

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**&**

**HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH**

**ON THE 2<sup>nd</sup> SEPTEMBER, 2022**

**CRIMINAL APPEAL No. 776 of 2013**

**Between:-**

**KANA @ KANHAIYALAL S/O SHRI SUKHLAL CHOUHAN, AGED ABOUT 19 YEARS, OCCUPATION: LABOUR H.NO. 84, SWARNABAG COLONY, INDORE (MADHYA PRADESH)**

**.....APPELLANT**

**(BY SHRI HITESH SHARMA, ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH GOVT. THRU. P.S. VIJAY NAGAR, INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY MS MAMTA SHANDILYA, GOVT. ADVOCATE )**

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Reserved on : 31.01.2022

Delivered on : 02.09.2022

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*This appeal coming on for judgment this day, JUSTICE SATYENDRA KUMAR SINGH passed the following:*

**J U D G M E N T**

**Satyendra Kumar Singh, J.,**

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973(2 of 1974) [in short Cr.P.C.] against the judgment dated 12.03.2013, passed by the Court of Sessions Judge, Indore in S.T.No.87/2011, whereby appellant has been convicted

under Section 302 of Indian Penal Code, 1860 (in short IPC) and Sec 25(1-B)(b) of Arms Act and sentenced to undergo Life Imprisonment with fine of Rs.1,000/- & RI for 01 year with fine of Rs. 500/-, in default of payment of fine, additional RI for 06 months and 03 months respectively.

**2.** Prosecution story in brief is that:

(i) The appellant and the deceased Ashraf were known to each other and on the date of incident i.e. 21.11.2020, in the morning, a quarrel took place between the appellant and the deceased as appellant did not give the mobile number, name and address of a girl engaged in prostitution. Due to which, on the same day, at about 6.45 p.m., when deceased Ashraf alongwith complainant Irfan and Imran was going towards Khajrana on motorcycle and reached near Radhakunj, appellant met him on the way. He asked the deceased that he want to talk to him and when deceased get down from the motorcycle, appellant assaulted him on his chest with a knife and thereafter fled away from the spot. Complainant Irfan alongwith Imran took the deceased to Life Line Hospital where he was declared dead.

(ii) On the same day at about 8:00 p.m, Head Constable Anil Kumar after receiving the information about the death of the deceased from Life Line Hospital, registered Merg Intimation Report (Ex. P-7) at Police Station Vijaynagar, Indore. On the same day at about 9:00 p.m., SHO Ajay Kaithwas, on the basis of oral complaint made by the complainant Irfan, lodged the FIR (Ex. P-1). Next day, on 22.11.2010, he went to the place of occurrence, prepared spot map (Ex. P-2), seized plain as well as blood soaked soil alongwith deceased blood stained slippers from the place of occurrence as per seizure memo (Ex. P-3).

S.I. S.S. Patel went to M.Y. Hospital, called the witnesses issuing *safina form* (Ex. P-8), prepared *Naksha Panchayatnama* (Ex. P-9) of the dead body of the deceased and vide application (Ex. P-10), sent the same for post-mortem examination.

(iii) On the same day at about 11.15 a.m., Dr. Prashant Rajput conducted the post-mortem examination of the deceased's body. He finding one stab wound measuring 2.5 cm. X 0.6 cm. on his chest and one stab wound measuring 2 X 0.5 X 2 cm. on left lateral part of of his left thigh, caused by hard, sharp and penetrating object, prepared post-mortem report (Ex. P-11) and opined that the deceased was died due to shock and hemorrhage as a result of injury to thoracic region within 24 hours since post-mortem and his death was homicidal in nature.

(iv) On the same day, SHO Ajay Kaithwas arrested the appellant as per arrest memo (Ex. P-4), recorded his disclosure statement (Ex. P-5) and on the basis of which, on his instance, seized blood stained knife, used in the crime, from the place near to the place of occurrence as per seizure memo (Ex. P-6). Vide letter (Ex. P-13) sent all the seized articles to FSL, Rau, Indore and obtained FSL report (Ex. P-15). After completion of investigation filed chargesheet against the appellant before the Court of Judicial Magistrate First Class, Indore, who committed the same vide order dated 18.01.2011 to the Court of Sessions Judge, Indore.

3. Learned trial Court considering the material *prima-facie* available on record, framed the charges for the offences punishable u/S 302 of IPC and Sec 25(1-B)b of Arms Act. against the appellant, who abjured his guilt and prayed for trial. In their statement recorded u/S 313 of Cr.P.C., the appellant pleaded his false implication in the matter.

Appellant took the defense that deceased was a quarrelsome person by nature and on the date of incident, appellant was asked to give mobile number of a girl, which was denied by him and on that issue, quarrel broke between them. However, on the basis of that quarrel, he has falsely been implicated in the matter only on the basis of suspicion.

4. Learned Trial Court after appreciating the oral as well as documentary evidence available on record, recorded the findings that prosecution proved its case beyond reasonable doubt against the appellant for the offences punishable u/S 302 of IPC and Sec 25(1-B)b of Arms Act. Therefore, vide judgment dated 12.03.2013 convicted him u/S 302 of IPC and Sec 25(1-B)b of Arms Act and sentenced him to suffer life imprisonment alongwith fine of Rs.1,000/- and 01 year R.I. With fine of Rs. 500/- with default stipulation. Being aggrieved with the said judgment of conviction and order of sentence, appellant has preferred this appeal for setting aside the impugned judgment and discharging him from the charges levelled against him.

5. Learned counsel for the appellant submits that learned trial Court has committed a legal error while appreciating the evidence available on record. On the date of incident, in the morning, a quarrel took place between the appellant and the deceased, due to which appellant has been implicated in the matter only on the basis of suspicion. The person Abdul Gaffar, whose name has been mentioned in the record of the hospital as the person who brought the deceased to Life Line Hospital after the incident has not been examined. Complainant Irfan and witnesses Imran have nowhere explained the reason as to why their names were not mentioned in the record of the hospital as to the one who brought the deceased to hospital. They have also not offered any explanation about the delay caused in lodging of the FIR. Blood stained

clothes worn by them at the time of incident have not been seized, hence their presence on the spot at the time of incident was very much doubtful. Weapon said to be used in the crime was seized from an open place. Statements of prosecution witnesses are contradictory with the medical evidence about the injuries caused to the deceased. Only one stab wound was found on the vital part chest of the body of deceased. Therefore, conviction of the appellant for the offences punishable u/S 302 of IPC and 25(1-B)b of Arms Act is liable to be set aside. In the alternative, as the incident took place all of a sudden and only one injury was found on the vital part of the body of the deceased, he may be at the most convicted u/S 304(A) of IPC. Hence, appeal filed by the appellant may be allowed and appellant be acquitted from the charges levelled against him.

In support of his above contentions, learned counsel for the appellant has placed reliance on the judgments rendered in the cases of *Rangbahadur Singh Vs. State of U.P. [(2000)3 SCC 454]*, *Kanhai Mishra Vs. State of Bihar[AIR 2001 SC 1113]*, *State of Rajasthan Vs. Shri Chiranjilal[2001(5) SC 259]*, *State of Rajasthan Vs. Taran Singh [(2003)12 SCC 341]*, *Mathuria Vs. State of M.P.[Cr.Law Reporter MP Pg 178]*, *Dharminder Singh Vs. State of Himachal Pradesh [ AIR 2002 SC 3007]*, *Ranveer Singh Vs. State of M.P.[AIR 2009 SC 1658]*, *Mangesh Vs. State of Maharashtra [2011 Cr. Law Journal 1166 (Supreme Court)]*, *Ghuru Vs. State of M.P. [2008(1) J LJ 258]*, *Lakhvinder Singh Vs. State of Punjab [AIR 2003 SC 2577]*.

6. Learned counsel for the respondent/State submits that the appellant in his statement recorded u/S 313 Cr.P.C. has admitted that on the date of incident, in the morning, a quarrel had taken place between the appellant and deceased. Therefore, appellant was having motive to

assault the deceased. During cross-examination of the prosecution witnesses, it has been suggested on behalf of the appellant himself that complainant and deceased alongwith witness Imran went to the place of occurrence and met the appellant. Therefore, presence of the complainant and witness Imran on the spot at the time of incident is very well proved. Both the above witnesses have supported the prosecution case and their statements find support from the FIR lodged by the complainant just after the incident. There was not much of discrepancy or contradiction in their statements. Hence, prosecution has proved its case beyond reasonable doubt. Thus, by affirming the impugned judgment of conviction and order of sentence, the appeal filed by the appellant may be dismissed.

7. In support of his above contentions, learned counsel for the respondent has placed reliance on the judgments rendered in the cases of *State of Rajasthan Vs. Chandgiram and Others [2014(14) SCC 596]*, *Vinod Vs. State (NCT of Delhi) [2016 SCC Online Del 2250]*, *State of Haryana Vs. Bhagirath And Others [1999(5) SCC 96]*

8. Heard learned counsel for the parties at considerable length and perused the record in depth.

9. Prosecution has examined in all, eight witnesses including complainant Irfan (PW-1), Shareef (PW-2) and Imran (PW-3) as eye-witnesses. Other relevant witnesses are Head Constable Anil Kumar(PW-4), who registered the Merg Intimation Report(Ex. P-2), Dr. Prashant Rajput(PW-6), who conducted the post-mortem of the deceased and SHO Ajay Kaithwas (PW-7), who lodged the FIR (Ex. P-1) and investigated the matter.

10. From the statement of Imran (PW-3) and also from the statement of appellant himself recorded u/S 313 of Cr.P.C., it is an admitted fact

that on the date of incident, i.e. 21.11.2010, in the morning, deceased Ashraf asked the appellant to give him mobile number and address of a girl engaged in prostitution and when he denied to give the same to the deceased, a quarrel took place between them wherein as stated by Imran (PW-3), deceased in the heat of moment gave 3-4 slaps to the appellant.

11. H.C. Anil Kumar (PW-4) deposed that on 21.11.2010, at about 8.00 p.m., after receiving an information from Telephone Operator, Life Line Hospital that on the same day at about 7.45 p.m., deceased Ashraf was brought dead in the hospital by Abdul Gaffar, he registered the Merg Intimation Report (Ex. P-7) about the death of deceased at Police Station Vijayanagar, Indore. S.I. S.S. Patel (PW-5) deposed that on the next day i.e. 22.11.2010 during merg inquiry, he went to M.Y. Hospital, called the witnesses through safina form (Ex. P-8), prepared *naksha panchayatnama* (Ex. P-9) of the body of deceased and sent the same for post-mortem examination.

12. Dr. Prashant Rajpoot (PW-6) deposed that on the same day at about 11:15 p.m., he conducted the post-mortem examination of the deceased's body and found following injuries on the person of the deceased:

(1) Stab wound measuring 2.5 cm. X 0.6 cm., vertically placed about 1.5 c.m. left from the center of the left nipple and about 2 cm. above from the lower end of the same. The wound has entered between 4th & 5th ribs injuring the left lower lateral part of the lungs, about 2 cm. from its base.

(2) Stab wound measuring 2 X 0.5 X 2 cm. right oblique on left lateral part of left thigh about 20 cm. below left hip joint.

**13.** Dr. Prashant Rajput (PW-6) prepared post-mortem examination report (Ex. P-11) and opined that both the above injuries found on the body of the deceased were caused by hard, sharp and penetrating object and deceased died due to shock and hemorrhage as a result of injury to thoracic region within 24 hours since post-mortem and his death was homicidal in nature.

**14.** Appellant has not seriously challenged the aforesaid statements of the witnesses - H.C. Anil Kumar (PW-4), S.I. S.S. Patel (PW-5) and Dr. Prashant Rajpoot (PW-6), therefore this fact is established that on the date of incident i.e. on 22.11.2010 at about 6:45 pm., deceased Ashraf was assaulted by hard, sharp and penetrative object and sustained injuries mentioned herein above on thoracic region of his body, and died due to shock and hemorrhage within 24 hours since post-mortem and his death was homicidal in nature. Causing such injury on vital part i.e. chest of the body of the deceased along with other injury by hard, sharp and penetrating object in itself shows that the same was caused with an intent to commit his murder. Hence, it is also established that he was murdered.

**15.** SHO Ajay Kaithwas (PW-7) deposed that on 22.11.2010, he went to the place of occurrence and prepared spot map (Ex. P-2), seized plain soil, blood soaked soil and deceased's blood soaked slippers from the place of incident as per seizure memo (Ex. P-3). His aforesaid statement has also not been challenged seriously by the appellant. Therefore, this fact is also established that deceased Ashraf was assaulted at the place, situated in Radhakunj area as shown in the spot map (Ex. P-2).

