

(2017) 11 BOM CK 0055
In the Bombay High Court
Case No : 21 of 2015

SHRI JEETENDRA @ BUNTY SHAKIYA	APPELLANT
Vs	
STATE OF GOA, THROUGH LD. PUBLIC PROSECUTOR	RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for murder
[Evidence Act, 1872](#), [Section 27](#) - How much of information received from accused may be proved

Citation : (2017) 11 BOM CK 0055

Hon'ble Judges : C.V.Bhadang, Prithviraj K.Chavan

Bench : DIVISON BENCH

Advocate : P.P.Singh, Govind Bhobe, M.Amonkar

Final Decision : Allowed

Judgement

1. By this appeal, the appellant challenges his conviction under Section 302 of the Indian Penal Code, by which he is sentenced to imprisonment for life and a fine of Rs.10,000/- by the learned Sessions Judge, South Goa on 20.2.2015.
2. The facts of the case, as emerging from the record, can be summerised as follows:- In the morning of 6.10.2011 PW 1 Joaquim Santiago, who was working as a driver at Margao Municipal Council was proceeding for his work at about 7.00 a.m. When he was passing next to Konkan Railway Rest House, Margao, he noticed a person lying by the side of the road in a pool of blood with his head smashed by means of a laterite stone lying near the dead body. According to him, the deceased was aged about 50 years. He was wearing a whitish coloured shirt and a blue jeans pant. PW 1 Joaquim Santiago, therefore, approached Margao Town Police Station and gave an information. A Crime bearing No.343/2011 under Section 302 IPC came to be registered at the Police Station. PW 12 Santosh Desai rushed to the scene of occurrence. He arranged for panch witnesses namely PW 3 Mohammed Khan and CW 3 Jagdish, in whose presence,

he drew a scene of offence panchanama. He had also seized blood smeared mud from the spot as well as control sample of mud. Cotton dipped with blood, dug metal stone from the road containing blood, a blue ball pen, a matchbox and about 18 biddies of brand 30 were found lying on the spot, which came to be seized under panchanama. He had also seized a black coloured plastic chappal and laterite stone with blood stains under panchanama (Ex.26). It was noticed that the penis of the deceased was chopped off and was lying at a distance of 2.6 meters away from the body. It was also seized. PW 2 Pravin Naik was the Photographer, who took snaps of the scene of occurrence.

3. PW 12 Santosh Desai thereafter conducted an inquest panchanama in presence of panch witnesses. He had also seized the clothes on the person of the deceased comprising of a white coloured long sleeved shirt with blood stains, a baniyan, brown coloured underwear and a blue jeans pant. The inquest panchanama is proved at Ex.28. The dead body of the deceased was sent for autopsy. The cause of death, as per the opinion of PW 7 Dr. Avinash Pujari, was due to crush injury of head and face with complete cutting of the penis at the base involving the scrotal skin resulting in the separation from the body.

4. During investigation it revealed that it was the body of one Ramesh Jethali, resident of Morena, M.P. who was then residing at Jakniband, Dramapur.

5. The Investigating Officer recorded statements of the witnesses. During investigation, it revealed that the appellant had committed murder of the deceased which could be revealed during his interrogation and the confession given to PW 12 Santosh Desai. The appellant, therefore, was arrested by PW 12 Santosh Desai on 12.10.2011 and had also seized a Hero Honda Splendor Motorcycle bearing Registration No.GA-02-M-3345. The muddemal property was sent for chemical analysis to CFSL, Hyderabad. The Investigating Officer had also seized the clothes of the appellant and the knife used in the commission of the offence at the instance of the appellant under Section 27 of the Indian Evidence Act. After investigation, he laid a chargesheet in the Court of JMFC, Margao. The learned JMFC committed the case to the Court of Sessions. The learned Sessions Judge framed a charge under Section 302 IPC against the appellant. The appellant pleaded not guilty and claimed a trial. His defence was one of denial of the commission of the offence alleged. It is the defence of the appellant that he has been falsely implicated in this case by PSI Ravi Desai as he was not in good terms with the appellant. The appellant states that according to PSI - Ravi Desai he was involved in theft cases, however, there was no complaint against him. It is also stated by the appellant that all the material has been planted in his house by PSI Ravi Desai before he could reach his house with the Investigating Officer PW 12 Santosh Desai. He also states that it was not he but Ravi Desai, who removed the clothes in the bundle to fasten the case upon him. No defence evidence has been adduced on behalf of the appellant.

