



Judgment

511 apeal459.19

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.459 OF 2019

1. Ashok s/o Gulabrao Uikey,
aged about 53 years, occupation:cultivator.

2. Vijay @ Sardar s/o Gulabrao Uikey,
aged about 43 years, occupation: labourer.

Both r/o Inzala, tahsil Hinganghat,
district Wardha. **Appellants.**

:: VERSUS ::

The State of Maharashtra,
through Police Station Officer,
Police Station Hinganghat,
district Wardha. **Respondents.**

Shri R.M.Daga, Counsel for the Appellants.
Mrs.Swati Kolhe, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE & NANDESH S.DESHPANDE, JJ.
CLOSED ON : 20/11/2025
PRONOUNCED ON : 09/12/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellants (the accused persons) have challenged judgment and order dated 28.3.2019 passed by learned Additional Sessions Judge,

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Hinganghat, district Wardha (learned Judge of the trial court) in Sessions Case No.25/2017.

2. By the said judgment impugned in this appeal, appellant No.1 is convicted for offence punishable under Section 302 read with 34 of the IPC and sentenced to undergo life imprisonment and pay fine Rs.5000/-, in default, to undergo simple imprisonment for 6 months.

The appellant Nos.1 and 2 are convicted for offence punishable under Section 201 read with 34 of the IPC and sentenced to undergo rigorous imprisonment for 5 years and pay fine Rs.1000/- by each of them, in default, to undergo simple imprisonment for 1 month by each of them.

Learned Judge of the trial court directed that all the substantive sentences shall run concurrently.

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3. During the pendency of this appeal, appellant No.1 Ashok s/o Gulabrao Uikey was reported to be dead on 9.11.2025 and, therefore, the appeal against him stood abated.

4. Factual matrix of the prosecution case, in a nutshell, is as under:

5. Accused No.1 and accused No.2 are real brothers and Kalpana (the deceased) was first wife of accused No.1. Sonali (the complainant) and Archana are daughters of the deceased and accused No.1. On 5.10.2013, at about 8:30 am, accused No.1 approached the Hinganghat Police Station, district Wardha and was talking irrelevant. As per his statement, "he killed his wife." After some time, the complainant and her sister Archana also came to the police station. The complainant informed that she received a phone call from her father disclosing that, "he has killed her

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mother and buried in house at village Inzala.” API Vanmala Pardhi, immediately issued letter to the Sub Divisional Magistrate, Hinganghat for conducting proceeding on the spot of the incident and proceeded towards the spot of the incident at Inzala along with daughters of the deceased. Tahsildar G.T.Purake reached the spot of the incident and opened doors of the house of accused No.1 and went inside. In second room of the house, which is kitchen in Northern Corner, wooden planks were kept and other portion of kitchen was covered with cement concrete. On a portion below wooden planks, there was a dug looking like pit. The planks were removed and with the help of villagers, a pit was dug by “spade” and a dead body of a lady was found. The said dead body was identified by the complainant. Accordingly, spot and inquest panchanamas were also prepared. During the inquest panchanama, strangulation marks were seen on throat and also an injury

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on stomach. Thereafter, the complainant lodged a report against accused No.1.

6. After lodging of the report, during investigation, it was revealed to the investigating officer that accused No.2 assisted accused No.1 in commission of the offence and, therefore, he arrested accused No.2. Incriminating articles i.e. clothes of the accused are seized. At the instance of the accused persons, weapons used in the commission of the crime were recovered on the basis of memorandum statement. After completion of the investigation, chargesheet was submitted against the accused persons.

7. As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court. Learned Sessions Judge framed charge vide Exh.24. The contents of

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the charge are read over and explained to the accused persons to which the accused persons pleaded not guilty and claimed to be tried.

8. In support of the prosecution case, the prosecution has examined in all 13 witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Narayan Vitthal Timase, pancha	38
2	Sonali Maraskolhe, daughter of the deceased and accused No.1, complainant	42
3	Loma Ramdas Khode, Circle Officer	45
4	Vijay Shende, pancha	48
5	Dilip Kursange, pancha	50
6	Vinayak Mute, Police Patil	51
7	Ganpat Purke, Tahsildar	57
8	Sau.Archana Dhurve, daughter of the deceased and accused No.1	63
9	Dr.Ashish Lande, Medical Officer	70
10	Mohini Kursange, pancha	77
11	Sunil Dhurve, son-in-law of the deceased	82

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12	Raspal Shendre, pancha on memorandum statement and recovery panchanama, and	87
13	Vanmala Pardhi, Investigating Officer	97

9. Besides the oral evidence, the prosecution placed reliance on report Exh.43, map Exh.47, spot panchanama Exh.38, inquest panchanama Exh.59, postmortem notes Exh.71, requisition Exh.72, query report Exh.73, FIR Exh.99, seizure memos Exhs.100, 101, 103, 105, and 107, memorandum statement of accused No.2 Exh.111, recovery panchanama Exh.113, seizure memo Exh.114, letter to CA Exh.120, and CA Reports Exhs.124 to 128.

10. After appreciating the evidence, learned Judge of the trial court held accused No.1 guilty for offence punishable under Section 302 read with 34 of the IPC and both the accused persons were held guilty for offence

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punishable under Section 201 read with 34 of the IPC and sentenced them as the aforesaid.

11. Being aggrieved and dissatisfied with the same, the accused persons preferred the present appeal.

12. During pendency of the appeal, accused No.1 Ashok s/o Gulabrao Uikey was reported to be dead and, therefore, the appeal is abated against him.

13. Heard learned counsel Shri R.M.Daga for the accused persons and learned Additional Public Prosecutor Mrs.Swati Kolhe for the State. With their able assistance, we have gone through the entire material on record.

14. Learned counsel for the accused persons submitted that as far as accused No.2 is concerned, only allegation levelled against him is that, he has assisted accused No.1 in burying the dead body of the deceased in the house and thereby as per contentions of the

prosecution, he committed the offence punishable under Section 201 of the IPC. He submitted that accused No.2 has already undergone the said sentence imposed upon him.

The communication issued by the Superintendent, District Prison, Wardha, placed on record by learned Additional Public Prosecutor for the State, shows that accused No.2 has already undergone the said sentence and he is released from the jail on 27.7.2024.

He further submitted that as far as merits of the matter is concerned, foundational fact, that accused No.2 was residing along with accused No.1, itself is not established by the prosecution.

Though the prosecution has adduced evidence of informant PW2 Sonali Maraskolhe, who is daughter of the deceased and accused No.1, her evidence shows that

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accused No.1 was residing along with his second wife Kalyani. Her evidence nowhere shows that, at any point of time, both the accused persons were residing together at Inzala along with the deceased.

He has invited our attention to the cross examination of the said witness, which shows that there was no door to backside of house of the deceased. He submitted that, therefore, possibility of any other intruder into the house and committing the offence cannot be ruled out.

He submitted that as far as accused No.2 is concerned that he has assisted accused No.1 to screen him from the legal punishment, which is required, itself is not established. Except the vague evidence of the investigating officer, that accused No.2 has assisted accused No.1 to bury dead body of the deceased in the house, there is absolutely

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no evidence and, therefore, the appeal deserves to be allowed.

15. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment impugned in the appeal and submitted that as far as merits of the matter is concerned, the prosecution has examined Police Patil PW6 Vinayak Mute.

The evidence of daughter of the deceased and accused No.1 PW8 Archana Dhurve discloses that accused No.2 was residing along with accused No.1. The dead body was found inside the house in a buried condition.

The evidence of Police Patil PW6 Vinayak Mute and daughter of the deceased and accused No.1 PW8 Archana Dhurve shows that the accused persons were residing together along with the deceased, which sufficiently shows involvement of accused No.2 in burying

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the dead body of the deceased and, therefore, the offence is made out against accused No.2 and, therefore, no interference is called for in the judgment impugned in the appeal.

