

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 25 OF 2018**  
**WITH**  
**INTERIM APPLICATION NO. 1996 OF 2021**  
**IN**  
**CRIMINAL APPEAL NO. 25 OF 2018**

Jamil Rafiq @ Khalil Khan.  
Age: 24 years, Occ. Service.  
R/o. Santosh Tiwari Contractor's  
Zopadi, Below Big Bridge, Near  
Kurla Terminus, Mumbai.  
Permanent Residence :  
Madara, Post: Shankarpur,  
Tal: Nanpara, Dist: Beharaich,  
Uttar Pradesh.  
(Presently lodged at Kolhapur Central ... Appellant.  
Prison, Nashik)

v/s.

State of Maharashtra.  
(Through Nagpada Police Station,  
Mumbai) ... Respondent.

**WITH**  
**CRIMINAL APPEAL NO. 100 OF 2019**  
**WITH**  
**INTERIM APPLICATION NO. 1414 OF 2021**  
**WITH**  
**CRIMINAL APPLICATION NO. 1315 OF 2018**

Pappu Chhotan Khan.  
C/6811, Age: 27 yrs.,  
Occ. Convict, presently at Kolhapur  
Central Prison, Kalamba, Kolhapur. ... Appellant.

v/s.

State of Maharashtra.

(At the instance of Nagpada Police

Station, Mumbai in respect of C.R. No.

326/2014

... Respondent.

**WITH  
CRIMINAL APPEAL NO. 765 OF 2018**

Hanif @ Hamid Hasanali Nau.

Age: 47 years, Occ. Carpenter,

residence Furniture Point shop,

Anand Niwas Building, Shop No. 3, 4,

Sector 6, Opp. Chanel Tower, Koper

Khairane, Navi Mumbai, presently at

Kolhapur Central Prison, Kalamba as

convict Prisoner 6810.

... Appellant.

v/s.

State of Maharashtra

at the instance of Nagpada Police

Station in Crime Register No. 326 of 2014

and Sessions Case No. 767 of 2014 of

Greater Bombay Sessions Court, Dist.

Bombay.

... Respondent.

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Ms. Rebecca Gonsalvez i/b. Dr. Yug Mohit Chaudhry, Advocate for the  
appellant in Criminal Appeal No. 25 of 2018.

Mr. Adnan Shabbir Sakharkar, Advocate for appellant in Cr. Appeal  
No. 100 of 2019.

Mr. Shantanu R. Phanse, appointed Advocate for appellant in Cr.  
Appeal No. 765 of 2018.

Mrs. M.M. Deshmukh, APP for the State.  
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**CORAM : SMT. SADHANA S. JADHAV &  
PRITHVIRAJ K. CHAVAN, JJ.**

**DATE : FEBRUARY 24, 2022.**

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

1           The appellants are convicted for the offence punishable under section 302, 392, 452, 342 read with section 34 of the Indian Penal Code in Sessions Case No. 761/2014 by Additional Sessions Judge, Greater Bombay vide Judgment and order dated 27/6/2017. The appellants are sentenced to suffer Life Imprisonment and to pay fine of Rs. 5,000/- in default to suffer S.I for six months for the offence punishable under section 302 r/w. 34 of the Indian Penal Code. The appellants are sentenced to suffer R.I. for five years and to pay fine of Rs. 2,000/- I.d. to suffer S.I. for three months for the offence punishable under section 392 r/w. 34 of the Indian Penal Code. The appellants are further sentenced to suffer R.I. for 3 years and to pay fine of Rs. 1,000/- I.d. suffer S.I. for one month for the offence punishable under section 452 r/w 34 of the Indian Penal Code. The appellants are further sentenced to suffer R.I. for 15 days for the offence punishable under section 342 r/w. 34 of the Indian Penal Code. Hence, these appeals.

2           Such of the facts necessary for the decision of these appeals are as under :

(i)           One Abdul Hamid Ansari aged about 96 years was residing alone in Room No. 9, second floor, Yakub building, Elabhai Street, Mumbai-8. He was father of 7 children who were all residing separately. His daughter Mehrunnisa used to send breakfast for him every day in the morning. It was carried by her son-in-law Mohd. Wasif Ismail Ansari(PW.1).

