



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.284 OF 2016

Sardar Bashirkhan Pathan
Age: 24 years, Occu.: Agril.,
R/o. Chincholirao,
Taluka and District Latur

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...

CRIMINAL APPEAL NO.442 OF 2016

Gopal s/o Narayan Jadhav
Age: 27 years, Occu.: Labour,
R/o. Dhanora (Bamni),
Taluka Nilanga, District Latur.

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...

Mr. S. J. Salunke, Advocate for the appellant in Criminal Appeal No.284 of 2016.

Mr. Satej S. Jadhav, Advocate for the appellant in Criminal Appeal No.442 of 2016.

Mrs. V. S. Choudhari, APP for the respondent – State in both the appeals.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 15th June, 2023

PRONOUNCED ON : 11th August, 2023

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Both the appeals are arising out of the same judgment, hence, we propose to dispose of these appeals by this common judgment. Both the

appellants are original accused Nos.1 and 2 respectively, who faced trial in Sessions Case No.110 of 2013 before the learned Additional Sessions Judge, Latur for the offence punishable under Section 302, 201 read with Section 34 of Indian Penal Code and they have been held guilty under those Sections by judgment and order dated 17.03.2016.

2. The prosecution story in short is that P.W.2 Sunil Dande, who was the then Police Patil of village Selu, gave information to AUSA Police Station around 2.30 p.m. on 28.05.2013 that dead body of one unknown male person is floating on the water in the well in the field of one Sunil Bajaj. The said A.D. was recorded as A.D.R. No.28 of 2013 under Section 174 of the Code of Criminal Procedure and further inquiry was conducted by P.W.9 PHC Mohan Kamble. He went to the spot along with panch witnesses and photographer. The dead body was taken out of the well with the help of people. Photographs were taken. It was found that the hands and legs of the dead person were tied with long handkerchief locally called as *Ganja*. Panchanama of the spot as well as inquest panchanama was carried out and then the dead body was sent for the postmortem. Provisional death certificate was given disclosing that the cause of death is due to "head injuries" and, therefore, FIR was lodged by P.W.9 PHC Mohan Kamble on 29.05.2013 stating that unknown person has committed murder of unidentified youth. News was published by him making appeal to the

public to identify the dead body. It is the further prosecution story that PW.6 Dadasaheb Kamble along with some persons from Beed district went to Ausa police station on 30.05.2013 and they identified the dead body on the basis of tatto "Jaibheem" on the chest and the clothes on the person of the deceased. It was identified that the dead person is his elder brother Anand Sadashiv Kamble. Statement of said Dadasaheb was recorded after the last rites were over. The investigation was carried out by PW.17 API Pujari. It was revealed that Anand was using two mobile numbers. The call details from both the sim cards were gathered. He found the IMEI number in respect of the handset and it was put on surveillance. P.W.4 Datta Kawle was found to be possessing the mobile handset of the said IMEI number. He disclosed that he has purchased the said mobile from accused No.2 Gopal. The said handset was then seized. After the arrest of accused No.2, names of other accused persons were revealed. They made certain discoveries in respect of the weapon that was used in the commission of the crime, vehicles those were used. It was further revealed that Anand was serving as a driver with one Vilas Jogdand. The accused persons posed themselves to be the customers who are in need of the vehicle on hire and after they had taken the vehicle, they had gone beyond Naldurg and then they went near Ausa. Thereupon, Anand was murdered and he was dumped in the well. Test Identification parade was arranged and then accused persons were identified by said Vilas Jogdand and

another person who was serving with him as driver on another vehicle belonging to him. After the completion of the investigation, charge-sheet was filed.

3. After the committal of the case, charge was framed originally against three accused persons i.e. present appellants and one Vijay Uttam Narange for the offence punishable under Sections 302, 201 read with Section 34 of Indian Penal Code. It can be seen that prosecution has examined in all eighteen witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Trial Judge has held accused Nos.1 and 2 guilty of committing offence punishable under Section 302 of Indian Penal Code. They have been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.3,000/-, in default to suffer simple imprisonment for three months. Further, they have been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 201 of Indian Penal Code. Set off has been granted under Section 428 of the Code of Criminal Procedure to both of them, as they were never released on bail. Accused No.3 has been acquitted of all the charges. Out of the fine amount, amount of Rs.8,000/- was directed to be given to the legal heir of deceased Anand as compensation. This order is under challenge in both the appeals.

4. Heard learned Advocate Mr. S. J. Salunke for the appellant in Criminal Appeal No.284 of 2016, learned Advocate Mr. Satej S. Jadhav for the appellant in Criminal Appeal No.442 of 2016 and learned APP Mrs. V. S. Choudhari for the respondent – State in both the appeals. and perused the record.

5. It has been vehemently submitted on behalf of both the appellants that the prosecution case is based on circumstantial evidence. Reliance has been placed on the decision in **Hanuman Govind, Nargundkar and another Vs. State of M. P., [AIR 1952 SC 343]**, wherein it has been held that “In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjectures or suspicion may take place of legal proof.... in cases where the evidence is of circumstantial nature, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusive consistent with the innocence of the accused and it must be such as to show that within all

human probability the act must have been done by the accused.” Here, the prosecution has led the evidence of P.W.6 Dadasaheb, but he cannot be said to be the person, who had seen the accused in the company of deceased prior to the death of deceased. P.W.10 Vijay Vidhyagar has deposed that he himself as well as Anand were working as driver on different vehicles belonging to Vilas Jogdand. Anand was driver on Indica Car bearing No.MH-23-E-8854. They used to park their vehicle near Axis Bank, Shivaji Chowk, Beed and used to wait for the customers to come and take the vehicles on hire. Around 2.00 to 2.30 p.m. on 27.05.2013 he was waiting for the customer. Along with him, Vilas Jogdand and Anand Kamble as well as one Bhange were waiting at the same point. At that time, Three persons came near the vehicle and asked him about the charges. He told that the charges is at the rate of Rs.7/- per kilometer. Those persons told him that they would pay at the rate of Rs.6/- per kilometer and then those persons went near Anand Kamble. Upon negotiations, Vilas Jogdand asked Anand to carry the passengers at the rate of Rs.6.50/- per kilometer. According to him, those persons sat in the car driven by Anand and said car went to Barshi road around 3.00 p.m. His testimony has been taken as the person on the point of last seen together. Similar is the statement of P.W.11 Vilas Jogdand. However, it is to be noted that the dead body was found on 28.05.2013 after 2.00 p.m., that means mere 24 hours had elapsed and the news in the newspaper was flashed on 31.05.2013. The test identification

parade in this case has been held on 10.07.2013. Therefore, it is hard to believe that these two persons would have remembered the face of those three persons who had taken their Indica Car belonging to P.W.11 Vilas on hire. P.W.11 Vilas had not taken any documents from those customers when he allegedly given the vehicle on hire. The test identification parade has tried to be proved through P.W.18 Dr. Ashishkumar Biradar, who was the then Naib Tahsildar. The Executive Magistrate has not followed the basic rules of test identification parade. Though it is said that test identification parade was held in jail, yet the rules require that the persons from the same age group should be arranged and then the identification parade can be held. The said test identification parade cannot be said to be legal. He relied on the decision in **Chunthuram Vs. State of Chattisgarh, [(2020) 10 SCC 733]**, wherein it has been held that “the test identification evidence is not substantive piece of evidence, but can only be used in corroboration of statements in court.” It has been brought on record through the cross-examination of P.W.18 Naib Tahsildar as to how he had taken the help of police to procure the presence. Therefore, the said test identification parade is doubtful and will have to be taken with suspicion. The learned Trial Judge appears to have relied upon the said defective piece of evidence.

6. It has been further submitted on behalf of the appellants that though P.W.1 Dr. Rahul Anerao has proved that death of deceased Anand was

homicidal in nature, yet the Trial Court failed in considering that the panchas have turned hostile. P.W.4 Datta is the scrap merchant, who purchased the mobile from accused No.2, however, that evidence cannot prove the offence of the accused persons beyond reasonable doubt. P.W.6 Dadasaheb, who is the brother of the deceased, had identified the body and he says that in search of deceased, they had gone to the Toll plaza of Naldurg along with P.W.11 Vilas Jogdand and P.W.8 Gautam Khemade. They had seen CCTV footage from the Toll Plaza wherein they could get that vehicle had crossed the Naka, but there was no further clue. Therefore, P.W.10 Vijay and P.W.11 Vilas cannot be said to be the proper persons to prove the last seen theory together. Learned Advocate for the appellants have relied on the decision in **Lalchand Cheddilal Yadav Vs. State of Maharashtra, [2000 (3) Mh.L.J. 440]**, wherein it has been held that it is necessary for the prosecution to produce evidence that steps were taken at once to seal the articles. If the evidence is missing, possibility of blood being smeared on it prior to its being sent to the Chemical Analyst cannot be ruled out. Further reliance has been placed on the decision in **Kalyan Deorao Sawase Vs. State of Maharashtra, [2021 (6) Mh.L.J. (Cri.)]**, wherein it has been held that, “mere recovery of a weapon/articles on the disclosure statement given by the accused under Section 27 of the Indian Evidence Act, is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter.” The appellants have raised

question in respect of the discovery of the weapons and, therefore, they submit that since there is illegality and no proper appreciation of evidence, the appeal deserves to be allowed.

7. Per contra, the learned APP strongly opposed the appeals and submitted the reasons given by the learned Trial Judge. It is submitted that the accused persons gone to P.W.10 Vijay first. He had negotiations with the accused. He had sufficient chance to see the accused persons and interact with them. It appears that he was not ready for charging less amount for hire than amount of Rs.7/- per kilometer, but then there was negotiations between P.W.11 Vilas Jogdand, deceased and the accused persons and P.W.11 Vilas Jogdand asked deceased Anand to take accused persons by charging at the rate of Rs.6.50/- per kilometer. Even P.W.11 Vilas Jogdand had sufficient time to watch accused. There is no illegality or error committed by P.W.18 Naib Tahsildar in conducting the test identification parade. He had given opportunities to the accused persons to chose the place where the accused persons would stand. When there is no fault found in the same and it has been sufficiently proved that deceased had gone along with the accused, the fact was also noticed in the CCTV footage by P.W.6 Dadasaheb till Toll Plaza of Naldurg, under the said circumstance, it was for the accused persons to explain how deceased was found in dead condition at some different place. The scientific evidence is

also supporting the prosecution. P.W.1 Dr. Rahul Anerao had proved that death of Anand was homicidal in nature. He had sustained injuries and his hands were tied with handkerchief. Therefore, the conviction awarded to the appellants is perfectly legal. It does not require any interference.

8. Before we proceed, we agree to the submissions on behalf of the appellants that when case is based on circumstantial evidence, then the law laid down on this point must be borne in mind. Apart from what was held in **Hanuman Nargundkar's** case (Supra) we will have to take note of the golden principles laid down on this point in famous case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116**. Those golden principles are as follows :-

“ There is no eye-witness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

Further, in **Vijay Shankar Vs. State of Haryana, 2015 (2) SCC 644** and recently in **Maghvendra Pratap Singh @ Pankaj Singh Vs. State of Chattisgarh, [Criminal Appeal No.915 of 2016 decided on 24.04.2023]** those golden principles have been reiterated.

9. Here, in this case, P.W.2 Sunil Dande is the Police Patil of village Selu, Tq. Ausa, Dist. Latur. He had received information from one Sunil Bajaj on 28.05.2013 that a dead body is floating in the water in his well. P.W.2 Sunil went to the said well, confirmed the information, went to Police Station Ausa and lodged A.D. Exhibit-44. At that time, the dead body was of unknown person. It has further come in evidence that police went to the spot, took out the dead body from the water, panchanama of the spot as well as inquest panchanama was executed and then the dead body was sent for the postmortem. Prior to that at the spot itself the photographs were taken. Though there is some objection as regards the spot and inquest panchanama, that objection appears to be not of serious nature. P.W.1 Dr. Rahul Anerao is the medical officer in PHC, Hasegaon, who conducted autopsy on 29.05.2013 between 10.00 a.m. to 11.40 a.m. He found six external injuries on the person of the deceased, which are as follows :-

1. Contused injury on left frontal parietal region, 8 cm x 1.5 cm in size. Bone deep in nature.
2. Laceration of lower lip in the center 1.5 x 0.5 cm.

3. Abrasion on left side of neck 10 cm x 1 cm in size obliquely upwards towards the angle of mandible on left side.
4. Contusion abrasion on left upper arm, 11 x 9 cm, lateral by side.
5. Abrasion on right shoulder, superiorly located, 10 in number, ranging from size 1 x 1 cm to 2 x 1 cm.
6. Abrasion on right thigh, anteriorly above the knee joint of size 4 x 2 cm.

Further, he found four internal injuries on the person of deceased, which are as follows :-

1. Haematoma present under scalp in orbito, frontal parietal region in left side, having size of 13 x 5 cm.
2. Fissured fractured in skull area extending from lateral wall of orbital at left side, extending upward to frontal area and anterior parietal region, 10 cm in length, blood clots seen at fractured edges of skull.
3. Subarachmoid hemorrhage present in the frontal and anterior parietal region.
4. Hemorrhage present in frontal and anterior parietal lobe of brain, size 30 cc.

10. The injuries noted by him in column No.19 were co-related to the injuries noted by him in column No.17. Taking into consideration all those

aspects, he has given opinion that the probable cause of death is head injury. Again, it is to be noted that there is no much dispute about the homicidal death in the cross, however, the main point here was the probable time of death. In his cross-examination, P.W.1 Dr. Rahul Anerao has stated that the death of said person might have occurred prior to 12 to 16 hours of performing autopsy. Thus, it is to be noted that when he had started the autopsy at about 10.00 a.m. and he says that the death might have occurred 12 to 16 hours prior to the autopsy, then the probable time of death would be 6.00 p.m. of 28.05.2013, however, again at the cost of repetition it is to be noted that P.W.2 Sunil Dande, the Police Patil, in his cross-examination, has stated that he had received telephonic call from Sunil Bajaj, owner of the land and well, around 2.00 to 2.15 p.m. on 28.05.2013. The exact time of death is not coming forward and the opinion in this respect given by P.W.1 Dr. Rahul is not in consonance with the evidence of P.W.2 Sunil Dande. Here, in this case, the prosecution has not examined Sunil Bajaj, who is the owner of the well in order to bring the fact on record as to when he had seen the dead body in the well.

11. The prosecution is heavily relying on the testimony of P.W.10 Vijay and P.W.11 Vilas. Part of their testimony as to how they claim that they got opportunity to interact with the accused persons has been already narrated, but at the cost of repetition, if we want to consider their testimony, as per

PW.10 Vijay, accused went to him around 2.00 to 2.30 p.m. of 27.05.2013, whereas PW.11 Vilas says that those three persons went around 1.30 to 2.00 p.m. on 27.05.2013. Interesting point to be noted is that according to PW.10 Vijay those three persons whom he has then identified as accused Nos.1 to 3 had interacted with him first. He quoted the charges to go to Omerga at the rate of Rs.7/- per kilometer, but those persons told that they would pay at the rate of Rs.6/- per kilometer. He did not agree and then PW.11 Vilas says that he asked Anand to carry those persons after negotiations by charging them at the rate of Rs.6.5/- per kilometer. As per PW.10 Vijay, Anand had also taken part in the negotiations, but PW.11 Vilas does not say so. The most interesting fact is as per PW.10 Vijay he himself as well as Anand were working as driver on different vehicles belonging to PW.11 Vilas. That means on that day also Vijay was waiting for the customers to be taken in one of the vehicle belonging to PW.11. If PW.11 Vilas was present there that means the owner was present there, why driver would negotiate with the customers. Testimony of PW.11 Vilas would not show that he had in any way authorized Vijay or Anand to decide the rate for his vehicles. Further, PW.11 Vilas does not explain that when he agreed to accept the lesser amount, why he had not asked PW.10 Vijay to take the said customer. Rather PW.11 Vilas has absolutely not stated that the accused persons had interacted with PW.11 Vijay. He rather says that those three persons had asked another person Mr. Bhange for vehicle on hire, but

as they could not settle the charges with Mr. Bhange those persons came to him and then the contract was settled. P.W.10 says that those persons disclosed that they wanted to go to Omerga, whereas P.W.11 Vilas says that those persons disclosed that they wanted to go to Udgir. These two places are different though in the same District and the route to go to these two towns is different from Beed. Therefore, the genesis is not inspiring confidence. Even if then we accept that those three persons were taken by deceased Anand in the Indica car owned by P.W.11 Vilas, we can get from the testimony of P.W.11 Vilas and P.W.6 Dadasaheb - brother of the deceased that when Anand did not return, he lodged missing report on 29.05.2013 Exhibit-54. Thereafter, they went in search of the deceased. P.W.6 Dadasaheb is not disclosing that P.W.11 Vilas was accompanying him, but he says that he along with P.W.8 Gautam Khemade and one Santosh Jogdand had gone to Naldurg. In the Toll Plaza, they had found the vehicle going towards Naldurg in CCTV footage. They saw that Anand was driving the said vehicle, however, though they had checked the vehicles coming from Naldurg in the CCTV footage, they could not find the car on that day. Here, it is to be noted that they had seen deceased going with those three unknown persons between 1.30 to 2.30 p.m. on 27.05.2013. Again coming back to testimony of P.W.2 Sunil Dande - the Police Patil, the dead body was found on 28.05.2013 and at the cost of repetition we are not getting the time of death from testimony of P.W.1 Dr. Rahul. Under the said

circumstance, it cannot be said that the prosecution has proved the theory of last seen together. For establishing last seen theory, the proximity between the deceased found alive in the company of accused and the death of deceased should be too short so that it should not infer that somebody else would have come in contact with the deceased. We would like to rely on the decision in **Dinesh Kumar Vs. State of Haryana, AIR 2023 SC 2795**, wherein it has been held that :-

“12. The evidence of last seen becomes an extremely important piece of evidence in a case of circumstantial evidence, particularly when there is a close proximity of time between when the accused was last seen with the deceased and the discovery of the body of the deceased, or in this case the time of the death of the deceased.

This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased and the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased. The circumstances of last seen together in the present case by itself cannot form the basis of guilt.

The circumstances of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused

and the crime committed. Particularly, in the present case, when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak.

In *Nizam and Anr. Vs. State of Rajasthan*, (2016) 1 SCC 550 where the time gap between the last seen together and the discovery of the body of the deceased was long, it was held that during this period the possibility of some other interventions could not be ruled out. Where time gap between the last seen and time of death is long enough, as in the present case, then it would be dangerous to come to the conclusion that the accused is responsible for the murder. In such cases it is unsafe to base conviction on the “last seen theory” and it would be safer to look for corroboration from other circumstance and evidence which have been adduced by the prosecution.”

Further, reliance can be placed on the decision in **State of Karnataka Vs. M. V. Mahesh**, [(2003) 3 SCC 353], wherein it has been held that :-

“Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that Beena had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together.”

Further, reliance can be placed on the decision in **State of U.P. Vs. Satish**, [(2005) 3 SCC 114], wherein it has been held that :-

“The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased

were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”

12. Therefore, we conclude that the evidence led by the prosecution on this theory has not been properly appreciated by the learned Trial Court. There is no investigation on the point that from which road the said vehicle would have gone and whether any other person had seen the deceased in the company of accused. It is the further prosecution story that P.W.17 the Investigating officer API Pujari went to village Chincholirao in search of accused No.1. One Indica Car bearing No.MH-24-C-6892 having number plate in Marathi was parked in front of his house. Accused No.3 appears to be in the custody of the investigating officer on that day. Accused No.3 called accused No.1 and accused No.1 was then arrested and the said vehicle was seized. It is said that the said number plate was fake. Merely because the vehicle was found parked in front of the house of a particular person, it cannot be said that the said person was having possession of the said vehicle. Since when the said vehicle was parked there has not been gathered. No doubt, the driving license of deceased, photograph of

deceased with his wife were found from the said car, but only on the basis of the said car was parked in front of the house of accused No.1 cannot be ground to rope accused No.1 in the case.

13. Many panch witnesses in this case have turned hostile and therefore, if it can be said that none of the panchanamas have been proved, it will not be out of reality. Under the said circumstance, when the panchanamas have not been proved, the connecting link between the crime and the accused cannot be said to have been firmly established. The prosecution is also relying upon the test identification parade conducted with the help of PW.18 Dr. Ashishkumar Biradar the Naib Tahsildar. Even if we hold for a moment that he had followed all the rules and regulations for conducting the test identification parade, yet as aforesaid, P.W.10 Vijay and P.W.11 Vilas, who had allegedly seen the deceased in the company of accused would be around 1.30 to 2.30 p.m. on 27.05.2013. He was found dead on 28.05.2013 i.e. after about 24 hours, that too in the well of Sunil Bajaj. In view of **Chunthuram** (Supra), the test identification evidence being not of substantive piece of evidence cannot be relied in isolation.

14. All the memorandum and panchanamas under Section 27 of the Indian Evidence Act have been got proved through P.W.17 - then API Pujari as the panchas to the same have turned hostile. As aforesaid the testimony of the investigating officer is not inspiring confidence as he has not carried

out the investigation as to from where beyond the Naldurg Toll Plaza, the vehicle went towards Chincholirao. It has also not been brought on record that what is the distance between village Selu and Chincholirao, how the road beyond Toll Plaza goes to Selu and beyond that to Chincholi rao. The investigating officer has not stated as to what was the motive to commit the murder. In the case based on circumstantial evidence, the prosecution has to establish the motive. He has not added any other Section than Section 302, 201 of Indian Penal Code. When it was revealed to him that the car was having fake number plate, yet he has not added any other Section. It is also not the case that the deceased was robbed of any amount or article and the evidence to that effect has not been adduced. Then what was the motive behind committing the said crime has also not been proved by the prosecution.

15. Thus, the scrutiny of evidence would show that the evidence adduced by the prosecution in this case has not established the guilt of the accused beyond reasonable doubt. When there is penal liability, strict proof is required. All these aspects were not considered by the learned Trial Judge and, therefore, interference is required. The appeals therefore deserve to be allowed. Hence, the following order :-

ORDER

I) Both the criminal appeals stand allowed.

- II) The conviction awarded to accused Nos.1 and 2 i.e. present appellants in Sessions Case No.110 of 2013 by learned Additional Sessions Judge, Latur on 17.03.2016 stands set aside.
- III) The amount of grant of compensation also stands set aside.
- IV) The appellant in Criminal Appeal No.284 of 2016 – **Sardar Bashirkhan Pathan** and appellant in Criminal Appeal No.442 of 2016 **Gopal Narayan Jadhav** stand acquitted of the offence punishable under Sections 302, 201 read with Section 34 of Indian Penal Code.
- V) They be set at liberty if not required in any other case.
- VI) The fine amount deposited, if any, be refunded to the appellant after the statutory period is over.
- VII) We clarify that there is no change in the order in respect of disposal of Muddemal passed by the learned Additional Sessions Judge.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm