



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 33 OF 2021

Aslam Yakub Shaikh
Age: 32 years, Occu.: Agri.,
R/o Gulaj, Tq. Georai,
Dist. Beed

..APPELLANT

VERSUS

State of Maharashtra
Through Chaklamba Police Station,
Tq. Georai, Dist. Beed

..RESPONDENT

....
Mr. R.G. Hange and Mr. A.R. Hange, Advocates for appellant
Mr. S.D. Ghayal, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 21st AUGUST, 2024
PRONOUNCED ON : 13th SEPTEMBER, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This appeal takes exception to a judgment and order of conviction and consequential sentence dated 15th December, 2020 passed by the Court of Session, Beed in Sessions Case, No. 35 of 2018 whereby the appellant herein has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and pay a fine of Rs.25,000/- with default stipulation.

Alongwith the appellant, his parents and two brothers were also prosecuted for the offences punishable under Sections 498-A and 302 read with Section 34 of the I.P.C. All of them, including the appellant have been acquitted of the offence punishable under Section 498-A of the I.P.C., while

except the appellant, all others were acquitted of the offence punishable under Section 302 read with Section 34 of the I.P.C. Neither the State nor the complainant / victim has preferred appeal against acquittal.

2. The facts in brief, giving rise to the prosecution case are as follows :-

The appellant had married Samina (deceased), daughter of PW 2 – Rashid (informant), in April 2010. The couple was blessed with four children, two boys and two daughters. It was the case of prosecution before the trial Court that just two years before the fateful day i.e. 17th October, 2017, the appellant and all his family members had started constructing a house for their residence. They were in need of money. All of them, therefore, would ask Samina to fetch Rs.2 lakhs from her parents. So as to meet the demand, all of them including the appellant would harass and ill-treat her, physically and emotionally as well.

3. Samina would relate her woes to her father, PW 2 – Rashid and other family members. A month before the incident she had been to her parental house. That time her fourth child was of one month old. The appellant and his brother had come to take her back. She accordingly went back to her matrimonial house.

4. On the early morning of 17th October, 2017, PW 4 – Babulbhai visited the house of the appellant. He found Samina was dead. He, therefore, made a phone call to her father (PW 2) and informed that his

daughter (Samina) was not well. It was about 08:00 in the morning. PW 2 – Rashid alongwith his son and other relations, therefore, rushed to the house of the appellant at village Gulaj, Tq. Georai. Somebody had already informed the police. The police arrived. PW 9 - Jogdand, Police official conducted inquest (Exh.25) and site panchanama (Exh.21). The mortal remains of Samina were subjected to autopsy by PW 5 – Dr. Onkar. In his opinion Samina died due to throttling. He noticed four contusions and an abrasion on her person. Dead body of Samina was handed over to her father (PW 2). He took the same to his village and buried according to the religious rites. He, thereafter approached Chaklamba Police Station and lodged the First Information Report ('F.I.R.') (Exh.27) against the appellant, his two brothers and their parents.

5. Crime, vide C.R. No. 235 of 2017 was, therefore, registered. On completion of investigation, the appellant and his family members were proceeded against by filing the charge-sheet.

6. The trial Court framed the charge (Exh.7). The appellant pleaded not guilty. His defence was of false implication. According to him, on the previous night he had been to village Umapur to attend *Ijtema*. He returned to his house by 08:00 in the morning on 17th October, 2017, i.e. post his wife breath her last.

7. To bring home the charge, prosecution examined ten witnesses and adduced in evidence certain documents. The trial Court, on appreciation

of the evidence in the case, convicted the appellant alone for the offence punishable under Section 302 of the I.P.C. All others were acquitted of the offences they were charged with. The appellant too was acquitted of the charge punishable under Section 498-A of the I.P.C.

