

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.189 OF 2016

Brahmaji Maroti Dakhore,
Age 30 yrs., Occ. Driver,
R/o Pardi (M), Tq. Ardhapur,
Dist. Nanded.

... Appellant

... **Versus** ...

The State of Maharashtra
Through Police Inspector
Police Station, Manatha,
Tq. Hadgaon, Dist. Nanded.

... Respondent

...

Mr. G.A. Kulkarni, Advocate h/f Mr. G.P. Shinde, Advocate for appellant

Mrs. V.S. Choudhari, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI
Y.G. KHOBRADE, JJ.

DATE : 16th MARCH, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

convicted for imprisonment for life and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default to suffer rigorous imprisonment for 30 days by learned Additional Sessions Judge-3, Nanded on 16.09.2015 after holding him guilty of committing offence punishable under Section 302 of the Indian Penal Code, 1860 in Sessions Case No.158/2013.

2 The prosecution story in the nutshell is that the present appellant who was the accused No.1 went to Police Station, Manatha, Dist. Nanded around 2.25 p.m. on 31.05.2013 and gave information to the police that he had committed murder of one Navnath Kondiba Mahatre on 29.05.2013. It was informed by him at that time to the police and his information was reduced into writing that he had seen his wife and deceased Navnath committing intercourse in sugarcane field on 05.05.2013. The wife of the appellant/accused No.1 thought that accused No.1 had seen her with deceased and, therefore, she went to her parental home and then the present appellant/accused No.1 decided to eliminate Navnath. He got the information on 29.05.2013 that deceased Navnath had gone to attend mass marriage ceremony at Kedarguda and, therefore, he went there and from the marriage ceremony he took deceased and accused No.2 Tanaji Avchar along with him. It is the further prosecution story that after Navnath had purchased two beer bottles they went to forest of Sawargaon village.

Accused No.1 and Navnath consumed liquor at Manatha. Accused No.1 intentionally consumed less liquor and then he told deceased that they would bring fish, therefore, they went towards valley, and on the way he assaulted deceased by stone. He dragged the deceased in a Nala nearby and then again threw a big stone on his head, thereby smashing his face.

3 It is the further prosecution story that after the said information was reduced into writing, police went along with accused No.1 and the videographer to the spot. Accused No.1 had shown the said spot and then the dead body of the deceased Navnath was discovered. At that place the inquest panchnama as well as spot panchnama was carried out and all of them returned to the Police Station. Thereafter, a detailed statement of the accused No.1 which was recorded by police was treated as First Information Report and the crime was registered. Investigation was taken up. Seizure of the motorcycle of the accused, memory card and clothes of deceased as well as accused was carried out. In the meantime, the dead body was sent for postmortem. The seized articles were sent to chemical analysis. Statements of the witnesses were recorded and after the completion of investigation charge sheet was filed. In the meantime, it was transpired that deceased Navnath was member of Scheduled Caste and, therefore, the investigation was carried out by the Police Officer of the rank of Deputy Superintendent of

Police and the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be added. After the committal of the case by learned Judicial Magistrate First Class, Hadgaon, both the accused were produced before the learned Special Judge and the charge was framed for the offence punishable under Section 302 of the Indian Penal Code and under Section 3(2)(v) of the Prevention of Atrocities Act against both the accused. After they pleaded not guilty trial was conducted.

4 Prosecution has examined in all 12 witnesses to prove the guilt of the accused and after considering the evidence and hearing both sides the learned Special Judge has held accused No.1 i.e. present appellant guilty of committing offence punishable under Section 302 of the Indian Penal Code. Accused No.2 Tanaji Maroti Avchar came to be acquitted of the offence punishable under Section 302 of the Indian Penal Code. Further, both the accused persons came to be acquitted of the offence under the Atrocities Act. The present appeal challenges the conviction of the appellant.

5 Heard learned Advocate Mr. G.A. Kulkarni holding for learned Advocate Mr. G.P. Shinde for the appellant and learned APP Mrs. V.S. Choudhari for the respondent.

