

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.703 OF 2013

Santosh Namdeo Bhukan	]	
Age : 34 Yrs., Occupation : Architect,	]	
R/at Bhukanwada, Azad Chowk,	]	
Opp. Ram Mandir, Lohgaon,	]	 Appellant /
Tal. Haveli, Dist. Pune	]	(Org. Appellant)

Versus

The State of Maharashtra,	]	
Thru' Officer-in-Charge,	]	
Vimantal Police Station, Dist. Pune	]	 Respondent

Mr. Anand Chaware, i/by Mr. Sachin Deokar,
for the Appellant/Original Appellant.

Mrs. S.D. Shinde, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 12TH FEBRUARY, 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. The Appellant, who stands convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code and sentenced to suffer R.I. for life and to pay fine of Rs.10,000/-, in default to suffer R.I. for six months, on first count, and R.I. for seven years and to pay fine of

Rs.5,000/-, in default to suffer R.I. for three months, on second count, by the Judgment dated 24th May, 2014 in Sessions Case No.105 of 2011, by the Additional Sessions Judge, Pune, by this Appeal, challenges his conviction and sentence.

2. Facts, as are necessary, for deciding this Appeal can briefly be stated thus :-

On 14th August, 2010, while PW-34 API Yashwant Nikam was on duty at Lohgaon Police Chowki under Vimantal Police Station, Pune, PW-2 Manisha Thorat came to the Police Chowki and disclosed that her sister Vaishali Vinayak Kadam was missing since 10th August, 2010. Hence, PW-34 API Nikam directed PW-32 PSI Dattatray Sasane, who was on PSO duty, to record the missing report of PW-2 Manisha. Accordingly, PW-32 PSI Sasane recorded her missing report vide Exhibit-24 and submitted the said missing report (Exhibit-103), along with his own report, to PW-34 API Nikam. At the same time, PW-32 PSI Sasane also broadcasted the information regarding missing report to all the Police Stations in Pune District vide Exhibit-106.

3. In inquiry of the missing report, PW-34 API Nikam collected the mobile number of the missing lady Vaishali, which was stated to be

“9623108086”. He tried to contact on the said mobile number, however, it was found to be switched off. Hence, he collected the Call Detail Record of the said mobile phone and it was revealed that many calls were received and dialed to the said mobile number of Vaishali from Mobile No.9657935973. He collected the Call Detail Record of the said mobile also and noticed that both the mobile phones were registered in the name of Vaishali.

4. Meanwhile, on 22nd August, 2010, PW-1 Pandurang Shinde, father of missing lady Vaishali, came to the Police Chowki and gave information that he and his daughter, PW-2 Manisha had also received some SMS from the mobile number of Vaishali. Accordingly, as per the directions of PW-34 API Nikam, PW-32 PSI Sasane recorded the statement of PW-1 Pandurang Shinde. In the said statement, PW-1 Pandurang expressed suspicion against the Appellant, with whom his daughter Vaishali was doing the service, and also against the husband of Vaishali, namely, Vinayak Kadam, who was staying separately from her. Hence, PW-34 API Nikam obtained the mobile number of Appellant, which was “9763728328”. He obtained Call Detail Record of the said mobile phone also and it was revealed that Appellant had received some calls from the mobile phone of Vaishali. PW-34 API Nikam then collected information regarding tower location of mobile phone of Appellant and also in respect

of phones at his office and construction sites. On the basis of tower location of mobile phones of Appellant and Vaishali, he realized that location of both the phones was same. When he gave the said information to PW-1 Pandurang, the suspicion was confirmed against the Appellant.

5. Hence, on 26th August, 2010, PW-1 Pandurang lodged complaint against the Appellant vide Exhibit-22. On the basis of the said complaint, C.R. No.142 of 2010 came to be registered at Vimantal Police Station. The investigation of the said C.R. was taken over by PW-34 API Nikam, as per the directions of PW-35 ACP Prakash Gharge. After recording the supplementary statement of Vaishali's brother, one Ramesh Thorat, and her sister PW-2 Manisha, on 26th August, 2010 itself, at 23:30 Hrs., PW-34 API Nikam arrested Appellant under Panchanama (Exhibit-116). At the time of personal search of the Appellant, one key and packet were recovered, which were seized under the said Panchanama and Appellant was referred to the Sassoon Hospital for medical examination.

6. On 27th August, 2010, during police custody, in the course of interrogation, Appellant gave a disclosure statement in the presence of two Panchas; PW-4 Sabia Sayyad and PW-28 Arjun Jagtap. The statement was reduced to Memorandum Panchanama (Exhibit-31). In view of this Memorandum Panchanama given by the Appellant showing

his willingness to take the Police and Panchas to show the place where he has buried the dead body of Vaishali, PW-34 API Nikam called at Police Station PW-1 Pandurang, PW-2 Manisha, PW-23 Sharad Kshatriya, the Assistant Photographer and PW-21 Dr. Ajay Taware. Then, as per the directions given by the Appellant, they went in the vehicles to the Farm House of the Appellant at Village Ponde, near Malshiras. There, in the presence of these witnesses and also PW-19 Vishwanath Virnak, the Executive Magistrate, who was asked to join on the way, Appellant pointed to the place where dead body of Vaishali was found buried. The place was underneath the flooring of the bathroom in the Farm House. It was buried under the concrete and iron-net layers. The dead body was exhumed from the said spot. It was identified to be that of deceased Vaishali by PW-1 Pandurang, her father, PW-2 Manisha, her sister, and PW-22 Indubai Thorat, sister-in-law of PW-2 Manisha. The Inquest Panchanama of the dead body was prepared at the spot vide Exhibit-33. The Driving License of the Appellant was found in the kitchen of the said Farm House. It was also seized under Panchanama (Exhibit-32) along with some saree pins. PW-20 Talathi Ganesh Kholam, who was also present there, prepared the sketch of the spot vide Exhibit-78.

7. Meanwhile, PW-34 API Nikam called for the ambulance and sent the dead body to the Sassoon Hospital for postmortem examination. The

statements of some of the witnesses were recorded on the spot itself. After returning to the Police Station, PW-34 API Nikam submitted his report of whatever investigation carried out by him to PW-35 ACP Prakash Gharge and handed over the charge of investigation to him.

8. On 28th August, 2010, the Postmortem Report was received, which gave the cause of death as "*death due to strangulation*". At the time of postmortem examination, the samples were collected for DNA examination. The Viscera of the dead body and these samples were handed over to PW-34 API Nikam by the Medical Officer. Police Constable Kharade produced the clothes, namely, underwear and brassier, which were found on the dead body. They were seized under Panchanama (Exhibit-35).

9. On 28th August, 2010, during police custody, Appellant again expressed his desire to give voluntary statement, which was reduced to writing in the presence of Panchas under Memorandum Panchanama (Exhibit-50). In pursuance thereof, his clothes were seized from his house. In pursuance of the said Memorandum Panchanama, his Wagon-R Car bearing No. MH-12/ET-6778 was also recovered. On inspection of Car, human hair was found on the front as well as back seat of the car. Similarly, there were pieces of bangles on the floor of Wagon-R Car below

front as well as rear seats. The Car and these articles were seized under Panchanama (Exhibit-51).

10. During further interrogation, at the instance of Appellant, his mobile phone came to be recovered under Panchanama (Exhibit-52) from his house at Lohgaon.

11. In the course of investigation, it was transpired that the land below the Farm House in which the dead body of Vaishali was found buried, was purchased jointly by Appellant and PW-15 Mahesh Makhamale from PW-8 Kalubai Waghale and others. Hence, her statement came to be recorded. She produced the receipt of earnest amount (Exhibit-131). The statement of PW-15 Mahesh Makhamale also came to be recorded.

12. On 30th August, 2010, the Call Detail Records relating to tower location and mobile phones of Appellant and deceased were received vide Exhibit-124.

13. On 31st August, 2010, viscera of the deceased, along with the seized articles, was sent to Chemical Analyzer vide Exhibit-142.

14. On 1st September, 2010, PW-35 ACP Gcharge conducted the search of the house of the Appellant at Lohgaon and in that search, he found certificate of employment of the deceased, which came to be seized under Panchanama (Exhibit-143).

15. On 2nd September, 2010, Appellant gave a disclosure statement in the presence of Panchas that he has thrown nylon rope, saree and blouse of Vaishali, along with mattress, in the river-bed near Theur Bridge and showed his willingness to point out the said place. Accordingly, the Memorandum Panchanama (Exhibit-65) was prepared. The search of these articles was taken, but due to water in the river bed, those articles were not found. The Panchanama of the same was prepared vide Exhibit-66.

16. On 3rd September, 2010 PW-35 ACP Gcharge recorded the statement of PW-5 Smita Ingle, who, as per the Prosecution case, has sent the messages to PW-1 Pandurang and PW-2 Manisha from the mobile of Vaishali, at the instance of Appellant.

17. On 4th September, 2010, Appellant gave one more voluntary statement in the presence of Panchas that he has thrown the SIM Card of his mobile near dustbin at Raman Bag. His statement was reduced to

Memorandum Panchanama at Exhibit-56. The search of SIM Card was taken at the place pointed out by him. It was not found. However, the mobile phone of Nokia make was recovered from his office, which came to be seized under the Panchanama (Exhibit-55).

