

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.684 OF 2017
WITH
CRIMINAL APPLICATION NO.932 OF 2021**

Anita Nagesh Koli ...Appellant
vs.
The State of Maharashtra ...Respondent

Ms. Payoshi Roy i/b. Dr. Yug Chaudhary, for the Appellant.
Mr. V.B. Konde-Deshmukh, APP for the Respondent-State.

VISHAL
SUBHASH
PAREKAR

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

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**JUDGMENT RESERVED ON : 14th DECEMBER, 2021
JUDGMENT PRONOUNCED ON: 5th JANUARY, 2022**

JUDGMENT : (Per N.J.Jamadar, J.)

1. The challenge in this appeal is to the judgment and order in Sessions Case No. 230 of 2013 dated 11th March, 2016 passed by the learned Additional Sessions Judge, Sangli whereby and whereunder the appellant/accused came to be convicted for the offences punishable under sections 302 and 380 of the Indian Penal Code, 1860 (the Penal Code) and sentenced to suffer imprisonment for life and pay fine of Rs. 2,000/-, on the first count, and rigorous imprisonment for two years and fine of Rs. 1,000/-, on the second count, with default stipulation.

2. The background facts leading to this appeal can be stated in

brief, as under:-

Ashok Patil, the then Assistant Police Inspector, Miraj City police station received information on telephone on 31st July, 2013 that a lady namely Saraswati Chougule, who was residing in a rented room in the house of Abbas Pathan at Magdum Mala, Miraj-Pandharpur Road, Miraj, has died. Aashok Patil visited the scene of occurrence. Saraswati (the deceased) was found dead. It appeared that she was strangled by means of a white scarf. In the presence of public witnesses, scene of occurrence panchanama was drawn. Articles found at the scene of occurrence, including five broken bangle pieces, were seized. Inquest was held. The dead body was sent for postmortem examination. Autopsy surgeon opined that death was due to ligature strangulation. Ashok Patil thus lodged report against an unknown person for having committed murder of the deceased. Crime was registered at C.R.No.144 of 2013 for the offences punishable under sections 302 and 380 of the Penal Code.

3. Investigation commenced. During the course of investigation, Ashok Patil, interrogated the witnesses and recorded their statements. It transpired that the appellant/accused Anita, the estranged wife of Nagesh Koli, had visited the house of the deceased on the night intervening 30th and 31st July, 2013. A scuffle had ensued between them, resulting in the death of the deceased. The

accused came to be arrested. Accused made discovery leading to recovery of the articles of the deceased namely a black mobile phone handset of Max company, a black umbrella and a pair of ladies chappal (sandals). The accused also produced saree and the blouse which she wore at the time of occurrence. One of the buttons of the blouse was missing and the said button had been seized under the scene of occurrence panchanama. Investigation further revealed that the deceased had extra-marital relations with Nagesh Koli, the estranged husband of the accused, and, thus, the accused had a grudge against the deceased and, therefore, caused the death of the deceased. Thus, the charge-sheet was lodged against the accused for the offences punishable under sections 302 and 380 of the Penal Code.

4. Post committal of the case, the learned Additional Sessions Judge framed charge against the accused for the offences punishable under sections 302 and 380 of the Penal Code. The accused abjured her guilt and claimed for trial.

5. At the trial, to substantiate the indictment against the accused, the prosecution examined in all 10 witnesses being Abbas Pathan (PW.4), the landlord of the deceased; Fatima Hudali (PW.5), the neighbour of the deceased; Nagesh Koli (PW.6), the estranged

husband of the accused; Sachin Salunkhe (PW.7), the public witness to the scene of occurrence panchanama; Kamlakar Kamble (PW.3), the public witness to the inquest; Malan Waghmare (PW.2), the public witness to the panchanama evidencing the arrest of the accused and Sumit Khandekar (PW.1), the public witness to the discovery allegedly made on 2nd August, 2013; Vijay Shinde (PW.9), public witness to the discovery allegedly made on 5th August, 2013; Aniket Shinde (PW.8), autopsy surgeon and Ashok Patil (PW.10), the investigating officer, who furnished the details of investigation.

6. Post the conclusion of prosecution evidence, statement of the accused under section 313 of Code of Criminal Procedure, 1973 was recorded. The accused did not lead any evidence in her defence, which consisted of denial and false implication.

