IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 705 OF 2012

Ashok Shankar Mhatre
Age 47 years, Occ: Business,
Resident of Jivdani Chawl, Dongripada,
Narangi, Virar (E), Taluka Vasai
(At present in Kolhapur
Central Prison, Kalamba at Kolhapur …Appellant

Versus

The State of Maharashtra …Respondent

Mr. D. S Mhaispurkar a/w Mr. H. S. Pawaskar, Mr. R.S. Patil i/b Mr. Ashish Sawant for Appellant.
Ms. Sangita E. Phad, APP for Respondent/State.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

RESERVED ON : 13th JANUARY 2026.

PRONOUNCED ON : 5th FEBRUARY 2026.

JUDGMENT : *(Per : SHREERAM V. SHIRSAT, J.)*

1. The present Appeal has been filed challenging the Impugned Judgment and Order dated 05.05.2012 passed by the Additional Sessions Judge, Vasai in Sessions Case No. 48 of 2010, whereby the Appellant was convicted under Section 302 of the Indian Penal Code (I.P.C.) and has been sentenced to suffer Life Imprisonment with fine of Rs.3,000/- and in default to undergo Simple Imprisonment for 6 months. The Appellant was also convicted for offence under Section 201 of I.P.C., and has been sentenced to suffer Rigorous

Imprisonment for 3 years and to pay a fine of Rs. 2,000/- and in default to suffer Simple Imprisonment for 3 months.

2. Brief facts of the case of the prosecution are as under:

a. It is the case of the prosecution that on 10th January 2010 at about 9.00 a.m. when the Complaint P.W. 1 - Prashant Raut was on his way towards National School, he saw a dead body with crushed face under a Tamarind Tree near National School. Since the place was falling within the jurisdiction of Virar Police Station, he informed the police. Accordingly, C.R. No. I-8 of 2010 was lodged in Virar Police Station.

b. Pursuant to the registration of FIR, the investigation commenced. The identity of the body was tried to be ascertained by publishing her photo in a newspaper. It is the case of the prosecution that the parents of the lady identified her as their daughter Kantabai. Subsequently, the investigation was taken over by the Local Crime Branch, Vasai Unit.

c. During the investigation, the telephone call records of the mobile phone of the deceased Kantabai were checked, which led to a few calls from the phone belonging to one Sapana Shetye and her husband Prasad Shetye. Inquiry with them led to the present Appellant. On 31.01.2010 the Appellant was arrested.

d. The investigation was further carried out and the chargesheet was

filed. The case was committed to the Court of Session and the Appellant faced the trial in Session Case No. 48 of 2010 before the Learned Additional Sessions Judge, Vasai at Vasai.

3. The following witnesses were examined by the prosecution during the course of trial:

Rank	Name	Nature of Evidence
P.W. 1	Prashant Raut	The Informant who had seen the dead body and who informed the police.
P.W. 2	Ganesh Bahurupi	Pancha who witnessed the collection of sample soil chappal and stones.
P.W. 3	Bapu Gaikwad	Taken photographs of the dead body
P.W. 4	Pradip Singh	Pancha for seizure of recovery of clothes of accused (hostile).
P.W. 5	Shankar Sawant	Brother-in-law of the Deceased who had procured SIM card for the Deceased.
P.W. 6	Bapu Phadake	Sold SIM card to one Santosh Pawar and Nilesh Holkar.
P.W. 7	Dinesh Holkar	Uncle of Nilesh Holkar Procured SIM card for the above mentioned Nilesh Holkar by giving his

		documents.
P.W. 8	P. C. Chitte	Conducted some part of the Investigation.
P.W. 9	Jaykumar Patade	Driver of Police Jeep who drove the vehicle after Accused made a voluntary statement about clothes, to take them to the spot.
P.W. 10	Dr. Bansode	Conducted postmortem examination.
P.W. 11	Prashant Shetye	Friend of the Appellant. He was examined on the point of Extra Judicial confession of the Accused and on the point of having seen the Deceased in the company of the Appellant in the night of 09.01.2010. The Appellant had used his phone to call the Deceased.
P.W. 12	Sapna Shetye	Wife of PW 11 and the mobile phone used by PW 11 actually stood in her name.
P.W. 13	Ramsuman Yadav	Neighbour of the Deceased about 3 to 4 months prior to the incident. Thereafter, the Deceased had shifted to Pune.
P.W. 14	Madhawan	Pancha for recovery of clothes of accused.

P.W. 15	Anil Sandbhor	Investigating officer
P.W. 16	Maruti Khedkar	Investigating officer
P.W. 17	Shekar Palanade	Nodal officer who had produced the call records.
P.W. 18	Sachin Bhadange	Nodal officer who had produced the call records.

4. Thereafter, 313 Statement of the Accused came to be recorded. Arguments were heard and the Appellant was convicted under Section 302 of the Indian Penal Code (I.P.C.) and has been sentenced to suffer Life Imprisonment with fine of Rs.3,000/- and in default to undergo Simple Imprisonment for 6 months. The Appellant was also convicted for offence under Section 201 of I.P.C., and has been sentenced to suffer Rigorous Imprisonment for 3 years and to pay a fine of Rs. 2,000/- and in default to suffer Simple Imprisonment for 3 months.

5. The Accused-Appellant preferred the Appeal before this Court challenging the aforementioned impugned judgement and order of conviction. The appeal came to be admitted on 21.06.2012.

6. We have heard Mr. D.S Mhaispurkar, Learned Counsel appearing for the Appellant and Ms. Sangita Phad, Learned APP for the State.

7. The Learned Counsel for the Appellant has submitted that the Appellant is innocent and has been falsely implicated. The Learned Counsel for the

Appellant has submitted that the case is based on circumstantial evidence and the circumstances that have been taken into consideration, though not specifically enumerated by the trial court, are the circumstances of motive, extra judicial confession, the theory of last seen together, call details of the deceased, recovery of blood stained clothes at the instance of the Accused-Appellant and has submitted that none of these circumstances have been proved by the prosecution. He has further submitted that there is no motive which has been proved by the Prosecution and there is no evidence on record to show that the Accused-Appellant had any affair with the Deceased. He has further submitted that the evidence of P.W. 11 to whom the Appellant had made Extra Judicial Confession has come by way of omission and therefore no reliance can be placed on such an Extra Judicial Confession, which is otherwise a weak piece of evidence. The Learned Counsel has further submitted that even the circumstance of last seen together with the Deceased has not been conclusively proved. He further submitted that the recovery of blood stained clothes is from an open place and P.W. 14 has admitted in the cross-examination that the clothes were not seized in his presence at the spot. He has further submitted that the blood found on the clothes of the Deceased as well as the Accused does not conclusively prove that the blood group of the Deceased is B and that of the Accused was A. He therefore submitted that the Appellant deserves to be acquitted by giving benefit of doubt.

8. Per contra, the Ld. APP has submitted that the Prosecution has

successfully proved all the circumstances, which has formed a complete chain of circumstances leading to only one conclusion that in all probabilities the Appellant has committed the murder of the Deceased Kantabai. She has further submitted that the evidence on last seen theory cannot be discarded as P.W. 11 has clearly stated that he had seen the Appellant and the Deceased leaving in a rickshaw after which there was no trace of the said lady and therefore the Prosecution has proved the circumstance of last seen together as well. The Learned APP has further submitted that the Appellant has given an Extra Judicial Confession that he was in relation with one Laxmi of Jivdani Pada and as she was having illicit relation with another person he became angry and killed her by strangulating her with a cloth. The Learned APP therefore submitted that there is nothing to disbelieve the Extra Judicial Confession made to P.W. 11. She has further submitted that the shirt of the Accused was found having blood group B which directly connects the Appellant with the crime in question. She has also submitted that there is a motive to commit the crime that has been brought on record by P.W. 13. The Learned APP therefore submitted that the conviction be confirmed.

