
(2019) 01 GUJ CK 0108
In the Gujarat High Court
Case No : R/Criminal Appeal No. 578 Of 2015

Namala Alias Bhangadabhai Hatiyabhai Nayaka	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 19-01-2019

Acts Referred:

Code Of Criminal Procedure 1973 — Section 209, 313, 374, 386
Indian Penal Code, 1860 — Section 114, 302, 323, 504 506(2)
Evidence Act, 1872 — Section 145, 154

Citation : (2019) 01 GUJ CK 0108

Hon'ble Judges : B.N. Karia, J;A.P. Thaker, J

Bench : Division Bench

Advocate : Rekha H Kapadia, Monali H. Bhatt

Final Decision : Allowed

Judgement

1. The accused has preferred this appeal under Section 374 of the Criminal Procedure Code, 1973 against the judgment and order of conviction dated 15.03.2013 passed by the learned 9th Additional Sessions Judge, Vadodara, Camp at Chhotaudepur (hereinafter be referred to as "the trial court") in Sessions Case No. 36 of 2012, whereby present appellant (accused no.1) has been convicted for the offence punishable under Section 302 of the Indian Penal Code and directed him to undergo sentence of rigorous imprisonment of life for the said offence with fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for six months.

2. The case of the prosecution briefly is that on 21.03.2012 at 10 o'clock at Village: Jinjarvani, a quarrel has taken place between the accused and the complainant and deceased Dineshbhai Vichhiyabhai @ Virsingbhai Nayaka for payment of tax of the land held by them jointly. It is further the case of the prosecution that the accused quarreled and abused them and the appellant herein - original accused no.1 inflicted axe blow on the head of the deceased and accused no.2 inflicted stick blow about the left eye of the complainant and

thereby caused injuries. It is also the case of the prosecution that the accused threatened them to kill. It appears that due to the injuries, the deceased died on the spot and, thereafter, the police visited the place of the incident and on the basis of the complaint filed by the complainant namely Sumitraben wife of Dineshbhai, the First Information Report (FIR) being C.R.No.I-34/2012 came to be registered for the offence punishable under sections 302, 504, 506(2) read with section 114 of the Indian Penal Code.

3. After completion of investigation, as the sufficient evidence was found, the police has arrested the accused and has filed the charge-sheet against the accused before the Judicial Magistrate (First Class), Chhotaudepur wherein it was registered as Criminal Case No.987 of 2012. As the offence was triable by the Court of Sessions, the Judicial Magistrate (First Class) has committed the case under Section 209 of the Criminal Procedure Code to the Court of Sessions wherein it has been registered as Sessions Case No.36 of 2012.

4. On the basis of the material available on record, the trial court has framed the charge on 09.10.2012 vide Exhibit 5 against both the accused for the offences punishable under sections 302, 504, 506(2) read with section 114 of the Indian Penal Code and the same were explained to both of them. The accused have denied having committed any offence. The accused pleaded not guilty to the charge and pleaded for trial and hence, the case was tried by the learned Additional Sessions Judge, Chhotaudepur, District: Vadodara.

5. Considering the evidence on record, ultimately, the trial court has convicted the accused no.1 - appellant herein for the offence punishable under section 302 of the Indian Penal Code and awarded the sentence as stated above. However, he has been acquitted from the charges under sections 504, 506(2) read with section 114 of the Indian Penal Code, whereas, the accused no.2 - wife of the present accused has been convicted for the offence punishable under section 323 of the Indian Penal Code and she was imposed sentence for which she has been undergone during trial. Against such conviction of the accused no.2, no appeal has been preferred, whereas, the acquittal of the present accused for the offence punishable under sections 504, 506(2) read with section 114 of the Indian Penal Code has not been challenged by the prosecution.

6. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

P.W.1

Sumitraben Dineshbhai

Complainant and Eye Witness

Exh.12

P.W.2

Koyaliben Ditiyabhai Nayak

Eye Witness

Exh.14

P.W.3

Kanubhai Vichhiyabhai Nayak

Witness

Exh.15

P.W.4

Jamnaben Kanubhai Nayak

Child Witness

Exh.16

P.W.5

Bharatbhai Mangalbhai Rathwa

Panch Witness

Exh.17

P.W.6

Chandubhai Koyjibhai Rathwa

Panch Witness

Exh.22

P.W.7

Maheshbhai Hirsingbhai Rathwa

Panch Witness

Exh.24

P.W.8

Dr.Bhargav Dineshbhai Dave

Doctor

Exh.26

P.W.9

Dr.Nandlal Rajak

Doctor, who performed postmortem

Exh.30

P.W.10

Rupsingbhai Chhaganbhai Parg

Investigating Officer

Exh.34

7. In addition to this, the prosecution has also produced the following documentary evidence:-

Sr.No

Particular

Exhibit

1

Complaint of Sumitraben

13

2

Yadi for registering the offence

35

3

Yadi for further investigation after registering the offence

36

4

Yadi for Inquest

37

5

Inquest Panchnama

18

6

Panchnama of scene of offence

19

7

Yadi for giving treatment to the injured

28

8

Medical certificate

29

9

Police Yadi for P.M.

31

10

Postmortem Form

32

11

Postmortem note

33

12

Panchnama of the clothes produced by the complainant

25

13

Panchnama of body of the accused

20

14

Discovery Panchnama

21

15

Panchnama of the clothes of the deceased

23

16

Yadi for taking blood of the accused

40

17

Yadi for calling FSL Officer

38

18

Report

39

19

Forwarding Note

41

20

Receipt

42

21

Yadi for map

43

8. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein they denied having committed any offence and have stated that they are innocent.

9. After hearing both sides and considering the evidence on records, the learned Additional Sessions Judge by impugned judgment and order dated 15.03.2013 has convicted the accused as stated hereinabove.

10. While referring to the entire evidence on record, especially, the evidence of the complainant at Exhibit 12, Ms.Rekha Kapadia, learned advocate for the appellant has vehemently stated that the said witness in her cross-examination has given total go-bye to the entire prosecution story regarding her presence at the time of the incident and the fact of inflicting axe blow by the present accused to the deceased. While referring to the evidence of Koyaliben Ditiyabhai Nayak, P.W.3 at Exhibit 15, it has been contended by Ms.Kapadia, learned advocate that she is the mother of the deceased and she has not supported the case of the prosecution and on reading of her entire evidence including her cross-examination, her evidence is not trustworthy for establishing the facts that the present accused has inflicted the axe blow to the deceased. It is also contended that the evidence of the eye witness is the hearsay evidence and according to her, a child witness, at the relevant time, was in the school and, therefore, whatever stated by her in her evidence is hearsay evidence. She has also referred to the evidence of the panch witnesses and stated that they have not supported the case of the prosecution. She has also contended that though the complainant has not supported the case of the prosecution and has stated different story in her cross-examination which destroy the entire case of the prosecution, she has neither re-examined by the prosecution nor she was cross-

examined as to the previous statement either under section 145 of the Indian Evidence Act or she was examined under section 154 of the Indian Evidence Act. According to her, the trial court has not properly appreciated the evidence on record and has committed serious error of facts and law in convicting the appellant for the alleged offence. She has also contended that though it is established that the deceased was died due to the injury sustained by him, but that fact does not lead to the conclusion that the author of the injury was the present accused. She has also contended that the trial court, while appreciating the evidence of the complainant, has not read entire evidence of the complainant and has considered the evidence in piecemeal manner which is not permissible in law. It is also contended that the reasoning given by the trial court is contrary to the oral as well as documentary evidence and contrary to law and, therefore, the impugned judgment and order of conviction is not sustainable in law and it is required to be quashed and set aside by this Court. She has prayed to set aside the impugned judgment and order of conviction.

11. Per contra, Ms.Monali Bhatt, learned Additional Public Prosecutor for the respondent - State has contended that the complainant Sumitraben is an eye witness and her injury is duly proved by the medical evidence and on the basis of such evidence, other accused has been convicted for the offence punishable under section 323 of the Indian Penal Code. She has also contended that the complainant, when examined by the doctor for her injury, has specifically narrated the story before the doctor wherein she has stated that the present accused along with his wife have assaulted herself and deceased. It is the contention of the learned APP that her evidence is required to be considered in these aspects and when she was injured witness, whatever stated in her cross-examination, has not bearing on the case of the prosecution and though, she has stated different facts in the cross-examination, that fact could not be considered for acquitting the accused and the reasoning given by the trial Court is proper one in believing the facts narrated in the chief-examination by the complainant. She has also referred to the medical evidence as well as evidence of other witnesses and has contended that the police witness has clearly stated that the complainant has narrated the entire facts before him and accordingly, the FIR was registered. According to her, the totality of the evidence is required to be considered and on such consideration, it can be said that the prosecution has been able to prove the case against the present accused beyond reasonable doubt and there is no lacuna whatsoever in the evidence except the fact that in the cross-examination, the complainant has given go-bye to her version of the chief-examination. She has stated that the trial court has not committed any error in facts and law and has properly convicted and sentenced the accused. It is her submission that there is no perversity in the impugned judgment and order and, therefore, this Court may not interfere with the impugned judgment and order of conviction and the present appeal may be dismissed.

12. We have carefully considered the rival contentions and perused the impugned judgment and order as well as the evidence placed on record minutely.

13. Under Section 386 of the Criminal Procedure Code, the first Appellate Court can very well set aside the judgment of the trial Court if it comes to the conclusion that there was factual as well as legal infirmity in the finding of the trial Court and there is non-application of the legal aspects. Now, it is well settled that the High Court, as a first Court of appeal on facts, must apply its independent mind and record its own findings on the basis of own assessment of evidence. Mere reproduction of the assessment of the trial Court may not be sufficient.

14. Now, in the present case, on perusal of the evidence of Dr. Nandlal Rajak (P.W.9) at Exhibit 30, who has performed the postmortem of dead body of Dinesh on 22.03.2012, it is found that he has got police yadi and got dead body and, thereafter, he has started postmortem on 22.03.2012 at about 9.00 a.m. and completed at 10.00 a.m. According to him, he has found the following injury on the dead body:-

(1) sharp cut incised wound over right side of temporal region just above right ear, size around 2.5" x bone depth.

(2) sharp cut over right external ear, size 5 cm x 1 cm x bone depth.

(3) contusion over right side of face below eye, size 3 cm x 2 cm colour brownish.

14.1 This witness has stated that there was fracture of skull bone (right temporal region) and all injuries were ante-mortem and he has also found internal injury of fracture of skull bone just above right ear temporal region of size of 2.5 cm x 3 cm and has found clotted blood present therein. According to him, the cause of death was due to hemorrhagic and neurogenic shock causing cardiac respiratory failure and due to injury sustained to head and brain by heavy sharp object. He has not been cross-examined on behalf of the accused. Therefore, from the evidence of this witness, it is clear that Dinesh died due to the injury sustained by him on vital part of body namely head with heavy sharp object. Thus, from the evidence of this witness, it is clearly established that the deceased has died homicidal death.

15. Now, on perusal of the prosecution case, it appears that the entire prosecution case is rested on the two witnesses i.e. complainant and her mother-in-law, who are alleged to be eye witnesses and the complainant who is injured witness. The rest of the evidence of other witnesses is on the nature of hearsay evidence. Therefore, the evidence of the complainant - Sumitraben Dineshbhai, P.W.1 at Exhibit 12 as well as her mother-in-law koyaliben Ditiyabhai Nayak, P.W.2 at Exhibit 14 is required to be scrutinized.

16. Now, on perusal of the evidence of the complainant, P.W.1, Sumitraben Dineshbhai at Exhibit 12, it transpires that in her chief-examination, she has stated that the accused Namlabhai is her uncle-in-law and other accused Kasturiben is her aunt-in-law and they have agricultural land in their joint names and they have to pay the land revenue. According to her version, the tax was not

paid by the present accused and for that payment of tax, on the day of the incident at about 10 a.m., she was preparing food and his husband was lying on the cot and her mother-in-law was also sitting on the cot and at that time, the present accused and his wife both came and the accused had axe in his hand, whereas, the lady accused had wooden log in her hand and without saying anything, they have started beating her husband and herself. It is her version that the aunt-in-law had given log blow on her left side head and the uncle-in-law had given axe blow on back side of the head and on waist on her hand. That, at that time, she did not speak anything and her husband died on the spot and, thereafter, her nephew made a phone call to her brother-in-law Kanubhai and, thereafter, the neighbours came there and Kanubhai informed the police and, thereafter, the police came there and she has given her complaint. She has identified the accused in the Court.

