

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

CRIMINAL APPEAL NO. 81 OF 2020

Nanda Rajendra Zodge alias
Sunanda Shivaji Narawane,
Age : 53 years, Occ. Housewife,
R/o: Building No.158, Room No.5168,
Chembur Safalya C.H.S., New Tilak Nagar,
Chember, Mumbai – 89.
At present Mubai Dist. Women Prison
Byculla, Mumbai.

... Appellant/ Orig. Accused
No.2.

V/s.

The State of Maharashtra,
(At the instance of Tilak Nagar Police
Station, Dist. Mumbai.

... Respondent.

**WITH
CRIMINAL APPEAL NO.342 OF 2020**

Shivaji Kisan Narawane,
Aged 61 years, Occupation: Retired,
Resident of :No.2-B/104, Dreams Complex,
Lal Bahadur Shastri Marg, Bhandup (West),
Mumbai 400 078,
presently held in Amravati Jail.

... Appellant/ Convict
(Accused No.1)

V/s.

State of Maharashtra by Tilak Nagar Police
Station, Mumbai through the Public
Prosecutor.

... Respondent/ Original
Complainant.

Mr. Aniket U. Nikam a/w Mr. Aashish Satpute, Mr. Piyush Toshnival, Mr.
Amit Icham, Mr. Vivek Arote, Advocate for the Appellant in Apeal/81.

Mr. Mahesh Vishwakarma a/w Ms. Angha Tandel i/b. Vishwakarma &
Associates, for the Appellant in Apeal/342/2020.

Ms. P.P. Shinde, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : JANUARY 29, 2021.

PRONOUNCED ON : FEBRUARY 26, 2021.

JUDGMENT(PER SMT. SADHANA S. JADHAV, J) :

1 The appellants herein are convicted for the offence punishable under section 302 read with section 120-B of the Indian Penal Code and sentenced to suffer Imprisonment for Life and to pay fine of Rs. 5,000/- by the Additional Sessions Judge, Greater Bombay in Sessions Case No. 100 of 2014 vide Judgment and Order dated 19/11/2019. Hence, this Appeal.

2 The case of the prosecution in a nut shell is as follows :

(i) The accused Shivaji Narawane (Appellant in Criminal Appeal No. 342 of 2020) was earlier working as Senior Inspector of Police and was attached to Tilaknagar Police Station. In the year 2013 accused No. 1 was working as DYSP attached to Special Protection Unit, Dadar. He got acquainted with the accused No. 2 since she used

to visit Tilak Nagar Police Station to file complaint against her notorious son Rohan.

(ii) The accused No. 2 (appellant in Criminal Appeal No. 81 of 2020) was a divorcee. She was mother of 2 sons namely, Rishabh and Rohan (deceased) and daughter Neha (PW. 6). That Rohan was notorious. He had criminal antecedents. He was alcoholic and used to trouble his mother. There were more than 4 to 5 non-cognizable cases registered at Tilaknagar Police Station against Rohan at the behest of his mother (original accused No. 2). That, she was a Homeopathic doctor and was practising in Rohini Clinic at C.S.T. near Hanuman Mandir and her cell phone number was 9833804832. It is alleged that the accused No. 2 was in relationship with accused No.1. That he visited her house quite often.

(iii) It is the case of the prosecution that on 25/10/2013 Head Constable Audumbar Pawar, who was attached to Tilak Nagar Police Station, while he was on patrolling duty, at about 10.52 a.m., received a wireless message that an untoward incident had occurred in building No.158, room No. 5168, near Tilak Nagar Colony, Chembur,

Mumbai-89 which in fact happens to be the residential house of the accused No.2. The police reached the spot. There was a gathering of people who informed the police that Rohan Zodge, the son of accused No. 2 was killed by some one. The police found that Rohan was lying just outside the room No. 5168 in the passage and the dead body was facing to the earth. ASI Jadhav informed Tilak Nagar Police Station. The dead body was taken to Rajawadi Hospital. PW. 2 Audumbar Pawar lodged a report at Tilak Nagar Police Station against unknown persons for an offence punishable under section 302 of the Indian Penal Code at about 12 noon. On the basis of the said report, Crime No.345 of 2013 was registered at Tilak Nagar Police Station. Investigation was set in motion.

(iv) That, at about 10.52 a.m. when the police reached the spot, accused No.1 was present near the dead body and upon enquiry had introduced himself as DYSP Narawane. In the course of investigation, it had transpired that the accused No. 2 was in relationship with the accused No.1 and in the previous night accused No.1 had visited house of accused No.2 and there was a quarrel between accused No.2 and her son Rohan and thereafter, Rohan had

died a homicidal death. Accused No. 2 was arrested on 25/10/2013.

(v) At the trial, prosecution has examined as many as 47 witnesses to bring home the guilt of the accused. The material witnesses in the present cases are P.W. 2 Audumber Pawar, Head Constable who was the first to reach the scene of offence. P.W. 4 Nikhil Kamble who is the cousin of accused No.2, P.W.17, Chhaya Kamble, mother of P.W.4, P.W.5 Abhijeet Bhingardive and P.W. 9 Tejas Rawat friends of P.W.6 Neha, P.W. 7 Kartiki and P.W. 19 Ganesh Jadhav, resident of building No.158. P.W.18 Lalpratapsingh who has proved CCTV footage and P.W.26 Birju Singh who was panch for CCTV footage, P.W. 30 Vijay Shinde, Nodal officer who has proved the user of the cell phones seized from accused Nos. 1 and 2. P.W. 36 Sunil Tiwari, Nodal officer of Airtel company; P.W. 37 Vikas Phulkar – Nodal officer of Vodaphone Ltd., P.W. 41 Dr. Shivaji Kachare, Investigating Officer P.W. 44 Vaijanath Upase, P.W. 46 Ashish Kumar Adsul and P.W. 47 Vilas Jadhav.

3 PW 2 Audumbar Pawar is the first informant. On the basis of his report, Crime No. 345 of 2013 was registered against unknown

persons for the offences punishable under section 302 of the Indian Penal Code. He had also seen the accused No. 1 at the scene of offence when he first reached there. In fact, he was knowing the name and designation of accused No. 1 prior to his visit on the spot. He has proved the contents of the FIR which is marked at Exh. 29. The location and position of the dead body of Rohan is spelt out by P.W.3 Rajbahaddur Pande who acted as panch to the scene of offence panchanama which is at Exh. 30. According to him, dead body had injury mark on the occipital region. The dead body was surrounded by ants. The deceased had an injury mark on forehead and throat. The recitals of Exh. 30 scene of offence panchanama would show that there were blood stains on the wall of the room and on the sofa in the said room. There was seizure of the wrapper of the knife and traces of solid blood found on the earth. There were foot prints on the trail of blood. A knife was found behind the building. It is seen from the evidence of P.W. 3 that when the police peeped from the window of the house, they could see one bed sheet, mat, half-pant behind the building and they found a knife having green colour handle with blood stains. A maxi was seen on the roof of pump house room. All the articles were seized under a panchanama. Dog squad was called. After

sniffing the maxi, the dog had stopped near the mother of the deceased. The police had therefore, suspected some role of accused No. 2 in the alleged incident in which her son had died a homicidal death. On 27/10/2013 both the accused were arrested.

4 In fact, the deceased Rohan was also one of the customer of P.W. 3. Similarly, accused No. 2 also used to make her domestic purchases from the shop of P.W. 3. That P.W. 3 by way of certain admissions had clearly indicated that Rohan was harassing local people by assaulting them, committing theft in the locality, chasing police with stick in his hand outside Tilak Nagar Railway Station. There are several criminal cases lodged against him and therefore, he was lodged in Arthur Road Jail. He had also committed theft of a computer set from the shop in the close vicinity. He had also raised quarrels with P.W. 3 on account of not paying the consideration for the articles purchased from his shop. It is admitted by P.W. 3 in his cross-examination that the dead body of Rohan was lying in the passage which was admeasuring about 4.6 ft. That, one could not have entered the room without crossing the dead body. The special investigating team had only taken photographs of the foot marks in the

presence of panchas.

5 The evidence of P.W. 4 Nikhil Kamble is relevant as far as the presence of the deceased in the company of the accused is concerned. P.W. 4 also throws light on the prelude and the postlude to the incident, since he was present in the house of accused N. 2 on the previous night i.e. just before Rohan was found dead. P.W. 4 happens to be the maternal cousin of accused No. 2. On the day of the incident, he had visited house of accused No. 2. He lives in building No. 136 which is in close proximity of accused No. 2. That P.W. 4 was a mediator in the transaction in which accused No. 2 had purchased 2 cars from one Mr. Rajan. The accused No. 2 had paid the consideration by extending cheques of Rs. 1.50 Lakhs each to Mr. Rajan towards purchase of Santro and EECO car. At the time of taking possession of the cars, there were certain defects, such as the battery of the car was discharged, Eeco car was jam, etc. Hence, Mr. Rajan had retained both the cars on the ground that he would complete all the formalities and would return the same within a short while. On the day of the incident i.e. on 24/10/2013 Rohan had picked up a quarrel with accused No. 2, as he did not agree with the nature of transaction.

P.W. 4 had reached the house of accused No. 2 at about 5.30 p.m. The transaction between Rajan and accused No. 2 through P.W. 4 Nikhil was not known to the other members of family. In the presence of P.W. 4, accused No. 1 had visited the house of accused No. 2 at about 6.45 pm. and continued to be there. At about 10.30 p.m. P.W. 4 was to leave the house of accused No. 2. However, the accused No. 2 insisted upon him to have dinner. That accused No. 1 had tried to convince Rohan, who refused to hear anything from accused No. 1 and thereafter, Rohan had left the house. As per the directions of accused No. 1, P.W. 4 and the younger son of accused No. 2 namely, Rushabh had gone in search of Rohan. When they returned, they saw accused No. 1 was drinking liquor. At that juncture, Rohan had returned home and had resumed his quarrel with accused No. 2. He was abusing the accused No. 1. The accused No. 1 had then requested P.W. 4 to take Neha alongwith him to his house. Similarly, accused No. 2 had expressed her desire to accompany Neha and therefore, P.W. 4 alongwith Neha and accused No. 2 had left the house. That accused No. 2 and Neha spent the night intervening 24th and 25th October, 2013 in the house of P.W. 4.

6 P.W. 4 has further deposed that when he woke up in the wee hours at 5 a.m., he saw Neha and accused No. 2 leaving his house. On instructions of his father. he went in search of Neha and accused No. 2. He saw them in the company of accused No. 1 near Sainath Mandir. He asked accused No. 2 and Neha to return home as per the directions of his father. While they were leaving, he saw a motor bike coming. Accused No. 1 accompanied the motorcyclist and they went in the direction of Tilaknagar Railway Station, whereas P.W. 4 returned to his house alongwith Neha and accused No. 2. At about 10 a.m. on the same day, Tanmay, younger brother of P.W. 4 informed the family members about the murder of Rohan. When P.W. 4 reached the spot i.e. building No. 158, he saw accused No. 1.

7 The testimony of P.W. 4 could not be shattered by the length of the cross-examination. Tenor of the cross-examination of P.W. 4 shows that the accused had made a frail attempt to implicate P.W.4 in the homicidal death of Rohan.

8 According to P.W. 5 Abhijeet, at the time of incident, P.W. 5 was using cell phone which was registered in the name of Neha i.e.

8898153186. He had also saved cell phone number of the accused No. 1. On 24/10/2013 he was informed by Neha that Rohan was quarreling with her mother and thereafter, he knew that Neha had gone to sleep in her uncle's house. The prosecution has brought on record the fact that on 25/10/2013 at about 8 a.m. the accused No. 1 had called upon P.W. 5 and had informed him about murder of Rohan and had further directed him to go to the spot. P.W. 5 had obliged. He had seen accused No. 2 and Neha taking exit from the building No. 136. Accused No. 2 had handed over her cell phone to P.W. 5. Said cell phone had dual SIM Card. He had confirmed news with accused No.1 that Rohan has been murdered and asked him to go to building No. 158. However, accused No. 1 had expressed that he was too busy to attend. Accused No. 1 had also asked P.W. 5 to keep a tab on Neha and Rushabh. However, he refused to do so and thereafter, he had learnt that on 26/10/2013 accused No. 1 was arrested.

9 The evidence of P.W. 5 is partly in the nature of hearsay evidence to the extent that after a week of the incident, Neha had informed P.W. 5 that when she was sleeping alongwith her mother in the house of P.W. 4, accused No. 2 had asked her to bring the laptop

and when they went to the building, they saw Rohan in a pool of blood. That she had further informed P.W. 5 that accused No. 1 had sent message on her cellphone asking her and her mother to see him near Sainath temple. P.W. 5 had then handed over cell phone of accused No. 2 alongwith two SIM Cards to the police. He had also handed over his own cell phone and SIM cards to the police. He has also identified the instrument which he had handed over to the police. The testimony of P.W. 5 has not been shattered, except for a few immaterial omissions. This corroborates the evidence of P.W. 4 to the extent that accused No. 2 and Neha had spent the previous night in the house of P.W. 4 and that on the next day early morning accused No. 2 and Neha had met accused No. 1 near Sainath Temple.

10 The disclosure made by P.W. 6 Neha to P.W. 5 has not been proved by Neha since she was declared hostile. She has testified before the Court that she was acquainted with accused No. 1 only to a limited extent i.e. because she was visiting Tilak Nagar Police Station alongwith her mother, whenever she had been to file complaint against her brother Rohan. According to her, on 22/10/2013 her mother had agreed to purchase two secondhand cars

from Rajan Pandey only because P.W. 4 was the mediator. She had paid Rs. 3 Lakhs towards consideration of the said car. On 24/10/2013 they had not received the cars and therefore, they had questioned P.W. 4 about the same. Rohan was of the opinion that they were cheated by P.W. 4 and therefore, he had raised quarrel. According to her, on the fateful night, she alongwith her mother had gone to the house of P.W. 4 to sleep and in the morning they learnt from P.W. 4 about the murder of Rohan. Her mother, Rushabh and herself were detained by the police in the detection branch for 7 to 8 days. She has admitted that cell phone No. 8898153186, 8898153268 and 8898153101 are all registered in her name. The said cell phones alongwith SIM cards were handed over to the police by P.W. 5. She has denied to have called accused No. 1 in the intervening night of 24th and 25th October, 2013 from her cell phone No. 8898153101 or to have received any message from accused No. 1 to come to the temple.

11 There is ample evidence to show that there used to be perpetual quarrels between accused No. 2 and her son Rohan and the same is corroborated by P.W. 7, who happens to be the resident of building No. 158. P.W. 7 Kartiki has deposed before the Court that in

the intervening night of 24th and 25th October, 2013 at about midnight accused No. 2 had called her on her cell phone and requested her to open latch of her house from outside. It appears that P.W. 7 had only opened latch and left for her own house and in the morning at about 9.30 a.m. she learnt about murder of Rohan. Her evidence further makes it clear that on several occasions accused No.2 was locked in the house by her son Rohan and she had to open the door.

12 The fact that accused No. 2 was in relationship with accused No. 1 is proved by the prosecution through P.W. 8 Ramraj Kori, who happens to be the Secretary of Chembur Saphalya Coop. Housing Society, Tilak Nagar, who has filed on record an application filed by accused No. 2 requesting him to change the name of the user of Room No. 1568 in Building No. 158 to Sunanda Shivaji Narawane instead of Nanda Rajendra Zodge and the said request was accepted vide letter dated 6th March, 2013. The application is at Exh. 48 and the acceptance letter of the society is at Exh. 49. P.W. 5 Abhijit Bhingardive and P.W. 9 Tejas Rawat happen to be friends of Neha and according to them, Neha had informed them that her mother was divorcee, but she had remarried with Shivaji Narawane/accused No. 1 and that is why

she had introduced accused No. 1 to P.W. 5 as her father.

13 It is proved by P.W. 13 Mrs. Sangeeta Kadam that accused No. 1 had not reported on duty on 25/10/2013 and had sent leave note.

14 The autopsy on the dead body of deceased Rohan was performed by Dr. Shivaji Kachare, P.W. 41. According to P.W. 41, dead body was received for autopsy on 25/10/2013 at about 3.30 p.m. and post mortem on the said dead body was conducted between 4 p.m. to 6 p.m. Following injuries are found on the dead body :

- “(i) Cut throat injury at anterior and posterior lateral of neck region, involving whole neck region anteriorly from chin to suprasternal notch and laterally behind both sternocleidomastoid muscles, reddish brown, margins well defined, both angles acute, muscles, blood vessels, internal jugular veins, internal carotid artery bilateral ruptured; Evidence of larynx, trachea, bronchus, cut and haemorrhagic; Evidence of total vocal cords cut size 16 cm x 8 cm x bone deep Vertebrae
- (ii) incise like wound at (RT) forehead and right fronto temporal region s/o 8 cm x 4 cm bone deep reddish brown, margin well defined, clean cut.

- (iii) incise like would at left temparoparietal region 5 cm above from left ear pinna s/o. 6 cm x 4 cm bone deep reddish brown.
- (iv) incise would at left ear lobule 1 cm x 0.5 cm reddish brown clean cut.

Injuries mentioned below column no.19.

- (i) Injuries under the scalp multiple contusions, at frontal, both temporal and parital region, reddish brown.
- (ii) Skull : i) communitied fracture at left frontotemporal and Parietal,
- ii) Fracture right frontotemporal bone 1 cm x 0.5 cm oblique
Brain – Extradural haematoma at both hemisphere s/o.15 cm x 10 cm reddish brown.

Subdural and subarachinoid haemorrhags frontal temparol and parietal region

Cut section – Pale.

Injuries mentioned below colomn no.20.

- a) walls, ribs, cartilages – Fracture 1st, 2nd, clavicle bilateral.
- b) Larynx Trachea – total rupture,
- c) Right lung, left lung – ruptured and apical region
- d) large vessels. - Evidence of total ruptured both carotid and jugular veins at neck region.

Injuries mentioned below column no.21.

- 1) Buccal cavity – Ruptured lower part of pharynx

ii) Oesophagous – Laceration at anterior and upper of oesophagous

Injuries mentioned below column no.22.

i) Evidence of fracture dislocation C1, C2, C3, C4 vertebrae.”

P.W. 41 has opined that the fracture injuries sustained by deceased were because of the injuries sustained on the anterior and posterior lateral part of the neck. If the neck of the deceased was slit to his throat, then naturally there was a movement in the body. It is also opined that huge pressure was required to cause injury shown in paragraph-20A of the post-mortem report and that percentage of haemorrhage was more than 70 percent. The weapon knife was not shown to P.W. 41 and that probable time of death of deceased was 24 hours prior to the receipt of dead body. It is admitted by P.W. 41 that the injuries sustained by deceased were possible by throwing article 24 which is a grinding stone, over his head.

15 In the course of investigation i.e. on 3/11/2013, the memorandum of the accused No. 1 under section 27 of the Indian Evidence Act was recorded and Grinding Stone was recovered at his instance from the premises of Chembur Safalya CHS. It was covered

with garbage. It had blood stains on it. P.W. 28 has proved the recovery of grinding stone at the instance of accused No. 1 on 27/10/2013. The said grinding stone was behind building No. 158. It was a slab of stone used for grinding spices and the same was marked as Article 24.

16 The evidence of P.W. 5 Abhijeet Bhingardive to the extent of his cell phone number is falsified by P.W. 22 Manjunath Prabhu who runs the business of internet service provider in the name and style of “Manjunath Cable Network”. He has proved that cell phone number 8898153186 is registered in the name of Abhijeet Bhingardive and that he had requested for registration of internet service on the said mobile number and therefore, there is doubt as to whether Neha was using cell phone number 8898153186 because according to Neha said number was registered in her name or there is a possibility that internet service on the said cell was solicited on behalf of Neha.

17 Men may lie, however, circumstances speak for themselves and leaves it's mark behind and the same is true in the present case. According to the prosecution, Cellphone number which was being used

by accused No. 1 was 9702724040 and the cellphone No. 8898153101 as claimed by Neha was registered in her name. Cellphone No. 9702724040 is registered in the name of Vilas Surve. The prosecution has proved this fact by examining P.W. 21 Swapnil Khadelkar who happens to be the nodal officer with IDEA Cellular company. The prosecution has not examined Vilas Surve. Suffice it to note that cellphone having SIM card No. 9702724040 was seized from the accused No. 1 at the time of his arrest.

18 The link that is established by the prosecution is that in the early morning of 25/10/2013 a message was received on the cell phone of Neha(8898153101) as “come at temple”. The said message was sent from cell phone number 9702724040. The same is corroborated by P.W. 4 who had actually seen the accused No. 2 and Neha in the company of accused No. 1 at 5 a.m. near Sainath Temple. The cell phone number of accused No. 2 is 9833084832.

19 The evidence adduced by the prosecution as far as purchase of knife (Article-12) by the accused No. 1 does not inspire confidence. Similarly, the evidence that he had washed his blood

stained clothes on the bank of river at Khadavali river, also does not inspire confidence of the Court. Thirdly, according to the prosecution, CCTV footage of Kurla Railway Station shows presence of accused No. 1 between 4.56.35 hours to 4.57.04 hours. It is admitted by PW. 26 Birju Singh that the image of the person seen in the CCTV footage is from his posterior side and hence, it cannot be said that the prosecution has established that accused No. 1 was at Kurla Railway Station at 4.25 a.m. The tower location of both the cell phone numbers would clearly establish that accused No. 1 had sent message to Neha and called her near the temple. The prosecution has placed on record CDR which would show that PW. 4 had received calls from accused No. 1. The location would show that throughout night accused no. 1 and accused No. 2 were not at the same place.

20 At this stage, learned Counsel for the accused No. 1 submits that the message from accused No. 1 to the daughter of accused No. 2 would not by itself substantiate that the accused has eliminated Rohan. Learned Counsel for the accused No. 1 has drawn attention of this Court to the evidence of Investigating Officer and panchas and has submitted that in fact, recovery of the weapon,

grinding stone or cell phone by itself is not sufficient to hold that the accused No. 1 as the perpetrator of the said crime. That grinding stone was recovered from an open place.

21 Learned Counsel submits that the prosecution has not examined any independent witness to establish that the accused No. 1 was in Room No. 1568 in the intervening night of 24th and 25th October, 2013. In fact, on 25th October, 2013 morning before 10 a.m. the newspaper vendor, the milkman had visited the spot in routine course, the neighbours had left for their offices and yet none of them is examined, although the dead body was lying in the passage.

22 We cannot be oblivious of the fact that people are generally insensitive to crimes and have no inclination to be a part of investigation even if the crime has taken place in their presence. There is a tendency to keep away from the court unless it is inevitable. They think that crime is also between two individuals, just like civil dispute. Unfortunately so, but this kind of apathy is prevalent in society and therefore, prosecution case cannot be disbelieved only because there is no independent witness examined, especially in cases that rest upon

circumstantial evidence. The evidence that accused No. 1 had sent a message to P.W. 4 Neha or had called upon P.W. 5 cannot be disbelieved due to non-examination of Vilas Surve. Non-examination of independent witnesses cannot always be held fatal, since it is a matter of satisfaction of judicial conscience which is founded upon the evidence adduced by the prosecution.

23 The learned Counsel for the accused No. 2 has submitted that there are serious lapses on the part of the investigating agency. That even according to P.W. 4, there was an altercation between him and deceased over the purchase of cars on 24/10/2013. However, the prosecution has not investigated the case from that angle. That the neighbour of accused No. 2 were not examined. That the version of P.W. 5 Abhijit that accused No. 2 handed over her phone to him on 25/10/2013 appears suspicious since seizure panchanama of the said phone is recorded one and half months later, after they were produced by P.W. 5. According to P.W. 17 Chhaya, mother of P.W. 4, her son i.e. P.W. 4 had informed her that Neha and accused No. 2 were seen talking to some third person in the early morning near the temple and there was no reference to accused No. 1. The evidence on record is not

sufficient to establish that there was a conspiracy between both the accused to eliminate Rohan. That the cell phone number 9702724040 stands in the name of Vilas Surve and the prosecution has not examined Vilas Surve and therefore, it cannot be held that it was the accused No. 1 who had sent the message. In any case, message is sent to Neha and not to accused No. 2 and accused No. 2 had only accompanied her daughter in the wee hours.

24 The learned Counsel has placed implicit reliance on the Judgment of the Apex Court in the case of **Sharadkumar Birdhichand Sarda v/s. State of Maharashtra**¹ and has highlighted the guidelines propounded by the Apex Court in the appreciating cases based on Circumstantial Evidence which are as under :

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;

¹ (1984) 4 SCC 116

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.”

25 Per contra, learned APP has vehemently argued that an accused in a heinous case like the present one is not entitled to any benefit due to certain immaterial lapses on the part of investigation. That the evidence of P.W. 4 is sufficient to prove that accused No. 1 and accused No. 2 had motive to cause death of Rohan as he was not only notorious, but abusive towards his mother and used to harass her to such an extent that it had become unbearable. That the circumstances adduced by the prosecution prove the involvement of accused No. 1 and accused No. 2 in causing the homicidal death of Rohan beyond reasonable doubt. That Rohan was in the exclusive company of accused No. 1 in the intervening night of 24th and 25th October, 2013 and that accused No. 1 had assaulted Rohan brutally with the aid and instigation of accused No.2.

26 The facts that are established by the prosecution beyond

reasonable doubt are as follows :

(i) The accused No. 1 was in a relationship with accused No. 2. Neha had introduced accused No. 1 to P.W. 5 Abhijeet as her father. The said fact is also proved through the Secretary(P.W.8) of the Society. P.W.8 has deposed that accused No. 2 intended to change the user name of Room No. 1568 to Sunanda Shivaji Narawane from Nanda Rajendra Zodge.

(ii) That Rohan was notorious. There were several criminal cases registered against him at Tilak Nagar Police Station. His mother had also registered non-cognizable case against him.

(iii) That P.W. 4 had visited house of accused No. 2 in the evening of 24/10/2013. He had seen accused No. 1 drinking alcohol till late at night. That deceased Rohan had raised quarrel with his mother. When verbal altercation had become unbearable, accused No. 2 had left her house alongwith her daughter and had slept in the house of P.W. 4 in building No. 136. That accused No. 2 and Neha were seen talking to accused No. 1 near Sainath Temple early morning pursuant to the message sent by accused No. 1 to P.W. 5 Neha.

(iv) P.W. 9 Tejas Rawat had proved that the presence of P.W. 4 in the house of accused No. 2 in the intervening night of 24th and 25th October, 2013.

(v) That accused No. 2 had called upon P.W. 7 Kartiki and asked her to open latch of her house from outside.

(vi) That CDR record establishes beyond reasonable doubt that 9702724040 was being used by accused No. 1 as the tower location would show that in the evening of 24/10/2013 he was in the house of the accused No. 2 and continued to be at Tilak Nagar atleast till 4.56 a.m. of 25/10/2013 and thereafter, the tower location was at Kurla. That he had sent a message on the cell phone of Neha at 4.55 a.m. on 25/10/2013 asking her to come near the temple.

(vii) The dead body of Rohan was found on the door step of his residential house lying in the passage in a pool of blood. The injuries sustained by deceased Rohan make it amply clear that his head was rather crushed 2 to 3 times by the said grinding stone, as there is triangular shape smash injury which is seen in the inquest

panchanama.

(viii) The fact that P.W. 5 had received phone calls from accused No. 1 asking him to find out location of Neha and Rishabh would clearly indicate that he was nurturing a suspicion that after he had made a disclosure statement to Neha and accused No. 2, they may report to the police or must have fled from Tilak Nagar area.

(ix) After Rohan had returned home, had his dinner and after departure of accused No. 2 and Neha from room No. 1568, accused No. 1 was at home alongwith deceased Rohan who was found dead in the morning. The fact that he had fallen dead in the passage and the room was latched from outside, coupled with the fact that there was a pool of blood in the house would show that the deceased was brutally assaulted in the house. By logical deduction, it can be safely held that accused No. 1 is the perpetrator of the crime.

27 The conduct of the accused Nos. 1 and 2 would show that they were fully aware that Rohan had met a homicidal death. Accused No. 1 was seen near building No. 158 when the police arrived there.

The service providers have also proved that the accused No. 1 had made 3 to 4 consecutive calls to P.W. 5 Abhijeet 8898153101 on the phone No. 8898153101 from phone No. 9702724040. That there was no reaction by accused No. 2 when she visited building No. 158 at about 11 a.m.. The police had reached the spot at about 11 a.m. Accused No. 2 was seen in the crowd. After sniffing maxi, the dog had pointed out to accused No. 2. That, in all probability, the maxi was used to wipe off the blood stains and in any case, canine inference is too weak a piece of evidence to prove the involvement of an offender in an offence. She had seen the police investigating the murder of her son, but there was no reaction, which would clearly show that she had the knowledge of not only the murder of Rohan, but the perpetrator of crime. But she chose to remain silent for obvious reasons. That she had spent the night intervening 24th and 25th October, 2013 in building No. 136 i.e. the house of P.W. 4 Nikhil Kamble. The defence of the accused is of total denial. In the facts and circumstances of the case, it can be safely held that the prosecution has travelled beyond realm of suspicion and has proved that the perpetrator of the crime is none other than accused No. 1. Conduct of the accused No. 1 of taking leave on 25/10/2013 is self explanatory. In addition, accused No. 1 had

asked P.W. 5 Abhijeet to keep a tab on accused No. 2 and Neha. It could be an expression of a guilty mind.

28 In fact, we are pained to observe that a high ranking police officer, instead of taking action against notorious Rohan in accordance with law, thought it fit to eliminate him by causing his homicidal death and thereafter, attempted to cause disappearance of evidence. No doubt, the horrendous act is committed by him in his individual capacity. At the same time, the fact that he was not true to his oath as a police officer to uphold the rule of law cannot be ignored and hence, accused No. 1 does not deserve to be shown any leniency.

29 In view of the above discussions and the totality of circumstances proved against accused No. 1, the conviction of accused No. 1 for offence punishable under section 302 of the Indian Penal Code deserves to be upheld. However, in view of the evidence adduced by the prosecution, it is proved that the accused No. 2 was in the house of P.W. 4 in the intervening night of 24th and 25th October, 2013 when Rohan died a homicidal death and hence, she cannot be held liable for causing homicidal death of her son Rohan, and hence,

she deserves to be acquitted. Both the accused are in custody since the date of arrest. The accused No. 1 is entitled to set off for the period spent in jail during the pendency of the trial and appeal.

30 Hence, following order is passed:

ORDER

- i) Criminal Appeal No. 81 of 2020 is allowed.

- (ii) The conviction and sentence passed against the appellant Nanda Rajendra Zodge@ Sunanda Shivaji Narawane, by the Additional Sessions Judge, Greater Bombay in Sessions Case No. 100 of 2014 vide Judgment and Order dated 19/11/2019 is hereby quashed and set aside.

- (iii) The appellant Nanda Rajendra Zodge @ Sunanda Shivaji Narawane be released forthwith, if not required in any other offence.

- (iv) Fine amount if paid be refunded.

- (v) Criminal Appeal No. 342 of 2020 is dismissed.

(vi) The conviction and sentence passed against the appellant Shivaji Kisan Narawane, by the Additional Sessions Judge, Greater Bombay in Sessions Case No. 100 of 2014 vide Judgment and Order dated 19/11/2019 is hereby confirmed. He is entitled to set off.

(vii) Both the appeals are disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)