



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

CRIMINAL APPEAL NO.499 OF 2021

Daivashala w/o. Umakant Waghmare,
Age:50 years, Occ. Labour,
r/o. Vijay Colony, Samarth Nagar,
Latur

..Appellant

Vs.

The State of Maharashtra,
Through its Police Inspector,
Shivaji Nagar Police Station,
Latur

..Respondent

AND

CRIMINAL APPEAL NO.1059 OF 2019

Parmeshwar s/o. Shankarrao Jadhav,
Age : 39 years, Occ. Hotel,
r/o.L.I.C. Colony, Mahadev Nagar,
Latur

..Appellant

Vs.

The State of Maharashtra,
Through its Police Inspector,
Shivaji Nagar Police Station,
Latur

..Respondent

Mr.K.S.Kahalekar, Advocate holding for Mr.N.S.Ghanekar, Advocate for
appellant in Criminal Appeal No.499 of 2021

Mr.A.D.Ostwal along with Mr.P.M.Salunke and Mr.A.K.Bagdiya,
Advocates for appellant in Criminal Appeal No.1059 of 2019

Mr.V.K.Kotecha, APP for respondent

Mr.V.G.Kodale, Advocate assisting the A.P.P.

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : AUGUST 13, 2024
PRONOUNCED ON : SEPTEMBER 06, 2024**

JUDGMENT (*Per R.G.Avachat, J.*) :

Both these appeals are decided by this common judgment since the challenge therein is to one and the same judgment of conviction and consequential order of sentence passed on 19.08.2019, by learned Sessions Judge, Latur, in Sessions Case No.121 of 2014. By the impugned order, learned Sessions Judge (trial court) convicted the appellants for the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code and therefore, sentenced them to suffer imprisonment for life and R.I. for seven years, respectively, and fine of Rs.10,000/- with default stipulation. The appellants are, therefore, before this court in these separate appeals.

Criminal Appeal No.1059 of 2019 is filed by original accused no.2 – Parmeshwar; while Criminal Appeal No.499 of 2021 has been preferred by original accused no.1 – Daivashala.

2. The case of prosecution, in short, was as under:-

Smt. Nilawati (deceased) was wife of PW 1 - Subhash. Appellant - Daivashala had acquaintance with Nilawati. She (Daivashala) lured Nilawati to pay her a sum of Rs.5 Lakhs for investing in such a scheme, wherein, Nilawati would be paid double the amount invested, within one and half months. Nilawati fell pray. She paid Daivashala Rs.5 Lakhs in two equal installments. After having been realised to have been duped by Daivashala, Nilawati started asking her for refund of the amount. With a view to avoid repayment of the amount, Daivashala, in furtherance of a common intention with appellant - Parmeshwar, took Nilawati towards Solapur, under the pretext of some personal work on 22.07.2014. PW 1 - Subhash, therefore, dropped Nilawati off near Ashtavinayak temple, Shivaji Nagar, Latur, by 11 in the morning on 22.07.2014. The trio started in a car (FIAT *Uno*, bearing registration No.MH-24-C-5505). On way, they halted at one place to have fruit juice. Nilawati was administered juice laced with powder of sleeping pills. Thereafter, on way, near Ambulga Sugar Factory, the car, which was being driven by appellant Parmeshwar, was halted. Appellant Parmeshwar strangled Nilawati with clutch-wire, robbed her of the golden ornaments on her person and then, abandoned her dead body by Solapur - Aurangabad roadside.

3. Since Nilawati had informed her husband (PW 1 -

Subhash) that she would be back home in the evening same day, he awaited for her arrival. Since she did not return, he took search for her for two days. On 24.07.2014, he lodged a missing person's report (Exh.72) at Shivaji Nagar Police Station, Latur. In the meanwhile, the dead body of a woman was found near a petrol pump within the limits of Indapur village. A report to that effect was made by one Babasaheb Kamble (PW 13) to Vashi Police Station. The police officials at the said police station, therefore, rushed to the place. It was the dead body of a female. It started developing decomposition. Inquest was conducted. The dead body was sent to the Rural Hospital for post mortem examination. Dr.Pradnya (PW 15) conducted the post mortem (Exh.135 and 136). In her opinion, the lady died due to throttling.

4. PW 1 – Subhash received a phone call from Shivaji Nagar Police Station. He was informed that dead body of a woman was found within the limits of Vashi Police Station, Dist. Osmanabad. He, therefore, went to the said police station. The police officials showed him photographs of the dead body. He identified the deceased on the basis of the photographs. Since the dead body was in decomposed state, the police officials buried the same. PW 1 – Subhash inquired with Vashi Police Station, whether there were

ornaments on the person of the deceased. Since he was informed that no ornaments were on the the person of the deceased, he realised that appellant - Daivashala, with the help of some unknown person, took his wife towards Solapur, under the pretext of personal work and committed her murder. He, therefore, lodged the First Information Report (FIR)(Exh.73) with Shivaji Nagar Police Station, Latur, on 30.07.2014.

5. A crime, vide C.R.No.148 of 2014, was registered for the offences punishable under Sections 302 and 201 of Indian Penal Code. Appellant Daivashala was, arrested. During her interrogation, involvement of appellant Parmeshwar was surfaced. He too was arrested. Both of them made disclosure statements, pursuant to which a sum of Rs.4 Lakhs came to be seized from the house of the appellant - Daivashala. Some amount was recovered pursuant to the disclosure statement made by appellant - Parmeshwar, from various persons to whom he had paid petty amounts, like Rs.10,000/- and Rs.5,000/-. Pursuant to the disclosure statement made by appellant Parmeshwar, ornaments of the deceased were seized from his residence. C.D.Rs. and tower locations of the cellphones of the trio were obtained. Statements of the persons acquainted with the facts and circumstances of the case were recorded. PW 3 -

Chandrashekhar had seen the trio proceeding together in a car. As such, it was a last seen theory. Upon completion of the investigation, charge sheet was filed against both the appellants.