18. On 24th September, 2010, PW-35 ACP Gharge received the C.A. Report (Exhibit-149). On 28th September, 2010, he requested the J.M.F.C., Pune for recording statement of PW-5 Smita Ingle under Section 164(5) of the Code of Criminal Procedure. After completion of due investigation, he filed Charge-Sheet in the Court.

19. On the case being committed to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-6. The charge was read over and explained to the Appellant. Appellant denied the guilt and claimed trial, raising the defence of false implication.

20. In order to prove its case against the Appellant, Prosecution examined as many as 35 witnesses, whereas, to prove his defence of false implication, Appellant also led the evidence of one witness by name DW-1 Hanumant Gaikwad.

21. The Trial Court, on appreciation of this voluminous oral and documentary evidence on record, held the guilt of the Appellant to be proved beyond reasonable doubt for both the offences punishable under Sections 302 and 201 of the IPC and convicted and sentenced him, as aforesaid.

22. This Judgment of the Trial Court is being challenged in the present Appeal by the learned Counsel for the Appellant Mr. Chaware, whereas, supported by the learned A.P.P. for the State Mrs. Shinde. We have heard elaborate submissions advanced by them and, in our opinion, in order to effectively deal with the same, it would be useful to refer to the evidence on record.

23. The case of the Prosecution is based on the circumstantial evidence alone. To prove the case, Prosecution has placed reliance on the following major circumstances, viz.,

- (i) Homicidal death of deceased Vaishali;
- (ii) Discovery of her dead body at the behest of the Appellant u/s. 27 of the Evidence Act from his Farm House;
- (iii) Misleading messages sent by PW-5 Smita Ingle at the instance of Appellant to PW-1 Pandurang, Vaishali's father and other witnesses;

(iv) Missing of Vaishali

(v) The motive;

(i) Homicidal Death

24. To prove the homicidal death of Vaishali, the Prosecution has placed reliance on the evidence of PW-21 Dr. Ajay Taware, who has conducted the postmortem examination and was also present at the time when Vaishali's dead body was exhumed. As per his evidence, on the requisition letter (Exhibit-80) received from PW-34 API Nikam, he accompanied the Appellant and the Police from the Vimantal Police Station along with his staff, Panch Witnesses and others. At Saswad, PW-19 Vishwanath Virnak, the Executive Magistrate, joined them. Then, as per the directions given by the Appellant, they went to Malshiras and from there Appellant took them to Farm House situate at Village Ponde. When the Farm House was opened with the key given by the Appellant to the Police, in the Farm House Appellant took them to the bathroom and pointed the place in the bathroom, where dead body of Vaishali was buried. That place was dug by his workers. Initially, there was layer of earth, followed by layer of concrete and then iron net. Beneath the iron net, there was again concrete and mud. In the said ditch, the dead body of lady was found in prone condition. The dead body was having only nicker and brassier. It was exhumed by the persons in the said room. PW-1

Pandurang and PW-2 Manisha identified the dead body as that of Vaishali.

25. According to him, as per the instructions given by Police, postmortem was to be conducted there on the spot itself. However, due to delay, it was decided to take dead body to the Sassoon Hospital for Postmortem. Accordingly, the dead body was taken to the Sassoon Hospital by ambulance. At about 11:30 p.m., on that day, he received Inquest Panchanama, along with the dead body, and then on 28th August, 2010, between 9:30 am to 11 am, along with Dr. Jedge, he conducted postmortem.

26. At the time of postmortem examination, he noticed that upper incisors teeth were artificial. Body was saponified. Rigor mortis was passed out. Signs of adipocere formation were seen, like, soft tissues all over the body becomes soft moist whitish yellow, greasy and offensive smell, peeling of scalp hair at places.

27. On further examination, he found :-

Depressed mark seen over antero lateral sites of neck, horizontal 15 x 2.5 cms, hard, brown, 5 cm below right mastoid, 6 cms below chin and 5.5 cms, below left mastoid, below thyroid cartilage;

Depressed mark seen 0.5 cms, below Injury No.1, having size of 4 x 0.5 cms, hard, brown, on midline.

Depressed mark seen – 5 cms, below injury No.2, having size of 1.5 x 0.5 cms, on right side of neck, interiorly, hard and brown.

On descection, hamatoma seen in the strap muscles of neck on right side having size of 2.5 x 2 cms, in midline, underneath external injury No.1 having size of 1.5 x 1 cms, and on left side 2.5 cms x 2.5 cms, reddish brown in colour.

