

(2020) 01 BOM CK 0120
In the Bombay High Court
Case No : Criminal Appeal No. 851 Of 1998

Shashikant Shantaram Bhandari

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302

Code Of Criminal Procedure, 1973 — Section 154, 164, 313, 437A

Evidence Act, 1872 — Section 8, 21, 24, 25, 26, 27, 28, 29, 30, 145, 157

Citation : (2020) 01 BOM CK 0120

Hon'ble Judges : S.S. Shinde, J; N.B. Suryawanshi, J

Bench : Division Bench

Advocate : Ganesh Gole, Bhavin Jain, M.M. Deshmukh

Final Decision : Allowed

Judgement

S.S. Shinde, J

1. This appeal is directed against the judgment and order dated 21st September 1998 whereby the accused/appellant herein has been convicted for the offence punishable under Section 302 of Indian Penal Code (for short 'IPC').

2. The prosecution case in nutshell is as under:-

One Vilas Vishnu Joshi (PW 1), then Sub Inspector of Police, attached to Malwani Sub-Police Station was on duty as a night station house duty officer on 31/5/1984 since 8 pm to 8 am., one night police inspector and one Relief Officer were also present at the police station. Vinayak Gholap (PW 6), the then Police Inspector of Administration was on duty on 31/05/1984 in Malvani Police Station as night Police Inspector. On 31/05/1984, when at about 9.10 pm the accused Shashikant Bhandari came to the police station and narrated the incident to police officer Joshi, that he had killed his aunt namely Vatsala at Chikkuwadi with a sickle (aaut). After receipt of information Police officer Joshi (PW 2) lodged a complaint on behalf of the State. The said complaint is at Exhibit-5, which is

signed by Police officer Joshi (PW 2) and P.I. Gholap (PW 6). After recording the FIR police officer Gholap registered the crime vide C.R. No. 94/84 for the offence punishable under Section 302 of IPC, against the accused. Thereafter, P.S.I. Joshi and P.I. Gholap investigated the matter. After registration of crime a station diary entry of the information given by the accused is made at Sr. No. 15. Thereafter, police officer Joshi (PW 1) had taken in-charge the blood stained sickle (aaut Article-1, which was produced by the accused Shashikant under the seizure panchnama before two panchas and P.I. Gholap (PW 6). The seizure panchnama of sickle is at Exhibit-21. At the same time, the clothes from the person of accused such as Article 3 'collectively' were also taken in-charge of by police officer Joshi in the presence of P.I. Gholap.

3. It is the case of the prosecution that, accused Shashikant made voluntary disclosure in the police station before two panchas that he would show the place where the dead body of his aunt Vatsalabai was lying. Accordingly, memorandum of accused Shashikant as regard to discovery of place was recorded in the police station in the presence of panchas and the same memorandum is at Exhibit-22. After recording memorandum the accused Shashikant led panchas and police party to the place where the dead body of deceased Vatsala was lying. The accused Shashikant pointed out the spot where the dead body of Vatsala (deceased) was lying after reaching to the spot of Chikkuwadi. Police Officer Joshi (PW 1) drew the panchnama of the place of offence in the presence of two panchas where the dead body was lying in the presence of P.I. Gholap (PW 6). The said panchnama of discovery of place of offence is at Exhibit-22-A. After the inquest panchnama of dead body of Vatsala (deceased) was drawn at that time certain articles were taken in-charge under the said inquest panchnama (Exhibit-28). Those articles were pair of Chappals of Lata (PW 3) Article-2 collectively., pair of chappals of Vatsala (deceased) Article-4 collectively. Thereafter police officer Joshi, police officer Gholap and accused Shashikant came to the police station by deputing a guard near the dead body of Vatsala (deceased). Thereafter, police officer Joshi (PW 1) sent the dead body of Vatsala (deceased) for post mortem and at that time he had told to the constable to take charge of the clothes of the deceased and accordingly the said constable took charge of the clothes of the Vatsala (deceased) and produced it before police officer Joshi. The clothes of Vatsala (deceased) are at Article-5 collectively. The ear rings and bangles belonging to Vatsala (deceased) are marked at Article 6 collectively. While drawing the inquest panchnama police officer had taken in-charge blood mixed earth and simple earth from the place of incident. Thereafter, during the course of investigation police officer Joshi recorded the statement of Nitin (PW 2) and Lata (PW 3) in the presence of police officer Gholap (PW 6) in the police station on 01/06/1984. All the seized articles were sent to the Chemical analyzer, so also, the accused was also sent to Nagpada Police Hospital for examination. Subsequently, the chemical analysers report Exhibit-6 was received by police officer Gholap. After collecting necessary documents such as post mortem notes and other documents, P.I. Gholap (PW 6) submitted the

charge sheet after completion of investigation against the accused on 30/08/1984 in the Metropolitan Magistrate's Court. The learned Metropolitan Magistrate committed the case to the Court of Sessions on 30/08/1984. Learned Sessions Court framed charge against the accused under Section 302 of IPC, its contents were read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. The defence of accused is of total denial. The accused stated in his statement recorded under Section 313 of Code of Criminal Procedure that, he is innocent and he has not committed any offence as alleged by the police and he has been falsely implicated in this case. Hence, this appeal.

4. Learned counsel for the appellant invites our attention to the notes of evidence and submits that, evidence of Nitin (PW 2) and Lata (PW 3) is not trust worthy, since there are material contradictions in their evidence. There was no light and as a result there was no question of witnessing the alleged incident when there was dark at the spot of the incident. The C.A. report cannot be relied upon as it has come in the evidence of Vilas Joshi (PW 1) that, all the blood stained clothes were packed together. No independent witness brought before the Court to show that Lata (PW 3) was accompanying Vatsala (deceased) in Malwani market. Admission of Lata (PW 3) falsifies the presence of Lata (PW 3) and Nitin (PW 2) with Vatsala (deceased) at the time of alleged incident. The witness was given police statement to memorize the facts before stepping in witness box which is not permissible. Anusaya was not examined to corroborate evidence of Nitin (PW 2) and Lata (PW 3). Once the substantive piece of evidence is disbelieved, the prosecution case would not stand. Therefore, learned counsel submits that, appellant deserves to be acquitted of all the charges.

5. Learned APP appearing for Respondent-State relying upon the findings recorded by the Trial Court and notes of evidence submits that, the Trial Court has rightly believed the evidence of two eye witnesses and other evidence. The prosecution has established the case beyond the reasonable doubt and therefore, the appeal filed by the appellant deserves to be dismissed.

6. In order to find out whether the death was homicidal, suicidal or accidental, the prosecution examined Dr. Subhash Khanolkar (PW 4). He stated in his examination in chief that, since 1982 to 1987 he was attached to Juhu Additional Coronr's Court as a Medical Officer. On 01.06.1984 a dead body of Smt. Vatsala Gopinath Kini was brought by police constable buckle No. 12626/G.D. of Malwani Police Station at about 2.00 a.m. for post mortem. On the very same day he conducted autopsy on the dead body of Vatsala Kini (deceased) in between 1.00 p.m. to 3.00 p.m. While performing post mortem on the dead body of Smt. Vatsala he had noticed the following external injuries, which he had mentioned in column no. 17 of the post mortem notes.

(I) Incised wound on right side of neck below mandible extending from mid line to just below angle of right mandible. The wound was transverse. Bredth 4.0 cm. depth 8.0 cm. Anteriorly thyroid cartilage right side was cut intervening muscles,

blood vessels and nerves were cut, deep upto vertebral column chipping the transverse process of vertebrae. Length was 10.0 cm.

(II) Incised wound right side of neck below injury no. (1). A portion was intact skin found between the two wounds, wound was extending on back of neck and on left side of neck. The wound was deep upto vertebral column cutting the bodies of and transverse processes of vertebrae. Anteriorly wound extended upto suprasternal notch. All structures were cut.

(III) Incised wound back of left elbow, 5.0 cm × 1.0 cm. skin deep. (IV) Incised stab wound over left scapular region, oblique, 5.0 cm × 2.5 cm and 7.0 cm from the mid line. Wound was opening in the thoracic cavity.

(V) Incised stab wound left side of back in 6th space mid scapular line, 8.0 cm from mid line. 2.5 cm × 1.0 cm opening in thoracic cavity.

(VI) Incises stab wound right side back medial to scapular 2.5 cm from mid line, 3 × 2.0 cm opening in thoracic cavity.

He stated that, all above mentioned injuries were ante mortem in nature.

7. Dr. Subhash (PW 4) also noticed following internal injuries while performing the post mortem on the dead body of Smt. Vatsala (deceased).

(I) Neck structure-All structures on right side of neck were cut due to external injuries no. (1) and (2). The injuries were gaping wounds with blood clots.