6 It has been vehemently submitted on behalf of the appellant that the learned Trial Judge has not considered the evidence properly. There was no question about the fact that death of Navnath was homicidal in nature, but it ought to have been seen by the learned Trial Judge as to whether the accused No.1 was the author of the said crime. Accused No.2 was acquitted, who was stated to be with the present appellant, but then it appears that only on the basis of the alleged discovery of the dead body stated to be at the instance of the present appellant he has been convicted. The evidence of the prosecution is also based upon last seen together, but if it is to be accepted in that way, then, the acquittal of Tanaji Avchar, who was also stated to be accompanying accused No.1 and deceased, needs to be further appreciated. Further, there was absolutely no evidence in respect of the motive. The said First Information Report which was reduced into writing by PW 12 Police Inspector Mr. Narayan Bembade cannot be read in evidence. Therefore, when the motive was absent and there was only the last seen theory, the present appellant ought not to have been convicted. The learned Trial Judge further failed to consider that the identity of the dead body was not established at all. The face of the dead body was crushed and it was not in a state of identifying the deceased. PW 1 Rajendra is the elder brother of deceased, PW 3 Jamuna was the wife of deceased and PW 6 Kondiba is the father of deceased. All of them have stated that the dead body was not in a

state to identify. Merely because the police on the basis of alleged disclosure by the accused No.1 stated that the said dead body was of Navnath, those persons were disclosing it in that way. The samples were not taken and DNA test was not conducted to establish the identity. Another fact to be noted is that as per PW 1 Rajendra, he and his father had gone to Ardhapur Police Station on 31.05.2013 to lodge a missing report in respect of deceased and at that time those police officials at Ardhapur Police Station intimated them that Navnath has been killed. It was disclosed to them that Police Station, Manatha has informed the said fact that both the accused persons have committed the murder and the body was taken to Hadgaon Hospital for postmortem. PW 1 Rajendra has not disclosed that when they had gone to Ardhapur Police Station. But in cross of PW 6 Kondiba he has stated that they had gone to Ardhapur Police Station around 12.00 noon of 31.05.2013, whereas as per the testimony of PW 12 PI Mr. Bembde, accused went to Manatha Police Station around 3.00 p.m. on 31.05.2013. If the said statement of PW 6 Kondiba is taken as it is, then, at that time accused had not even reached Manatha Police Station and had not narrated anything prior to 12.00 noon of 31.05.2013. Then, how Ardhapur Police had given that information to PW 1 Rajendra and PW 6 Kondiba, is a question. Further, PW 12 Police Inspector Mr. Narayan Bembde has not disclosed any fact about death of Navnath and information of the same allegedly given by the accused

to Ardhapur Police Station. He has not filed any document to show that such communication was made by him. Therefore, on such evidence it could not have been held by the learned Trial Judge that the offence under Section 302 of the Indian Penal Code was proved by the prosecution beyond reasonable doubt. The appeal, therefore, deserves to be allowed.

7 Per contra, the learned APP supported the reasons given by the Trial Judge while convicting the accused No.1 for the offence punishable under Section 302 of the Indian Penal Code. It is submitted that even though there is no direct evidence in the matter, but the circumstantial evidence together with last seen together theory the offence has been proved beyond reasonable doubt. The motive for committing the offence was the illicit relations between the deceased and the wife of accused No.1. The learned Trial Judge has rightly relied on **Aghnoo Nagesia vs. The State of Bihar** reported in **AIR 1966 SC 119**, wherein it was held by the Supreme Court that First Information Report to the Police Station by the accused or in other words the information given by the accused himself to the police involving himself in the crime cannot be considered in view of Section 25 of the Indian Evidence Act. However, the admission given by the accused has to be tendered in whole in the evidence. The learned Trial Judge by relying on the decision in **Laxmandas vs. State of Maharashtra** reported in **1997 Cri.L.J. 950**

and **Prabhakar vs. State of Maharashtra** reported in **2012 ALL M.R. (Cri.) 3118** by this Court has rightly relied that though the said submission made before the Police Officer is inadmissible in evidence but the conduct of the accused intimating the said fact is admissible under Section 8 of the Indian Evidence Act. Therefore, in this case the said statement Exh.80 by the accused and thereafter leading the discovery of the dead body will have to be considered against the accused. Only the accused No.1 in this case was having knowledge about the fact that Navnath was killed and his dead body was lying near the valley in a Nala in Savargaon forest area. The videography has been done and the memory card was also collected. Videographer has also been examined in this case. In the said disclosure the accused No.1 has clearly stated that the dead body was that of Navnath. PW 1 Rajendra and PW 6 Kondiba both had also gone to the mass marriage ceremony and they had seen deceased Navnath leaving the said place along with both the accused around 12.30 p.m. on 29.05.2013. There was no reason for them to implicate the accused. They have also stated as to how they came to know about the death of Navnath. PW 3 Jamuna has also stated that around 10.00 a.m. on 29.05.2013 accused No.2 had gone to their house and took Navnath with them. She has stated that Navnath was not willing to go along with him but accused No.2 had taken Navnath along with him to mass marriage ceremony. She had given the description of the clothes

