
(2016) 06 BOM CK 0160
In the Bombay High Court
Case No : Criminal Appeal No. 291 of 2014

Mohd. Iqbal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 AIRBomRCri 596 : (2016) ALLMRCri 4530 : (2017) 2 BomCR(Cri) 243 : (2016) 5 MhLJCrI 565

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. R.M. Daga, Advocate, for the Appellant No. 1; Mr. A.V. Gupta, Senior Advocate with Mr. A.A. Gupta, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

V.M. Deshpande, J.(Oral)—These two appellants are before this Court since they are aggrieved by the judgment and order of conviction, dated 3rd of April, 2014, passed by the Additional Sessions Judge ? 4, Nagpur in Session Trial No. 548 of 2009. By the said judgment, the appellants are convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and they were directed to suffer imprisonment for life and also to pay a fine of by each of them and in default of payment of fine to suffer simple imprisonment for three months.

2. The prosecution case which was unfurled during the course of the trial is stated herein under :-

The Criminal Law was set into motion on 9th of August, 2009 by Smt. Sk. Jamila wd/o Sk. Abid, first informant, by lodging her report at Exh.62. When first informant had been to Police Station Lakadganj that time Pandurang Rangari, A.S.I., (PW 8) was on duty as a Night Officer. He registered the Crime vide Crime No. 238 of 2009 for the offence punishable under Section 302 read with Section

34 of the Indian Penal Code against one Munna and Bablu, on the basis of the oral report. The Printed FIR is at Exh.63.

As per the First Information Report, the name of the husband of the first informant is Sk. Abid. He was an autorickshaw driver by profession. On 8th of September, 2009, in the morning, as usual her husband went away and came at 1 O'clock for his lunch. Thereafter, at 2 O'clock he again proceeded for his work and he returned in the night at about 10.30 to his house.

3. When he was parking auto-rickshaw in front of his house that time appellants Munna Sattar and Bablu Sattar came to her husband and demanded Rs.10/- for drinking liquor. Her husband did not oblige to them and therefore they picked up quarrel with him and thereafter they went towards their own house.

It is further stated in the report that after ten minutes both Munna and Bablu came armed with deadly weapons and in front of the house of first informant, her husband was assaulted resulting into receiving severe injuries.

After the registration of the Crime, Pandurang Rangari (PW 8), ASI, handed over investigation to API Shri Nagarale (PW 15).

4. After being entrusted with the investigation, API Shri Kishor Nagarale visited the spot of the incident along with the first informant. The spot was in front of the house of the first informant. He prepared spot panchanama (Exh.86). He also conducted inquest on the dead body. Inquest is at Exh.58. He then sent dead body to the hospital for Post Mortem. He also recorded statement of two witnesses.

5. The further investigation was carried out by Kishor Kamble (PW 14). On 9th of August, 2009, the accused persons were arrested by Head Constable Vijay Salwe. The arrest Memos (Exhs.93 and 94) are proved by Kishor Kamble (PW 14). Shri Kamble also recorded the statements of the witnesses. He seized clothes of the deceased under Seizure Memo (Exh.97).

When appellant No. 1 Mohd. Iqbal @ Munna was in custody, he made a disclosure statement in presence of two panchas that he had hidden knife, gupti and clothes at his house and he is ready to point out the place. The disclosure statement is at Exh.98. Similarly, appellant no.2 Mohd. Rafiq @ Bablu also gave a memorandum statement in presence of panchas (Exh.99) and agreed to show the place where he had hidden the sword and clothes which were on his person at the time of commission of the offence.

6. According to the prosecution, thereafter the police party went to the places shown by the appellants and from there the articles were seized under Seizure Memos Exh.100 and Exh.101, respectively. Kishor Kamble (PW 14) also sent weapons to the Medical Officer, Mayo Hospital, Nagpur for query with his requisition letter (Exh.83). He received the query report from the Medical Officer. It is at Exh.84. Then he sent the muddemal articles to Chemical Analyzer under requisition Exh.107. After completion of the other usual investigation he filed

charge-sheet before the Court of law. The learned Magistrate, in whose Court final report was presented, noticed that the offence is exclusively triable by the Court of sessions therefore he passed committal order and committed the case to the Court of Sessions. Thereafter the case was registered as Sessions Trial No. 548 of 2009.

