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Prabhakar Vs. The State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Aug-05-2014

Judge : A.V. Nirgude &Amp; a.I.S. Cheema

Appeal No. : Criminal Appeal No. 374 of 2000

Appellant : Prabhakar

Respondent : The State of Maharashtra

Judgement :

A.I.S. Cheema, J.

1. This criminal appeal is by original accused No.1 Prabhakar, who was tried along with his father Kaduba (accused No.2), mother Gayabai (accused No.3) and sister Kusumbai (accused No.4) for offen ce punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code (IPC for short), alternatively Section 306 read with Section 34 of the Indian Penal Code. Only the appellant accused (hereinafter referred to as accused) came to be convicted under Section 498-A and Section 302 of the Indian Penal Code. For offence under Section 302 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5000/-, in default to suffer rigorous imprisonment for three months; for offence under Section 498-A of the IPC, he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for three months. His old aged father Kaduba, who was 80 years

when charge sheet was filed, died during pendency of appeal and the appeal abated as far as his father was concerned. Accused Nos.3 and 4 came to be acquitted of the offences with which they were charged. Thus, the appeal by accused. Prosecution Case

2. The case of the prosecution in short is as follows :-

(A) Accused was married to Hirabai (now deceased hereinafter referred to as victim) on 3.5.1984 and has children from her. The marriage continued properly for 4-5 years. Thereafter there were differences and the victim went away to her parent's place. The accused entered into another marriage with one Mangalabai. The victim filed maintenance proceedings as well as proceedings for adultery and bigamy against the accused. Order of maintenance was passed in favour of the victim. After some time, the accused along with other relatives went to the place of the victim and it was promised that the victim would be treated well and he brought her home at Vishnunagar Aurangabad. The arrangement was made for victim and her children to reside on the first floor while the other wife Mangala and her children and parents of accused were residing on the ground floor, so that quarrels do not take place.

(B) It is the case of the prosecution that, brothers of victim, when they visited her, came to know that she was still being ill-treated and beaten. On the day of incident of 5.7.1995, at about 8.00 p.m., the accused went to the victim and asked her to withdraw the cases pending. When she declined, he poured kerosene on her and put fire to her. In the process, he also suffered burn injuries. The accused thereafter put out the fire and also suffered burns. The accused and others took the victim at Ghati Hospital, Aurangabad and the victim as well as the accused were admitted. The victim had 49% burns and the accused had suffered 28% burns. At the time of admission of the victim, the history of incident was stated to be suffering of burns while cooking. As regards the accused, the history given was that, while trying to save his wife he had also suffered burn injuries.

(C) According to the prosecution, Narayan Jadhav, the brother of victim, resident of Cantonment, Aurangabad came to know about the incident and in the morning of 6.7.1995, went and met the victim and came to know that the accused had

caused her burns. He contacted an Advocate and then met the Commissioner of Police, on whose directions, the dying declaration-cum-F.I.R. of the victim was recorded and offence came to be registered at Crime No.135/1995. P.S.I. Dhondiappa Kamble (P.W.3), who had recorded the F.I.R., initially investigated the matter. He recorded spot panchanama and other statements. He also recorded further statement of the victim on 7.7.1995, which was also treated as dying declaration, in which she implicated accused Nos.2 to 4 as also the persons who beat her and were ill-treating her and instigating the accused to kill her.

(D) On 6.7.1995, Special Executive Magistrate Subhash Mehara also recorded dying declaration of the victim. P.S.I. Murlidhar Bahule (P.W.6) took up investigation from 9.7.1995. The victim passed away on 17.7.1995. P.S.I. Bahule prepared inquest panchanama. The post mortem was got done which revealed that the victim had 80% burns. The accused, who was also admitted in the hospital, was discharged on 14.8.1995 and thereafter he came to be arrested. The articles seized from the spot- burnt clothes, were sent for chemical analysis and report received showed that there were residues of kerosene. In the A.D. which had been registered earlier, there was yet another spot panchanama done in the morning of 6.7.1995, in which stove and can of kerosene had been seized. Completing the investigation, the charge sheet came to be filed. Arguments for Appellant-Accused

3. The matter was committed to the Court of Sessions at Aurangabad. It was tried before 4th Additional Sessions Judge, who convicted the appellant- accused as mentioned above. The appeal raises grounds, and it has been argued on behalf of the appellant, the very first dying declaration of the deceased in the nature of history recorded by C.M.O. at the Casualty was suppressed by the prosecution. It was a case of accidental death. The accused had suffered burns in his efforts to save his wife. At the hospital, Dr. Sureshchandra Chavan (D.W.1) had recorded history of the incident as was told to him by the victim. This was reflected in the MLC, which was recorded on 5.7.1995 at 21:21 Hrs. Surajlal and Bhanudas, who had taken the victim to the hospital, were not examined by the prosecution. Neighbours and independent witnesses were not examined. There was inordinate delay in filing of the F.I.R., which was of more than 24 hours. The trial Court found

explanations in favour of the prosecution and on surmises ignored the delay. P.W.1 Narayan had gone to Advocate and after consultation, approached the police and the victim was tutored. When the dying declaration of victim was recorded, admittedly wife of P.W.1 Narayan was present there near the bed side. The dying declarations (Exhibits 20, 21 and 29) did not bear time or certificate of Medical Officer certifying consciousness and fitness of the patient. All this was ignored. The evidence of P.W.1 and 2, the brothers of the victim, were unreliable. There were material omissions and improvements in theevidence. When the incident occurred, grown up child of the victim namely Komal was present there and statement of Komal was also recorded, but the same was suppressed while filing the charge sheet and Komal was not examined also. The statement of Komal was considered by the High Court while deciding bail application of the appellant-accused in Criminal Application No.1386/1995, wherein Komal had stated that his mother had sustained burns by accident. According to the appellantaccused, the case was not established and the conviction could not be maintained. Arguments for State

4. Against this, learned A.P.P. argued that the spot panchanama did not indicate that it was a case of accidental burns. Kerosene residues were found in the clothes of victim, seized from the spot. Stove and can were seized from the spot. The stove was full of kerosene and there was very little kerosene left in the kerosene can. When the victim was admitted to the hospital, the accused was also admitted and the history of the incident must have been given by the accused and thus, the defence evidence was not reliable. The dying-declarations recorded were consistent and need to be relied on and the conviction should be maintained. The Background Earlier cases between the parties

5. We have gone through the evidence available in this matter and heard counsel for both sides. The marriage had taken place on 3.5.1984 and the date of incident is 5.7.1995. Facts show that the accused and victim were residing at Vishnunagar, Aurangabad while her brother Narayan (P.W.1) is also resident of Cantonment, Aurangabad. There is no dispute regarding the fact that the victim had children Komal and Sunil, 14 years and 10 years of age at the time of incident, living with her. There is no dispute regarding the fact that after some time of living together,

there were differences and the victim had left the accused and gone and started residing at village Kachner, Taluka Aurangabad at the place of her parents. Then she filed some cases against the appellant- accused. The prosecution filed, and the appellant-accused admitted documents relating to the matters between the victim and accused. Exhibit 24 is the consent terms in maintenance proceedings of the Family Court, Aurangabad in Petition ER-593/1993. Exhibit 25 is order in revision, also relating to maintenance. It was Criminal revision No.260/1991, decided on 2.8.1992. Exhibit 26 is copy of application under Section 128 of the Code of Criminal Procedure, filed by the victim along with her child referred as Soni. P.W.6 P.S.I. Murlidhar Bahule brought on record certified copy of R.C.C. No.318/1995 as the copy of complaint under Sections 494, 497 read with Section 34 of the Indian Penal code, filed by the victim against accused and the other lady Mangala on 21.12.1993 for second marriage said to have been performed in May 1988, and adultery. Cruelty / Ill-treatment

6. With the above background, if the evidence of P.W.1 Narayan and P.W.2 Arun are perused, they have deposed that the victim was being ill-treated after the second marriage and this they had learnt from the victim. According to these brothers, the victim was left at Kachner where she lived for 3-4 years and the cases came to be filed. These witnesses have deposed that, about one year before the death, the accused along with his sister Kusum and another person Sandu had come to take the victim and had assured to treat her well. P.W.1 deposed that, after they had so come together, after about one and a half month, when he had met victim, she told that the accused was beating and ill-treating her. P.W.2 has also deposed in this regard. However, the copies of documents from the litigations, if perused, show that, there were differences between the accused and the victim. Exhibit 25, the order of Criminal Revision No.260/1991 shows that, due to disagreement, the victim had left the place of accused and went to the place of her father. If she again had problem, she had the option to go back to Kachner or to P.W.1 who was living in same city. The evidence of P.W.1 and P.W.2 trying to show that the victim was being beaten at the place of the accused, can be stated to be vague. P.W.1 Narayan stated in para No.2 of the evidence that when he met the victim, she had stated that all accused were beating and ill-treating her. No specific act is attributed to any particular accused referring to any

date, period, time or place. First Dying-Declaration (cum-F.I.R.) Exh. 20

7. Coming to the dying-declarations on which the prosecution mainly relied, there is evidence of P.W.3 Dhondiappa Kamble. This P.S.I. deposed that on 5.7.1995 he was asked to enquire into MLC No.58/1995 and he went to Ghati Hospital on 6.7.1995 at 16.00 Hrs. and recorded statement of Hirabai, the victim. The statement of victim, treated as dying-declarationcum- F.I.R. is Exhibit 20. What was stated in Exhibit 20 can be reproduced as under :

Victim stated that, she was residing at Vishnunagar, at Aurangabad. She was married 10 years back, with the accused. She has a son and a daughter. 7-8 years back, without telling her, the accused married with one Mangalabai, was learnt by her later on. After the second marriage, husband Prabhakar (accused) was abusing and beating her. She later went to the place of her parents and filed cases for maintenance and regarding beating, which cases are pending in Court. Later, husband Prabhakar and mother-in-law Gayabai had come to place of her parents and again took her for cohabitation at the place of her husband. At that time, Mangalabai was at home. In order that there should not be quarrels between victim and Mangala, the husband kept Mangala on the ground floor along with her two children and mother-in-law; and the victim was accommodated on the first floor along with her children, and they were residing accordingly. From time to time the husband started telling the victim to withdraw case from the Court, but she did not say anything and seeing this he would abuse her. On 5.7.1995, Wednesday evening at 8.00 p.m., accused had food with Mangala and came to upper floor to the victim and started telling her as to why she is not withdrawing case from the Court, and started abusing her and said that if the case is not withdrawn, he will burn her. She kept quiet. At that time, the accused took kerosene can from the house and poured the same on her and by match stick put fire to her and she suffered burns to her body. At that time, the hand of the husband also got burns. Thus, on 5.7.1995 at 20.00 hrs. in her residential house, husband Prabhakar poured kerosene on her and by match stick, put fire to her and so she had suffered burns all over and the husband had tried to murder her and so the complaint. Second Statement-cum-Dying Declaration Exh. 21

8. P.W.3 Dhondiappa Kamble deposed that, on recording statement as above of the victim, the offence was registered at the Police Station at 20.05 Hrs. He recorded yet another statement of the victim on 7.7.1995, which is proved as Exhibit 21. In this, reference was made to the earlier statement recorded on 5.7.1995, and the victim added that her husband as well as parents-in-law and sister-in-law Kusumbai used to pick up quarrels on petty grounds and used to beat and ill-treat her. Since the time Mangalabai came to reside there, the other accused were beating and ill-treating her and instigating the accused to kill her. P.W.3 tendered this Exhibit 21 also as dyingdeclaration, on which he had taken the thumb impression of victim. Third Dying-Declaration Exh. 29

9. The third dying-declaration is proved by P.W.4 Special Executive Magistrate Subhashchandra Mehara. This witness deposed that, on 6.7.1995, he received letter Exhibit 30 for recording the dying-declaration of the victim and he had gone to the Ward and recorded dying-declaration of the victim, which is Exhibit 29. In Exhibit 29 also the victim blamed the appellantaccused for her burns. Dying-Declarations are not reliable

10. Question is as to why reliance should not be placed on these dying-declarations for holding the appellant- accused guilty. We find from the record various reasons why these dyingdeclarations are not inspiring confidence and why we have doubts regarding the manner in which the investigation was conducted in this matter. We will refer to the reasons. Basic Precautions not taken

11. Coming to Exhibit 20, the dying-declaration-cum-F.I.R., if the evidence of P.W.3 Dhondiappa Kamble, the P.S.I., who recorded the same is perused, he deposed that, on 5.7.1995, he was attached to the Jawaharnagar Police Station, Aurangabad and had been orally directed to enquire into the MLC No.58/1995. He claims that, he went to the hospital on 6.7.1995 at 16.00 Hrs. i.e. 4.00 p.m. and went to the Burn Ward and recorded statement of the victim Hirabai. His evidence does not show that he contacted any doctor to take opinion if the victim was in a physical and mental condition to record her statement. He does not depose that he put any questions to the victim to verify if she was in physical and mental condition to make a statement. He simply says that, he went and recorded the statement.

He says that, he recorded the statement of the victim and the statement Exhibit 20 shows thumb impression of the victim. He claims that, Exhibit 20 was in his handwriting and bears his signature also. Although Exhibit 20 at the foot has an endorsement that the statement was read over to the victim and was written as was told, still the evidence of P.W.3 does not disclose that he did actually read over the statement to the victim and verified that she has understood the same and then put the endorsement at the foot and took her thumb impression. Same is the condition with the second dying-declaration Exhibit 21, recorded by this witness on 7.7.1995. When the maker of these statements is not available and the same were recorded as dying-declarations, no basic precautions were taken to make them reliable.

In the cross-examination, P.W.3 admitted that the dying-declaration Exhibit 20 does not bear time of recording the same. No doubt there is endorsement regarding registration of the offence at 20.05 Hrs. endorsed on Exhibit 20, which endorsement is made when the F.I.R. is registered. Still the dying-declaration does not bear time of its own. P.W.3 P.S.I. Dhondiappa Kamble had deposed that he had gone to the hospital at 4.00 p.m. and recorded the dying-declaration. He admits that, from Ghati Hospital, the police station is hardly at a distance of 15 minutes by vehicle. Still, the offence came to be registered only at 8.05 p.m. of 6.7.1995 for an incident which had taken place 24 hours earlier. This witness claimed that, when he went and recorded statement of Hirabai, no one was present near the patient. However, if evidence of P.W.1 Narayan is perused, (in para No.5), he deposed that, he had come to know about incident at 7.30 a.m. (of 6.7.1995) and he had reached the hospital at 8.00 a.m. His evidence is that, his sister gave oral dying-declaration to him that her husband told her to withdraw the criminal cases and when she refused, the accused Prabhakar had poured kerosene on her and set her on fire, and the accused himself had then extinguished the fire. The witness claimed that thereafter he had gone to the Advocate Mr. Chhallani and taking advice, had gone to Police Commissioner's office and met one Mr. Yadav. Thereafter the Commissioner of Police directed and statement of his sister was recorded. His evidence is that he was present in hospital when statement of his sister was recorded, but he was told to go out of the room. He further deposed that, his wife was sitting near his sister and that,

because of the injuries, his ister was restless and was shouting. Thus, the evidence of P.W.1 is that, when statement of his sister was to be recorded, he was asked to go out, but his wife kept sitting near the sister. This is in conflict with what P.W.3 deposed that no one was present near the patient when he recorded the statement. P.W.3 also denied that, Hirabai was not in a position to give statement. As we have just noted, P.W.1 deposed that, the victim was restless and was shouting because of the injuries. P.W.3, however, insisted that the victim was not restless and was not shouting. Relative present while recording Dying-Declaration

12. The evidence on record shows that P.W.1 Narayan had reached the victim on the next day morning of 6.7.1995 itself and after talking to victim, instead of going to the police station, he went and discussed the matter with an Advocate and moved the Police Commissioner. When the statement was recorded, admittedly his wife was there. Chances of victim getting influenced cannot be ruled out. The dying-declaration Exhibit 20 (as well as Exhibit 21) do not bear endorsement of any doctor regarding the condition of the patient and P.W.1 did not depose anything that he verified the condition of the patient before recording the statements. For such reasons, we find that, it would be risky to rely on such documents Exhibits 20 and 21 when the victim is not available for cross-examination and even established basic procedures for recording dying-declarations were not followed. Date doubtful; time etc. not mentioned

13. Coming to Exhibit 29, recorded by P.W.4 Special Executive Magistrate Subhashchandra Mehara, he deposed that, Police Constable from Jawaharnagar had come to his house on 6.7.1995 in the afternoon and said that, one lady had sustained burns and dying-declaration is to be recorded. He deposed that, he endorsed letter which was given to him. His evidence is that, he then went to the Ghati Hospital and gave letter to the doctor if the patient was conscious and doctor gave him letter that the patient was conscious and fit to give statement. He claims that, he also ascertained that the lady was in a position to give statement and then recorded her statement (Exhibit 29). He added that, he read over the contents and the victim ascertained that the contents are correct, and then he had affixed her thumb impression. This witness then deposed that the letter which was given to him by police and on which he had endorsed, is the document which he proved at

Exhibit 30. If Exhibit 30 is perused, the document is dated 5.7.1995. If the original of Exhibit 30 from the record of trial Court is seen, it is a report-cum-letter (Carbon copy) from Head Constable S.S. Bawaskar, B.No.1529, informing the Executive Magistrate that in MLC No.9570, burn victim Hirabai and in MLC No.9571, her husband Prabhakar (accused), their dyingdeclarations are to be recorded. The contents of the report are that, Hirabai had suffered burn injuries while cooking due to the sudden flame of the stove and suffered 50% burns and her husband, who had tried to put out the fire, had suffered 30% burns and so, their statements were to be recorded. Exhibit 30 (in original) shows that, in original, there is endorsement in the margin of receiving the report at 11.40 p.m. The date put earlier was 7.7.1995, which appears to have been later overwritten so as to read 5.7.1995. This is material looking to the fact that, in evidence P.W.4 Subhashchandra Mehara deposed that, Police Constable had come to him in the afternoon of 6.7.1995 and gave him letter Exhibit 30. If the Constable came to him in the afternoon of 6.7.1995 with letter dated 5.7.1995, P.W.4 could not have endorsed that the letter was received at 11.40 p.m. of 5.7.1995.

14. P.W.4 Subhashchandra Mehara admitted in crossexamination that, the dying-declaration Exhibit 29 does not bear the time and place of recording. In fact, we have perused the original of Exhibit 29 from the record of trial Court. What appears to bare eyes is also the fact that, the date of 6.7.1995 at the top right corner of Exhibit 29 appears to be in different handwriting and ink (although both are blue) than the rest of the body of the document, which is handwritten. P.W.4 did not prove any endorsement by doctor also on Exhibit 29 or any other document. When police officials like P.W.3 and Special Executive Magistrate like P.W.4 record dying-declarations , they know the purpose, and there is no reason why the dying-declarations should not bear date, time and place of recording as part of the document. Not writing date and time as part of the dyingdeclarations makes such documents and investigation suspect. Overlapping Investigation and MLC Enquiry

15. In the present matter, after the victim and the accused were admitted to hospital, it appears that, MLC was being enquired into and there is overlapping investigation. On 6.7.1995, spot panchanama Exhibit 15 was recorded in MLC No.58/1995 by Head Constable Bawaskar, who recorded the same between 9.00

10.30 a.m. The room appeared to be of the first floor, where there were tell tale signs of even the household articles getting burnt. The room was hardly of 9 ft. x 10 ft. He claimed to have recovered a tin can of kerosene having just 50 gms. of kerosene in it and a stove. The iron stove was with kerosene filled in it, on which an aluminium box had been kept. Yet another spot panchanama Exhibit 13 came to be recorded on the same day between 20.30 21.30 Hrs. by P.W.3 P.S.I. Kamble, who recovered pieces of polyester sari, petticoat, blouse, as clothes of victim, all partly burnt and a match box from the spot. The spot panchanam Exhibit 13 claimed to be in Crime No.135/1995. Although according to prosecution the F.I.R. was registered at 20.05 Hrs. on 6.7.1995, P.W.6 P.S.I. Bahule, who had carried out further investigation, admitted document Exhibit 35 as signed by A.S.I. Ghumre. If Exhibit 35 is perused, it is dated 17.7.1995 and the report given was to police inspector of the police station that the victim of MLC No.9570- registered on 5.7.1995, Hirabai and who had been admitted in the hospital, and who had stated in front of the C.M.O. that on 5.7.1995, she had suffered burns at 20.00 Hrs. due to sudden high flame of stove and who had got burnt to the extent of 50%, has expired while taking treatment, on 17.7.1995 and on MLC post mortem had been directed and so, further action may be taken. On receipt of such report Exhibit 35, it appears, the P.S.O. took station diary entry at 198/1995 under Section 174 of the Code of Criminal Procedure and marked it to same P.S.I.- P.W.6 Bahule with the date put as 17.7.1995. If the offence had already been registered on 6.7.1995, why MLC enquiry continued even till 17.7.1995 and report was filed that the lady who suffered burns accidentally has passed away and so, further actions were required to be taken, is not clear. A.S.I. Ghumre and also P.S.O. at the police station appear to have been oblivion of the offence registered and dying-declarations Exhibits 20, 21 and 29, dated 6.7.1995/ 7.7.1995 if they were there. Although P.W.6 P.S.I. Bahule was confronted with such document and the same was proved, he did not try to explain as to how such parallel enquiry and investigation were going on. In the circumstances, there are doubts as to the manner in which the investigation took place. Was D.D. recorded in night of 5th-6th July, 1995 itself ?

16. Prosecution examined Dr. Hamid Karim to prove document Exhibit 39. He deposed that, on 5.7.1995, he was given the letter Exhibit 39 and he examined the

victim Hirabai and found her to be conscious and oriented and accordingly, endorsed on the document. If Exhibit 39 is seen, Head Constable Bawaskar had given this letter to the Medical Officer claiming that statement of Hirabai who had suffered burns while cooking, was to be recorded and statement of her husband was also to be recorded and so, report may be given if the victim and her husband were in condition to record statement. The doctor endorsed that, patient is conscious and oriented and able to give statement, and the signature was put with time as 11.50 p.m. of 5.7.1995. Head Constable Bawaskar has not been examined in this matter to know as to what happened after he took such certificate from the doctor in the same night of 5.7.1995. To recall, P.W.3 P.S.I. Kamble claims to have recorded Exhibit 20 only after going to hospital at 4.00 p.m. of 6.7.1995 and P.W.4 Subhashchandra Mehara claimed that he had received letter Exhibit 30 only after the Police Constable came to him in the afternoon of 6.7.1995. Was or not dying-declaration recorded in the night itself after endorsement of doctor taken on Exhibit 39, nobody is telling. And the Head Constable Bawaskar, as mentioned, is not examined.

17. In the above background manner in which the MLC was enquired into and the manner in which the investigation was being done, the evidence of D.W.1 Dr. Sureshchandra Chavan becomes material (in the English version of deposition, he is wrongly shown as Witness No.8 for prosecution). This witness deposed that, on 5.7.1995 the victim Hirabai was brought in the hospital by her relatives and he examined her. According to him, she was conscious and she gave history of burns while cooking by stove flames. This doctor proved Exhibit 43 as the injury certificate which has endorsement history of burns while cooking at 8.00 p.m. from stove flame. The doctor was asked and he admitted in cross-examination that, the exhibit does not mention as to who gave such history. But then, even Exhibit 35 dated 17.7.1995, the report submitted by A.S.I. Ghumre stated that, at the hospital it was the victim who had informed that on 5.7.1995 at 20.00 Hrs., while she was cooking, due to sudden flame, she had got burns. Material Witness kept back

18. Yet another aspect, which needs to be considered is that, P.W.1 admitted in the cross-examination that Komal and Soni, the children of victim were residing with her at the time of incident. P.W.3 admitted in cross-examination (para 5) that

it was true that at the time of incident, son and daughter of victim were residing with her and in the investigation, it transpired that the son had gone to call Sundarabai. It was admitted that, statement of Komal was recorded, but it had not been filed on record. Even P.W.6 admitted that, statement of Komal was recorded but the same was not filed on record. It has been argued that, the statement of Komal to police was that there was incident of accidental burns and because of that, at the time of investigation, the accused was granted bail by the High Court. Thus, according to the appellant- accused, the investigation had suppressed material evidence and prosecution was not fair.

19. Having gone through the material available on record and carefully examining the reasonings recorded by the trial Court for convicting the appellant- accused, we find ourselves in disagreement with the trial Court. Keeping in view the above discussion, we find that, it would be risky to rely on the evidence brought on record by the prosecution to convict the accused. Giving benefit of doubt to the appellant-accused, he needs to be acquitted.

20. For the above reasons, the criminal appeal is allowed. The conviction and sentence as imposed by the trial Court is quashed and set aside. Appellant-accused is acquitted of the offence with which he has been charged. Fine, if paid, be refunded to him. The appellant- accused is on bail. The bail bonds are cancelled.

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