

(2017) 01 BOM CK 0152
In the Bombay High Court
Case No : 213 of 2015

Radha @ Ashtha D/o Vitthal Takaras

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#) - Punishment f

Citation : (2017) 01 BOM CK 0152

Hon'ble Judges : S.S. Shinde, K.K. Sonawane

Bench : DIVISON BENCH

Advocate : N.R. Thorat, S.G. Kawade, P.G. Borade

Judgement

1. Being aggrieved by conviction for the offence punishable under sections 302 and 201 of the Indian Penal Code (for short "IPC") and resultant sentence of rigorous imprisonment for life and to pay a fine of Rs.2000/- (Rupees Two Thousand), i/d. six months simple imprisonment, for the offence punishable under section 302 of the IPC and rigorous imprisonment for two years and fine of Rs.1000/- (Rupees One Thousand), {2} criapl 213.13.odt i/d. four months simple imprisonment, for the offence punishable under section 201 of the IPC, imposed by the learned Additional Sessions Judge, Ambajogai, District Beed, in Sessions case No. 101 of 2011, the appellant -

original accused has preferred present appeal to redress her grievance.

The facts, which led to the prosecution case are as under:

2. That, ill-fated victim Payal, three years old was daughter of complainant - Smt. Soni Karan (Tuusam) Thakur resident of Latur. According to prosecution, there were marital discord in between the complainant -

Smt. Soni and her husband Kapil Subrao Sonawane and thereafter, she was

staying with one Karan son of Chetansing Thakur as his wife. The complainant - Smt. Soni also begotten a daughter namely Payal from paramour Shri Karan Thakur. But, since last three months of the incident, complainant - Smt. Soni started residing with her parents following quarrel with paramour Karan. It has been alleged that prior to eight days of the incident, the complainant- Smt. Soni had been to Bazar for purchasing vegetables and at that time she met with friend Soni Waghmare and her sister Hema Gupta. After conversation, the trio alongwith minor Payal went to the house of friend Soni Waghmare. The lady, namely, Hema sister of friend Soni Waghmare made enquiry about labour work done by the complainant - Smt. Soni. The lady Hema asked the complainant - Smt. Soni to accompany with her to Delhi and she will provide her job. Thereafter, the complainant - Smt. Soni, her minor daughter victim-Payal came to Delhi with Hema, the sister of friend Soni Waghmare. At Delhi, Hema made {3} criapl 213.13.odt arrangement for job as maid servant at two houses for the complainant

-Smt. Soni. But, the minor daughter Payal used to cry and did not allow the mother - Smt. Soni to do the job as maid servant. She was creating hurdles for doing the work as maid servant. Eventually, mother - Complainant Smt. Soni decided to send daughter victim Payal to her parents house at Latur.

The lady, Hema advised that her friend accused Radha is going to her village and she will carry minor daughter Payal at Latur for taking her to parents' home of the complainant- Smt. Soni. Accordingly, the complainant - Smt. Soni sent her minor daughter with accused Radha to take her to the house of parents of complainant at Latur. She had also given phone number of her sister to accused Radha to call her parents for taking minor victim Payal.

3. Unfortunately, minor victim Payal did not reach to the parents home of the complainant -Smt. Soni. The lady Hema rushed to Latur in search of victim-Payal. The Complainant - Smt. Soni also came to Latur. They took search of missing minor daughter Payal. Police of Bardapur Police Station called the complainant- Smt. Soni, her parents to Police Station on 09-09-

2011. Both, Hema and accused Radha were in the Police Station. On enquiry, they disclosed to the complainant that minor victim Payala was giving trouble to accused Radha, and therefore, she killed her by pressing neck.

The complainant - Smt. Soni lodged First Information Report (for short "FIR") at Bardapur Police Station. Pursuant to the FIR, the Police of Bardapur Police Station registered crime No. 50 of 2011 under section 302 and 201 of the IPC and set the penal law in motion.

{4} criapl 213.13.odt 3. Prior to registration of FIR, the Police of Bardapur Police Station received information about dead body of minor child in the dilapidated house (Wada). Accordingly, Accidental Death (AD) No. 27 of 2011 came to be registered and police swung into action. Investigating Officer visited the spot of incident and recovered dead body. He drew spot panchnama and inquest

panchnama in presence of Panchas. Postmortem was also conducted on the dead body of the deceased at the spot itself by the concerned Medical officer. The body was highly decomposed in condition. The concerned Medical officer could not express the opinion about the cause of death of minor deceased Payal. Police recorded statements of witnesses and obtained FIR of the Complainant - Smt. Soni. Investigating Officer apprehended the accused - Ashtha @ Radha Takaras for the sake of investigation and recovered the cloths of minor victim Payal at the behest of accused under section 27 of the Evidence Act. After completion of investigation, charge-sheet came to be filed against the accused before the learned Judicial Magistrate F.C. Ambajogai, District Beed.