On 27th of September, 2010, a Charge was framed against the appellants under Exh.26 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. On 25th of July, 2013, an alter Charge was framed under Exh.191. The alter charge was in respect of nicknames of the appellants. As per the said, the appellant no.1 Mohd. Iqbal is also known as Munna whereas the appellant no.2 Mohd. Rafiq is also known as Bablu. It appears that the appellants have no quarrel about their nicknames.

7. The charge framed for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code was denied by both the appellants and they claimed that they be tried.

In order to bring home the guilt of the appellants, the prosecution has examined in all fifteen witnesses and also relied upon various documents which were proved during the course of the trial. The appellants were examined by the learned judge of the Court below under Section 313 of the Code of Criminal Procedure. They also examined one defence witness. After a full-fledged trial, the learned judge of the Court below convicted both the appellants as observed in the opening paragraphs of this judgment. Hence, this appeal.

8. We have heard Shri A.V. Gupta, the learned Senior Counsel with Shri R.M. Daga, Advocate and Shri A.A. Gupta Advocate the appellants. The State is represented by Shri T.A. Mirza, learned Additional Public Prosecutor. The learned Senior Counsel and the learned Additional Public Prosecutor for the State took us through the entire record of the Sessions Trial very minutely. They also took us through the notes of the evidence of the prosecution witnesses. According to the learned Senior Counsel, there is no trustworthy evidence for conviction. He submitted that though PW 6 Sk. Akram and Firoz Shaik (PW 7) are relied upon by the learned judge of the Trial Court as eye witnesses to the incident, on the closure scrutiny of their evidence there is a reasonable doubt about their character as an eye witness. He further submits that even their evidence is contradictory inter se. It is further submitted that the recoveries of the weapons and clothes as claimed and relied by the prosecution are highly suspicious and consequently the scientific evidence in the nature of the Chemical Analyzer Report needs to be discarded. He, therefore, submits that the appeal be allowed. Per contra, the learned Additional Public Prosecutor would submit that no fault can be found in the judgment of the learned judge of the Court below in accepting the evidence of PW 6 and PW 7 who has seen the incident of assault on deceased at the hands of the appellants. He submits that merely there is a delay in sending articles to Chemical Analyzer that by itself is not sufficient to discard the corroborative piece of evidence and therefore prayed for dismissal of the

appeal.

9. In a case like this, the first question to be determined by the Court is about the nature of the death of the deceased. Occurrence is dated 8th of September, 2009. Inquest was conducted on the dead body vide inquest panchanama (Exh.58) on 9th of August, 2009. While observing inquest proceedings the panchas observed numerous injuries on the person of deceased Sk. Abid s/o Sk. Mohammad.

On 9th of August, 2009, Dr. Manish Shrigiriwar (PW 9) was discharging his duties as Associate Professor at Indira Gandhi Medical College and Hospital, Nagpur. On the said day, he received requisition from Police Station Lakadganj to conduct Post Mortem examination on dead body of Sk. Abid Sk. Mohd. Accordingly, he conducted the Post Mortem. He noticed following external injuries :-

1. Incised wound present over right side of frontal region situated 6 cm. above glabella of size 6 cm. x 0.5 cm. x bone deep, underlined bone cut, margin clean cut, obliquely placed red in colour.
2. Incised wound present over right side of forehead involving right eyebrow situated 5 cm. from midline of size 3 cm. x 0.5 cm. x muscle deep, margin clean cut, vertically placed reddish.
3. Incised wound present over right side of infra orbital region situated 0.5 cm. below end of right lower eyelid of size 2 cm. x 0.5 cm. x muscle deep, margin clean cut, obliquely placed red in colour.
4. Contuse abrasion present over left side of forehead situated 0.2 cm. above left eyebrow of size 1.5 cm. x 1 cm. red in colour.
5. Incised wound present over left parietal region situated 1 cm. from midline of size 5 cm. x muscle deep obliquely placed red.
6. Linear abrasion present over front of right side of neck of size 8.5 cm. x 2 cm. red.
7. Punctured wound present over left supra clavicular region situated from 5 cm. midline, 3 cm. above left clavicle 0.7 x 0.2 cm. x subcutaneous tissue deep, red.
8. Abrasion present over left side of chest situated 8 cm. above left nipple 13 cm. from midline of size 2 cm. x 0.2 cm. horizontally placed red in colour.
9. Stab injury present over lateral aspect of right side of chest, along anterior axillary line situated in 7th intercostal space, 8 cm. below and lateral right nipple, 16 cm. from midline of size 3.5 cm. x 1 cm. x cavity deep, margin clean cut, medial angle sharp, lateral angle blunt, horizontally placed, directed right to left downward and backward, red.
10. Punctured wound present over right side of umbilical region of the abdomen situated 10 cm. right and lateral to umbilicus of size 5 cm. x 5 cm. x subcutaneous tissue deep, red.

11. Stab present over umbilical region of the abdomen situated just above left to umbilicus of size 3 x 2 cm. x cavity deep margin clean cut, medial angle sharp, lateral angle blunt directed from front to back, coils of intestine protruding out of the abdominal cavity through the wound, red.

12. Incised wound present over middle 3rd of posteromedial aspect of left forearm situated 11 cm. below left elbow of size 5 x 2 cm. into muscle deep, margin clean cut red.

13. Contused abrasion present over middle 3rd of back of left forearm situated 14 cm. below left elbow joint 2 x 1 cm. red.

14. Contused abrasion present over back of right forearm 6 cm. below right elbow joint, 3 cm. x 0.3 cm. red in colour.

15. Incised wound present over knuckle of right middle finger of size 1.5 cm. x 0.3 cm. x muscle deep, margin clean cut red.

16. Abrasion present over knuckle of right ring finger of size 0.5 cm. x 0.2 cm. red in colour.

On internal examination he found following injuries :-

1. Head :- A) skull ? linear cut marks present over right side of frontal bone length 3 cm. corresponding with injury no.1 of column no.17.

2. Thorax :- A) Wall-ribs ? cut marks present over upper border of 8th rib of right side corresponding with injury no.9 of column No. 17.

(B) Pleura ? right pleura torn at the side corresponding to injury no.9 of column no.17, right pleural cavity contained 500 ml. Of blood. Left pleura intact.

(C) Right Lung ? stab injury present over the middle lobe passing through and through corresponding to injury No. 9 of column No. 17. Left lung intact.

(D) Diaphragm ? Stab injury present over right dome of diaphragm passing through and through corresponding to injury no.9 to column no.17.

3. Abdomen :- A) Walls ? stab injury present over umbilical region of abdomen situated just above and left to umbilicus region of size 3 cm. x 2 cm. by cavity deep.

(B) Peritoneum ? torn at side corresponding to injury no.11 of column no.17.

(C) Cavity ? abdominal cavity contains about 1.5 liter of blood.

(D) Small Intestine ? in tact, coils of small intestine protruding out of abdominal cavity through the stab wound mentioned as injury no.11 of column no.17.

(E) Large intestine ? stab wound present over transverse colon passing through and through situated 28 cm. distal to ileocaecal junction directed from front to back, corresponding to injury no.11 of column no.17.

(F) Liver ? Stab injury present over lobe of liver passing through and through from anterosuperior surface to under surface of liver.

According to the Autopsy Surgeon, all the injuries were anti-Mortem and injury Nos.9 and 11 are individually sufficient to cause death in ordinary course of nature. In his opinion, the cause of death of deceased was hemorrhage and shock due to homicidal stab injury to vital organs (lung, liver, intestine). He proved the Post Mortem report. It is at Exh.40.

Looking to the injuries noticed by the panchas while conducting the inquest panchanama and in view of the evidence of Autopsy Surgeon, and the injuries which he has noticed and mentioned in the Post Mortem report, it is clear that the nature of death of Sk. Abid Sk. Mohammad was that of homicidal one.

10. Once the Court reaches to the nature of the death, the next question that the Court is required to answer is as to whether the prosecution is able to prove the guilt of the appellants beyond reasonable doubt as appellants are responsible for the injuries due to which the deceased died.

11. In this case, prosecution has examined in all fifteen witnesses. They can be cataloged as eye witnesses, panch witnesses, Investigation Officers and Medical Evidence. Prosecution has examined PW 1 Jamila (first informant), PW 2 Aminabi w/o Sk. Habib, PW 3 Hamidabi Rafique, PW 6 Sk. Akram and PW 7 Firoza Sk. and PW 10 Sk. Siraj Shabir as eye witnesses to the incident. PW 4 Sk. Sk. Akil and PW 5 Sk. Hakim, PW 12 Mohd. Firoz and PW 13 Sk. Wahib were examined as panch witnesses whereas PW 8 Pandurang Rangari, PW 14 Kishor Kamble and PW 15 Kishor Nagrale are the Investigating Officers. PW 9 Dr. Manish Shrigiriwar and PW 11 Dr. Vijay Jadhav are examined as medical evidence.

12. PW 1 Sk. Jamila is the first informant and wife of the deceased. She has turned hostile. Further, PW 2 Aminabi Habib and PW 3 Hamidabi Rafiq, who are the neighbours, also turned hostile and they did not support the prosecution.

PW 10 Sk. Siraj, a child witness is disbelieved by the learned Trial Judge of the Court below and we see no reason to upset the said finding.

13. That left for the Court for appreciation of the evidence of PW 6 Sk. Akram and PW 7 Firoza Sk., who were examined as eye witnesses. The learned Senior counsel has seriously disputed their character as an eye witnesses. He submits that their evidence is not only contradictory inter se but their evidence is belied by the contemporaneous document namely; the First Information Report (Exh.32) and Spot Panchanama (Exh.86).

14. These two eye witnesses are husband and wife. PW 6 Sk. Akram is the brother of the deceased and as such PW 7 Firoza Sk. being the wife of Sk. Akram is the sister-in-law of the deceased. As per the First Information Report, two incidents were occurred on 8th of August, 2009. Firstly, at 10.30 p.m. and another after ten minutes. Both the incidents as per the First Information Report, occurred in front of the house of the first informant. Exh.86, Spot Panchanama,

which was drawn on 9th of August, 2009, in between 00.50 hour to 02.40 hrs., shows that the blood was spread within the distance of 2 ft. from the house of the first informant. Also Exh.86 recites that the spot of the incident is near the house (?kjtoGhy) of the first informant.

In the aforesaid backdrop, let us examine and scrutinise the evidence of PW 6 and PW 7. PW 6 Sk. Akram is elder brother of deceased. Though they were brother, it is not claim of PW 6 Sk. Akram that they were residing jointly. According to his evidence, the house of deceased is situated after six houses from his house (R;kps ?kj ek>s ?kjkps lgk ?kjkuarj vkgs).

As per the evidence of Firoz Sk. (PW 7), the house of the deceased is situated adjoining to her house (R;kps ?kj ek>s ?kjkyk ykxqu gksrs).

From the aforesaid evidence, these two witnesses are at variance in respect of the spot of the house of the deceased. The word "adjoining" is a relative term. Therefore, necessarily, we will have to fall back on the testimony of PW 6 Sk. Akram that the house of the deceased was six houses away from the house of these two eye witnesses.

15. According to the First Information Report (Exh.32), on 8th of August, 2009 at 10.30 p.m. the deceased returned to his house after finishing his work. The deceased, who was an auto rickshaw driver, was parking his auto rickshaw in front of his house on a road. That time, the present appellants came to him and demanded Rs.10/- for drinking liquor. The said demand was refused by the deceased. Therefore, both the appellants abused the deceased and thereafter proceeded towards their own house. This is the first incident i.e. reported in the First Information Report.

According to the First Information Report, the second incident occurred after ten minutes. As per the First Information Report both the appellants returned to the house of the deceased and that time they were armed with the deadly weapons and in front of the house of the first informant they made murderous assault on the deceased.

Though first informant PW 1 Sk. Jamila has not supported the prosecution, however, in her evidence she has stated as under :-

"I learnt that there was a murder of my husband when I was cooking in my house. Therefore, I went to see him near my house."

Thus, according to the First Information Report and as per the evidence of Sk. Jamila the incident has occurred in-front of her house. The said aspect is clearly corroborated by the contemporaneous document i.e. Spot Panchanama (Exh.86).

16. In that behalf, the evidence of PW 6 Sk. Akram, who states that his house is situated after the six houses of the house of deceased reads as under :-

"Accused Bablu was having sword, accused Munna was having gupti and they were beating Abid in front of my house."

Similarly, evidence of PW 7 Firoza Shaikh on the point of the spot of incident also states that the incident in question occurred in front of her house and that time deceased was standing near her.

When the house of PW 6 Sk. Akram and PW 7 Firoza Sk. is situated after six houses from the house of the deceased, at the night hour at 10.30 there was no occasion for the deceased to go near the house of his brother. It is not the claim of either PW 6 Sk. Akram and PW 7 Firoza Shaikh that after returning to home deceased was called by them near their house. Therefore, the presence of the deceased near the house of PW 6 Sk. Akram and PW 7 Firoza Shaikh, as claimed by them, appears to be improbable. Further, the spot of the incident as given by PW 6 and PW 7 is different than that is indicated by the evidence of PW 1 Shaikh Jamila and contemporaneous document i.e. FIR (Exh.32) and Spot Panchanama (Exh.86) which indicate altogether different spot. That reminds us a authoritative pronouncement of the Hon'ble Apex Court reported in AIR 2006 SC, 2908 (Syd. Ibrahim v. State of Andhra Pradesh) in which the Hon'ble Apex Court ruled that different places of occurrences indicated in the prosecution case show that the place of occurrence itself is not established and therefore the conviction of the accused is not proper.

17. We have one more another reason to discard the testimony of these two eye witnesses. According to the evidence of Sk. Akram (PW 6) he returned to his house at 10.30 p.m. for taking meal. The second incident of actual assault has occurred at 10.30 p.m. According to the claim of Firoza Shaikh (PW 7), at the time of assault deceased was standing near her. In spite of that the testimony of PW 6 Sk. Akram is completely silent about the presence of his wife. Similarly, testimony of PW 7 Firoza Shaikh is also completely silent about the presence of PW 6 on the spot. From the spot panchanama it is clear that the spot of the occurrence was illuminated with more than sufficient light therefore it would be impossible that this couple will fail to mark each other's presence.

18. It is to be noted that PW 6 Sk. Akram is the real elder brother of the deceased. He claims that he was present at the time of assault. In spite of that, if his evidence is minutely scrutinised then it shows that deceased was taken to the hospital by other persons gathered there. Further, PW 7 Firoz Shaikh, if her evidence is appreciated in its true perspective, shows that she claims ignorance as to whether her husband PW 6 Sk. Akram went to hospital. Exh.64 is an intimation from Mayo hospital. That shows that the deceased was brought in the Mayo hospital by some unknown persons in the Casualty Ward. If PW 6 was accompanying with his brother, there was no reason for the authorities to mention that the deceased was brought in injured condition by unknown persons. Further, the said intimation (Exh.64) shows that nobody is present near the dead body and everybody has left the dead body. If really PW 6 Sk. Akram was in the hospital, surely he would not leave the dead body of his near and dear in unattended condition. Cumulative effect of aforesaid re-appreciation of evidence of PW 6 Sk. Akram and PW 7 Firoza Sk. constrains us to reach to the

conclusion that, with conviction, one cannot say that these two persons has seen the actual assault. For the reasons observed in the preceding paragraphs, their evidence is not trustworthy and appears to be improbable. Therefore, there is no hesitation in our mind to discard their evidence.

19. The another aspect on which the prosecuting agency had relied is the recovery of weapons and blood stained clothes of the accused persons which they were wearing at the time of incident.

20. When the appellants were in the custody of Kishor Kamble (PW 14), PSI, they made their disclosure statement whereby they agreed to show the place where they concealed the weapons and the clothes. The disclosure statement of appellant no.1 Mohd. Iqbal @ Munna s/o Abdul Sattar is at Exh.98 whereas the disclosure statement of appellant no.2 Mohd. Rafique @ Bablu s/o Abdul Sattar is at Exh.99. The statement of appellant no.1 is recorded in presence of panchas on 11th of August, 2009 in between 12.15 to 12.30 whereas the disclosure statement (Exh.99) of Bablu is recorded on 11th of August of 2009 at 14.30 hours.

