R.M. Amberkar
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 939 OF 2003

The State of Maharashtra
(Through P.S.O. Jath Police Station,
C.R. No.7/2002) Appellant
.. (Orig. Complainant)

Versus

1. Gulab Dattu Patil.
   Age : 43 yrs., Occ. : Business,
   R/o. Valsang, Tal. Jath.

2. Baburao Bhimrao Kadam.
   Age : 38 yrs., Occ.: Agri.,

3. Prakash Shivaji Patil.
   Age : 35 yrs., Occ.: Agri.,

   Nos. 2 & 3 R/o. Kumathe, Tal. Tasgaon, Respondents
   Dist. Sangli. .. (Orig. Accused)

.....

- Mr. S.S. Hulke, APP for the Appellant - State.
- Ms. Rui Danawala i/by Mr. Umesh Mankapure for the Respondents.

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CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.

RESERVED ON : DECEMBER 20, 2021.
PRONOUNCED ON : FEBRUARY 04, 2022.
(Through Video Conferencing)

JUDGMENT: (PER MILIND N. JADHAV, J.)

1. The learned ad-hoc Additional Sessions Judge, Sangli, by judgment and order dated 03.05.2003, has acquitted Respondent Nos. 1 to 3 of offences punishable under Sections 120B, 302, 364 and 201

read with Section 34 of the Indian Penal Code, 1860 (for short, **"IPC"**). The State of Maharashtra is in appeal against the said judgment and order acquitting the Respondents in Sessions Case No. 77 of 2002. The Trial Court has arrived at a conclusion that the Prosecution did not establish the chain of circumstances so as to implicate the Respondents in the crimes.

2. Respondent No. 1 (**originally Accused No. 1**) along with Respondent Nos. 2 and 3 (**originally Accused Nos. 2 and 3** respectively) were arrested for killing Shri. Hari Pandurang Jadhav (hereinafter referred to as "**the deceased**"). The deceased was well-known colloquially as a "panadia," who is a person adept at locating underground water sources. He was also the father of Smt. Asha Rani (P.W. 13), to whom the Respondent No. 2 was married i.e., he was the father-in-law of the Respondent No. 2.

3. It appears that the Respondent No. 2 and his family mistreated Smt. Asha Rani (P.W. 13). Complaints were filed by Smt. Asha Rani against the Respondent No. 2 in the local police station for the said mistreatment. She had also filed a petition in the Court of the Judicial Magistrate, First Class, Tasgaon, seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short, **"CrPC"**). She used to attend the hearings in respect of the proceedings

in the Tasgaon Court along with her father (the deceased). Due to the litigation initiated by Smt. Asha Rani, Respondent No. 2 purportedly used to threaten to kill Smt. Asha Rani and the deceased. The Prosecution has alleged that the Respondents were involved in a criminal conspiracy to kill the deceased. According to the Prosecution, Respondent No. 2 hired Respondent No. 1 through Respondent No. 3 to kill the deceased and paid an amount of Rs. 20,000.00 for the said contract killing.

4. Before we advert to the submissions made by the respective advocates and to the reappraisal of evidence on record, it would be apposite to refer to the relevant facts of the incident briefly.

4.1. According to the the prosecution on 20.01.2002, Respondent No. 1 visited the deceased at his house in Khujgaon on a Boxer Motorcycle and took him along to locate an underground water source in a nearby field of one Shri. Krishna Mane (P.W. 1). When the deceased located the underground water source and was performing pooja/rituals, Respondent No. 1 threw chilli power on his face and then killed him by smashing his head with a stone. Respondent No. 1 then unclothed the deceased with an intention to leave no evidence of the killing, and left the body of the deceased naked in the field.

4.2. On 22.01.2002 i.e., two days after the incident, Shri Krishna Mane (P.W. 1) spotted the body of the deceased when he visited his field at 7:30 AM to bring fodder. He saw the dead body lying naked, with injuries on the face and with blood oozing out from the nostrils. He also saw a stone stained with blood lying near the dead body and saw broken coconuts, turmeric and chilli powder scattered around the dead body. He immediately went to inform the Sarpanch of the village where he resided i.e., Amrutwadi. Thereafter, he went to Jath Police Station and lodged a report, marked as Exhibit '15'. Based on this report, the Jath Police Station registered C. R. No. 7 of 2002, initially under Sections 302 and 201 IPC.

4.3. The Investigating Officer thereafter proceeded to the spot of the incident and drew up an Inquest Panchanama and a Spot Panchanama, marked as Exhibits '36' and '37' respectively. He then sent the body for autopsy to a rural hospital in Jath and a post-mortem was carried out thereafter.

4.4. On 27.01.2002, the Respondent Nos. 1 to 3 were arrested. During the investigation, the clothes of the Respondent No. 1 and the blood-stained clothes of the deceased were seized owing to a disclosure statement made by the Respondent No. 1 on 27.01.2002 itself. The Investigation Officer also seized an amount of Rs. 20,000.00

in cash from the house of the Respondent No. 1 on 04.02.2002. All items that had been seized were sent for chemical analysis and the report thereof is placed on record, marked at Exhibits '20' and '22'.

4.5. On 09.04.2002, a chargesheet against the Respondents was filed in the Court of the Judicial Magistrate, First Class, Jath. As the offence was punishable under Section 302 IPC and exclusively triable by the Court of Sessions, the learned Judicial Magistrate on 01.06.2002 committed the case to the Court of Sessions, Sangli, under the provisions of Section 209 of the CrPC. Charges were framed against the Respondents on 03.02.2003. The charges were read out and explained to the Respondents in vernacular language. The Respondents denied their complicity in the offence by a total denial, stating that a false case was lodged against them.

5. The Prosecution, in support of its case, examined in all fourteen witnesses. No defence witnesses were produced before the Trial Court. The Trial Court, after recording evidence and hearing the parties, was pleased to acquit the Respondents of all charges by the impugned judgment and order dated 03.05.2003.

6. Shri. S. S. Hulke, Assistant Public Prosecutor appearing on behalf of the Appellant-State, submits that the impugned judgement

and order suffers from grave infirmity as it acquits the Respondents of all charges even though the Prosecution's case implicates the Respondents in the offences beyond reasonable doubt. He submits that:

i. it was Respondent No.1 who was last seen with the deceased on the date of the incident i.e., 20.02.2002;

ii. the clothes that the Respondent No. 1 was wearing during the incident and the blood-stained clothes of the deceased were not only recovered at the instance of the Respondent No. 1 but were also seized from his custody;

iii. the Respondent No. 2 had a strong motive to kill the deceased owing to the litigation between Respondent No. 2 and Smt. Asha Rani (P.W. 13), which was supposedly instituted at the instance of the deceased;

iv. the sum of Rs. 20,000.00 paid by the Respondent No. 2 to the Respondent No. 1 through the Respondent No. 3 for the contract killing of the deceased was recovered from the house of the Respondent No. 1;

v. the chemical analysis report marked as Exhibit '22' states that the shirt buttons lying near the dead body and the buttons on the clothes seized at the instance of the Respondent No. 1 were identical.

7. *PER CONTRA,* Ms. Rui Danawala, learned counsel appearing for the Respondent Nos. 1 and 3, submits that on perusal of the evidence placed before the Court, it is proven that the chain of circumstances has not been established by the Prosecution so as to implicate the Respondent Nos. 1 and 3 in the crimes. She supports the impugned judgment and order passed by the Trial Court and prays for dismissal of the present appeal as the Trial Court rightly exonerated Respondent Nos. 1 and 3. She submits that:

i. the theory of the deceased having been last seen with the Respondent No. 1 together on 20.01.2002 is not proved beyond reasonable doubt;

ii. the recovery of the clothes that the Respondent No. 1 was wearing during the incident and the blood-stained clothes of the deceased from the Respondent No. 1 has not been proved;

iii. the recovery of the sum of Rs. 20,000.00 seized from the Respondent No. 1, purportedly paid for the contract killing by the Respondent No. 2, has not been proved;

iv. it was not unnatural for the Respondent No. 1 to possess an amount of Rs. 20,000.00 in cash as he is a jeweller by profession and has his shop at Jath;