8. Learned counsel for the appellant would submit that the case was based on circumstantial evidence. The medical officer did not conduct postmortem examination properly. He was grossly negligent. He gave prima facie opinion about the cause of death. The medical officer even could not give the age of the injuries noticed on the person of the deceased. According to learned counsel, the appellant on the given night had been to Umapur. He examined a witness in his defence. The defence witness is entitled to have weight (reliability) equal to that of the prosecution witness. The investigating officer admitted to have made no investigation to find whether the appellant was at his house in the night or immediately before his wife died. He then adverted our attention to the evidence of PW 2 – Rashid (informant), who admitted that after he reached the house of the appellant, he (appellant) arrived. He would further submit that in view of acquittal of the offence punishable under Section 498-A of the I.P.C., the motive could not be established. Then he took us through the evidence of the informant and other witnesses to indicate that it was an arranged marriage. The couple was happy. The appellant and his family members were financially sound. They knew her parents to have been financially poor. According to learned counsel, the burden to prove the charge beyond reasonable doubt is on the

prosecution. The same never shifts. There is not a single witness examined by the prosecution to suggest the appellant was in the company of the deceased at the relevant time to call upon him to offer explanation about the circumstances in which his wife – Samina met with death. According to him, Section 106 of the Evidence Act, therefore, has no application. He then referred to a sketch of the crime scene panchanama. He pointed out the room wherein the appellant would reside alongwith his wife. It was at the last in the house. The house has an opening door on the road, without any intervening fencing or anything. It would, therefore, be a mystery as to how did Samina met with homicidal death. According to him, the appellant has made out his defence based on preponderance of probabilities, even though the prosecution evidence itself fell short to bring home the charge. He, therefore, urged for allowing the appeal.

9. Learned A.P.P. would, on the other hand, submit that Samina died in the room of her matrimonial house, which was shared by her and the appellant alone. It is, therefore, for the appellant to explain the circumstances in which she met with the death. All the ornaments on her person were intact. Possibility of someone else committed her murder for robbery was, therefore, ruled out. The defence witness examined by the appellant was his neighbour and friend as well. He had not accompanied the appellant to village Umapur for attending *Ijtema*. As per the postmortem report (Exh.35), the deceased died within fifteen hours next before the postmortem was conducted. It is to be presumed that the appellant returned his house after

the function was over. PW 5 – Dr. Onkar, Medical Officer noticed five injuries on the person of the deceased. The appellant owes explanation how did the deceased suffered those injuries. The response of the appellant to the questions put to him during his cross-examination under Section 313 of the Cr.P.C. was simply of denial. The same would give missing link or reinforce the prosecution case. Learned A.P.P. heavily relied on Section 106 of the Evidence Act and the following two authorities to ultimately urge for dismissal of the appeal :-

- (I) ***Prem Singh Vs. State of NCT of Delhi, AIR 2023 SC 193***
- (II) ***Balvir Singh Vs. State of Uttarakhand, AIR 2023 SC 5551***

10. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein.

11. The case is based on circumstantial evidence. In case of ***Ravinder Kumar Vs. State of NCT of Delhi, [2024] 3 SCR 767***, the Apex Court has observed in paragraph no.8, as under :-

“8. Undoubtedly, the case of the prosecution rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystallized in the judgment of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116, wherein this Court held thus:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this

Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the Accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the Accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an Accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 Cri LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the Accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.”

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

In paragraph no.11 of the said judgment, it has been observed

thus :-

“11. In the light of the aforesaid judgment, we have examined the present case. In the present case, the trial court and the High Court have basically convicted and affirmed the conviction Under Section 302 Indian Penal Code, finding the plea of the alibi to be without substance. It is a settled proposition of law that before the burden shifts on the Accused Under Section 106 of the Evidence Act, the prosecution will have to prove its case. No doubt that in view of the law laid down by this Court in the case of Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681, which is a case like the present one, where husband and wife reside together in a house and the crime is committed inside the house, it will be for the husband to explain how the death occurred in the house where they cohabited together. However, even in such a case, the prosecution will have to first establish that before the death occurred, the deceased and the Accused were seen in the said house. In the present case, the incident had occurred on the intervening night of 28th /29th May, 2004. It was necessary for the prosecution to lead some evidence to establish that on the night of 28th/29th May 2004, deceased and Accused were together in the house. This will be more necessary in view of the specific plea of the defence of alibi.”

12. Let us now advert to the evidence on record and appreciate the same.

13. The appellant had admittedly married Samina (deceased) in 2010. The couple was blessed with four children. The appellant has two brothers and parents as well. The premises they were residing comprised of four rooms. All the four rooms were standing in a row. Each room has a separate entrance. PW 9 – Jogdand, Investigating Officer, testified that it was in the nature of a *wada*. The room in which the appellant would reside alongwith his deceased wife was last in the row. It was facing towards north. Entrance door of the house had an opening overlooking the road that runs from in front of the house. The appellant specifically admitted that in inquest panchanama (Exh.25) a black spot was noticed on the chin of the deceased and blood was oozing from the nose.

14. P.W.5 – Onkar, Medical Officer conducted autopsy on the mortal remains of Sameena during 02:30 p.m. to 04:30 p.m. on 17th October, 2017. On external examination of the dead body, he noticed following injuries :-

- “1. contusion on chin, 2 x 2 cm on right inferior border of mandible, brownish black colour,
2. contusion on inferior border of mandible, 1 x 1 cm, at mid-point of inferior border, brownish black colour,
3. contusion below and behind right ear, 1.5 x 1.5 cm, brownish black colour,
4. contusion below and behind left ear, 2 x 1.5 cm, brownish black in colour,
5. scratch abrasion on central line of neck above level of thyroid cartilage, obliquely transverse 0.5 cm, in length.”

According to him, the injuries were ante mortem. He had, however preserved viscera. No poisonous substance was found in the

viscera. He, therefore, testified that final cause of death of the deceased was, “asphyxia due to throttling”.

15. In his cross-examination he admitted to have not noted age of the injuries noticed by him on the person of the deceased and noted in column no.17 of the postmortem report (Exh.35). According to him, he has mentioned colour of those injuries as, “brownish black” and the same suggests those to have occurred within twelve to twenty-four hours before the postmortem examination was undertaken. In his view, the death might have occurred within eighteen hours next before the postmortem examination.

16. PW 5 – Dr. Onkar being an independent witness, we find no hesitation to rely on his evidence to conclude the deceased to have died of, “asphyxia due to throttling”. Thus, one of the circumstances viz. homicidal death has been proved.

17. The question is whether the appellant was the author of homicidal death of his wife, Samina. In case of circumstantial evidence, the prosecution is required to prove motive. However, non proving thereof is not always fatal. It is reiterated that it was the case of prosecution before the trial Court that the appellant, his parents and two brothers harassed and ill-treated his wife so as to coerce her to fetch Rs.2 lakhs from her parents for construction of the house. Since the demand was not met, she was ill-

treated by all of them in furtherance of their common intention. If we read second limb of the charge (Exh.4), the same would be crystal clear. The second part of the charge is reproduced below :-

“That, on 17/10/2017 at about 8.00 A.M. at your house, you accused, in furtherance of your common intention, committed murder of Sameena Aslam Shaikh by throttling and thereby committed an offence punishable under Section 302 r.w. Sec.34 of the Indian Penal Code and within my cognizance of Hon’ble Sessions Court.”

18. On acquittal of the original accused nos. 2 to 5, no conviction of the appellant could be recorded relying on Section 34 of the I.P.C. Evidence of the informant indicates that it was an arranged marriage. The appellant knew that his in-laws are financially somewhat unsound. The appellant and his family owns 12 acres of agricultural land. The appellant too work to earn his living. Deceased – Samina was also doing tailoring work. The trial Court convicted the appellant holding him to have failed to make out his defence of alibi. According to trial Court, the deceased met with homicidal death at her matrimonial house, and therefore, the appellant owes explanation. It also observed the appellant to have put up a false theory to have been at Umapur for attending *Ijtema*.

19. Inquest (Exh.25), spot panchanama (Exh.21) and postmortem examination took place during enquiry of accidental / unnatural death of Samina. After her body was buried according to religious rites, her father, PW2 – Rashid lodged the F.I.R. (Exh.27). Just a month before the incident, Samina was at her parental house with her one month old baby. It was the

appellant and his brother, who had visited his father-in-law's residence and took her back to his house. The spot panchanam (Exh.21) indicates that there are four rooms in a row. PW 9 - Jogdand, Investigating Officer testified that the premise was like a *wada*. The room of the appellant is last in the row. It is facing north, while other rooms have facing towards west. A road runs from in front of the house of the appellant. True, all the ornaments on the person of the deceased were intact. It is not the case of the appellant that anything from his room went missing. The same rules out the case of robbery with murder.

20. It was in the early morning of 17th October, 2017. PW 4 - Babubhai informed PW 2 – Rashid that Samina was not keeping well. He too had visited the house of the appellant. He did not speak about the presence of the appellant when he visited his residence.

21. PW 2 – Rashid (informant) and PW 3 - Dilawar (brother of the deceased) gave evidence in one voice. Most of their evidence is in relation to ill-treatment to Samina at the hands of the appellant and his relations (acquitted accused). We do not propose to refer to the said evidence in view of acquittal of all of them of offence punishable under Section 498-A of the I.P.C. Even though when we appreciate the said evidence, we did not find the deceased to have been ill-treated by the appellant with a view to coerce her to meet the demand of Rs.2 lakhs. We, therefore, do not propose to refer to the evidence of PW 6 - Shaikh Miya, who was examined to prove that

the informant had been to him to make a demand for hand loan of Rs.2 lakhs for being paid to the appellant and his family members. Same is the case of the evidence of PW 7 – Avinash, a neighbour of PW 2 – Rashid. PW 8 – Yasin and PW 3 - Dilawar had been to the house of the appellant alongwith PW 2 – Rashid after having learnt Samina was not keeping well. Evidence of all these witnesses do not further the prosecution case since they were away from the place (house of the appellant) wherein the crime took place.

22. We have closely perused the authorities relied on by learned Addl. P.P., which are mainly on the point of Section 106 of the Evidence Act. If we peruse the facts of the case in Prem Singh (supra), it would disclose that the appellant therein had taken his two sons, aged 9 and 6 years to Haiderpur canal, strangled them and threw the dead bodies into the canal and thereafter attempted to project as if it was a case of accidental drowning. The witnesses were examined in that case to indicate the appellant therein had custody of both of his children at the material time. He falsely informed the forest guard about the children to have been drown accidentally, while postmortem report indicates the children were strangled. In this factual backdrop, the Court held the appellant therein to have failed to explain the circumstances which were specially within his knowledge. It has also been observed that if, in a case based on circumstantial evidence, the accused evades response to an incriminating question or offers a response which is not true, such a response, in itself, would become an additional link in the chain of events.

23. It has further been observed thus :

“16.4.1. It is, of course, the duty of prosecution to lead the primary evidence of proving its case beyond reasonable doubt but, when necessary evidence had indeed been led, the corresponding burden was heavy on the Appellant in terms of Section 106 of the Evidence Act to explain as to what had happened at the time of incident and as to how the death of the deceased occurred. There had not been any explanation on the part of the Appellant and, as noticed, immediately after the incident, he attempted to create a false narrative of accidental drowning of the children. There had not been any specific response from the Appellant in his statement Under Section 313 Code of Criminal Procedure either.

17.1. As noticed, motive, when proved, supplies additional link in the chain of circumstantial evidence but, absence thereof cannot, by itself, be a ground to reject the prosecution case; although absence of motive in a case based on circumstantial evidence is a factor that weighs in favour of the Accused.”

24. Each criminal case has to be decided on the factual matrix thereof. There can hardly be any precedent. A change of fact here or there makes all the difference. In case of Balvir Singh (supra) there were two letters written by the deceased to her father informing her woes. The contents of the letters have been reproduced in the judgment. The same would speak for itself. Moreover, the wife of the appellant therein had died of poisoning. Aluminium phosphide was found in the viscera. It was a defence of the appellant therein that the deceased used to take medicines for her ailment. The Court found the said theory of the appellant therein was absurd. The appellant therein had even not informed family members of the deceased about her death. Close reading of the entire judgment would indicate that it was quite different from the facts and circumstances of the case on hand. It has also referred to paragraph no.16 of the judgment in

Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681,

wherein it has been observed as under :-

“16. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

25. The Apex Court, had sounded a caution while invoking Section 106 of the Evidence Act in criminal cases. We propose to reproduce paragraph nos. 41, 42 and 43 of the judgment in case of Balvir Singh (supra) below :-

“41. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary Rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the Accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

42. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the Accused. This Section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the Accused and it does not throw the burden of the Accused to show that no crime was committed. To infer the guilt of the Accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the Accused.

43. Section 106 obviously refers to cases where the guilt of the Accused

is established on the evidence produced by the prosecution unless the Accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the Accused gives an explanation which may be reasonably true in the proved circumstances, the Accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the Accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the Accused or the absence of satisfactory explanation appearing from his evidence.”

26. Similar are the observations of the Apex Court in case of Anees (supra). The facts of the said case indicate that the appellant therein had come with a false defence. He had stated as under :-

“I along with my wife deceased and my daughter Shaheena was sleeping in my house. Two persons caused injuries to my wife. I tried to save her but I was also hurt by those persons. I do not know as to why those strangers caused injuries to my wife. I am innocent. After causing the injuries those persons fled away from there.”

Facts of the said case indicate the appellant therein was very much at his residence when his wife met with homicidal death.

27. Now turning to the facts of the case on hand, although the appellant in his examination under Section 313 of the Cr.P.C. denied almost all the questions and not put forth his defence version, his case that he was at Umapur to attend *Ijtema* on the fateful night was put to the prosecution witnesses in their cross-examination. Evidence of the prosecution witnesses indicate that while they reach the house of the appellant, his family members

were weeping. The informant, PW 2 – Rashid admitted in his cross-examination that when he reached to the house of the appellant, Aslam was not there. He claimed ignorance of the appellant to have been to *Ijtema* a day before the incident. He did not suspect involvement of the appellant or anyone else when police were there to draw inquest (Exh.25), spot panchanama (Exh.21) and even during postmortem. It is only after realising the cause of death he lodged the F.I.R. PW 10 - Naseer, Investigating Officer has admitted in no uncertain terms to have not made any investigation to find whether the appellant was at his residence on the fateful night. The appellant examined DW 1 - Hasham in his defence. The said witness testified that he was the neighbour of the appellant. On the given night the appellant had gone to Umapur to attend *Ijtema*. True, learned A.P.P. submits that this witness was not in the company of the appellant to Umapur. It needs no mention that defence can be made out on preponderance of probabilities. Evidence of DW1 - Hasham could be taken to be based on his personal knowledge, since nothing could be elicited from his cross-examination that he was a got up witness to make out a false defence. Needless to mention, the witnesses examined in the defence are entitled to have equal weight (reliability) as that of the prosecution witnesses.

28. Before the trial Court there were five accused persons. The spot panchanama (Exh.21) indicates that there were four rooms in a row. All other family members of the appellant could be said to have an easy access to the room occupied by the appellant and the deceased. The other accused

persons, who are the family members of the appellant, were prosecuted before the trial Court for the very offences. On their acquittal, the State did not prefer an appeal against acquittal. As such, the prosecution did not lead or adduce a shred of evidence to indicate the appellant and the deceased were together at their residence/room on the fateful night. As such, the prosecution has failed to discharge its burden of proof. It was, therefore, not obligatory on the part of the appellant to offer any explanation or lead any evidence which was especially within his knowledge. It is reiterated that the room in which the deceased met with homicidal death was accessible to other family members of the appellant. Now, they are not before us.

29. For all the aforesaid reasons, we reach to the conclusion that the prosecution has failed to bring home the charge beyond reasonable doubt. Hence, the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Impugned judgment and order dated 15th December, 2020 passed by the Court of Session, Beed in Sessions Case No. 35 of 2018 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, is hereby set aside. He stands acquitted thereof.
- (III) The appellant be released forthwith, if not required in any other case.
- (IV) Fine amount paid, if any, be refunded to him.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD