

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 629 OF 2021

Mukesh Mahadev Musahar

Age : 25 Years, Occu.:

R/o : In front of New CSMT Platform,

No.18, P. D'mello Road Footpath,

Mumbai – 400 001.

...Appellant

Versus

The State Of Maharashtra

(Through MRA Marg Police Station)

...Respondent

WITH

CRIMINAL APPEAL NO. 752 OF 2022

Avinash Bhushan Pimpalkar @ Raju

Age : 29 Years,

Residing at in front of New Cst Platform No.18,

P'Dmello Road Footpath, Mumbai 01.

Presently lodged Kolhapur Central Prison,

Kolhapur – 416007

...Appellant

Versus

The State of Maharashtra

(at the instance of MRA Marg Police

Station, CR No. 74/2016)

...Respondent

Mr. Dattatray Solankar for Appellant in Criminal Appeal No. 629 of 2021

Mr. Prosper D' Souza for Appellant in Criminal Appeal No. 752 of 2022

Dr. Dhanlakshmi S. Krishnaiyer, APP for Respondent-State

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

RESERVED ON: 14th JANUARY 2026.

PRONOUNCED ON : 25th FEBRUARY 2026

JUDGMENT (PER SHREERAM V. SHIRSAT J):

1. These are two Appeals challenging the judgment and order of conviction recorded by the Learned Sessions Judge for Greater Bombay, at Bombay on 12/01/2018 in a Sessions Case No. 459 of 2016, holding the Appellants guilty under Section 235 (2) of Criminal Procedure Code for offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code and sentencing them to undergo imprisonment for life and to pay fine of Rs. 2,000/- each, in default to suffer rigorous imprisonment for one month.

2. Although the Appellants have preferred two separate appeals, both the Appeals are being disposed of by a common order since the Appellants are convicted vide common judgment and order dated 12/01/2018. For the sake of brevity and contextual convenience, the Appellants are referred herein as to Appellant No 1 who is Accused No 1-Avinash Bhushan Pimpalkar @ Raju and Appellant No 2 who is Accused No 2-Mukesh Mahadev Musahar.

3. The Case of the prosecution is encapsulated as under :

a. It is the case of the complainant, that on 25/03/2016, he received a message from police control room at about 09.00 a.m. that a dead body was lying near the compound of Railway

Claims Tribunal at P. D'Mello road. It is further the case that they reached the spot at around 09.10 a.m. and one lady by name Rajeshree Sharma was present outside the compound. It is the case that thereafter the police were taken to the spot and shown the dead body. It is further the case that the dead body was lying inside the compound and that they entered inside the compound from the eastern main gate and saw that the dead body was of a lady about 55 to 60 years old and it was lying near the compound in a ditch. It is further the case that body was half naked and there were injuries on her face and that the face was not identifiable due to injuries. It is further the case that FIR came to be lodged against unknown person vide C.R. No 74/2016 on 25/03/2016 for the offences under Sections 302, 201 r/w 34 of IPC.

b. Thereafter investigation commenced and the Appellants came to be arrested on 27/03/2016. After completion of the investigation, the Charge-Sheet was filed.

4. The Sessions Court for Greater Bombay framed charges against the Appellants for the commission of offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code. Both the Accused pleaded not guilty for the charges and claimed to be tried. The defence

of the Appellants is of total denial and of having been falsely implicated in this case.

5. The prosecution examined 10 witnesses in support of its case:

P.W.NO.	NAME OF THE WITNESS
1	ASI Pandharinath Vithal Darade (Informant).
2	Rajshree Jagdish Sharma (Lady who reported the information to the Police).
3	Adesh Uttarmrao Shejav (who last saw both the Appellants with the deceased).
4	Mr. Samshunddin Hussain Mansoori (panch witness for recovery of brick at the instance of the appellant-accused Avinash).
5	Mr. Girish Govind Zaverre (panch witness for recovery of clothes at the instance of the appellant-accused Avinash).
6	Mr. Anup Ramkishor Pandey (panch for recovery of clothes and stone at the instance of appellant-accused Mukesh).
7	Mr. Nagesh Shanakar Nasari (panch witness for recovery of clothes at the instance of appellant-accused Avinash).
8	Dr. Hemal Jagdish Bhavani (Medical Officer of St. George Hospital, Mumbai).
9	Mr. Gajanan Vyankaro Bharati (Investigating Officer)
10	PI Gulabrao Arjun More (Investigating Officer)

6. The Learned Sessions Judge after completion of recording of statement under Section 313 of Cr. P.C. and after hearing the arguments of the Public Prosecutor and Ld. Counsel for the Appellants,

vide order dated 12th January, 2018 was pleased to convict both the Appellants under Sections 235 (2) of Criminal Procedure Code for the offences punishable under Section 302 r/w 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay fine of Rs. 2,000/- and in default, to suffer rigorous imprisonment for one month.

7. Being aggrieved by the said order of conviction recorded by a Judgment in Sessions Case No. 459 of 2016, dated 12th January 2018, passed by the Learned Sessions Court for Greater Bombay, the Appellants have approached this Hon'ble Court by way of Appeal.

8. We have heard Mr. Dattatray Solankar for Appellant in Criminal Appeal No. 629 of 2021, Mr. Prosper D'Souza for Appellant in Criminal Appeal No. 752 of 2022 and Dr. Dhanlakshmi S. Krishnaiyer, APP for Respondent-State in both the Appeals.

9. The Learned Counsels for the Appellants have submitted that both the Appellants have been falsely implicated. It is their submission that there is no eye witness to the alleged incident but this is a case of circumstantial evidence and therefore the complete chain of circumstances leading to only one conclusion that none other than the Appellants are guilty of the offences in question has not been

established and proved by the prosecution. They have further submitted that the last seen theory has not been cogently established by the prosecution and even the recovery of blood stain clothes, bricks and stones at the instance of respective Appellants do not inspire confidence. The Ld. Counsel for the Appellant No 1 further submitted that the recovery of clothes at the instance of Appellant No 1 is tainted as it has come in the evidence that the Appellant No 1 was handcuffed at the time of making the voluntary statement and therefore such a voluntary statement and the recovery thereof deserves to be kept out of consideration. They have further submitted that since the police were not able to apprehend the actual culprits, the Appellants being easy targets who were readily available in the vicinity, have been falsely implicated. The Ld. Counsels therefore prayed that the Appellants be acquitted.

10. *Per contra* the learned Addl. Public Prosecutor has submitted that the Trial Court has rightly convicted the Appellants and the conviction deserves to be confirmed. She has further submitted that the last seen theory is absolutely believable and there is nothing to disbelieve the said witness. The Ld. APP has further submitted that PW-3 is an independent witness who has categorically deposed about having seen the Appellants going along with the deceased and therefore the last

seen theory has been cogently proved by the prosecution. She further submitted that there are blood stains which have been found on the bricks, stones as well as on the clothes of the accused and the blood group is 'B' which is of the deceased and therefore submitted that chain of circumstances is duly proved. She therefore urged that the conviction be confirmed and such persons deserve no sympathy.

11. There is no direct evidence or any eye witness to the said incident in question, but the case is based on circumstantial evidence. 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. Keeping in mind this cardinal principle of criminal jurisprudence, 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 are fully established and all the facts so established are consistent only with the hypothesis of the guilt of the Accused.

13. Before adverting to the analysis of the evidence, it will be pertinent to succinctly discuss the evidence of the witnesses that has come on record. As stated above, the Prosecution has examined ten witnesses in support of its case.

14. PW 1 - Pandharinath V. Dharade, is the ASI who was attached to MRA Marg Police Station since the year 2013. He has deposed that on 25th March 2016, a message was received from Police Control Room at about 9 am about a dead body lying near the compound of Railway Tribunal at P D'Mello Road. He has further deposed that after reaching the spot at 9.10 am, a lady namely Rajashree Sharma (PW2) was present outside the compound and she informed that she had made call to the Control Room and then took him to the spot to show the dead body. He has further deposed that the dead body was lying inside the compound and when he entered inside the compound from the eastern main gate, he saw that a dead body was of a lady aged about 55-60 years and it was lying near the compound in a ditch. He has further deposed that the body was half naked and there were injuries on her face and that the face was not identifiable due to injuries. He has

further deposed that he lodged a complaint of murder of the said lady against unknown person. He also identified his signature on the FIR at Exhibit 12.