(II) Thorax- Left 2nd and 3rd ribs were cut posteriorly due to external injury no. (4) 6th intercostal space posteriorly vertically due to external injury no. (5). Right thyroid cartilage was cut transversely due to external injury no. (1). Right lung was injured in apical. Left lung penetrated through and through in upper lobe. Left lower lung punctured in lower lobe.

(III) Spine and Spinal Cord- Bodies and transverse processes of cervical vertebrae cut on right side due to external injury no. (2).

He further states that, the cumulative effect of external as well as internal injuries mentioned above is sufficient in the ordinary course of nature to cause the death of Smt. Vatsala (deceased). The external injuries along with internal injuries can be possible by sharp edged weapon like sickle, knife etc. He stated that, external as well as internal injuries can be possible by article no. 1-sickle. He stated that, in his opinion the cause of death of Smt. Vatsala (deceased) was due to multiple stab injuries with sharp edged weapon. While conducting the post mortem on the dead body of Vatsala (deceased), he had preserved the blood for grouping, and subsequently he had sent it to C.A. Thereafter, he received C.A. report regarding the grouping of blood of Vatsala (deceased).

8. In his cross examination, Dr.Subhash (PW4) stated that except injury No.3 the other injuries mentioned in column no.17 were deep. He has not mentioned the depth of injury no.1 in the certificate however he stated that it was

approximately 4 cm. in deep. He was not in a position to say that the injury No.4 was straight or not, however it must have been more or less straight. He stated that injury No.4 can be possible by knife. However, the Medical Officer is not sure that if the injury is caused with Article No.1 i.e. the sickle, its external and internal shape would be of curve. He opined that the injury caused with any sharp edged weapon and with article no.1 sickle must be one and the same in size if caused on neck. He admitted that he did not mention the depth of injury no.1 in centimeter.

9. The prosecution examined Nitin Patil (PW 2). In his examination in chief he stated that, in the year 1984 his age was 11 years. In the year 1984 he was residing at Chikuwadi, Malwani, Malad (West) with his aunty-Vatsala. He had been residing with Vatsala Mawshi since about 5 years prior to 1984. On 10/05/1984 he went to his another aunty-Anusaya Mawshi who resided at Thane. On 31/05/1984 he, Anusaya Mawshi, Latabai-daughter of Anusaya Mawshi, and Mahendra- son of Anusaya Mawshi returned back to Chikuwadi, Malwani, to Vatsala Mawshi. At about 7.00 to 7.15 pm., Vatsala Mawshi and Latatai went inside Malwani village for making some purchase. He, Mahendra and Anusaya Mawshi waited in the house of Vatsala. After sometime Shashi came to Vatsala Mawshi's Zopda, running. Shashi was known to him as he was the nephew of Vatsala Mawshi. Shashi is the son of Vatsala Mawshi's husband's brother. At that time Shashi was wearing red colour half pant. He had put a clothe over his body. He was having 'Aaut'. Aaut is an instrument which is used for cutting grass or trees. It is sharp instrument. Shashi asked, as soon as he entered the hut, as to where Vatsala Nani was. On seeing Shashi Anusaya Mawshi got frightened and she embraced Nitin (PW 2) and Mahendra. Nitin Patil (PW 2) told Shashi that Vatsala Mawshi had gone to 'naka'. Anusaya Mawshi was frightened and started saying that we are guests. Shashi then moved his neck up and down and then left. Anusaya Mawshi asked him as to who he was, when he informed that, he was the nephew of Vatsala Mawshi and that he always used to threaten Vatsala Mawshi and to leave the place and go away. Thereafter, Anusaya Mawshi started cooking the food. But at that time, also, she was making inquiry about Vatsala Mawshi and Lata.

After some time, he went to see as to where Vatsala Mawshi and Lata were. He met them at Malwani naka. They were standing there. At that time also, he had covered his body with a big clothe piece. He and Lata were walking together talking to each other and Vatsala was walking 2/3 steps behind them. They had barely traveled half the way, when he heard somebody threatening Mawshi. He turned back and saw that the accused was pulling the basket on the head of Vatsala Mawshi. He was frightened and he stopped there itself. At that time, Shashi gave a blow with the 'Aaut' on the neck of Vatsala Mawshi. Latatai quickly went towards Mawshi and embraced her. The accused threatened Latatai also that if she would come ahead, she would also be killed. When Latatai left Mawshi, the accused gave another blow with the 'Aaut' on the neck of Mawshi. Mawshi fell down crying 'Meli, Meli'. He started crying. Even after Mawshi had

fallen down, the accused was giving blows by the 'Aaut' on her back. Latatai then caught the hand of Nitin (PW 2) and they started running. They went to Vatsla Mawshi's house and narrated whatever happened to Anusaya Mawshi. Then, Nitin (PW 2), Latatai, Mahendra and Anusaya Mawshi came running towards Malwani Naka. They caught a rikshaw there and came to Vishnu mama at Malad. Vishnu mama is Vatsala Mawshi's brother and his maternal uncle. She told what had happened to Vishnu Mama. Vishnu Mama asked Anusaya Mawshi to wait at his residence only as she was frightened. Nitin (PW 2), Latatai, Vishnu Mama and his wife came to Malwani police station by rikshaw. Vishnu Mama went inside the police station and after the he came out, they again went to Chikuwadi. There they saw the accused had already been apprehended by the police. Nitin (PW 2) also saw police making some writings by standing by the side of Vatsala Mawshi.

He further stated that, late in the night they went to Malwani police station. His statement was recorded by the police. Police told them to go to house alongwith Vishnu mama. Nitin (PW 2) stated that, he can identify the 'Aaut' if shown to him. He cannot give any description except that it was a big one. It was about 1 ½ feet in length. He stated that, approximately the blade could be 1 to 1 ½ feet. The width of the blade was the same as is generally of all the 'Aauts'. Both the edges of the blade of 'Aaut' were sharp. He stated that, he can also identify the clothes by which the accused had covered body, but he did not remember the color of the clothe.

10. Nitin (PW 2) was cross examined by the defence at length. He stated that, he did not give the description of 'Aaut' to the police. He did not see the 'Aaut' for the third time when they had gone to Chikuwadi afterwards where the police were making some writings, though it is correct that he had seen the said 'Aaut' twice before. He further stated that, he had not seen the handle of 'Aaut' as the accused had been holding it in his hands. He accepted a suggestion that, such 'Aauts' are available in the market and he has seen similar articles in his village. He accepted a suggestion that, 'Aauts' are similar in appearance and 'Aaut' is not totally dissimilar had been shown to him instead of Article No. 1. He admitted that, he never identified the clothes or 'Aaut' since the police did not show him clothes or 'Aaut'. He admitted that, at the time of incident he did not notice which clothes were wore by the accused. He stated that, the road which goes from their house to Malwani Naka does not have any street light. He had no documents to show that at the time of incident he was residing with Vatsala (deceased). He stated to the police that, accused came to his residence however, he cannot assign any reason as to, why the police officer did not record the said fact in his police statement. He specifically admitted that, "it is true that on the date of incident there were no lights on the street from the Marve junction to Chikuwadi. I had seen at my back side because the basket was being pulled." He did not remember whether the accused was giving abuses to Vatsala (deceased) at the time of incident. At the time of alleged incident, he was caught hold by Lata. He admitted that, he did not rush to catch hold the Vatsala (deceased) after she slumped to the ground. He stated that, Lata fell on Vatsala (deceased)

after Vatsala slumped to the ground. He stated that, after that accused did give blow to Vatsala after she slumped to the ground. Again he says that, accused further assaulted Vatsala (deceased) on her back after she slumped to the ground. It did so happen that, Lata fell on the person of Vatsala (deceased) after she slumped on the ground and then the accused told Lata that she should get herself aside otherwise accused will kill her. It did not so happen that accused gave 2-3 strokes on the neck of Vatsala (deceased) after she slumped to the ground.

11. If the evidence of this witness is considered in its entirety, it does not inspire confidence in as much as it is not clear that really he has seen the incident since according to the prosecution case there were no lights at the spot of the incident. He admitted that, he has no any documentary evidence to show that he was residing with Vatsala (deceased) at the relevant time. At the relevant time, he was of 11 years and has claimed that, he went all the way alone at the night time to search Vatsala mawshi (deceased) and Lata (PW 3) at Malwani Naka through the path which was dark and had no street lights, is difficult to believe. It is difficult to imagine that Nitin (PW 2) was able to describe the assault with "Aaut" at various parts of the body and also identified the same in Court when it has come on record that it was complete dark and there were no street lights, it was Kacchha road and had trees on both sides of the road. He did not identify the clothes the accused was wearing at the time of incident. He admitted that there were no street lights on the road which goes from house of Vatsala (deceased) to Malwani Naka.

12. The prosecution examined Mrs. Lata Pandharinath Koli (PW 3). She stated in her examination in chief that, before her marriage she was residing with her father, mother, brother and sister. One Nitin Patil is her cousin i.e. son of her mother's sister. He used to reside at Malwani, Malad with her Mawshi-Vatsala. In May 1984 Nitin had come to reside with them at Thane. On 31/05/1984 Nitin and they all i.e. she herself, her younger brother Mahendra and her mother Anusaya went to reside at Malwani, Malad with Vatsala Mawshi. They reached Vatsala Mawshi's house at about 4.30 p.m. Vatsala Mawshi was in the house only. At about 7.00 to 7.15 p.m., she herself and Vatsala Mawshi left the house for purchasing some 'machhi' and vegetables. They went to Malwani Bazar. Her mother, Nitin and Mahendra remained in the house only. They made purchase at the Malwani Bazar. They had purchased vegetables and machhi. At the naka they saw Shashi. They were returning back to Vatsala Mawshi's house. On the naka they met Nitin (PW 2). She herself and Nitin were walking together talking to each other. Two, three steps behind them Vatsala Mawshi was walking. She was carrying a basket on her head. At that time, she heard noise of some thing falling and turned around. She saw that the accused had pulled down the basket on the head of Vatsala Mawshi with the 'Aaut' which he was holding. The accused said 'KAY GA AE RANDE, AMCHYAWAR JADUTONA KARTE ANI MARAYACHA PRAYATNA KARTRES KA' and gave blow by the the Aaut on the neck of Vatsala Mawshi. Mawshi shouted saying 'Aai'. She rushed towards Mawshi, and as Mawshi had

fallen down she threw herself on her body. The accused repeatedly gave blows to Vatsala Mawshi. The accused threatened her that she should not come in his way or else he would kill her also. However, she continued to cling to Vatsala Mawshi for some time. The accused gave 2 or 3 blows on the neck of Vatsala Mawshi. Vatsala Mawshi shouted 'Aai, Aai, Meli, Meli'. Thereafter, she and Nitin (PW 2) left that place and went to Vatsala Mawshi's house. While running chappal of Lata (PW 3) slipped from her feet and remained there. Then they narrated the incident, to her brother.

Thereafter, she herself, her mother, Nitin (PW 2) and Mahendra went to Vishnu Mama at Malad by rikshaw. The incident was reported to Vishnu Mama. Thereafter, Vishnu Mama, his wife and she herself and Nitin went to police station in a rikshaw and reported the matter. Her mother had been waiting at Vishnu Mama's house only. Thereafter they went to the place, alongwith the police where the dead body had been lying. At that place inquiries were made with her by the police. Her statement was recorded. Thereafter, she was called at the police station on 04/06/1984. Police showed her, her plastic chappals wrapped in Khaki paper and asked her, whether said footwears belonged to her. She had on the day of incident itself handed over her blood stained frock to the police when they had gone to the police station alongwith Vishnu Mama.

13. She further stated that, on 31/05/1984 when they had gone alongwith Vishnu Mama near the dead body she did not remember, whether anybody else was there as she was under the influence of memories of the said incident that she had experienced. She was not able to give description of her frock which she handed over to the police. Her chappals were plastic chappals which are used in the rainy season. She cannot give any other description. She will however be able to identify the chappals and frock. She stated that, her statement was recorded by the police and read over to her. She knew the accused person since prior to the incident, as she used to see him when she used to go to Vatsala Mawshi. The accused is the nephew of Vatsala Mawshi.

14. Lata (PW 3) stated in her cross examination that, Vatsala (deceased) and herself purchased vegetables and those were in the basket (Topli), which was with Vatsala (deceased) when she was assaulted. It appears that, vegetables or fruits have not been seen at the spot of incident by concerned police officer and to that effect there is no mention in the spot panchnama. In her cross examination she further stated that, she did not see specifically vegetables coming out of basket when the accused assaulted Vatsala (deceased). She has also admitted in her cross examination that there were no street lights or light available at the time of alleged incident. Though, she stated to the police in her statement that, she had fallen on the person of Vatsala (deceased) still accused has assaulted her by giving 2-3 strokes, however, she cannot assign any reason as to why the police officer did not record the said fact in her police statement. She stated that, Nitin (PW 2) and Anusaya met her after the incident was over. She specifically stated that, 'it is true that, I did not see actual incident'.

15. The entire prosecution case rests upon evidence of Nitin (PW 2) and Lata (PW 3) who claimed that, they have witnessed the incident. However, as already observed Lata (PW 3) stated in her cross examination that, Nitin (PW 2) and Anusaya met her after two hours of incident. The contention of Nitin (PW 2) that Lata was present when alleged incident had happened is falsified by the evidence of Lata (PW 3) that, she has stated in her cross examination that, Nitin (PW 2) and Anusaya had met her after two hours of alleged incident.

16. Therefore, upon conjoint reading of evidence of Nitin (PW 2) and Lata (PW 3) it is abundantly clear that, their evidence is contradictory to each other and not trustworthy. It is also relevant to mention that, Dr. Subhash (PW 4) stated that, injury No. 4 mentioned in column No. 17 is possible by knife whereas it is the evidence of so called eye witnesses that the assault was by 'Aaut' and the seizure by Vilas Joshi (PW 1) from the accused is of 'sickle' on which blood is found, as per report received from the chemical analyzer results inconclusive. There is complete variance in the version of prosecution witnesses about, which weapon was actually used by the accused i.e Shashikant, whether accused assaulted by Aaut, knife or sickle.

17. Mustafa Gulam Mohd. Bhadu (PW 5) claims to be panch for seizure of article. He states that before signing the panchnama Exhibit-21,22 and 22A, the contents of said was not read over to him. He was panch for all the panchnamas. He stated that, there were no lights in the lane and police had taken petromax while conducting panchnama. It further appears that, all the blood stained articles were packed together while sending it to CA.

18. Vinayak Gholap (PW 6) stated that, on 31.05.1984 he recorded the FIR of Vilas Joshi (PW 1). He did not identify the clothes of accused. He did not make any entry in the station diary after panchnama's were drawn. He stated that, incident had taken place at Chikuwadi and not on Marvey road which completely contradicts the testimony Lata (PW 3) that incident occurred at Malwani Naka.

19. It is the prosecution case that, the accused went to the police station and confessed that, he has killed Vatsala (deceased). The Supreme Court in the case of Agnoo Nagesia V. State of Bihar AIR 1966 Supreme Court 119 held that, the first information report recorded under Section 154 of Criminal Procedure Code as such is not substantive evidence, but may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act, if the informant is called as a witness. Where the accused himself gives the first information the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant. But a confessional first information report by the accused to a police officer cannot be used against him in view of Section 25 of the Evidence Act. AIR 1964 SC 1850 and (8) AIR 1957 SC 899 and AIR 1917 PC 25, relied on.

20. Yet another authoritative pronouncement in the case of Khatri Hemraj Amulakh V. The State of Gujarat AIR 1972 SC 922 (V 59 C 175), the Hon'ble Supreme Court in Paragraph 14 held that, the confessional statement, Ex. 27, which was made by the accused to Sub Inspector Rojia and which formed the basis of the first information report was not admissible in evidence as the same was hit by section 25 of the Indian Evidence Act. We may in this connection refer to the case of Aghnoo Nagesia V State of Bihar, wherein this Court held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.

21. In yet another decision in the case of Bheru Kalyan Singh V/s. State of Rajasthan 1994 Law Suit (SC) 157, the Hon'ble Supreme Court held that, a confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provisions of law. Provisions of Sections 24 to 30 of Evidence Act of Section 164 Cr.P.C. deal with confession. Inadmissibility of a confessional statement made to a police officer under Section 25 of Evidence Act is based on the ground of public policy. Section 26 deals with partial ban to the admissibility of confession while Section 27 is of the nature of proviso lifting ban imposed by Sections 25 and 26. Where first information report is given by an accused himself to a police officer and amounts to confessional statement, no part of such confession can be proved in evidence except to the extent it is permitted by Section 27 of Evidence Act.

22. In the light of discussion in foregoing paragraphs, we are of the opinion that, the prosecution utterly failed to prove the case beyond the reasonable doubt against the accused-appellant. It is also relevant to mention that alleged incident had taken place in the year 1984 and the trial was concluded in the year 1998. Therefore, it is difficult to believe that, Nitin (PW 2) and Lata (PW 3) were able to correctly state the incident before the court. Therefore in our considered view appellant is entitled for the acquittal. Hence the following order:-

ORDER

- 1] The Criminal Appeal is allowed.
- 2] The Appellant/accused is acquitted of the offence punishable under section 302 of Indian Penal Code.
- 3] The Appellant/accused is already on bail. His bail bond shall stand cancelled.
- 4] The fine amount if any, deposited by the Appellant/accused to be refunded to Appellant/accused.
- 5] The Appellant/accused shall furnish bail of Rs. 15,000/-with one surety in the

like amount in terms of section 437(A) of Code of Criminal Procedure.