**16.** Now, so far as the issue whether aforesaid injuries were caused by the appellant is concerned, prosecution case is that appellant due to the quarrel, which had taken place in the morning on the date of



incident between the appellant and the deceased, assaulted the deceased by knife blow resulting into his death, while appellant's defense is that due to the quarrel took place between him and the deceased in the morning, he has been falsely implicated in the matter only on the basis of suspicion.

17. Prosecution case is mainly based on the ocular evidence of the complainant Irfan (PW-1), Shareef (PW-2) and Imran (PW-3), who were said to be present on the spot or near the spot at the time of incident. Complainant Irfan (PW-1) and Imran (PW-3) have deposed in their examination-in-chief that on the date of incident, at about 6:45 p.m, they alongwith deceased Ashraf were going towards Khajrana to eat haleem and when they reached Radhakunj, appellant met them and stopped their motorcycle. They further deposed that appellant asked the deceased to get down from the motorcycle as he had to talk with him and when deceased got down, appellant assaulted him with knife on his chest due to which he fell down on the ground.

18. Both the above witnesses have deposed that they just after the incident took the deceased to Life Line Hospital, where he was declared dead. They further deposed that thereafter, complainant went to the P.S. Vijayanagar and lodged the F.I.R.(Ex. P-1). Complainant Irfan (PW-1), in para 14 of his cross-examination, deposed that after the incident they reached the hospital within 10 minutes. He in para 10 of his cross examination, deposed that when they reached the hospital, their names and addresses were asked and noted by the doctor at the time of entry itself. Imran (PW-3) has also made similar statements mentioning specifically that the hospital was about 1-1.5 km away from the place of incident.

19. From the unchallenged testimony of H.C. Anil Kumar (PW-4), it

has already been found established that on the date of incident deceased was brought to the Life Line Hospital not within 10 minutes of the incident but at about 7.45 p.m. i.e. after about an hour of the incident and not by the complainant Irfan or witness Imran, but by Abdul Gaffar, a resident of Krishnabag Colony, where deceased was residing, as mentioned in the Merg Intimation Report (Ex. P-7) registered at P.S. Vijayanagar. Complainant Irfan (PW-1) and Imran (PW-3) both have nowhere explained the reason as to why deceased was brought so late to the hospital, when the same was only about 1- 1.5 km away from the place of incident and why their names were not mentioned in the record of the hospital as the persons, who brought the deceased to the hospital.

20. Complainant Irfan (PW-1) and Imran (PW-3) both have deposed that when they brought the deceased to the hospital, police also came there and thereafter, complainant Irfan went to the police station alongwith the police personnel and immediately lodged the FIR (Ex. P-1). From the statement of Ajay Kaithwas (PW-7), it is apparent that on the date of incident at about 9.00 p.m., he on the basis of oral complaint made by the complainant Irfan, lodged the aforesaid FIR (Ex. P-1) at P.S. Vijaynagar, which is about 2 kms from the place of incident. Prosecution has not explained the reason as to why the FIR was lodged after about two hours of the incident.

21. Facts of the case *State of Rajasthan Vs. Chandgiram and Others [Supra]*, cited by the learned counsel for the respondent, are entirely different from the instant case, wherein occurrence took place in a remote place in late night and complainant, wife of the deceased, was a rustic village woman with two minor children, who were pathetically witnessing the gruesome killing of their father, it was held that the delay caused in lodging the FIR is not fatal. In the instant case

incident occurred at a place, which is hardly about 1.00- 1.50 km away from Life Line Hospital and about 2 km away from P.S. Vijayanagar, Indore, as stated by the complainant Irfan (PW-1) and Imran (PW-3) themselves and if they were present with the deceased at the time of incident and were having motorcycle with them, therefore, delay caused in bringing the deceased to hospital and also in lodging the FIR is certainly fatal and creates doubt about their presence on the spot.

22. In this regard, it is also pertinent to mention here that the prosecution has neither examined - Abdul Ghafar, the person who brought the deceased to the hospital, nor offered any plausible reason for not mentioning his name in the list of prosecution witnesses. Non examination of material witness whose testimony may have deleterious impact on the veracity of the other witnesses would be an incongruity which would cast a doubt on the prosecution case as held by the Apex Court in *Rangbahadur Singh Vs. State of U.P. (Supra)*.