15. PW 2 - Rajashree Sharma, is the one who informed the police about the lying of dead body near compound of Railway Tribunal. She has deposed that she along with her mother and maternal aunt were residing at railway quarters. She has deposed that at 25th March 2016, she woke up at 8.30 am and went to railway toilet which was near to her residence and as there were water blocks, she went behind the said bathroom to verify the system. She has deposed that she saw a body of a lady lying behind the bathroom who was naked and a saree was just thrown on her body. She has deposed that she saw there were injuries on her face, therefore, she returned from there and informed to the watchman of the Railway Court. She has also deposed that she made a call to 100 and informed the address to the police. She has further deposed that when she returned after showing the spot to the police, her mother informed her that in the said night at about 2 am, her mother and maternal aunt had woken up due to cough and they heard noise of a lady saying in Marathi "Maru Naka, Mala Soda." She has further deposed that as they were three ladies residing at their house and many drug addicts used to roam around in the area during night,

they did not open the door or even go out on hearing the shouts.

16. PW 3 – Adesh Shejav, is the person who claims to have last seen the deceased and the Appellants going together. He has deposed that he is residing on Platform No. 18, CST Station since about 10 -12 years. He has deposed that he knows both the Appellants-Accused Mukesh and Avinash since last five years as they are also residing on Platform No. 18 of CST Railway Station. He has further deposed that on 25th March 2016, he had not seen anything, but at about 12 in the night, he had seen both the accused along with an old lady near a bathroom near the Railway Court. He has deposed that Avinash took the said old lady behind the bathroom and Mukesh also followed him. He has also deposed that he waited there for half an hour, however, none of those three had come out from that place. He has further deposed that he went to Platform No. 18 and slept over there. He has further deposed that on 26th March 2016 Saheb had shown a photograph which he identified to be of the same old lady who was taken there by those two accused. He has further deposed that he had narrated to the police what he had seen in the earlier night. In the cross-examination, he has replied that there is a toilet bathroom adjacent to the wall of the Railway Court and that all the persons residing on the platform use the same toilet. He has further replied in cross examination that he had not

seen exactly where the accused had taken the said lady. He has further replied that he had not heard shouts of any lady when he went to sleep and has also further stated that he had stated to the police that he had not seen Avinash and Mukesh since day before yesterday, i.e., 24th March 2016. He has also admitted that he does not know the said lady personally or where she was residing.

17. PW 4 – Samshunddin Mansoori, is the panch witness for recovery of brick at the instance of the appellant-accused Avinash. He has deposed that on 30th March 2016, he was called at MRA Marg Police Station. He has deposed that one arrested accused by name Avinash wanted to make a statement to show the place where the brick used at the time of incident is kept. He has further deposed that he along with other panch, after signing the panchnama, proceeded by Government vehicle as per directions of the accused and the accused took them at Platform No. 18 of CST Railway Station. He has further deposed that accused took them to some distance from the platform and there were some bushes and cement pipes and then the accused took out a half broken brick which was near the pipe. He further deposed that the brick was seized by the police and on inspection, it was found that there were blood stains on six spots on the brick which the police encircled the big blood stains appearing on the brick. In the cross-examination, he had

admitted that the police always call him whenever they need his help. He has further admitted that there were many stones lying on the spot and that the public used to go for toilet there. He also admitted that similar type of stones were lying on the spot at the relevant time.

18. PW 5 - Girish Zaveri, is the panch witness for recovery of clothes at the instance of the accused Avinash. He has deposed that on 30th March 2016, he was called at MRA Marg Police Station. He reached at 4 pm. He has deposed that an accused Avinash was present there. He has further deposed that police took them by police vehicle to some place and accused Avinash was with them. He has further deposed that they went to P. D'mello Road No. 18. He has deposed that he took them near a tree at some distance from Platform No. 18 and produced the clothes which he had concealed in a bag of which the police prepared the panchnama. He has further deposed that police also seized the sample and blood mixed soil from the spot. He has further identified those seized clothes.

19. PW 6 - Anup Pandey, is the panch for recovery of clothes and stone at the instance of accused Mukesh. He has deposed that he was called by the police attached to MRA Marg Police Station on 31st March 2016. He has deposed that the police had informed that he had to act as a panch for what the accused states. He has deposed that the said

accused Mukesh stated to the police in his presence that he would show the place where he along with another accused had committed the murder and he would also show the place where, stone by which offence is committed is concealed and also the place where clothes were concealed. He has further deposed that the accused took them to Platform No. 18 of CST Railway Station and the accused led to the bushes at some distance and there was heap of garbage and the accused took out a stone from the said place. He has further deposed that it was stone of a triangle shape admeasuring 4x6 inches and there were blood stains on the stone.

