



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

CRIMINAL APPEAL NO. 629 OF 2021
WITH
CRIMINAL APPLICATION NO. 2529 OF 2024

Vishal Pradeep Torne,
Age : 32 years, Occu. Agri & Labour,
R/o. Tornewadi, Padhegaon,
Tq. Shrirampur, Dist. Ahmednagar.

...**Appellant**
Applicant

Versus

The State of Maharashtra

...**Respondent**

.....
Mr. Nilesh S. Ghanekar – Advocate for the Appellant/Applicant
Mrs. Kalpalata Patil Bharaswadkar – Addl. PP for Respondent/State
.....

AND
APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 53 OF 2021

The State of Maharashtra,
through Shrirampur Taluka Police Station

...**Applicant**

Versus

Manisha Vikas Pawar,
Age : 30 years, Occu. Labour,
R/o. Krushnawadi, Padhegaon,
Tq. Shrirampur, Dist. Ahmednagar.

...**Respondent**

.....
Mrs. Kalpalata Patil Bharaswadkar – Addl. PP for Applicant/State
.....

CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.

DATE OF RESERVING THE JUDGMENT : 06th JANUARY, 2025
DATE OF PRONOUNCING THE JUDGMENT : 13th JANUARY, 2025

JUDGMENT [*Per Neeraj P. Dhote, J.*] : -

1. The present Appeal filed under Section 374(2) of the Code of Criminal Procedure [hereinafter referred to as 'Cr.P.C.'], is directed against the Judgment and Order dated 24th May, 2021 passed by the learned Additional Sessions Judge, Shrirampur, in Sessions Case No.18/2018, convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code [hereinafter referred to as 'IPC'] and sentencing him to suffer Rigorous Imprisonment for life and pay fine of Rs.10,000/-, in default, to suffer Rigorous Imprisonment for six (6) months.

2. The Prosecution's case as revealed from the Police Report, is as under :-

2.1. Vikas Indrabhan Pawar (hereinafter referred to as 'Deceased') and his wife Manisha Vikas Pawar (Accused No.2) were in the employment of the Appellant as the Labourers. Deceased was suspecting intimate relations between the Appellant and Accused No.2. In the evening of 05.04.2018, Accused No.2 had come to the house of Appellant. Deceased came to the house of the Appellant in search of Accused No.2. Deceased banged the entrance door of Appellant's house. The Appellant opened the door. Deceased saw Accused No.2 inside the house. Scuffle took place between the Appellant and Deceased. The

Appellant hit the Deceased with the wooden stick/log. Deceased came out of the house. The Appellant again assaulted him with the wooden stick/log. Deceased suffered several injuries to which he succumbed. The next day morning, the brother of Deceased came to know that, the dead body of the Deceased was lying near the house of Appellant. He reached the said spot and called his other relatives. He went to the Police Station at Shrirampur and lodged report, pursuant to which Crime bearing No.41/2018 came to be registered for the offence punishable under Section 302 read with Section 34 of the IPC against the Appellant and Accused No.2.

2.2. The Inquest and *Post mortem* of the dead body was done. The Spot Panchanama came to be prepared. The statements of witnesses were recorded. The Appellant and Accused No.2 came to be arrested. They were referred for medical examination. The articles seized during the course of the investigation were sent for Chemical Analysis. In the *post mortem* report, the cause of death was revealed as '*due to multiple injuries*'. On completion of the investigation, the Appellant and Accused No.2 came to be charge-sheeted for the offence punishable under Sections 302 r/w 34 of the IPC and Section 4 r/w 25 of the Indian Arms Act.

2.3. On committal, the learned Trial Court framed the Charge against both the accused for the offence punishable under Section 302

r/w 34 of the IPC and Section 4 r/w 25 of the Indian Arms Act, vide Exh.4, to which both the Accused pleaded not guilty and claimed to be tried. To prove the Charge, Prosecution examined in all thirteen (13) witnesses and brought on record the relevant documents. After the Prosecution closed its evidence, the statement of both the Accused came to be recorded under Section 313(1)(b) of the Cr.P.C. Both the Accused denied the case and evidence of the Prosecution. The Appellant stated that, Deceased had come to his house in an inebriated state, kicked the door of his house, and assaulted him with the stick. At that time, three persons assaulted Deceased with the stick and the incident took place in self-defence. By the impugned Judgment and Order, the learned Trial Court convicted the Appellant as referred above in the opening paragraph and acquitted Accused No.2.

