

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 322 OF 2012
WITH
CRIMINAL APPLICATION NO. 102 OF 2013
IN
CRIMINAL APPEAL NO. 322 OF 2012**

Ranjit S Kadam)
Aged about 24 years,)
R/at village Kutre, Baudhawadi,)
Taluka Chiplun, Dist, Ratnagiri,)
At present lodged in Kolhapur)
Central Prison) ...Appellant

Versus

State of Maharashtra)
At the instance of)
Sr. Inspector of Police)
Sawarde, Ratnagiri)
u/Sec. 302, IPC) ...Respondent

.....
Ms.Payoshi Roy i/b. Dr.Yug Mohit Chaudhary for the
Appellant/Applicant.
Mr.A.R.Patil, APP for the Respondent -State.
.....

**CORAM : PRASANNA.B.VARALE &
VG. BISHT, JJ.**

DATE : 8TH OCTOBER 2020

JUDGMENT (PER: VG.BISHT, J.)

1. This is an appeal by a convict from the judgment and order of conviction and sentence dated 29th September, 2011 delivered in Sessions Case No. 38 of 2009. By the said judgment, the appellant

has been convicted under Section 302 of the Indian Penal Code (for short, “IPC”) and sentenced to suffer rigorous imprisonment for life with fine of Rs. 10,000/- with default stipulation.

2. Short fact of the case is that the informant and accused are neighbors. The accused was on visiting terms to the house of informant. Sometime in the past the relations between the accused and informant’s daughter, namely, Shital (deceased) became strained and, therefore, both of them in a meeting were asked not to speak with each other.

3. According to prosecution, on 4th July, 2009 at about 9.00 pm., the deceased told her father that she is going to ease herself and after that she never came back. The informant and his wife tried to locate her in the vicinity but in vain.

4. On 6th July, 2009, the informant and his wife went to Sawarde Police Station and lodged a missing complaint. At this material time there was a phone call at the said Police Station enquiring about any missing person complaint as Police from Sangmeshwar had found a dead body on the bank of river Aravali. The relatives of deceased accordingly went there and confirmed that in fact the dead body was that of deceased.

5. The prosecution then contends that, later on, the informant came to know that deceased was seen on a motorcycle owned by one Rajendra Molak. After the postmortem of deceased, the informant came to know that his daughter was carrying eight month pregnancy and that was outcome of love affairs between the accused and deceased. In the circumstances, he thought that the deceased might have committed suicide. Accordingly, the informant lodged the First Information Report (FIR) with Sawarde Police Station, Taluka-Chiplun on the basis of which Crime No. 23 of 2009 under Section 306 read with 34 of the IPC came to be registered.

6. It further appears from the record that the supplementary statement of informant- father again came to be recorded on 9th July, 2009 and in the said statement, the informant stated that on 4th July, 2009 instead of going to attend nature's call, the deceased rang up the accused as she had started feeling labour pain because of running of ninth month of pregnancy and therefore, summoned accused. Later on, both of them went on a motorcycle and it was seen by Uday Laxman Kadam (PW-5) and Surendra Babu Kadam (PW-6).

7. According to informant, the deceased was taken to Dr. Nikam (PW-7) of village Nandgaon and as the said Doctor told about the imminent delivery, the accused took away the deceased from there and in order to avoid the responsibility of prospective baby, committed the murder of deceased.

8. PW-13 Satyajit Shashikant Amle carried out further investigation as the initial investigation was done by Assistant Police Sub Inspector Mahipat Kulye. PW-13 recorded the statements of witnesses, collected specimen signature of the accused and after receipt of the report of handwriting expert and as investigation was completed, forwarded the chargesheet against the accused.

9. To substantiate the charge against the appellant-accused, the prosecution has examined as many as thirteen witnesses and exhibited number of documents. The appellant-accused was questioned under Section 313 of the Code of Criminal Procedure about the incriminating evidence and circumstances and the appellant-accused denied all of them as false.

10. It is his further statement (Exh. 94) that he has been arrested only on the ground of suspicion. He was not having any illicit

relation with the deceased and there was a relation of brother and sister. He even did not make disclosure statement before Police nor had shown the place of occurrence as alleged by the prosecution. He had not taken deceased on a motorcycle to any Doctor and he has been falsely implicated.