20. PW 7 – Nagesh Nasari, is the panch witness for recovery of clothes at the instance of accused Avinash. He has deposed that on 30th March 2016 at 4 pm, he was called at MRA Marg Police Station. He has further deposed that accused had stated in his presence that he has concealed the clothes at some place and also the deceased lady was thrown in a ditch of gutter and he would show such places. He has further deposed that thereafter, they proceeded from police station and the accused took them near Platform No. 18 at CST Railway Station. He has further deposed that accused took them to some distance from said platform and took out some clothes which were concealed by him inside the heap of rabbet (rubble). He has further deposed that the

clothes which were in a plastic kept in a sack and the police seized those clothes and affixed label which was signed by him. He has further deposed that accused took them to show the place of offence and took them near the toilet which was closed and they found blood stains there. He has further deposed that police took samples of blood mixed with soil and affixed their label. He has further deposed that the accused took them near the Court and the toilet and had shown the ditch where the body was thrown by them. He has further deposed that police prepared the panchnama where he made his signature. In the cross-examination, he has admitted that he has acted as panch earlier also and that the accused was handcuffed at that time.

21. PW 8 – Dr. Hemal Bhavani, has deposed that on 25th March 2016, he conducted postmortem of an unknown female dead body produced by MRA Marg Police Station at about 3 pm to 4 pm. He has deposed that the injuries were found on the face and body of the deceased. In the cross-examination, doctor has deposed that the injuries were not possible by fall on hard substance and that the injuries were not of the age about 48 hours prior to postmortem.

22. PW 9 – Gajanan Bharati, he has deposed that he is PSI attached to Crime Branch Unit 3. He has deposed that on 25th March 2016, at about 9 pm, ASI Darade informed him about recovery of a dead body of

a lady near compound of Railway Tribunal, P. D'mello Road. He has further deposed that he saw a dead body of a lady and prepared inquest panchnama of the body as well as spot panchnama. In the cross-examination, the officer has admitted that panchas were called after they went to the spot. He has further admitted that there is a forest like area, it is not a dense forest. He has further admitted that he had tried to search for any material nearby the spot prior to the arrival of panchas. He has also admitted that 5 to 6 police officers searched there but nothing was found.

23. PW 10 – Gulabrao More, is the PI attached to MRA Marg Police Station and he has deposed that after completing the investigation, he filed the chargesheet against both the accused.

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

- (i) Last seen theory
- (ii) Recovery of brick having blood stains at the instance of accused Avinash
- (iii) Recovery of blood stained clothes at the instance of accused Avinash

(iv) Recovery of stone, having blood stains, at the instance of Mukesh

(v) Recovery of clothes, having blood stains, at the instance of Mukesh

(vi) Motive

25. The first circumstance which can be taken into consideration for the analysis is the *“Theory of Last Seen Together”*. In order to prove the circumstance of last seen together, the prosecution has examined PW 3. PW 3 in his deposition before the Court has stated that he knows both the accused Mukesh and Avinash since last five to six years as they were residing on Platform No. 18 of CST Railway Station. He has deposed that at about 12 in the night, he had seen both the accused along with a lady near a bathroom near the Railway Court. He has deposed that Accused Avinash took the said lady behind the bathroom and Accused Mukesh also followed them. He has further deposed that he waited there for half an hour. However, none of them came out from the said place. He has further deposed that he went to Platform No. 18 and slept over there. In the cross-examination, he has confirmed that he went to sleep from footpath to platform at about 12 to 1 am. The PW- 3 has stated that he saw Avinash taking the said lady behind the bathroom and Mukesh followed him and he waited there for half an hour and none of them had come out from the said place he went to Platform No. 18 and slept over there. He has admitted in the cross-examination that

he had not seen exactly where the accused had taken the said lady. He has also stated that he had not heard the shouts of any lady when he went to sleep. It has come in the evidence of PW 2 that the dead body of the deceased was seen in the morning at 9 am. Analysis of evidence of PW 3 and PW 2 would show that PW 3 had last seen the Appellants with the deceased at about 12 to 1 am and as per PW 2 the dead body was seen at 9 am in the morning on 25/3/2016, therefore the time gap between the last seen together and the time when the body came to be recovered is too wide and also the place and circumstances in which the body was recovered, the possibility of others intervening cannot be ruled out. The said witness has also admitted that the persons residing on the said platform used to use the said toilet. In the absence of definite evidence, where the time gap is long and there is material to show that there is a possibility of intervention by some other persons, it would be dangerous to come to a conclusion that the appellants are the only persons responsible for the murder of the deceased. The Apex Court has, time and again, held that where the time gap is long, it would be unsafe to rely upon on the last seen theory and it is safer to look for other circumstances and evidence adduced by the prosecution.

26. It will be pertinent to refer to the ruling of the Apex Court in the case of *Karakkattu Muhammed Basheer Vs State of Kerala*¹, wherein it

¹ (2024) 10 SCC 813

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.”

27. In **Nazim & Ors. v. The State of Uttarakhand [2025] 10 S.C.R. 263**, it has been held as under:

“Even apart from the deficiencies in identification, the ‘last-seen’ theory is itself a weak link unless the prosecution establishes a narrow time gap between when the accused and the deceased were seen together and the recovery of the body, such that the possibility of intervention by a third person is excluded.

At this juncture, it is relevant to refer to the following decisions:a. This Court has consistently cautioned against treating the last-seen circumstance as conclusive proof of guilt. In State of U.P. v. Satish⁴, it was observed:

“22. 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 the 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....”

28. This Court therefore is of the considered opinion that from the

facts and evidence, the circumstance of last seen has not been conclusively proved.

29. The second circumstance is the recovery of brick having blood stains at the instance of accused Avinash (Appellant No 1) . The prosecution, in order to prove this circumstance has examined PW 4. The said witness has deposed that accused Avinash took them at Platform No. 18 of CST Railway Station. He has further deposed that accused took them to some distance in distance from the platform and there were bushes and cement pipe. He has further deposed that accused took out half broken brick which was near the pipe. It has come in the cross-examination that the public used to go for toilet there. Therefore, it can be safely inferred that it was place of public access. Moreover, the recovery of the brick has been after five days from the date of the incident. Taking into consideration the circumstances under which the recovery is made, it cannot be doubted that the recovery is from a place of public access. Further, the credibility of this witness also comes in question as he has categorically admitted that police used to always call him when they needed his help. In the opinion of the court this circumstance recovery of brick at the instance of the Accused Avinash (Appellant No 1) cannot be said to be conclusively proved.

30. The third circumstance is the recovery of blood stained clothes at

the instance of accused Avinash which according to prosecution were worn by him at the time of commission of offence. To prove this circumstance, the prosecution has examined Panch Witnesses PW5 Guirish Zaverre and PW7 Nagesh Nagari. These are the two panch witnesses who were present at the time of panchnama. However, if the evidences of PW5 and PW7 are perused, then it can be seen that there is stark difference between what PW5 and PW7 have deposed on the same aspect of recovery of clothes at the instance of the Accused Avinash. PW5 has deposed that accused Avinash had shown the clothes to him and he had taken them near a tree at some distance from platform number 18 and produced the clothes which he had concealed in a bag and the police prepared Panchama of its seizure. PW 7 who was the co-panch for the same recovery of clothes at the instance of accused Avinash has deposed that they proceeded from police station and accused took them near platform number 18 at CST Railway Station, then took them at some distance from the said platform and took out some clothes which were concealed by him inside the heap of rabbit (rubble). He has further deposed that the clothes which were in a plastic bag were kept in a sack and the police seized those clothes and fixed label, signed by him on it. Thus it can be seen that for the same recovery of clothes and despite being together during the panchnama,

in substantial deposition before the Court, these two panchas have given totally different versions and therefore, even this circumstance of recovery of clothes at the instance of Accused Avinash cannot be said to be conclusively proved. Further in the cross-examination, PW, 7 has admitted that he has acted as panch earlier and that the accused was present in detection room when he went there and that he was handcuffed at that time.

31. A useful reference can be made to the judgment in the case of ***Sakharam Raoji Dharap v. State of Maharashtra, Criminal Appeal No.562 of 2021 (2021:BHC-AS:19363-DB)*** wherein it is held as under:

“17. Insofar as the alleged recovery of the articles pursuant to the memorandum statement given by the accused is concerned, it has come in the evidence of the panch witness that at the relevant time, when the memorandum statement was made by the accused, he was handcuffed. The Division Bench of this Court (Coram: P.V. Kakade & J.A. Patil, JJ.) in the case of Laxman Keraba Patil vs. State of Maharashtra³, in paragraph 11 has held thus:

“11. The next piece of circumstantial evidence is, the alleged recovery of blood stained clothes, other articles and dagger having blood stains at the instance of the accused. P.W. No. 8 Giri, the panch witness has stated that, on 11-9-1995, the accused made statement in his presence at the police station that he had hidden the knife and clothes in a land and he would show the place to the police. Accordingly, memorandum panchnama Exh. 20 was made. Thereafter the accused led the police and panchas to the place where sugarcane crop was grown and accused produced one pant on which blood stains were found. Thereafter he further led them to another field and produced one bag, a dagger and a sandal alongwith a banian, a

shirt and a pant. There was a sheath of dagger also. All these articles were seized by the police under panchnama Exh. 21. Said articles were at Nos. 19 to 26. In the course of his cross-examination, the panch witness has admitted that, during the entire process, the accused was handcuffed and was taken handcuffed in the jeep with the police.

Now, apart from the merits of this particular piece of circumstantial evidence i.e. recovery contemplated under section 27 of the Evidence Act, it is to be noted that, factum of handcuffing of the accused shows that it cannot be said beyond doubt that the recovery was voluntary and not the result of duress, threat or pressure by the police authorities.

This Court, in the case of Shankar Raju Banglorkar v. State of Goa, has held that the disclosure by the accused while he was handcuffed, amounted to disclosure under duress, pressure or threats given by police and hence is not admissible in view of Article 20 of the Constitution. This view was again relied upon by the Division Bench of our High Court in the case of Deoraj Deju Suvarna v. State of Maharashtra, 1994(4) Bom.C.R. 85 : 1994 Cri.L.J. 3602, wherein similar view was taken. We may observe that, no doubt that, while disclosure of the fact is made by the accused as contemplated under section 27 of the Evidence Act, he is in police custody, however, the voluntariness of his statement is guaranteed by the testimony of independent panch witnesses. However, when the accused is handcuffed during the process, it is nothing but physical manifestation of possibility of duress, threat or pressure by the police authority and, therefore, voluntary nature of the disclosure becomes doubtful.

Apart from this aspect, the evidence on record is conspicuously silent if the said articles were sealed or not after its seizure because it is not testified to by the panch witness nor by the Investigating Officer in the course of their evidence. Therefore, in our considered view, the entire evidence regarding recovery of incriminating articles at the of the accused is rendered doubtful and thus cannot be accepted at all.”

“18. In the present case also, during the entire process of the alleged recovery of the articles, as admitted by the panch witness, the appellant was handcuffed by the police at the relevant time of finding out the allegedly recovered articles. In

the aforesaid authoritative pronouncement, this Court has taken a view that the factum of handcuffing of the accused shows that, it cannot be said beyond doubt that the recovery was voluntary and not the result of duress, threat or pressure by the police authorities.

“19. In the light of the discussion in the foregoing paragraphs, in our opinion, it is not necessary to elaborately discuss the evidence of other witnesses i.e., panchas and other witnesses on recovery of the articles in view of the legal position stated in the case of Laxman Keraba Patil vs. State of Maharashtra (supra), that when the accused is handcuffed and the articles are recovered pursuant to his statement, cannot be said to be beyond doubt that the recovery was voluntary and not the result of duress, threat or pressure by the police authorities.”

“20. In the light of discussion in foregoing paragraphs, we are of the considered view that the appellant – accused deserves to be given benefit of doubt and is entitled to be acquitted. Accordingly, the following order is passed:”

32. Therefore, this circumstance of recovery of clothes which has been made pursuant to the statement made by Avinash, when he was handcuffed cannot be said to be beyond reasonable doubt as the recovery cannot be said to be voluntary but as a result of pressure or threat by the police authorities.

33. Further even a perusal of the CA Report would show that the clothes which were recovered at the instance of the Accused Avinash viz the black coloured T-shirt had no blood detected on it and finding with respect to light blue coloured jeans is “Inconclusive” and therefore this circumstance also does not get conclusively proved.

34. The fourth and the fifth circumstance which is taken into

consideration is the recovery of stone and clothes, having blood stains, at the instance of Mukesh (Appellant No 2). To prove this circumstance, the prosecution has examined PW6. In the deposition of PW6, he has stated that upon being called on 31/03/2016, he went to the MRA Marg police station at 11:30 a.m. He has further deposed that police had shown an accused named Mukesh Mahadev and said that Mukesh would show the place where he along with another accused have committed the murder and he would also show the place where stone by which offence was committed is concealed and also the place where the clothes are concealed. He has further deposed that accused took them to Platform 18 at CST Railway Station and led them to bushes at some distance and there was a heap of garbage. He has further deposed that accused took out a stone from the said place and that it was a stone of triangle shape admeasuring 4 x 6 inches and further deposed that there were blood stains on the stone and the police encircled the stains and packed it in a Khaki wrapper. He has further deposed that the accused took them to a railway godown which was at some distance from platform 18 and produced the clothes from heap of garbage. He has further deposed that the clothes were blue shirt and brown colour (Tapkiri colour) pant. He has further deposed that the clothes were also seized in a Khaki wrapper and they put their signature on the label. He

has further deposed that the accused then led them to show the place of offence and took them behind the railway court at CST station and there was a closed toilet/bathroom and accused Mukesh had shown it as the place of offence. He further deposed that the accused Mukesh had shown the ditch as the place where the body of the lady was thrown. In the cross examination, the witness has admitted that the accused has not specified the name of the place where he has concealed the clothes and the stone and further told that the accused has said that it was at CST station. He has categorically admitted it was like a forest and many stones were lying there and admitted that Platform 18 is visible from that place and it is at 2-minute distance and also stated that the railway quarters are behind that area. He has also admitted that there is a railway court behind the forest and there has been no barricading kept by the police in the said area. He has also admitted that the stones like Article B were lying in the forest area and those were of different shape. What needs to be seen is whether the articles which were seized were sealed on the spot? This witness in his deposition before the court has not deposed or it has not come in his substantial evidence that the stone which was recovered has been sealed on the spot. Similarly, even the clothes which were recovered at the instance of the accused have not been sealed after its seizure as it

has not been so testified by the said witness in his deposition before the court. Even the Investigating Officer has not stated in the substantial evidence that the sealing of either clothes or stone was done on the spot. Therefore, the entire evidence regarding recovery of incriminating article at the instance of the accused is rendered doubtful and thus cannot be accepted. Since the recovery itself is doubtful, the finding of the blood stains of group B on the clothes of the accused Mukesh pales into insignificance.

35. *In a recent judgment, the Hon'ble Supreme Court of India in Criminal Appeal No.2143 of 2024 Hansraj vs. State of Madhya Pradesh 2024 INSC 318 decided on 19.04.2024 held as under:*

“14. As a consequence of the above discussion, we have no hesitation in holding that the prosecution miserably failed to prove the factum of disclosure made by the accused to the Investigating Officer (PW-12) leading to the recovery of the silver articles allegedly looted by the accused from the complainant. It is also important to note that the prosecution did not lead any evidence to show that the recovered articles were sealed at the time of recovery or that they were kept secure in the malkhana of the Police Station till the same were subjected to identification before the Executive Magistrate.”

36. Even in the judgment of *Sakharam Raoji Dharap v. State of Maharashtra*, supra, the Apex Court has held that when the accused is handcuffed and the articles are recovered pursuant to his statement, it cannot be said to be beyond doubt that the recovery was voluntary and

not the result of duress, threat or pressure by the police authorities.

37. In the absence of substantial evidence either by PW 6 or PW 10 about the factum of sealing at the spot, in our considered view, the entire evidence regarding recovery of incriminating articles at the instance of the accused is rendered doubtful and thus cannot be accepted at all.

38. The prosecution has also failed to establish any motive. None of the witnesses examined have deposed about the motive and therefore even this circumstance cannot be taken into consideration against the Appellants.

39. Taking into consideration the evidence that has been brought on record, it does not unerringly point towards the guilt of the Accused/ Appellants. No doubt it raises suspicion about the involvement of the Appellants; 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 Appellants 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 the Appellants 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 Appellants.

40. We are satisfied that the prosecution has failed to bring home the guilt of the Appellants beyond reasonable doubt and therefore the Appellants deserve to be acquitted. The trial court has failed to appreciate the evidence on the touchstone of the settled principles of law and has therefore erroneously returned a finding of conviction.

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

- i. Both the Appeals are allowed.
- ii. The conviction and sentence of the Appellants under Sections 302, 201 r/w 34 of Indian Penal Code recorded vide impugned judgment and order dated 12th January 2018, passed by the Learned Sessions Court for Greater Bombay in Sessions Case 459/2016

is quashed and set aside and the Appellants are acquitted of all the charges they are charged with.

iii. The Appellants be released forthwith if not required in any other case.

42. The Appeal stands disposed of and all pending applications also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)