6. We heard Shri P. P.Singh, learned counsel for the appellant and Shri M. Amonkar, learned Additional Public Prosecutor for the respondent.

7. The learned counsel for the appellant took us through the evidence of the prosecution witnesses, more particularly, on the point of "last seen together" theory, motive and discovery of weapon of offence. He pointed out various discrepancies in the evidence of prosecution witnesses and the CFSL report, which does not indicate the complicity of the appellant in the crime. He vehemently argued that the prosecution has failed to examine material witnesses namely brother of the deceased Rajendra, one Mukesh and Naresh, which creates a doubt and there is absolutely no chain of circumstances brought forth by the prosecution on record. He argued that the prosecution has subsequently introduced "last seen together" theory, which is unbelievable. He also questioned the so-called discovery under Section 27 of the Indian Evidence Act by indicating that even after 8 days of the offence, the clothes and towel were wet. The witness, on the discovery panchanama, does not know Devnagari or Hindi and, therefore, the discovery is also doubtful. On the aspect of motive, the learned counsel argued that whatever had happened on the evening of 5.10.2011 was just a small quarrel, in which, in a spur of moment, the appellant had slapped the deceased and the matter was over. The learned counsel, therefore, prayed for acquittal of the appellant.

8. On the other hand, Shri M.Amonkar, learned Additional Public Prosecutor for the respondent supported the impugned judgment by stating that the prosecution has proved the case beyond doubt by indicating the motive, and "last seen together" theory as well as discovery under Section 27 of the Indian Evidence Act.

9. Indisputedly, deceased Ramesh died a homicidal death, which is apparent from the inquest panchanama vis-a-vis the evidence of PW 7 Dr. Avinash Pujari, who conducted autopsy. According to PW 7 Dr. Avinash Punjari, he conducted the postmortem examination on 10.10.2011 and noted the following injuries:

"Crush injury, side to side of the head and face with distortion in the shape of the head with thick dried blood stains on the skull, left side face and adjoining right side with extensive, irregular lacerated wound from 10 cms above and behind the right ear pinna extending to the front of the left side upto the hairline 5 cms. above outer end of the left eyebrow, on the back upto left ear pinna back with interior of cranial cavity exposed out with irregular fractured piece of the right and the left parietal bone at margins with lacerated brain matter at margin on the right side face with extensive and irregular bruising of the right temporal, frontal, maxillary areas upto the mandibular border, on the left side irregular lacerations 2 X 2 Cms at the left tragus and lobuine and also at the left side upper and lower lip .5 X.5 Cm. and 1 X .5 cms. respectively with extensive bruising of the soft tissues on the left side temporal, temporalis muscle, left maxillary area below mandible of the adjoining neck oval 24 X 8-10cms.

On further dissection there is extensive bruising of the skull on the right and left side, all the skull bones fractured with fractures lines extending into multiple directions and sutures separate, fractured margins showed the evidence of blood

infiltration. Only above 30 % of the brain matter weighing about 340 gms lacerated with the blood clots in cranial cavity. The injury was ante-mortem in nature, fresh at the time of death causing by crushing force of a hard and heavy object.

ii. Completely severed/chopped penis at the base with sharp, regular clean, clear margins alongwith the scrotal skin on either side front exposing both the testis with evidence of blood infiltration consistent with the separately piece of penis at about 7 cms. in length which is circumcised with sharp cut margins, skin over the scrotum is retracted. This injury was ante-mortem in nature, fresh at the time of the death and caused by a sharp edged weapon.

iii. abrasion red and fresh 1.5X 1 cms. on the back of the right elbow tip and

iv. abrasion red and freshh 1 X.5 cms. on the left elbow near the lateral epicondyle, both cause by a hard and blunt object and ante-mortem in nature".

The Medical Officer opined that the cause of death was crush injury to head and face with complete cutting of the penis at base involving the scrotal skin resulting into the separation from the body. Thus, in view of the evidence of PW 7 Dr.Avinash Pujari, the deceased died a homicidal death.

10. Turing to the next important aspect of "motive" behind the commission of the offence for which the prosecution has heavily relied on the evidence of PW 5 Virappa Nirloti. The prosecution case is entirely based on circumstantial evidence as there is neither any eye witness nor the appellant's name figured in the First Information Report. When a case is based on circumstantial evidence, motive for committing the crime assumes great importance. In such circumstances, absence of motive would put the Court on its guard to scrutinize the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof. It would, therefore, be essential to scrutinize the evidence of the only witness examined by the prosecution namely PW 5 Virappa Nirloti, who runs a bar viz. "Martin Bar" which belongs to one Sebsatiao Afonso. According to this witness, he knew deceased Ramesh and his brother Rajendra Jethali apart from one Mukesh and Naresh CW 9 and CW 10. He also identified the appellant, as according to him, the appellant as well as the deceased used to come to his bar for drinks. On 5.10.2011 he opened the bar at 10.15 hours and within 10 minutes the appellant came to his bar for drinks. He was followed by deceased Ramesh at about 11.00 hours. Both had drinks. Thereafter, the deceased came out of the bar around 11.30 hours followed by the appellant, who paid the bill of drinks for both of them. His evidence further indicates that the appellant came back after five minutes and started searching for keys of his motor cycle inside the bar and asked this witness as to whether he had noticed the same to which the witness replied in the negative. The evidence further reveals that the appellant again visited the bar at about 19.00 hours, which was followed by the deceased and one Mukesh. The appellant went out of the Martin bar and after 10 minutes they called the deceased out of the bar. Thereafter PW 5 Virappa Nirloti

witnessed that the appellant slapped and abused deceased Ramesh in a filthy language. Thereafter, the appellant went away and Mukesh and deceased Ramesh entered into the bar and sat for some time. One Naresh also came to the bar and joined them. All the three were there for half an hour and thereafter they went away.

11. According to PW 5 Virappa Nirloti on 10.10.2011 Rajendra brother of the deceased Ramesh came to his bar with one Sajid at about 21.30 hours and he told him that deceased Ramesh was missing since last 4-5 days and asked him whether he had seen him. On 11.10.2011 Rajendra had informed this witness that his brother Ramesh was dead and his body was shown to him by the police.

12. During cross-examination, the testimony of PW 5 Virappa Nirloti has been rebutted to a considerable extent inasmuch as it would be difficult to gather motive behind the offence only from the uncorroborated testimony of PW 5 Virappa Nirloti. This is because the deceased and the appellant in the same morning had a drink together of which the bill was paid by the appellant which indicates that they were on good terms. There is nothing in the evidence of PW 5 Virappa Nirloti indicating as to why the appellant had slapped and abused the deceased outside the bar. Mukesh and Naresh would have been the best persons or witnesses to corroborate this fact in the light of the fact that when the appellant left bar, the deceased and these persons were sitting together for half an hour. Even if it is presumed for a moment that the deceased was slapped by the appellant because he could not find out key of his motorcycle, that aspect was already over when the appellant had slapped deceased and went away. The brutality with which the deceased was done to death would only indicate that someone who had a very strong grudge or enmity against the deceased must have done the said act. An adverse inference in view of Section 114 (g) of the Evidence Act can be drawn against the prosecution for withholding the evidence of Mukesh and Naresh, more particularly, when the motive is an important factor in circumstantial evidence. As already stated above PW 5 - Virappa Nirloti does not know as to why the deceased was slapped and abused by the appellant. Since the incident had occurred at Martin bar of PW 5 Virappa Nirloti, obviously there must have been some customers, however, except PW 5 Virappa Nirloti, the Investigating Officer has not recorded statement of any other independent witness. The examination of Mukesh and Naresh would have been important in the light of the fact that PW 5 Virappa Nirloti admits in cross-examination that the appellant used to visit his bar some times for consuming alcohol, however, the deceased Ramesh, his brother Rajendra, Mukesh and Naresh used to visit his bar on regular basis. Even, non-examination of brother of the deceased Rajendra would also be fatal to the prosecution case as he would have thrown some light on the aspect of any motive behind the offence. The learned Sessions Judge has failed to appreciate the evidence of PW 5 Virappa Nirloti in a proper perspective by ignoring the fact that it would be dangerous to place implicit reliance on the sole testimony to find out the motive for the reason that the prosecution has failed to examine Rajendra, Mukesh and Naresh who were present at the time of