9. The death of the deceased is homicidal in nature and was caused on account of asphyxia due to strangulation as per the post mortem report. Once the death is homicidal death, the burden lies on the Prosecution to prove that the death was on account of the act committed by the Accused with the intention and knowledge that this act would cause death of the Deceased

which would amount to offence of murder. In the present case there is no direct evidence or any eye witness to the said incident in question, but the case is based on circumstantial evidence.

10. Before adverting to the circumstances, it will be pertinent to refer to the ruling of the Hon'ble Apex Court in the case of ***Abdul Nassar Vs. State of Kerala and Another***[1] wherein it has been observed that:-

> "*14. Indisputably, the prosecution case rests on circumstantial evidence. The law with regard to a case based purely on circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda (supra), wherein this Court held thus:*
> *"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129].*
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> *This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail (Alias)Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of 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 conclusion*

1 2025 SCC Online SC 111

> *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.*"

11. Therefore, where the evidence is of a circumstantial nature or where the case is based on circumstantial evidence, the circumstances from which the conclusion of 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. Therefore, the circumstances should be of a conclusive nature 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 complete as not to leave any reasonable ground for a conclusion 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.

12. It will therefore have to be seen from the evidence that has come on record, whether the circumstances from which the conclusion of guilt is to be drawn is fully established and all the facts so established are consistent only with the hypothesis of the guilt of the Accused.

13. As stated above, in this case, there is no direct evidence and the case is entirely based on circumstantial evidence. The Trial Court has not specifically carved out the circumstances, however the circumstances which can be borne out from the evidence that has come on record are:-

i. Last seen together.

ii. Extra Judicial Confession by the Appellant to P.W. 11.

iii. Motive to commit murder.

iv. Recovery of Clothes and stones at the instance of the Appellant.

v. Blood stains on the shirt of the Appellant having the blood group " B" which is of the Deceased.

vi. Call details of the Appellant.

14. The first circumstance which can be taken into consideration for the analysis is the ***"Theory of Last Seen Together"***. At this stage it will be pertinent to refer to the ruling of the Apex Court in the case of ***Karakkattu Muhammed Basheer Vs State of Kerala[2],*** wherein it has been held as under:-

> *"27. The last seen theory, furthermore, comes into play where the time-gap between the point of time when the Accused and the Deceased were last seen alive and 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. Even in such a case the courts should look for some corroboration."*

15. In order to prove the circumstance of last seen together, the prosecution has examined P.W. 11, Prashant Prakash Shetty who is the friend of the Appellant. He has deposed that he knows the Appellant and they used to consume toddy together for last two years. He has deposed that on 09/01/2010, the Appellant had called him at about 9:30 am at Gandhi Chowk for consumption of Toddy. He has deposed that the Appellant had called him on his mobile phone from his mobile and thereafter, he went on the motorcycle

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with the Appellant to consume toddy and they were consuming Toddy from 11.00 a.m. to 11:30 a.m. He has further deposed that at that time, the Appellant asked him as to whether he has his mobile with him, as he wanted to call one party regarding the letting of premises on rent. He has deposed that he told the Appellant that there is no balance in the mobile upon which the Appellant told him that he will recharge the phone for making the call and thereafter the Appellant took him to Manvel Pada on motorcycle and got the mobile phone recharged. He has further deposed that by using the mobile, he called someone and after completion of the phone call, the Appellant returned the phone to him and left him near Geetanjali school. He has further deposed that again, he took his mobile phone and called someone and returned his mobile phone. He has further deposed that at about 1:30 p.m., the Appellant called him and enquired with him as to whether he had received a phone call from the party and again asked him to come to Gandhi Chowk. He has further deposed as to how till 7 p.m. they were in contact with each other and which other places he visited with the Appellant. He has further deposed that the Appellant had called him again, telling that he had brought liquor, and after the Appellant had consumed liquor at Guru Dutta Nagar, they went to Virar railway station and the Appellant made a phone call from his mobile phone and thereafter he went home. He has further deposed that the Appellant again called him at 10 p.m. and enquired about the phone call of the party and informed him that if he received the phone call from the party then he should

tell the party that he is at the railway station. He has further deposed that Appellant called him to Subway near railway station and when he reached Subway, he received a phone call from a lady who was enquiring for the Appellant. He has further deposed that he told the lady that the Appellant is likely to come at Subway and that she should wait near Booking office of the railway. He has further deposed that he informed the same to the Appellant on phone and thereafter the Appellant came near Subway and told him that the said Lady who standing near the Booking office is the party. He has further deposed that thereafter the Appellant and the said lady left towards Manvel Pada in a rickshaw and at that time the Appellant was wearing half white colour shirt, and black pant. On this issue in particular, in the cross-examination, the witness has admitted that he had seen the said lady for about one or two second. The witness has also admitted that since he had seen her only for one or two second, he cannot give her description. This witness has also categorically answered in cross-examination that except her saffron colour sari, he cannot describe any other cloth on her body and that it will be correct to say that he could not see her face. He has also answered in the cross examination that it will be correct to say that the photograph is of the lady whose face is smashed and therefore she is not identified.

16. From the evidence that has come on record, the theory of last seen together cannot be said to be conclusively proved. As per the evidence of P.W. 11, the Appellant was last seen in the company of the Deceased at about 10.00

p.m. on 09/01/2010 and the dead body was found in the morning at 8:45 a.m. on the next day. Considering the evidence on record, it is difficult to come to a conclusion that the Appellant is the author of the crime in question, especially considering the time gap between the time when the Appellant was last seen in the company and at the time when the said body was found in the morning at 8:45 a.m. on the next day. In the opinion of this Court, this circumstance is not conclusively established since the interval between the point of time when the Appellant and the Deceased were last seen together and the time when the Deceased was found dead is so wide that the possibility of any other person other than the Appellant being the author of crime cannot be ruled out. The last seen theory applies only when the time gap is so narrow that the hypothesis of involvement of some other person is completely eliminated. The last seen theory alone is weak piece of evidence and requires corroboration. Although there are several calls made to the Deceased by the Appellant through the mobile phone of P.W. 11 before they were seen going together, but that itself will not be sufficient to come to conclusion that the Appellant was the person who had committed the murder of the Deceased. Therefore this court is of the opinion that this circumstance has not been proved.

17. Another circumstance is the ***Extra Judicial Confession*** of the Appellant to his friend P.W. 11. The law on the subject is well crystalized. In the latest

judgment of the Hon'ble Apex Court in the case of ***Ramu Appa Mahapatar vs State of Maharashtra***[3]**,** it has been held that:-

> "*19. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan Vs. State of Tamil Nadu. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the Accused. That apart, in a case of circumstantial evidence where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. However, the confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the veracity of the witness to whom it has been made.*
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> *19.1. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows:-*
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> > *14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances,*

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the court would be fully justified in ruling such evidence out of consideration

19.2. Upon an in depth analysis of judicial precedents, this Court in Sahadevan (supra) summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an Accused: (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution. (ii) It should be made voluntarily and should be truthful. (iii) It should inspire confidence. (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. (vi) Such statement essentially has to be proved like any other fact and in accordance with law."

18. The Hon'ble Apex Court has in several rulings stated that Extra-judicial confession is a very weak type of evidence and requires appreciation with great caution and especially in a case based on circumstantial evidence where the reliance is placed on extra-judicial confession. In the facts of the present case, P.W. 11 has deposed that on 25/01/2010 or 26/01/2010, his mother-in-law called him informing that police are in search of Swapna i.e., the wife of the P.W. 11 and told him that police were making enquiry about the mobile phone of Swapna. He has deposed that as the Appellant had used his phone, he called him and asked whether he has done something to which he said that he did nothing. He has further deposed that he asked the Appellant to meet him personally, however, he was avoiding to meet him. He has further deposed that after about two days, he met him in Wadi and while consuming toddy he asked

him as to what really had happened. He has further deposed that the Appellant had told him that he had relation with one Lakshmi of Jiwani Pada, who is from Pune and he had called her here. He has further deposed that the lady was having illicit relation with another person and he being angry by this had killed her near National School Kargil Nagar by strangulating her with a cloth. He has further deposed that the Appellant told him that he killed her in the night of 09/01/2010 and that she was the same lady whom he had seen at the railway station on 09/01/2010. In the cross-examination, however, it has been brought on record that this Extra Judicial Confession has come by way of omission which has been duly proved in the cross-examination of P.W. 15, the IO. The most crucial factor which needs to be taken into consideration is that, what he had deposed in the court that he had stated to the police that Ashok told him that he had killed the lady by strangulating with the cloth, has come by way of omission and that he cannot assign any reason why it is not so mentioned in his statement. Therefore, the so called Extra Judicial Confession cannot be a circumstance upon which any credence be placed for being considered as a circumstance in the chain of circumstances in order to establish the guilt of the Appellant. An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence which is conspicuously missing in the present case.

19. The next circumstance is the ***Motive.*** In order to prove the motive, the prosecution has examined P.W. 13 to prove that the Deceased was having an affair with another person because of which the Appellant was enraged. Through this witness, it was tried to be brought on record that the Appellant used to visit the house of one Sitaram when his daughter Kantabai i.e., the Deceased used to be alone in the house and that he had seen the Appellant roaming around with Kantabai. However, this deposition that the Appellant used to visit the house of Kantabai when she used to be alone in the house has come by way of omission which has been duly proved in the cross-examination of the investigating officer. Further just because the Appellant was seen roaming around with Kantabai, it will be too far-fetched in the peculiar facts of the case to conclude that they were having an affair. Something more was required to be brought on record. The court is therefore of the opinion that even this circumstance cannot be said to be conclusively proved. Motive may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the Appellant-Accused but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the Accused beyond reasonable doubt.

20. The prosecution in order to prove the ***recovery of clothes*** as a circumstance in the chain of circumstances, has examined P.W. 4, P.W. 9 and

P.W. 14. As far as recovery of clothes of the accused is concerned, P.W. 4, the panch witness has turned hostile and has not supported the case of prosecution. The prosecution therefore examined P.W. 14 the other pancha witness, Seturaman Madhavan in order to prove the recovery of the clothes of the accused. Although in the examination in chief, the P.W. 14 has deposed that the Appellant took them to his house and from the place behind the house he took out plastic bag kept under the grass and out of the said bag he took out white coloured shirt and black pant with stains of blood on them and that the clothes were seized, panchnama was drawn, however, in the cross-examination, he has categorically replied that it is correct to say the plastic bag, shirt and pant were not seized in his presence at the spot and his signature was not obtained on it. He has further answered in the cross-examination that he cannot say about description of the clothes. He has also further admitted that he cannot say whether the clothes were seized are the same which were before the court. So also there is no material brought on record about the blood group of the deceased having being either collected or sent for chemical examination. Therefore, even the recovery of the blood stained clothes also cannot be said to be conclusively proved by the prosecution. Another attempt was made by the prosecution to prove the recovery of clothes at the instance of the Appellant and for that purpose, has examined P.W. 9. This witness P.W. 9 is the driver of the private jeep, which was taken to the spot, pursuant to the statement made by the Appellant with

respect to the clothes that he would show the place where he has hidden the clothes used at the time of commission of the offence. He has deposed that pursuant to the memorandum statement made by the Appellant as per the directions shown by the Appellant, they came to Nagi Chandan Nasar Road, Sainath Naka, where the Appellant called upon them to stop the vehicle. Although he has further deposed that he took them to one Chawl and from backside of the fifth room, the accused removed one plastic bag from heap of dry grass and from the said plastic bag he removed one white shirt and black pant and that the said clothes were seized and sealed at the spot and that the Panchnama was drawnm, upon analysis of the evidence of P.W. 9, it cannot be said to be of sterling quality to establish the said fact of recovery for the reason that in the first place he is not the panch witness as he was only a driver whose services were hired to drive the private jeep to lead to the said place. Secondly, this witness does not even refer to the presence of either of the panchas along with the police official to be present in the vehicle, which was driven by him. Therefore, this witness cannot be said to be conclusively proving the recovery of clothes. Hence, even this circumstance has not been cogently established by the prosecution.