23. Statements of complainant Irfan (PW-1) and Imran (PW-3) with regard to the fact that they brought the deceased to the hospital and also with regard to the timings of bringing the deceased to the hospital and lodging of the FIR are contradictory with the Merg Intimation Report (Ex. P-7) and FIR (Ex. P-1). Their statements are also contradictory on the point that before proceeding to Khajrana for eating haleem, where they met with the deceased. Irfan (PW-1) in para 9 of his cross-examination deposed that on the date of incident when he was going on his motorcycle, deceased Ashraf and witness Imran met him opposite to Krishnabagh Colony and from there, all of them proceeded towards Khajrana. While Imran in para 12 of his cross-examination deposed that on the date of incident, deceased Ashraf and complainant Irfan met him at Sonu Monu Grocery Shop and from there, all of them proceeded

towards Khajrana.

24. Both the above witnesses although deposed that when they alongwith deceased reached Radhikhakunj Colony, appellant met them, but their statements are contradictory on the point that where and how appellant assaulted the deceased. Irfan (PW-1) in para 9 of his cross-examination deposed that when his motorcycle was stopped by the appellant and deceased - Ashraf get down from the motorcycle, appellant took him about 30-40 steps away and thereafter a scuffle took place between them and then he assaulted the deceased with knife due to which deceased fell down on the ground. While Imran (PW-3) deposed that when they reached Radhikhakunj Colony, then appellant stopped their motorcycle and asked the deceased to get down from the motorcycle and when deceased got down, appellant assaulted on his chest due to which he fell down on the ground. None of them have deposed anything about the stab wound found on the left thigh of the deceased.

25. In the aforesaid circumstances, as argued by the learned counsel for the appellant, presence of both the above witnesses on the spot at the time of incident appears to be doubtful. Complainant Irfan (PW-1) and Imran (PW-3) deposed that after the incident, they got the deceased seated in injured condition on the motorcycle and took him to the hospital, but the prosecution has not seized the clothes worn by the aforesaid two witnesses as the same might be stained with blood of deceased while they rushed him to Life Line Hospital on their motorcycle. Non-seizure of their blood stained clothes also makes their presence doubtful on the spot at the time of incident. In this regard observation made by the Apex Court in the case of *State of Rajasthan Vs. Taran Singh (Supra)* can be relied upon.

26. During course of argument learned counsel for the respondent/State has vehemently argued that as during the cross-examination of Imran (PW-3), it has been suggested on behalf of the appellant himself that Imran alongwith complainant Irfan and deceased Ashraf themselves, with an intent to assault the appellant, went to the place of occurrence on motorcycle, therefore, presence of both the above witnesses on the spot at the time of incident cannot be doubted. It is apparent from the perusal of the cross examination of Imran (PW-3), that contradictory suggestions were given by the learned counsel for the appellant to him. On one side it has been suggested that both the above witnesses alongwith the deceased themselves had gone to the place of occurrence, while on the other side their presence on the spot has been denied.

27. In this regard, it is pertinent to mention here that appellant himself in his statement recorded under section 313 of Cr.P.C. has specifically denied the question asked in this regard. He has not taken any such defence that both the above witnesses alongwith deceased came on the spot to assault him. It appears that the suggestion with regard to presence of the aforesaid witnesses on the spot was given by the learned counsel for the appellant only for the purpose of adopting legally recognized defence of right of private defence. Alternative defence can be taken and it is not the law that failure to set up a defence foreclose his right to rely on other defence. In this regard judgment passed by the Apex Court in the case of *State of U.P. Vs. Lakhmi (1998) 4 SCC 336* can be relied upon. In the instant case the statement of aforesaid two witnesses have been found inconsistent on material issues. Therefore, only on the basis of suggestion given by the learned

counsel for the appellant, it is not safe to rely their presence on the spot at the time of incident and to rely their evidence.

