

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

**CRIMINAL APPEAL NO. 514 OF 2015
WITH
INTERIM APPLICATION NO. 2686 OF 2021
IN
CRIMINAL APPEAL NO. 514 OF 2015**

Prakash Bhimashankar Bagle
Age : 22 years, Occ. - Labour,
R/o. Mandrup, Tal. South Solapur,
Dist. Solapur.
(At present in Solapur Jail,
Dist. Solapur)

... Appellant
(Org. Accused)

Versus

State of Maharashtra

... Respondent

Mr.Makarand Kale a/w. Mr.Samadhan A. Kashid, Ms. Sangita Jangale and Mr. Prashant M. Patil i/b Mr.Ramakant Patil for appellant.

Mr.S.S. Hulke, APP for respondent-State.

**CORAM : S. S. SHINDE &
N.J. JAMADAR, JJ.**

Reserved for Judgment on : 1st DECEMBER 2021.

Pronouncement of Judgment on : 23rd DECEMBER 2021.

JUDGMENT : (PER N.J. JAMADAR, J.)

1. This appeal is directed against the judgment and order dated 9th March 2015 in Sessions Case No.329 of 2014 passed by learned Additional Sessions Judge, Solapur, whereby the appellant/accused came to be convicted for the offences

punishable under sections 302 and 452 of the Indian Penal Code, 1860 ('Penal Code') and sentenced to suffer rigorous imprisonment for life and pay fine of Rs.10,000/- for the offence punishable under section 302 of the Penal Code and seven years rigorous imprisonment and fine of Rs.2,000/- for the offence punishable under section 452 of the Penal Code, with default stipulation.

2. The background facts leading to this appeal can be stated, in brief, as under :-

(a) Siddharam Kalgounda Birajdar (hereinafter referred to as 'the first informant'), is the father of Shaila ('the deceased'). The first informant was residing at Lavangi, Taluka South Solapur alongwith his wife Mahadevi, the deceased daughter Shaila, and Premkumar, a 1½ year old son of his elder daughter Sapana. The first informant ran a grocery store from the said house. The deceased used to look-after the grocery store in addition to household affairs.

(b) On 12th August 2014, the first informant had gone to Zilha Parishad, Solapur to obtain an income certificate. His wife Mahadevi had gone to their

field. At about 3:00 p.m., Mr. Pintu Imale informed the first informant, on cell phone, that the deceased had sustained injuries on her hand and asked him to return home immediately. When the first informant reached home, he found the deceased lying in a pool of blood in the grocery store. She had succumbed to her multiple injuries.

(c) The first informant alleged that the accused, who is a resident of the same village, had one sided love towards the deceased. The accused used to come to sleep at the house of his grand-mother Vithabai Bagale, which was near the house of the first informant. Since the accused was teasing the deceased and had threatened to kill her if she did not return his advances, a month prior to the occurrence, the first informant, his brother-in-law Ashok Birajdar and nephew Kallappa Bhagwantrao Nimbargi had made an effort to dissuade the accused from harassing the deceased. Since then, the accused had a grudge against the deceased.

(d) The first informant, thus, approached

Mandrup Police Station and lodged report to the effect that the accused, taking advantage of the fact that there was nobody in the house apart from the deceased and his 1½ year's old grand-son, caused death of the deceased by means of sharp weapons. Crime was registered at C.R.No.104 of 2014 for the offences punishable under sections 302 and 452 of the Penal Code.

(e) Investigation commenced. During the course of investigation, the investigating officer visited the scene of occurrence and drew panchnama (Exh.6). Inquest on the body of the deceased was held. The dead-body was sent for post-mortem examination. The accused came to be arrested. The accused made disclosure statements on 12th August 2014 (Exh.11), 18th August 2014 (Exh.13) and 21st August 2014 (Exh.15) leading to recovery of the axe (Article-A), clothes (Article-B & C) which the accused wore at the time of occurrence and knife (Article-D), respectively. The investigating officer interrogated the witnesses and

recorded their statements. As the investigation revealed the complicity of the accused, charge-sheet was lodged against the accused for the offences punishable under sections 302 and 452 of the Penal Code.

3. Post committal, charge was framed against the accused for the offences punishable under sections 302 and 452 of the Penal Code. The accused abjured his guilt and claimed for trial.