6. The trial court framed Charge (Exh,11). The appellants pleaded not guilty. Appellant - Daivashala placed on record her written statement, wherein she disclosed that the sum of Rs.4 Lakhs, recovered from her, was received as *Stridhan* in the marriage of her son. Her son married daughter of her brother. He had paid them the amount. Same was kept at her residence for purchase of a flat in Pune. In her defence, she examined her brother (DW 1 - Virbhadra) and bank official (DW 2 - Ashok) in proof of her brother to have raised loan to pay his son-in-law the sum of Rs.4 Lakhs. The defence of the appellant Parmeshwar was of denial altogether.

7. The prosecution, to bring home the Charge, examined 23 witnesses and produced in evidence certain documents. On appreciation of the evidence, the trial court convicted the appellants and consequently sentenced, as stated above.

8. Heard learned counsel for the parties.

9. Learned counsel for the appellant - Daivashala would

submit that the case was based on circumstantial evidence. As per the case of prosecution itself, acquaintance between appellant Daivashala and deceased Nilawati was developed just two months before the incident. Within five days of Nilawati to have paid Daivashala the sum of Rs.5 Lakhs, she realised to have been duped. According to learned counsel, if such was the case of the prosecution, why Nilawati would join Daivashala to go to Solapur, for her personal work. PW 1 - Subhash, husband of the deceased, did not drop her off at the house of the appellant Daivashala. He dropped her at Ashtavinayak temple, Latur. He did not remain at the spot until Daivashala, allegedly, joined her there. According to learned counsel, recovery of sum of Rs.4 Lakhs from appellant Daivashala, pursuant to the disclosure statement, would not be relevant under Section 27 of the Evidence Act. The C.D.R. indicates that appellant Daivashala did not leave Latur city. PW 3 - Chandrashekhar, who claimed to have had seen the appellant Daivashala in the company of Nilawati on the given day, i.e. on 22.07.2014, was a childhood friend of Nilawati's husband (PW 1). After having been realised Nilawati to have been murdered, he did not share said fact with anyone. It is only after 20 days of the incident, he received phone call from the police and thereafter, his statement was recorded. According to learned counsel, PW 3 -

Chandrashekhar is a planted witness. The chain of circumstances relied on was not complete. None of the circumstances have been conclusively proved. He, therefore, urged for allowing the appeal.

10. Learned counsel for the appellant - Parmeshwar would reiterate the submissions made by learned counsel for the appellant Daivashala. He has also placed on record the submissions in writing. According to him, there was delay of 8 days in lodging of the FIR. Delay remained unexplained. According to him, it was a mystery as to why the husband of deceased did not lodge the FIR no sooner he learnt his wife to have been murdered. His close relations are practicing advocates. According to him, there was great delay in recording the statements of the so called witness, who claimed to have lastly seen the appellants and deceased together. No test identification parade was held of the ornaments seized pursuant to the so called disclosure statement made by the appellant - Parmeshwar. So far as the C.D.Rs. are concerned, he would submit that the certificate/s under Section 65B of the Evidence Act were not in the prescribed format. One of the tower location's record was not supported by the certificate under Section 65B of the Evidence Act. Cellphone of the deceased was in the name of someone else. The Investigating Officer, in fact, did not leave Latur city on the given day

on which recovery of certain articles was shown to have been made pursuant to the disclosure statement made by the appellant Parmeshwar. The information obtained in writing relating to the log book of the police vehicle in which they had travelled on the given day, indicates that the vehicle did not leave Latur on the given day. The defence witness was examined in that regard. Learned counsel relied on certain judgments of the Apex Court and ultimately, urged for allowing of the appeal.

11. Learned APP for the respondent - State and learned counsel representing the victim would submit that the chain of circumstances relied on was complete. It was the chain of unerring circumstances. As regards the delay in recording statement of PW 3 - Chandrashekhar, they would submit that no questions were put to the Investigating Officer in that regard. The Investigating Officer could have offered explanation had he been put such question. Learned APP and learned counsel for respondent no.2 relied on a set of judgments of the Apex Court, reference thereto is made herein after. According to them, the trio were lastly seen together. The C.D.R. and tower locations of the culprits reinforce the same. The ornaments of the deceased were recovered from the appellant Parmeshwar. The cash amount was also recovered from both the

appellants, pursuant to the disclosure statements made by them. In their examination under Section 313 of the Code of Criminal Procedure, both the appellants simply denied the prosecution case. According to learned counsel, both the appellants, in fact, owe the duty to explain the circumstances appearing against them. Keeping mum or giving false explanation would be an additional link to reinforce the prosecution case. When both the appellants were lastly seen in the company of the deceased, they did not explain when they parted ways or what had happened with the deceased.

12. On the question of certificate under Section 65B of the Evidence Act, learned APP relied on the judgment of the Division Bench of this Court in the case of **State of Maharashtra VS. Ramesh Vishwanath Darandale and ors., AIR Online 2019 Bom 1224**. They would submit that the C.D.Rs. were obtained from main source. The certificate under Section 65B contains requisite contents as are mandatory under Section 65B of the Evidence Act. Two of the authorities, who issued those certificates could not attend the Court for unavoidable reasons. Their signatures on the certificates have been proved by the official who was acquainted with the same. According to them, the tower locations never

changed. Those have also been given in the C.D.Rs. It is only in respect of one tower location, there is no certificate under Section 65B of the Evidence Act. They adverted our attention to paragraph 164 of the judgment of the trial court, wherein details thereof have been given. In short, according to learned APP and learned counsel for the victim, the trial court has passed a well-reasoned judgment and the consequential order. No interference is, therefore, warranted with the impugned judgment.

13. Considered the submissions advanced. Perused the judgment impugned herein and the authorities relied on.

14. Before adverting to the evidence on record, one must refer to the decision of the Apex Court in the case of **Anwar Ali and anr. Vs. State of Himachal Pradesh, 2021 AIAR (Criminal) 80**, wherein, it is observed thus :-

B. Circumstantial evidence – Scope and sweep of – In case of a circumstantial evidence – The circumstances, taken cumulatively – should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and – Incapable of explanation of any other hypothesis than that of the guilt of the accused and –

Such evidence should only be consistent with the guilt of the accused but should be inconsistent with his innocence

15. The trial court, in paragraph 188 of its judgment, held the prosecution to have proved the chain of circumstances against both the appellants. The circumstances relied on and proved by the prosecution, are as follows:-

1. Acquaintance of accused no.1 with the deceased.
2. Communication of accused no.1 on mobile with deceased on 22nd after she left the house.
3. Call details of the mobiles of the accused nos.1 and 2 proves their common intention and involvement in offence.
4. The recovery of ornaments at the instance of accused no.2.
5. Disclosure of the spots by accused no.2.
6. Recovery of purse, seat mat and the intention of accused no.2 to mislead the investigation by producing the clutch wire proves that he has very cleverly planned the crime and is additional circumstance against the accused no.2.
7. The recovery of amount of Rs.4,00,000/- from accused no.1.
8. Motive is proved as to grab the amount.
9. The absence of accused no.1 from her house during the period from 22nd to 24th.
10. PW 3 saw the accused nos.1 and 2 with deceased on 22nd.

16. Nilawati left her house to go to Solapur for some work of her friend (appellant Daivashala) on 22.07.2014. She was supposed to return home in the evening same day. Since she did not return home, her husband (PW 1 – Subhash) took search for her at the places of his relations and friends. He, ultimately, lodged the missing person's report (Exh.72) at Shivaji Nagar Police Station. Said report reads thus:-

वरील विषयी विनंती अर्ज करतो की, माझी पत्नी निलावती सुभाष उटगे, राहणार आज्ञाद चौक लातूर वय : ४३, उंची.५ फूट ४ इंच, रंग सावळा, असून अंगावर निळी रंगाची साडी असून ती दिनांक. २२ .०७ .२०१४ या तारखेस (वार मंगळवार) सकाळी ११.३० च्या सुमारास ती स्वतः अष्टविनायक मंदिराजवळ सोडलो होतो.

तिने मला तिच्या मैत्रिणीसोबत सोलापूर येथे तिच्या मैत्रिणीचे काम आहे म्हणून गेली असता आजपर्यंत तिचा कोठलाही संपर्क झालेला नाही. मोबाइलला सुद्धा बंद आहे.

आम्ही सर्व नातलगांना तिच्याबद्दल चौकशी केली असता कोठलेही माहिती मिळालेली नाही. तसेच माझे तिकटीहासोबत कसलेही वाद किंवा भांडण झाले नाही.

तरी साहेबानी सहकार्य करावे हि नम्र विनंती. माझ्या पत्नीचे मो. न.९४०३६४२०३१ , ९९७५०७४९९९

17. In the missing person's report itself, he gave cellphone number of his wife Nilawati (deceased). One of the cellphone number is 9403642031. On the other hand, dead body of an unknown woman was noticed near petrol pump in Indapur Shivar

along Aurangabad - Solapur highway on 23.07.2014 by one Babasaheb Kamble (PW 13). He reported same at Vashi police station, Dist. Osmanabad. An accidental death report in that regard was registered vide Exh.128. PW 12 - Rajabhau was on his way, at the relevant time, from in front of the petrol pump situated in Indapur Shivar. The police officials had reached the place whereat the dead body was found. Inquest was conducted at the spot in his presence. Same is Exh.126, while Exh.125 is panchnama as to the spot whereat the dead body was found. Since the dead body had started catching maggots (decomposition state), it was sent for autopsy. PW 15 - Dr. Pradnya conducted autopsy on the mortal remains of the dead body of said unknown lady on 24.07.2014. She prepared post mortem examination report (Exh.135 and 136). In her opinion, the lady died due to throttling. It was PW 16 - Shahaji, serving as Police Inspector at Vashi Police Station at the relevant time, who drew panchnamas (Exhs.125, 126 and 128). It is in his evidence that since the dead body was of unknown person and in decomposed state, same was buried.

18. PW 1 - Subhash testified that he took search for his wife for next two days post filing of the missing person's report. It is in his evidence that on 26.07.2014, by 12:30 p.m., he received a phone

call from Shivaji Nagar Police Station, informing him that dead body of a lady was found within the limits of Vashi Police Station. He, therefore, rushed to the police station. The police officer showed him photographs of the dead body. He recognised the person in the photographs, who was none other than his wife (Nilawati). He learnt from the police officer that no ornaments were there on the person of the deceased. It is further in his evidence that he immediately realised that the appellant Daivashala must have been involved in committing murder of his wife. According to him, the motive behind the same was to dupe his wife of Rs.5 Lakhs she had invested with her in a scheme, wherein the investor was to be paid double the amount invested. He, therefore, lodged the FIR (Exh.73) against Daivashala and unknown person. It is in his evidence that on the given day, i.e. on 22.07.2014, Nilawati had told him that she was proceeding to Solapur along with Daivashala for her personal work. She assured him that she would be back home by evening. PW 1 – Subhash dropped her off in the morning. He gave the description of the ornaments which were on her person, cellphone and black purse as well. It is further in his evidence that acquaintance between appellant Daivashala and Nilawati was developed just two months before the incident. The reason therefor was that the parental homes of both of them were at one and same village, Alamala.

19. It is further in the evidence of PW 1 – Subhash that he asked his brother-in-law Siddheshwar Murge to visit the house of the appellant Daivashala. He, accordingly, went to her house on the following day (on 23rd) to find it to have been locked. He again visited Daivashala's house on the next day (on 24th). He met with Daivashala to learn from her that Nilawati even did not come to her house. PW 1 – Subhash, therefore, lodged the missing person's report. It is further in his evidence that he received a sum of Rs.4,23,000/- on Supurtnama and spent the same. He received the gold ornaments, allegedly recovered pursuant to the disclosure statement made by the appellant – Parmeshwar.

20. PW 1 – Subhash was subjected to searching cross-examination. He was confronted with the missing person's report (Exh.72) referred to herein above. Said report is conspicuously silent to state therein about closeness between the appellant Daivashala and his wife (deceased Nilawati) and the details about having paid a sum of Rs.5 Lakhs by his wife to appellant Daivashala in two installments. According to him, Nilawati (deceased) was agent of Peerless Finance and Insurance Company (now defunct). He admitted to have no occasion to hear about any scheme in the world, which would give return of double the amount invested, within one and half

months. According to him, he gave understanding to his wife. She was, however, not responsive. According to him, his close relations were practicing advocates. Ashtvinayak temple was neither close to his house nor that of the house of appellant – Daivashala. Nilawati did not obtain receipt from Daivashala of having invested amount with her.

21. PW 2 – Rajesh is a panch witness to recovery of amount of Rs.5,000/- paid to one Kishor Kamble, pursuant to the statement made by appellant – Parmeshwar. PW 3 – Chandrashekher is a witness to have last seen the appellant - Daivashala and deceased Nilawati together. It is in his evidence that on 22.07.2014, he was present near the gate of Adarsh colony. He noticed a green colour car proceeding from Shivaji Chowk to AUSA. Nilawati (deceased) was sitting on the back seat. One unknown lady had occupied a seat by her side. Appellant – Parmeshwar was driving the car. After 5-6 days, he came to know Nilawati to have been murdered and it was committed by the appellants. It is further in his evidence that he knew appellant Parmeshwar since he would run a tea-stall near Navgrah Shani temple and he used to visit the said stall for tea. During his cross-examination, it was brought on record that he met with Subhash (PW 1) after he came to know about the murder. He

admitted that Subhash was his childhood friend. He did not inform the police to have seen the trio together. No test identification parade was held. He identified appellant - Parmeshwar for the first time before the court. PW 1 - Subhash accompanied him to the court when his evidence was recorded. He admitted that it was after 24 days, he received the phone call from the Police Inspector. He then went to the police station and gave his statement. It was further brought on record in his cross-examination that near Adarsh colony, there was road-divider and plants and trees were grown thereon. He saw the car from other side of the road. He claimed ignorance about the glasses of the car to have dark film on it

22. PW 4 - Shivanand, PW 5-Dhanraj and PW 6 - Siddheshwar are the witnesses examined by the prosecution in proof of them to have paid PW 1 - Subhash a sum of Rs.2,50,000/- for construction of house (Rs.One Lakh each by PW 4 and PW 5 and Rs.50,000/- by PW 6). PW 1 - Subhash admitted that construction of first floor of his house was completed some days before the incident. These witnesses were examined so as to make out the case that the amount received from them was paid to Nilawati for being, in turn, paid to appellant - Daivashala as investment in the scheme. We find evidence of these three witnesses of little relevance to further the prosecution case.

23. On arrest of appellant – Parmeshwar, he allegedly made disclosure statements on 2-3 days separately. PW 2 – Rajesh is witness to one of such statements (Exh.90), pursuant to which a sum of Rs.5,000/- was seized from a person, Kishor Kamble. PW 7 – Laxmikant is a witness to the disclosure statement made by appellant – Parmeshwar on 01.08.2014. It is in his evidence that he attended Shivaji Nagar Police Station on 01.08.2014 in response to the police call. Appellant – Parmeshwar first took them to one place, where there were three juice centres. He then pointed juice centre no.2 and then showed Ashtvinayak temple. He took them to Zari-Udgir road and pointed out one place. The police took some search in the nearby and found a clutch-wire. It was seized under panchnama. He identified the clutch-wire before the court. Photographs of the happenings were drawn. PW 7 – Laxmikant is also a witness to the seizure of the car (FIAT *Uno*, bearing registration No.MH-24-C-5505) under panchnama Exh.108. According to him, four liquor bottles were found in the car. Those were seized.

24. PW 8 – Sanjay is witness to other disclosure statements made by appellant – Parmeshwar on 03.08.2014. It is in his evidence that appellant – Parmeshwar expressed his readiness to produce

ornaments, seat cover and purse. The memorandum statement is at Exh.110. Appellant - Parmeshwar then took the police and panchas to his residence. He took out one paper containing something from wooden showcase. Jewellery (gold ornaments) was wrapped in that paper. The police seized the same. The appellant - Parmeshwar then took them to *Sarathi Bar* on Barshi road, whereat he had thrown the cellphone of NOKIA company. The cellphone was not found there. Then, appellant - Parmeshwar took them to a bridge near village Dhoki. He took them under the bridge. At one place, they found black purse. On opening the purse, it found to have contained xerox copy of Election Card of Nilawati (deceased). Those articles were seized. Then he took the police and panchas to a place on Solapur highway within Indapur village. He pointed out the place whereat he had dropped the dead body of Nilawati. Then, he took them near village Yenegur and pointed the place whereat he had thrown the seat cover. No seat cover was found. Then they returned to the police station. A memorandum of entire exercise was drawn vide Exh.111.

25. PW 9 - Sk. Majid is a witness to the arrest and physical search panchnama (Exh.114) of appellant - Parmeshwar drawn on 30.07.2014. A sum of Rs.8,000/- was seized from the appellant -

Parmeshwar in the presence of PW 9 - Sk. Majid. PW 10 - Purushottam is a witness to the panchnama Exh.116 drawn as regards seizure of cellphone of NOKIA make delivered to the police by one Shri. Alte.

26. PW 11 - Vijaykumar is witness to the disclosure statement (Exh.119) made by appellant - Daivashala. It is in his evidence that on 01.08.2014, appellant - Daivashala made a statement that she was ready to produce Rs.4 Lakhs, which was concealed by her in her house. Her statement was recorded. She then took the police and panchas to her residence. She took out one thermos and from the bottom thereof, the sum of Rs. 4 Lakhs were seized under panchnama (Exh.120). According to him, there were three bundles containing 256 currency notes of denomination of Rs.1,000/- each and three bundles of 288 currency notes of denomination of Rs.500/- each. In the cross-examination, this witness has denied to have been a stock witness of Shivaji Nagar Police Station.