16.1 In her cross-examination on behalf of the accused, she has stated that her parents are residing at Village : Pidariya and at the time of incident, she was at her parental home at Village : Pidariya. She has also admitted that as, she got the information about the incident, she came to her matrimonial home at Village : Jinjarvani, and at that time, Kanubhai has told her the entire facts of the incident. She has also admitted that she has no personal knowledge as to the death of the deceased. She has also admitted that as the villagers have told her to lodge the complaint and, therefore, she has given the complaint and, thereafter, she went to Village: Pidariya to reside with one Popatbhai with whom she had love affair and had got married afterwards.

16.2 Thus, on perusal of her evidence, it is clearly found that she has taken summersault in the cross-examination and has given total go-bye to whatever she has narrated in the chief-examination. On reading of the entire evidence, it transpires that she has destroyed the case of the prosecution by stating contrary facts in the cross-examination. It is pertinent to note that though, she has taken summersault in the cross-examination regarding her version in the chief-examination, the prosecution has not tried to re-examine her. Not only that but the prosecution has also not sought any permission of the Court under section 145 of the Indian Evidence Act to contradict her version in her previous statement nor the prosecution has sought any permission to ask the leading question which could be asked in the cross-examination under section 154 of the Indian Evidence Act. At this juncture, it is worthwhile to refer to sections 145 and 154 of the Indian Evidence Act, which read as under:-

145. Cross-examination as to previous statements in writing. - A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

154. Question by party to his own witness. -

(1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

[2] Nothing in this section shall disentitle the person so permitted under subsection (1), to rely on any part of the evidence of such witness.

16.3 Now, on perusal of the provisions of sections 145 and 154 of the Indian Evidence Act, it is crystal clear that the right is available with the prosecution to contradict his witness under section 145 of the Indian Evidence Act, if witness does not support the case of the prosecution and that can be done during the chief-examination or even after cross-examination. Not only that but under section 154 of the Indian Evidence Act, the prosecution can, by getting necessary permission from the Court, ask the leading question which could be asked in the cross-examination to its own witness. Now, in this case, no such course is adopted by the prosecution with regard to the evidence of the complainant though she has given totally different story and has stated that she was not present at the time of occurrence and, thereafter, she has created new picture that she is not an eye witness of the incident. Of course, considering the evidence of Dr. Bhargav Dineshbhai Dave, P.W.8, at Exhibit 26, it has come on record that he has stated that the complainant was brought to him for her treatment and at that time, she has given history to the doctor that Paghda Hatiya and his wife Kasturiben Paghda have assaulted her. Further she has not stated before the doctor as to assault by the present accused with axe on her hand. But it is pertinent to note that the complainant in her evidence has not stated anything regarding her getting any treatment from any doctor or stated anything before the doctor. Thus, she is silent on this aspect. But even if the prosecution case, as to the injury sustained by complainant and her getting treatment from the doctor is believed, that fact, is not sufficient to connect the accused with the injury sustained by the deceased.

17. Now, so far as the evidence of Koyaliben Ditiyabhai Nayak, P.W.2, at Exhibit 14 is concerned, it appears that in her chief-examination, she has initially stated that the incident has happened at 10.00 a.m., and her son was died and at that time, she was in the house and her son Dinesh was sleeping in the cot and his wife was preparing food and at that time, nobody came there and, however, at the same time, she has stated that due to land dispute, Bhangda has killed her son at that time, Kasturiben has having log in her hand and with that, she has beaten Sumitraben.

17.1 During her cross-examination on behalf of the accused, she has admitted that she has difficulty in hearing as well as in her vision and she cannot see 2-4 feet away. She has admitted that she has not narrated before the police that she was beaten with log by Kasturi and Kasturi has also given blow to Sumitra. According to her version, the police has not met her. She has also admitted that she has not narrated before the police that her son Dinesh had died. She has admitted that when Dinesh died, she, Dinesh and Sumitra were present and

nobody was present there.

18. On perusal of the evidence of Kanubhai Vichhiyabhai Nayak, P.W.3 at Exhibit 15, it is found that at the time of incident, he was in the field and Ramesh has given the version of the incident to him and thus, his entire evidence is based on hearsay evidence.

19. Now so far as the evidence of Jamnaben Kanubhai Nayak, P.W.4 at Exhibit 16 is concerned, it appears that she is a child witness and on perusal of the entire evidence, it is found that though she has stated that Bhangda uncle has given axe blow to her Dinesh uncle, it appears from her chief-examination itself that at the time of the incident, she was in the school and when she came back, she came to know regarding the death of her Dinesh uncle. She has stated that Sumitraben (complainant) has told her that her uncle has been killed.

19.1 During her cross-examination on behalf of the accused, she has stated that she came at Noon and she has not entered in the house of her Dinesh uncle and she has not seen him as dead. She has stated that her father has told her how Dinesh uncle has died. She has also admitted that except her father, nobody has told her as to how the incident had happened. Thus, the evidence of this witness is hearsay evidence and at the time of incident, she was in the school.

20. On perusal of the evidence of P.W.5, Bharatbhai Mangalbhai Rathwa at Exhibit 17, it is found that he is the panch witness of inquest panchnama produced at Exhibit 18 and he is also panch witness of panchnama of place of occurrence which is produced at Exhibit 19. He has denied that in his presence, panchnama of arrest of the accused has been prepared. However, he has admitted his signature in panchnama at Exhibit 20. He has also denied the suggestion that the accused has produced the weapon used in the commission of the offence. However, he has admitted his signature in the panchnama at Exhibit 21. From his evidence, it appears that he has not initially supported the case of the prosecution and, therefore, after getting him declared hostile, the prosecution has cross-examined him and has asked the leading question which can be asked in the chief-examination.

20.1 During his cross examination on behalf of the prosecution and accused, he has admitted that he has seen the dead body of Dinesh and that dead body was identified by Sumitraben and panchnama of scene of offence was prepared in his presence. He has denied that the place of occurrence was shown by Sumitraben. Of course, he has admitted that the police has seized the sand containing blood and has prepared the panchnama thereof. Of course, he has not supported the case of the prosecution that the accused has produced the clothes and has also produced the weapon used in the commission of the offence. He has admitted that the police has got his signature in the panchnama which was already prepared. Thus, this witness has materially not supported the case regarding the fact that the accused have produced the weapon used in the alleged offence.

21. On perusal of the evidence of P.W.6, Chandubhai Koyajibhai Rathwa at

Exhibit 22, who is second panch of panchnamas at Exhibit 18, 19, 20 and 21, it appears that he has not supported the case of the prosecution in his chief examination and, therefore, after getting him declared hostile, the prosecution has cross-examined on the aspect of preparation of panchnamas in his presence.

21.1 During his cross-examination on behalf of the accused, he has narrated the same fact which has been narrated by the other panch which has been referred to hereinabove.

22. On perusal of the evidence of P.W.7, Maheshbhai Harsing Rathwa at Exhibit 24, it is found that he is the panch witness of panchnama at Exhibit 25. He has not supported the case of the prosecution and, therefore, he has been declared hostile and the prosecution has cross-examined him. During such cross-examination also, he has not supported the case of the prosecution.

23. On perusal of the evidence of P.W.8, Dr. Bhargav Dineshbhai Dave at Exhibit 26, it is found that on 21.03.2012, when he was on duty as medical officer in Community Health Centre, at that time, injured Sumitraben was brought before him with police yadi and he has examined her and according to her version, she was given blow by wooden stick on her left side head at about 10.00 a.m., by Paghda Hatiya and his wife Kasturiben Paghda. According to him, on examination of Sumitraben, it was found that she was conscious and there was wound of 6 cm x 1 cm on left temporal parietal region and he was given treatment on OPD base. He has produced the medical certificate at Exhibit 29.

23.1 During his cross-examination on behalf of the accused, he has stated that the injury might be 9-10 hours old.

24. On perusal of the evidence of P.W.10, Rupsingbhai Chhaganbhai Pargi at Exhibit 34, it is found that he has carried out the investigation of the entire case and has produced documentary evidence and has stated that he has recovered the weapons used in the alleged offence at the instance of the accused and has arrested the accused and after completion of the investigation, as he has found sufficient evidence against the accused, he has filed the charge-sheet.

