. It is pertinent to note that PW-13 has referred to deceased Punita Sukhwani as the mistress. Thus, the history provided at the examination of PW-13 that she was assaulted by house mistress i.e. deceased. Thus the prosecution case that appellant assaulted PW-13 and committed offence under Section 307

IPC suffers from serious doubt and no credence can be given to version of this witness.

41. Dr.Gaikwad (PW-21) conducted post mortem of the deceased. He could not produce original post mortem notes. The affidavit sworn by him was exhibited in evidence with reference to missing or original post mortem notes. The affidavit of investigating officer in that regard is also on record. According to him, the cause of death is due to smothering and strangulation. He has referred to the nature of injuries on the person of deceased. According to him, original post mortem report is misplaced by him. He had collected the original post mortem notes before receiving the summons as he was required to study the same for answering the questions. He received the summons on 3-6-2013. He had received original post mortem notes from Kalgutkar madam on 20-4-2012. In his affidavit it was mentioned that relatives of the deceased met him and he gave copy of the post mortem notes and the cause of death certificate to them. However, in the evidence he stated that the said averment is not correct and he cannot assign reason why it is mentioned in the affidavit. When he received the summons he had informed the Court that original post mortem notes are missing. He cannot say when the post mortem notes were misplaced after he received it. He had not lost the documents on the date of receiving it and cannot give any reason why it is mentioned so in the affidavit. His lawyer had drafted the affidavit and he do not know the contents of affidavit. PSI Rahul Deshmukh filed affidavit stating that Dr.Gaikwad submitted carbon copy of cause of death certificate, and true copy of post mortem report. In view of affidavit filed by Dr.Gaikwad (PW-21), prosecution be permitted to lead secondary evidence. The

affidavit of PW-21 is Exhibit-39. In the affidavit it is stated that original post mortem report and forwarding letters were misplaced by him on 20th April 2012 in campus of J.J.Hospital. In his evidence he stated that he had received post mortem notes on 20th April 2012 before receipt of summons. He also stated that he signed the affidavit without reading it.

42. Dr.Baban Shinde, PW-24, has stated that she had examined the accused. The history was given by accused that one Bengali lady was working in the house. Mrs.Sukhwani was murdered by Bengali lady and there was scuffle between the Bengali lady and the accused during which she received the injuries. The doctor deposed that he did not find any foreign particles in the nail clippings of the accused. The history was voluntary.

43. From the evidence of PW nos.26 and 27 it can be seen that there were lapses in the investigation. The statements were recorded belatedly. According to PW-27 the statement of Kalpana was recorded on 26-2-2012. While recording evidence of PW-13 the statement dated 3-5-2012 is brought on record. PW-13 has stated that her statement was recorded after ten to fifteen days. From the evidence of PW-27, following aspects would show that entire case of prosecution was suspicious :

- (i) PW-27 was also suspecting Kalpana (PW-13);
- (ii) At the time of giving complaint the complainant did not suspect anyone of the ladies who were present;
- (iii) PW-27 did not file medical papers of Kalpana of Nair Hospital;

- (iv) There was watch on Kalpana by police;
- (v) The station diary entry was made after arrest of accused;
- (vi) It is not mentioned in station diary that there were injuries found on the person of accused at the time of arrest; alternate clothes were arranged for her; money was found with her and clothes were seized from her person;
- (vii) PSI Deshmukh has prepared two spot-cum-inquest panchanama in this case. Original is misplaced. There is no station diary about misplacement of panchanama. It is not reported to senior officers;
- (viii) Experts were called to collect the finger prints but nothing was found to them;
- (ix) During search hand gloves were found on the spot. It was not found from the custody of accused. They were not belonging to inmates of the house. Inquiry was made during investigation regarding hand gloves. No proof was found regarding hand gloves. During investigation it was felt that hand gloves were used in crime. No nexus was established about the hand gloves and the accused;
- (x) Cash seized during the search of the accused was not shown to the complainant. The cash is not claimed by the complainant. PW-27 did not ask the complainant to verify the valuables and cash in their house at the time of conducting panchanama. The complainant has not verified the valuables and the cash at the time of spot panchanama;
- (xi) There was blood in the bed room. It was on the floor. PW-27 did not collect the samples of blood lying on the floor. No bleeding injury was found on the body of deceased by PW-27. No visible injury marks were found on the body;

(xii) The blood on the floor in the bed room was not sent to chemical analyzer. The blood was not on the bed and cushion. The cupboard was locked and closed and it was not verified whether the articles in the cupboard were scattered;

(xiii) PW-27 did not seize any articles, such as, bed sheets and cushion on the spot. The pillow was seized after disclosure by the accused. The pillow was in the bed room at the time of spot panchanama. At that time the investigating officer did not find any objectionable mark on the pillow;