28. All injuries, according to him, were ante-mortem in nature. He has opined that the death was due to strangulation. He has prepared his Postmortem Report (Exhibit-81) and further opined that the injuries were sufficient in the ordinary course of nature to cause the death. The depressed marks found on the neck may be possible by rope. He has further given opinion that the death might have taken place 6 to 7 days before Postmortem examination.

29. In his cross-examination, further details are brought out, as to his travel from Police Station to the spot of incident and how the dead body was exhumed, which persons identified the same, etc. The suggestion given to him that injuries found on the dead body suggest suicidal or accidental death is denied by him.

30. His evidence, thus, categorically goes to prove the homicidal death to which Vaishali was subjected. The fact that the ligature marks were found around her neck and the cause of death was strangulation, is sufficient to prove the homicidal nature of her death. Moreover, the very fact that the dead body has to be exhumed from the layers of mud, iron net and concrete is more than sufficient to prove that her death cannot be either accidental or suicidal. Further fact that except for the brassier and nicker, no other clothes were found on the dead body, again goes to fortify the conclusion that it was a case of death by homicide only.

31. In this respect, useful reference can be then made to the Judgment of the Supreme Court in ***Deepesh Raikar s/o. Anand Raikar Vs. State, 2008 ALL MR (Cri) 2251***, wherein also the dead body was exhumed from the place of burial and it was held that, *“as the dead body was buried, the death has to be homicidal and certainly could not have been suicidal or accidental. The dead body cannot be found buried in case the death was suicidal or accidental.”* In this also, therefore, the conclusion is inevitable that death of Vaishali was homicidal in nature.

(ii) Discovery of dead body at the behest of Appellant

32. Now coming to the second circumstance on which the Prosecution is placing reliance, that of *"the discovery of the dead body of Vaishali at the instance of the Appellant"*. For proving this circumstance, there is more than sufficient evidence on record, as brought out by Prosecution.

33. In the first place, there is independent evidence of two Panchas by name PW-4 Sabia Sayyad and PW-28 Arjun Jagtap, supported and corroborated by the evidence of PW-34 API Nikam and PW-35 ACP Gcharge, in whose presence the Appellant had given the disclosing statement during interrogation in police custody, on 27th August, 2010. Their evidence goes to prove that in their presence, Appellant made a voluntary statement that he will show the place, which was a bathroom in his Farm House at Village Ponde, where he has buried the dead body of Vaishali. His statement was reduced to Memorandum Panchanama (Exhibit-31).

34. In view of this Memorandum Panchanama, as deposed by PW-34 API Nikam, he gave a call to Control Room for providing services of Mobile Laboratory Van. He also issued letter to the Dean of Sassoon Hospital for sparing Medical Officer for Postmortem (Exhibit-80). He then called Vaishali's father PW-1 Pandurang Shinde, who came there

along with his daughter PW-2 Manisha Thorat and her sister-in-law PW-22 Indubai Thorat, for identification of the dead body. PW-34 API Nikam then also arranged for the Police Jeep. He took the key, which was seized from the Appellant at the time of his arrest on 26th August, 2010 under Panchanama (Exhibit-116). Then, along with PW-35 ACP Gcharge and these Panchas and other persons, he went in the Police Jeep.

35. As per the directions given by the Appellant, Jeep was taken to the Saswad, from where PW-19 Vishwanath Virnak, Executive Magistrate, was taken in the Police Jeep, as per the requisition letter (Exhibit-75). Thereafter, Appellant directed the Police Jeep to be taken to Village Ponde. After some distance, they noticed one hill. While proceeding on descending road, Appellant asked them to stop the Jeep and pointed one Farm House belonging to him. Thereafter, Jeep was taken to the Farm House and video shooting of the further proceeding was done by PW-23 Sharad Kshatriya, Assistant Photographer.

36. On reaching the door of the Farm House, Appellant demanded the key from PW-34 API Nikam. With that key, he opened the lock of the Farm House. All of them went inside. Appellant took them to bathroom and pointed the place where the dead body was buried. As deposed by all these witnesses, the labours started digging the

flooring of the bathroom. Initially there was concrete layer, beneath it the iron net, again the layer of concrete and beneath it, they found the dead body lying in prone condition. The dead body was exhumed from the spot. As stated above, it was having only the brassier and nicker.

37. After exhumation, PW-1 Pandurang Shinde, PW-2 Manisha Thorat and PW-22 Indubai Thorat identified the dead body as that of Vaishali. Then the Inquest Panchanama (Exhibit-33) was prepared in the presence of all. The Driving License of the Appellant, which was found in the kitchen, was also collected and the Panchanama of whatever has happened was made vide Exhibit-32. Thereafter the dead body was sent for Postmortem, whereas, the sketch of the spot was drawn by PW-20 Talathi - Ganesh Khollam, which is at Exhibit-78. After the dead body was taken out from the Farm House, the Farm House was again locked and the key thereof was seized under Panchanama.

38. Thus, as regards the circumstance of discovery of the dead body of Vaishali at the instance of Appellant, there is not only the evidence of two Panchas, which has remained unshattered even after exhaustive cross-examination, but, there is also evidence of two Investigating Officers, namely, PW-34 API Nikam and PW-35 ACP Gcharge, fully and completely supported and fortified by the evidence of independent witnesses like PW-21 Dr. Ajay Taware, the Medical

Officer from Sassoon Hospital, PW-19 Vishwanath Virnak, the Executive Magistrate, PW-20 Talathi - Ganesh Kollam and PW-23 Sharad Kshatriya, Assistant Photographer. It is also getting support and corroboration from the evidence of PW-1 Pandurang, PW-2 Manisha and PW-22 Indubai. Thus, there is abundant evidence on record to prove the discovery of the dead body of Vaishali at the behest of Appellant and from his Farm House.

39. The place buried underneath the flooring of bathroom, from where the dead body was exhumed, is such that, except for the person, who has either buried it or seen some one burying it, no one would have come to know about it. The discovery in this case is neither from open place or even from the open field as such, but it is from the bathroom in the Farm House and that too buried below the three layers of concrete, iron net and mud. This discovery of dead body, therefore, at the instance of the Appellant, leads to no other inference but to that of the complicity of the Appellant in commission of the offence.

40. In this view of the matter, we are fortified by observations of Supreme Court in ***State of Maharashtra Vs. Suresh, 2000 ALL MR Cri. (554) S.C.***, wherein also the dead body was recovered at the instance of the Appellant, but Appellant declined to tell about his

knowledge of concealment of dead body. It was held by the Supreme Court that,

“three probabilities can be countenanced when an Appellant points out the place where dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that, he himself would have concealed it, second is that he would have seen somebody else concealing it and the third is that he would have been told by another person that it was concealed there. But, if the Appellant declines to tell the criminal Court that his knowledge about the concealment was on account of one of the last two probabilities, the criminal Court can presume that it was concealed by the Appellant himself. This because, the Appellant is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is well justified course to be adopted by criminal Court that the concealment was made by Accused himself.”

41. In the instant case also the evidence on record proves that the dead body of Vaishali was discovered at the instance of the Appellant, in pursuance of the disclosure statement made by him. It, therefore, gives rise to three possibilities, as stated above. Appellant has, however, not explained before the Court as to how he came to know

about the concealment of dead body at that place and hence this Court can safely presume that it was concealed by Appellant himself. This is because the Appellant is the only person who could have offered explanation as to how else he came to know of such concealment. As he chose to refrain from telling the Court as to how else he came to know about it, the presumption is well justified that the concealment of dead body was made by the Appellant himself. Mere denial on his part cannot release him from the clutches of this presumption.

42. Being fully aware of this legal position, it appears that the Appellant has taken a different way of escaping himself from the clutches of law by adopting a defence that it was not the dead body of Vaishali. Mr. Chaware, the learned counsel for the Appellant, has relying upon the admission given by PW-21 Dr. Taware, who has conducted the Postmortem, that the dead body was not in a condition of identification, submitted that there is no question of Appellant being implicated with the homicidal death of Vaishali.

43. To substantiate this defence, Appellant has also examined one witness DW-1 Hanumant Gaikwad, who has deposed that one Bhimrao and Sakhubai were residing in the two rooms constructed by one Dhole on the land of one Kalubai. There used to be frequent quarrels

between them. In one of such quarrels, Bhimrao had assaulted Sakhubai. Hence she had lost her tooth. Subsequently, Sakhubai committed suicide. Her dead body was buried by Bhimrao and then he absconded. Police came there and exhumed the dead body, which was of Sakhubai.

44. In the first place, least said about the evidence of this Defence Witness Hanumant Gaikwad is better. His evidence so vague, so general and is apparently adduced only with an intention to save the Appellant. No such suggestions are given to any of the Prosecution Witnesses. Absolutely no details are given by him as to when this Bhimrao and Sakhubai were residing in the room and who are these Bhimrao and Sakhubai. His knowledge about this entire incident of quarrels between Bhimrao and Sakhubai and Sakhubai's body being buried by Bhimrao in the said room, as rightly observed by the Trial Court is totally hear-say. This evidence is absolutely unreliable and the Trial Court has rightly disbelieved it.

45. Now as regards identification of the dead body of Vaishali, there is evidence of PW-1 Pandurang Shinde, who is father of Vaishali, and PW-2 Manisha Thorat, her real sister. PW-1 Pandurang has deposed that on the basis of denture of two teeth, he identified the dead body of Vaishali. The fact that PW-1 Pandurang has identified the dead body

is deposed by all other witnesses, including Panchas and others, who were present at the time of exhumation. Even PW-22 Indubai, who is the sister-in-law of PW-2 Manisha and who was knowing Vaishali very well since five years before the incident, has also identified her dead body. Significant aspect is that PW-21 Dr. Taware, who has conducted postmortem on her dead body, has also deposed that on examination of dead body, he found upper incisors teeth were artificial. This fact is noted in the Postmortem Report (Exhibit-81) also. Therefore, when PW-1 Pandurang himself has identified the dead body of his daughter and given the specific identification mark like, her upper incisors teeth being artificial, there cannot be any dispute relating to the identification of the dead body. Moreover, the evidence of PW-21 Dr. Taware goes to show that the death has taken place just before 6 to 7 days. Therefore, the body cannot be said to have become so decomposed as to be beyond the stage of identification.

46. Hence, even in the absence of the DNA finding, which could not be made available in the present case as no amplifiable DNA could be obtained from the samples sent, as per Report (Exhibit-153/8), there cannot be any doubt relating to identification of her dead body. The very fact that it was Appellant who has led to discovery of her dead body, indirectly goes to prove that the dead body was of none else but of Vaishali.

47. In our considered opinion, these two circumstances that of homicidal death of Vaishali and recovery of her dead body at the instance of the Appellant are the two most clinching circumstances in the instant case, which, even in the absence of any other corroborating evidence on record, are sufficient to point the guilty finger to Appellant and Appellant alone.

48. The Prosecution has also placed reliance on several other circumstances, like the Farm House, from which the dead body was recovered, belonged to and was in possession of the Appellant. The Appellant has denied the said fact. Hence, to prove it, the Prosecution has examined PW-7 Narsing Waghale and PW-8 Kalubai Waghale and the Notary PW-24 Sunita Saste. PW-8 Kalubai has admitted that she has sold her land to some person and executed the earnest receipt after accepting the amount of Rs.1,50,000/-, but she has feigned ignorance as to whom she has sold the said land. Similarly, PW-7 Narsing, who is working as a mason, has become hostile and denied that he has constructed the Farm House on the land, which was purchased from Kalubai, as per the job order given to him by Appellant and joint owner Mahesh Makhamale.

49. Prosecution has, therefore, examined PW-15 Mahesh Makhamale. He has admitted that he and Appellant had decided to purchase the land of Kalubai at the rate of Rs.3,50,000/- per acre and paid her about Rs.2,00,000/- as earnest amount. Visar Pavti, i.e. receipt of earnest money, was also executed. However, he has denied that he and Appellant had received possession of the land. Hence, he was cross-examined by Prosecution on this particular aspect and confronted with the contents of statement recorded by police. The Prosecution has also examined the Notary PW-24 Sunita Saste, before whom Visar Receipt was executed. She has proved the certified copy of the Receipt at Exhibit-90. It is clear from the contents thereof that the possession of the land was given to the Appellant and PW-15 Mahesh Makhamale at the time of execution of Visar Pavti on 3rd June, 2010.

50. In our considered opinion, whether Appellant was the owner of the said land or whether he was in actual possession of the said land is not so material. Whatever is material is that he led the Police, Panchas and others to the said Farm House, where dead body of Vaishali was found buried below the flooring in the bathroom. There is no evidence adduced on record to show that, at the relevant time, the Farm House was in actual or physical possession of any other person. No such suggestion is put up to any of the Prosecution Witnesses also.

Conversely, the evidence of PW-34 API Nikam goes to show that at the time of arrest, the personal search of the Appellant was taken, in which they found one key and packet. They were seized under Panchanama (Exhibit-116). It was the same key, as deposed by all the Prosecution Witnesses, with which the lock of the Farm House was opened by the Appellant on 27th August, 2010. Therefore, it again leaves no manner of doubt about the exclusive knowledge and possession of the Appellant as regards the Farm House, from where the dead body was discovered.

(iii) Misleading Messages

51. The next circumstance on which the Prosecution has placed reliance is that of the misleading messages sent by PW-5 Smita Ingle to Vaishali's father and sister, at the instance of the Appellant. On this point, there is categorical evidence of PW-5 Smita, who was earlier working in the Firm of the Appellant, namely, "Ozon Site". As per her evidence, on 8th, 9th and 10th of August, 2010, she received telephonic calls from the Appellant informing her that he had some work with her and he would disclose the said work later on. Thereafter, on 11th August, 2010, at 2 p.m., she received phone call from the Appellant requesting her to wait for him at Bhosri Bus Stand. He then came there and gave his Sim Card and BSNL No.9422005185 and told her to insert the said Sim Card in her mobile and asked her to return it to him

at 8:30 p.m. on the same day. He further told her that she should not receive call of his wife on the said number. Further, he told her to send the messages, which were already typed and stored on the said Sim Card, to the number given by him. Accordingly, she inserted the Sim Card given by the Appellant in her cell phone. Appellant confirmed the said fact by calling her. On that night, Appellant did not collect the Sim Card. However, on 12th August, 2010, Appellant called her at Swargate for handing over his Sim Card to her. She reached Swargate at 9:30 am. Appellant gave her reddish brown coloured mobile and told her that some messages were stored therein, which she has to send on some numbers. He gave her the list of those numbers. He further requested her to visit Mahabaleshwar for two days for sending those messages and gave her Rs.2,000/- for expenses.

52. As deposed by PW-5 Smita Ingle, she, accordingly, went to Mahabaleshwar by S.T. Bus and from there, she sent 2 - 3 messages to one lady by name Premlata. The messages were like "*mai kisi ke sath bahar ja rahi hu*". She received one or two calls on the said mobile, but she did not attend them, as she was told not to receive the calls. She returned on the same day from Mahabaleshwar. Appellant again met her at Swargate Bus Stand, collected mobile and the list of phone numbers from her. Again on 13th August, 2010, she went to Mahabaleshwar, at the instance of the Appellant with the

same mobile and again sent the messages to the numbers given by the Appellant. Those messages were like *"I am infected with AIDS, do not search for me"*.

53. The evidence of PW-1 Pandurang and PW-2 Manisha goes to prove that they had received these messages about which they had informed the Police. It is deposed by PW-2 Manisha that on 12th August, 2010, she received the phone call from PW-3 Premlata, Vaishali's friend, that she had received message from Vaishali's mobile phone that she was infected with AIDS and has left for Mahabaleshwar along with one person. On 13th August, 2010, PW-2 Manisha herself received message from Vaishali's cell phone that she was infected with AIDS and has left for Mahabaleshwar with one person. The said message was repeated 7 to 8 times on her cell phone. PW-1 Pandurang has also deposed about the receipt of such messages on his cell phone. These messages were decoded by PW-33 Roshan Bangera and PW-11 Umesh Magar has taken print out of those messages. The Prosecution has also examined, on this point of the exchange of messages and phone calls, PW-25 Ravi Pardeshi, the Nodal Officer from Vodafone, PW-26 Sachin Shinde, the Nodal Officer from Idea Cellular Company, and PW-27 Gokul Rasal, Junior Telecom Officer from BSNL. They have produced various Call Detail Records. Though the Trial Court has not relied on them as they are not having

the requisite certificates, hence, even if they are excluded from consideration, in our considered opinion, the evidence on this aspect is coming from the horse's mouth i.e. PW-5 Smita Ingle, who has sent those messages at the instance of the Appellant, and from PW-1 Pandurang, PW-2 Manisha, PW-3 Premlata, who have received those messages. Nothing of substance is elicited in their cross-examination to disbelieve them. As deposed by PW-5 Smita Ingle, she was knowing the Appellant very well, having worked with him and Appellant has also extended financial help to her during the illness of her mother. Hence, there was nothing unnatural on her part to oblige the Appellant by going to Mahabaleshwar and sending messages at his instance.

54. Prosecution has further placed reliance on the evidence of PW-9 Shakuntala Mane and PW-10 Dr. Vinod Kengale of A.B. Diagnostic Center to prove that those messages were totally false as Vaishali was not at all suffering from the AIDS. As a matter of fact, those messages are proved to be not sent by Vaishali at all in view of the evidence of PW-5 Smita Ingle.

(iv) Missing of Vaishali

55. The Prosecution has also relied upon the fact that since 11th August, 2010, Vaishali was found missing. There is evidence of

Vaishali's friend PW-3 Premlata, who has deposed that on 11th August, 2010, she found Vaishali's daughter Vaishnavi playing with her son. Vaishnavi asked her whether she should come to her house and thereafter when she made enquiry about Vaishali with Vaishnavi, it was informed to her that Vaishali was at Bombay. As deposed by PW-3 Premlata, she waited for Vaishali and then in the night, as Vaishali did not return, Vaishnavi stayed in her house. On the next day, she gave call to Vaishali. Her calls were received on other end but no one was speaking on phone. Then she received message from the phone of Vaishali that she should leave Vaishnavi in the house of her sister Rani @ Manisha. She received 2 - 3 other messages also, which she had shown to the Police. Then she called PW-2 Manisha and requested her to take Vaishnavi.

56. PW-2 Manisha has also deposed about the receipt of phone call from PW-3 Premlata and then she going to the house of PW-3 Premlata and collecting Vaishnavi. She has then informed about it to her father PW-1 Pandurang, who was at Karad. He told PW-2 Manisha to lodge missing report of Vaishali. Accordingly, on 13th August, 2010, PW-2 Manisha lodged the missing report (Exhibit-24). On 15th August, 2010, PW-1 Pandurang and her brother came. They had also received the messages, which were sent by PW-5 Smita Ingle. They also tried to contact Vaishali on her mobile, but with no response. Prosecution has

examined PW-11 Umesh Magar to produce the print out of the messages received by them. Even if the evidence relating to these messages is left aside, the fact remains that Vaishali was missing from the house and ultimately her dead body was found at the instance of the Appellant.

(v) Motive

57. As per Prosecution case, the Appellant was having illicit relations with her and then wanted to eliminate Vaishali, the reason may be because she was proving to be a hurdle in his marital life. The defence raised by the Appellant is of outright denial. He has even denied that he was knowing Vaishali or had any acquaintance with her. This defence is, however, falsified by the evidence of PW-3 Premlata and PW-5 Smita Ingle. As per the evidence of PW-3 Premlata, she came to Vaishali while Vaishali was working in the office of the Appellant. According to her, she wanted to buy a flat and in connection with the same, she came in contact with Vaishali. Vaishali has shown her one flat at Lohgaon, which was belonging to her employer. The said flat was in Ozon Building and it was also having the office of Vaishali's employer.

58. PW-5 Smita Ingle, who was earlier working with the Appellant, as deposed by her, has also stated that she met Vaishali in the office of

the Appellant on 26th January, 2008, when she had gone there to give invitation card to the Appellant of one programme. At that time, one lady was present there, whom Appellant had introduced as Vaishali Kadam. Her evidence also shows that the Firm of the Appellant was known as "Ozon Site", where PW-3 Premlata had also been in search of the flat.

59. It is pertinent to note that the line of cross-examination of Prosecution Witnesses, as adopted by the Appellant, also proves the case of the Prosecution that Appellant was very much knowing Vaishali. The suggestions are put up to PW-1 Pandurang, Vaishali's father, that he used to meet Appellant in his house and demand money from him, which Appellant used to refuse. Hence, once he has threatened the Appellant that he would take revenge against him. It is also suggested to him that Vaishali was residing near the house of the Appellant. Admittedly, PW-1 Pandurang is resident of Karad and hence the only reason why he would come to know the Appellant is through Vaishali. Therefore, the very suggestions put up to him indirectly prove that Appellant was very much knowing Vaishali and the defence of total denial put up by him is palpably false.

60. The submission of Mr. Chaware, the learned counsel for the Appellant, is that, though the Prosecution has also tried to put up the

case that the Appellant first gave the sedative to Vaishali and then subjected her to homicidal death, Prosecution has failed to prove it. PW-30 Ajit Lodha, the owner of the medical store, has not supported the Prosecution case. He is declared hostile. Prosecution has also failed to prove the recovery of the nylon rope or its purchase by Appellant from PW-29 Dinesh Thakkar. The Prosecution has also failed to recover the clothes of the Appellant or to connect the Appellant in any way to the incriminating articles. According to the learned counsel for the Appellant, the Prosecution has also failed to prove the alleged motive on the part of the Appellant to eliminate Vaishali.

61. In our considered opinion, even if these circumstances are excluded from consideration in the face of overwhelming evidence on record about the discovery of the dead body of Vaishali at the instance of the Appellant from the place, exclusively known to him and the homicidal death of Vaishali, coupled with the missing of Vaishali and the misleading messages sent to her relatives, there remains no doubt about the involvement of the Appellant in the offence. These incriminating circumstances are so strong and established with such a positive and cogent evidence that they form a chain so complete that from these proved circumstances, no other inference can be drawn except that of the guilt of the Appellant.

62. In our opinion, therefore, the Trial Court has, on proper appreciation of evidence on record, rightly held the guilt of the Appellant to be proved for both the offences punishable under Sections 302 and 201 of the IPC, beyond reasonable doubt.

63. The Criminal Appeal No.703 of 2013, therefore, holds no merit and, accordingly, stands dismissed, confirming the conviction and sentence of the Appellant – Santosh Namdeo Bhukan for the offences punishable under Sections 302 and 201 of the IPC.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]