7. After appraisal of the evidence and material placed on record, the learned Additional Sessions Judge was persuaded to return the finding of guilt against the accused for the offences punishable under sections 302 and 380 of the Penal Code. The learned Additional Sessions Judge was of the view that the prosecution succeeded in establishing a complete chain of circumstances against the accused. It was held that the fact that the accused was seen leaving the house of the deceased, at the dead of the night, coupled with recovery of

broken bangle pieces, which matched with the bangles found on the person of the accused, and a button of the blouse, which matched with the rest of the buttons of the blouse of the accused, firmly established the presence of the accused at the time and place of occurrence. Moreover, the accused could not offer any explanation regarding articles of the deceased namely mobile phone, umbrella and pair of ladies sandals, which were found in the house of the accused pursuant to the discovery made by her. Thus, the learned Additional Sessions Judge convicted the accused for the offences punishable under sections 302 and 380 of the Penal Code and sentenced her, as indicated above.

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

9. We have heard Ms. Payoshi Roy, the learned counsel for the appellant/accused and Mr. Konde-Deshmukh, learned APP for the State at length. With the assistance of the learned counsels for the parties, we have carefully perused the material on record including the depositions of the witnesses and the documents proved in evidence by the prosecution.

10. Ms. Roy, the learned counsel for the appellant, mounted a

multi-pronged challenge to the impugned judgment. Ms. Roy would urge that, first and foremost, the learned Additional Sessions Judge committed grave error in law in basing the finding of guilt on surmises and conjectures. Secondly, the circumstances arrayed against the appellant were not fully and conclusively established. The testimony of Fatima Hudali (PW.5), which was primarily relied upon by the learned Additional Sessions Judge to support the finding that the accused was seen leaving the house of the deceased on the night of occurrence, could not have been relied upon for being extremely unnatural and untrustworthy. Thirdly, the learned Additional Sessions Judge lost sight of the fact that the chain of circumstances was snapped, as from the own showing of the prosecution, a door of the room was open. In such circumstances, by no stretch of imagination, it could be inferred that it was the accused and no one else, who committed the offences. Fourthly, the discoveries sought to be pressed into service by the prosecution were infirm and could not have been relied upon to sustain an inference of exclusive knowledge to the accused. Lastly, even if the evidence of the prosecution is construed rather generously, at best, it would point a needle of suspicion against the appellant. Suspicion, however strong, cannot take the place of legal proof, submitted Ms. Roy.

11. In opposition to this, Mr. Konde-Deshmukh, learned APP supported the impugned judgment. Banking upon the testimony of Fatima(PW.5) to the effect that the said witness had seen the accused leaving the house of the deceased, the learned APP would urge that there was credible evidence before the learned Sessions Judge to draw an inference that the accused and the deceased were last seen in the house of the deceased. To add to this, the circumstance of broken pieces of bangles and the button of blouse found at the house of the deceased matched with the bangles on the person of the accused and rest of the buttons of her blouse, squarely incriminated the accused. The recovery of the articles belonging to the deceased, pursuant to the discovery made by the accused, seals the complicity of the accused, beyond reasonable doubt, submitted the learned APP. Lastly, the evidence of Nagesh Koli (PW.6), the estranged husband of the accused establishes that the accused had a strong motive to eliminate the deceased, who the accused suspected to have illicit relations with her husband Nagesh (PW.6). In the circumstances, the learned Additional Sessions Judge was wholly justified in returning the finding of guilt against the accused, urged Mr. Konde-Deshmukh.

12. To begin with, the nature of death which the deceased met. Dr. Aniket Shinde (PW.8), the autopsy surgeon, informed the Court that

he had conducted the postmortem examination on the body of the deceased on 31st July, 2013 in between 4.15 pm to 6 pm. On external examination, he claimed to have noticed, inter alia, ligature mark around neck at the level of thyroid cartilage having length 20 cm, max breadth 6.5 cm at left angle of mandible, horizontally placed. It was dry, hard and brown. On dissection, haematoma of size 2 x 2 cm, dark red was found in the strap muscle in mid-line. Thyroid cartilage was found fractured. There was extravasation of blood in the surrounding tissue. There were six other external injuries on the person of the deceased. In the opinion of Dr. Shinde (PW.8), the cause of death was due to ligature strangulation. Dr. Shinde further affirmed that the strangulation was possible by scarf (Article 6). Rest of the external injury Nos. 2 to 7 were possible in a scuffle.

13. In the opinion of Dr. Shinde (PW.8), the death of the deceased was homicidal. Dr. Shinde did not cave in to the suggestion that the deceased met death on account of chronic disease nor subscribed to the version sought to be pressed into service on behalf of the accused that the death like the one met by the deceased could be possible on account of twisting and contorting around the neck by snake.