16. After hearing both the sides and perusing the evidence adduced, as far as accused No.1 is concerned, he was charged for offence under Section 302 of the IPC.

17. Regarding homicidal death of the deceased, the evidence of Medical Officer PW9 Dr.Ashish Lande is material. As per his evidence, death body of the deceased was referred to him for conducting postmortem along with requisition Exh.61 and the inquest report is at Exh.59. The dead body of the deceased was identified by daughter of the deceased and accused No.1 PW8 Archana Dhurve and Yogesh Uikey. During external examination, he found following injuries on the body of the deceased:

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“1) Circular strangulation/ligature mark which was circular angle continuous abraded groove around neck with gap of posterior aspect of neck of length 17 cm x 1.5 cm. This was placed 3 cm below right angle of mandible, 6 cm below mentum and 4.5. cm below left angle of mandible”.

Upon internal examination, he found extroversoin of blood in subquestion tissue. There was fractured of hayride bone and cricoid cartages. The death of the deceased was due to strangulation. Time of the death narrated by him is within 6-8 hours of her last meal. Accordingly, he prepared postmortem report Exh.71. He has opined, after examination of “stick,” that no injury is consistent with the above mentioned weapon as evident on the deceased body.

Though the medical officer is cross examined at length, nothing is brought on record to falsify the cause of death of the deceased.

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Thus, the evidence of the medical officer sufficiently shows that the death of the deceased is due to the strangulation.

18. The entire case of the prosecution is rested on circumstantial evidence.

19. The material evidence, on which the prosecution placed reliance, is the evidence of informant PW2 Sonali Maraskolhe and PW8 Archana Dhurve, who are daughters of the deceased and accused No.1. They both have not supported the prosecution case and left loyalty towards the prosecution case.

The evidence of informant PW2 Sonali Maraskolhe shows that she received a phone call from an unknown person. Her parents were residing separately. The unknown person informed her that her mother is lying behind her house at Inzala and, therefore, she lodged the

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report Exh.43. Her cross examination shows that she along with her sister and brother were maintained by her grandfather. There was a dispute between her parents. Her father has performed second marriage. Subsequently, there was a settlement between her father and mother. She also admitted that her father took her mother to Inzala. She has also admitted that after the dead body was cremated, she made enquiry with her uncle, i.e. accused No.2, about the incident. Her cross examination on behalf of the accused shows that there was no door to backside of the house of her mother. Her mother was found lying behind her house at a distance of ten feet. She has also admitted that her father deserted her mother and her father was residing at Hinganghat since last 10-12 years.

Similarly, another daughter of the deceased and accused No.1 PW8 Archana Dhurve has also not supported the prosecution case and her evidence is on the similar line

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that her father was residing at Inzala and after her marriage, her mother also started residing at Inzala. Whereas, her step-mother Kalyani was residing at Hinganghat.

During her cross examination, by learned APP, it was brought on record that she is not aware whether in the year 2013 her mother Kalpana and the accused persons were residing together in the house at Inzala. In her further cross examination, she admitted that there was compromise between her father and mother and, thereafter, they started residing together at Inzala and accused No.2 was also residing along with them.

20. Besides the evidence of these two witnesses, Police Patil PW6 Vinayak Mute of Inzala, is examined vide Exh.51, whose evidence shows that he received a phone call from the police station on 5.10.2013 and, therefore,

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when he visited the house of accused No.1, the house was locked. Thereafter, at 10:00 am, the police and the Tahsildar came to his house. The Tahsildar opened the lock of the house of accused No.1. They entered into house and the dead body was found in the said house. His cross examination shows that there is no backdoor to the house of accused No.1. He admitted that he is not aware, whether, at the time of the incident, accused No.1 was at Inzala.

21. Thus, as far as the evidence of these witnesses is concerned, the same does not state sufficiently that accused No.2 was residing along with accused No.1 and the deceased in the same house.

22. Besides the oral evidence of these witnesses, PW1 Narayan Timase is examined by the prosecution, who acted as a pancha on spot panchanama. However, he has

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also not supported the prosecution case and stated that only his signatures were obtained on the said panchanamas i.e. spot and inquest. He specifically denied that the spot panchanama and the inquest panchanama were prepared in his presence.

23. PW3 Circle Officer Loma Khode, has drawn map of the incident. His evidence is to the extent that he prepared the map of the incident Exh.47.

24. PW4 Vijay Shende, also acted as pancha on seizure of the clothes and blood samples of the deceased, has also not supported the prosecution case. He is also pancha on seizure of the blood samples of the accused, but as observed earlier, he has completely left loyalty towards the prosecution.

25. PW5 Dilip Kursange, is another pancha, who also left loyalty towards the prosecution and stated that no

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panchanama was prepared in his presence. During the cross examination, he admitted that he and the accused persons are residents of the same village. There are good relations between the accused persons and him. His further cross examination by the defence counsel shows that since last 9-10 years, accused No.1 is residing with his wife at Hinganghat. He also admitted that accused No.1 has taken divorce from the deceased and, therefore, he was residing with his second wife.

26. PW10 Mohini Kursange, has also acted as pancha on spot panchanama and the inquest panchanama. She has also not supported the prosecution and left loyalty towards the prosecution. Her cross examination shows that on 5.10.2013, she went to the house of accused No.1. She has also admitted that there were two rooms in the house of accused No.1 and she has only to put her signatures on the said panchanamas.

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27. PW12 Raspal Shendre, has acted as pancha on memorandum statement of the accused persons and as per the prosecution, on the basis of the memorandum statement, incriminating articles, i.e. weapons, are recovered. This witness has also not supported the prosecution case and he has completely denied the prosecution case that accused No.2 has given statement that he is ready to produce “iron-spade” and “scrapper” and at his instance, these articles were recovered.

28. Thus, considering the above evidence, that none of panchas has supported the prosecution case, even informant PW2 Sonali Maraskolhe, PW8 Archana Dhurve, who are daughters of the deceased and accused No.1, and PW11 Sunil Dhurve, the son-in-law of the deceased, who have also not supported the prosecution case, the prosecution placed reliance on the evidence of Tahsildar PW7 Ganpat Purke whose evidence is only to the extent

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that on 5.10.2013, Hinganghat Police Station issued letter to the Sub Divisional Officer at Hinganghat for preparation of spot panchanama and inquest panchanama. Accordingly, the Sub Divisional Officer at Hinganghat ordered him to prepare the spot panchanama by visiting the spot of the incident situated at mouza Inzala. He issued notices to Dilip Kursange, Narayan Timase, and Mohini Kursange to act as panchas. The notices are at Exh.39. The spot of the incident was shown by the police. The villagers were present. Informant PW2 Sonali Maraskolhe was also present. The lock of the house was opened in presence of panchas. The walls of the house was constructed of bricks and cement and roof was of tin. The house was having two rooms. On the southern side, in the said room, one wooden cot was placed. On northern corner of kitchen, wooden planks were kept and other portion of the kitchen was floored with cement concrete.

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The portion beneath wooden planks was looking like dug and pit. After removing the planks and utensils, they dug the place and the dead body was removed from the said place which was identified by informant PW2 Sonali Maraskolhe as her mother. Accordingly, he has drawn the spot panchanama as well as inquest panchanama. The investigating officer has seized clothes of the deceased. The strangulation marks were found on the throat. Accordingly, the spot and inquest panchanamas were proved through him, which are at Exhs.59 and 60.

During his cross examination, he admitted that he has not seen documents of ownership of the house.

Except this cross examination, nothing incriminating is brought on record.

29. As already observed, none of witnesses has supported the prosecution case and, therefore, the

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prosecution placed reliance on the evidence of investigating officer PW13 Vanmala Pardhi, who carried out the investigation in the said crime. Her evidence states about investigation carried out by her. As per her evidence, accused No.1 came in the police station, who was talking irrelevant, and he was saying that, "he has killed his wife". After some time, informant PW2 Sonali Maraskolhe along with her sister came to the police station. The same information was given by accused No.1 to the informant also and, therefore, they proceeded towards the spot. She has issued a letter to the Sub Divisional Magistrate. The Tahsildar and panchas were called and the Tahsildar has drawn the panchanama at the spot of the incident. The dead body was recovered from the said house. She has seized simple soil and blood stained soil from the spot. On the basis of the report lodged by informant PW2 Sonali Maraskolhe, she has registered the crime. The inquest

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panchanama was also prepared. The clothes of the accused persons as well as clothes of the deceased are seized. The blood samples of the accused persons are also collected with the help of the medical officer. Her evidence shows that on 9.10.2013, accused No.1 disclosed in presence of panchas that he is ready to produce “stick” and an “iron-rod of weighing scale”. At the instance of accused No.1, the said “iron-rod” and “stick” were recovered by drawing panchanama Exh.109. On 10.10.2013, accused No.2 was enquired in presence of panchas. He has made a statement that he is ready to produce one “spade” and “pick-axe” from the dilapidated rooms of house at Inzala. Thereafter, he led them and in presence of panchas, he has shown the place and accordingly the said articles were recovered at the instance of the accused. She has seized the said articles in presence of panchas. Her evidence further shows that the said articles are forwarded by her for chemical analysis.

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After completion of the investigation, she submitted chargesheet against the accused persons. During her cross examination, it came on record that when she reached the spot, the house of accused No.1 was locked. Her cross examination further shows that when accused No.1 approached the police station, she asked him to sit and he was sitting in the police station.

As far as accused No.2 is concerned, her evidence only shows that during the investigation, it revealed to her that accused No.2 has assisted accused No.1 in concealing the dead body of the deceased in the house.

30. Learned counsel for the accused persons submitted that as far as accused No.1 is concerned, now, the appeal is abated against him.

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As far as accused No.2 is concerned, except bare statement, that during the investigation, it revealed that accused No.2 has assisted accused No.1, there is no material to connect him with the alleged offence.

It is submitted that in fact, foundational fact, that accused No.2 was residing along with accused No.1 and the deceased, itself is not proved. On the contrary, the evidence of the witnesses shows that accused No.1 was residing along with his second wife at Hinganghat and not at Inzala.

He submitted that admission given by PW1 Narayan Timase, who acted as a pancha on spot panchanama, and informant PW2 Sonali Maraskolhe, shows that there was no door to the house of the deceased towards backside and, therefore, entering into the house by any other person cannot be ruled out. He submitted that

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in fact, there is no allegation against accused No.2 that he has caused death of the deceased.

31. Learned Additional Public Prosecutor for the State invited our attention to the memorandum statement of accused No.2 and recovery at his instance. Admittedly, panchas have not supported the prosecution case and, therefore, she placed reliance on the CA Reports Exh.128 and submitted that “pick-axe” and “spade” were recovered at the instance of accused No.2 and blood stains are found on the “pick-axe”, which are of human blood and no explanation is put forth for the same. Admittedly, pancha i.e. PW12 Raspal Shendre has not supported the prosecution case as far as voluntary statement of accused No.2 and recovery at his instance are concerned. The evidence of the investigating officer also not discloses that accused No.2 has made a voluntary statement and in

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pursuance of the said statement, he has led the panchas and articles are recovered.

32. As far as the evidence as to the recovery is concerned, the doctrine underlined under Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The conditions necessary for the applicability of Section 27 of the Act are that; (1) discovery of fact in consequence of an information received from accused; (2) discovery of such fact to be deposed to; (3) the accused must be in police custody when he gave information; and (4) so much of information as relates distinctly to the fact thereby discovered is admissible. What is admissible is the information and the same has to be proved and the opinion form it by the police officer. The exact information given by

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the accused while in custody which led to recovery of the articles has to be proved. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

33. In the present case, there is no evidence on record that accused No.2 has made a voluntary statement and in pursuance of the said statement, recovery was made.

34. Thus, the evidence of the investigating officer, regarding recovery of the incriminating articles, is also not proved by the prosecution.

35. The accused No.2 is charged for offence punishable under Section 201 read with 34 of the IPC.

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Section 201 of the IPC deals with causing disappearance of evidence of offence, or giving false information to scree offender. Having regard to the language used, following ingredients emerge:

“(i) committal of an offence;

(ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(iii) person charged with the offence under Section 201 IPC should have caused disappearance of evidence or should have given false information regarding the main offence; and

(IV) the act should have been done with the intention of screening the offender from legal punishment.”

36. Thus, intent to screen the offender from legal punishment is essential. Such intention exists or is

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presumed to exist in the mind of the accused when he has some interest in the person who committed the main offence. Though identity of a person who committed the main offence is not established in evidence, there must be material to indicate that the accused knew who is the main offender and when the accused did the act of causing disappearance of evidence or giving false information regarding the offence. The intention to screen the offender must be the primary and sole object of the accused. Mere fact that concealment was rightly to have that effect is not sufficient. Mere suspicion would also not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The foremost necessity is that, the accused must have knowledge or have reason to believe that such an offence has been committed.

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37. The observations of the Hon'ble Apex Court in the cases of **Palvinder Kour vs. State of Punjab, reported in AIR 1952 SC 354** and **Roshan Lal vs. State of Punjab, reported in AIR 1965 SC** are relevant, which are as follows:

“Section 201 is somewhat clumsily drafted, but we think that the expression "knowing or having reason to believe" in the first paragraph and the expression "knows or believes" in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe that an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under Section 201. If it be supposed that the word "believes" was used in a sense different from the expression "having reason to believe", it would be necessary for the purpose of inflicting punishment upon the accused to prove that he "believes" in addition to "having reason to believe". We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first

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paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved”.

38. In the light of the above interpretation, as regards Section 201 of the IPC, if facts of the present case are taken into consideration, except the admission given by PW8 Archana Dhurve, there is absolutely no material to show that accused No.2 was residing along with accused No.1 and he was present at the relevant time along with accused No.1. On the contrary, the entire evidence shows that accused No.1 himself was not residing at Inzala and he was residing along with his second wife Kalyani at Hinganghat. Police Patil PW6 Vinayak Mute of village Inzala, has also not stated that accused No.2 was residing along with accused No.1. On the contrary, he has admitted during his cross examination that he is not aware, whether, at the time of the incident, accused No.1 was at Inzala.

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39. Thus, the entire evidence of the prosecution is not cogent and reliable, as far as involvement of accused No.2 is concerned.

40. The burden is on the prosecution to establish the fact that accused No.2 was residing along with accused No.1 and the deceased at the spot of the incident. None of witnesses has stated presence of accused No.2 along with accused No.1 at village Inzala and, therefore, in absence of any evidence, observation of learned Judge of the trial court, on the basis of the evidence of investigating officer, that during the investigation involvement of accused No.2 is revealed, is not sufficient to hold him guilty and, therefore, the said observation of learned Judge of the trial court appears to be erroneous without having been there any evidence to the extent that accused No.2 has assisted accused No.1 in disappearance of the evidence. The act of accused No.2 in disappearance of the evidence is itself is

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not proved by the prosecution and, therefore, the prosecution miserably failed to prove the charge under Section 201 read with 34 of the IPC against accused No.2.

41. In this view of the matter, the criminal appeal deserves to be allowed and, therefore, we proceed to pass following order:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 28.3.2019 passed by learned Additional Sessions Judge, Hinganghat, district Wardha in Sessions Case No.25/2017 convicting accused No.2 - **Vijay @ Sardar s/o Gulabrao Uikey** for offence punishable under Section 201 read with 34 of the IPC is hereby quashed and set aside.

(3) The amount of fine, if any, be returned to accused No.2 on due identification and verification.

Judgment

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(3) The R&P be sent back to the trial court.

Appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

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