4. At the trial, the prosecution examined in all six witnesses being Tatyasaheb Baburao Shinde (PW-1), the panch witness to the scene of occurrence panchnama (Exh.6), Gangaram Ramchandra Gaikwad (PW-2), public witness to the discoveries made by the accused, Siddharam Kalgounda Birajdar (PW-3)-the first informant, Kallappa Bhagwantrao Nimbargi (PW-4), the nephew of the first informant, Dr.Dattatraya Baliram Vankalas, (PW-5), the Autopsy Surgeon and Mr.Prakash Bapurao Raskar (PW-6)-the investigating officer, who furnished details of investigation. The accused did not lead any evidence in his defence, which consisted of denial and false implication.

5. After appraisal of the evidence, the learned Additional Sessions Judge was persuaded to return a finding of guilt against

the accused. The learned Additional Sessions Judge was of the view that the prosecution succeeded in establishing that the accused had a strong motive to eliminate the deceased. The discoveries made by the accused leading to the recoveries of the weapons of offence and blood stained clothes of the accused incriminate him and the chemical analyser's report (Exh.23) establishes the nexus between the incriminating articles and weapons and the offence. Thus, accused came to be convicted and sentenced, as indicated above.

6. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the accused is in appeal.

7. We have heard Mr. Kale, the learned counsel for the appellant and Mr. Hulke, the learned APP for the State, at length. With the assistance of the learned counsels for the parties, we have perused the material on record including the depositions of the witnesses and the documents tendered for the perusal of the Court.

8. Mr. Kale, the learned counsel for the appellant strenuously submitted that the learned Additional Sessions Judge committed a manifest error in returning the finding of guilt against the appellant sans legal evidence. Indisputably, there was no eye-

witness to the occurrence. The case rested on circumstantial evidence. The learned Additional Sessions Judge, according to Mr. Kale, was in gross error in not adhering to the well recognized principles of appreciation of circumstantial evidence. According to Mr. Kale, the learned Additional Sessions Judge lost sight of the fact that in the case of circumstantial evidence, the inferences to be drawn, from the proved circumstances, should be consistent only with the hypothesis of guilt of accused and incompatible with the innocence of the accused. Thus, the conviction recorded by the learned Additional Sessions Judge is wholly unsustainable as it is based on surmises and conjectures in contradistinction to legal evidence.

9. As against this, Mr. Hulke, the learned APP endeavoured to support the impugned judgment. It was urged that two circumstances are potent and have definite tendency to incriminate the accused. Firstly, the testimony of the first informant Siddharam Kalgounda Birajdar (PW-3) and Kallappa Bhagwantrao Nimbargi (PW-4) that the accused was pestering the deceased and they had cautioned him against harassing the deceased, a month prior to the occurrence, has gone untraversed. Secondly, the disclosures made by the accused leading to the recovery of the weapons of

offence i.e., axe (Article A) and knife (Article D) and the clothes (Articles B & C) which he wore at the time of occurrence, which have been duly proved, squarely incriminate the accused. Moreover, the medical evidence lends credence to the prosecution version that the injuries were caused by the weapons which were recovered pursuant to the discovery made by the accused. Lastly, the chemical Analyst's report (Exh.23) establishes the necessary nexus between the weapons of offence and incriminating articles and the offence. In this view of the matter, according to Mr. Hulke, the learned Additional Sessions Judge was wholly justified in returning the finding of guilt and, therefore, no interference is warranted in the impugned judgment and order.

10. We have given our anxious consideration to the rival submission canvassed across the bar. To start with, the nature of the death, which the deceased met. Dr.Dattatraya Baliram Vankalas, (PW-5), the Autopsy Surgeon, informed the Court that there were as many as 15 external injuries on the person of the deceased. Injury No. 8 namely, "incised penetrating stab wound over left umbilical region, transverse in directions margins clean cut, would of entry size 4 cm x 2 cm x opening deep into abdominal cavity with bleeding through wound" was grievous. In

the opinion of the Autopsy Surgeon, the cause of death was “shock due to massive haemorrhage due to penetrating incised stab wound over abdomen with injury to abdominal aorta.”

11. In the light of the nature of the injuries found on the person of the deceased, the fact that the deceased met a homicidal death, can be said to be established beyond the pale of controversy, especially in the context of the defence that someone who visited the grocery store of the first informant, where the deceased was found lying in the pool of blood, might have caused the death of the deceased.

12. This propels us to the question of authorship of the death. Is the accused perpetrator of the offence? It is a common ground that the case rests solely on circumstantial evidence. Undoubtedly, a conviction can be based solely on circumstantial evidence provided it is worthy of implicit reliance on the touchstone of the principles which govern the appraisal of the circumstantial evidence. The law relating to circumstantial evidence is well settled by a catena of decisions.

13. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*¹ the conditions precedent for basing the conviction on circumstantial evidence were expounded as under :

1 AIR 1984 SC 1622

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

The observations of the Supreme Court in the case of **C.Chenga Reddy and others v. State of A.P.** ² are also instructive. They read as under :-

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

14. On the aforesaid touchstone, re-adverting to the facts of the

² (1996) 10 SCC 193

case, the circumstances relied upon by the prosecution and, which found in favour with the Additional Sessions Judge, can be culled out as under :

- (1) Motive.
- (2) Discoveries made by the accused leading to the recovery of weapons of offence; and the clothes which the accused wore at the time of occurrence.
- (3) The blood stains found on the weapons of offence and the clothes, for which no satisfactory explanation was offered by the accused.

(1) **Motive :**

Motive plays an important role and, at times, constitutes a driving force to commit a crime. Thus, motive behind the crime is a relevant factor for which evidence is adduced. In a case where there is a clear proof of motive which compelled the perpetrator of the offence to commit the offence, it provides an additional support in basing the finding of guilt. When the prosecution case rests on the circumstantial evidence, motive for commission of an offence assumes greater significance. Nonetheless, even in the case based on the circumstantial evidence, if prosecution succeeds in establishing each of the circumstances arrayed against the accused

and persuades the Court to record a finding that it was only the accused who committed the crime, the Court would be justified in establishing the guilt of the accused even in the absence of proof of motive.

15. In the case at hand, the prosecution alleges that the unrequited love of the accused towards the deceased was the motive for the offence. In order to appreciate the aforesaid circumstance, a brief resume of the evidence of the first informant- Siddharam Birajdar (PW-3) and Kallappa Bhagwantrao Nimbargi (PW-4) would be necessary.

16. Siddharam Kalgounda Birajdar (PW-3), the first informant, informed the Court that he had known the accused. The latter used to visit his grand-mother's house which is near to the first informant's shop. The accused had one sided love towards the deceased. The accused used to tease the deceased. The accused had threatened to kill her if she did not return his love. Siddharam Kalgounda Birajdar (PW-3) further wants the Court to believe that, a month prior to the occurrence, he, his brother-in-law Ashok Birajdar and nephew Kallappa Nimbargi (PW-4) attempted to convince the deceased not to harass the deceased.

17. Kallappa Bhagwantrao Nimbargi (PW-4) ventured to lend

support to the claim of Siddharam Kalgounda Birajdar (PW-3). He informed the Court that he had been to the house of the first informant a month prior to the occurrence. The deceased had narrated to him that the accused used to tease her as he had a one sided love towards her. Thereupon, he, the first informant and Ashok Birajdar had met the accused and convinced him not to tease the deceased as she was about to marry. Kallappa Bhagwantrao Nimbargi (PW-4) further affirmed that, since then the accused had a grudge against the deceased.

18. During the course of cross-examination of the first informant Siddharam Kalgounda Birajdar (PW-3) as well as Kallappa Bhagwantrao Nimbargi (PW-4), it was elicited that report was not lodged against the accused with the police about the alleged harassment by the accused. Siddharam Kalgounda Birajdar (PW-3) conceded that he did not apprise the parents and the grand mother of the deceased about the alleged harassment by the accused. Kallappa Bhagwantrao Nimbargi (PW-4) also conceded that neither he apprised the alleged act of harassment of the deceased by the accused to his parents nor lodged report with the police.

19. The aforesaid evidence which bears upon the motive for the

offence, was assailed on behalf of the appellant by canvassing a submission that failure to lodge the report with police and take precipitatory steps by the above witnesses renders their claim unworthy of credence. This challenge is required to be appreciated in the light of the fact that the first informant Siddharam Birajdar (PW-3) and Kallappa Nimbargi (PW-4), being the father and cousin of the deceased, might have thought it appropriate not to escalate the issue as it would have adversely reflected upon the deceased. Therefore, the fact that the first informant and Kallappa Nimbargi (PW-4) did not lodge report against the accused, at that point of time, cannot be extolled to such a pedestal as to throw their testimony overboard.

20. In the ordinary circumstances, a grievance with the parents and grand-mother of the accused, would have been a natural reaction. However, it would not be permissible to circumscribe the reactions in a straight jacket. The first informant Siddharam Birajdar (PW-3) and Kallappa Bhagwantrao Nimbargi (PW-4) deserve allowance on this count as well. It is imperative to note that the accused had made an endeavour to drag home the point that the deceased shared a romantic relationship with him. It was suggested to Siddharam Birajdar (PW-3) that there was a love affair

between the accused and the deceased and the said love affair was the talk of the town. In this view of the matter, we are persuaded to hold that the evidence of Siddharam Birajdar (PW-3) and Kallappa Nimbargi (PW-4) is sufficient to sustain an inference that the accused had unrequited love towards the deceased, in the least. We are, however, not persuaded draw a further inference that the accused harboured the design to eliminate the deceased in the absence of cogent evidence on the said aspect.

(2) **Discovery :**

21. The basic postulate underlying section 27 of the Evidence Act is of confirmation by subsequent events. It is based on the premise that if a fact is actually discovered consequent to the disclosure made by the accused, then the said discovery furnishes the guarantee that the information disclosed by the accused was true and, consequently, such information can safely be allowed to be given in evidence because the truthfulness of the information is further fortified and confirmed by the discovery of articles, the instruments of crime or the body of the deceased.

22. In the case of *State of Maharashtra Vs. Damu, S/o. Gopinath Shinde and Ors.*³, the jurisprudential premise of section 27 was enunciated as under :

3 (2000) 6 SCC 269

“The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the Section. The decision of Privy Council in Pullukurri Kottayya vs. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the Section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”

23. It would be contextually relevant to note that the courts have been alive to the possibility of misuse of the provisions contained in section 27 of the Evidence Act which, in effect, lifts the embargo to the admissibility of the statements made before the police in the preceding sections; section 24 to 26. The necessity of appreciating the evidence of discovery with care and caution was expounded by the Supreme Court in the case of ***Geejaganda Somaiah Vs. State of Karnataka***⁴ in the following words :

“22 As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the

4 AIR 2007 SC 1355

aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of [Section 27](#) the Evidence Act.”

24. On the aforesaid touchstone, reverting to the facts of the case, it is imperative to note that, in the case at hand, the evidence of discovery is not of subsidiary nature, which is often the case. Discoveries are not relied upon to support the ocular account or other circumstances. In the absence of any other evidence, in the facts of the case, discoveries constitute the core of the evidence, nay the sole evidence.

25. The fate of the discoveries hinges upon the testimony of Gangaram Ramchandra Gaikwad (PW-2), the public witness to the three discoveries allegedly made by the accused, after an interval of few days. Gangaram Ramchandra Gaikwad (PW-2) informed the Court that on 16th August 2014, the accused made a disclosure statement at Mandrup Police Station, in his presence and that of Abdul Kadar Gulab Shaikh, another public witness, that he desired to produce the concealed axe used in the commission of offence. The memorandum of disclosure statement (Exh.10) was recorded. The accused thereafter led the police party near his house at Lavangi. The accused removed 2 to 4 stones from the

heap of stones dumped in front of his house and took out the axe (Article A) which was smeared with blood. The axe (Article A) was seized under seizure panchnama (Exh.11).

26. Gangaram Gaikwad (PW-2) further informed the Court that on 18th August 2014, the accused made a disclosure statement that he would produce the clothes which he wore at the time of occurrence, which were concealed in the heap of fodder (Kadaba) dumped in front of his house. Its memorandum (Exh.12) was drawn. The accused led the police party to the heap of fodder in front of his house and produced a jean pant and half shirt (Articles B and C) stained with blood, which were concealed. They were seized under the panchnama (Exh.13).

27. On 21st August 2014, the accused again made a disclosure statement and volunteered to produce a knife. Its memorandum (Exh.14) was recorded. The accused led the police party to the Kabristan (Graveyard) of village Lavangi and took out a knife (Article D) from the thorny bushes grown in the graveyard. The knife (Article D) was stained with blood. It was seized under panchnama (Exh.15).

28. During the course of cross-examination, Gangaram Gaikwad (PW-2) conceded in no uncertain terms that he and co-public

witness Abdul had acted as panchas in other cases of Mandrup Police Station. He went on to admit in no uncertain terms that he had not heard any conversation between the accused and police officer. Though, Gangaram Gaikwad (PW-2) did not cave in to the suggestion that he had not witnessed any of the disclosure statements and recovery of the incriminating articles pursuant thereto, and had signed the pachnama at the instance of the police, yet, it would be rather hazardous to place implicit reliance on the testimony of Gangaram Gaikwad (PW-2).

29. First and foremost, Gangaram Gaikwad (PW-2) did not depose to the disclosure made by the accused in respect of the first disclosure statement, dated 16th August 2014 and the third disclosure statement, dated 31st August 2014, with regard to the place where the weapons were allegedly concealed. It is the knowledge of the accused as to the factum of concealment which is the linchpin of discovery under section 27 of the Evidence Act. If the fact that the accused disclosed the place of concealment is not deposed to, the evidentiary value of discovery is substantially eroded.

30. Secondly, Gangaram Gaikwad (PW-2) appears to be at the back and call of police. This inference is deducible not only for the

reason that Gangaram Gaikwad (PW-2) conceded in the cross-examination that he had acted as a public witness in other cases registered at Mandrup Police Station but also for the reason that on three different dates and times of discoveries, the same public witness was employed by the police. In the least, an inference is inescapable that Gangaram Gaikwad (PW-2) was amenable to the influence of police.

31. Thirdly, the testimony of Mr.Prakash Bapurao Raskar (PW-6), the investigating officer, who effected the recovery pursuant to the disclosure statements allegedly made by the accused, also suffers from infirmities. The statements made by the accused, at each of alleged discoveries, with reference to the place of concealment, have not been deposed to by Mr.Prakash Bapurao Raskar (PW-6) also.

32. In the aforesaid view of the matter, the discoveries are fraught with infirmities. Had there been any other evidence or circumstance of sterling quality, apart from the discoveries, different considerations would have come into play. As indicated above, the discoveries in the case at hand, constitute the sole evidence. We are therefore not persuaded to discount the infirmities with which the discoveries are fraught with.

33. The third circumstance of the blood stains having been found on the weapons of offence i.e., axe (Article A) and knife (Article D) and clothes (Articles B and C) which were recovered pursuant to the discoveries made by the accused, loses the potency, once the evidence of discoveries does not allure confidence. The chemical analyst's report (Exh.23) undoubtedly reveals that blood stains of human origin were found on the axe (Article A) and knife (Article D) and the jean pant and half shirt (Articles B and C) which were allegedly recovered pursuant to the discoveries made by the accused. However, the blood-group could not be determined as the results were inconclusive. In our view, this circumstance sails or falls with the evidence of discovery under section 27 of the Evidence Act. As the evidence on record does not lend assurance as regards the discoveries, this circumstance also loses probative value.

34. In our view, the attendant circumstances cannot be lost sight of. Firstly, the time and place of occurrence. The incident allegedly occurred in between 2:00 p.m. to 2:30 p.m. The victim was done to death in the grocery store. Siddharam Kalgounda Birajdar (PW-3) conceded in the cross-examination that his house is surrounded by other houses. To add to this, the prosecution case does not shed

any light on the presence of Premkumar, the 1½ year old grandson of Siddharam Birajdar (PW-3), who was admittedly with the deceased in the said house. No witness has endeavoured to offer an explanation as regards his presence or absence at the time and place of occurrence. Nor there is any evidence to establish that any person had seen the accused in the vicinity of the house of the deceased in proximity of the time of occurrence.

35. The situation which thus emerges is that, at best, the prosecution can be said to have succeeded in establishing that the accused had an unrequited love towards the deceased. At the highest, it would lead to a needle of suspicion against the accused. It is trite law that suspicion, however strong, cannot take the place of proof. This sole circumstance, on its own, cannot sustain the burden of establishing the guilt of the accused beyond reasonable doubt sans requisite corroboration by other circumstances.

36. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of *Navaneethakrishnan Vs. State by Inspector of Police* ⁵, wherein the principles were culled out as under :-

“27 The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so

⁵ (2018) 16 SCC 161

proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.

(emphasis supplied)

37. The upshot of the aforesaid consideration is that the prosecution has not succeeded in establishing the circumstances arrayed against the accused fully and conclusively. Nor the circumstances are of definite tendency unerringly pointing towards the guilt of the accused. Even if assumed to be proved, they do not lead to the only hypothesis that the accused caused death of the deceased. In short, there is no chain of circumstances which establishes the guilt of the accused beyond reasonable doubt. In our view, the learned Additional Sessions Judge was, therefore, not

justified in returning the finding of guilt against the accused.

38. For the foregoing reasons, the appeal deserves to be allowed and the impugned judgment of conviction and order of sentence, is liable to be quashed and set aside.

39. Hence, the following order :

O R D E R

- (i) The appeal stands allowed.
- (ii) The impugned judgment of conviction and order of sentence dated 9th March 2015 for the offences punishable under sections 302 and 452 of the Penal Code passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.329 of 2014 stands quashed and set aside.
- (iii) The appellant-Prakash Bhimashankar Bagle stands acquitted of the offences punishable under sections 302 and 452 of the Penal Code.
- (iv) The appellant is in custody. He be set at liberty forthwith, if not required to be detained in any other case.
- (v) In view of the disposal of the appeal, Interim Application No.2686 of 2021, taken out by

the appellant, does not survive and also stands disposed of.

All concerned to act on an authenticated copy of this judgment and order.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]