14. In the backdrop of the nature of the ligature mark found on the person of the deceased, especially, the fracture of the thyroid cartilage, an inference of the deceased having met homicidal death becomes justifiable. Nothing material could be elicited in the cross examination of Dr. Shinde, apart from the aforesaid gratuitous suggestions, which were not at all borne out by the attendant circumstances. Thus, the learned Additional Sessions Judge was fully justified in recording a finding that the deceased met homicidal death.

15. This leads us to the pivotal question of the authorship of the death. Was the accused perpetrator of the offences ?

16. From the nature of the evidence led by the prosecution, it becomes clear that, the prosecution case rests on circumstantial evidence. Though Fatima (PW.5) claimed to have heard the commotion emanating from the house of the deceased, on the night of occurrence, yet her evidence falls short to constitute an ocular account. It is trite that conviction can be based solely on circumstantial evidence provided it passes the well recognized test of credibility and reliability.

17. By a catena of decisions the principles which govern

evaluation of circumstantial evidence have been settled. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*¹ they were expounded as under :

“(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.”

18. On the aforesaid touchstone reverting to the facts of the case, at the outset, it may be apposite to have a brief resume of the evidence led by the prosecution; to cull out therefrom the circumstances which were pressed into service against the appellant and found favour with the learned Additional Sessions Judge and, thereafter, consider as to whether those circumstances sustain the guilt of the accused beyond reasonable doubt.

1 AIR 1984 SC 1622

19. Abbas Pathan (PW.4), the landlord of the deceased informed the Court that he owns a house consisting of five rooms located at Magdum Mala, Miraj. The deceased Saraswati had taken room No. 2 on rent. The deceased was residing alone as her husband had deserted her. She worked at Sai Dhaba located at Pandharpur road, Tasgaon Phata, Miraj. He claimed to have seen a person, who the deceased identified as Nagesh Koli, visiting her house. Abbas Pathan (PW.4) affirmed that on 31st July, 2013 at about 8 am, Salman, a 14 year old boy, came to his chicken center and told him that the deceased died. Thereupon, he claimed to have visited the scene of occurrence along with Shivaji Durve, local councillor. Abbas (PW.4) claimed to have called police at the scene of occurrence.

20. Fatima Hudali (PW.5) informed the Court that she resides at Magdum Mala, Miraj in the house, adjacent to the house of Abbas Pathan (PW.4). The deceased came to reside in one of the rooms of Abbas Pathan(PW.4), a month prior to the occurrence. The deceased claimed that Nagesh Koli was her husband. Later was also working near the hotel, where the deceased was working.

21. Fatima Hudali (PW.5) wants the Court to believe that on 31st July, 2013 at 12.00 midnight to 00.30 am, she heard shouts of quarrel. She woke up. She tried to rouse her husband but he did not

wake up. Fatima Hudali (PW.5) claimed to have noticed one woman wearing green saree having one bag and umbrella coming out of the room of the deceased. She claimed to have seen her face and gave her 2-3 calls but the later did not stop. The said lady went towards road in a frightened state. She went to the house of the deceased. The door was shut. On the next morning, her grandson pipped into the house of the deceased, from the window, and found her sleeping. She claimed to have narrated the incident to police who arrived at the scene of occurrence. Fatima (PW.5) further wants the Court to believe that police were accompanied by the accused, who was then wearing a green saree. She thus identified accused as the same lady.

22. Nagesh Koli (PW.6) the husband of the accused affirmed that he had known the deceased. She used to talk to him. At her request, he had provided a mobile handset to her. When he and the accused were cohabiting together, the accused used to suspect his character. The accused had lodged a report against him. He was arrested and detained. After release, he started to reside separately from the accused.

23. Nagesh Koli (PW.6) further affirmed that on 30th July, 2013 at about 11.30 pm, he returned to his room. The accused came thereat. She raked up quarrel with him over the visit of the deceased

to his room. Sanjay Sapkal, his friend, pacified them. On 31st July, 2013 at about 6 am Nagesh claimed to have first visited the Dhaba where the deceased worked and not finding her thereat, visited her room. He broke open the door and found the deceased lying.