v. the Prosecution has not brought on record how the Respondent No. 2 came into possession of Rs. 20,000.00 so as to give it to Respondent No. 1 for contract killing through Respondent No. 3;

vi. there is no eyewitness in whose presence the sum of Rs. 20,000.00 was supposedly paid to the Respondent No. 1;

vii. the Prosecution could not extract any relevant information from the deposition of Shri. Sanjay Patil (P.W. 5), an STD Booth owner, who was examined in order to prove that the Respondent No. 2 had made phone calls to the Respondent No. 1 at Pandharpur for the alleged contract killing;

viii. the chemical analysis report fails to match the blood stains on the clothes of the deceased (belonging to Group 'B') and those on the clothes worn by the Respondent No. 1 at the time of the incident. The sole observation in the report that the buttons found near the spot of the incident and the buttons on the clothes worn by the Respondent No. 1 are the same do not necessarily connect the Respondent No. 1 to the incident;

8. We have heard the learned counsel appearing for the respective parties, considered their submissions, and perused the evidence on record.

9. It is a well-settled position of law that reversal of acquittal is permissible on the touchstone of the principle that an appellate court should generally be loath in disturbing the findings of a trial court especially when the view adopted by the trial court is a possible view, and, that the appellate court should interfere with the conclusions of the trial court only when they are palpably erroneous, unreasonable, perverse and likely to result in injustice. It is also an established position of law that an acquittal by a trial court only bolsters the presumption of innocence in favour of the accused.

9.1. The Hon'ble Supreme Court of India in the case of ***Murlidhar @ Gidda vs. State of Karnataka***,[1] while considering criminal appeals, underscored the fundamental principles to be kept in mind by an appellate court while hearing an appeal against acquittal. Paragraphs 10, 11, and 12 are relevant and read thus:

> *"***10.** Lord Russell in Sheo Swarup [Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] , highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said : (IA p. 404)"… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the

1 2014 (5) SCC 730 : 2014 (2) SCC (Cri) 690

witnesses." The opinion of Lord Russell has been followed over the years._

11. As early as in 1952, this Court in Surajpal Singh [Surajpal Singh v. State, AIR 1952 SC 52 : 1952 Cri LJ 331] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed : (AIR p. 54, para 7)

> "7. … the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225] , Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656] , Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426] , Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC

228 : 1978 SCC (Cri) 108] , K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to

> stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and
>
> (iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."
>
> **[emphasis supplied]**

9.2. The principles laid down in *Murlidhar @ Gidda (supra)* were reaffirmed by the Hon'ble Supreme Court of India in ***Suman Chandra vs. Central Bureau of Investigation***,[2] wherein the Apex Court held that the if the view taken by a trial court is a possible view, which was neither perverse nor unreasonable, then it ought not to be interfered with or reversed by an appellate court.

10. At this juncture, we may also state that, in the present case, what we have before us is a case founded solely upon circumstantial evidence, as there were no eyewitnesses to the incident. In view thereof, a proper and careful evaluation of the circumstances is required in order to ascertain whether they lead to the unequivocal inference of the guilt of the Respondents. The Hon'ble Supreme Court of India in ***Shankarlal Gyarasilal Dixit vs. State of Maharashtra***[3] laid

2 LL 2021 SC 758 : Criminal Appeal No. 1645 of 2021
3 1981 AIR 765 : 1981 (2) SCC 35

down the fundamental principles to be kept in mind while adjudicating a criminal case founded on circumstantial evidence. Paragraphs 31 and 32 of aforementioned decision are relevant and read thus:

> "**31**. It causes us some surprise that the learned Additional Sessions Judge, Akola, who tried the case, has not shown any awareness of the fundamental principle which governs cases dependent solely on circumstantial evidence. Nowhere in his judgment has the learned Judge alluded, directly or indirectly, to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.
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> **32.** The High Court, it must be said, has referred to the recent decisions of this Court in Mahmood v. State of U.P. [(1976) 1 SCC 542 : 1976 SCC (Cri) 72 : AIR 1976 SC 69] and Chandmal v. State of Rajasthan [(1976) 1 SCC 621 : 1976 SCC (Cri) 120 : AIR 1976 SC 917] in which the rule governing cases of circumstantial evidence is reiterated. But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the "shadow of doubt". In the first place, "shadow of doubt", even in cases which depend on direct evidence is shadow of "reasonable" doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far

> more rigorous than the test of proof beyond reasonable doubt."
>
> **[emphasis supplied]**

11. Against the above backdrop, we shall now reappraise the evidence adduced by the Prosecution, the submissions of the Defence thereon, and the material on record to determine whether an unequivocal inference of the guilt of the Respondents can be made. Since there are no eyewitnesses in the present case, there are four successive circumstances upon which the Prosecution makes its case. We may state that this chain of circumstances must be carefully analysed and is required to be proved or corroborated beyond reasonable doubt in order to convict the Respondents. The four successive circumstances upon which the Prosecution makes out its case against the Respondents are as under:

i. That the Respondent No. 2 paid a sum of Rs. 20,000.00 to the Respondent No. 1 through the Respondent No. 3 for killing the deceased, and that the said amount was recovered from the possession of Respondent No. 1. For the sake of convenience, we shall refer to this as the **"contract killing theory."**

ii. That the blood-stained clothes of the deceased and the Respondent No. 1 were recovered from the possession of the Respondent No. 1.

iii. That it was the Respondent No. 1 who was last seen with the deceased on the date of the incident i.e., 20.02.2002. For the sake of convenience, we shall refer to this as the **"last seen theory."**

iv. That the Respondent No. 2, and tangentially Respondent Nos. 1 and 3, had a strong motive to kill the deceased owing to the matrimonial dispute and ongoing maintenance proceedings between the Respondent No. 2 and the daughter of the deceased, Smt. Asha Rani (P.W. 13). For the sake of convenience, we shall refer to this as the **"motive theory."**

12. We shall first test the credibility of the contract killing theory, which is the first among the chain of circumstances required to evaluated.

12.1. The only witness examined by the Prosecution in order to substantiate this theory is Shri. Sanjay Patil (P.W. 5), who is the owner of the STD booth from where the Respondent No. 2 made phone calls to the Respondent No. 1 at Pandharpur. He has deposed as under:

i. His STD booth is behind the grocery shop of the Respondent No. 2;

ii. He is acquainted with the Respondent No. 2;

iii. In his examination-in-chief, he deposed that he does not remember whether the Respondent No. 2 came to his STD Booth on 20.01.2002 after 9:30 PM;

iv. There is note recorded in the deposition that the witness is declared hostile at the instance of the Assistant Public Prosecutor. In his cross-examination conducted by the Prosecution thereafter, there is nothing of substance barring mere denials in five sentences are under:

> "It is true that police recorded my statement. It is not true to say that accused Baburao had been to my STD booth for making telephone call to Jeth after 9.30 p.m. on 20-1-2002. I did not state portion marked 'A' in my statement before police. It is not true to say that I am having close relations with accused Baburao and so I am deposing falsely. It is true that I am not at cross terms with police."

12.2. On a true analysis of the deposition of Shri. Sanjay Patil (P.W. 5), it cannot be said that the Prosecution has been successful in establishing the contract killing theory. No material evidence pertaining to the contract killing theory is apparent from the depositions of this witness. Additionally, the role of the Respondent No. 3, through whom the Respondent No. 2 is alleged to have paid the Respondent No. 1 to kill the deceased, has not been established.

12.3. Insofar as the payment of Rs. 20,000.00 for the contract killing is concerned, it is necessary to examine the evidence given by Shri. Appasaheb Koli (P.W. 11), a pancha witness. He has deposed as under:

i. In his examination-in-chief, he has stated the following:

> "1. On 27.01.2002, I was called by P. S. I. of Jath police station. There were police in the police station. The other panch was along with me. Accused Gulab Dattu Patil was in police station. I am not remembering what accused Gulab stated before us. There was no panchanama in the police station. Accused Gulab Patil was in another police vehicle we and police were in other vehicle. We went to village Valsang. Accused Gulab went behind his house. We were there. The clothes were removed. The police seized those clothes under the panchanama in our presence. The panchanama now shown to me is the same. It bears my signature. The contents are correct (exh. 42).
>
> 2. The accused has also handed over the clothes on his person which he was wearing at the time of offence. Those were also seized under panchanama.
>
> 3. I was again called by police on 4.02.2002. Police obtained our signature on the panchanama. It did not happen that accused Gulab has handed over an amount of Rs.20,000/- to police in my presence."
>
> **[emphasis supplied]**

ii. After his examination-in-chief, this witness was declared hostile. The cross-examination conducted by the Prosecution thereafter is as under:

> "6. ...The panchnama now shown to me bears my signature. It is not true to say that I had accompanied with accused and police staff to the house of the accused and the accused had handed over an amount of Rs. 20,000/- in our presence.
>
> 7. ...It is true that the panchama was prepared in the police station..... It is true that we have signed the panchnamas at the police station.
>
> 8. ...
>
> 9. It is true that for panchnama I was called by the police only once. It is true that on 04.02.2002 Police obtained my signatures on the panchnamas. It is true that accused did not handover an amount of Rs. 20,000/- to Police from his house in our presence."
>
> **[emphasis supplied]**

12.4. An analysis of the evidence given by Shri. Appasaheb Koli (P.W. 11) completely demolishes the case of the Prosecution, as it demonstrates that the Panchanama had been pre-prepared by the Investigating Officer, and the pancha had only been called upon to sign it. In fact, the Trial Court also observed that Shri. Appasaheb Koli is a habitual pancha. Furthermore, Shri. Appasaheb Koli clearly states that he had not seen the Respondent No. 1 hand a sum of Rs. 20,000.00 over to the police from his possession. Moreover, even if a sum of Rs. 20,000.00 was recovered from the house of the Respondent No. 1, the said recovery by itself cannot prove that the sum was paid as consideration for the contract killing. Respondent No. 1 is a jeweller

by profession and has his own shop at Jath. As such, possessing Rs. 20,000.00 in cash is not an unnatural circumstance that is solely consistent with the hypothesis of contract killing. As such, a sufficient doubt has been created in our minds as to the credibility of the contract killing theory.

13. We shall now test the credibility of the second successive circumstance relied upon by the Prosecution i.e., the purported recovery of the blood-stained clothes of the deceased and the Respondent No. 1 from the possession of the Respondent No. 1.

13.1. In this regard, the evidence given by another pancha witness, Shri. Salim Kakatikar (P.W. 12) is relevant. He has deposed as under:

i. In his examination-in-chief, he has deposed as under:

> "1. ...It did not happen that accused Gulab Dattu Patil stated in my presence that he would remove the clothes on the person of the deceased."
>
> **[emphasis supplied]**

ii. Immediately after making the above statement, this witness was declared hostile. The relevant part of the cross-examination conducted by the Prosecution thereafter is as under:

> "2. It is not true to say that accused Dattu Patil gave a disclosure statement stating that he would hand over the clothes of deceased persons from the shop Tirupati Jewellers....."
>
> **[emphasis supplied]**

iii. This witness has further gone to state as under:

> "2. ...It is not true to say that accused had handed over clothes in my presence and those were seized under panchanama. It is not true to say that those were sealed in my presence and the labels of my signature were affixed thereof. Now, I am shown those clothes. I do not identify those clothes.
>
> 3. ...
>
> 4. ... It is not true to say that accused handed over an amount of Rs. 20,000/- to police in our presence from his house. It is not true to say that said amount was seized in my presence under the panchnama."
>
> **[emphasis supplied]**

13.2. The evidence given by Shri. Salim Kakatikar (P.W. 12) is damning to the Prosecution's case. It is clear from his deposition that the blood-stained clothes of the deceased and those of Respondent No. 1 were not recovered from the possession of the Respondent No. 1, much less at Respondent No. 1's own instance. In fact, if the deposition given by Shri. Appasaheb Koli (P.W. 11) and Shri. Salim Kakatikar (P.W. 12) is considered conjunctively, two things become clear. First, that the sum of Rs. 20,000.00 was never recovered from the possession of the Respondent No. 1. Second, the blood-stained

clothes as described hereinabove were also never recovered from the possession of the Respondent No. 1.

14. We shall now examine the veracity of the last seen theory, which is the third successive circumstance required to be evaluated. The Prosecution has examined two witnesses in this regard, namely Shri. Rajaram Bhimrao Patil (P.W. 4) and Shri. Jyotiram A. Jadhav (P.W. 7), who are said to have last seen the deceased before the incident while he was with the Respondent No. 1.

14.1. Shri. Rajaram Bhimrao Patil (P.W. 4) has deposed as under:

i. That while returning from a fair on 20.01.2002 at about 4:00 PM, he saw the deceased pillion-riding on the Boxer Motorcycle along with Respondent No. 1;

ii. That he was on-board an ST Bus when he saw the deceased and the Respondent No. 1 and the bus was moving at a fast pace;

iii. Most importantly, he states that he was not acquainted with the Respondent No. 1 – "*It is true that accused Gulab* [Respondent No. 1 herein] *was not knowing to me earlier.*"

14.2. Shri. Jyotiram A. Jadhav (P.W. 7) has deposed as under:

i. That while playing cars along with two others under a tamarind tree on 20.01.2002 at about 3:00 PM, one person approached him on a motorcycle and asked him about the whereabouts of the house of the deceased;

ii. In his cross-examination, he stated that the tamarind tree under which he was sitting was at a distance of about 150 feet from the house of the deceased.

14.3. There are some important aspects about the evidence given by the aforementioned witnesses i.e., Shri. Rajaram Bhimrao Patil (P.W. 4) and Shri. Jyotiram A. Jadhav (P.W. 7) which destroy their credibility. On a careful evaluation of the evidence given by the aforementioned witnesses, the last seen theory that the Prosecution seeks to rely upon is also not established:

i. In the case of P.W. 4, his evidence is unreliable as he was not acquainted with the Respondent No. 1. In addition to that, the bus he was on was admittedly moving at a fast pace, which could not have given him more than a fleeting glance at the person present with the deceased.

ii. In the case of P.W. 7, the unease arises from the fact that P.W. 7 had not disclosed the sequence of events as purportedly witnessed by him until 24.01.2002 i.e, four days

after the incident. No explanation whatsoever has been given for the said delay.

15. Finally, we shall evaluate the credibility of the motive theory forwarded by the Prosecution. At the core of this theory, the Prosecution relies upon the motive arising out of the litigation that was instituted against the Respondent No. 2 by Smt. Asha Rani (P.W. 13, wife of the Respondent No. 2 and daughter of the deceased), as well as the mistreatment meted out to P.W. 13 by the Respondent No. 2 and his family. In support of its motive theory, the Prosecution has relied upon the evidence given by three witnesses, namely Shri. Krishna Mane (P.W. 1), Smt. Padmini Jagtap (P.W. 2), and Shri. Mahadev Patil (P.W. 3).

15.1. Shri. Krishna Mane (P.W. 1) is the owner of the land on which the body of the deceased was discovered two days after the incident. The evidence given by him is formal and not relevant to the determination of the motive theory.

15.2. Smt. Padmini Jagtap (P.W. 2) is the daughter of the deceased and the sister of the Smt. Asha Rani (P.W. 13). She has deposed as under:

i. That the Respondent No. 2 mistreated his wife Smt. Asha Rani and used to beat her, and that the parents of Respondent No. 2 also mistreated Smt. Asha Rani and demanded money from her parents. *At this juncture, it is pertinent to note that notwithstanding the averments made by Smt. Padmini Jagtap (P.W. 2), no complaints of mistreatment or beating have been brought on record.*

ii. That her father (the deceased) had lodged a complaint against the Respondent No. 2 and his family and took Smt. Asha Rani back to her natal home. Thereafter, an application for maintenance under Section 125 of the CrPC was filed in the Tasgaon Court. *At this juncture, we may also consider the evidence given by Smt. Asha Rani, who has contradicted the evidence given by this witness, P.W. 2. Smt. Asha Rani has deposed that neither did her father (the deceased) nor did her advocate lodge any complaints in a police station and/or a court in relation to the Respondent No. 2's threats.*

iii. That both the deceased and Smt. Asha Rani used to attend the hearings of the maintenance proceedings at the Tasgaon Court which angered the Respondent No. 2;

iv. That the deceased, along with the Sarpanch and the Village Police Patil, visited the house of the Respondent No. 2 to

settle the dispute between the Respondent No. 2 and Smt. Asha Rani;

v. In her cross-examination, there mere denials in respect of the statements and questions put to her.

15.3. In relation to the evidence given by Smt. Padmini Jagtap (P.W. 2), we find that save and except giving details of the dispute between the Respondent No. 2 and his wife Smt. Asha Rani, there is nothing material in the cross-examination of this witness that decisively establishes beyond reasonable doubt that the Respondent No. 2 had a strong motive to kill the deceased. Importantly, we find that Smt. Asha Rani (P.W. 13) herself has contradicted this witness on material particulars. Furthermore, in conjunction with this witness' statement that the Respondent No. 2's family kept demanding money from Smt. Asha Rani's parents, it is important to highlight the evidence given by Shri. Mahadev Patil (P.W. 3), who deposed that the financial condition of the Respondent No. 2 *qua* his grocery shop was good.

15.4. Shri. Mahadev Patil (P.W. 3) is the ex-Sarpanch of Khujgaon Village. The evidence given by him has been annexed as Exhibit 18 at page nos. 61 to 63 of the Paper Book. In the entire examination-in-chief and cross-examination, this witness has not spoken of the Respondent No. 1 harbouring any motive to kill the deceased or

thrown any light whatsoever on the incident. All that this witness has said pertains to the matrimonial dispute between the Respondent No. 2 and Smt. Asha Rani (P.W. 13) which was sought to be reconciled with his efforts.

15.5. We may state that on an evaluation of the evidence given by the three aforementioned witnesses, we cannot come to a decisive conclusion that the Respondent No. 2 was harbouring a strong intention to kill the deceased, especially because Smt. Asha Rani herself has deposed that neither the deceased nor her advocate had not filed any complaints against the threats of the Respondent No. 2. Even if there was a motive harboured by the Respondent No. 2, there is no chain of circumstances that leads to the killing of the deceased by the Respondent No. 1 as the contract killing theory has already been disproved. That being the case, the motive theory that is sought to be relied upon by the Prosecution falls flat.

16. Even though the four successive circumstances upon which the Prosecution has sought to prove its case have fallen flat, we shall consider another important piece of evidence relied upon by the Prosecution i.e., the chemical analysis report (marked as Exhibit 20 and 22). The report stipulates that the buttons recovered at the scene of the crime and the buttons on the shirt that was purportedly

recovered from the Respondent No. 1 were the same. This, it is asserted by the Prosecution, establishes the involvement of the Respondent No. 1 in the commission of the crime. However, this proposition cannot be accepted for two reasons. First, there is nothing in the report that shows that the buttons recovered from the scene of the crime are from the shirt purportedly recovered from the Respondent No. 1. Second, the chemical analysis report did not bring on record the blood group of the blood stains found on the clothes allegedly recovered from the Respondent No. 1, which could have been matched with that of the deceased i.e., Group 'B.'

17. Therefore, taking into consideration the entire evidence on record, the depositions of the prosecution witnesses, and the circumstances sought to be relied upon by the Prosecution, we find it impossible to unequivocally infer the guilt of the Respondents in respect of the offences they have been charged for. Furthermore, in view of the principles laid down in *Murlidhar @ Gidda (supra),* the presumption in favour of the Respondents is only bolstered owing to their acquittal by the Trial Court. On an overall consideration, we find that the Prosecution has not been able to prove its case beyond reasonable doubt.

18. In view of the above discussion and findings, we are not inclined to disturb and interfere with the judgement of the Trial Court and see no reason to set aside the order of acquittal passed by the learned ad-hoc Additional Sessions Judge, Sangli.

19. Criminal Appeal stands dismissed with no order as to costs.

[MILIND N. JADHAV, J.] **[S.S. SHINDE, J.]**