3. It is submitted by the learned Advocate for the Appellant that, the Prosecution examined three (3) eye-witnesses. Their testimony is unbelievable as their statements were recorded after seven days from the incident. One of the eye-witnesses was one of the Suspects in the incident which resulted in the death of Deceased. One of the eye-witnesses did not support the Prosecution. The First Information Report is lodged on Suspicion. No blood was found on the stick seized during the investigation. The other evidence on record is not sufficient to prove the Charge. The learned Trial Court did not appreciate the evidence in

its correct perspective. The Appellant was entitled for acquittal.

4. The learned Additional Public Prosecutor submitted that, the case is based on the consistent testimony of the eye-witnesses. One wooden log was broken in four pieces, which shows the extent of assault. The injuries on the Deceased were multiple, which shows the intention to kill. The evidence available on record in its entirety proved the Charge and the learned Trial Court has rightly convicted the Appellant and the Appeal be dismissed.

4.1. The learned Additional Public Prosecutor further submitted that, the learned Trial Court committed an error in acquitting Accused No.2, as she was present on the spot of incident and instigated the Appellant to eliminate her husband. The Application filed by the State for Leave to Appeal against acquittal of Respondent/Accused No. 2, be allowed.

5. Heard both the sides. Scrutinized the evidence on record. The witnesses can be categorized as under : -

- | | |
|----------------------------------|---------------------------|
| [i] Informant. | [ii] Eye witnesses. |
| [iii] The panch witnesses. | [iv] Carrier of Muddemal. |
| [v] Medical Evidence. | [vi] Photographer. |
| [vii] The Investigating Officer. | |

HOMICIDAL DEATH : -

6. As regards the homicidal death of Vikas Indrabhan Pawar is concerned, the relevant evidence is that of his Brother, the Inquest Panch, the Medical Officer and the Investigating Officer, who are examined as PW1, PW2, PW6 and PW13, respectively.

6.1. The evidence of PW1 – Annasaheb Indrabhan Pawar show, that, he was the brother of the Deceased and in the morning of 06.04.2018, the Police Patil of the village called him and informed that the dead body of his brother was lying near the house of Appellant. Accordingly, he went on the spot and saw the dead body of his brother with injuries on the head and hands and blood on the clothes. He approached Shrirampur Taluka Police Station and lodged report at Exh.28. Nothing has come in the cross-examination to doubt his testimony. This witness set the criminal law in motion.

6.2. The evidence of PW2 – Sachin Shamrao Gaikwad shows that, on 06.04.2018, he was called by the police on the spot where the dead body was lying and accordingly, he went there. He noticed injuries on the head and blood on the face of Deceased. The Inquest at Exh.30 was prepared. The cross-examination could not create any dent in his testimony.

6.3. The evidence of PW13 – Vasant Mahadu Patve, the Investigating Officer, corroborates the testimony of PW2 – Sachin Shamrao Gaikwad, Panch, in respect of the Inquest at Exh. 30. His further evidence show that the dead body was referred for *post mortem*.

6.4. The evidence of PW6 – Dr. Jame Basheer M. Farooqui, who was working as a Medical Officer, shows that, on 06.04.2018, he received the dead body of Vikas Indrabhan Pawar for autopsy. The body was averagely built, eyes and mouth partly open, tongue inside the oral cavity, no secretion through nostril, mouth and ears and face and neck stained with dried blood. He performed *post mortem* and found the following external injuries.

1. *Lacerated wound over the left frontal region near hairline, 2.7 cms above the mid of left eyebrow, star shape 2.9 X 2 X 0.7 cms after dissection linear fracture of length 4.3 cms.*
2. *Incised looking lacerated wound over 2 cms right to occipital protrubance, obligely present, 3.9 X 1 X 0.8 cms after dissection linear fracture seen underneath the wound of length 3.1 cms.*
3. *Abraded contusion over right upper scapular region, 1.3 X 1 cms.*
4. *Scratch abrasion over the right scapular region, obliquely placed above downward, 8.7 cms.*
5. *Contusion over the right side of the chest wall extending from angle of mandible to spinal column, 18 X 14 cms.*

6. *Abraded contusion over right arm, outer aspect, above downward, 5.3 X 3.8 cms.*
7. *Abraded contusion over the right shin mid, 4 X 0.7 cms.*

6.5. His further evidence shows that, all the injuries were bright red in colour and were ante-mortem. As regards internal injuries, he deposed that, *subgleal hematoma over the frontal region in the vicinity of injury No.1 of column No.17 and fracture of skull mentioned in the column No.17. He also found contusion over frontal lobe of left side, 3 X 2 cms. There was injury over lung i.e. contusion over all the lobes, over postero lateral aspect. He noticed edematous contusion over upper lip intra-orally having teeth mark 3 X 1.2 cms.*

6.6. His evidence further shows that, after the entire examination, he opined the probable cause of death '*due to multiple injuries*'. He prepared the *post mortem* report at Exh. 35. He deposed that if someone is beaten or assaulted with Articles 1 to 3 and 4, which were the pieces of the wooden stick, the internal and external injuries found on the body were possible. The cross-examination shows that the injuries found on the dead body were possible by hard and blunt object. Nothing is there in the cross-examination of the Medical Officer to discard his testimony. The *post mortem* report at Exh. 35 corroborates the testimony of the Medical Officer.

6.7. On the basis of the above referred evidence, particularly the medical evidence, the Prosecution has established that Vikas Indrabhan Pawar met with Homicidal death. Evaluation of evidence on record indicate that, Homicidal death is not seriously disputed.

EYE – WITNESSES :-

7. PW3, PW4 and PW5 are examined as the eye-witnesses to the incident. Scrutiny of their evidence shows that, though they claimed to have witnessed the incident, their statements were recorded belatedly after a period of seven (7) days. Strangely, they did not disclose the incident to the Police who had come to the village at the spot of the incident and these witnesses were knowing the same. PW5's evidence shows that, he was arrested in this case and after his arrest, his statement came to be recorded. Surprisingly, the statements of all the three eye-witnesses were not recorded immediately though they were the residents of the same village where the incident took place. No reason is forthcoming for recording belated statements of these witnesses though they were the eye-witnesses to the incident. Under such circumstances, it is not possible to rely on the testimony of these three eye-witnesses and their testimonies are discarded.

CIRCUMSTANTIAL EVIDENCE : -

DISCOVERY OF DEAD BODY AT THE INSTANCE OF THE APPELLANT :

8. The evidence of PW13 – Vasant Mahadu Patve shows that,

on 06.04.2018, he was attached to Shrirampur Taluka Police Station as the Police Inspector. The investigation of this Crime was handed over to him. In the morning of 06.04.2018, at 07:00 am, the Appellant came to the Police Station and informed him about the incident of assault. The evidence in respect of the Appellant informing the Police about the incident between him and the Deceased would be hit by Section 26 of the Indian Evidence Act, and not admissible. His further evidence shows that, the Appellant took them to the spot which was in the field Gut No. 445, where the dead body of Vikas Indrabhan Pawar was lying. He prepared the Inquest and referred the body for *post mortem*. In his further evidence, the Station Diary Entry is brought on record at Exh. 75. His cross-examination that, he visited the spot of incident before the registration of the crime, supports his evidence that the spot where the dead body was lying was discovered at the instance of the Appellant. The cross-examination could not create any dent in the testimony of this witness. The suggestion that no statement was made by the Appellant, is denied.

9. Section 27 of the Indian Evidence Act provides that, the discovery in consequence of information received from the accused of any offence, in the custody of a Police becomes relevant. On this point, useful reference can be made to the judgment of Hon'ble Apex Court in **Perumal Raja alias Perumal Vs. State represented Inspector of Police;**

2024 SCC Online SC 12, wherein, the following observations are made

in Paragraph Nos.19 to 29:

“19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person Accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the Accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events - a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person Accused of the offence can be relied.

20. In Pulukuri Kottaya v. King Emperor¹⁰, the Privy Council held that the fact discovered embraces the place from which the physical object is produced and the knowledge of the accused as to this, and the information given, must distinctly relate to this fact.

21. In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru¹¹, this Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused

as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In **Mohmed Inayatullah v. State of Maharashtra**¹², elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposited to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR.No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression "custody" under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical

purposes, in the custody of the police.

26. Reference is made to a recent decision of this Court in **Rajesh & Anr. v. State of Madhya Pradesh**¹³, which held that formal accusation and formal police custody are essential pre-requisites under Section 27 of the Evidence Act. In our opinion, we need not dilate on the legal proposition as we are bound by the law and ratio as laid down by the decision of a Constitution Bench of this Court in **State of U.P. v. Deoman Upadhyaya**¹⁴. The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.¹⁵ This Court in *Deoman Upadhyay* (supra) observed that the bar under Section 25 of the Evidence Act applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was in custody at the time of making the confession. Further, for the ban to be effective the person need not have been accused of an offence when he made the confession. The reason is that the expression "accused person" in Section 24 and the expression "a person accused of any offence" in Sections 26 and 27 have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. The adjectival clause "accused of any offence" is, therefore, descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement.

27. Elaborating on this aspect, a three judge Bench of this Court in **Aghnoo Nagesia v. State of Bihar**¹⁶ has held that if the FIR is given by the Accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence, except to the extent that the ban is lifted by Section 27 of the Evidence Act. While dealing with the admission of part of confession report dealing with motive, subsequent conduct and opportunity, this Court rejected the severability test adopted by some High Courts. The statement can, however, be relied upon and admitted to identify the Accused as the maker, and the portion within the purview of Section 27 of the Evidence Act is admissible. *Aghnoo Nagesia* (supra) has been applied and followed by this Court in **Khatri Hemraj Amulakh v. State of Gujarat**.

28. The words "person Accused of an offence" and the words "in the custody of a police officer" in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term "police custody" is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of Sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation

would be that as soon as an Accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in "custody" within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression "custody" has been held, as earlier observed, to include surveillance, restriction or restraint by the police.

*29. This Court in Deoman Upadhyay (supra), while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer. Reference can also be made to decision of this Court in **Vikram Singh and Ors. v. State of Punjab**¹⁸, which discusses and applies Deoman Upadhyay (supra), to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in **Dharam Deo Yadav v. State of Uttar Pradesh**¹⁹, has held that the expression "custody" in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police. Even if the Accused was not formally arrested at the time of giving information, the Accused is, for all practical purposes, in the custody of the police and the bar vide Sections 25 and 26 of the Evidence Act, and accordingly exception Under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in **State of A.P. v. Gangula Satya Murthy**²⁰ and **A.N. Venkatesh and Anr. v. State of Karnataka**²¹.*

10. In the light of the above referred settled legal position, on the basis of evidence on record, the Prosecution established that, the dead body was discovered at the instance of the Appellant and it would be a discovery under Section 27 of the Indian Evidence Act and relevant.

INJURIES ON THE APPELLANT : -

11. The evidence of PW13 – Vasant Mahadu Patve shows that, on arrest, the Appellant was referred for medical examination in the

Rural Hospital, Shrirampur, vide communication dated 06.04.2018. The said aspect is not challenged. The evidence of PW9 – Dr. Yogesh Kisanrao Band, who was the Medical Officer attached to the Rural Hospital, Shrirampur, on 06.04.2018 shows that, the Appellant was brought by the Police for examination and on examining, he found the following injuries on the Appellant.

- [i] Blunt trauma over right hand. No visible injury.*
- [ii] Abrasion, 3 in no., circular, 0.2 mm diameter each reddish superficial over right palm.*

12. Both the injuries were simple in nature and might have been caused by hard and blunt object. This evidence of Medical Officer is corroborated by the Medical Certificate at Exh. 49. Though in his evidence, it has come that the Injury No. 2 may be possible if someone falls on hard surface or object, he further deposed that, such injury was also possible if someone assaults another with hard and blunt object by holding it in his hands. The cross-examination shows that, the injuries were not disputed. It is further brought in cross-examination that, the stick / wooden log may come under the category of hard and blunt object and both the injuries on the Appellant were possible by the same. Moreover, it has come that injuries found on the Appellant were matching with the history given by him. This get corroboration from the above referred medical certificate which speak of alleged history of assault.

12.1. From the above evidence it is clearly established by the Prosecution, that there were simple injuries on the person of the Appellant as a result of assault.

EXPLANATION BY THE APPELLANT :

13. The learned Trial Court had put the incriminating circumstances to the Appellant under Section 313 of the Cr.P.C. to which the Appellant stated that, the Deceased had come to his house in an inebriated state with stick and kicked the door of his house and assaulted him with stick. At that time, Sudhir Torne, Shekhar Torne, Karan Thombe beat the Deceased with the stick and he (Appellant) defended himself and was not possessing any weapon. The incident took place when he tried to save himself.

13.1. If we see the evidence of PW1 – Annasaheb Indrabhan Pawar, who lodged the report, it has come that, on 05.04.2018, Deceased had come to the village in the night for Shakubaba fair from village Devgaon and his wife i.e. Accused No. 2, was with the Appellant and Deceased informed him that he was going to the house of the Appellant in search of his wife. The said evidence is not challenged as seen from the cross-examination of PW1 – Annasaheb Indrabhan Pawar.

13.2. The above unchallenged evidence of PW1 – Annasaheb Indrabhan Pawar and the above referred contention of the Appellant, it

is clear that the Deceased had gone to the house of the Appellant where the incident had taken place. The injuries on the Appellant indicate that fight or scuffle had taken place. The sticks collected during the course of the investigation shows Human blood as per the Chemical Analysis Report at Exh.83. This furthers the case of the Prosecution that the article of assault was the wooden stick. Appreciating the above referred circumstances, only inference which is possible is that the offence fall short of Murder. The weapon used in the assault was a wooden stick. What has come in the evidence of PW6 – the Medical Officer is that, the injuries nos. 1 and 2 referred while considering the circumstance of Homicidal death, may be possible by a single blow. The other injuries are in the nature of contusion and abrasion. The medical evidence is completely silent that, the injuries on the dead body were sufficient in the ordinary course of nature to cause death. This indicates that there was no intention to kill the Deceased. The incident was the result of scuffle or fight. However, considering the body part where the injuries were inflicted, the knowledge that such injury may prove fatal, can safely be attributed to the Appellant.

13.3. In *Anbazhagan Vs. The State represented by the Inspector of Police*, AIR 2023 SC 3660/MANU/SC/0782/2023, the Hon'ble Supreme Court of India explained the fine distinction between the terms 'Intent' and 'Knowledge' and reiterated the important principles of law

to be considered when the Court is confronted with the question, what offence the Accused could be said to have committed. The provisions of Section 299 (Culpable Homicide) and Section 300 (Murder) are considered.

14. In view of the above observations and the result of re-appreciation of the evidence on record, the conviction of the Appellant for the offence punishable under Section 302 of the IPC needs to be scaled down to Section 304 Part-II of the IPC. The Appellant is behind the bars for a period of 6 years 9 months and 8 days. The Appellant was 32 years of age at the relevant time. Considering the facts and circumstances of the case, the Sentence of Imprisonment already undergone would be appropriate punishment. From the endorsement of the operative order of the impugned Judgment and Order, it appears that the Appellant had not deposited the fine imposed by the learned Trial Court, therefore, there is no question of directing refund of fine amount.

15. As regards the Application for Leave to Appeal against the acquittal of Accused No.2, recorded by the learned Trial Court in the impugned Judgment and Order is concerned, except seizure of photographs of the Appellant along with Accused No. 2, there is no evidence to connect Accused No. 2 with the Crime. As held above, the

testimony of the eye-witnesses is discarded. The said photographs cannot form the basis to convict her for the Charge framed with the aid of Section 34 of IPC. Hence, the Application seeking leave to Appeal against acquittal of Respondent/Accused No. 2, deserves dismissal.

16. In view of the above discussion, we proceed to pass the following order.

ORDER

- [i] The Appeal is partly allowed.
- [ii] The conviction of the Appellant recorded by the learned Additional Sessions Judge, Shrirampur, vide Judgment and Order dated 24.05.2021 in Sessions Case No.18/2018, for the offence punishable under Section 302 of the Indian Penal Code and consequent sentence, is hereby quashed and set aside.
- [iii] The Appellant is convicted for the offence punishable under Section 304 Part-II of the IPC and sentenced to suffer imprisonment already undergone i.e. 6 years 9 months and 8 days.
- [iv] The Appellant be set at liberty, if not required in any other case.

- [v] In view of disposal of Criminal Appeal, the Criminal Application No. 2529 of 2024 for suspension of substantive sentence and Bail no more survives and stands disposed of.
- [vi] The Criminal Application No. 53 of 2021 seeking leave to Appeal against Acquittal of Respondent/Accused No. 2, is Dismissed.
- [vii] Record & Proceeding be sent back to the learned Trial Court.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde