IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1286 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 3942 OF 2022
IN
CRIMINAL APPEAL NO. 1286 OF 2022

Suresh Bapu Koli @ Taral
Age : 42 years, Occ.: Driver
R/at : Bhairewadi, Kurundwad,
Taluka : Shirol, Dist. Kolhapur. ….Appellant

V/S

The State of Maharashtra,
(Through Daund Police Station, Pune) …..Respondent

Mr. Chaitanya Pendse a/w Ms. Gauratna Kale i/by Mr. Sachin Dhakephalkar for the Appellant.

Ms. Sharmila S. Kaushik, APP for the Respondent/State.

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

RESERVED ON : 25th FEBRUARY 2026
PRONOUNCED ON : 10th MARCH 2026

JUDGMENT *(PER SHREERAM V. SHIRSAT J) :*

1. The present Appeal has been filed challenging the impugned Judgment and Order dated 08.08.2022 passed by the Additional Sessions Judge- 2, Baramati, District Pune, in Sessions Case No. 09/2017 whereby the Appellant has been convicted under section 302 of the Indian Penal Code (IPC) and has been sentenced to undergo Imprisonment for life and to pay a fine of

Rs.2,500/- and in default to undergo Rigorous Imprisonment for 1 year. The Appellant has also been convicted under section 201 of the Indian Penal Code (IPC) and has been sentenced to undergo Imprisonment for six months and pay a fine of Rs. 500/- in default to suffer RI for 2 months.

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

a. On 04/09/2016, one Mahadev Baburao Gadhwe lodged a complaint that when he was going towards Pune at about 10:30 a.m., one person coming from the Baramati side told him that one person was lying on the road and some other persons were gathered there. Hence, the Complainant went at the site and found that near the field of one Majid Abbas Pathan, on the side of the road going towards Bholobawadi, one person aged about 20 to 25 years was lying on his stomach in a pool of blood. There was a grievous injury on the back of his head and blood was oozing out. His eyes were closed and there was no movement. The Complainant and the other persons gathered at the spot made inquiries in the nearby vicinity, but his name and address could not be ascertained. The said person was wearing black-coloured Bermuda shorts and green-coloured underwear. The complainant thereafter lodged a complaint alleging that some unknown person had killed the said unknown person by assaulting him on the

backside of the head.

b. On the basis of the said report, an offence was registered vide Crime No. 5 of 2016 under Section 302 of the I.P.C. against an unknown person. The investigating team swung into action and visited the spot of the incident and carried out the further investigation

c. After completion of the investigation, a charge-sheet against the accused came to be presented before the Judicial Magistrate First Class, Daund, District Pune, who committed the case, it being triable exclusively by the Court of Session.

3. The charges came to be framed on 27.06.2018 for the offences under Section 302 r/w 201 of the IPC to which the Appellant pleaded not guilty and claimed to be tried. Thereafter trial commenced and the prosecution examined 13 witnesses in support of the case. The Appellant did not examine any defence witness. After examination of witnesses, examination of the accused under Section 313 of the Code of Criminal Procedure, 1973 came to be recorded. The defence of the Appellant is of total denial and false implication in the crime.

4. To bring home the guilt of the Appellant, the prosecution in all examined 13 witnesses :

Rank	Name	Nature of Evidence
PW 1	Mahadev Baburao Gadhwe	Informant who lodged the F.I.R .
PW 2	Abhijeet Tukaram Shitole	Panch witness – Recovery of Rupees 41,000 and the T- shirt worn by Deceased. (Hostile)
PW 3	Sharad Prakash Sonawane	Panch Witness -Recovery of Clothes of Accused and Axle Rod.
PW 4	Tanaji Raghunath Karnale	Owner of Mutton Shop
PW 5	Shashikant Rajaram Bhoir	Owner of Fish Shop next to shop of PW4.
PW 6	Raju Narayan Wadekar	Uncle of Deceased.
PW 7	Amar Yallappa Aarge	Brother-in-law of the Accused at whose instance there was a recovery of Rupees 41,000/-.
PW 8	Dr. Sameerkumar Sabat	Medical Officer – Sub-district Hospital, Daund

		who conducted the Post Mortem of the Deceased.
PW 9	Sadiq Adam Shaikh	Panch Witness- Recovery of the clothes of the Deceased and spot panchnama. (Hostile)
PW 10	Rehan Sayyed Aasad	Mechanic.
PW 11	Rohit Sunil Wadekar	Brother of the Deceased.
PW 12	Yuvraj Rama Dalimbe	Panch Witness (Village Kotwal) – Recovery of disclosure statement.
PW 13	Atul Shridhar Bhosale	A.P.I Daund Police Station – Investigating Officer

5. The Learned Sessions Judge after hearing the arguments of the Public Prosecutor and Ld. Counsel for the Appellant, vide order dated 8/8/2022 was pleased to convict the Appellant under Sections 235 (2) of Criminal Procedure Code for the offences punishable under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay fine of

Rs.2,500/- and in default, to suffer rigorous imprisonment for one month. The trial court also convicted the Appellant under Section 201 of the Indian Penal Code (IPC) and sentenced him to undergo Imprisonment for six months and pay a fine of Rs. 500/- and in default to suffer RI for 2 months.

6. Being aggrieved by the said order of conviction recorded by a Judgment in Sessions Case No. 9 of 2017, dated 08/08/2022 passed by Additional Sessions Judge - 2, Baramati District Pune, the Appellant has approached this Hon'ble Court by way of Appeal.

7. We have heard Mr. Chaitanya Pendse for the Appellant and Ms.Sharmila Kaushik, APP for the Respondent-State.

8. The Learned Counsel for the Appellant has submitted that the Appellant has been falsely implicated. The Ld. Counsel has submitted that there is no eye witness to the alleged incident but this is a case of circumstantial evidence and the complete chain of circumstances leading to only one conclusion that none other than the Appellant is guilty of the offence in question has not been established and proved by the prosecution. He has further submitted that the last seen theory has not been cogently established by the prosecution and even the recovery of bloodstained clothes, axle rod at the instance the Appellant

does not inspire confidence since the recovery is from an open place as also admitted in the evidence by the Investigating Officer himself. The Ld. Counsel for the Appellant further submitted that the prosecution has failed to establish the identity of the deceased. The Ld. Counsel has further submitted that there is discrepancy in the report of Chemical Analayzer as well and the motive has also not been proved beyond reasonable doubt. The Ld. Counsel has submitted that the prosecution has deliberately not produced the CCTV footages although the same was asked for by addressing letters to various toll plazas. The Ld. Counsel therefore submitted that the Appellant has been falsely implicated and prayed that the Appellant be acquitted.

9. The Ld. Counsel has relied upon the following judgments in support of his contention.

(a) Anjan Kumar Sarma and Others V/s. State of Assam, (2017) 14 Supreme Court Cases 359.

(b) Kanhaiya Lal V/s. State of Rajasthan, (2014) 4 Supreme Court Cases 715.

(c) Sahadevan and Another V/s. State of Tamil Nadu, (2012) 6 Supreme Court Cases 403.

(d) Babu V/s. State of Kerala, (2010) 9 Supreme Court Cases 189.

10. *Per contra* the learned Addl. Public Prosecutor has submitted that the Trial Court has rightly convicted the Appellant and the conviction deserves to be confirmed. She has further submitted that the last seen theory has been cogently established through the evidence of PW 4 and PW 5. The Ld. APP has further submitted that PW 4 and 5 are natural witnesses who have deposed about the Appellant going along with the deceased and therefore in the absence of effective cross examination, the last seen theory has been cogently proved by the prosecution. She also submitted that identity of the deceased has been established and there is nothing to disbelieve the same. She therefore urged that the conviction be confirmed.

11. The death of the deceased is homicidal in nature. 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. 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. Since the Trial Court has not specifically enumerated the circumstances, the circumstances which can be borne out from the evidence that has come on record and as also argued by the Ld. Counsel for the Appellant, are:-

i. Last seen theory.

ii. Recovery of axle rod at the instance of accused.

iii. Recovery of bloodstained clothes at the instance of accused.

iv. Motive.

14. 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 4, PW 5, and PW 10.

15. PW 4 Tanaji Raghunath Karnale has deposed that he owns a mutton shop at Kurundwad. He has deposed that he owns a Tempo Pick up and the accused-appellant was working as a driver of the said vehicle. He has deposed that he knows Shashikant Bhai (PW 5), who owns a shop next to his shop. He has also deposed that he knows the deceased as the deceased used to visit the shop of PW 5. He has deposed that on 02/09/2016 at around 3.00 p.m., PW 5 came to his shop and enquired with his father, whether his vehicle could be made available on hire. He has further deposed that at around 8.00 p.m., the vehicle was handed over and the fish was kept in the tempo. He has further deposed that PW 5 paid Rs. 5,000/- to the Accused and thereafter the deceased and the accused left, taking the vehicle with them. He has further deposed that on the next day that is on 03/09/2016, he tried calling up the deceased, but his phone was switched off. Further when PW 4 asked the reason for the delay the Accused replied that there was a breakdown of the vehicle. On 04/09/2016 when the Accused returned to the market at Kuraunwad, PW 5 enquired about the deceased to which the Accused-Appellant informed that the deceased got down at Aurangabad at Delhi Gate

and he would be coming later by another vehicle. PW 5 has deposed that he is a fish vendor, having his shop at Kurundwad. He has deposed that he is into the business of fishery and he orders fish from Karnataka and transports it to Pune, Mumbai and Jalgaon. He has deposed that he knows Raghunath Karnale (father of PW 4), whose shop is next to his shop. He has deposed that on 02/09/2016, he had enquired with father of PW 4 whether his vehicle would be available for business purpose to which Raghunath Karna replied that vehicle would be available. He has further deposed that his brother and the deceased Sushant Wadekar loaded the fish in the Vehicle and he paid Rs.5000/- to the accused Suresh who was going to drive the vehicle. He has further deposed that the deceased as well as the accused took the vehicle and went to Nere (place in District Jalgaon). He has further deposed that deceased had telephoned him from the mobile of the accused and informed him that there was a breakdown of their vehicle at a place which is ahead of Sillod. PW 5 has further deposed that he asked them to wait there itself and informed that he would be sending one business man by name Krishna Bohi. He has further deposed that the fish from the vehicle (which had broken down) was transferred into the vehicle of Krishna Bhoi and accordingly Krishna Bhoi paid Rs. 52,000 to the deceased as told by PW 5. He has further deposed that a mechanic was called to repair the vehicle and Rs. 6000/- to Rs. 7000/- was paid to the mechanic for repairing the vehicle and the balance was with the deceased. He has further deposed that in the evening and at night, the accused

did not answer the call. He has further deposed that on the next day accused came to the market at around 10:30 to 11.00 a.m., and when inquired about the deceased to which the Accused informed that the deceased got down at Delhi Darwaja at Aurangabad and the money was with the deceased. He has further deposed that the accused thereafter went home. He has further deposed that in the afternoon, he got a call from Krishna Bhoi who informed that Police had informed him that the deceased was killed by the Accused. He has further deposed that he learnt from the police that the accused had killed the deceased. The prosecution has also examined PW 10, the mechanic who reached at the place where the vehicle had broken down to prove that he had seen the Accused and the deceased on 03/09/2016, however this witness has not supported the prosecution case although not declared as hostile.

16. The body was recovered on 04/09/2016 at 10:30 a.m. Thus, from the evidence of these three witnesses, it is difficult to come to a conclusion that the theory of last seen is duly proved more particularly considering the time gap between the last seen and the time when the body was recovered. As per PW 4 and PW 5 they had last seen the Accused and the deceased when they left their shop on 02/09/2016. PW 5 has deposed that thereafter he spoke to the deceased who informed him about the break-down of the vehicle. PW 4 has deposed that on 04/09/2016, the Accused returned when PW 4 and PW 5 asked the Accused about deceased who said that he got down at Aurangabad

at Delhi Gate. The body is recovered on 04/09/2016 at 10:30 am, 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 in the barren land, the possibility of others intervening cannot be ruled out. The Apex Court has, time and again, held that where the time gap is long, it would be unsafe to rely upon the last seen theory and it is safer to look for other circumstances and evidence adduced by the prosecution.

17. The Ld. Counsel for the Appellant has relied upon the following judgments in support of his contention.

(a) ***Anjan Kumar Sarma and Others vs. State of Assam, (2017) 14 Supreme Court Cases 359*** and has relied upon the following paras from the judgment.

> *"14. Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are:*
>
> *(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;*
>
> *(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
>
> *(3) The circumstances should be of a conclusive nature and tendency;*
>
> *(4) They should exclude every possible hypothesis except the one to be proved; and*
>
> *(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (See: Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 153; M.G. Agarwal v. State of*

Maharashtra AIR 1963 SC 200 18)

"23. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under:-

"34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."

(b) Kanhaiya Lal vs. State of Rajasthan, (2014) 4 Supreme Court Cases 715 :

"8. The prosecution case is that the appellant/accused Kanhaiya Lal committed the murder of Kala by strangulation and threw the body in the well. Nobody witnessed the occurrence and the case rests on circumstantial evidence. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances."

"12. The circumstance of last seen together does not by itself and 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 vs. State of Rajasthan (2010) 15 SCC 588 [LQ/SC/2002/1014]."

(c) *In* ***Sahadevan and Another vs. State of Tamilnadu, (2012)6 Supreme Court Cases 403*** : it has been observed as under:

"28. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.

"30. Even in the case of State of Karnataka v. M.V. Mahesh [(2003) 3 SCC 353], this Court held that merely being last seen together is not enough. What has to be established in a case of this nature is definite evidence to indicate that the deceased had been done to death of

which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the Court.

"31. In the case of State of U.P. v. Satish [(2005) 3SCC 114], this Court had stated that the principle of last seen comes into play "where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

"32. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."

18. Therefore, considering the evidence PW 4, PW 5 and PW 10, this court cannot come to a conclusion that the circumstance of last seen together has been cogently proved by the prosecution. As rightly held in the judgement cited by the Ld. Counsel for the Appellant that there can be no fixed or straitjacket formula for the duration of time gap and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period. In the present case also the prosecution has not been able to lead any such evidence to show that the likelihood of some person other than the accused-appellant being the author of the crime was impossible, in which circumstance, even though there would have been a long duration of time, the same could have been considered as one of the circumstances in the chain of circumstances to prove the guilt against

such accused-appellant. The prosecution has also not demonstrated that the Appellant was in exclusive possession of the place where the incident occurred or where the body of the deceased was found. As per PW 1, the body was found on 04/09/2016 near the field of one Masjid Abbas Pathan on the side of the road, whereas the deceased was last seen with the Appellant on 02/09/2016, as per the deposition of PW 4 and PW 5. Therefore, in such circumstances, it cannot be said that there was no possibility of any intrusion in that place by any third-party or that it was well neigh impossible for any third party to get an access to that place.

19. The next circumstance is recovery of bloodstained clothes and weapon of assault i.e axle having bloodstains. To prove this circumstance, the prosecution has examined PW 3. During evidence, the PW 3 has deposed that on 10/09/2016, he was called to act as a panch. He has deposed that he saw the accused seated there and API Bhosale told that Panchnama is to be conducted. He has further deposed that it was told that they have to go where the clothes and Axle rod is kept. Thereafter, by a private vehicle PW 3, along with Accused and police officer went to the place where the offence had occurred which was shown by the accused. He has further deposed that they travelled via Baramati, Phaltan and reached Kolhapur and then reached Kurunwad and the vehicle was asked to be stopped near the house of the accused. He has further deposed that there was a garbage heap of cow dung in

front of the house of the accused and the accused produced clothes and rod which were in green coloured carry bag, put in the garbage heap of cow dung. He has deposed that there was a T-shirt having bloodstains on it and a grey coloured pant which were seized and sealed and memorandum panchanama was prepared. However, in the cross-examination, the said witness has categorically admitted that the cow dung place at Kurunwad was at open place. He has also further deposed that from one side of that garbage heap, anybody could approach there. Even the IO, PW 13 has categorically admitted that he had seized shirt and rod from the open place at Kurundwad. In the cross examination he has also admitted that the cow-shed had only the roof and not walls. Therefore, such a recovery from open place loses its credibility and evidentiary value.

20. A profitable reference can be made to the judgment of **Kacharji Hariji v State of Gujarat in Criminal Appeal 465 of 1967 (GHC),** wherein the Hon'ble Court has been pleased to observe as under :

> *"He took the police and panchas at a heap of cow- dung and dust and therefrom produced a gunny-bag containing the stolen muddemal bottles of medicines and remnants of boxes. As revealed from the panchnama, proved by the panch witness, this cow-dung hill is used by Rabaris for storing cow dung and dust. That place is accessible to anybody. It is also not a case where something was hidden under the ground so that one could even say reasonably that the appellant had the exclusive knowledge. I am, therefore, of opinion that the prosecution has not satisfactorily established the guilt of the accused-appellant The order of conviction and sentence, passed against the appellant therefore, cannot be sustained."*

21. Further it is the case of the prosecution that the proceedings relating to the recovery panchnama was video recorded. PW 3 has stated in his evidence that he has not witnessed any such recording having been done. This is an additional factor which makes the recovery doubtful and therefore cannot be taken as a circumstance against the Appellant.

22. Further the evidence of PW 11, Rohit Wadekar completely demolishes the case of the prosecution about recovery of the Axle rod, as PW 11 has deposed that the clothes of the deceased and the axle rod were shown to him by the police at the police station. Although he has not specified the date when it was shown to him, but from the deposition, if read in entirety, it can be unequivocally gathered that when they went to Daund Police Station on the day when the body was recovered, they were shown the axle rod by which the deceased was assaulted on the head. Thus, the recovery of clothes of the accused and the axle rod shown on 10/09/2016 at the instance of the Accused-Appellant is a mere eyewash. Further even though the jacket of the Accused was shown to have bloodstains of 'A' group which is of the deceased, in the absence of cogent evidence about recovery, finding of bloodstains on the jacket of the Accused-Appellant of 'A' group which is of the deceased, pales into insignificance.

23. The third circumstance is the Motive. The case of the prosecution is that the accused in order to steal/rob the amount of approx. Rs. 40,000/- to Rs. 45,000/- which was received by the deceased from businessman Krishna Bhoi (after deducting the expenses for vehicle repairs) has committed the murder of the deceased. It is the case of the prosecution that the accused was working as a driver of the vehicle which was owned by PW 4. PW 5 is the owner of fish shop and was into the business of transporting fish to Pune, Mumbai and Jalgaon. PW 5 had hired the vehicle from PW 4 to deliver fish. After the fish were loaded in the Vehicle, the accused was paid 5000/- for the delivery and the deceased had gone along with the accused in the vehicle at the request of PW5. It has further come in evidence that when the vehicle broke down, the deceased had made a phone call from the phone of the accused and informed that the vehicle had broken down, upon which PW 5 asked him to wait there and he sent one Krishna Bhoi to the said place. Further it has come in the evidence that Krishna Bhoi had handed over Rs.52,000 to the deceased. After the amount was paid for the repairs of the vehicle, the balance of Rs. 40,000/- to Rs. 45,000/- was with the deceased. The prosecution has tried to establish a case that the avarice and greed overpowered the accused and the Accused with the intention to steal/rob the amount from the deceased, had killed the deceased. Further to establish the theory of motive and to show a recovery of Rs. 41,000/- as the same amount which the Accused had stolen from the deceased, the prosecution examined PW 7 Amar Aarge, who is the brother-in-

law of the accused and it was tried to be brought on record that this amount of Rs. 41,000/- was handed over by the accused to his brother-in-law by calling him near a place called Arjunwad. The story of the prosecution does not inspire confidence for various reasons. Firstly, PW 2, who was a panch witness to the recovery of Rs. 41,000/- from PW 7, has turned hostile. Secondly the theory of the prosecution that Accused committed murder of the deceased out of greed and avarice is based on conjectures and surmises with no cogent and convincing material to support this theory and thirdly the evidence of PW 7, the brother in law, who has also not supported the prosecution case. In the substantial evidence, PW 7, the brother-in-law has categorically denied the theory of recovery and has stated that he was forced to bring Rs.41,000/- by the police under coercion that if he does not get Rs. 41,000/- the other family members would be falsely implicated in the case. Therefore, the recovery of Rs. 41,000/- has also not been cogently proved by the prosecution and consequently the motive also does not get proved, although in the cross examination it was brought on record that for the coercion by the police to get Rs.41000/-, no complaint was lodged. To establish motive there should be cogent and convincing evidence.

24. In the case of ***Ramanand @Nandial Bharti Vs State of Uttar Pradesh*** reported in ***2022 AIR Supreme Court 5273,*** it has been observed that:-

"*90. Thus, even if it is believed that the Appellant-Accused had a motive to*

> *commit the crime, the same 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.*"

25. Apart from the aforementioned circumstances which the prosecution has failed to establish, the other factors which also tilt in the favour of the Accused are that, firstly the prosecution in order to establish that the accused was with the deceased had written letters to toll plazas at Daund, Baramati and Satara for obtaining CCTV footages, however, for the reasons best known, the investigating agency has failed to produce any CCTV footage on record and therefore an adverse inference needs to be drawn. Secondly, if at all the story of the prosecution had to be believed, then the prosecution ought to have examined business man Krishna Bhoi, who was a material witness, as he was the one who had actually last seen the Appellant and the Deceased together on 03/09/2016 when he had visited the place where the vehicle had broken down and after transferring the fish from the said broken down vehicle to his vehicle had handed over cash to the deceased. There is no explanation as to why such an important witness has not been examined or withheld by the prosecution. Thirdly the conduct of the Accused is also not unnatural. After the incident in question, the Accused came back to Kurundwad, Kolhapur and was following his normal pursuits till the time he was arrested on 08/09/2016 and had not absconded.

26. The Ld. Counsel for the Appellant had strenuously argued that the identity of the deceased has not been established. He would argue that his own relatives viz PW 6 and PW 11 have not deposed in their substantial deposition that they had revealed the identity of the deceased to the IO. He further submitted that the letter dated 04/09/2016 marked as Exhibit 98 by which PW 13 informed the Medical Officer to issue post mortem in the name of Sushant Wadekar based on PW 11 identifying the deceased cannot be said to be admissible in evidence, as mere marking of a documentary exhibit is essentially for the purpose of location of the document in the record and the fact that document is exhibited does not by itself make it admissible or prove its contents. We are not in agreement with this particular submission of the Ld. Counsel for the Appellant that marking of a document as 'Exhibit' is only for the purpose of locating the document in the record. Whenever a document is marked as 'Exhibit' without objection, it will be presumed that a party having right of objection has waived formal proof of the document and in such a situation, the entire contents of the document would be admissible in evidence. No doubt that by such admission of a document, the truth and correctness of the contents by itself would not be established and there must be some evidence to support the contents of such document. In the present case also, the author of the document i.e PW 11 has tendered the document/letter written to the Medical Officer, which has been marked as Exhibit 98, however he has not deposed about the contents of the same and

therefore to that extent it qualifies only to be corroborative piece of evidence which in the absence of substantial evidence, cannot be said to be establishing the identity of the deceased.

27. 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 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 an irresistible conclusion about the involvement of the Appellant in the present crime.

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

29. Since we have come to a conclusion that charge under Section 302 IPC has not been proved beyond reasonable doubt on the strength of circumstantial evidence indicting the present Appellant, consequently the charge under section 201 IPC also fails.

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

i. 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 08/08/2022, passed by Sessions Court is quashed and set aside and the Appellant is acquitted of all the charges he is charged with.

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

iv. Before being released, the Appellant shall execute P.R. Bond in the sum of Rs.25,000/-, under Section 481 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (corresponding to Section 437A of the Cr. P.C.) for his appearance, in the event an appeal is preferred against his acquittal.

31. Appeal stands disposed of accordingly. Pending Applications, if any, also stand disposed of.

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