

(2010) 04 BOM CK 0039

In the Bombay High Court

Case No : Criminal Appeal No. 653 of 2000

Prakash Pandurang Pawar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 302, 498A, 506, 506(2)

Citation : (2010) 04 BOM CK 0039

Hon'ble Judges : B.H. Marlapalle, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Smita Kadu, for the Appellant; P.P. Shinde, APP, for the Respondent

Judgement

B.H. Marlapalle, J.—This appeal u/s 374 of Cr.P.C. is directed against the order of conviction and sentence recorded by the learned Additional Sessions Judge for Greater Mumbai in Sessions Case No. 1392 of 1997, on 11th April, 2002. The appellant faced trial for the offences punishable under Sections 302, 498A and 506 of IPC and by the judgment and order under the appeal he came to be convicted for all the offences. He has been sentenced to suffer R.I. for life with a fine of Rs. 500/- for the offence punishable u/s 302 IPC, R.I. for 2 years with a fine of Rs. 500/- for the offence punishable u/s 498A and R.I. for 1 year and to pay a fine of Rs. 500/- for the offence punishable u/s 506(II) of IPC. He was arrested on 14-9-1997 and he was denied bail before the trial Court, as well as before this Court during the pendency of this appeal and hence he has already completed the sentence of more than 13 years, by now.

2. Laxmi @ Devka, the daughter of Tukaram Shivdas P.W.6 and Sushila Shivdas P.W. 9, resident of Satara District was married to the accused for more than 12 years and from the said wedlock she begot 6 daughters and one son. The couple was staying for a long time in a joint family of appellant's father and about 2-3 years prior to the date of the incident they had moved into a separate home in the same Dharavi area. The appellant was working as a salesman in a foot wear

shop and was alleged to be addicted to liquor. As per the prosecution case, on 13-9-1997 between 10.00 p.m. to 11.30 p.m. there was some quarrel between the husband and wife on account of the wife going to his mother's house to attend a Pooja ceremony and the appellant started beating her with fists and he took out a belt. He got enraged and the kerosene can lying in the house was emptied on the person of the wife and he set her on fire by lighting a match stick. The husband spread water on her person, wrapped chadar around her body and in an auto rickshaw which was called by P.W. 4 Basveshwar Pol a neighbour, he took his wife, accompanied by his elder daughter Pramila to the Bhabha Hospital at Bandra, where she was admitted at about 1.15 a.m.

Her dying declaration was recorded by the Special Executive Officer, P.W. 5 Shri Jayesh Jani, immediately after her admission and after the doctor had declared that the patient was in a fit condition to record the same. The Police Officer P.W. 20 Kiran Avchar also recorded the dying declaration in presence of the doctor on duty i.e. Dr. Ninad Karandikar, P.W. 19. In both these dying declarations the cause of fire was that the stove got inflamed while the wife was warming the food to be served to her husband at about 10.30 p.m. The spot panchanama at Exh. 28 was drawn at about 5 a.m. and on the basis that the victim had no complaint against any one. A message was sent to the parents of the victim i.e. P.W. 6 and P.W. 9 through the brother of the appellant by name Jitendra and P.W. 9 was told that her daughter Laxmi sustained burn injuries because of inflamed kerosene stove.

P.W. 6 and P.W. 9 the parents of the victim, visited the hospital around 6 p.m. P.W. 9 the mother of the victim asked her to tell the truth on oath in the name of God and the victim purportedly disclosed that the burn injuries were not accidental and initially the husband started beating her and she told him instead of beating why did not he kill her. On that the husband took the kerosene can, poured the kerosene on her person and set her on fire by lighting the match stick. When the wife sustained the burn injuries, the husband poured water on her, wrapped in chadar and brought her to the hospital along with a social worker. P.W. 20 had taken steps to rerecord the dying declaration of the victim and therefore, P.W. 5 Shri Jayesh Jani the Special Executive Officer visited the hospital and the patient, once again at 8.30 p.m. on 14-9-1997. He recorded her statement in the presence of P.W. 19 Dr. Ninad Karindakar in question and answer form and similarly P.W. 20 Kiran Avchar, I.O. also recorded a fresh dying declaration of the victim in the presence of the same doctor (Exh. 40B). Based on this disclosure (oral dying declaration) made by the victim to the mother, P.W. 6 Tukaram Shivdas went to the police station and recorded his complaint, which is registered as an FIR at Exh. 40-C at 10.55 p.m.

Thus, two sets of dying declarations by two different officials came to be recorded and which were contrary to each other. Further investigation was undertaken on the basis of the subsequent dying declarations and the accused was taken into custody. The articles collected from the spot while drawing the spot

panchanama were sent for chemical analysis on 15-9-1997. The victim was shifted to the Kasturba Hospital, where she came to be admitted after 7 p.m. and at 3 p.m. on 16-9-1997, she died. The FIR came to be amended so as to incorporate the offence punishable u/s 302 of IPC and on completion of the investigation P.W. 20 Shri Avchar filed the charge sheet in the Court of Metropolitan Magistrate. The case being exclusively triable by the Sessions Court it was committed and charge was framed at Exh.2.

3. The prosecution examined in all 20 witnesses including 2 minor daughters of the appellant i.e. P.W.10 Manisha and P.W.11. Rekha. There were 4 neighbours examined by the prosecution viz. P.W. 1 Omkar Sawarkar, P.W. 2 Smt. Kamal Prakash Bhagat, P.W. 3 Haribhau Karande and P.W.4 Basveshwar Pol. P.W. 1 and P.W. 3 have turned hostile and so also the minor daughters. Through the evidence of P.W. 7 Ghanashyam Kasare and P.W. 8 Sadanand Kadam the case papers from Bhabha hospital as well as Kasutrbha hospital were placed on record before the trial Court and the case papers had recorded that the burn injuries were on account of stove burst. The defence examined one witness i.e. Pramila, the minor elder daughter, who had gone with the appellant to the hospital on the fateful day. In his statement recorded u/s 313 of Cr.P.C. the defence taken was that his wife died on account of burn injuries sustained accidentally (stove burst inflamed). The learned trial Judge for the reasons stated in the impugned order of conviction discarded the dying declarations recorded in the early morning on 14-9-1997 and held that the dying declarations recorded consequently on the same day at about 10.00 p.m. were reliable and corroborative by the evidence of the neighbours and that is how the appellant came to be convicted for all the offences.

4. It was submitted by Mrs. Kadu, the learned Appointed Advocate for the appellant that during the matrimonial period of about 13 years there was no complaint of harassment or illtreatment lodged by the deceased and for the first time when P.W. 9 stepped in the witness box, she came out with the story that on account of suspected illicit relationship between the deceased and the appellant's brother Jitendra, while they were staying as members of the joint family, the deceased was being illtreated and beaten by the appellant on every day. As per Mrs. Kadu, these allegations came before the Court for the first time only by way of an after thought and were not supported even by P.W.6 the father of the deceased. She further submitted that the dying declarations recorded at the first instance and corroborated by the medical case papers ought to be relied upon so as to acquit the appellant by discarding the dying declarations recorded at about 10.00 p.m. on the same day. She also pointed out that the social worker who had accompanied the appellant to Bhabha hospital while admitting the victim, was not examined by the prosecution though witness summons were issued against her. In addition the behavior of P.W. 9 Sushila Shivdas was not normal and natural when she came to know about the incident through Jitendra at about 9.30 a.m. on 14-9-1997 at her home. The learned Advocate urged before us that when there are two sets of dying declarations and contrary to

each other though reliable, the dying declarations recorded subsequently ought to be discarded and the accused must get the benefit of doubt. She also submitted that both the dying declarations recorded at 10 p.m. on 14-9-1997 could not be corroborated by any other evidence and they did not inspire confidence in view of unnatural behavior of P.W.9 Sushila. Mrs. Kadu, therefore, prayed for setting aside the order of conviction and the acquittal of the appellant from all the charges.

5. Mrs. Shinde, the learned APP on the other hand, has supported the order of conviction in toto. She referred to the evidence of the neighbours and the medical papers showing that it was the accused who had admitted the victim to the hospital and thus was in her company. When the first set of dying declarations were recorded in the wee hours on 14-9-1997 at the Bhabha hospital, as per Mrs. Shinde, there was a strong possibility of the deceased being tutored or threatened by the husband to make the said statements and even otherwise being a mother her inclination to screen the accused from offences for the future of her daughters was natural. Mrs. Shinde also referred to the C.A. reports at Exh. 66 which indicated that the burnt saree pieces collected under the spot panchanama indicated kerosene residue. She pointed out that if the deceased had substantial burn injuries by accidental fire on account of stove flames, there was no possibility of the kerosene residue on the saree or on the spot of incident. As per the learned APP the dying declarations recorded after 10 p.m. on 14-9-1997 did not suffer from any infirmities, they are more reliable, natural and corroborated by the evidence of the neighbours and therefore, the trial Court was justified in basing the conviction on the second set of recorded dying declaration. The learned APP therefore, prayed for dismissal of the appeal by confirming the order of sentence and conviction.

6. There is no doubt that the prosecution case is entirely based on the record set of recorded dying declarations by P.W.5 Shri Jayesh Jani and P.W. 20 Shri Kiran Avchar. It is well settled that if the Court is satisfied that the dying declaration is true and voluntarily made, it can base its order of conviction on such dying declaration without corroboration. But it is the responsibility of the Court to scrutinize the dying declaration carefully and must ensure that the declaration is not a result of tutoring, prompting or imagination. Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. Where the prosecution version differs from the version as given in the dying declaration the said declaration cannot be acted upon. Where there is more than one statement in the nature of a dying declaration the one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable it has to be accepted, as has been held by the Supreme Court in the case of Mohanlal Gangaram Gehani Vs. State of Maharashtra, .

7. P.W. 1 Omkar Savarkar, a neighbour though turned hostile stated before the trial Court that on 13-9-1997 between 10.30 p.m. to 12 midnight the accused was beating and abusing his wife and he heard them but he did not pay any

attention as it used to be a daily affair. This incident had taken place before he went out of his house to see Ganpati Idols. He admitted that his statement at Exh. 51 was correctly recorded by the police on 17-9-1997 and admitted that he knew nothing about the incident of burn injuries. He stated in his recorded statement that out of 6 daughters of the appellant, Rekha @ Goti had told the neighbours about the incident that her father had poured kerosene on the person of her mother and set her on fire.

P.W. 2 Smt. Kamal Bhagat is one of the said neighbours. She stated before the Court that the accused was addicted to liquor and used to quarrel with his wife everyday under the influence of liquor. Her house is adjacent to the house of accused and she did not know the reasons of the quarrel. When the incident had taken place, it was the period of Ganpati festival and on 13-9-1997 there was quarrel between the accused and his wife but she did not pay attention as it was the daily affair. She alone was at home on the fateful night and in the midnight she was woken by hearing noise and commotions and she came to the house of the accused and found that his wife was engulfed in flames and she was shouting "save me, save me." The appellant put a chadar on the person of the victim and had taken her to the hospital. She confirmed that her statement was correctly recorded by the police. In her cross-examination she admitted that she had never complained to the police about the behaviour of the accused or about his drinking liquor. On 17-9-1997 her statement along with other neighbours, Omkar Savarkar and Karande was recorded by the police.

P.W. 3 Haribhau Karande was aware of the incident and who was not an eye witness and on the material circumstances contradictions were brought on record by confronting him with his statement recorded by the police at Exh.44. He heard commotions at about 11. 30 p.m. and therefore, he rushed to the house of the accused. He had seen that the wife of the appellant was in flames. Many people had gathered there and the accused was wrapping chadar around the person of his wife and thereafter he had taken her to the hospital. On his intimation to the wireless van the police came on the spot but by that time the accused had already taken his wife to the hospital. His statement was recorded by the police and it was correctly recorded as per the disclosures made by him. In his cross-examination he confirmed that there was quarrel between the appellant and his wife and at about 12 in the midnight on the fateful day he had seen that the appellant carrying his wife along with his daughter Pramila and the wife was shouting " Vachava Vachava" From amongst the children of the appellant, Rekha @ Goti told him and other neighbours that her father had poured kerosene on the person of his mother and set her on fire. He further clarified that when the statement was made by the daughter, her father had gone to the hospital. In his recorded statement at Exh.44 he has corroborated the statements of P.W. 1 Omkar Savarkar. P.W. 4 Basveshwar was also not an eye witness to the main incident like the other 3 neighbours. When the appellant had lifted his wife after she sustained the burn injuries and was waiting for rickshaw, this witness was returning from his work and was requested by the accused to

bring a rickshaw. He therefore brought an auto rickshaw and the appellant with his wife and the daughter went to the Bhabha Hospital. He repeated the disclosure purportedly made by the minor daughter to the neighbours that her father had spread kerosene on the person of her mother and set her ablaze.

8. The medical papers at Exh. 23-A and 24 and running into few pages, show the medical history and the cause of burn injuries. It was recorded that the burn injuries were sustained on account of stove burst. The daughters have turned hostile and we have perused their depositions. They do not support the prosecution case. P.W. 13 was a panch witness for the recovery of belt which in our opinion is not material. The spot panchanama at Exh. 28 has been proved through the evidence of P.W.14 Dinesh as well as P.W. 20 Kiran. Dr. Sunil, P.W. 18 was the in-charge of the burn ward at Bhabha Hospital and Dr. Ninad was his assistant. Dr. Ninad was the doctor on duty when the deceased came to be admitted at the Bhabha hospital.

9. The recorded dying declarations by P.W. 20 are at Exhs. 39B and 40B, whereas, the dying declarations recorded by P.W. 5 are at Exh.10 and 11. Though in question and answer form, Exhs. 10 & 11 do not have the endorsement of the treating doctor i.e. P.W. 19 as to whether the patient was in a fit condition to make a statement. No time is mentioned as to when the dying declaration was recorded. At the foot of the dying declaration there was no endorsement that it was read over to the maker and she certified to be correctly recorded. P.W. 5 in his depositions before the trial Court stated that he was working as SEO since 1996 and his term had expired but he was asked to continue till the new list of SEOs was published. He had received the message through Dharavi Police Station between 2 to 2.30 a.m. on 14-9-1997 for recording the statement of a lady who had burn injuries and admitted in Bhabha hospital and therefore, on the motorcycle of the police constable he reached the said hospital where P.W.20 Kiran Avchar was also present. He further stated that the doctor was present with whom he made inquiry about the condition of the patient so as to make a statement and after the doctor replied in affirmative, he proceeded to record the statement. Though the prosecution examined as many as 3 doctors from Bhabha hospital i.e. P.W. 12 Dr. Shashikant Wadekar, P.W. 18 Dr. Sunil Kowli and P.W. 19 Dr. Ninad Karandikar, both these dying declarations at Exh. 10 and 11 were not put to any of these doctors so as to corroborate the statement made by P.W. 5 that the medical officer on duty had informed that the patient was in a fit condition to make a statement. Hence in our opinion, both the dying declarations at Exh. 10 and 11 recorded by P.W. 5 at two different stages that one in the morning and other in the night on 14-9-1997 are required to be excluded from consideration.

10. P.W. 20 Kiran Avchar before the trial Court stated that he received intimation at about 1.40 a.m. on 14-9-1997 from the police constable attached to Bhabha hospital that a stove burst patient was admitted with burn injuries on her face, chest, abdomen, hands and legs with total 85% burn injuries and therefore he

reached the said hospital and made oral inquiry with Dr. Ninad Karnadikar, P.W. 19 whether the patient was in a fit condition to give statement. The doctor stated that the patient was in a fit condition and therefore, he went in the ward and recorded her statement at Exh. 39-B. It was endorsed by Dr. Karandikar. On the same day at about 8 p.m., P.W. 6 reached the police station and informed P.W. 20 that his daughter was set on fire by her husband by pouring kerosene on her person. He therefore, requisitioned to SEO to record a fresh dying declaration. He himself also went to the hospital and contacted Dr. Karandikar P.W. 19. He was told by Dr. Karandikar that the patient was fit and conscious and therefore she could give her statement. He went to the Ward and recorded her statement Exh. 40-B. She disclosed to him the accused was a drunkard and he used to beat her suspecting her fidelity while they were staying in the joint family. She clarified that her husband was suspecting that she was in an illicit relationship with his brother Jitendra. She also stated that the children were afraid of the accused. On 13-9-1997 she had gone to her mother-in-law's house for Satyanarayana Pooja and returned home in the evening with the children and carried food for herself and her husband. The husband came at about 10.30 p.m. and was fully drunk. She served food to him and he realized that food was brought from his mother's house and therefore, he asked her as to why she had gone there. He picked up a quarrel and started beating her with the belt. She therefore, said to him "instead of beating me all the time, why not kill me". On hearing this he poured kerosene on her person from the kerosene can and lighted two match sticks which could not be ignited and therefore he lighted the 3rd match stick which set her on fire. Thereafter he kept her watching for some time while she was in flames and started extinguishing fire. He wrapped her in chadar, took daughter Pramila with him in an auto rickshaw to Bhabha Hospital. While going by the auto rickshaw he had threatened her if she would tell the truth to the police, the children would meet the same fate as she met and therefore, she did not disclose the same on admission in the hospital that she was set on fire by her husband. We have perused the dying declarations at Exh. 39-B and 40-B and noted that they are duly endorsed by P.W. 19 Dr. Karandikar. It is also clear from reading the evidence of P.W. 19 and P.W. 20 that these dying declarations were recorded when the patient was conscious and was in a fit condition to make a statement, though she had sustained more than 85% burn injuries. We therefore find that both these dying declarations cannot be discarded on any infirmities. However, they are contradictory to each other. In the first dying declaration the deceased stated that she sustained burn injuries accidentally, whereas, in the second statement she changed her case to state that she was set on fire by her husband and she did not disclose the same on earlier occasion on account of his threat to kill the children.

11. We have also examined the testimony of P.W. 6 Tukaram Shivdas and P.W. 9 Shushila Shivdas, the parents of the deceased. On the alleged illicit relationship the defence was successful in pointing out that the same was stated by this witness in examination-in-chief by way of improvement and the said allegations

was not stated in the police statement recorded by P.W. 20. He also stated that on 14-9-1997 at about 10 a.m. the brother of the accused had gone to his house and given a message to P.W. 9 that Laxmi had sustained burn injuries. He got the message in his office about the same at 11. 30 a.m. and he then went alone to the Bhabha Hospital and asked his daughter as to how she received the burn injuries. She did not make a statement and asked as to whether her mother had come. He come back with his wife to the hospital. At about 2.30 p.m., his wife asked the deceased as to how she sustained the injuries and she disclosed that the husband had poured kerosene on her person and set her on fire. The evidence of P.W. 9 Sushila went to shows that the accused and his wife had started staying separately two years prior to the incident and she did not know the reason for separation. She admitted that the brother of the accused had given her message on 14-9-1997 and she did not go to the hospital. She stated that her husband went to the hospital and returned back between 3.00 p.m. to 4.00 p.m. and thereafter he took her to the hospital. She put her daughter to oath and asked her as to why she sustained burn injuries and she was informed by the victim that the accused poured kerosene on her person and set her on fire. P.W. 6 in his depositions before the trial Court admitted that he had no complaints about any illtreatment meted out by the accused to his wife. We therefore, do not find any substance in the prosecution case to prove the charge u/s 498A, so also for the charge u/s 506(II) of IPC., against the appellant. The conviction order u/s 498A and 506(II) of IPC is therefore, unsustainable.

12. So far as the charge u/s 302 of IPC is concerned, there are two dying declarations contrary to each other i.e. Exh. 39-B and 40-B. In the case of Sanjay Vs. State of Maharashtra, the Supreme Court held while reversing the judgment of this Court that when there are different dying declarations contrary to each other, it would not be safe to uphold the conviction of the accused and he should be given a benefit of doubt. It is also equally well settled that if there are two contradictory dying declarations the Court is required to examine the reliability of each of them and while keeping in mind the essential pre-requisites for assuming their correctness, though it is generally believed that a person on the verge of permanent departure from his earthly worth is not likely to indulge into falsehood or concoct a case so as to implicate an innocent person. because he is answerable to to make his act. We will have to therefore, consider the evidence of the neighbours and other witnesses on the reliability of either of these dying declarations though the trial Court has relied upon the dying declaration at Exh.40-B.

13. The dying declaration recorded at Exh. 39-B is inconsistent with the medical record which was prepared at the earliest opportunity while the deceased was admitted at the Bhabha hospital but at that time the accused was with her. In our opinion, this will not be a circumstance to believe that she was tutored or forced by the appellant to make a false declaration about the incident. The record indicates that the accused was knowing a social worker by name Miss Madhavi Sarkhot and while going to the Bhabha hospital along with his wife and daughter

after the incident had taken place he had gone to the house of the said social worker, requested her to accompany him and she was present in the hospital when the deceased was admitted. She was present with the deceased even on the next day i.e. on 14-9-1997. She has not been examined by the prosecution as one of its witness though her statement was recorded and she could be available as the best witness for the prosecution on the point whether the deceased was tutored or forced by her husband to state that she had received the burn injuries accidentally. Hence there is no material to accept the prosecution case, that when the dying declaration at Exh. 39-B was recorded at the very first instance by P.W.20, the deceased was under the influence of her husband or she was tutored.

So far as the neighbours are concerned i.e. P.W. 1 to P.W. 3, none of them had seen the incident and some of them only state that the deceased was taken to the hospital by the accused, the others told that the 4 children were saying that their father set the mother on fire by pouring kerosene on her person. However, all of them were aware that there used to be quarrels in the house of the accused almost every day, and two of these witnesses turned hostile. Mrs. Shinde, the learned APP is justified in relying upon the C.A. report at Exh. 66 as well as the spot panchanama Exh. 28 in support of her contention that the dying declaration recorded at Exh. 39-B does not find support from the circumstances on the spot. If the burn injuries were accidental due to stove flames there may not be any chance of kerosene spray on the body of the victim. Therefore it would be difficult to believe that the kerosene residue would be detected on the burnt pieces of saree. The dying declaration at Exh. 40B is therefore strongly relied upon by the prosecution to suggest that it was the accused who poured kerosene on the person of his wife and set her on fire. This case of the prosecution has come up only after 5 p.m. on 14-9-1997 and earlier to that even the spot panchanama drawn and the A.D. recorded clearly indicated that the police was satisfied of burn injuries on account of accidental stove flames. The FIR came to be recorded only on the basis of the information furnished by P.W. 9 that the deceased had informed her it was the accused who had caused the burn injuries. The evidence on record goes to show that when these dying declarations Exh. 40B was recorded, P.W. 9 mother was around the deceased. Even the mother's behaviour did not appear normal. If she received the message at about 10.00 a.m. that her daughter was hospitalized on account of burn injuries, she did not rush to the hospital and instead she sent her son to convey the message to her husband at his work place. Her husband visited the hospital and came back at 4.00 p.m. and thereafter alongwith her husband P.W.9 visited her daughter. The evidence of P.W. 9 does not inspire confidence. It is well settled that if there are contradictory dying declarations recorded on different points of time, and if both are found to be in order, the first in point of time will have to be accepted by giving benefit of doubt to the accused because on account of the second contradictory dying declaration the prosecution case, gets weakened. Even in the circumstances as relied upon by Mrs. Shinde to support the dying

declaration at Exh. 40-B, there are no compelling and clear circumstances to discard the defence case based on the dying declaration at Exh.39-B and if these are two contradictory dying declarations being the sole basis for the prosecution case, the first in time will have to be generally accepted. In our opinion, having regard to these two dying declarations at Exh.39-B and 40-B it would not be safe to accept the prosecution case and hold that the offence punishable u/s 302 of IPC has been proved by the prosecution beyond any reasonable doubt against the appellant. In our opinion, he must get the benefit of doubt and therefore, the order of conviction against him become unsustainable.

There is one more aspect which also deserves consideration, P.W. 15 Dr. Chavan conducted conducted post-mortem and noted that the deceased had sustained 84% burn injuries. As per P.W. 17 Dr. Vivek Upasany the deceased had sustained 88% burn injuries. Dr. Upasany was attached to the Kasturba hospital where Laxmi breathed her last on 16-9-1997. P.W. 19 Dr. Ninad Karandikar had stated before the trial Court that after Laxmi was admitted at about 1.30 a.m. in his hospital he started treatment and pain killers were given, I.V. and antibiotics were also administered to her. The condition of the patient was deteriorated. The dying declaration at Exh. 39-B was recorded at about 2.30 a.m., whereas the dying declaration at Exh. 40-B was recorded at about 10.30 p.m. i.e. after about 20 hours. Hence it would be safe to give benefit of doubt to the accused. The material circumstances noted by us hereinabove appear to have escaped the scrutiny by the trial Court and if the order of conviction is upheld, it would result in miscarriage of justice. Hence the accused deserves acquittal solely by giving him the benefit of doubt.

In the premises we pass the following order.

- (i) The appeal succeeds and the same is hereby allowed.
- (ii) The impugned order of conviction and sentence is quashed and set aside.
- (iii) The appellant is acquitted of all the charges.
- (iv) He shall be released forthwith from the prison unless he is required to be continued in connection with any other case.
- (v) Appointed Advocate's fee is quantified at Rs. 4000/-.