27. PW 17 - Pranita was P.S.I., who recorded the FIR lodged by PW 1 - Subhash.

Evidence relating to cellphones:-

28. PW 18 - Amol was nephew of deceased Nilawati (sister's son). It is in his evidence that he had obtained three sim cards of BSNL under the scheme, "Krushi cards". He had given one of the cards to his aunt Nilawati (deceased). He, however, did not recollect the sim card number given to her. PW 20 - Gokul was Nodal Officer, B.S.N.L., Pune. He tendered in evidence certain information disclosing that sim card no.9403642031 was issued in the name of Amol Konde (PW 18), nephew of deceased Nilawati. He tendered in evidence CDRs of said cellphone along with certificate under Section 65B of Evidence Act. According to him, as per the CDR, on 22.07.2014 at 09.22 a.m., there were outgoing calls from cellphone no.9403642031 to cellphone no.7775925551. The tower location of the cellphone at that time was Ashtavinayak, Sector-III. According to him, there was again another call from the very phone by 11.53 a.m. to cellphone no.7709911449. At that time, the tower location of BSNL was Ashtavinayak, Sector - I. He referred the certificate under Section 65B of Evidence Act (Exh.157) issued under the signature of Mr.Vikas Mali, Sub-Divisional Engineer. According to him, Mr.Mali was unable to come to the court and give evidence since he was in-charge of lock centre and responsibility of implementation of intersection was with him. He could not leave Pune Headquarter.

29. During cross-examination of PW 20 – Gokul, it was brought on record that on 22.07.2014, at 12.45 p.m., the tower location of the cellphone of BSNL sim number was Kava, Latur. According to him, the certificate regarding tower location was not given. According to him, there was no incoming call on the said BSNL phone number from cellphone no.7775925551 and 7709911449. According to the prosecution, since there being no calls between these cellphone numbers on 22.07.2014, same indicates that both the persons namely, appellant – Daivashala and deceased Nilawati were together and hence, there was no need for them to interact on cellphone. This was the inference sought to be suggested by the prosecution.

30. PW 19 – Dattaram was Nodal Officer of IDEA Cellular Ltd. He tendered in evidence certain documents and CDRs of cell phone no. 7775925551. His evidence indicates that said sim card was issued in the name of appellant – Daivashala on the address of Vijay Colony, Samarth Nagar, Latur. He referred to the certificate under Section 65B of Evidence Act regarding CDRs and tower locations as well. The documents tendered in evidence by him find place at Exh.146 to Exh.158. According to him, they used to destroy the original application of the subscriber after three years. He produced

on record scanned copy of the application duly filled in by appellant – Daivashala. It was at Exh.149. He referred to the certificate under Section 65B of Evidence Act in that regards (Exh.151) and the tower location chart (Exh.150). It is further in his evidence that during the period from 21.06.2014 by 12.47 p.m., there was first call from cellphone no.7775925551 to cellphone no.9403642031. According to him, thereafter, there were number of incoming and outgoing calls between the two cellphone numbers.

31. This suggests that both the cellphone holders namely, appellant – Daivashala and deceased Nilawati were contacting with each other since 21.07.2014 to 22.07.2014. The last call from cellphone no.7775925551 was to cellphone no.9823022139 by 12.45 p.m. That time, location of cellphone no. 7775925551 was Adarsh colony, Latur, meaning thereby, appellant Daivashala had not left Latur town. According to him, there was call between these two numbers by 09.22 a.m. on 22.07.2014. The tower location of IDEA cellphone number was Saubhagya Nagar, Latur. On 22.07.2014 itself, there was outgoing call from the very cellphone number to cellphone no.9823022139. That time, the tower location of the cellphone of appellant – Daivashala was Adarsh Colony, Latur. Same suggests that even when PW 1 – Subhash dropped his wife at

Ashtavinayak temple, the appellant – Daivashala did not join her at least until 12.45 p.m.

32. Admittedly, there were no phone calls between the cellphone of appellant – Parmeshwar and deceased – Nilawati. The trial court, relying on the evidence of the officials of the cellular companies, reproduced in its judgment the details of relevant calls between the concerned phone numbers. For ready reference, we produced the same below:-

Calling No.	Calling party	Called No.	Called party	Time of call	Location of calling no./ party	Location of called no./ party
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DATE : 21.07.2014

7775925551	Accused no.1 Daivashala	9403642031	Deceased Nilawati	13.27	Saubhagaya Nagar, Latur	Latur WTR, Sector-3
9156509080	Accused no.2 Parmeshwar	7775925551	Accused no.1 Daivashala	17.48	-	Saubhagaya Nagar, Latur
9156509080	Accused no.2 Parmeshwar	7775925551	Accused no.1 Daivashala	18.08	-	Saubhagaya Nagar, Latur
9156509080	Accused no.2 Parmeshwar	7775925551	Accused no.1 Daivashala	18.10	-	Saubhagaya Nagar, Latur
7775925551	Accused no.1 Daivashala	9403642031	Deceased Nilawati	20.19	Saubhagaya Nagar, Latur	Majge Nagar, Latur, Sector 3

DATE : 22.07.2014

9403642031	Deceased Nilawati	7775925551	Accused no.1 Daivashala	9.22 a.m.	Ashtavinayak Sector III, Latur	Saubhagaya Nagar, Latur
9156509080	Accused no.2 Parmeshwar	7775925551	Accused no.1 Daivashala	11.17	-	Saubhagaya Nagar, Latur

9689738389	-	9975677495	Accused no.2 Parmeshwar	11.48	-	Shivaji Chowk (Main road), Latur
9156509080	Accused no.2 Parmeshwar	7385880230	Accused no.1 Daivashala	11.49	-	-
9403642031	Deceased Nilawati	7709911449	-	11.53 a.m.	Ashtavinayak Sector I, Latur	-
9156509080	Accused no.2 Parmeshwar	7383880230	Accused no.1 Daivashala	11.56	-	-
9156509080	Accused no.2 Parmeshwar	7383880230	Accused no.1 Daivashala	12.03	-	-
7775925551	Accused no.1 Daivashala	9823022139	-	12.45 p.m.	Adarsh Colony, Latur	-

DATE : 23.07.2014

9975677495	Accused no.2 Parmeshwar	7775925551	Accused no.1 Daivashala	11.20 a.m.	Mulaj, Tq. Omerga, Dist. Osmanabad	-
9156509080	Accused no.2 Parmeshwar	7385880230	Accused no.1 Daivashala	11.24	-	-
7775925551	Accused no.1 Daivashala	9957677495	Accused no.2 Parmeshwar	11.26 a.m.	Saubhagya Nagar, Latur	Mulaj, Tq. Omerga, Dist. Osmanabad
9975677495	Accused No. Parmeshwar	7775925551	Accused no.1 Daivashala	11.49 a.m.	Mulaj, Tq. Omerga, Dist. Osmanabad	-

DATE : 24.07.2014

7383880230	Accused no.1 Daivashala	9156509080	Accused No.2 Parmeshwar	08.10	-	-
7383880230	Accused no.1 Daivashala	9156509080	Accused No.2 Parmeshwar	09.49	-	-

33. The aforesaid is the evidence in the case besides the evidence of the Investigating Officer (PW 23 – Deepratna). We do not propose to refer to his evidence in extenso, since what he done as part of investigation, has already been referred to herein above,

which has come on record through the oral evidence of the prosecution witnesses.