of the accused No.2 when he had gone to her house to fetch deceased. The testimony of the Medical Officer PW 10 Dr. Pravin Munde and the Postmortem Notes Exh.73 would show that there was depressed fracture to the right occipito parietal region as well as to the right temporal area. There was one more fracture to the left occipito parietal region and then there were corresponding internal injuries. Therefore, he has given the cause of death as “death due to sudden cardio respiratory failure due to shock due to head injury”. On the basis of this evidence the learned Trial Judge has rightly held that the offence under Section 302 of the Indian Penal Code has been proved against the accused. There is no merit in the appeal. It deserves to be dismissed.

8 As aforesaid, the prosecution has examined in all 12 witnesses to bring home the guilt of the accused and from the evidence that has been led by the prosecution it is very much clear that the case of the prosecution is based on information alleged to have been supplied by the accused No.1 himself as well as on the basis of last seen theory. The present appellant stood prosecuted along with original accused No.2 Tanaji Maroti Avchar, however, accused No.2 has been acquitted by the learned Additional Sessions Judge, Nanded. Surprisingly the prosecution has not challenged his acquittal. This fact is also then required to be borne in mind while assessing

the evidence.

9 The story of the prosecution proceeded on the fact that PW 12 PI Mr. Bembde was attached to Manatha Police Station as Assistant Police Inspector on 31.05.2013 and he has testified that the present appellant went to the Police Station around 3.00 p.m. and told him that he has committed murder of one Navnath. Whatever was told by appellant/accused No.1 was barred under Section 25 of the Indian Evidence Act. No doubt, as per the decision in **Aghnoo Nagesia** (supra), the said fact can be considered as a relevant fact/conduct of the accused. If we consider the testimony of PW 12 PI Mr. Bembde, then, only accused No.1 had gone to the Police Station and allegedly disclosed about his own involvement in the crime. He had not brought accused No.2 in picture. It is then stated that PW 12 PI Mr. Bembde reduced the said information given by the accused No.1 in writing in the Station Diary and thereafter after making arrangement of the staff and the Videographer he went along with the accused No.1 to the place showed by him. According to him, they found a dead body on the spot and accused No.1 told that the dead person is Navnath. He has then stated that he had prepared the Inquest Panchnama Exh.57. He clearly states that when he saw the dead body, the head and face of the body was completely crushed. The spot panchnama was also prepared and he seized certain articles from the

said place. He then sent the dead body for postmortem. Interesting point to be noted is that the identification of the dead body was not got done by this witness from any other person. He accepted whatever accused No.1 was saying and, therefore, in the Inquest Panchnama, Spot Panchnama, requisition letter to the Autopsy Surgeon and the Postmortem Report at all places name of Navnath has been stated. It is also to be noted that though the learned Trial Judge appears to have noted the objection taken on behalf of accused No.1 to exhibit the statements on which PW 12 PI Mr. Bembde had taken signature of the accused; yet, that statement has been exhibited. It is to be noted that, that statement is then treated as First Information Report. The objection was rightly taken. It cannot be read in evidence as barred under Section 25 of the Indian Evidence Act. Mere exhibiting of the document would not amount to reading that document in evidence and, therefore, the entire episode will have to be restricted to the fact that accused No.1 had gone to the Police Station and allegedly led to the discovery of the dead body. In isolation this piece of evidence will not prove the guilt of the accused beyond reasonable doubt. There has to be corroboration. Here, it is to be further noted that as per the testimony of PW 12 PI Mr. Bembde, the videography of the entire discovery was made with the help of said Videographer and the said Videographer/Photographer has been examined i.e. PW 9 Dhammapal Dadarao Sonale. Important point to be noted is that