(xiv) Supplementary statement about the keys was given by PW-1 on 27-2-2012. The investigating officer came to know about the missing of keys on 26-2-2012. He showed the keys to PW-1;

(xv) PW-11 did not give name of other lady as Shaila Kamble;

(xvi) CCTV camera was installed in the society. It was functioning on the date of incident. He had seen the CCTV footage. The investigating officer did not feel it necessary to call CCTV footage as the accused was arrested in the house;

(xvii) PW-16 did not say in his statement that Shaila and Kalpana were quarreling. He did not state that Kalpana was working there;

(xviii) There was no restriction to any of the servants of any of the houses to go to each others house. During investigation the investigating officer did not find that there was dispute amongst servants of three houses;

(xix) He did not send the blood samples for DNA. The blood lying on the floor was not of accused.

44. From the evidence as stated above and the discrepancies noted, it cannot be said that the prosecution has established all the

circumstances to show that the appellant has committed the crime. Neither the charge u/s 302 of IPC is established nor the charge u/s 307 and 392 r/w 397 has been proved. The evidence of PW-13 is under shadow of doubt. On the basis of her evidence the appellant cannot be convicted for any offence. The history allegedly provided during examination of appellant to doctor cannot be the basis of drawing any adverse inference against appellant. There is no evidence to establish that appellant has committed murder of Punita Sukhwani. There is lack of evidence to establish robbery. There is no cogent evidence to prove that the appellant has committed offence to attempt to murder by assaulting PW-13 Kalpana.

45. The clothes of deceased viz. Gown, Bra and Nicker were sent for chemical analysis. The C.A report mentions that human blood was found on these articles. The blood group on gown is inconclusive. The blood on bra and undergarment was of 'B' group. The C.A report with regards to the blood on floor mentions that it was human and blood group is inconclusive. This was the blood which was lying in the hall. Human blood was found on pieces of glass, flower pot, hair, button, ear ring, pieces of bangles, hand gloves. The blood group was inconclusive. The blood was found on clothes of PW-13. The blood group on saree and blouse was inconclusive. The blood on parkar was of 'O' group. The clothes of accused contained human blood. The blood group on saree and blouse was inconclusive and on parkar it as of 'O' group. The blood from bedroom was not forwarded for forensic examination. Thus evidence is not incriminating to prove guilt of appellant.

46. The entire case is based on circumstantial evidence. The chain of circumstances is required to be established beyond doubt. In the

case of **Gambhir Vs. State of Maharashtra (1982-SCC (Cri)-431**, the Supreme Court in para 9 of the said decision, has observed as follows:-

"9. It has already been pointed out that there is no direct evidence of eye witness in this case and the case is based only on circumstantial evidence. The law regarding circumstantial evidence is well settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests : (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

47. The locus classicus of the decision of the Supreme Court is the one rendered in case of **Hanumant Govind Nargundkar and another Vs. State of Madhya Pradesh (AIR-1952-SC-343)**, it was observed as follows :

"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, where he said :

"The mind was apt to take a pleasure in adopting 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 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."

48. In the case of **Shivaji Sahabrao Bobade and another Vs. State of Maharashtra (1973)2-SCC-793**, the Supreme Court is pleased to observe in paragraph 19 that 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.

49. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984)4-SCC-116**, which is another landmark decision of the Supreme Court on appreciation of circumstantial evidence as

well as other principles of criminal jurisprudence, the Court had referred to the earlier decisions of Hanumant's case and Shivaji Bobade's case and on analysis of the said decisions, it was observed that the following conditions must be fulfilled before a case against an accused can be said to be fully established :-

(i) The circumstances from which an conclusion of guilt is to be drawn, should be fully established;

(ii) The facts so established, should be consistent 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;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved;

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion that in human probability, the act must have been done by the accused.

These five golden principles constitute the panchasheel proof of a case based on circumstantial evidence.

50. In **Kali Ram Vs. State of Himachal Pradesh (1973)2-SCC-808**, the Supreme Court made the following observations :-

"Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to

the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

51. We are of the opinion that the appellant cannot be convicted for the alleged crime. Conviction of the appellant would not sustain.

52. Hence, we pass following Order :

ORDER

- (i) The appeal is allowed;
- (ii) The judgment and order dated 10th April 2014 passed by the learned Additional Sessions Judge, City Civil & Sessions Court for Greater Bombay, at Fort, Mumbai, in Sessions Case No.418 of 2012, whereby the sentence and conviction was awarded to the appellant/original accused, is quashed and set aside. The appellant be set at liberty forthwith, if not needed in any other case.

53. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

(PRASANNA B. VARALE, J.)