34. In our view, the trial court relied on the evidence which was inadmissible. The appellant - Daivashala examined her brother and other witnesses in her defence to show that her brother had raised loan and paid Rs.4 Lakhs to his son-in-law (son of appellant Daivashala). It needs no mention that the accused can make out defence based on preponderance of probabilities. The burden to prove the charge beyond reasonable doubt rests on the prosecution throughout the trial. It is only in certain circumstances, if some evidence in the nature of last seen together or recovery of certain articles relevant to the crime is proved, it is for the concerned accused to explain.

35. The question is, whether, based on the aforesaid evidence, the prosecution brought home the charge. In our view, the answer is "No".

36. It is reiterated that the case was based on circumstantial evidence. The motive was said to be avoidance of repayment of Rs.5 Lakhs received by Daivashala from deceased Nilawati as

investment to be paid back within one and half months with double the amount invested. True, the deceased Nilawati met with homicidal death. PW 1 – Subhash did not state that the amount was paid to appellant Daivashala by deceased Nilawati in his presence. Admittedly, no receipt was obtained from appellant Daivashala of the amount paid to her. Although PW 4, PW 5 and PW 6 were examined in proof of having lent a sum of Rs.2.5 Lakhs to PW 1, his (PW 1) evidence is silent to state this amount was paid to his wife for being, in turn, paid to appellant Daivashala. True, the C.D.R. of the cellphones used by both appellant Daivashala and deceased Nilawati indicate that there was proximity between the two. It is not known as to why the factum of payment of Rs.5 Lakhs to appellant Daivashala as deposit in the scheme finds no mention in the missing person's report. Even, the name of appellant - Daivashala does not figure therein as a friend of Nilawati with whom she proposed to go to Solapur for her personal work. The FIR was lodged by 30.07.2014, i.e. eight days after Nilawati did not return home. True, the missing person's report was lodged on 24.07.2014, i.e. two days after the deceased left the home with the promise to return by the evening of the same day. Although PW 1 – Subhash testified that he had asked his brother-in-law, PW 6 – Siddheshwar, to visit the home of appellant Daivashala and he, accordingly, visited and found her house to have

been locked; and on the following day, he met her to learn deceased Nilawati to have not even come to her, the same is hearsay, since PW 6 – Siddheshwar did not speak anything about having visited the residence of appellant Daivashala on the direction of PW 1 – Subhash or even, on his own, on 23.07.2014 and 24.07.2014. He was examined only to prove that he lent a sum of Rs.50,000/- for construction of house. PW 1 – Subhash being husband necessarily took search for his wife for two days. It is, however, not known as to why he took two days to lodge the missing person's report. The deceased was using cellphone no. 9403642031 is taken to be proved, since mention thereof finds place in the missing person's report that was lodged long before the crime was registered. Said document could be read in evidence as it is. The FIR and oral evidence of PW 1 – Subhash is silent to explain the delay of six days in lodging the FIR. Admittedly, he learnt on 26.07.2014 itself that his wife was done to death by someone. Still, he took four days to lodge the FIR. It is categorically admitted in his evidence that in his family, there were two practicing advocates: one was his uncle and the other was his cousin. Both of them were present in the court on the day his evidence was recorded.

37. We need not emphasize the importance of lodging the FIR promptly/immediately. The delay of six days in lodging the FIR remained unexplained.

38. Appellant Daivashala allegedly made disclosure statement, pursuant to which a sum of Rs.4 Lakhs came to be seized under panchnama drawn in the presence of PW 11 – Vijaykumar. Admittedly, even if we accept the case of the prosecution that the deceased had paid the appellant Daivashala a sum of Rs.5 Lakhs, there is no evidence to indicate the denomination of currency notes paid to Daivashala. Admittedly, no receipt of payment was obtained. PW 4, PW 6 and PW 7 were examined in proof of having paid the amount to PW 1 – Subhash as financial assistance for construction of new house. They too did not describe the denomination of currency notes they paid to PW 1 – Subhash. We are conscious of the fact that no person in relation would make record of the currency notes or evidence as proof of payment. We are dealing herein with the offence for which minimum sentence is of life imprisonment. Now, we deal with the evidence of recovery of Rs.4 Lakhs, pursuant to the disclosure statement of appellant Daivashala. The memorandum/ panchnama indicates that she made disclosure statement pursuant to which Rs.4 Lakhs came to be seized from the bottom of a

thermos. By no stretch of imagination, we can conclude that the amount recovered or seized pursuant to the disclosure statement made by the appellant Daivashala was the amount she had received from the deceased Nilawati. If we read the statement of the panch witness in whose presence the appellant Daivashala made disclosure statement, the same nowhere states that she would be taking them (police and panchas) to her house to take out and deliver the amount received from deceased Nilawati. As such, the amount recovered from appellant Daivashala pursuant to the disclosure statement would, in no way, be termed to be relevant under Section 27 of the Evidence Act. So is the case about recovery of various amounts at the instance of appellant – Parmeshwar from himself when he was arrested and from two other persons pursuant to the disclosure statements made by him. The currency notes recovered did not bear earmark to attribute them to have belonged to deceased Nilawati.