21. The prosecution has examined P.W. 17 Shekar Palande and P.W. 18 Sachin Bhandge, who are the nodal officers of Tata Tele Services and Vodafone Cellular Limited respectively to establish another circumstance, i.e., to prove the ownership of the cell number of P.W. 12, Swapna Shetye, the wife of P.W.

Number 11, the cell number of the Appellant and that of the deceased to establish a connection and to show that on 09/01/2020, the Appellant was in contact with the deceased through the mobile phone of P.W. Number 11. Even assuming that the Appellant was in contact with the deceased on 09/01/2010, till the time he was last seen together with the deceased, that by itself will not be a reason to come to a conclusion that the Appellant is the author of the crime in question. It will at the most establish that the Appellant was constantly calling the deceased which culminated into both of them meeting at the railway station after which they left towards Manvel Pada in a rickshaw, however this will not be a conclusive proof that the Appellant had killed the said lady more so when the body was recovered in the morning. The time interval is too wide. What should have been brought on record or established was the tower location of the Appellant and the deceased along with the timings of both being together at a particular location, by means of cogent evidence, in which case an inference could have been drawn that the Appellant was with the deceased till the time of her death. In the absence of the same, even this circumstance cannot be said to be fully established which could be held against the Appellant.

22. It will be apposite to refer to the judgment of ***Ramanand @Nandial Bharti Vs State of Uttar Pradesh***[4]***,*** wherein it has been observed that:-

> "*116. Thus, none of the pieces of evidence relied on as incriminating by the courts below, can be treated as*

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> *incriminating pieces of circumstantial evidence against the Accused. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged Accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an Accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Though the offence is gruesome and revolts the human conscience but an Accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the Accused.* In Shankarlal Gyarasilal *(supra), this Court cautioned "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". This Court has held time and again that between "may be true" and "must be true" there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an Accused is condemned a convict.*"

23. In the case based on circumstantial evidence all the circumstances which the prosecution relies must be duly proved. In the present case as the important links in the chain of circumstances, itself are not proved and therefore the other circumstances pale into insignificance as the chain of circumstances is snapped. As has been held by the full bench of the Hon'ble Apex Court in the case of ***Darshan Singh v. State of Punjab***[5] "*Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances. There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap*

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in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt."

24. Taking into consideration the evidence that has been brought on record, it does not unerringly point towards the guilt of the Accused/ Appellant. No doubt it raises suspicion about the involvement of the Appellant; however, it is a settled law that suspicion, however strong it may be, cannot take the place of proof beyond a reasonable doubt and the Accused cannot be convicted on the ground of suspicion, no matter how strong it is. An Accused is presumed to be innocent unless proved guilty beyond reasonable doubt. The circumstances brought on record also do not form a complete chain so as to lead to irresistible conclusion about the involvement of the Appellant in the present crime. Establishing one or two circumstances beyond reasonable doubt is not sufficient to hold that the entire chain is complete as the chain of circumstances must be so complete that it leads to no other conclusion than the guilt of the Accused person, which is not so in the present case. The degree of proof required to hold him guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established. Due to the missing links finding of guilt cannot be recorded and the benefit of doubt must go to the Appellant.

25. We are therefore satisfied that the prosecution has failed to bring home the guilt of the Appellant beyond reasonable doubt and the Appellant deserves to be acquitted.

26. As a result, we pass the following order:

i. The Appeal is allowed.

ii. The conviction and sentence of the Appellant under Section 302 r/w 201 of Indian Penal Code recorded vide impugned judgment and order dated 05/05/2012, passed by the Additional Sessions Judge, Vasai in Sessions Case No.48 of 2010 is quashed and set aside and the Appellant is acquitted of all the charges he is charged with.

iii. The Appellant is on bail. His bail bond stands cancelled and sureties are discharged.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**