incident which had occurred at the Marten bar. The learned trial Court has also lost sight of the fact that it has come in the evidence of PW 5 Virappa Nirloti that on 5.10.2011 the appellant left the bar at about 10.15 hours. If that being so, how come he was present near the General Stores of PW 9 Sachin Kerkar at about the same time? Moreover, PW 5 Virappa Nirloti could not give details of the filthy abuses uttered by the appellant at the relevant time and in what context the appellant had slapped the deceased. It is, therefore, unsafe to rely on the sole testimony of PW 5 Virappa Nirloti to construe that the appellant had motive to eliminate the deceased.

13. Coming to the "last seen together" theory, the law is well settled by the Hon'ble Supreme Court in case of Sharad Birdhichand Sarda Vs State of Maharashtra, (1984) 4 SCC 116. The golden principles culled out based on circumstantial evidence can be enumerated as follows:-

"1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude every possible hypothesis except the one to be proved.

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

14. It would, therefore, be essential to scrutinize the evidence adduced by the prosecution in the light of the aforesaid principles.

15. The prosecution has examined two witnesses i.e. PW 9 Sachin Kerkar and PW 10 Salim Khan. PW 9 Sachin Kerkar runs a General Store along with PW 10 Salim Khan at the Dream Centre Building, Navelim, which belongs to one Babush. He opens the shop at about 6.30 hours and closes at 22.30 hours every day except Sunday. PW 9 Sachin Kerkar as well as PW 10 Salim Khan knew deceased Ramesh, as according to both of them, he used to visit their shop every day to purchase cigarettes. He was last seen by both PW 9 Sachin Kerkar and PW 10 Salim Khan on 5.10.2011 at about 22.00 hours standing near their shop and was drunk. He further deposed that a person came over there on Hero Honda Splendor Motor Cycle bearing Registration no.GA 02-3345 and requested the deceased to sit on his motorcycle and thereafter both of them went towards Navelim Church. These witnesses have also identified the motorcycle rider who is known as Banty Shekiya (appellant) who also used to come near their shops. According to these witnesses, they had not seen deceased Ramesh in that area till they came to know on 12.10.2011 that the deceased was murdered. Both these witnesses can be said to be got up witnesses, who have narrated a

concocted story of the "last seen together" for the following reasons.

16. Both of them testified that their statements were recorded by PW 12 Santosh Desai on 13.10.2011. The prosecution has not clarified as to how the Investigating Officer had zeroed in on these two witnesses when as per the evidence of PW 12 Santosh Desai, the appellant had already confessed about the murder on 11.10.2011 when he was arrested. PW 12 Santosh Desai has testified that on 11.10.2011 during inquiry in Navelim area, it revealed that there was quarrel between the deceased and another and, therefore, on suspicion he brought the appellant and interrogated. It indicates that the Investigating Officer had already arrested the appellant on suspicion and thereafter he was shown arrested on 12.10.2011. The so-called confession of the appellant before PW 12 Santosh Desai is inadmissible. Be that as it may.

17. The evidence of both PW 9 Sachin Kerkar and PW 10 Salim Khan is not free from doubt for the reason that, according to them, the deceased used to visit their shop regularly to purchase cigarettes, however, from the evidence of PW 12 Santosh Desai and PW 3 Mohammad Khan the panch witness on the scene of occurrence it revealed that there was a biddy packet with 17-18 biddies and a match-box found near the dead body of the deceased which indicates that the deceased was smoking biddies and not cigarettes. This falsifies the version of these witnesses who testified that the deceased used to purchase cigarettes regularly from their shop. Further, there was no special reason for these witnesses to remember the exact registration number of the motor cycle of the appellant which they have testified, that too during late hours and, therefore, their evidence does not inspire confidence which is required to be viewed with suspicion. There is nothing on record to show that in fact there is any shop as stated by the witnesses sans any documentary evidence or even non-examination of the so-called owner namely Babush by the prosecution. It is testified by PW 9 Sachin Kerkar that the appellant used to come regularly nearly the shop. It is not his evidence that the appellant used to purchase something from the shop. Why or for what reasons he used to visit regularly "near the shop" is also unclear. Therefore, there was no reason for these two witnesses to know the name of the appellant. It is clear from the evidence of PW 9 Sachin Kerkar who at the first instance, testified that a person came near his shop on a Hero Honda Motor Cycle bearing Registration no.GA-02-M-3345 and requested the deceased to accompany him. If the deceased was slapped earlier in the morning by the appellant, there was no reason why the deceased would accompany the appellant on his motor cycle at 22 hours on the same day. It appears that after getting knowledge of the murder of the deceased on 12.10.2011 his statement was recorded by PW 12 Santosh Desai on 13.10.2011. Moreover, it is not the evidence of PW 9 Sachin Kerkar that when the deceased was taken away by the appellant on his motor cycle, PW 10 Salim Khan was present. Even PW 10 Salim Khan does not say about the presence of PW 9 Sachin Kerkar. However, both of them spoke in tune with each other and, therefore, they can be said to be got up witnesses of the prosecution.

Interestingly, PW 10 Salim Khan admits that the General Store has no name, which is run by both of them. He denied the suggestion that both of them accept matka on bets in a temporary structure of Tarpaulin. Interestingly PW 10 - Salim Khan knew only the deceased and the appellant by their names and no other customers, which also shows the falsity of their evidence on the point of "last seen together" theory. If it is a shop run by both of them how come this witness would only know the name of deceased and the appellant and no other customers? Surprisingly, PW 10 Salim Khan is not aware about the existence of "Martin Bar" in the vicinity of Navelim which renders his testimony unworthy of credit and makes his presence doubtful on 5.10.2011 at 22.00 hours near the general store. As such, from the discussion of aforesaid facts and evidence, it is difficult to accept that the prosecution has proved "last seen together" theory as there is no intact chain of circumstances from which the conclusion of guilt against the appellant could be drawn.

18. Turning to another important aspect of the discovery of fact under Section 27 of the Evidence Act. PW 8 George Barreto had been to the Margao Town Police Station on 12.10.2011 to obtain police clearance for his son to travel overseas. He was requested by PW 12 Santosh Desai to act as panch witness. He was taken to a room where one more person by name Eveny Fernandes was present. There was one more person who was recording the contents as per the direction of PW 12 Santosh Desai when two constables brought the appellant. The appellant was talking in Hindi. According to this witness, the appellant said that he would show the place where he had kept the clothes worn by him on the day of incident, the knife and towel used by him. Whatever stated by the appellant was recorded in his words in Hindi while the remaining part of panchanama was recorded in English. It is surprising to note that the Investigating Officer PW 12 Santosh Desai testified that when he arrested the appellant on 11.10.2011, during interrogation the appellant had already confessed his involvement in the crime and, therefore, there is no question of the appellant voluntarily making the statement before the Investigating Officer while in police custody that he would produce the articles and the knife as there is every possibility of coercing and pressurising him to depose about the alleged discovery of fact. Even the panchanama (Ex.48) indicates that it was PW 12 Santosh Desai who asked the appellant to tell what he wanted to tell before the panchas which shows that it was not his voluntary statement. The possibility of physical torture cannot be ruled out in the light of the fact that he was in custody of the police since 11.10.2011 and there is medical evidence which shows that the injuries could relate to the period, when the appellant was in the custody of the investigating Officer. It is significant in the light of the evidence of PW 12 Santosh Desai who himself testified that during interrogation the appellant agreed to show the clothes worn by him at the time of incident as well as knife used for severing private part and election identity card of the deceased. It is equally surprising that election identity card of the deceased was found in the pocket of the shirt of the appellant which is alleged to have been recovered from his house. No sane

man would keep such vital piece of evidence with him which would expose him to the commission of the offence and, therefore, the story of the defence that the articles were subsequently planted in the house of the appellant also cannot be ruled out in these peculiar circumstances.

19. The evidence of PW 8 George Barreto further reveals that after recording the panchanama they left the police station in a police jeep towards the over-bridge at Navelim via the Collectorate building, Margao with PW 12 Santosh Desai, who was sitting by the side of the driver and the appellant was sitting behind the driver who was escorted by two police constables. The appellant asked the jeep to drive in a particular direction and ultimately it was stopped near Virginkar Tile. There is one more aspect in the sense that panchanama (Ex.48) indicates that when the appellant was taken in a police jeep from the police station, his face was covered to conceal his identity. If the face of the appellant was covered, how he could give directions to the jeep driver to proceed to his house is a mystery and creates doubt about authenticity of discovery of the articles.

20. It is further testified by PW 8 George Barreto that as per the directions of the appellant they entered the house on the main road and found three women inside the house. They were mother, wife and the sister of the appellant. There was a verandah and the house had two doors. One of the doors was closed. He further testified that they entered into the house from the open door. There was a bed room. The appellant entered the bed room and went underneath a bed from where he removed a bundle of a multi colour towel and kept it on the bed. He opened the bundle wherein the witnesses noticed a shirt, a pant and a dupatta. The shirt was wet. The appellant removed an Election Identity Card from its pocket which belonged to the deceased. As already stated that normally a person accused of such a serious offence would not carry material evidence showing his complicity in the offence. The natural conduct in such cases would be to either destroy the evidence or keep it as away as possible. This pre-supposes and fortifies the defence theory of implanting the said article in the house of the appellant as the other evidence on this point itself is quite fragile and shaky which does not at all inspire confidence.

21. The evidence of PW 8 George Barreto further indicates that the pant and the towel were also found to be wet. It is strange that even after six or seven days of the incident, these articles were wet, which also creates a reasonable doubt as regards the authenticity of the discovery. The Investigating Officer had duly sealed those articles in the presence of PW 8 George Barreto. The witness testified that a knife was wrapped in an orange coloured dupatta. There were blood stains. The appellant is alleged to have stated that he was wearing the stained wet pant and shirt on the date of the incident. It was a knife with steel blade and green coloured handle. There were blood stains on the blade with some hair stuck to dry blood on the lower position. The length of the handle is 11 cm with one inch breadth. The blade is 13 cms. long which is bent. All these articles were seized by the Investigating Officer in the presence of panch

witnesses.

22. The prosecution has not collected any evidence, much less, documentary evidence to show that the house from where the aforesaid articles were seized, in fact belongs to the appellant or that he was residing there as a tenant. PW 12 Santosh Desai admits in cross-examination that he did not record the statement of the owner of the house and, therefore, on that count also, the discovery is suspicious. PW 12 Santosh Desai also admits that he did not attempt to obtain finger prints from the knife as well as other articles before those articles were sealed.

23. The evidence of PW 8 George Barreto cannot be totally accepted and believed as he has admitted that he cannot read and write Deonagari script and, therefore, did not understand as to what PW 12 Santosh Desai asked the appellant in Hindi and what the appellant disclosed him in Hindi. He further testified that when they reached the house, there were four police personnel inside the house which also strengthens the possibility of planting the muddemal in the house before the appellant was taken over there. What is further significant is that PW 8 George Barret states that there was no voluntary statement made by the appellant offering to discover the articles.

24. Thus, from the aforesaid discussion, it is crystal clear that the so-called recovery of clothes and knife at the instance of the appellant is in clear breach of spirit of Section 27 of the Indian Evidence Act. It was not recovered pursuant to the voluntarily disclosure of the fact by the appellant while in police custody. Thus, there is no chain of evidence pointing towards, none other than, the appellant, in commission of the offence.

25. If the appellant was arrested by PW 12 Santosh Desai on 11.10.2011 itself why there was a delay in his medical examination which came to be conducted on 13.10.2011 by PW 11 Dr. Soniya Naik. The evidence of PW 11 Dr. Soniya Naik indicates that on 13.10.2011 when she was attached as a Medical Officer to Hospicio Hospital, Margao, she received request from PW 12 Santosh Desai to examine the injuries on the person of the appellant. The appellant was produced before her at 11.30 hours who gave a history of assault on 5.10.2011 and the injury to his right shoulder. PW 11 Dr. Soniya Naik noticed an abrasion on the right arm anterior aspect 5 x 5 cms. caused by a blunt object for more than 24 hours duration. It was a simple injury. Accordingly, she issued Certificate, which is at Ex. 57. During crossexamination, she admits that said injury could have been caused between 12.10.2011 to 13.10.2011 i.e. during the period when the appellant was in custody of PW 12 Santosh Desai. The evidence of PW 11 Dr. Soniya Naik speaks volumes.

26. There were no finger prints found on any of the articles including knife and stone. There is no iota of evidence to establish that blood stains found on the knife were of the same blood group of the deceased only. Another important aspect is the report of Forensic Science Laboratory, Hyderabad. The Expert could

not detect blood group on Ex.A (stained mud with small stones). The blood group "B" was detected on Ex.3 stained cotton, which is blood collected from the scene of the Crime, Ex.11 Shirt of the deceased, Ex.12- Baniyan, Ex.13 jeans pant with belt of the deceased, Ex.14 underwear of the deceased and Ex. 21- a knife with a few hair stands struck to the blade. Ex-E Scalp hair sample of the deceased. Ex.F Stained gauze piece. These exhibits indicate the blood group-B of the deceased. However, no blood group could be detected on Ex.1 Stained mud with small stones from scene of Crime, Ex.6 -One match stick box with match sticks from the scene of crime, Ex.7 - 18 biddies with plastic cover. Ex.10 laterite stone from the scene of crime. Ex. 18 - Dupatta, Ex. 19 towel and Ex.G nail clippings of the right and left hand of the deceased, Ex.I - dried glass. The report further reveals that human hair has been recovered from Ex.21 could not be ascertained as its comparison with scalp hair of the deceased could not be done due to paucity of the sample. There was no blood detected on these articles i.e.Ex.2, 4, 5, 8, 9, 16, 17, 20, A (1), B(1). Ex.16 is a shirt of the appellant. Ex.17 is a pant of the appellant and Ex. 18 is a dupatta of the appellant Ex.19 towel, Ex. 20 voter identity card.

27. Thus, the report of the Central Forensic Science Laboratory is not conclusive and it does not support the prosecution case in the absence of any nexus between the appellant and the crime.

28. After having closely scrutinized the evidence on record, we are of the firm view that the prosecution has failed to establish the chain of circumstances as well as motive behind the commission of the offence. There are several lacunae as discussed hereinabove. The circumstances are not at all conclusive in nature. There are several reasonable grounds for the conclusion consistent with the innocence of the appellant and, therefore, it is not a fit case in which the appellant is liable to be convicted. The impugned judgment, therefore, calls for interference in appeal. We, therefore, pass the following order:-

ORDER

1. Criminal Appeal is allowed.
2. The judgment and order dated 20.2.2015 passed by the learned Sessions Judge, South Goa, in Sessions Case No.4/2012 is set aside and the appellant is acquitted of the offence punishable under Section 302 of Indian Penal Code.
3. He be set at liberty forthwith, if not required, in any other offence.
4. Fine amount, if paid, be refunded to the appellant.
5. The order, as regards disposal of muddemal property, is maintained.