Under Exh.93, appellant no.1 was arrested. The arrest panchanama of appellant no.1 shows that the arrest of his intimation was given to his wife and the name in the said document of his wife is shown as Siraju Nisha whereas the appellant no.2 was arrested under arrest panchanama (Exh.94) and the intimation of his arrest was given to his wife by name Shabina Parveen. Exh.100 and Exh.101 are the recovery panchanamas. Apart from the fact that the recitals of the said recovery memos show that the recovery was made from the place which was not in the exclusive control and possession of the appellants. In Exh.100, the name of the wife of Munna is shown as Shabin Parveen and also the name of wife of appellant no.2 in recovery Memo (Exh.101) is also shown as Shabina Parveen when as per Exh.93 the name of wife of appellant no.1 was Siraju Nisha. There is no explanation whatsoever coming on record as to why in both the recovery memos names of the wife of appellants are shown as Shabin Parveen. That shows most casual approach on the part of the Investigating Officer. Both the panch waitresses to those recoveries are turned hostile. The evidence of Investigating Officer Kishor Kamble (PW 14) is completely silent that after the seizure, the muddemal property was properly "sealed". The Division Bench of this Court in the case of Tulshiram Bhanudas Kambale and ors. v. State of Mah. reported in 2000 CRI.L.J. 1566 has ruled that where the evidence of Investigating Officer shows that after effecting the recovery of articles he did not affix the lac seals on them, no evidentiary value can be attached to said recovery. In fact, we have also taken the said view in many of the cases.

21. What further disturbing is that on the documents (Exh.100 and Exh.101) in the left-hand column of the said document one rubber stamp appears which is as follows :-

I. P.C. 1 To 5

eky ua0 104@2009

fnukad % 08-09-2009

The other seizure panchanams also shows the aforesaid stamp and date is 8th of September, 2009.

22. Though the blood stained clothes of the appellants and the weapons were seized on 11th of August, 2009, there is no evidence at all available on record as to on what date they were deposited in Malkhana. The aforesaid rubber stamp states that the Muddemal articles were deposited in Malkhana on 8/9/2009.

23. Exh.83 is dated 13th of November, 2009. It is a requisition by PW 14 Shri Kishor Kamble, P.S.I. to doctor of Mayo Hospital, Nagpur by which he sent the weapons for his opinion as to whether the injuries as mentioned in Post Mortem report can be caused by said weapons. Exh.84 is the query report addressed by the Medical Officer to the Investigating Officer, Police Station, Lakadganj. Exh.84 shows that on 13th of November, 2009 itself the doctor has handed over query report and weapon to the police constable on duty. It is further corroborated by the Outward No. 69 dated 13th of November, 2009, as it is appearing on Exh.84.

Thus, it is crystal clear that on 13th of November, 2009 itself the Investigating Officer has received the opinion. Though the Investigating Officer is silent on the date, evidence of Dr. Vijay Jadhav (PW 11) shows that he issued query report (Exh.84) which is having date of 13th of November, 2009.

24. Though the query report was received on 13th of November, 2009, Muddemal articles like the clothes of the accused and the weapons were sent to Chemical Analyzer by Investigating Officer under requisition (Exh.107) on 2nd of February, 2010 vide Outward No. 246 of 2010. Now, from 13th of November to 2nd of February, 2010 where these articles were lying ? Whether they were kept in proper sealed condition ? Whether they were in proper custody ?. There is no prosecution evidence to answer the aforesaid questions. The prosecution was obliged to adduce the evidence to show that after the articles seized were properly sealed and they were in proper custody and were kept throughout in a sealed condition i.e. right from the time of recovery till being sent to the Chemical Analyzer. The prosecution evidence is clearly wanting on the said aspect. Therefore, in our view, the learned Senior Counsel has rightly placed his reliance on dictum of this Court reported in 1995 CRI.L.J. 1432 (State of Maharashtra v. Prabhu Barku Gade) for extending benefit in favour of the appellants.

25. We notice that aforesaid aspects were not properly and correctly appreciated by the learned Judge of the Court below. Therefore, on the re-appreciation of entire prosecution case we record our finding that the prosecution has failed to prove the charge against the appellants beyond reasonable doubt. Consequently, we pass the following order.

ORDER

26. The appeal is allowed.

27. The judgment and order of conviction and sentence dated 3rd of April, 2014 passed by learned Additional Sessions Judge ? 4, Nagpur, in Sessions Trial No. 548 of 2009 is set aside. The appellants are acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

28. Both the appellants be released forthwith, if not required in any other Crime.