(ii)          On 28/6/2014 Mohd. Wasif Ismail Ansari(PW.1) as usual had taken breakfast for his grand-father-in-law at about 8.30 a.m. The door was found to be open. However, electricity connections were switched off. He saw that his grand-father-in-law Abdul Hamid was sleeping with quilt over him. Upon drawing the quilt, he noticed that the hands and legs of Abdul were tied by a cloth to the bed. Froth was oozing from his mouth. The information was given to Mehmood Parvez Abdul Hamid Ansari(PW. 3) son of deceased Abdul Hamid, who summoned the police. The first informant called upon Dr. Astullah who on examination declared the Abdul Hamid “dead”.

(iii) Grand-Son-in-law of the deceased namely, Mohd. Wasif Mohd. Ismail Ansari, who happens to be the husband of the granddaughter of the deceased lodged FIR at the police station alleging therein that on 28/6/2014 in the morning at about 8 a.m. he had taken some bread from Central Bakery for breakfast for his grandfather-in-law. He saw door of the house open. He switched on the lights and saw that his grand-father-in-law was sleeping with a quilt. He tried to wake-up the old man. After removing the quilt, he saw that the hands and legs of the old man were tied to the cot with a cloth. His face was also covered with a cloth. He noticed that his mouth was gagged with a piece of cloth. Froth was oozing from his mouth. He suspected some foul play. He therefore, called upon the neighbours and informed the son of Abdul Hamid, namely, Mohd. Parvez. At his instance, the first informant called upon Dr. Astullah Ansari. Abdul was declared dead. The first informant then observed that 3 drawers of the cabinet were open. Screwdriver was lying nearby. Wallet of Abdul was lying on the cot. There was no money in the wallet. Abdul used to normally keep some cash in the pocket of his banian, which was missing. That Abdul Hamid(deceased) had 5 cell

phone handsets. All the handsets were missing. Mohd. Pervez informed the police control room and FIR was lodged against unknown person.

(iv) On the basis of the said FIR, Crime No. 226 of 2014 was registered at Nagpada Police Station for the offence punishable under section 302, 394, 452, 342 read with 34 of the Indian Penal Code against unknown person. The accused Jamil and Accused Hanif were arrested on 11/7/2014. Pappu Chotan Khan was arrested on 26/8/2014. After completion of investigation, charge-sheet was filed before the Metropolitan Magistrate, Mazgaon, Mumbai.

3 At the trial, prosecution examined as many as 21 witnesses to bring home the guilt of the accused.

4 PW.1 Mohd. Wasif Mohd. Ismail Ansari is the first informant. He has proved the registration of FIR at his behest and contents of the FIR, which according to him, are true and correct. The first information report is marked as Exh. 31. In the course of recording evidence, P.W. 1 has reiterated the facts disclosed by him to the police. According to him, Abdul Hamid Ansari was carrying five

cell phones. He has identified the cell phones and watch which were with the deceased before his death. He has feigned ignorance about IMEI numbers of the said cell phone numbers. He has deposed before the Court that the deceased Abdul was friendly with one Mumtaz. There were some transactions between the deceased and Mumtaz, as the deceased was helping her monetarily. He had no knowledge as to whether Mumtaz was on visiting terms with the deceased. His house is located in the close vicinity of the house of the deceased and the distance between both the houses could be covered in five minutes. The first informant was having one SIM card number of the deceased, but had no knowledge about other SIM card numbers of the deceased. It is admitted in the cross-examination that he had not removed the piece of cloth from the mouth of the deceased nor untied his hands. According to him, Mohd. Parvez, son of the deceased was residing in the building opposite the house of the deceased and the distance can be covered within 2 minutes.

5            P.W. 2 Mohd. Salim Abdul Hamid happens to be the son of the deceased. According to him, all the four sons of the deceased are residing separately. The building where his father resided was a three

storied building. P.W. 1 used to take breakfast for the deceased everyday. On the previous day, i.e. on 27/6/2014 he had taken lunch for his father. On the day of the incident in the morning, one of the resident of the building where his father was residing informed him telephonically that hands and legs of his father were tied and he was assaulted. Accordingly, he passed on the information to his elder brother Mehmood Parvez. Both the brothers visited the house of their father. According to P.W. 2, his father was having 3 cell phones, wrist watch and they were missing on 28/6/2014. He had identified the cell phones in the police station. It is admitted in the cross-examination that when he visited his father on the day of the incident, P.W. 1 had been asked to call doctor. They gave information to police. It is admitted that the latch of the door was not broken. It is admitted in the cross-examination that mobiles were "Made in China". He had no knowledge about the make of the mobiles and company of SIM cards. The reason assigned by P.W. 2 for his father possessing 3 mobile phones is that whenever his father found fault with one handset, he purchased new one.

6 P.W. 3 Mohd. Parvez Abdul Hamid Ansari is the second son

of the deceased. According to him, on 28<sup>th</sup> June, 2014 at about 8 to 8.15 a.m. Wasif (PW.1) had rushed to his house and informed him that his grand-father was tied to the cot and was not breathing. Thereupon, PW. 3 asked him to fetch doctor. He rushed to Yakub building. There he met his younger brother and his wife. They all saw that the hands and legs of Abdul Hamid were tied to the cot and a piece of cloth was shoved in his mouth. One of the son called Nagpada Police station. By then, Abdul Hamid was declared as “dead” by Dr. Asatullah Ansari.

7 PW. 3 has further narrated that there was a table with four drawers in the room of Abdul Hamid. 3 drawers were open. A screwdriver was lying near the table. One of the drawer was found to be locked. Upon opening the drawer, they found a cash amount of Rs. 6,52,000/-. The police prepared an inventory and kept the said amount with PW. 3.

8 On 27/6/2014 some of the accused were arrested and some articles were recovered from them. PW. 3 claims to be knowing accused Pappu Khan and therefore, could identify him. According to

P.W. 3, accused Pappu Chhotan Khan was close to the deceased and was also acquainted with his possessions. P.W. 3 claims to have identified the watch of the deceased. After five to six days after the arrest of the accused, P.W. 3 had denied any transactions between his father and Mumtaz. That Abdul Hamid used to meet Mumtaz 3 to 5 times a week. It is admitted in the cross-examination that when he visited his father's room, a lady's handkerchief was lying in his room. P.W.3 claims to have learnt from the police that accused No. 3 was planning to kill Abdul.

9           The prosecution has examined P.W. 12 K. Rama Lingam, the Chief Manager of Allahabad Bank, Vashi Branch. According to him, on 23/7/2014 P.I. Ramani visited the office of the bank in order to verify the transactions. On 30/6/2013 Hanif had deposited an amount of Rs. 20,000/- in the bank account of Mr. Narendra Jaiswal. His presence in the bank was substantiated by C.C.T.V. footage. It is admitted in the cross-examination that he was not sure whether it was accused No. 2 who had deposited money in the bank. He had handed over the CCTV footage to the police, but no panchanama was conducted.

10           The prosecution has examined Rajendra Walimbe(PW.13) the Senior Branch Manager of the Bank of Baroda, Kopar Khairane branch. P.W. 13 has identified accused No. 3 Hanif who had deposited Rs. 4,000/- in the name of Najima on 9/7/2014. The entry of depositing Rs. 4000/- is marked as Exh. 58 and 59.

11           P.W. 14 Bhaskar Kadam was API attached to DCB CID Unit II. On 10/7/2014 a secret information was received by the said unit that one of the accused in C.R. No. 226 of 2014 registered at Nagpada police station was to visit Milan Subway, Santacruz. A trap was arranged. On 11/7/2014 accused Jamil Khan was taken into custody at Milan Subway. On the same day, another accused Hamid Nao was apprehended at National Furniture Kopar Khairane. Two handsets of Telego company were seized from accused Jamil Rafiq khan. The said handsets had two SIM Cards of IDEA and TATA Docomo company and the last two digits of the IMEI numbers were 2877 and 5885 respectively. Railway ticket was also seized from accused Jamil Khan. Similarly, two handsets were seized from accused Hamid having dual SIM cards. P.W. 14 identified accused Hanif @ Hamid Nau before the court. According to P.W.14, since inception i.e. since 28/6/2014,

Crime Branch was carrying out parallel investigation.

12           It is the case of the prosecution that on 24/7/2014 Rs. 5,000/- were recovered from a suitcase from the house of accused Jamil Rafiq Khan. A panchanama was prepared to that effect and P.W.15 Santosh Tiwari happens to be the panch for recovery of Rs. 5,000/- at the instance of accused Jamil Rafiq Khan.

13           It is pertinent to note that P.W. 15 Santosh Tiwari was acquainted with accused Jamil since two to three months prior to the incident. P.W. 15 happens to be the employer of Siraj Khan, Irfan Khan and Chandani. That Jamir, Pappu and Imran were the friends of the employees of P.W. 15 i.e. Siraj Khan and others. On one occasion, Jamir had enquired with him as to whether he had knowledge of some source from where he could get money. According to P.W. 15, in July, 2014, he was residing under Kurla Bridge in R. No. A-3 in Kurla Terminus area. On 24/7/2014, police officer Ramane had brought Jamir to his house. The face of Jamir was covered with a veil. They had taken search of house of P.W. 15 and found Jamir's cloths and Rs. 5,000/- in Jamir's suitcase and the same were seized by the police. It

is elicited in the cross-examination that P.W. 15 was residing in the said room since 6 months prior to the incident. The room was a tin shed. There was no cot in the room. He was acquainted with Jamir for 2 to 3 months prior to the incident. He has further stated that on 24/7/2014 when the police visited his house, he was at work and not in his room. The worksite is closer to his house.

14            P.W.16 Ramchal Prajapati happens to be a co-worker with accused Hanif Nau in a shop namely, 'Furniture Point' owned by Amjad Khan. According to P.W. 16, Hanif was out of station prior to 16/7/2014. That Hanif Nau was brought to the shop "Furniture Point" on 16/7/2014 by police. That at the instance of Hanif, his clothes and one white colour mobile was recovered from the loft. The same were seized by the police. That Hanif had borrowed Rs. 2,000/- from P.W. 16. Hanif was residing alongwith P.W. 16 in the said shop. The said amount was not returned. It is stated in the cross-examination by P.W. 16 that they were earning about Rs. 7000/- per month and contributing about Rs. 3,000/- to 3,500/- per month for food which they cooked outside shop. That Hanif had borrowed money to send the same to his village for agricultural work. That P.W. 16 and Hanif were

the only employees who were sleeping in the shop. At the time of recovery, no one had accompanied Hanif to the loft.

15           PW.17 Dr. Waman Kedari-Gaikwad had performed autopsy on the dead body of Abdul Hamid, aged 96 years. At the time of performing autopsy, the photographs were taken by Mr. Pervez. The cause of death was “Asphyxia due to smothering/gagging and throttling (unnatural)”. It is stated in the cross-examination that smothering is possible by putting cloth, pillow and hand etc. on the mouth. In the present case, the death was caused by putting cloth in the mouth. That throttling can be caused by human hands and not by ligature. That there were no bruises or injury marks on the part of the neck. That in case of throttling, there would be some marks on the neck and throttling would occur only if neck is pressed. In the next breath, P.W. 17 has stated that it is not necessary that marks would appear on the neck in the eventuality of throttling. That he is not an expert in histopathology. All the antemortem injuries were in the nature of contusions and some abrasions. The associate doctors had signed the post-mortem notes and P.W. 17 had signed the same subsequently.

16 PW. 18 Farid Khan was attached to Nagpada Police Station as PSI and working as S.H.O. According to him, on 18/6/2014 he received a call from Yakub Building Nagpada Mumbai that a person had died. He informed the same to the police station. On visiting the site, they noticed that an old man had been murdered. However, other police personnel had reached the scene of offence before he reached. He claims to have seen the deceased with his hands and legs tied to cot with a rope and the chest and face were covered with clothes. Dr. Parvez had declared him dead. He has stated about the steps taken by him in the course of investigation. He had recorded the statement of Mohd. Wasif Mohd. Ismail Ansari in J.J. Hospital on the basis of which Crime No. 226 of 2014 was registered against unknown person by him. He has clarified in the cross-examination that he had received the information from mobile van No. 1 at about 8.40 a.m. about the incident. That Dr. Parvez was called by the relatives of the deceased. That till the doctor arrives, the hands and legs of the deceased were not untied. The deceased was still covered with clothes when the doctor arrived. He could not recollect as to when the copy of the FIR was sent to the Court of Metropolitan Magistrate.

17            P.W. 20 Ganesh Waykar was attached with Nagpada Police station in Detection Squad. He is a witness to the recording of statement of the accused Zamir. He is a witness to the recovery of white colour mobile and the clothes of accused Zamir from the house of P.W. 16. It appears that P.W. 20 was a member of the investigating team for the recovery of incriminating articles at the behest of accused under section 27 of the Indian Evidence Act and hence, his evidence needs no discussion.

18            The learned Counsel for the appellants have vehemently argued that in the present case, there is no cogent and convincing evidence to connect the present appellant with the homicidal death of deceased Abdul Hamid. It is submitted that the learned trial Court has recorded conviction against the accused only on account of recovery of clothes and Rs. 5,000/- at the instance of Jamir, recovery of watch at the instance of Pappu Chotan Khan and recovery of mobile handset at the instance of Hanif. Hence, according to respective Counsel for appellants, the conviction of the appellants has resulted in grave miscarriage of justice.

19           Per contra, learned APP has vehemently submitted that the accused Hanif Nau has not given any plausible explanation for the possession of the mobile handset, which was used by the deceased. That the said mobile handset was identified by the family members of the deceased. It is further submitted that the accused Jamil has not explained the source of being in possession of Rs. 5,000/- which was allegedly stolen from the deceased. The wrist watch which was recovered at the instance of accused Pappu was identified by the family members of the deceased as the one which was used by the deceased. Hence, according to the learned APP, judgment of the trial court is justified and calls for no interference.

20           With the help of the learned APP and the learned Counsel for the accused, we have gone through the records meticulously. The only fact that is established by the prosecution in the present case is the homicidal death of Abdul Hamid.

21           There is no material evidence to show that the accused were seen near the scene of offence prior to the incident, on the day of

the incident or thereafter. It is the case of the prosecution that the murder of Abdul Hamid was committed in the course of committing theft. According to P.W. 3, the table in the room of the deceased was having 3 drawers which were open. A screwdriver was lying nearby. The third drawer was locked and upon opening the drawer, they have found cash of Rs. 6,52,000/-. The amount was returned to P.W. 3 at the time of drawing the inventory. It cannot be believed that the thieves would not tamper with the third drawer especially when a screwdriver was allegedly used in the commission of theft.

22           The prosecution case that the deceased was in possession of five cell phones on the day when he died also does not inspire the confidence of the court for the simple reason that the prosecution witnesses have been unable to give the SIM card numbers of any one of the phone. The identification of the mobile handset seized at the instance of Hanif is without any foundation for the simple reason that there is no investigation in respect of IEMI number of the said cell phone. There is no investigation as far as the last call either made or received by the deceased. The white colour mobile handset is common item and it may belong to any person.

23 In the case of **Pulukuri Kottayya and ors. v/s. Emperor<sup>1</sup>**, the court had observed as follows :

“10. [Section 27](#), which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.”

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**AIR (34) 1947 Privy Council, page 67**

24           In the present case, the object which is allegedly recovered at the instance of the accused does not in any way connect the accused with the homicidal death of Abdul Hamid. Unless the object recovered is proved to be the specific object which was in the possession of the deceased at the time of his death or was used by him in the past, it cannot be said that an onus would lie upon the accused to explain its possession. There have been cases where the object which is recovered must have changed hands and the person from whom it is recovered could be a receiver of stolen property. In any case, the onus would lie upon the prosecution to prove its case beyond reasonable doubt that the guilt of the accused is established up to the hilt.

25           The accused were working on daily wages. All the accused are from different States and were working in Mumbai to support their family. They were sending money to their home towns as is revealed from the evidence of P.W. 15 and 16. In this eventuality, it was not impossible for them to save Rs. 5,000/- in order to send it to their home towns. Moreover, it is not the case of P.W. 1, 2 and 3 that at the time of the incident, the deceased had Rs. 5,000/- in his wallet and

therefore, the recovery of Rs. 5,000/- would be of no consequence to connect the accused with the homicidal death of Abdul Hamid.

26           The learned trial Court has not assigned any justifiable reason for convicting the accused for the offence punishable under section 392 of the Indian Penal Code. Section 392 of the Indian Penal Code reads as follows :

“392. Punishment for robbery.—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.”

In the present case, there is no evidence worth its name to draw an inference that the robbery was committed on the highway between sunset and sunrise.

27           The charge was framed against the accused under section 394 of the Indian Penal Code. Section 394 of the Indian Penal Code reads thus :

“394. Voluntarily causing hurt in committing robbery.—If

any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

28           It is further pertinent to note that the prosecution has failed to adduce any evidence which would establish the charge under section 302 of the Indian Penal Code against the accused. Moreover, P.W. 17 has opined that the cause of death is Asphexia due smothering/gagging and throttling. As per Mody's Medical Jurisprudence, strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. It is called throttling, when constriction is produced by the pressure of fingers and palms upon throat.

29           In the present case, there is no ligature marks nor thumb marks on the fragile neck of the deceased. In fact, there is evidence to show that there was a piece of cloth in his mouth which would be a clear evidence of death due to gagging. The post mortem notes also do

not indicate any ligature mark to show that it was a case of strangulation. In fact, it appears that there was some struggle before the death occurred in view of the injuries shown in column No. 17 of the post-mortem notes which are as follows :

- (1) Multiple contusions over upper and lower lips present of size 1 ½ cms. and 1 cm.. Brownish reddish.
- (2) Contusion-left palm-palmer and dorsal aspects, on c/s. 4<sup>th</sup> finger tip – Reddish in colour.
- (3) Contusion-right palm-palmer and dorsal aspects, on c/s. 4<sup>th</sup> finger tip – Reddish in colour.
- (4) Contusion-right waist jt. 1 x ½ cms in circling waist x 1 cm., on c/s. Over radial aspect-Reddish in colour.
- (5) Contusion- Left wrist jt. 1 x ½ cms. in circling wrist x 1cm. On c/s. -Radial aspect- Reddish.
- (6) Abrasion- Medial aspect of Rt. Knee jt. - ½ cm. x ½ cm. -reddish.
- (7) Abrasion-Medial aspect of left partella- 1 ½ cm. x 1 ½ cm. -Reddish.
- (8) Pin Point Multiple Abrasions- over Rt. 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> toes- dorsal aspect- Reddish.

(9) Pin point Multiple Abrasion 4 ½ cm. distal to lt. Ankle jt. Medially- Reddish.

The post-mortem notes further show the time of death is as “2 to 6 hours after taking last meal as there was 350 gm. semi-digested food particles in his stomach. The dead body was seen in the morning at 8.30 a.m. There is no material to show as to whether he had any visitor at night. The prosecution has not examined Mumtaz, whom he visited frequently as deposed by his family members i.e. P.W. 1, 2 and 3. The prosecution has also not examined any neighbour of the deceased to establish that he had no visitor on the previous night.

30 In view of the above discussion, it can be safely said that the prosecution has not proved the guilt of the accused beyond reasonable doubt and hence, accused deserves to be acquitted of all the charges levelled against them. Hence, following order is passed :

### **ORDER**

- (i) The appeals are allowed.
- (ii) The accused/appellants are acquitted of the offence punishable under section 302, 392, 452, 342 read with section 34 of

the Indian Penal Code as well as 302 r/w. 34 of the Indian Penal Code.

(iii) The accused/appellants be enlarged forthwith, if not required in any other offence.

(iv) Fine amount, if paid, be refunded.

(v) Since the appeals are disposed of, the interim applications are disposed of.

**(PRITHVIRAJ K. CHAVAN, J)**

**(SMT. SADHANA S. JADHAV, J)**