**28.** Other eye-witness Shareef (PW-2), who is maternal uncle of the deceased and a chance witness in the case, deposed that he resides at about ½ km away from the place of incident and used to go for a walk twice a week. On the date of incident at about 6:30 to 7:00 p.m., when he was walking in Radhikhakunj Colony, he saw the deceased Ashraf alongwith complainant and witness Imran going on a motorcycle. He further deposed that he also saw that appellant stopping them and as soon as deceased get down from the motorcycle, he assaulted him with a knife on his chest and thereafter he fled away from the spot. He in his examination-in-chief deposed that after viewing the incident, he ran towards the place of incident, where he find complainant Irfan(PW-1) and witness Imran (PW-3) taking the deceased to hospital on their motorcycle.

**29.** But, he in his cross-examination stated that he was at a distance of about 10 ft. from the place of incident and immediately reached the spot when deceased fell down on the ground. He in para 8 of his cross examination deposed that at the time of incident he picked up the deceased from the spot and got him seated on the motorcycle. He specifically admitted that his clothes were stained with the blood of the deceased, but even then the same has also not been seized. He being the maternal uncle of the deceased was expected to accompany the deceased when he was being taken to the hospital and give information about the said incident to the police. But, he was neither present at the time when deceased was being rushed to the hospital nor at the time of registration of Merg Intimation Report nor while lodging the FIR. In these circumstances, presence of witness Shareef (PW-2) on the spot at

the time of incident also becomes doubtful. Facts of the case *Vinod Vs. State (NCT of Delhi) [Supra]*, cited by the learned counsel for the respondent, are entirely different, wherein absence of effort to save deceased and act of not taking the deceased to hospital were found not material.

**30.** So far as the circumstantial evidence is concerned, SHO Ajay Kaithwas (PW-7) deposed that on the next day of incident, he arrested the appellant as per seizure memo (Ex. P-4) and recorded his disclosure statement (Ex. P-5) wherein he disclosed about the weapon knife used in the crime. He further deposed that on the basis of said disclosure statement and on his instance, he seized a blood stained knife 'Article A' from the place situated near the date tree in an open place as per seizure memo (Ex. P-6). Shareef Khan (PW-2) has supported his aforesaid statement, but it is apparent from the seizure memo (Ex. P-6) itself that the aforesaid knife 'Article A' said to be seized from the possession of the appellant was seized from an open place situated near the place of occurrence. Therefore, the same cannot be said to be seized from the exclusive possession of the appellant. For the sake of arguments, if the same is presumed to be seized from the possession of the appellant, then as the grouping of the blood found on the said knife was not done, therefore it can also be not said that the same was used in the crime at the time of incident.

**31.** In view of the aforesaid discussion, ocular as well as circumstantial evidence produced on record cannot be said to be of such standard, on the basis of which offences alleged against the appellant are said to be proved beyond reasonable doubt. Defence taken by the appellant that he has falsely been implicated in the matter only on the basis of suspicion as he had a quarrel with the deceased in the

morning, cannot be ruled out. Hence, learned trial Court has committed error in finding the fact that prosecution has proved its case beyond reasonable doubt.

**32.** In the aforesaid circumstances, impugned judgment and order of sentence passed is not sustainable and liable to be set aside.

**33.** Therefore in the light of the aforesaid discussion, we have no hesitation to hold that the prosecution has failed to prove the guilt against appellant beyond reasonable doubt. Hence, conviction of the appellant cannot be upheld and the appeal filed by the appellant deserves to be allowed. Accordingly, we pass the following order:

(i) Criminal Appeal No. 776/2013 filed by the appellant is allowed.

(ii) The judgment of conviction and order of sentence dated 12.03.2013, passed by the Court of Sessions Judge Indore, whereby appellant has been convicted under Sections 302 of Indian Penal Code, 1860 (in short IPC) and u/S 25(1-B)b of Arms Act and sentenced to undergo life imprisonment with fine of Rs.1,000/- and RI for 1 year with fine of Rs. 500/- and in default of payment of fine, additional rigorous imprisonment for six months and three months respectively is hereby set aside.

(iii) Appellant be set at liberty, if not required in any other case.

(iv) Fine amount(if any), deposited by the appellant be refunded to him.

The Registry is directed to send back the trial Court record forthwith alongwith the copy of this judgment.

**(Subodh Abhyankar)**

**Judge**

**02-09-2022**

sh/-

**(Satyendra Kumar Singh)**

**Judge**

**02-09-2022**