11. Ms.Roy, learned Counsel for the appellant-accused, vehemently submitted that the appellant-accused was arrested only on the ground of suspicion and that there is no eye witness to the alleged incident. The entire prosecution is based on circumstantial evidence and this being so it was expected of the prosecution to prove all the circumstances by leading cogent and convincing evidence which has not been done by the prosecution. No incriminating material has been brought on record against the appellant-accused so as to prove his involvement in the alleged offence.

12. Moreover, the case being based on circumstantial evidence, the prosecution has also failed to prove motive. Lastly, the learned Counsel submitted that although foetus was found in the womb of deceased but the same was not sent for DNA analysis, leading to the failure of ascertainment of parentage of foetus. The entire evidence led by the prosecution is not properly appreciated by the learned

trial Court in its proper perspective, leading to an erroneous judgment of conviction.

13. Apart from above, there are various inconsistencies between the version of witnesses. For all these reasons, the impugned judgment and order is liable to be set aside, argued learned Counsel.

14. Per contra, the learned APP vehemently and fervently opposed the submissions made by the appellant's Counsel and submitted that all the circumstances having been duly established in the light of evidence led by the prosecution witnesses, the trial Court was justified in recording the finding of guilt against the appellant-accused. The learned APP also took us through the evidence of prosecution witnesses to substantiate his submission. There being no merit in the appeal, the same is liable to be dismissed, argued learned APP.

15. Before looking into the evidence of material witnesses, we propose to refer to the postmortem report conducted by PW 10 Dr. Dhananjay Vilasrao Mahadik (Exh. 68).

16. PW-10 testified in his evidence that on 6th July, 2009 he was working as Medical Officer in P.H.C. Makhajan. The dead body of

one unknown female was brought by Sangmeshwar Police for an autopsy. Accordingly, he conducted postmortem. He did not find any external injuries. According to him, the probable cause of death was due to ANL 32 to 36 weeks with male foetus inside. The death was due to asphyxia due to drowning. He then proved his postmortem report at Exh. 69.

17. In the cross-examination, this witness admits that asphyxia due to drowning is possible because of suicide also. He further admits that if a person is thrown from a bridge then there is possibility of external injuries and then volunteered that in a given case there may not be any external injuries.

18. Apparently from the evidence of above witness, the cause of death appears to be asphyxia due to drowning. Whether it was suicidal or homicidal will have to be ascertained in the light of other evidence led by the prosecution.

19. Before we proceed with the matter, it has to be borne in mind that this case depends upon circumstantial evidence. Apposite it would be, therefore, to take note of a few fundamental principles governing the circumstantial evidence and its application.

20. In **Sharad Birdhichand Sarda vs. State of Maharashtra**¹ the five golden principles which have been stated to constitute the panchsheel of the proof of the case based on circumstantial evidence are (i) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established, (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (iii) the circumstances should be of a conclusive nature and tendency, (iv) they should exclude every possible hypothesis except the one to be proved, and (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

21. Similarly, in the case of **Digambar Vaishnav and Another vs. State of Chattisgarh**² in paragraph 16 of the judgment, the Hon'ble Apex Court has laid down the principle where conviction on the basis of circumstantial evidence could be sustained, viz., i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; ii) those

¹ (1984) 4 SCC 116 : AIR 1984 SC 1622

² AIR 2019 SC 1367

circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and iii) 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, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

22. Having taken note of the basic principles, when we examine the record, several lacuna and infirmities come to fore at once.

23. PW-1 Siddharth Sadu Kadam, informant-father, states in his evidence (Exh. 37) that the accused is his neighbor. Shital i.e., deceased and accused were in love with each other. On 4th July, 2009, the accused took deceased at 9.30 p.m. Surendra Kadam (PW-6) and Uday Kadam (PW-5) told him that the accused had taken the deceased on his motorcycle to village Aravali. A missing report about the deceased was lodged in the police station.

24. It is his further evidence that from Sangmeshwar Police Station, a message came to Sawarde Police station and after receiving that message, Sawarde Police told him that one dead body

of a girl is lying near bridge of Aravali and asked him to see that dead body. His nephew Ravindra Kadam and Pradip Kadam went there and returned only to inform him that the dead body of deceased was lying near bridge. According to him, the accused had committed the murder of deceased. He then proved his report at Exh. 38.

25. From the evidence of informant-father, it is clear that he was told by Surendra Kadam (PW-6) and Uday Kadam (PW-5) that they had seen the deceased in the company of accused. However, it is not made clear when and at what time both the above said witnesses had seen the accused in the company of deceased. Probably this fact may be cleared when we go through the evidence of PW-5 and PW-6 at a later stage.

26. This witness has also made a bold statement in his examination-in-chief that it is the accused who committed the murder of deceased but no motive is attributed.

27. Before we go through the cross-examination of informant-father, it is material to note from the record that he gave supplementary statement before Police on 9th July, 2009 and in that

supplementary statement, he enlightened the police that he was told by Surendra Kadam (PW-6) and Uday Kadam (PW-5) that both of them had seen the deceased in the company of accused. He also came to know that the accused had taken deceased to the dispensary of Dr. Nikam (PW-7) and as the Doctor told accused that there is likelihood of the delivery, the accused took deceased from the dispensary and in order to avoid the fatherhood, committed the murder of deceased.

28. From the supplementary statement dated 9th July, 2009, it is also not clear as to when these material facts were told to informant-father by PW-5 and PW-6. It can be inferred safely that either the above noted facts were told on 9th July, 2009 itself i.e., the day of recording of supplementary statement or before that. Here we immediately revert back to the cross-examination.

29. In the cross-examination, informant-father admits that on 5th July, 2009, Surendra Kadam (PW-6) and Uday Kadam (PW-5) met him and inspite of meeting with above persons, their search of whereabouts of deceased was continued in the houses of Bouddha - Wadi and in the houses of relatives. From this piece of admission, it is abundantly clear that PW-5 and PW-6 as on 5th July, 2009 had not

disclosed the fact of they having seen deceased in the company of accused. Why they had not revealed this material fact to informant-father is a mystery. Again, the reason for that will have to be searched from the testimonies of PW-5 and PW-6 as and when we undertake that exercise.

30. Even the supplementary statement of informant-father doesn't make it clear as to revelation of the said fact by PW-5 and PW-6.

31. There are more admissions.

32. Informant-father further admits that at the time of lodging of the complaint i.e., missing complaint on 6th July, 2009, Uday Kadam (PW-5) and Surendra Kadam (PW-6) and other people of his Bhavaki were accompanying with him. It means even till the date of filing of missing complaint, nobody, including PW-5 and PW-6 were aware of the whereabouts of deceased. However, it is not so and we will make it clear when we advert to the evidence of PW-5 and PW-6.

33. His further admission is that after lodging of the complaint (Exh. 38) he did not receive any information. If he had not received any information subsequent to the filing of Exhibit 38 then there could not have been any occasion to give supplementary statement

on 9th July, 2009 by him. His further cross-examination also carries significance which is enough in its nature to surround his own case with suspicion.

34. Informant-father admits that after the funeral, people of Bhavaki took a meeting and decided that a complaint is to be made in the Police Station. He further admits that in the said meeting, the discussion in respect of the nature and how the complaint is to be made was also discussed and accordingly they all went to the Police Station and lodged the report (Exh. 38). He further admits that he was having suspicion against the accused that he might have committed some mischief behind the death of deceased and that on the basis of this suspicion he is giving the evidence against the accused.

35. We have already pointed out at the very beginning that no motive or reason is attributed by informant-father behind the alleged act of accused. Now, the various admissions as noted above make it further clear that the whole FIR came to be filed against the accused after much deliberations and churning of thoughts amongst the Bhavaki in a meeting. Even on the date of adducing evidence, the informant was nurturing suspicion against the accused and nothing

else. Therefore, the evidence of informant –father read in its entirety does not augur well for prosecution.

36. PW-2 Smt. Sumita Siddharth Kadam, mother of deceased, states in her evidence (Exh. 39) that on 6th July, 2009 she had lodged a complaint in Sawarde Police Station regarding missing of her daughter. She then proved her missing complaint at Exh. 40.

37. It is also pertinent to note from the examination of informant-father that the accused and deceased were having affairs and despite harbouring suspicion, as is cleared from the evidence of informant-father, the name of accused was not mentioned anywhere in the missing complaint or any role of accused was attributed. This in itself goes to show that till the lodging of missing complaint, there was nothing in the mind of informant-father and it is only after well thought, deliberations and on the ground of suspicion, an FIR came to be filed against the accused.

38. PW-3 Sudhakar Babu Ballal appears to be the neighbour of informant. It is his evidence (Exh. 41) that on 4th July, 2009 at 8.45 p.m. while they were taking dinner, the deceased visited there house and gave a missed call from their phone. Even before they could finish up their dinner, the deceased went away.