4. The learned Sessions Judge, after committal of case, framed the charges against accused. She denied the allegations and pleaded not guilty and claimed for trial. In order to prove the charges pitted against the accused, prosecution has examined P.W.1-Bhimrao Bhalerao (Exhibit-14) P.W.2-Achyut More (Exhibit-18) P.W.3 Babruwan Sonawane (Exhibit-22), P.W.4-Sandipan Admane (Exhibit-24) P.W.5- complainant - Smt. Soni Karan Thakur(Exhibit-25), P.W.6-Satish Dhumal (Exhibit-27), P.W.7 Dr. Ghule(Exhibit-31), P.W.8- Balika @ Hema Gupta (Exhibit-35) and P.W.9-

{5} criapl 213.13.odt Investigating Officer PSI Sirsat (Exhibit -37).

5. The learned trial court has recorded the statement of accused prescribed under section 313 of the Criminal Procedure Code (for short "Cr.P.C."). The accused denied allegations and claimed her innocence. The learned trial court appreciated the evidence adduced on record and arrived at the conclusion that accused committed crime as alleged against her on behalf of prosecution. Therefore, the learned trial court hold accused guilty under sections 302 and 201 of the IPC and imposed the sentence as indicated above. The impugned judgment and order of conviction and sentence is the subject-matter of present appeal.

6. The learned counsel appearing for the appellant assailed that the learned trial court failed to appreciate the evidence adduced on record in its proper perspective and committed error for convicting the accused for the charges pitted against her. There is no direct evidence to nail accused in this crime and entire prosecution case is based on circumstantial evidence. The prosecution has failed to prove the complete chain of circumstance to bring home guilt of the accused. The learned trial court did not appreciate the circumstance that the Medical experts could not express the opinion about cause of death of the deceased as body of the victim was highly decomposed in state. It was contended that the learned trial court erred in placing reliance upon the evidence of Babruwan Mukund Sonwane for evidence of last seen together of the deceased in the company of accused. But, the evidence of P.W. 3 Baburwan appears not credible and inspire confidence.

{6} criapl 213.13.odt The evidence of last seen the deceased in the company of

accused cannot be considered to prove the charges against accused. The learned counsel for the appellant submitted that the learned trial court committed error while appreciating evidence of extra judicial confession in this case. The recovery of cloths of the deceased Payal under section 27 of the Evidence Act is not proved beyond reasonable doubt. The learned counsel for the appellant urged that the entire evidence adduced on record on behalf of prosecution is not sufficient to prove the charges beyond all reasonable doubt against the accused. In such circumstances, the judgment and order of conviction and resultant sentence passed by the learned trial court deserves to be set aside and quashed and the accused be absolved from the charges pitted against her.

7. Per contra, the learned APP vehemently submitted that there is sufficient material on record to prove complicity of the accused in this case.

P.W. 3 Babruwan had seen the deceased in the company of accused during the relevant time. There were extra judicial confessions on the part of accused to P.W.8- Hema Gupta and other witnesses. The Police also recovered clothes of the deceased at the behest of accused under section 27 of the Evidence Act. The circumstances categorically demonstrate that the accused is the sole person responsible for the homicidal death of deceased Payal. The learned trial court has correctly appreciated the evidence and hold the accused guilty for the charges pitted against her. The prosecution has also proved the motive for commission of crime by the accused as victim-Payal was causing trouble to her. Therefore, accused snuffed out the {7} criapl 213.13.odt life of victim Payal. The learned APP requests not to nod in favour of accused and dismiss the appeal.

8. We have carefully considered the rival contentions propounded on behalf of both sides. We have also delved into the evidence adduced on record on behalf of prosecution and the impugned judgment of learned trial court.

9. It is evident that there is no eye witness to the occurrence of incident and the entire prosecution case is based upon circumstantial evidence. It is the rule of law that the circumstances from which an inference of the guilt is required to be drawn must be cogently and firmly established that it would create a chain of circumstance which would led to an inescapable inference of guilt of the accused. In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra¹, the Hon''ble Apex Court observed that circumstances to be proved by the prosecution should be of a definite tendency unerringly pointing towards the guilt of the accused that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

10. In the instant case, entire edifice of the prosecution case is rests on the circumstances of (i) last seen theory, (ii) extra -judicial confession, (3) 1 1984 SCC (Cri) .487 {8} criapl 213.13.odt recovery of clothes of the deceased Payal

under section 27 of the Evidence Act, and (iv) motive of the crime. In the light of the settled principle of law laid down in the case of Sharad Birdhichand Sarda (supra), we proceed to examine as to whether prosecution has succeeded to prove circumstances by convincing evidence and whether those circumstances unerringly points towards guilt of the accused.

I. LAST SEEN THEORY :-

11. The learned trial court has relied upon the last seen theory to base conviction of accused in the present crime. It has been alleged that PW-3 Babruwan Mukundrao Sonawane, had an occasion to see the accused with the minor victim Payal on 29th August, 2011. It was Monday and being a day of Lord Mahadeo, he made arrangement to provide meal to the devotees in the name of God.

12. PW-3 Babruwan deposed that he had an acquaintance with the accused Radha being resident of his village. Accused Radha alongwith her daughter - 8 to 9 year old and one minor girl of 3 years old attended his religious function. He further stated that on seeing accused Radha with minor girl of 3 years old, he made enquiry with one Laxman Bhatane about the minor girl with the accused Radha. In reply, Laxman Bhatane disclosed to him that the minor girl of 3 years old was brought by the accused Radha.

According to PW-3 Babruwan, thereafter, on 6th November, 2011, police arrived in the village and recovered naked dead body of one 3 year old minor girl from the dilapidated house of Mahadeo Karpe. He further added that on {9} criapl 213.13.odt 9th September, 2011, police shown him photographs and on seeing photographs, he identified the minor girl who was seen in the company of accused on the day of religious function of Lord Mahadeo at his house. The evidence of PW-3 Babruwan was assailed, contending that PW-3 Babruwan is not reliable witness. He is stock witness of the prosecution. He had acted as a Panch on behalf of prosecution in other cases. The conduct and demeanour of PW-3 was unnatural and suspicious. He had not invited appellant/accused for the function and, therefore, no question arises to attend the function and enjoy the meal by the appellant. It is unbelievable that the accused would attend the religious function arranged by PW-3.

13. We find substance in the arguments advanced on behalf of appellant. In cross examination, PW-3 Babruwan conceded that his function was limited to the extent of devotees only and he had not invited the villagers in general. Therefore, no question arises for the accused to attend the function with her daughter and minor victim girl Payal for enjoying the meal. In view of the attending circumstances, it is quite improbable that PW-3 could see the appellant/accused while enjoying the meal in the religious function arranged by him in the name of Lord Mahadeo. Moreover, PW-3 Babruwan testified that he had made enquiry with Laxman Bhatane about the 3 year old girl which was in the company of accused Radha. The person Laxman Bhadane told him that the girl was brought by accused Radha. But, thereafter silence pervades in the evidence of

PW-3 Babruwan.

The prosecution did not examine Laxman Bhatane to bring on record the {10} criapl 213.13.odt circumstance, how he came to know and wherefrom as well as for what purpose accused Radha brought the victim girl Payal with her. The absence of evidence of material witness - Laxman Bhatane created serious flaw in the prosecution case and also doubt about the trustworthiness of version of PW-3 Babruwan on the factual aspect of last seen theory. There is absolutely no corroboration to the evidence of the PW-3 Babruwan on the point of last seen theory. In absence of any corroboration, it would be hazardous to keep implicit reliance on the version of PW-3 Babruwan for any adverse inference against the accused.

14. In the case of Godabarish Mishra Vs. Kuntala Mishra reported in (1996)11 SCC 264, the Apex Court in para.11 held that, the theory of last seen together is not of universal application and may not otherwise sufficient to sustain conviction unless supported by other ring in the chain of circumstances. In Mohibur Rahman Vs. State of Assam, reported in (2002) 6 SCC 715, their Lordships of the Apex Court delineated that the circumstance of last seen together does not by itself necessarily lead to inference that it was the accused who committed crime. It depends upon the facts of each case.

15. We may also refer State of Goa Vs. Sanjay Thakaran, reported in (2007) 3 SCC 755, wherein, the Honourable Apex Court described that in the absence of any other corroborative piece of evidence to complete the chain of circumstances, it is not possible to fasten the guilt on the accused on the solitary circumstance of the two being seen together.

{11} criapl 213.13.odt As referred (supra), the solitary evidence of PW-3 Babruwan about the circumstance of last seen together appears not supported by any other evidence on record. The star witness, Laxman Bhatane, with whom PW-3 Babruwan made enquiry about the minor victim girl Payal, has also not come forward and divulged the circumstance about the presence of victim Payal in the company of accused Radha. Therefore, in view of the rule of law indicated above, it is hazardous to act upon the version of PW-3 Babruwan for adverse inference against the accused.

II. EXTRA JUDICIAL CONFESSION :-

16. The prosecution relied upon other circumstances in the form of extra judicial confession to bring home the guilt of the accused. The PW-4 Sandipan, PW-5-complainant - Soni Karan Thakur and PW-6 Balika @ Hema Gupta claimed that the accused made extra judicial confession to them about death of victim Payal. PW-4 Sandipan is the father of complainant Soni. He deposed that victim Payal was his grand-daughter begotten to complainant Soni from one Karan Ketan Singh. There was a quarrel in between the daughter Soni and Karan Singh. Therefore, she alongwith her daughter Payal came to his home for residence. According to PW-4 Sandipan, complainant Soni and her daughter had been to

Delhi at the instance of Balika @ Hema Gupta for job. Thereafter, he was informed by his daughter Soni that on 27th day of that month, his granddaughter Payal was sent back to him at Latur with accused Radha. But, she did not reach at his home.

Thereafter, Police of Bardapur police station came to him and made enquiry {12} criapl 213.13.odt about his daughter Soni and granddaughter victim Payal. The police called him in Bardapur Police Station. Accordingly, he himself, alongwith daughter Soni, visited Bardapur police station and saw accused Radha and Hema, friend of his daughter Soni, sitting in the police station. On enquiry, accused Radha, Hema and daughter of accused Radha, divulged him that the victim Payal was causing trouble and, therefore, she was killed after throttling by accused Radha. He further came to know that dead body of victim Payal was thrown in dilapidated house of Mahdeo Karpe after removing her clothes.

17. The evidence of PW-4 Sandipan reflects that, he has stated in regard to disclosure by accused about the homicidal act of killing victim Payal for the first time in the court. In cross-examination, he categorically stated that accused Radha told him that Payal was killed by throttling her neck and thrown her in the dilapidated house of Mahadeo Karpe. But, in his statement u/sec. 161 of Cr.P.C., these circumstances are absent. The omission to disclose these material facts to the police while recording his statement, found detrimental to the prosecution case. Moreover, in examination in chief, PW-4 Sandipan ventured to state as follows :-

" I say that Radha, Hema and daughter of Radha told me that as Payal was giving trouble to Radha, she has killed her by throttling her neck. I say that they have told that Radha has throttled neck of Payal killing her and thrown her body after removing clothes in the dilapidated wada of Mahadeo Karpe." The aforesaid version of PW-4 Sandipan appears vague, cryptic and not explicit in nature to consider the same as extra-judicial confession of the accused for admitting the guilt on her part. The statement made {13} criapl 213.13.odt seems to be complex and compound in nature. Therefore, it is cumbersome to appreciate the evidence of PW-4 Sandipan in favour of prosecution to fasten the liability of death of deceased on accused.

18. The prosecution also made feeble attempt to bring on record the circumstance of extra-judicial confession made by the accused to complainant PW-5 Soni, when she met with the accused in the police station itself. PW-5 Soni Karan Thakur deposed that, when she went to Bardapur police station, her friend Hema and accused Radha were present in the police station. At that time, she asked Hema and Radha, about the whereabouts of Payal. The accused Radha disclosed that Payal was troubling her, so, she had throttled and killed her. Accused Radha further disclosed that she had killed Payal and thrown her dead body in the dilapidated house of Mahadeo Karpe at Babhalgaon, after removing her clothes. As referred supra, PW-5 - complainant Soni, also did not state all these material facts to the police in her FIR (Exh. 26). The omission to state

these vital circumstances in the FIR devastated the gravity of the prosecution case. The alleged extra-judicial confession of accused to PW-5 Soni cannot be appreciated in favour of prosecution for adverse inference against the accused.

19. The prosecution made valiant attempt to keep reliance on the evidence of PW-8 Balika @ Hema Gulta to prove the circumstance of extra-

judicial confession by the accused. In her evidence, it is brought on record that when she came to know that minor girl Payal did not reach to her {14} criapl 213.13.odt parental home of her friend Soni, that time, she rushed to village Babhalgaon to see the accused Radha. She met with accused Radha on the next day and made enquiry about the minor victim Payal. The accused Radha spill the beans to her that the victim Payal was harassing and troubling her. Therefore, she has pressed her neck and after killing, thrown her dead body in the dilapidated house of Mahdeo Karpe after removing the clothes. The PW-8, Balika @ Hema passed on the information received from accused Radha to complainant Soni Thakur on phone. The complainant Soni Thakur rushed to Bardapur Police station on 9 th September , 2011 and filed FIR.

20. The conduct and demeanour of PW-8 Balika @ Hema Gupta appears suspicious and doubtful. Since beginning she played a vital role in this case. She met with PW-5 -complainant Soni in the vegetable market and next day she took complainant Soni and her daughter to Delhi on the assurance of providing job. Thereafter, victim Payal was causing disturbance and trouble to her mother - complainant Soni for doing the job as maid servant. Therefore, PW-8 Balika @ Hema made arrangement to send back the minor victim girl Payal to Soni's parental home at Latur with accused Radha. Except the version of PW-8 Balika @ Hema and PW-5 Soni, there is no other witness available to establish the circumstance that victim Payal was given in custody of accused Radha at Delhi and she carried her to Latur by train and thereafter to Babhalgaon. In cross-examination, PW-8, Balika @ Hema conceded that even after coming to know that accused killed the minor victim Payal, she did not inform about the death of victim Payal {15} criapl 213.13.odt to police. The evidence PW-5 Soni is also silent on the material circumstance that PW-8 Hema conveyed to her on telephone pertaining to extra-judicial confession of the accused Radha of killing victim Payal. In contrast, evidence of PW-5 complainant Soni adumbrates that she rushed to her parents home in search of missing daughter Payal. Thereafter, her parents told her that police have called them in the police station on the next day. Accordingly, they visited the police Station Bardapur and saw accused Radha and PW-8 Balika @ Hema in the police station. In the police statements for the first time, she came to know that Radha killed her daughter Payal. The discrepancies occurred in the evidence PW-5 complainant Soni and PW-8 Balika @ Hema Gupta cause serious dent in the prosecution case. The version of PW-8 Balika @ Hema about the extra judicial confession made by accused Radha to her at the relevant time loses its significance.

21. Taking into consideration the evidence of aforesaid witnesses in its entirety, it

reveals that circumstance of extra-judicial confession brought on record appear improbable and inappreciable one. The evidence of these star witnesses of the prosecution do not inspire confidence and not free from blemish. The prosecution witnesses did not disclose about the confessional statement of the accused at the earliest to the police in the FIR or during the course of investigation. The conduct and demeanour of PW-8 Balika @ Hema appears suspicious and not reliable to act upon her version to draw adverse inference against the accused. Their Lordships of Honourable Apex {16} criapl 213.13.odt Court, in the matter of, Sahadevan Vs. State of Tamil Nadu reported in (2012) 6 SCC 403, described the principles in respect of evidentiary value and reliability of extra-judicial confession. In para.16, it has been observed as under :-

"16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:-

(I) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(II) It should be made voluntarily and should be truthful.

(III) It should inspire confidence.

(IV) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(V) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. (VI) Such statement essentially has to be proved like any other fact and in accordance with law."

22. In the light of aforesaid legal guidelines, it is manifestly clear that the extra-judicial confession is a weak piece of evidence and courts are to view it with great care and caution. For an extra-judicial confession to form basis of conviction, it should not suffer from any material discrepancy and inherent improbabilities. In the matter in hand, as discussed above, there are vital discrepancies in the evidence of PW-5 Soni and PW-8 Balika @ Hema on the point of extra-judicial confession made by accused Radha to {17} criapl 213.13.odt them. Moreover, failure to disclose about the extra judicial confessional statement of the accused to the police by the prosecution witnesses in their statement at the earliest also proved fatal to the prosecution case.

Therefore, evidence of PW-4 Sandipan, PW-5 Soni and PW-8 Balika @ Hema is unreliable, suspicious and not credible one. Their evidence do not inspire confidence and cannot form basis for conviction of the accused in this case.

III. RECOVERY OF CLOTHES OF DECEASED UNDER SECTION 27 OF THE EVIDENCE ACT.:-

23. According to prosecution, the accused, during custodial interrogation, confessed about the crime and shown willingness to produce the clothes of victim Payal which were concealed in her house at Babhalgaon. The I.O. recorded memorandum statement of the accused in presence of Panchas and proceeded towards her house at village Babhalgaon.

The I.O. recovered the clothes of the deceased Payal at the instance of accused under Section 27 of the Indian Evidence Act in presence of panchas.

But, PW-2 Panch Acchut Mote, turned hostile and made volte-face. He did not support the prosecution case on the point of recovery of clothes of deceased at the behest of accused. However, PW-6 Satish Dhumal stated about the confessional statement leading to recovery of the clothes of deceased under Section 27 of the Indian Evidence Act. The sole evidence of recovery of clothes of deceased cannot be considered as a substantive evidence to bring home guilt of the accused. The evidence of recovery of clothes is a corroborative piece of evidence and there should have been other circumstances to complete the chain for inescapable inference of guilt {18} criapl 213.13.odt of accused. In the instant case. There is no C.A. Report on record. I.O. did not state that clothes were sent to C.A. to determine that the clothes were of victim Payal. In absence of cogent evidence it is hazardous to arrive at the conclusion that the clothes recovered at the behest of accused were belonging to victim Payal. The identification of clothes by mother - PW-5 Soni in the court during the trial would not sub-serve the purpose. The prosecution miserably failed to prove the complete chain of circumstances to bring home guilt of the accused. Moreover, mere recovery of clothes of the deceased also not sufficient to draw inference in favour of the prosecution in this case.

IV. MOTIVE :-

24. According to prosecution, the victim Payal was causing trouble to accused Radha and, therefore, she killed her by pressing neck and thrown her naked dead body in the deserted and dilapidated house of one Mahadeo Karpe. The motive behind the commission of crime alleged by the prosecution appears not plausible and sustainable one. It would be reiterated that there are no circumstances on record to establish that the victim Payal was given in custody of the accused Radha at Delhi Railway station for taking her to Latur. The prosecution did not collect the railway ticket of journey of accused Radha with victim Payal. It is also the fact that parent of PW-5 Soni were residing at Latur. Accused Radha while carrying victim Payal must have alighted at Latur Railway station for going ahead to her village Babhalgaon. It is also brought in evidence of the prosecution witnesses, PW-5 Soni and PW-8 Balika @ Hema, that the phone number of {19} criapl 213.13.odt sister of PW-5 Soni was given to accused Radha for calling them to take victim Payal from the custody of accused

Radha. In such circumstances, in case victim Payal was causing trouble or harassment to accused Radha at Latur, she would have called the parents or sister of complainant Soni, after getting down from the train at Latur Railway Station, to take victim Payal with them. It is unbelievable that accused Radha would take victim Payal from Latur to village Babhalgaon and instead of giving the victim Payal in the custody of parents of PW-5 Soni, killed her for trifle reason of causing disturbance and troubling her. The motive propounded on behalf of prosecution, appears slender in nature and not sufficient to draw adverse inference against accused Radha.

25. In the above premises, considering the totality of the evidence on record, we are of the view that the circumstances relied upon by the prosecution are not established by convincing evidence to form a complete chain of incriminating circumstances pointing to the guilt of the accused accused/appellant. The law postulates that the suspicious circumstances however strong cannot take place of proof. Therefore, the conviction recorded by the learned Trial Court appears not supported by credible evidence. The prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt. Eventually, the appellant/accused is entitled for benefit of doubt accrued in the prosecution case. In the aftermath, we have no alternative but to exonerate the accused/appellant from the charges levelled against her by extending benefit of doubt in the prosecution case.

{20} criapl 213.13.odt 26. In the result, the appeal stands allowed. The impugned judgment and order of the learned trial court is hereby quashed and set aside. The appellant/accused is hereby acquitted of the offence punishable under Sections 302 and 201 of IPC. It is informed that the appellant is in jail being a convict in the crime. She be set at liberty forthwith, if not required in any other offence. Muddemal property, if any, preserved in this case be destroyed, after the stipulated period of appeal. The appellant shall furnish the bail bonds of Rs. 15000/- (Rupees Fifteen thousand) and surety of like amount under section 437-A of the Criminal Procedure Code, before the concerned trial court at Ambajogai.