though PW 9 has stated that he had copied the video shooting on the memory card and the memory card was handed over to the police, PW 12 PI Mr. Bembde has admitted in the cross-examination that he had not supplied the copies of the memory card to the accused at the time of filing of the charge sheet. Rather the testimony of PW 9 was required to be deferred as the memory card was not supplied to the defence. It was asked to PW 9 Dhammapal, as to whether the said memory card is the same which he had given to the police. He had clearly stated that he is unable to say that and volunteers that unless it is displayed he will not be able to say the same. Thereafter, after his evidence was deferred, it appears that said memory card was not played in the open Court and all of a sudden on the adjourned date PW 9 Dhammapal says that Article 'A' i.e. the memory card shown to him is the same. In cross-examination he has admitted that he was unable to name the company of the memory card which he used on the day of shooting. Thus, it can be seen that though the primary evidence in the form of memory card was available; yet, prosecution has not led proper evidence to prove the said documentary/electronic evidence. When documentary evidence was available, then, it would be given more importance to the ocular evidence and, therefore, we cannot solely rely on the testimony of PW 9 and PW 12 on the point that accused No.1 has led the discovery of the dead body. Even if for the sake of argument it is accepted that accused No.1 had led the

discovery of the dead body; yet, the further questions arise, as to whose dead body it was, whether it required further steps to collect the evidence for establishing the identity of the dead person or mere statement of the accused No.1 was sufficient enough to say that the dead body was that of Navnath, which are required to be considered.

10 PW 12 PI Mr. Bembde in his cross-examination has admitted that there is no mention of name of father and surname of Navnath in the inquest panchnama. The entire face of the dead body was crushed and there were maggots on the entire dead body. Even the teeth in the mouth of the dead person were totally damaged and the face was in unidentifiable condition due to crush. At this stage itself, we would like to consider the testimony of the relatives of the deceased for a limited purpose regarding the identity. PW 1 Rajendra is the elder brother, PW 3 Jamuna is the wife and PW 6 Kondiba is the father of the deceased. All of them have stated that after they came to know about murder of Navnath, they had gone to hospital and seen the dead body. The face was crushed and the dead body was decomposed, swollen. Important point to be noted that the APP, who was conducting the trial, had not taken pains to show the clothes on the person of the dead person to these relatives and get the identification of the dead body. PW 1 Rajendra has admitted in his cross examination that as the police told him that the dead

body is of Navnath he is saying so. Similar statement is made by the wife and the father of the deceased. There was no attempt to get the identity of the dead body established by taking help of advanced science. DNA test was not conducted at all. At the costs of repetition, it can be said that the clothes on the person of the dead body could have given the clue. Further, Exh.55 is the seizure panchnama of the clothes, which were produced by Police Constable Mr. Pappu Chavan and it is stated that those clothes were collected after the postmortem, but, surprisingly, said Pappu Chavan has not been examined. But PW 7 – the panch has been examined, who was present at the time of execution of Exh.55. The description of the clothes, which were seized under Exh.55, are that there was open shirt having blood stains and handkerchief. The question then arises – what happened to the pant and under garments on the dead body. PW 12 PI Mr. Bembde was the Police Officer at the time of execution of panchnama Exh.55, however, he is also silent, as to why only the shirt and the handkerchief were seized and what happened to the other clothes on the person of the dead body. Further, the memory card was not shown to the relatives of the deceased, who could have identified the clothes on the person of the dead body, as seen in the video. Therefore, it will have to be seen that though the discovery of a dead body might have been made by the appellant/accused No.1; yet, it is not established that the said dead body was of Navnath Kondiba Mahatre. The said alleged discovery cannot be

considered as a conduct as the identity of the dead person is not established.

11 Now, turning towards the last seen theory that has been introduced by the prosecution; PW 1 Rajendra and PW 6 Kondiba are the persons who had allegedly seen Navnath going along with both the accused. They both have stated that there was mass marriage on 29.05.2013 at Kedarguda. Navnath attended the same. Both the accused were present at the venue of marriage. PW 1 Rajendra says that he observed that from the place of marriage both the accused and his brother Navnath went to the direction of Manatha on motorcycle around 12.30 p.m. on 29.05.2013. PW 6 Kondiba also states the same fact. It is to be noted that both of them have not stated that Navnath told them about his intention to go along with the accused and then all of them had left the said place. On which pretext Navnath was taken by both the accused along with them has not been stated. But then PW 3 Jamuna states that accused No.1 had gone to her house around 10.00 a.m. on 29.05.2013 and he requested Navnath to accompany him, however, Navnath refused but then in spite of the refusal she states that Tanaji i.e. appellant took Navnath with him. In her examination-in-chief she has clearly stated that she has no idea about the talks between accused No.1 and Navnath. If we consider her version then deceased had left along with accused No.1 around 10.00 a.m., but then PW 1 Rajendra and PW 6 Kondiba

have stated that they had seen accused No.1, 2 and deceased in the marriage at Kedarguda and thereafter they left around 12.30 p.m. At this stage we would like to consider the testimony of PW 10 Dr. Pravin Munde who conducted autopsy. The dead body was received by him around 10.00 a.m. on 01.06.2013. As per the testimony of PW 12 PI Mr. Bembde the accused No.1 had gone to Police Station on 31.05.2013 and discovered the dead body after 3.00 p.m. Therefore, prosecution has to establish the proximity between the time of last seen together and the time of death/approximate time of death and the discovery of the dead body. PW 10 Dr. Pravin Munde in his examination-in-chief has stated that after inspecting the dead body he was of the opinion that the deceased might have died prior to 72 hours of the postmortem examination. If we calculate the same, then, definitely it will not be the time when PW 1 Rajendra and PW 6 Kondiba had seen leaving the accused persons and the deceased together. PW 12 PI Mr. Bembde has not stated approximately at what time he sent the dead body on 31.05.2013 for postmortem. Postmortem Report Exh.73 is silent regarding the date, hour and minute of receipt of the dead body. Why the postmortem was conducted belatedly has not been explained by PW 10 Dr. Pravin Munde.

11.1 In **Arjun Marik vs. State of Bihar** [1994 Supp. (2) SCC 372], the Hon'ble Supreme Court had taken a view that -

“Where the appellant was alleged to have gone to the house of one Sitaram in the evening of 19th July, 1985 and had stayed in the night at the house of deceased Sitaram, the evidence was very shaky and inconclusive. Even if it was accepted that they were there, it would, at best, amount to be the evidence of the appellants having been last seen together with the deceased. The Court further observed that it is well settled law that the only circumstance of last seen will not complete the chain of circumstances to record a finding that it is consistent only with the hypothesis of guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.”

11.2 In **State of U.P. vs. Satish [(2005) 3 SCC 114]**, Hon’ble Supreme Court has stated that -

“The principle of last seen comes into play where the time gap between the time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

Both these authorities have been further referred in **Sahadevan and another vs. State of Tamil Nadu [(2012) 6 SCC 403]**.

Therefore, we conclude that the prosecution had failed to prove the last seen theory as the proximity is not established.

12 PW 10 Dr. Pravin Munde while conducting autopsy had noted three injuries on the dead body – 1) Depressed fracture of about 2 c.ms. in

diameter in right occipito parietal region, 2) Depressed fracture of right temporal area of about 3 c.ms. in diameter and 3) Depressed fracture of about 4 c.ms. in diameter in left occipito parietal region. According to him, the injuries were antimortem and the internal examination showed three corresponding injuries. He has, therefore, given the opinion that the death was 'due to sudden cardio respiratory failure due to shock due to head injury'. We may accept that the death of the person whose autopsy has been conducted by him was homicidal in nature. However, as aforesaid, he had not taken pains for establishing the identity of the dead person. He has not stated, as to what was the condition of the clothes on the person of the dead body. But in the cross-examination he has stated that there were no clothes on the dead body when it was brought to him. This is something again contrary to panchnama Exh.55. Because it has been stated in the said panchnama that those clothes were collected by concerned Police Constable after the postmortem was performed. PW 12 PI Mr. Bembde does not say that when they had noticed the dead body it was in naked condition. PW 8 Chandrakant Murmure is the panch witness to the discovery of dead body, spot panchnama and the recovery of articles from the spot. Important point to be noted is that the witness has stated that he along with another panch were proceeding from Manatha to Sawargaon, police were standing on road and, therefore, they had stopped them. It was informed to them that there

was dead body in the valley and they should accompany them. Therefore, they went along with the police. The dead body was taken out from the valley. According to him, the dead body was tied on the stretcher of sticks. He says that he had not seen the dead body and do not know whose dead body it was. When it was found by learned APP that the witness was not supporting the prosecution, after taking permission to put the questions in the nature of cross, the learned APP conducted the further examination. Thereafter PW 8 Chandrakant told that the dead body was shown by accused/appellant and the dead body was of Navnath. But then he turned again hostile and denied that police seized articles from the said place. Important point to be noted once again that he has not stated that there were no clothes on the person of the dead body. The inquest panchnama Exh.57 rather says that there was open shirt of blue colour and black pant as well as white bunion on the dead body.