39. His evidence then shows that they learnt later on that the accused had kidnapped deceased by taking her on the motorcycle of Rajendra Molak and while taking away the deceased, Uday Laxman Kadam (PW-5) and Surendra Baburao Kadam (PW-6) had personally seen them.

40. The conduct of this witness appears to be not natural inasmuch as it appears that not only he was the neighbour of the informant but when the deceased allegedly visited his house on 4th July, 2009 at about 8.45 p.m., he must have asked or interacted with the deceased, as according to him, the deceased had used their phone. Even in ordinary course of nature it was expected of him to ask as to where the deceased wanted to communicate by their phone.

41. Nothing of this sort is coming from his mouth. Even the concluding part of this evidence shows that he learnt from others of kidnapping and taking away of the deceased by accused and that in doing so the accused was seen by Uday Kadam (PW-5) and Surendra Kadam (PW-6). This is nothing but hearsay evidence. Even otherwise we do not find any merit in the evidence, if read as a whole.

42. This brings us to material witnesses viz. PW-5, PW-6 and PW-7 who had seen the deceased in the company of accused.

43. As already noted at the beginning that the present case is based on circumstantial evidence and more particularly, the prosecution has relied on the theory of “last seen” as a circumstance in the present case. What is held in the case of **Jaswant Gir Versus State of Punjab**³, is that it is not possible to convict a person solely on the basis of "last seen" evidence in the absence of other links in the chain of circumstantial evidence. It is further held that the Court, in such circumstances, should extend the benefit of doubt to the accused. In the facts and circumstances of the present case, whether in fact even the theory of “last seen” as a circumstance is well established by the prosecution or not is required to be seen.

44. PW-5 Uday Laxman Kadam states in his evidence (Exh. 48) that on 4th July, 2009 at about 8.30 to 9.00 p.m. he and Surendra Kadam (PW-6) were returning back to their houses. Accused was coming with one girl on a motorcycle from Wadi. Surendra Kadam (PW-6) was having battery light and he put the same for seeing the

³ (2005) 12 SCC 438

girl. It was deceased. Surendra (PW-6) called her by uttering “Dolly” but accused and that girl did not halt. The motorcycle of accused then went towards village Yegaon by the road.

45. Similarly, PW-6 Surendra Babu Kadam, on his part, states in his evidence (Exh. 49) that on 4th July, 2009 at about 8.45 p.m. he and Uday Kadam (PW-5) were proceeding to their houses. There is a square on road and there was an electric light outside the house of Vijay Sunder Khedekar and the light was coming upto the road. One motorcycle came from his village and by taking a turn near the house of Vijay Khedekar, the motorcycle went towards Sawarde. The speed of motorcycle was slow. Accused was driving the motorcycle. One girl was sitting as a pillion rider on the motorcycle. As he was having a battery, he put on the battery light on the girl who was sitting on the motorcycle and as the girl looked towards him, he noticed that, that girl was deceased. He used to call deceased as “Dolly” out of love and affection. He called her by saying Dolly but the accused did not halt the motorcycle and went away. Since he suspected something wrong therefore he and Uday Kadam (PW-5) went upto the bridge on river of Warachi Peth but could not find accused and deceased.

46. First of all, we would like to point out the major inconsistencies between the versions of these two material witnesses.

47. The evidence of PW-6 shows that because of spreading of the electric light coming from the house of one Vijay Khedekar upto the road, he saw a motorcycle driven by the accused. However, this fact doesn't get corroboration from the mouth of PW-5. Even assuming that both of these witnesses had seen accused driving the motorcycle but then they materially defers as to the girl who was a pillion rider.

48. According to PW-5 when the battery light was flashed on the girl, he saw that it was Dolly. Whereas, according to PW- 6, when he flashed the battery light on the girl she looked towards PW-6 and it is only then PW-6 identified that it was the deceased. Further, the evidence of PW-6 shows that he and PW-5 suspecting something wrong and therefore, went upto the bridge on river of Warachi Peth but could not locate accused and Shital, an important fact which is not at all deposited by PW-5.

49. Moreover, in the cross-examination, PW- 5 states that he had not stated before Police in his statement that Surendra Kadam i.e.,

PW-6 had flashed battery light for the purposes of seeing the girl sitting on the motorcycle. Had it really been so, he definitely would have stated accordingly before Police. So this major omission also dents the testimony of PW-5.

50. Thus, these are certainly major inconsistencies which affect the reliability of these witnesses. Above all, there is something seriously wrong which compel us to question their conduct and dependability.

51. From the evidence of both these witnesses, it is crystal clear that both of them allegedly had seen the accused and deceased in the company of each other on 4th July, 2009 itself at about 8.30 to 9.00 p.m. However, while discussing the cross-examination of PW-1 informant –father, we had noted that on 5th July, 2009, PW-5 and PW-6 had met informant while informant and others were making a search of deceased. When PW-5 and PW-6 were knowing the fact of deceased having been seen in the company of accused, apparently they did not tell the informant either on 5th July, 2009 or on 6th July, 2009 when the missing complaint came to be lodged by PW-2 mother.

52. If we firstly go through the cross-examination of PW-5, we find various admissions given by him. According to him, he was present in village Kutare from 4th July, 2009 to 10th July, 2009. Admittedly, the dead body of deceased was found on 6th July, 2009. He admits that from 6th July, 2009 onwards Police started visiting village Kutare and his statement came to be recorded for the first time on 10th July, 2009. He further admits that till 10th July, 2009 he had not disclosed before Police the fact of having seen the accused and deceased on 4th July, 2009. He further admits that it was an important fact, according to his assessment, that accused was seen with deceased on 4th July, 2009 and that from 4th July, 2009 till 10th July, 2009 he was continuously in contact with complainant and police.

53. The cross-examination of PW-6 is also on similar lines. It is seen from his cross-examination that PW-6 was present in the village from 4th July, 2009 to 8th July 2009. He admits that from 4th July, 2009 in the night time onwards the search about deceased had started and he was accompanying with villagers in search of the deceased. He admits that Police recorded his statement for the first time on 8th July, 2009.

54. What is glaringly clear from the material admissions given by PW-5 and PW-6 in their cross-examination is that though they were very much present in the village from 4th July, 2009 till 10th July, 2009 still they did not reveal the fact of they having had seen deceased in the company of accused at the very first available opportunity i.e., on 4th July, 2009 itself. Had it been so informant would have immediately lodged the FIR. Moreover, they themselves did not went to the Police till the time of recording of their respective statements.

55. Amazingly enough, although they were very much with the informant and villagers who were looking for the deceased still they kept mum for a considerable period of time i.e., till the recording of their respective statements by the Police, for the reasons best known to them.

56. In State of Orissa v. Mr.Brahmananda Nanda⁴, the Hon'ble Apex Court held that where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eye witness and this witness did not disclose the name of assailant for a day and a half after the incident and the explanation offered for non-

4 AIR 1976 SC 2488

disclosure was unbelievable, such non-disclosure was a serious infirmity which destroyed the credibility of the evidence of the witness and that the High Court was correct in rejecting it as untrustworthy and acquitting the accused.

57. The ratio laid down in **State of Orissa** (*supra*) squarely applies to the case in hand. It is indeed difficult to believe that PW-5 and PW-6 should not have disclosed the name of appellant-accused either to the Police or to the informant at the very first available opportunity and should have waited till the time of recording of their statements. This is a very serious infirmity which destroys the credibility of the evidence of these witnesses. Even there is no explanation to that effect and it assumes greater significance particularly when the prosecution case depends on “last seen” theory.

58. The further cross-examination of PW-5 even brings the conduct of police in the ambit of suspicion when he admits that since from the date of incident till 10th July, 2009 i.e., till the time of recording of his statement, it was not decided by police as to what sort of statement is to be recorded pertaining to him and therefore, the statement was not recorded till 10th July, 2009. This speaks volume

not only as to the conduct of this witness but as also that of investigating machinery.

59. This is further compounded when this witness further admits that he and informant belongs to one Bhavaki and that it was his desire since beginning that the case filed by informant should be made strong and in order to help informant, he adduced evidence accordingly. This sort of conduct certainly cannot be countenanced by any logic and rather it shows the prosecution in a bad light.

60. PW-7 Dr.Sunil Ramchandra Nikam states in his evidence (Exh. 51) that on 4th July, 2009 at about 9.45 p.m. accused along with a girl visited his residential house and complained that the girl was feeling pain in her abdomen. He then took the girl on OPD table for examination and found her pregnant. He then summoned his Doctor wife and after having examined in her presence, he told accused the deceased was about to deliver a child. At that point of time, the accused told him that the deceased was getting medical treatment at Sawarde and he is about to take her at that place.

61. It is his further evidence that he had also recorded the name of deceased in his OPD register and had handed over a xerox copy of his OPD register to police along with one letter. He then proved his letter at Exh. 52.

62. Two material facts can be noted from the evidence of this witness. One, that on 4th July, 2009 at about 9.45 p.m. the accused and deceased had visited his residence. He found deceased pregnant and was about to deliver a child. However, the accused removed deceased on the pretext that deceased was getting medical treatment at Sawarde. Two, the name of deceased was recorded in his OPD register and during the course of investigation, he had handed over a xerox copy of his OPD register to Police along with one letter (Exh. 52).

63. It is pertinent to note that the dead body of deceased was found on 6th July, 2009. It is not at all the case of prosecution that shortly before the retrieval of the dead body of deceased, the accused was seen in the company of deceased. Thus, there was a huge time gap between leaving of the dispensary of PW-7 and retrieval of the dead body of deceased. The possibility of the other persons interfering within meantime cannot be ruled out altogether.

It is also not that the other positive evidence is forthcoming to convincingly and cogently connecting the accused with deceased soon before her death and therefore, in such circumstances, it is very difficult to conclude that the accused and deceased were “last seen” together. Definitely, it would be hazardous to come to any positive conclusion foisting the guilt on accused.

64. The examination-in-chief of PW-7 also compels us to put a comment or two.

65. We have gone through the record and it appears that there is xerox copy of the extract of register having names of patients. At serial No. 89, the name of deceased is shown. This is a xerox copy. The record doesn't show that the original register was brought at the time of examination-in-chief of this witness and the Court after verifying or tallying the xerox copy with the original one duly admitted it in the evidence.

66. No exhibit is given to this document nor the witness in his examination-in-chief says that this xerox copy bears his signature and the contents are true and correct to his knowledge. As far as Exhibit 52 is concerned, it is proved by this witness in his evidence.

However, Exhibit 52 nowhere shows to whom this letter was addressed and for what purpose. Therefore, this letter (Exh. 52) coupled with the xerox copy of the extract of the register incorporating and showing the names of various patients including deceased do not further the case of prosecution.

67. As far as his oral testimony as to the visit of deceased and accused is concerned, his cross-examination is a pointer to the fact that all is not well with his testimony as well. In the cross-examination, this witness states that he learnt on 6th July, 2009 that Police had found a dead body of Shital Kadam. He was present in the clinic from 6th July, 2009 to 12th July, 2009 and then admits that during the aforesaid period, he did not go to meet Police and that he cannot tell us as to why Police approached him on 12th July, 2009 for enquiry. He lastly admits that he had delivered the letter (Exh. 52) on 5th July, 2009.

68. Despite knowing that the dead body of deceased was recovered by Police on 6th July, 2009, this witness though being a Doctor did not feel it necessary to inform Police of the fact that two days ago he had seen deceased in the company of accused in his house.

69. Investigating Officer has not revealed anything about seizure of the extract of the original register from the possession of PW-7 or for that matter letter (Exh. 52) having received from PW-7. Therefore, for all these reasons, the evidence of this witness does not inspire confidence.

70. On re-appreciation of the evidence, we are of the firm view that the prosecution has failed to prove the guilt of accused beyond all reasonable doubt.

71. Needless to say, the learned trial Court has failed to appreciate the evidence of all the material witnesses in proper perspective and wrongly came to the conclusion that the prosecution was able to prove the guilt beyond reasonable doubt. The judgment of conviction and sentence passed against the appellant-accused is not sustainable either in law or on facts and it deserves to be set aside.

72. In view of above, we pass the following order :

ORDER

- i) Criminal Appeal is allowed.

ii) The judgment and order dated 29th September, 2011 passed by learned Additional Sessions Judge, Khed in Sessions Case No. 38 of 2009 is hereby quashed and set aside and the appellant-accused is acquitted of the offence charged against him.

iii) The appellant-accused be set at liberty forthwith, if not required in any other case.

73. In view of disposal of the appeal, nothing survives in the criminal application and the same is accordingly disposed of.

(V. G. BISHT,J.)

(PRASANNA.B.VARALE, J.)

**Trupti
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