



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

**CRIMINAL APPEAL NO. 236 OF 2021**

Gajanan S/o Janardhan Wankhede,  
Aged about 37 years, Occ. Labour  
R/o Ralegaon, Tah. Bhadrawati, Dist.  
Chandrapur

Present R/o Bhoyadapada, Tah. Wasai, Dist.  
Palghar.

... Appellant.

**// VERSUS //**

State of Maharashtra, through Police Station  
Officer, Majari, Tah. Bhadrawati, Dist.  
Chandrapur

... Respondent

Shri M.V. Rai, Advocate for the appellant.  
Shri K.R. Lule, APP for the respondent/State.

**CORAM : ANIL L. PANSARE  
NIVEDITA P. MEHTA, JJ.**

Reserved on : 20.01.2026  
Pronounced on : 28.01.2026

**JUDGMENT** : (PER : NIVEDITA P. MEHTA J.)

By the present appeal, the appellant calls in question the judgment and order dated 18.09.2019 passed by the learned Additional Sessions Judge, Warora, in Sessions Case No. 18 of 2017, whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short, "IPC") and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months.

2. Prosecution Case :

(i) The prosecution case, in brief, is that the informant Anil Khaire, lodged a report alleging therein that the deceased Kaushalya Wankhede was his cousin sister. She had two sons, namely Gajanan (the present appellant) and Prakash, both married. It was alleged that the deceased was mentally weak and therefore rarely visited by relatives. The appellant Gajanan was residing at Mumbai and had come to the village about one month prior to the incident along with his daughter Punam, aged about 12 years, to visit his mother.

(ii) It is the prosecution case that the appellant was persistently insisting that the deceased should transfer the house property in his name and used to quarrel with her on that issue. The other son Prakash had gone to Warora eight days prior to the incident for attending his duty.

(iii) On 11.06.2017, at about 6.00 p.m., the informant left for his duty at Issar Petrol Pump, Mazri Colony, and returned on 12.06.2017 at about 9.15 a.m. On his return, his wife informed him that on the previous night between 8.00 p.m. and 9.00 p.m., a quarrel had taken place between the deceased and the appellant, which she had overheard. She further stated that when she went to the house of the deceased, she noticed that the door was broken and upon entering, she found Kaushalya lying on a cot with injuries on her face and blood oozing from her nose. Kaushalya had succumbed to the injuries.

(iv) The informant further stated that one Jitu Khamankar, resident of Ralegaon, informed him that at about 9.00 a.m., he had seen the appellant and his daughter leaving the village and when questioned, the appellant stated that his mother had gone out of the village and therefore he was returning to Mumbai. Suspecting the conduct of the appellant and alleging that the information furnished by him was false, the informant lodged the report.

(v) On the basis of the said report, Crime No.196 of 2017 was registered against the appellant for the offence punishable under Section 302 IPC.

3. During the course of investigation, the Investigating Officer prepared the spot panchanama, seized blood stained articles including a broken pot, a German pot, and a stainless steel *charvi*. The inquest panchanama (Exh.17) was prepared and the dead body was sent for post-mortem examination vide requisition (Exh.52). The post-mortem report (Exh.38) was received.

4. The appellant was traced at the Bus Stand, Warora, and arrested on 12.06.2017. He was medically examined and the medical report (Exh.29) disclosed swelling on his right hand. Blood samples and clothes of the appellant were seized and sent for chemical analysis. The statement of the appellant's daughter Punam was recorded under Section 164 of the Code of Criminal Procedure. After completion of investigation, the charge-sheet was filed.

5. The learned Sessions Court framed Charge (Exh.2) against the appellant under Section 302 IPC. The appellant pleaded not guilty and claimed to be tried.

The prosecution examined thirteen witnesses. The statement of the appellant under Section 313 Cr.P.C. was recorded.

6. Upon appreciation of the evidence, the learned trial Court recorded, *inter alia*, the following findings:

- (i) The relationship between the deceased, the appellant, the informant, and prosecution witnesses P.W.2 Prakash and P.W.4 Mangala was not disputed.
- (ii) It was not disputed that on the relevant night, only the appellant, his daughter Punam, and the deceased were present in the house.
- (iii) The homicidal death of Kaushalya in her own house was not disputed.
- (iv) The appellant was apprehended on the very next day at Warora Bus Stand and medical examination revealed swelling on his right hand, for which no explanation was offered.
- (v) The defence theory that the deceased sustained injuries due to falling of tiles during heavy rain was belied by the spot panchanama, which revealed that the house had a tin roof and not a tiled roof.
- (vi) Blood stained utensils and a tiles' piece were recovered from the spot.
- (vii) The evidence of P.W.4 Mangala, P.W.6 Durga, and P.W.8 Ramabai established that a quarrel had taken place between the appellant and the deceased on the preceding night.

(viii) The motive of the crime was established, namely the appellant's insistence on transfer of property in his name.

(ix) The medical evidence ruled out accidental injuries and established that the death was caused due to multiple grievous injuries inflicted by hard and blunt objects.

(x) On the basis of the aforesaid evidence, the learned trial Court held that the prosecution had proved the guilt of the appellant beyond reasonable doubt and accordingly convicted and sentenced him as stated above.

7. Heard the learned Counsel Mr. Rai for the appellant and learned Additional Public Prosecutor Mr. K.R. Lule for the state.

Submissions on behalf of the Appellant :

8. Learned Counsel for the appellant submitted that the impugned judgment is unsustainable as the prosecution case rests entirely on circumstantial evidence and the chain of circumstances is incomplete. There is no direct eye-witness to the incident and the conviction is founded on suspicion rather than legal proof. It was contended that the testimony of PW.11 Punam, the minor daughter of the appellant, is unreliable due to material contradictions and omissions vis-a-vis her statement under Section 164 of the Criminal Procedure Code, coupled with admitted influence and unnatural conduct. In the absence of electricity and independent corroboration, her evidence cannot safely be relied upon. Learned Counsel further submitted that the alleged motive of property dispute is weak and

based on interested witnesses having strained relations with the appellant. Motive, even if assumed, cannot by itself sustain a conviction. It was also argued that the "last seen together" theory is not established, as P.W.7 Jitendra has deposed that the deceased was alive at about 6.00 a.m., thereby creating doubt regarding the time of death. The medical evidence does not conclusively support the prosecution version regarding the weapon of offence, and the alleged injury on the appellant's hand is not linked to the incident by medical opinion. Lastly, it was submitted that serious lapses in investigation further weaken the prosecution case. In view of the settled principle that benefit of doubt must go to the accused, the appellant is entitled to acquittal.

Submissions on behalf of the State :

9. The learned Additional Public Prosecutor supported the impugned judgment and submitted that the prosecution has proved the case beyond reasonable doubt. The homicidal nature of death is conclusively established by medical evidence. It was contended that a clear motive is proved, as the appellant was persistently quarrelling with the deceased over transfer of property. The testimony of P.W. 11 Punam is natural and trustworthy, and being a child witness, cannot be discarded merely on account of age. Her presence at the scene and narration of events inspire confidence. Learned Additional Public Prosecutor further submitted that the conduct of the appellant in leaving the village immediately after the incident and giving a false explanation regarding the whereabouts of the deceased is incriminating. The injuries found on the appellant's hand further corroborate the

prosecution case. According to the learned Additional Public Prosecutor, the cumulative effect of the evidence establishes a complete chain of circumstances pointing exclusively towards the guilt of the appellant, and therefore no interference with the conviction is warranted.

Discussion and Appreciation of Prosecution Evidence :

10. The prosecution case substantially rests on circumstantial evidence. Though PW. 11, the minor daughter of the appellant, has been projected as an eye-witness, her testimony also requires to be examined in the backdrop of the settled principles governing appreciation of child witness evidence. Therefore, we find it incumbent to re-appreciate the entire evidence and to ascertain whether the prosecution has succeeded in establishing the guilt of the appellant beyond reasonable doubt.

11. PW 1 - Wasudeo Chaudhary, the spot panch, deposed that he was called by the police to act as a panch witness. In his presence, the police drew the spot panchanama (Exh.16) and seized blood-stained cotton, a piece of tile, and two blood-stained utensils. He further stated that the inquest panchanama (Exh.17) on the dead body was prepared in his presence. In cross-examination, he denied the suggestion that no seizure was effected in his presence and admitted that there was no electric supply in the village on the night of the incident, which assumes significance while assessing the version of alleged eyewitnesses.

12. PW 2-Prakash Wankhede, the younger brother of the appellant and son of the deceased, deposed that the appellant, who was residing at Mumbai, had come

to the village about fifteen days prior to the incident and was staying in their mother's house. At his instance, PW 2 had left the house and was staying outside for work. While at Chandrapur, he received information about his mother's death and rushed to Ralegaon. At Rural Hospital, Warora, he noticed injuries on her head and hands and bleeding from her nose and learnt that the appellant had assaulted her. He stated that the appellant was demanding share in the property and had absconded from the village after the incident. In cross-examination, he admitted strained relations with the appellant and that his mother's mental health was not proper, but denied the suggestions of accidental fall or false implication due to property dispute. His testimony, therefore, is that of a interested witness and cannot be treated as substantive evidence of guilt.

13. PW. 3-Anil Khaire is the first informant. He is also not an eye-witness. His evidence establishes discovery of the dead body, alleged prior quarrels between the appellant and the deceased, conduct of the appellant in leaving the village after the incident. However, material omissions are admitted by him in cross-examination, particularly regarding quarrel having taken place in his presence, and details regarding the condition of the door and covering of the dead body.

14. PW. 4-Mangala Wankhede, sister of the appellant and daughter of the deceased, is an interested and inimical witness. She deposed that the appellant was demanding transfer of the house standing in the name of the deceased and, upon refusal, used to quarrel with an assault the deceased. She further deposed that during her visit to the deceased house on the eve of *Akhadi* festival, the appellant

attempted to assault her with a stone and asked her not to stay with the deceased, whereupon she left the village. In cross-examination, she admitted strained relations with the appellant and that she and her brother desired that the property should devolve upon PW 2. She further admitted that she had not personally witnessed the appellant assaulting the deceased and that her mother's mental health was not proper. Her testimony regarding alleged assaults by the appellant appears hearsay and motivated.

15. PW. 5—Dr. Rizwana Gawai proved swelling on the right hand of the appellant. However, no opinion is given regarding age or cause of the swelling. Mere presence of an injury on the appellant, without proof of its nexus with the crime, cannot be incriminating.

16. PW. 6—Durga Khaire, neighbour, claims to have heard quarrel but admits that there was no electricity and it was raining heavily. She did not see the alleged incident. Her evidence is, therefore, circumstantial and inferential, and cannot independently establish guilt.

17. PW. 7—Jitendra Khamankar, last seen witness, deposed that at about 6.00 a.m. on the day of the incident, he went to call the appellant for work and found him at home, while his mother was sleeping on a cot. At about 9.00 a.m., the appellant met him along with his daughter and stated that they were leaving for Mumbai. At about 12.00 noon, he learnt that the appellant had killed his mother. In cross-examination, he denied the suggestion that the appellant had not met him or

that he had not stated about leaving for Mumbai. This evidence creates doubt regarding the time of death, particularly in light of medical evidence suggesting death after about four hours of last meal.

18. PW. 8—Ramabai Ghaiwan, neighbour of the deceased's deposition initially supported the prosecution story, but in cross-examination, she stated that due to rain and lightning she could not hear anything clearly. She admitted that she had not personally intervened in the quarrel and that there was village gossip about the incident, but denied the suggestion of false implication. Such evidence is weak and unreliable.

19. PW. 10—Dr. Rohan Jabbalwar conducted post-mortem on the body of the deceased and found multiple external and internal injuries.

On external examination, he found following injuries :

- (i) *Contusion having size of 8 cm x 3 cm on her left forearm.*
- (ii) *Contusion having size of 6 cm x 2 cm on left forearm.*
- (iii) *Laceration having size of 5 cm x 4 cm x skin deep on left forearm.*
- (iv) *Contusion having size of 8 cm x 6 cm on right side of face.*
- (v) *The eyes were black.*
- (vi) *There was fracture to nasal bridge.*
- (vii) *Multiple abrasions on right side of neck.*
- (viii) *Contusion having size of 8 cm x 4 cm on left parietal region of scalp.*

On internal examination, he found following injuries :

- (i) *Fracture on left parietal region of skull.*
- (ii) *Haematoma was present in left parietal region.*
- (ii) *5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> of ribs were having fractures.*

He opined that all injuries were ante-mortem, caused by hard and blunt object except injury No.(vii) which could be caused by sharp object. In his opinion, the cause of death was multiple grievous injuries. The tile allegedly found was not referred for medical opinion. Thus, medical evidence does not conclusively corroborate the prosecution theory of assault by pot alone.

20. P.W. 11–Punam Wankhede (Child Witness) is projected as the sole eye-witness. She deposed that she was residing with the appellant and deceased and that on the night of the incident, at about 9-00 p.m., a quarrel took place between the appellant and deceased over demand of land, during which appellant assaulted the deceased. She further stated that out of fear, she hid herself and thereafter went to a neighbouring house and on returning in the morning, found her grandmother not breathing. According to her, the appellant thereafter collected their clothes and left with her towards Mumbai.

In cross-examination, she admitted that there was no electricity supply on the night of the incident, thereby rendering her claim of clearly witnessing the alleged assault doubtful. She further admitted that she did not inform any neighbour about the alleged assault nor did she raise any alarm. She also admitted that she could not name the neighbour in whose house she allegedly took shelter. Significant omissions and contradictions appear between her police statement and

her deposition regarding the sequence of events, rendering her testimony unsafe for sole reliance without independent corroboration.

21. P.W. 13-Sayyad Ahmed Sayyad Usman, Investigating Officer, visited the spot, prepared spot panchanama (Exh.16), seized blood stained articles, prepared inquest panchanama (Exh.17), seized clothes and blood samples of appellant and deceased (Exhs. 18 & 21), and forwarded the seized articles for chemical analysis. After completion of investigation, he filed the charge-sheet.

In cross-examination, he admitted that till reaching the spot, the identity of the appellant and cause of death were not known, and that no witness statement was recorded prior to preparation of spot panchanama. He further admitted several material improvements in witness statements, non-referral of tile for medical opinion, absence of initial clarity regarding weapon of offence. These material lapses and contradictions further appear to weaken the prosecution story.

Points for Determination :

22. On the basis of the rival submissions and the evidence on record, the following points arise for determination:

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
(i)	Whether the prosecution has proved that the death of Kaushalya Wankhede was homicidal?	In the Affirmative.
(ii)	Whether the prosecution has proved beyond reasonable doubt that the appellant caused the homicidal death of Kaushalya Wankhede?	In the Negative.

(iii)	Whether the chain of circumstantial evidence relied upon by the prosecution is complete and consistent only with the hypothesis of the guilt of the appellant?	In the Negative.
(iv)	Whether the conviction of the appellant under Section 302 of the Indian Penal Code calls for interference in appeal?	In the Affirmative.
(v)	What order ?	As per final order.

### REASONS

#### As to Point No.(i) :

23. There is no serious dispute regarding the homicidal nature of the death of Kaushalyabai. The post-mortem report (Exh.38) coupled with the testimony of PW 10-Medical Officer clearly establishes that the deceased sustained multiple injuries caused by hard and blunt objects. The nature, number and location of injuries rule out the possibility of accidental or suicidal death. The medical evidence unerringly points to a homicidal death. Accordingly, Point No. (i) is answered in the affirmative.

#### As to Point Nos.(ii) & (iii) :

24. The prosecution case rests primarily on circumstantial evidence, with the testimony of P.W.11 – Punam, the minor daughter of the appellant, projected as an eye-witness. It is well settled that in cases based on circumstantial evidence, each incriminating circumstance must be firmly established and the chain of circumstances must be so complete as to point only towards the guilt of the accused, ruling out every hypothesis consistent with innocence. The principles

governing such cases have been authoritatively laid down in *Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*. Keeping these principles in view, the evidence adduced by the prosecution is required to be scrutinized with circumspection.

25. The prosecution seeks to establish motive through the testimony of PW.2 Prakash and PW.4 Mangala, who are close relatives of the deceased. According to their depositions, the appellant was persistently insisting that the deceased should transfer the house property in his name, leading to frequent quarrels. However, both witnesses have admitted in cross-examination that the relations between them and the appellant were strained and that they were themselves interested in the property. Their testimonies are, therefore, admittedly interested. It is trite law that motive, even if proved, cannot by itself form the foundation of conviction unless supported by reliable and cogent evidence. In the present case, the alleged motive appears weak and insufficient.

26. PW.3 Anil Khaire, the informant, is not an eye-witness. His evidence is confined to the discovery of the dead body and the alleged conduct of the appellant in leaving the village. Material omissions have been brought on record in his cross-examination regarding the alleged quarrel and the condition of the house. His testimony, at the highest, gives rise to suspicion. It is well settled that suspicion, however strong, cannot take the place of proof.

27. The prosecution relies upon the testimonies of P.W. 6-Durga and P.W. 8-Ramabai to establish that a quarrel had taken place between the appellant and the deceased on the preceding night. Both witnesses admitted that there was no electricity supply and that it was raining heavily. They did not witness any assault and only claimed to overheard a quarrel. Their evidence is, therefore, purely inferential. Such evidence is weak and insufficient to establish any incriminating circumstances.

28. P.W.7 – Jitendra claimed that at about 6.00 a.m. on the day of the incident, he had seen the deceased sleeping on a cot and the appellant present in the house. This evidence assumes significance as it creates doubt regarding the prosecution theory of time of death, particularly when examined in light of the medical evidence. The proximity of time necessary for invocation of the “last seen together” theory is conspicuously absent. The Hon’ble Supreme Court in *Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715* and *Nizam v. State of Rajasthan, (2016) 1 SCC 550* has cautioned that the said theory must be applied with great care and only when the time gap between the accused being last seen with the deceased and the death is so small as to exclude every other possibility. That requirement is not satisfied in the present case.

The relevant para Nos. 12 and 15 of *Kanhaiya Lal v. State of Rajasthan* (supra) read as under:

“12. *The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-*

*explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.*

*15. The theory of last seen-the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive, particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan.*"*

29. Though the medical evidence establishes homicidal death, it does not conclusively support the prosecution version regarding the weapon of offence. The Medical Officer has admitted that certain injuries could be caused by a fall on a hard surface and that one of the injuries could not have been caused by the alleged pot. The stone/tile allegedly recovered was not referred for medical opinion. In absence of such corroboration, recovery of the alleged weapon loses much of its evidentiary value (*State of Rajasthan v. Teja Ram and Others, (1999) 3 SCC 507*).

Furthermore, although the trial court records seizure of a blood-stained pot from the spot and refers to a subsequent medical opinion that some of the injuries were possible by the said pot, the prosecution has failed to place on record any clear clarification regarding the exact nature, size, weight, and structural features of the pot, nor is there any consistent description of the alleged weapon across the seizure panchanama, medical query report, and ocular testimony. This absence of precise identification and correlation between the seized article and the injuries sustained creates a significant evidentiary gap, rendering the prosecution version regarding the weapon of assault uncertain and unsafe for sustaining a conviction.

30. The prosecution relies upon the swelling found on the hand of the appellant. However, the Medical Officer has not opined regarding the age or cause of the injury. In the absence of such opinion, the injury cannot be treated as an incriminating circumstance connecting the appellant with the crime.

31. The testimony of PW.11 - Punam, the minor daughter of the appellant, is projected as the most crucial evidence. While there is no legal impediment in acting upon the testimony of a child witness, the law mandates that such evidence must inspire confidence and be free from suspicion of tutoring. In *Dattu Ramrao Sakhare and Others v. State of Maharashtra, (1997) 5 SCC 341*, the Hon'ble Supreme Court held that as a rule of prudence, corroboration is desirable. The relevant para of the said judgment is reproduced as under :

*“5. The entire prosecution case rested upon the evidence of Sarubai (PW 2), a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereto. The evidence of a child witness and credibility thereof depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand, but however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. -----”*

32. In the present case, the testimony of PW.11 suffers from material inconsistencies and improbabilities *vis-a-vis* her statement under Section 164 of the Code of Criminal Procedure. Her conduct in allegedly leaving the house and sleeping at a neighbour's place without alarming or informing anyone appears unnatural. Further, the admitted absence of electricity raises serious doubt regarding the credibility of her claim of having witnessed the incident. It was further brought on record that she was emotionally hostile towards the appellant, particularly in view of subsequent death of her mother, thereby suggesting possibility of tutoring and exaggeration. In the absence of independent corroboration, it would be unsafe to base a conviction solely on her testimony.

33. The evidence of PW 13, Investigating Officer, discloses serious lapses, including material improvements in witness statements, failure to seek medical opinion regarding the alleged weapon, and lack of clarity regarding the sequence of events. In a case based on circumstantial evidence, such lapses assume considerable significance and enure to the benefit of the accused.

34. On a cumulative appreciation of the entire evidence, it is evident that the chain of circumstances relied upon by the prosecution is incomplete and does not form an unbroken chain consistent only with the guilt of the appellant and do not rule out other plausible hypotheses. We, therefore, are of the considered opinion that the prosecution has failed to establish beyond reasonable doubt that the

appellant alone was responsible for causing the death of Kaushalyabai. Accordingly, Point Nos. (ii) and (iii) are answered in the negative.

**As to Point No. (iv) :**

35. It is a settled principle of criminal jurisprudence that where two views are reasonably possible, the view favourable to the accused must be adopted. The benefit of doubt is not a matter of charity but a legal right flowing from the presumption of innocence, as reiterated in *Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808*. Para 25 of the said judgment reads as under :

*“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of*

*witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."*

36. In the present case, the conviction recorded by the learned trial Court is not sustainable in law and warrants interference. Accordingly, Point No. (iv) is answered in the affirmative.

**As to Point No.(v) :**

37. In view of the foregoing discussion, the appeal deserves to be allowed. Hence, we pass the following order.

**ORDER**

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order dated 18.09.2019 passed by the learned Additional Sessions Judge, Warora, in Sessions Case No. 18 of 2017 is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.
- (iv) The appellant shall be released forthwith, if not required in any other case.
- (v) Fine amount, if paid, shall be refunded to the appellant.

[NIVEDITA P. MEHTA, J.]

[ANIL L. PANSARE, J.]