13 Another point to be noted is that PW 12 PI Mr. Bembde says that the weapon that was used while commission of the crime was wooden log and stones. In the cross-examination he admitted that he has not seized the wooden log and stones at the time of spot panchnama. He admitted that he did not find any incriminating such articles at the spot and, therefore, he had not seized it. The questions therefore arise – Where exactly the murder had

taken place, who were the assailants and from the spot of the said murder how the dead body was carried till valley. There is no investigation in this direction by PW 12 PI Mr. Bembde. It is unfortunate to note that at a later point of time it appears that it was revealed that deceased was member of Scheduled Caste and accused No.2 is from the upper caste and, therefore, the provisions of Atrocities Act came to be added and the investigation went to PW 11 Dy.S.P. Mr. Dattatraya Kamble. In his cross-examination he has admitted that deceased was member of Scheduled Caste, whereas accused No.1 is from Scheduled Tribe. Certainly, those sections under Atrocities Act were not applicable to accused No.1, but when the investigation went in the hands of senior Police Officer; yet, he had absolutely not taken pains to see whether any lacuna has been left by PW 12 PI Bembde in the investigation and whether he himself can correct it. He has not started the investigation *de novo* after he took over the investigation and, therefore, it cannot be said that the investigation has been done in this case by a competent Police Officer, who is authorized to investigate the offences under the Atrocities Act. The very purpose for which such rule has been made has got frustrated.

14 Though accused No.2 was from the upper caste, there is absolutely no evidence on record to show that he was in any way involved in the crime. If the prosecution has come with a case that deceased had left

along with both the accused, then, the further question would – where accused No.2 went thereafter. Accused No.1 in his alleged disclosure has not involved accused No.2. With so many lacunas in the evidence of the prosecution the learned Trial Judge ought not to have held that the offence has been proved against the present appellant beyond reasonable doubt. A conviction cannot be based only on the point of alleged disclosure of statement about commission of the crime and then leading to the discovery of the dead body. It would be a corroborative piece of evidence, but if the main evidence itself is not proved beyond reasonable doubt, we cannot rely upon the corroborative piece of evidence.

15 The family members of the deceased i.e. PW 1 Rajendra, PW 3 Jamuna and PW 6 Kondiba were totally unaware about the motive of the crime. When the case was based on the circumstantial evidence, it was incumbent upon the prosecution to prove the motive. It has been tried to be brought on record that the motive was that deceased had illicit relations with the wife of accused No.1 and he had seen them in such condition. The relative witnesses are totally ignorant about the alleged illicit relations. It was told by PW 12 PI Mr. Bembde that when the wife of accused No.1 suspected that accused No.1 had seen her along with deceased, she left accused No.1 and went to her parental home. Prosecution could have

examined the wife of accused No.1. She might not have then supported but a fact would have at least come on record since when she is residing with her parents. Therefore, considering every angle involved in the case, we are of the opinion that the findings of the learned Trial Judge are perverse. There was absolutely no evidence to hold accused No.1 guilty of committing murder of Navnath. The evidence that was led has not proved the guilt of accused No.1 beyond reasonable doubt and, therefore, the case is made out to interfere. The appeal, therefore, deserves to be allowed.

16 For the aforesaid reasons, we pass the following order.

ORDER

1 The Criminal Appeal stands allowed.

2 The Judgment of conviction awarded to the appellant Brahmaji Maroti Dakhore in Sessions Case No.158 of 2013 by the learned Additional Sessions Judge-3, Nanded on 16.09.2015 under Section 302 of the Indian Penal Code stands set aside.

3 The appellant Brahmaji Maroti Dakhore stands acquitted of the offence punishable under Section 302 of the Indian Penal Code. He be set at liberty, if not required in any other case.

4 We clarify that there is no change as regards order in respect of disposal of muddemal.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

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