24.1 During his cross-examination on behalf of the accused, he has admitted that he has sent blood sample of both the accused to the FSL and has admitted that before taking blood sample of any person, he has to send written yadi to the concerned doctor. He has denied the suggestion that neither he has sent any yadi nor has taken the blood sample. He has denied the suggestion that he has not sent any yadi for taking blood sample of the accused. After perusing Exhibit 40, he has stated that it is the office copy of the yadi sent to the doctor for taking blood sample of the accused. He has admitted that there is no time mentioned in the yadi and there is no time mentioned by the doctor for receiving the same. He has stated that he has not produced any documentary evidence showing that the doctor has replied to that yadi and he has admitted that he has got blood sample of the deceased after his postmortem. He has denied the suggestion that he has, deliberately and intentionally, not sent the blood sample of the deceased to the

FSL. He has admitted that as per his version, the complaint was recorded at 5.30 p.m. and the complainant was also injured.

25. On perusal of the evidence on record, it transpires that the original complainant, though she is alleged to be injured witness, has not supported the case of the prosecution in her cross-examination. It also appears from the record that the prosecution has not cared to contradict her with her previous statement either under section 145 or under section 154 of the Indian Evidence Act, after her cross-examination by the accused is over. Therefore, on appreciation of her evidence in its entirety, it is found that she is not reliable witness and, therefore, her evidence is not trustworthy in nature and it has to be discarded. At the same time, the evidence of Koyaliben Ditiyabhai Nayak, P.W. 2 at Exhibit 14 does not inspire any confidence and on the basis of her testimony, the accused cannot be convicted for the alleged offence. So far as other witnesses are concerned, as referred to hereinabove, their evidence is also in a nature of hearsay evidence.

26. On perusal of the impugned judgment and order of the trial court, it appears that though the complainant has given go-bye in her cross-examination regarding the case of the prosecution which she has narrated in her chief-examination, the trial court has, while appreciating her evidence, considered the evidence in piecemeal manner which is not permissible in law. Now, it is well settled principle of law that for appreciation of evidence of any witness, the Court is required to read the entire evidence in toto which includes chief-examination, cross-examination and re-examination, if any. The evidence of any witness cannot be read in piecemeal.

27. It appears from the reasoning given by the trial court for reaching to the conclusion of conviction and sentence of the present accused, the trial Court has read the evidence of the complainant in piecemeal manner and it has given reasoning for not believing the version of the complainant, as narrated in her cross-examination on behalf of the accused, on the basis that she has got married with another person, therefore, she might have taken summersault from her version of chief-examination. But this fact should have been brought on record by the prosecution. Therefore, in view of the entire evidence on record, it clearly appears that the trial court has misdirected itself and misread the evidence on record and has reached wrong conclusion of conviction and has committed serious error of facts and law in imposing sentence on the accused for the alleged offence.

28. Considering the well settled principles of law and on perusal of the evidence, it is clearly found that the prosecution has miserably failed to prove the charges levelled against the present accused beyond reasonable doubt. Therefore, the impugned judgment and order cannot be sustained in the eye of law and it is required to be set aside and the accused is required to be set at liberty forthwith if he is not required in custody for any other offence.

29. In the light of the above discussion, the present appeal is allowed. The

impugned judgment and order passed by the learned 9th Additional Sessions Judge, Vadodara Camp at Chhotaudepur in Sessions Case No.36 of 2012 convicting the accused namely Namala @ Bhangdabhai Hatiyabhai Nayaka for the offence punishable under Section 302 of the Indian Penal Code and sentencing him for rigorous imprisonment of life and fine of Rs.1000/- and in default of payment of fine, for simple imprisonment for six months is hereby quashed and set aside. The accused namely Namala @ Bhangdabhai Hatiyabhai Nayaka is hereby ordered to be set at liberty forthwith if he is not required in custody for any other offence. Fine, if paid, is ordered to be refunded to the accused namely Namala @ Bhangdabhai Hatiyabhai Nayaka. Record and proceedings be sent back to the concerned Trial Court forthwith. Yadi to be sent to the concerned jail authority forthwith by the Registry.