Last Seen :-

39. PW 3 - Chandrashekhar, who claimed to have had seen the appellant Parmeshwar driving the car, wherein deceased Nilawati had occupied back seat along with unknown lady, was, admittedly, a childhood friend of PW 1 - Subhash, husband of deceased. He happened to be a chance witness, if we accept his evidence as it is.

On the given day, he claimed to have been to Adarsh Nagar colony, a place away from his residence. His evidence indicates that the road whereat he was, had divider. There were trees grown on the divider. He was on the other side of the road. The car must have passed within seconds. The car seized by the Investigating Officer, in which the trio allegedly traveled towards Solapur, had dark film on its glasses. According to him, one unknown lady was sitting by the side of deceased Nilawati. On arrest of appellant Daivashala, no test identification parade was held. He (PW 3) identified Daivashala first time before the court three years after the incident. We find his evidence to be not reliable for more than one reasons. He was a childhood friend of husband of the deceased. He admitted to have had learnt about Nilawati to have been murdered within six days of the incident as a news in that regard had been flashed in the daily. When he was close and childhood friend of the PW 1 – Subhash (informant), it could have been natural and moral obligation on his part to immediately approach the police station and report the same. His evidence indicates that Shivaji Nagar Police Station was on his way home. He kept mum for about 20 days post incident. He admitted that he was called by the police after 20 days of the incident and then, his statement was recorded. True, the Investigating Officer was not put any question, as to delayed

recording of the statement of this witness. The fact remains that the conduct of this witness in not approaching the police within reasonable time and reporting the matter, goes a long way to disbelieve him and even accept the contention of the appellants that he being a brought up witness to make out the case of last seen theory.

40. We have perused the authorities relied on by learned APP in relation to delayed recording of statement. Learned APP has relied on the judgment of Apex Court in the case of **State of U.P. Vs. Satish, 2005 Cri. L.J. 1428**, which read thus thus:-

(B) Criminal P.C. (2 of 1974), S.161 – Evidence Act (1 of 1872), S.3 – Examination of witness by Investigating Officer – Delay – Does not ipso facto make prosecution version suspect – For that Investigating Officer has to be categorically questioned on aspect of delayed examination – Case of rape and murder – Delay in examination of witnesses by I.O. - I.O. not asked about delay – Disbelieving version of witnesses, improper.

(C) Penal Code (45 of 1860), S.376, S.300 – Rape and murder of child – Case based on circumstantial evidence – Circumstance of “last seen together” – Positive evidence of witnesses that they had seen accused carrying deceased on bicycle – one witness had seen accused in perplexed state near place where dead body was

found – under-garments of accused and deceased recovered during investigation – absence of name of accused in F.I.R. explained – Delay in examination of witnesses, but I.O. not questioned on aspect of delay – Acquittal of accused on grounds of absence of name of accused in F.I.R., delay in examination of witnesses and that presence of accused nearby place from where dead body was recovered is only a suspicious circumstance – Not proper.

Learned APP also relied on the decision of the Apex Court in the case of **Gautam Joardar Vs. State of West Bengal, 2021(12) SCALE 339**, wherein it has been observed thus:-

..... It is true that there was some delay in recording the statements of the concerned eye-witnesses but mere factum of delay by itself cannot result in rejection of their testimonies.

41. Mr.Ostwal, learned counsel for appellant, relied on the three-Judge bench of the Apex Court in the case of **Ganesh Bhavan Patel and anr. Vs. State of Maharashtra, (1978)4 SCC 371**, wherein it has been held thus:-

Criminal Procedure Code, 1973 – Section 161 – Delay in examining eye-witnesses by the Investigating Officer, can on the peculiar facts of a case, amount to serious infirmity in the prosecution case.

Criminal Procedure Code, 1973 – Section 154 – Delay in recording FIR, on facts, held fatal to the prosecution case.

It has also been observed in paragraph 15 as under :-

15. As noted by the Trial Court, one unusual feature which projects its shadow on the evidence of PWs., Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under [Section 161](#) Cr. PC. were recorded on the following day. Welji (PW. 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case.

42. In our view, it would depend upon the facts and circumstances of each case, whether delayed recording of statement would be fatal to the prosecution. If the Investigating Officer is in

the know from day one of registration of the crime that certain persons are eye witnesses to the incident and/or recording their statement is necessary as a part of investigation, he must make efforts to approach them and record their statements at the earliest. If any delay occasions in recording of statement of such witness, it is for him to explain, since he is in the know of those witnesses being there. It is equally true that the person who has witnessed the crime must, at the earliest point of time, approach the concerned police station and give statement or else offer explanation as to why did he approach late. The explanation has to be plausible and acceptable.

43. Now, turning to the fact of the present case, it is reiterated that PW 3 - Chandrashekhar was the childhood friend of the informant (PW 1). He had seen the trio proceeding in the car on 22.07.2014 itself. Within six days, he learnt Nilawati to have been done to death. A news report regarding murder of Nilawati was flashed in the daily, still, he did not approach the concerned police station to give his statement regarding last seen trio together. It is on 20th day, he received phone call from the police station. In response thereto, he goes to police station and gives statement. It would, therefore, be anybody's guess as to why he had not been called by the police. Had he been called immediately, he would have

given statement under Section 161 of Cr.P.C. There is also no evidence to indicate as to how come the Investigating Officer realised that it was necessary to record the statement of PW 3 - Chandrashekhar. We find substance in the contention of learned counsel for the appellants that PW 3 - Chandrashekhar is a planted witness.

44. When the last seen theory is not believed, it is not for the appellants to offer any explanation, as to what had happened with one of their companions or when did they parted their ways. In the facts and circumstances of the present case, we find that the appellants did not owe any explanation or under obligation to disclose within their exclusive knowledge, in view of Section 106 of Evidence Act. Reliance on the judgment of Apex Court in the case of **Anees vs. State Govt. of NCT, (Criminal Appeal No.437 of 2015, decided on 03.05.2024)**, relied on by learned APP would, therefore, be of little assistance to the prosecution. In the very judgment, it has been observed that the courts should apply Section 106 of Evidence Act in criminal case with care and caution. It cannot be said that it has no application to criminal case. It has been observed in paragraphs 44 of 45 of the judgment as under:-

44. Section 106 of the Evidence Act 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 on 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.

45. Section 106 of the Evidence Act 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 offers 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.”

(Emphasis supplied)

Recovery pursuant to the disclosure statements made by appellant - Parmeshwar :-

45. As stated above, recovery of money, pursuant to the disclosure statements made by the appellant Parmeshwar was not relevant under Section 27 of the Evidence Act. Same would be the case as regards his disclosure statements made on 03.08.2014, pursuant to which he took the Investigating Officer and panchas to various places. The clutch-wire seized pursuant to the disclosure statement could not be connected with the crime in connection, since there is nothing to indicate that with the said clutch wire, the deceased was strangled. Even, no opinion of medical expert was solicited, whether cause of death of throttling could be connected with the clutch wire. Moreover, it was seized from an open place. So

far as regards recovery of purse from below bridge, wherein xerox copy of election card of deceased Nilawati was found, is admittedly, from an open place accessible to one and all. Moreover, although there were photographs relating to those discoveries made allegedly on 03.08.2014, no photographer has been examined. During examination of a defence witness, being DW no.1 for accused no.2 - Sadiq Pathan, who is Officer in the rank of Police Inspector, serving with Nagpada Motor Parivahan, Mumbai, was shown the extract of the log-book of the police vehicle in which the Investigating Officer, panchas and the appellant had gone at various places on 03.08.2014. It is at Exh.195. This witness has specifically testified in his examination-in-chief that from the documents obtained under Right to Information Act, it appears that on 2nd and 3rd August, 2014, the vehicle was not taken out of Latur City (Vehicle registration No.MH-24-D-7518). Although during his cross-examination, he testified that the said extract was not visible as the entry dated 03.08.2014 was not clear, we must take into consideration that he is none other than the police official. Needless to mention, a defence can be made out based on the preponderance of probabilities. Even if we accept the same as it is, finding of purse, containing the election identity card of the deceased, would be not of that much importance since the recovery was from an open place.

Recovery of ornaments:-

46. There is evidence to indicate the appellant Parmeshwar to have made disclosure statement (Exh.110) in the presence of PW 8 – Sanjay and then, he took the panchas and police to his residence and took out one paper containing some jewellery from a showcase. Said jewellery was stated to be that of the deceased. In the FIR, which was lodged six days after the deceased went missing, only the kinds of ornaments has been given and not their description. PW 1 – Subhash, in his examination-in-chief, also did not give the description of the ornaments. Admittedly, on seizure of those ornaments, the Investigating Officer did not hold test identification thereof. Those articles were delivered to PW 1 – Subhash on *Supurnama*. It would, therefore, be illogical to conclude that whatever ornaments were recovered pursuant to the disclosure statement made by the appellant Parmeshwar were proved to have belonged to deceased Nilawati.

47. PW 8 – Sanjay, panch witness to the recovery of those ornaments, deposed that appellant Parmeshwar made a statement (Exh.110) that he was ready to produce the ornaments, seat cover and purse. His evidence is short to state that the appellant did make

statement that he would produce the ornaments of deceased he had kept at his residence. Had such statement been made by the appellant Parmeshwar in his presence and then ornaments were recovered pursuant thereto, he would have been under obligation to explain how the ornaments of the deceased came to his possession. Had the Investigating Officer held test identification thereof and PW 1 – Subhash had identified them, then and then only, said recovery could have been termed as an incriminating circumstance against the appellant.

48. Then, what remains is the evidence relating to CDRs and the tower locations of certain cellphone numbers. The evidence of witnesses examined in that regard were officials of concerned cellular companies. Except, in respect of one tower location, all other record is supported with certificate issued under Section 65B of the Evidence Act. It has been amply proved from their evidence that cellphone no.7775925551 was issued in the name of appellant Daivashala and cellphone no. 9403642031 was issued in the name of nephew of the deceased and the same was being used by her. Same is also evident from the missing person's report (Exh.72). It has also been proved that cellphone no.9156509080 was issued in the name of appellant Parmeshwar. The CDRs pertaining to 22.07.2014 and

23.07.2014 in respect of these cellphone numbers would indicate that both appellant Daivashala and deceased Nilawati were in contact with each other. The appellant Daivashala was also in contact with appellant Parmeshwar. The chart referred by the trial court in its judgment in paragraph 164, indicate that at no point of time, the tower location of cellphone number of appellant Daivashala was beyond the city of Latur. On 23.07.2014, the tower location of cellphone of Parmeshwar was within the limits of village Mulaj, Tq. Omerga, Dist. Osmanabad. It is not known, whether the dead body of deceased Nilawati was found within the limits of this tower location or nearby thereof. It is informed that the radius of each tower location was not less than 3 kms. or more than that. The same was based on aerial distance, meaning thereby, the road distance might be somewhat more than 3 kms. Solely based on the CDRs and their tower locations, it cannot be said that the trio were together and the appellants done away with Nilawati. At the cost of repetition, it is observed that there is no record to indicate that the appellant Daivashala's cellphone, during the relevant period, ever had tower location beyond the city of Latur.

49. Thus, the appreciation of the aforesaid evidence lead us to conclude the prosecution to have failed to establish each and

every circumstance, as is expected to be proved in the case based on circumstantial evidence. It is reiterated that the trial court has relied on the entire evidence of the prosecution, most of which was in the nature of recovery of cash amount, clutch-wire and ornaments, etc., which we find to be not relevant under Section 27 of the Evidence Act.

50. In our considered view, all in all, the prosecution has failed to bring home the charge beyond reasonable doubt. The appellants, therefore, deserve to be given benefit of doubt. The appeals, thus, succeed.

51. Hence, the following order:-

(i) Both the appeals are allowed.

(ii) The order of conviction and consequential sentence passed on 19.08.2019, by learned Sessions Judge, Latur, in Sessions Case No.121 of 2014, convicting and sentencing the appellants for the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code, is set aside. The appellants stand acquitted of the said offences.

(iii) The appellants be released forthwith, if not required in any other case.

(iv) Fine amount paid by the appellants, if any, be refunded to them.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP