

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO. 16 OF 2023**

Shri. Vijeyendra @ Chetan Arondekar
S/O Mr. Vithu Arondekar Aged about 29
years, Occupation-Fisherman, R/o
House No-485, Talpona, Cancona – Goa. ... APPELLANT

Versus

1. The Police Inspector, Officer In-charge of Cuncolim Police Station Cuncolim- Goa.
2. The Public Prosecutor, High Court of Bombay at Goa, High Court Building Porvorim. ... RESPONDENTS

Mr. Rohan Desai with Mr. Pranav Phatak, Advocates for the Appellant.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

CORAM: **BHARATI DANGRE & NIVEDITA P. MEHTA, JJ.**

RESERVED ON: **8th AUGUST 2025**

PRONOUNCED ON: **10th SEPTEMBER 2025**

JUDGMENT: (per BHARATI DANGRE, J.)

1. The Appellant, Vijeyendra @ Chetan Arondekar was charged by the Additional Sessions Judge, South Goa at Margao in Sessions Case No. 03/2017, under Section 302 of IPC with the following allegation:-

“That on 23.12.2016 at about 11:30 hours, you committed murder of your girl friend namely Deepali Shridhar Metha, aged 20 years, resident of Talpona, Canacona and native of Mazali, Karnataka, by intentionally and knowingly causing her death by strangulating her neck and further fled away from the spot and you thereby committed an offence punishable under Section 302 IPC and within the cognizance of the Court.”

2. On pleading not guilty, the Appellant faced trial before the Additional Sessions Judge in Sessions Case No. 3/2017, resulting into a finding of conviction and imposition of sentence based on the evidence adduced by the prosecution and by recording that there was strong motive for the accused to do away with Deepali and thus, sentencing him to undergo imprisonment for life and payment of fine of Rs.50,000/-, in default to undergo simple imprisonment for two years.

It is this judgment and order dated 07.05.2022, which is challenged in the Appeal, which was Admitted on 17.01.2023.

Pursuant to the Records & Proceedings being received and on preparation of the paperbook, the Appeal is taken up for final hearing.

3. We have heard the learned Counsel, Mr. Rohan Desai appearing for the Appellant and Mr. Bhobe, the learned Public Prosecutor for the State.

4. In order to establish the charge levelled against the Appellant, the prosecution examined 32 witnesses, the key witnesses in proximity of the deceased, being the following:-

PW-1, Sarita Metha, mother of the deceased;

PW-2, Yashoda Keluskar, grandmother of the deceased;

PW-3, Rupali Metha, sister of the deceased;

PW-4, Shridhar Metha, father of the deceased;

PW-5, Nitesh Gokarnekhar, cousin of the deceased;

PW-6, Nandesh Thakkar, neighbour of the accused;

PW-31, Prashant Keluskar, uncle of the deceased.

The prosecution has relied upon the following medical experts in form of the following witnesses:-

PW-7, Dr. Sunil Chimbolkhar, who conducted the post mortem examination;

PW-8, Dr. Mandar Kantak, who medically examined the accused.

5. The forensic science experts from Goa Forensic Science Laboratory i.e. PW-9, Dr. N.P. Waghmare and PW-30, Dr. Narayan Waghmare along with PW-10, Umanath L. Naik, second Expert in Finger Print Bureau as well as the Nodal Officers as PW-26 and PW-27 from Bharti Airtel Ltd. and Vodafone Idea Ltd. respectively, were also examined in support of the case of the prosecution.

PW-13, Sandesh Gaonkar is the photographer who took photographs of the attachment panchanama. The Investigating Officers were examined as PW-22 and PW-29. One significant witness, PW-18, Prashant Velip, has been examined by the prosecution to establish its theory of last seen. PW-32, Shri Payak Zaravkar is yet another witness whose mobile phone was used by PW-3, Rupali, the sister of the deceased.

6. The case of the prosecution which has surfaced through its witnesses would reveal that the mother of the deceased, PW-1, lodged a missing complaint on 24.12.2016, stating that on 22.12.2016 she went to her native place at Karwar and returned back on 23.12.2016 and came to know that her daughter, Deepali went to Margao at about 08:30 hours and did not return and her attempts to establish contact with her on her mobile phone did not receive any success, as her mobile phone was switched off.

In her complaint (Exhibit 12-C), she gave the physical description of Deepali and also stated that she was wearing jeans pant and a top of green colour. She also stated that her daughter was seen by her elder daughter, Rupali at 08:30 hours at the residence of her brother on 23.12.2016.

7. The mother, PW-1 deposed that she has two daughters by name, Rupali and Deepali, who were staying at her brother's place at Talpona, Canacona with her mother, sister-in-law and brother,

Prashant Keluskar. According to the information provided, Rupali was working in a pharmacy at Chaudi, Canacona, whereas her younger daughter was studying in standard 12th in open school (correspondence). Though she did not remember the mobile number as far as Rupali is concerned, she offered the details that her number ended with 501 and that of the deceased Deepali ended with 37 and 78.