24. Since Nagesh (PW.6) did not support the prosecution earnestly, learned APP cross examined him. During the course of cross examination by learned APP, it was brought out that he had inquired with the accused as to whether she had visited the house of the deceased, on the night of occurrence, and had brought the mobile phone of the deceased and the later had replied in the affirmative. It would be contextually relevant to note that in the cross examination on behalf of the accused, Nagesh (PW.6) affirmed that mobile phone handset (Article 12) was not of the deceased Saraswati.

25. This constitutes the core of the evidence, led by the prosecution, on the aspects of the motive for the accused to commit the crime and the deceased having been last seen with the accused on the night intervening 30th and 31st July, 2013. In addition, the prosecution has banked upon the discoveries allegedly made by the accused leading to the recovery of the articles and the nexus between the articles found at the scene of occurrence and the

articles found on the person of the accused.

26. The prosecution thus pressed into service the following circumstances which, according to the prosecution, squarely incriminated the accused.

(i) Motive,

(ii) The accused was last seen leaving the house of the deceased on the night of occurrence,

(iii) Broken bangle pieces and button of blouse, found at the scene of occurrence, matched with the bangles which the accused wore at the time of her arrest and the button had the same characteristic as the rest of the buttons on the blouse of the accused,

(iv) The accused made disclosure leading to the recovery of mobile phone handset, umbrella and pair of ladies sandals belonging to the deceased.

MOTIVE :-

27. On the aspect of the proof of motive for the crime, it is well recognized that in a case based solely on circumstantial evidence, motive plays a significant role. It is trite that it is not an immutable rule of law that in every case rested solely on the circumstantial evidence, the prosecution must establish motive for the crime. If the rest of the circumstances are fully and conclusively established and

they satisfy the test of evaluation of circumstantial evidence, mere failure of the prosecution to lead evidence in respect of motive for the crime is not a ground to discard the prosecution case. Motive rests in the mind of the perpetrator of the offence. However, where the prosecution succeeds in establishing the existence of a strong motive to eliminate the deceased, it lends credence to the rest of the circumstances to complete the chain of circumstances.

28. In the case at hand, the material on record indicates that the deceased was residing alone in a rented premises at the house of Abbas Pathan (PW.4), situated at Magdum Mala. There is evidence to show that she was estranged from her husband. Conversely, there is material to show that the marital relationship between the accused and Nagesh Koli was also strained. On account of marital discord, the accused and Nagesh were residing separately. Nagesh Koli (PW.6) can be believed to the extent that the accused suspected that, he had extra marital relationship with the deceased. The evidence, however, stops at that. There is no further material to show that, in the past, there was any quarrel between the accused and the deceased over the alleged extra marital relationship and the accused had threatened to eliminate the deceased.

LAST SEEN TOGETHER :-

29. Fatima Hudali (PW.5) wants the Court to believe that on the night intervening 30th and 31st July, 2013 she had heard the shouts of quarrel and noticed one woman wearing green saree leaving the room of the deceased. Ms. Roy, learned counsel for the appellant mounted a strong criticism against the credibility of the version of Fatima (PW.5). Emphasis was laid on the fact that the statement of Fatima (PW.5) was recorded belatedly. The incident occurred on the night intervening 30th and 31st July, 2013. Indisputably, the police visited the scene of occurrence on 31st July, 2013 and drew scene of occurrence panchanama. Yet, the statement of Fatima (PW.5) was recorded by the investigating officer on 2nd August, 2013, though Fatima (PW.5) affirmed that on 31st July, 2013 at about 10 am itself she had related the incident to the police.

30. The aforesaid submission, on behalf of the appellant, appears to carry substance. As indicated above, Fatima (PW.5) is the next door neighbour of the deceased. There is evidence to indicate that her grandson had visited the shop of Abbas Pathan (PW.4) and apprised him about the death of the deceased. Fatima (PW.5), in turn, informed the Court that it was her grandson who had first seen the deceased lying in her house on the morning on 31st July, 2013, from a window. Fatima (PW.5) categorically asserted that when the

police arrived at about 10 am, she had narrated the incident to police.

31. In the aforesaid circumstance, when the police had indisputably visited the scene of occurrence on 31st July, 2013 and Fatima (PW.5), the material witness, claimed to have met the police, the delay in recording her statement cannot be said to be inconsequential or immaterial. We are mindful of the proposition that mere delay in recording the statement of the prosecution witness, by itself, is not fatal. What impairs the prosecution is an unexplained and inordinate delay. If there are concomitant circumstances, which indicate that the investigating officer was marking his time with a view to introduce the witnesses and give shape to the prosecution case, then the aspect of delay in recording the statement of witness assumes critical significance.

32. In the case at hand, Fatima (PW.5) is the most important witness for the prosecution. When the witness claimed to have apprised the police about the incident which occurred on previous night whilst the police first visited the scene of occurrence, the delay in recording her statement impairs the prosecution.

33. Moreover, the testimony of Fatima (PW.5) bristles with

omissions and improvements. An omission was elicited in the cross examination of Fatima (PW.5) that her statement before police does not find mention of the fact that on the night of occurrence she woke up after hearing shouts. A contradiction was brought out to the effect that she had stated before police that she had seen the face of the lady who left the house of the deceased, but she had not known her from before. The omission and contradiction were duly proved in the cross examination of Ashok Patil (PW.10), the investigating officer.

34. The aforesaid contradiction bears upon the identity of the accused as the lady who allegedly left the house of the deceased on the night of occurrence. It is not the claim of Fatima Hudali (PW.5) that she had known the accused from before the occurrence. Fatima (PW.5) had no more than a fleeting glimpse of the lady, even if we take her evidence at par. No test identification parade was conducted to establish the identity of the accused as the same lady. In contrast, an effort was made on behalf of the prosecution to fix the identity of the accused by banking upon the claim of Fatima (PW.5) that when the police came to the house of the deceased along with the accused, she had seen the accused wearing a green saree and thereupon identified her.

35. There is an apparent incongruity in the prosecution case on this score. It seems that Fatima (PW.5) attempted to make improvements to suit the prosecution case. It is not the case of the prosecution that when the accused was arrested, she was wearing the green saree. On the contrary, an endeavour was made by the prosecution to draw home the point that on 2nd August, 2013 the accused, on her own, produced a green saree and blouse from her house, after the recovery of the articles namely mobile, umbrella, pair of sandals were effected pursuant to the disclosure statement made by the accused. Saree and blouse were seized under seizure panchanama (Exhibit 23). This belies the version of Fatima (PW.5) that, when the accused accompanied the police to the house of the deceased, she was wearing a green saree.

36. In the aforesaid view of the matter, it would be rather hazardous to place implicit reliance on the testimony of Fatima (PW.5) to sustain a finding that Fatima (PW.5) had seen the accused leaving the house of the deceased on the night of occurrence. In the absence of any other evidence to corroborate the version of Fatima (PW.5), in our view, the aforesaid omission, contradiction and improvement render it extremely unsafe to draw an inference of last seen on the basis of the testimony of Fatima (PW.5).

37. The attendant circumstances also render the version of Fatima (PW.5) unworthy of credence. In the backdrop of the incident which Fatima (PW.5) claimed to have witnessed, on the night intervening 30th and 31st July, 2013, in the normal circumstances, Fatima (PW.5) was expected to ascertain the position on the next morning. In contrast, Fatima (PW.5) claimed that her grandson informed her that the deceased was still asleep. To add to this, Nagesh Koli (PW.6) claimed to have visited the house of the deceased on early morning of 31st July, 2013 and broke open the door. An element of uncertainty thus surrounds around the circumstance as to who first noticed the deceased lying in motionless state. In the backdrop of the aforesaid circumstances, the delay in recording the statement of Fatima (PW.5) further dents the prosecution.

RECOVERY OF ARTICLES :-

38. On the point of recovery of broken pieces of bangles and button at the scene of occurrence and recovery of mobile phone handset, umbrella and pair of sandals, the learned Additional Sessions Judge was impressed by the fact that the C.A report (Exhibit 35) revealed that five pieces of glass bangles seized from the scene of occurrence tallied with 15 glass bangles found on the person of the accused in respect of hue, design, physical and spectrochemical characteristics. Likewise, the button seized from the scene of

occurrence under panchanama (Exhibit 32) tallied with rest of the buttons on the blouse of the accused, seized under panchanama (Exh.23) in respect of its hue, physical and thermal characteristics. Since the accused did not offer any explanation, much less satisfactory one, this circumstance and the recovery of the mobile phone handset, umbrella and pair of ladies sandals cumulatively incriminated the accused, observed learned Sessions Judge.

39. Two discoveries were sought to be pressed into service against the accused. First, the disclosure statement allegedly made by the accused on 2nd August, 2013 leading to the recovery of the mobile phone, umbrella, ladies sandals under seizure panchanama (Exhibit 23). Second, the disclosure statement made by the accused on 5th August, 2013 to point out the scene of occurrence.

40. Evidently, the second discovery allegedly made by the accused on 5th August, 2013, sought to be proved by examining Vijay Shinde (PW.9), the public witness, is bereft of any evidentiary value. Police had already known the scene of occurrence, on 31st July, 2013 itself. Thus, nothing can be said it to have been discovered pursuant to the statement made by the accused on 5th August, 2013.

41. First discovery is also not free from infirmities. As indicated

above, Nagesh Koli (PW.6) categorically affirmed that mobile phone seized pursuant to the discovery made by the accused (Exhibit 12) did not belong to the deceased. Sumit Khandekar (PW.1), the panch witness to the discovery, conceded in the cross examination that rest of the articles i.e. umbrella and sandles were easily available in the market. Nor there is evidence to show that those articles bore distinctive earmarks to firmly establish that they belonged to deceased. In this view of the matter, even if the evidence of discovery is taken at par, it does not seem to have the definite tendency to incriminate the accused.

42. The circumstances of finding broken button of blouse at the scene of occurrence, heavily relied upon by the prosecution, now warrants consideration. It is imperative to note that the recovery of the saree and blouse deposed to both by Sumit Khandekar (PW.1) and investigating officer Ashok Patil (PW.10) is not preceded by any disclosure statement made by the accused. The memorandum of disclosure statement (Exhibit 22) is restricted to point out the place where the nylon bag, mobile handset, umbrella and ladies sandles were kept. The witnesses want the Court to believe that the accused, out of her own volition, produced the saree and blouse which she wore at the time of occurrence. In the absence of preceding disclosure statement, the direct seizure of the said clothes is

evidently fraught with infirmities. It would, therefore, be difficult to place reliance on the the testimony of witnesses that blouse which was so recovered had five buttons and the button which was recovered from the scene of occurrence was the missing one.

43. The upshot of aforesaid consideration is that the testimony of Fatima (PW.5), which constitutes the linchpin of the prosecution case, does not allure confidence. The circumstance of last seen, thus, cannot be said to have been established beyond reasonable doubt. Once this finding is recorded, the chain of circumstances gets irretrievably snapped. What remains is the evidence of discovery and seizure of articles from the scene of occurrence. The discoveries, in turn, are also not free from infirmities.

44. This propels us to the submission of Ms. Roy that, even if the prosecution case is taken at par, it would not sustain an inference that only the accused was the perpetrator of the offence. Inviting the attention of the Court to the scene of occurrence panchanama and the site map (Exhibit 61) Ms. Roy submitted that, the door on the southern side of the room was found open when the police party visited the scene of occurrence. This submission appears to be factually impeccable. In the scene of occurrence panchanama (Exhibit 32) it is recorded that door in the southern wall towards

eastern corner of the said room, was open. This fact is further borne out by the site map (Exhibit 61). The situation which thus obtains is that the main door of the house was shut. Another door towards southern side was open all along. To further confound the matter, Nagesh Koli (PW.6) claimed to have visited the house of the deceased and broke open the door on the early morning of 31st July, 2013, even before the matter was reported to police. In the aforesaid view of the matter, the possibility of a person other than the accused having had a role to play in the alleged occurrence cannot be ruled out. The circumstances pressed into service against the accused, therefore, do not lead to the only hypothesis of the guilt of the accused.

45. For the foregoing reasons, in our view, the learned Additional Sessions Judge was not justified in recording the finding that the prosecution succeeded in establishing the chain of circumstances and convicting the accused for the offences punishable under sections 302 and 380 of the Penal Code.

46. We are thus persuaded to interfere with the impugned judgment of conviction and order of sentence. Resultantly, the appeal deserves to be allowed.

Hence, the following order.

ORDER

- 1] The Appeal stands allowed.
- 2] The impugned judgment of conviction and order of sentence dated 11th March, 2016 passed by the learned Additional Sessions Judge, Sangli stands quashed and set aside.
- 3] The appellant/accused Anita Nagesh Koli stands acquitted of the offences punishable under sections 302 and 380 of the Penal Code.
- 4] The appellant/accused is in custody. She be set at liberty forthwith, if not required to be detained in any other case.

However, in compliance with the provisions contained in section 437A of the Code, the appellant shall furnish a P.R. bond in the sum of Rs. 15,000/- and a surety in the like amount, before the Court of Session. Four weeks time is granted to the appellant to furnish the surety, after release from prison.

- 5] In view of disposal of appeal, Criminal Application No. 932 of 2021 also stands disposed of.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)