8. As per PW-1, on 08.12.2016, Deepali went to Pune for studies and on 13.12.2016, she established contact with her and informed her that one boy by the name Chetan had threatened to kill her and she was asked to visit his house, but later on was persuaded from not doing so.

According to PW-1, Chetan (accused) met her elder daughter, Rupali on 16.12.2016 and told her that he wanted to discuss about Deepali and on 17.12.2016, he came to her house at Talpona, Canacona and started inquiring about Deepali, when she told that Deepali had gone to Pune for studies and he must also focus on his career. On 18.12.2016, Chetan, again, visited the house of PW-1 and told him that he wants Deepali and will commit suicide if he does not get Deepali.

As per PW-1, on 21.12.2016 Deepali informed her that she is returning from Pune and when she called her mother in the afternoon, she was informed that Deepali had already arrived in the morning.

On 23.12.2016, Deepali contacted PW-1 and inquired when she would be reaching Canacona and was told that she will be reaching in the evening and thereafter, when she attempted to contact her on her mobile phone, it was switched off and therefore, she contacted her other daughter, Rupali (PW-3), who also attempted to establish contact with Deepali, but could not do so.

9. As per deposition of PW-1, she along with PW-3 tried to contact Deepali and even her mother and Rupali went to the house of Chetan in the late night and was told that he had gone to his friend's place and had not come home.

When on 24.12.2016, they could not establish contact with Deepali in the evening, Rupali told her that they must file a complaint as Deepali's whereabouts are not known and therefore, along with their neighbour Nandesh (PW-6), she approached the Police Station and lodged the missing complaint by giving her identity and also the description of the clothes worn by her.

When PW-1 was subjected to cross examination, she admitted that her daughter Deepali was not having any relationship with the accused and denied the suggestion that her daughter was wearing green colour top and black colour pant, is false.

She further admitted that she had mentioned in the complaint as to what clothes her daughter was wearing when she

left the house and it was her daughter, Rupali, who had seen her last when she left her maternal uncle's house on 23.12.2016.

10. Since the deceased was residing with her grandmother, Yashoda Keluskar, she was examined as PW-2, who deposed that Deepali had gone to Pune for study two months before, but she returned back within 15 days and when she inquired about her return, she informed that she had some work in Margao in respect of filing of a computer form in respect of her studies and therefore, she had come early and after some days, she will go back to Pune.

According to PW-2, Deepali left the house at 9:00 a.m. by informing that she will be returning home for lunch, but she did not return. She deposed that her daughter, Sarita (PW-1) along with her elder daughter, Rupali, despite trying to establish contact with her, could not establish the contact. On the next day, i.e. Saturday, her daughter, Sarita (PW-1) went to Canacona Police Station to file a missing complaint and when she was at her residence, she heard someone saying that her neighbour, Chetan had killed Deepali.

PW-2 deposed that when Deepali left the home, she was wearing a green colour top and black pant.

In cross examination, she admitted that her statement was recorded by the Police after two months and the Police never visited her residence before two months.

She admitted that she did not remember whether she had told the Police that when Deepali left she had worn a green colour top and black jeans pant, however, when she was further examined for the purpose of identification of the memorandum of article as per order dated 16.08.2017, she reiterated that when the deceased left the house, she had worn green colour shirt/top and she identified the black colour pant as the same which was worn by the deceased. In her re-cross examination, she stated thus:

“I say that I had disclosed for the first time to the police that the deceased had worn the above mentioned clothes at the time of leaving the house. I had not disclosed the above fact to any other person. It is not true to suggest that I falsely identified the M.O.'s referred above.”

11. In order to corroborate the version of PW-1 and PW-2, the prosecution has examined Rupali, the sister of the deceased as PW-3.

Rupali categorically deposed that she was using mobile number 9637063501 and her sister, Deepali was using mobile nos. 9763882437 and 7066131478. PW-3 deposed that Deepali went to Pune for her studies on 08.12.2016 and on 11th or 12th December 2016, she received a whatsapp message from one Mansi on her mobile no. 8971829552 inquiring about Deepali, but when she called on the said number, one lady picked up the call and informed that the call is connected at Mazali.

As per PW-3, on 12.12.2016, she again received a text message from the mobile number of Mansi stating that Deepali is in a relationship with Chetan and pursuant thereto, on 13.12.2016, she met Chetan and came to know that he was residing near her uncle Prashant's place at Talpona. Chetan thereafter, showed PW-3 a picture of Deepali and informed her that Deepali is in Pune. However, PW-3 could not save the text message of Mansi, as according to her, her phone got hanged and she formatted the mobile as a result of which, all her details, contacts and apps came to be deleted.

According to PW-3, on 16.12.2016 she was informed by her mother that one Chetan want to discuss about Deepali and on the next day, he came to her uncle's place and started discussion about Deepali, but was told by her mother to focus on his career. On the next day, Chetan again visited her maternal uncle's place and informed that he wanted Deepali or else he will die or commit suicide.

PW-3 further state that Chetan used to call her to discuss about Deepali and on 22.12.2016, Deepali came home from Pune and though there was no discussion between the two sisters, there were some arguments as she had done shopping only for herself. On 23.12.2016, PW-3 left for her work and she inquired with Deepali as to when she would be returning from Margao and she received a reply that she would return in the afternoon for lunch. PW-3, on reaching the work, received a phone call from the phone

number of Chetan 9527817988 inquiring whether Deepali had come down from Pune and whether she had told anything. On the same afternoon, she called Deepali, but her phone was switched off, and even Chetan's phone number was switched off, but she received some messages from Chetan's mobile between 5:00 to 5:30 p.m. stating that Deepali was engaged in sexual work in the name of college and she had disclosed it to him and she had come to teach him a lesson. The message also stated that there was a big fight between them on the road in public and in that, he lost Deepali.

12. After receipt of the message, PW-3 contacted her cousin brother, Nitesh Gokarnekhar (PW-5), who was working in the Police Department, who thereafter informed the mother of the deceased. After reaching home, she along with her grandmother, went to the house of the accused and was told that Chetan was not at home. As per Rupali, she attempted to contact Chetan on his mobile, but it was switched off and therefore, she sent a text SMS, *"Are baba call me plz every bady is in tension plz reb"*.

As per PW-3 on 24.12.2016 morning, she went to work and was trying to contact Chetan but still his phone was switched off. However, at 11:00 a.m. she attempted to contact Chetan and inquired about Deepali and he asked her if she did not go to see Deepali at Cabo-de-Rama, when he had sent the SMS. She asked Chetan if he had returned home, then why did Deepali not return

and she received a reply that Deepali had fallen at Cabo-de-Rama and advised her to go there. When inquired where he was, he told that he is at Canacona railway station and he is going to commit suicide and she persuaded him not to do so and thereafter, he disconnected the phone.

In continuation, PW-3, further deposed that thereafter, she her mother and her cousin brother, Nandesh went to Canacona to lodge the complaint and her mother gave a missing complaint. The accused, Chetan, was also brought to the Police Station after the complaint was lodged and thereafter, she came to know that Deepali was murdered at Cabo-de-Rama by Chetan.

13. According to Rupali, when Deepali left the house on 23.12.2016, she had worn a green colour top and black colour jeans pant and was carrying a black and grey colour bag with books and identity card.

PW-3 is extensively cross examined when she admit that she knew one Payak Zaravkar (PW-32), who stays in Sanquelim and she is acquainted with him through her friend, Sneha, residing in Canacona.

A very categorical admission in her cross examination read to the following effect:-

“I do not remember that since how many years my sister, Deepali was using this number 9763882437. So also the other number i.e 7066131478. I say that I am

using number 9637063501 for last 2 years. I have not received any calls nor SMS from the number 9527817988 (phone number of accused) before receiving the message which I have stated in my chief.”

It is not true to suggest that I have been in contact with the number 9527817988 before the receipt of the above message.”

I say that I know Prashant Keluskar. I say that I am not aware whether 7066131478 belongs to Prashant Keluskar but I voluntarily say that the same was being used by my sister Deepali. It is not true to suggest that my above statement is false.”

In cross examination, PW-3 admit that she was present while the missing complaint was lodged by her mother, but her mother went inside alone to give the missing report and she was not present with her and she had not mentioned anything about the messages which she had received from Chetan as she had not read the message properly. She further admit that she visited the house of the accused along with her grandmother as Chetan had messaged her and also called her on her mobile.

In her further cross examination, PW-3, admit that the mobile number which she was using was in her friend's name and she was using the internet on 9637063501 and that was the number used for communicating with Mansi on whatsapp.

14. Rupali admitted that she received a text message from Chetan from mobile no. 9527817988 at around 5:00 to 5:30 p.m.

and the message read as “*Dis msg pavta pasun me n dipali bth ill finish .. Me at talpon smwer n dipali at cab de raam.*” as well as another message stating that “*Cab de raam fort right side inside dt parking wall dont tell dis story abt dipali sex wrk. at ur home .. Plzz kp It wid u .. I hv few secnd Ift wid me. Me als going wid dipali by death. Tc of ursif b hppy wid ur luv .. Dnt tl y I suicide at my hom.*”. She admit that she had not shown the messages received by her to her family members, but had orally informed them.

She was further called for re-cross examination for the purpose of identification of the memorandum of articles and she identified her sister’s sandals, her grey and black colour shoulder bag, two metal earrings, watch and greenish colour shirt belonging to her deceased sister along with black pant. She also identified the black colour mobile phone of micromax make as belonging to her deceased sister, but on further re-examination, state that the black colour micromax mobile (M.O No. 12) belongs to her and she never stated that it belonged to her sister and the Police took the mobile phone on 24.12.2016 from her residence at Mazali, Karwar.

15. Some other evidence is also brought by the prosecution on record and this includes the statement of PW-4, the father of the deceased, who stated that his daughter wanted an employment card and for that purpose, she had returned to Goa on 23.12.2016

and at that time, he was at his work place. He deposed that he was informed by his wife that their daughter, Deepali had not returned home and that she is going to lodge a missing complaint to Canacona Police Station. Since she did not return on Friday, his wife waited and on the next day, i.e. Saturday, when he was informed by Nitesh that his daughter had not returned home, he proceeded home from Vasco and reached Canacona Police Station at about 6:00 p.m. He was taken to Cabo-de-Rama and one dead body of a lady was shown to him, which he identified to be of his daughter, Deepali.

16. Another relevant witness, PW-5 Nitesh Gokarnekhar, is the nephew of PW-1. He deposed that on 23.12.2016 at around 4:41 p.m., he received a message from Rupali on his mobile stating, *“Cab de raam fort right side inside dt parking wall dont tell dis story abt dipali sex wrk. at ur home .. Plzz kp It wid u .. I hv few secnd Ift wid me. Me als going wid dipali by death. Tc of ursif b hppy wid ur luv .. Dnt tl y I suicide at my hom.”*. Rupali had also sent five other messages and informed him that the said messages were sent by the boyfriend of Deepali by name Chetan. He, therefore, told her to tell her mother to lodge a missing complaint and she should go to the house of Chetan and see whether he is at home. He was also appraised by Rupali that Chetan was not at home and it was decided by the family to wait for one night before the complaint is lodged.

On the next day, at around 12:00 p.m., he received a call from Rupali informing that Chetan had told her that she will get Deepali at Cabo-de-Rama and he is going to commit suicide at the railway station and he forwarded this information to the Canacona P.I. and even he visited Canacona Police Station at 2:45 p.m., when Rupali and her mother were present to lodge the missing complaint. At that time, the P.I. told him that Deepali was not alive and the accused had committed her murder and asked the mother and sister of Deepali to reach at the spot. He called the father of the deceased and they went to Cabo-de-Rama for further identification of the body.

In cross examination, he admit that he had sent five messages to Canacona Police Station, but they were not taken by the Police and he had shown the messages to the P.C. who recorded his statement.

17. PW-6, Nandesh Thakkar, a person in the neighbourhood and cousin of Deepali corroborated the version of PW-1 and 3 as he deposed that on 24.12.2016, he received a phone call from Deepali's mother and therefore, he visited the house of the uncle of Deepali and met her as she was crying. He questioned her as to why no police complaint was filed and thereafter, they went to Canacona Police Station. At that time, Rupali informed him that she had received a phone call from Chetan stating that Deepali will die at Cabo-de-Rama and he will die at the railway track and he

disclosed this fact to the Police staff. Since it was informed that Chetan was at home, they reached his house and took Chetan in the Police jeep to Canacona Police Station. At around 4:30 p.m., he received information from Nitesh that Deepali was murdered and her body was at Cabo-de-Rama fort.

18. PW-31 is the uncle of the deceased, who deposed that he had taken the mobile SIM card of Vodafone bearing no. 7066131478 and gave it to Deepali, who was using it till her death and at the relevant time, he was in Mumbai. He categorically admit that when he had given the SIM card to Deepali she did not have any other SIM card.

Similarly, PW-32, Payak Zaravkar admitted that he had taken a SIM card of Vodafone, indicating no. 9637063501 and gave it to Rupali, who was using it till date.

19. Another witness, who is relevant in the chain of circumstances, is PW-18, Prashant Velip, who was studying at Mallikarjun College at Canacona. He deposed that on 23.12.2016, he had seen the accused at HP Petrol Pump, Gulle, Canacona as he was proceeding with a girl pillion rider and the girl was wearing a green colour top and he would be able to identify the green colour top if shown to him. He was confronted with the greenish colour shirt and he identified it to be the same which was worn by the pillion rider.

In cross examination, he state that the statement was read over to him and it was as per his say. He admit that he had stated to the Police that the girl had covered her face with a cloth, but this fact is not recorded in the same way. As per this witness, the Police came to his house to record his statement after three days. He categorically state that for the first time in his statement, he disclosed that he had seen the accused with a girl, pillion rider on 23.12.2016 at the Petrol Pump and prior to that he had not disclosed it to anyone. He also admit that as below:-

“I was not shown the greenish colour top at the police station or even thereafter. The police did not tell me the type of clothes worn by the girl. I say that I had stated to the police that the girl was wearing a greenish colour top. It is not true to suggest that I have falsely deposed and stated to the police that the girl was wearing a greenish colour top.”

20. In the re-cross examination, this witness gave the following admission:-

“I say that while I was going out of the petrol pump after filling the petrol I saw the accused and the said girl near the petrol pump. The accused was wearing a helmet at that time. I do not remember the colour of the said helmet.

I was also wearing helmet of black colour. The accused was wearing a shirt and the pant but I do not remember their colour.

I have not seen the registration number of the said motorcycle. I say that I saw the accused and the

girl wearing green top as a pillion rider on the motorcycle of the accused at the H.P. Petrol pump at Gullem, Canacona at 10.00 a.m.”

21. In order to establish and prove its case that it is the accused who had done the deceased to death, the prosecution has also relied upon some other evidence. The scene of offence panchanama [Exhibit C-62 colly (2)] dated 24.12.2016 is signed by Gurudas Zaravkar, who is examined as PW-17. The spot panchanama, records that the body of the deceased was identified by her father, who stated that his daughter had gone with Vijeyendra @ Chetan. The attachment panchanama disclose that froth was oozing out from the dead body's mouth and blood was seen coming out from the nose and she was wearing green colour shirt and yellow colour petticoat along with a black colour long pant having broken belt around the waist. A shoulder bag was lying at a distance, with the student identity card in the name of Deepali along with two copies of Aadhar card, one ticket of Jay Durga Travels, Pune, showing the date of journey on 21.12.2016 along with some money and some other articles. The material found at the spot came to be seized under the panchanama, which included the sandal, lying on the spot. The inquest panchanama (Exhibit 121) records about oozing of blood from the mouth and nose and the neck having turned black.

The greenish colour shirt worn by the deceased was removed and it was found to be soaked in blood and even the inner garment/petticoat was found to be soaked in blood. The said articles were sealed along with one sandal, which was worn by the deceased.

22. The dead body of the deceased was forwarded for post mortem on 25.12.2016 at 11:40 hours and PW-7, Dr. Sunil Chimbolkar deposed that autopsy was conducted on 25.12.2016 between 01:50 to 04:00 p.m. The post mortem report referred to the injuries on the body and also has mentioned a fracture of the haier bone corneo on left side with extravasation of blood and free mobility on the inward direction 12 x 5 cm extending from the level of the hyoid to supraclavicular region anteriorly upto thyroid.

PW-7 opined the cause of death to be asphyxia as a result of compression of neck and underlying structures vide injury nos. 1 and 2. In cross examination, PW-7 has deposed that the approximate time of death is around 24 to 36 hours prior to preservation in morgue and it is based on decomposition changes and external examination findings of the body. The Medical Expert also admit that the time of death can also be extended to 6 hours from 24 to 36 hours and the body was preserved on 24.12.2016.

23. In the sequence of events, it is necessary to note that PW-21, In-Charge of Canacona Police Station, was present at 13:35 hours when PW-1 appeared and lodged the report and in his evidence has deposed that the mother gave the physical description of her daughter and also informed about her apparel as green colour top and jeans pant and the report was lodged at 13:35 hours.

Accordingly, he registered the missing person report on 24.12.2016 at 14:00 hours and on the same day, he received a phone call on his personal number from P.C. Driver, Nitesh Gokarnekhar (PW-5) informing that he has received a phone call from his cousin sister, Rupali Metha, informing that her sister Deepali was missing and was informed by Chetan that her missing sister Deepali was at Cabo-de-Rama and he is at the railway station.

On receipt of the said information, he informed the P.I. Cuncoim to trace the missing girl on the above location and directed P.S.I., Damodar to trace the boyfriend Chetan @ Vijeyendra for inquiry. At around 15:20 hours, Chetan @ Vijeyendra was brought to Canacona Police Station and he admitted that he had killed the victim girl at Cabo-de-Rama and therefore, he lodged the complaint against Chetan for killing Deepali by strangulating her neck. The complaint is exhibited through the said witness (Exhibit-94).

In the cross examination, PW-21 admit that he has not recorded in the station diary about receipt of the phone call of

Nitesh Gokarnekhar (PW-5), who was told by Rupali that her missing sister is at Cabo-de-Rama and also informing her that he is at the railway station. However, PW-21 state that the fact that he informed the P.I., Canacona, on telephone to trace the missing girl on the above location is mentioned in station diary.

24. The case of the prosecution as surfaced through the aforesaid witnesses and we find it surprising to note that PW-3, Rupali, the sister of deceased allegedly received a message on her mobile from Chetan, but when the missing complaint was lodged on the next day by her mother, she did not refer to any of the messages or phone calls by Chetan nor did she disclose that Chetan had called her on the same day and informed that her sister is not alive. What is surprising is the statement of PW-3 that she never received any phone call from Chetan, who was using no. 9527817988 nor had she received any SMS and this proves to be incorrect when we read the data of the call details brought on record by the Nodal Officers.

It is to be noted that Deepali, deceased was using two SIMs; SIM with no. 7066131478 in the name of Prashant Keluskar (PW-31) and another SIM used by her is 9763882437. As per the prosecution, the accused was using the SIM card with no. 9527817988 and also 8600954022 and from these numbers, messages were forwarded to PW-3.

The two mobile phones are attached, one at the instance of Rupali and one at the instance of the accused. As far as the mobile phone of the deceased is concerned, the prosecution has failed to produce the same in evidence. PW-3, Rupali identified the black colour mobile phone of micromax make as belonging to her sister, but further, admitted that she had not stated in her previous deposition that the mobile phone belongs to her sister.

25. PW-26, the Nodal Officer of Bharti Airtel Ltd. and PW-27, Nodal Officer of Vodafone Idea Ltd. have proved the Call Detail Record (CDR) by producing a certificate under Section 65B of the Evidence Act.

PW-27 has produced the CDR of no. 7066131478, which was used by the deceased, but was allotted by Vodafone to one Prashant Keluskar. In the CDR of the number used by the deceased, produced for the month of December, there is frequent telephonic conversations between the two sisters. However, as far as the accused is concerned, there is a telephonic contact established between the deceased and the accused on 22.12.2016 at 10:30:47 for 83 seconds, which is an outgoing call. Once again, another outgoing call is at 11:29:03 on the same day. Another outgoing call from the number of the deceased to the number of the accused is on 23.12.2016 at 09:26:51 for 14 seconds.

26. As far as PW-3 is concerned, who was using the same mobile no. 9637063501, in her call details for the month of December, there is a contact established through a message between the deceased and PW-3 on her no. 7040948172 on 12.12.2016. The call details further reveal that there was repeated contact between no. 9527817988, which was used by the accused, Chetan and PW-3 and several messages are exchanged on 13.12.2016 between the two numbers. Thereafter, there are outgoing calls from PW-3 to the number used by the accused at 09:23:59 as well as at 09:31:33 on 14.12.2016. On 14.12.2016, there was an exchange of SMS between the two numbers in the afternoon. Once again, there are multiple conversations exchanged through messages between the two numbers on 14.12.2016 and there is also an outgoing call by PW-3 to the accused at 17:05:32. There are exchanges of messages from 17:51:31 to 18:01:17 and also between 19:07:11 and 19:07:46. Apart from this, even on 15.12.2016, there are various SMSs exchanged between the two numbers.

27. What is most relevant to note is, on 22.12.2016 the call records refer to 12 messages. Apart from this, there are exchanges of messages between the phone used by the accused and that of PW-3 on 23.12.2016 at 14:25:59 onwards and the CDR refer to six messages. What is most relevant to note is the phone calls between PW-3 and the phone used by the deceased, Deepali i.e.

9763882437 on 24.12.2016 at 15:55:01 and 15:56:14 with the call lasting for 38 and 31 seconds respectively.

PW-3 had specifically deposed that she did not receive any message or phone call from no. 9527817988 i.e. the number from which she received messages from Chetan, but the aforesaid call log establishes to the contrary. What is most intriguing is, PW-3 had deposed that her sister left the home on 23.12.2016 and she received messages from the mobile phone of Chetan i.e. from no. 9527817988 between 05:00 to 05:30 p.m., giving an indication about Deepali and she forwarded the messages to her cousin brother, Nitesh, who is in the Police Department and she also checked whether Chetan was at home and she attempted to contact Chetan on his mobile, which was switched off.

Thereafter, on 24.12.2016 morning she went to her work place and continued to try to contact Chetan and she was able to contact him at 11:00 a.m. and when she asked about Deepali, she was asked as to why she did not go to see her at Cabo-de-Rama, when he had sent the message to her and informed her that Deepali had fallen at Cabo-de-Rama and she was asked to proceed to the spot. As per PW-3, she along with her mother and cousin brother, went to Canacona Police Station to lodge a missing complaint, but the complaint did not express any suspicion over Chetan, nor does it make mention of any phone call received by PW-3, from Chetan informing her that Deepali is dead. As per her deposition, Chetan was brought to the Police Station and when she

went home, she came to know that Deepali has been murdered at Cabo-de-Rama by Chetan.

A specific assertion from her that she never received any calls or SMS from 9527817988 before receiving the message is a false statement as on multiple occasions prior to the said incident, she was in contact with the said number. It is also not established by the prosecution as to for what reason PW-3 was using the no. 9637063501, which was in her friend's name. If she had received the text messages from the mobile used by Chetan, on the earlier day i.e. 23.12.2016 between 05:00 to 05:30 p.m., but the CDR show that the messages are received between 04:25 to 04:27 p.m., then why PW-3 did not take any steps to confront him or lodge a complaint to the Police Station or even go to the spot.

28. As far as the accusation levelled against the Appellant that he had intentionally and knowingly caused the death of his girl friend by strangulating her neck and fled away from the spot, the prosecution has miserably failed to prove the said accusation.

The case of the prosecution is based on circumstantial evidence and largely hinges upon the evidence of PW-3, who, according to us is not a trustworthy witness, as she did not remain consistent in her version and her credibility is widely impacted because of her statements contradicting with each other or on account of her surprising conduct. Her testimony is further shattered as she has made many false statements as deposed that

on 23.12.2016 when she reached her work, she received a phone call from Chetan from no. 9527817988 asking whether Deepali had come down from Pune and she told him that she is gone to Margao. Further, she told that she received messages from Chetan between 05:00 to 05:30 p.m. whereas the messages are received from 04:25 p.m. onwards. It is worth to note that as per the CDR, she sent a SMS to Chetan at 08:49 p.m. saying “*Are baba call me plz every bady is in tension plz reb*”. Her version that she was able to contact the accused at 11:00 a.m. is also belied from the CDR, which establish that on 24.12.2016 at 12:23 p.m. the accused called her from his another number 8600954022 and later on at 12:24 p.m., she made a phone call to him and further again at 12:28 p.m. and the calls lasted for 240, 287 and 56 seconds respectively.

29. There is a complete inconsistency in her version and what surprises us is her conduct, that she had established the contact with the accused who told her that her sister was killed by the him, despite this, she did not rush to the spot or when she accompanied her mother to the Police Station, she did not go inside and provide the necessary details. The exchange of telephonic calls and SMS between Rupali and the accused definitely lead to an inference that they were in touch with each other, although she has specifically deposed that before receiving the messages, she was not in contact with the accused, Chetan and hence she is not found to be trustworthy.

Except the extra judicial confession by the accused, which find mention in the evidence of PW-21, Filomeno Costa, In-Charge of Canacona Police Station, as it is deposed that as per his knowledge, this fact was entered in the station diary. When Chetan was brought at Canacona Police Station for inquiry, he disclosed that on 23.12.2016 at around 10:00 hours, he and Deepali went to Cabo-de-Rama and reached about 11:30 hours and there were arguments and a quarrel and he caught hold of her neck and killed her and left the spot. Admittedly, this statement is not admissible in law being given to a Police Officer and since the accused pleaded ignorance when the charge was put to him.

30. The complaint lodged at the Canacona Police Station on 24.12.2016 at 14:00 hours is merely a missing complaint which is lodged by the mother stating that Deepali is missing from her residence from the morning of 23.12.2016. If going by the prosecution case, if PW-3 received messages on 23.12.2016 itself, clearly indicating to her that when the messages are received, her sister and the accused will be finished, he at Talpona whereas Deepali at Cabo-de-Rama right inside the parking wall, it is not known why this fact was not disclosed to the mother or when the missing complaint was filed at 14:00 hours on 24.12.2016. Not even a single time, PW-3 raised any suspicion that her sister was not alive and she continued to call the accused to find his mobile switched off and ultimately, she established contact with him on

the next day i.e. 24.12.2016 at 11:00 a.m. when she was clearly told that she ought to have searched her sister at Cabo-de-Rama.

31. There can be no dispute about the fact that deceased Deepali died a homicidal death, but the question is whether the prosecution who accuse the Appellant-Chetan of causing her death, has proved the case beyond a reasonable doubt. Admittedly, the case of the prosecution is based on circumstantial evidence as there is no direct eyewitness to the case. In **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹, the Apex Court has laid down the following five golden principles to prove a case based on circumstantial evidence:-

“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 Vs. State of Maharashtra where the observations were made:

“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

¹ AIR 1984 SC 1622

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.

32. In order to establish the case based on circumstantial evidence, it is necessary for the prosecution to place before the Court, the chain of sequence of events, which points out to the guilt with no reasonable suspicion being expressed and the circumstances on which the conclusion of guilt is to be drawn, should be fully proved and should be conclusive in nature. Apart from this, the principle of circumstantial evidence require the circumstances to be complete, leaving no gap in the chain of

evidence and the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with this evidence. In case of circumstantial evidence, the Court shall examine the entire evidence in its entirety and ensure that only inference that can be drawn from the evidence is the guilt of the accused as the circumstances must firmly establish from the chain in which they are placed i.e. only the accused who is guilty of commission of the offence and there is no scope for any other inference being drawn. The onus ultimately is on the prosecution to prove that the chain of circumstances is complete and any infirmity or the lacuna in the proceedings cannot be cured by the plea of defence. The condition precedent for sustaining the conviction based on circumstantial evidence is, fully established circumstances pointing out to the accused and his guilt.

33. It is in light of the settled position of law, the Trial Judge relied upon the following circumstances:-

13. In order to prove the guilt of the accused, the prosecution has to prove the following circumstantial evidence referred above, namely:

(i) Homicidal death; (ii) Missing Report of Deepali Shridhar Metha by her mother; (iii) Scene of occurrence panchanama; (iv) Recovery of dead body and its identification; (v) Arrest of the accused; (vi) Recovery of Micromax mobile phone from PW3, Rupali Metha with SMSs from the accused; (vii) Call Details showing SMSs sent by the accused to Rupali regarding

death of Deepali Metha; (viii) Last seen together; (ix) Motive to commit crime; (x) Statement of the accused under Section 313 of Code of Criminal Procedure.

34. We have gone through the reasoning of the Trial Judge and we find it to be not in consonance with the principles laid down in **Sharad Birdhichand Sarda** (supra) or the subsequent decisions laying down the parameters for sustaining conviction based on circumstantial evidence.

There can be no doubt that the death of the deceased is homicidal. It is also proved that her mother lodged a missing report.

The last seen theory is considered to be one of circumstance which is not at all established by the prosecution as the only witness on the last seen, PW-18, admit that he had not seen the girl's face as her face was covered with cloth.

As far as the last seen theory is concerned, it is well settled that the provisions of Section 106 of the Evidence Act would refer to the fact which is especially within the knowledge of a person and if a person is last seen with the deceased, it is necessary for him to establish as to how and when he parted with the company, but with the specific admission from PW-18 that he had not seen the girl's face, his evidence do not assist the prosecution. Further, it is also not established by the prosecution as to how did the Police reach this witness, PW-18, as his statement came to be

recorded after three days. We do not find this witness to be trustworthy as he remembers the clothes worn by the girl, but does not recognize the colour of the clothes of the accused or even the colour of the helmet.

35. The next circumstance is of recovery of micromax mobile phone from Rupali (PW-3) and SMSs received from the accused. As we have already discussed above, PW-3 has created more confusion and we find her to be completely untrustworthy. The call details showing SMS sent by the accused to Rupali regarding death of Deepali create more questions as PW-3 being her sister, why she did not sprung into action immediately when she received messages and even after receiving the phone calls on 24.12.2016, when the missing complaint is lodged. She also did not disclose that she had received phone calls from Chetan, who had told her about her sister being done to death by him.

36. Another circumstance on which the learned Judge has relied is the statement of the accused under Section 313 of Cr.P.C. and when we have perused the statement, we find that being confronted with the evidence brought on record by the prosecution, when he has only stated that he has been falsely implicated and chargesheeted. We fail to understand as to how did the learned Judge consider the statement of the accused under Section 313 of Cr.P.C. to be an incriminating circumstance.

We find that the reasoning adopted by the Trial Judge to be in complete ignorance of principles of criminal jurisprudence, the primary one being the burden lies on the prosecution to establish the guilt of the accused beyond reasonable doubt and if the presentation of the prosecution's case results into any doubt, the benefit must definitely go to the accused.

Here is a classic case where the prosecution has failed to establish the guilt of the accused and the learned Judge failed to appreciate that the circumstances on which the prosecution relied and which she took into consideration in no way lead to an inevitable conclusion that it is the accused who had caused the death of Deepali. In absence of any cogent and reliable evidence, merely because the crime committed is heinous, the accused cannot be found guilty and sentenced only by adopting an approach of imposing befitting penalty for heinous offence or being persuaded by the feelings of the parents that they will not be able to see or enjoy the warmth of their lovely daughter as what is expressed by the learned Judge.

37. The burden was on the prosecution to establish the guilt of the accused by placing reliable evidence and in the present case, apart from the prosecution witnesses, who had deposed as regards the involvement of the accused, there is no evidence to establish his involvement as we find that there is not even forensic evidence to connect the accused to the death of Deepali. Merely because

some messages were received by the sister of the deceased, whose testimony is in doubt as she has changed her version throughout, we find that she herself was in touch with the accused through messages and phone calls on numerous occasions. We wonder what was the connection between the two and even after her sister went missing, she had a conversation with the accused, but failed to disclose it to anyone. Thus, according to us, the prosecution has failed to prove the guilt of the accused, which it was duty bound to do and in the absence of any such evidence being brought on record, resulting in a benefit of doubt, which must necessarily accrue to the accused.

38. The basic principle of criminal jurisprudence, “let a hundred guilty be acquitted but not a single be convicted”, based upon a legal maxim emphasizing the importance of wrongful conviction, which formulate the idea, “better that ten guilty persons escape than that one innocent person suffer”.

The phrase is based on the principle that a wrongful conviction erodes public faith in the justice system and would cause more injustice than a criminal evading punishment. It is the duty of the prosecution to bring home the guilt of the accused by bringing forth cogent and reliable evidence, and establishing its case beyond a reasonable doubt.

The prosecution having failed to do so, in the present case, in our opinion, the impugned judgment suffers from gross error,

both on appreciation of facts and position in law and as a result, it cannot be sustained.

39. The Appeal is allowed. The impugned judgment dated 07.05.2022 passed by the Additional Sessions Judge, South Goa, Margao in Session Case No. 3/2017 along with the sentence imposed, is quashed and set aside.

The Appellant if not required to be detained in custody in connection with any other case, is entitled for his release forthwith and be a free man.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.