

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.235 OF 2013

Mohammad Irshad Ahmed Siddiqui **..Applicant**
S/o. Mohammed Akhil Ahmed Siddiqui,
Age-65 years, occu-Pensioner,
Resident of C/o. Government
Indian Medicine Pharmacy Ltd.
Kettedon, Hyderabad (A.P.)

VERSUS

The State of Maharashtra **..Respondent**
through Public Prosecutor,
High Court of Judicature
of Bombay Bench at Aurangabad

Mrs. A.N.Ansari, Advocate for the appellant
Mr.D.R.Kale, APP for the respondent/State
Mr. G.K.Thigale (Naik), Advocate Assist to APP

**WITH
CRIMINAL APPEAL NO.300 OF 2013**

Mohammad Gafoor Ahmed Siddiqui **..Applicant**
S/o. Mohammed Irshad Ahmed Siddiqui,
Age-33 years, occu-Unani Doctor,
R/o. Hyderabad, Dist. Hyderabad (A.P.)

VERSUS

1. The State of Maharashtra **..Respondents**

2. Mohammad Irshad Ahmed Siddiqui
S/o. Mohammed Akhil Ahmed Siddiqui,
Age-61 years, occu-Pensioner,
R/O. Bandla Gudda Chandrayan Gutta,
Post Keshavgiri, Hyderabad,
Dist. Hyderabad (A.P.)
(Through Jail)

Mr. G.K.Thigale (Naik), Advocate for the appellant
Mr.D.R.Kale, APP for the respondent No.1/State
Mrs. A.N.Ansari, Advocate for the respondent No.2

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA, JJ.**

**RESERVED ON : 13.07.2016
PRONOUNCED ON : 28.07.2016**

J U D G M E N T [PER : A.V. NIRGUDE,J]

1. Both these appeals challenged judgment and order dated 01.06.2013 passed by the learned Sessions Judge, Beed in Sessions Case No.33 of 2005 convicting the appellant/accused in appeal No.235 of 2013 for the offence punishable under Section 302 of the Indian Penal Code. The accused was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- in default to suffer further rigorous imprisonment for six months. The other complainant's appeal seeking enhancement of sentence. During pendency of the trial the appellant/accused was on bail. After the conviction he was taken in custody. After filing of this appeal his

application for bail stood rejected. The appellant in Appeal No.235 of 2013 hereinafter would be referred to as 'the accused', was charged for committing murder of his wife on 07.12.2004 during the night between 07.12.2004 and 08.12.2004 at the house of the victim at village Therla, Tq. Patoda, Dist. Beed.

2. The relevant facts came on record through depositions of as many as 12-witnesses can be narrated as under.

3. P.W.5- Mohammad Gafoor is the complainant and the son of the accused and the victim. He stated that his mother victim Latifa Begum was working as Medical Officer in Unani Dispensary at Therla, Tq. Patoda, Dist. Beed since 27 years prior to her death. The Accused was residing at Hyderabad with his second wife and was working there. He was in the habit of demanding money from the victim. In the event of denial he used to assault her. His mother had visited Hyderabad for the purpose of her treatment. The accused had married another woman and she has two children. Victim Latifa Begum used to send money to the accused from time to time till the year 2000. The accused had come for visit the victim Latifa Begum at Village Therla, Tq. Patoda, Dist. Beed about two and half years prior to the incident. Latifa

Begum refused to open the door of her house and meet him. So the accused had broken open the door. Due to timely intervention of relatives further assault etc. was avoided. The accused, however, threatened her that he would kill Latifa Begum. On 15.11.2004 Latifa Begum came to Hyderabad for arranging his marriage and went back to Village Therla, Tq. Patoda, Dist. Beed on 19.12.2004. Latifa Begum arranged the marriage but the accused refused to cooperate unless he was paid certain amount. On 08.12.2004 at about 1:30 p.m. he received a message of on his mobile phone that his mother was taken ill. Soon he learnt that his mother was no more. Thereafter, he went to house of the accused. He did not find him(the accused) there. He told his step-mother about his mother's death. Latifa's dead body was brought to Hyderabad for burial which took place on 09.12.2004 at about 11:30 a.m. At the time of burial the accused was informed that Latifa Begum had died homicidal death to which the accused reacted saying that he would go to village Therla, Tq. Patoda, Dist. Beed with his Lawyer friend but did not show any remorse or grief.

4. P.W.No.11 Shaikh Rafiq was working as a Compounder in Unani Dispensary at Therla, Tq. Patoda, Dist. Beed. He stated that from Latifa Begum he learnt that there would be son's wedding on 19.12.2004 but she

would not invite her husband. On 07.12.2004 Latifa had come to her duty at about 09:30 a.m. But went back at about 10:30 a.m. Thereafter she did not come back on that day. On 08.12.2004 Latifa was scheduled to go to a meeting at Beed. Her peon Navnath was aware of it. Navnath came to Dispensary and told Shaikh Rafiq that Latifa's house was bolted from outside. Mr. Navnath again went to Latifa's house but even at 12:00 noon the house was found latched from outside. Therefore, at about 12:00 noon Shaikh Rafiq, Sk. Madam, Mathurabai Gaikwad and Muktabai went to Latifa's house. They unlatched the outer door of the house, and entered inside. They found Latifa laying on bed in supine position. They also saw blood on the floor near bed. They got frightened and informed about the incident to Dr. Baig.

5. P.W.No.9-Nivratti Namdeorao Godsay, Assistant Sub-Inspector stated that he was attached to Patoda Police Station and was on duty as P.S.O. On 08.12.2004 and at about 04:00 p.m. Dr. Mirza Baig came to Police Station and informed that Latifa was found dead in her house. He registered accidental death and went to the spot. He recorded inquest panchanama and also noticed various injuries on Latifa's body. He sent Latifa's body for postmortem examination. The Medial Officer gave him certificate that Latifa died homicidal death. He

therefore filed a complaint which was registered as Crime No.102 of 2004 at the Patoda Police Station, Dist. Beed. The investigation was entrusted to P.S.I. Wagh.

6. P.W.No.12 Ramrao Wagh, P.S.I. stated that he took over the investigation of Crime No.102 of 2004 dated 09.12.2004. He recorded statements of Latifa's co-workers Dr. Mirza Baig and others. He talked to Latifa's son and on 11.12.2004 he recorded statements of four more witnesses. On 13.12.2004 he went to Hyderabad and arrested accused on 14.12.2004. While in custody the accused disclosed that he would discover his clothes from his house at Hyderabad. Accordingly P.S.I. Wagh, Pancha witnesses and accused went to Hyderabad. The accused entered his house and took out safari dress. They found sleeve of safari dress stained with blood. The Safari dress was taken in charge and was sent for chemical analysis. The Chemical Analyzer confirmed that safari dress was stained with blood B-group which was blood group of Latifa.

7. P.W.No.8 Maroti Abaji Rakh residing at Therla, Tq. Patoda, Dist. Beed stated that he knew Latifa since last many years. He also knew that she was residing in official quarters. He stated that he knew accused and that he was Latifa's husband staying at Hyderabad. He had

seen the accused many times at village Therla, Tq. Patoda, Dist. Beed. A day prior to the incident at about 11:00 a.m. he saw the accused proceeding towards the Latifa's house from the main road. He was wearing brown colored pant and shirt. He was also wearing muffler around his neck. He could identify clothes which were produced by the accused during investigation being the same clothes.

8. P.W.No.1 Maruti Raosaheb Rakh residing at Therla, Tq. Patoda, Dist. Beed stated that on 09.12.2004 the police called him to act as Panch at the scene of offence. He said that in the room where incident had taken place, he noticed a bed on which there was blood stained bedsheet. He also found an iron bar of one and half feet in length, lying nearby, which was also stained with blood. He also noticed spray of blood on Eastern side wall.

9. P.W.No.4 Dr. Avinash Mohniraj Deshpande, General Surgeon, at Beed. He said that on 08.12.2004 he received Latifa's dead body for post-mortem examination. He noticed following external injuries on the body.

1. C.L.W. on right parietal region, 8x3 cms. X bone deep, the underlying bone shows evidence of linear fracture;
2. Incised wound, left frontal region of size; 4x1x1 cm.,

bone deep with clearcut edges,

3. Incised wound, just anterior to injury no.1 of size 2x1x1 cm.
4. Multiple small abrasions over anterior aspect of neck from chin to larynx, of size 1 to 1 ½ cm, there was echymosis at the site in cutaneous tissue;

In Column No.18

There was evidence of fracture of right parietal bone, there was evidence of fracture of hyoid bone.

10. He opined that cause of death was due to head injury. He also opined that the injury was possible by iron bar which was found at the scene of occurrence.

11. P.W.No.2 Nanasaheb Sainaji Jawale residing at Patoda, Dist. Beed stated that on 18.12.2004 he acted as Panch for discovery panchnama. The accused led police and others to a place where he pointed out a stone which was lying in bushes. It was a black colored stone having irregular shape but sharp edge. The stone was also found stained with blood. C.A. report indicates that safari dress of the accused was found stained with blood group of 'B' near cuff and right sleeve. The stone discovered at the behest of the accused was also found with stains of blood group-B.

12. On the basis of these evidences the learned Judge of the trial Court came to a conclusion that the

prosecution could prove their case on the basis of circumstantial evidence. The following circumstances were taken into consideration by trial Court to hold accused as guilty of offences charged.

- i] The accused had motive to kill Latifa who had refused to pay money to him.
- ii] The accused was seen in the village on previous day of incident.
- iii] The accused produced clothes which were found blood stained with Latifa's blood group-B.

13. The Learned Counsel for the appellant asserted that the evidence collected against the accused was not sufficient to come to a conclusion that the accused must have committed Latifa's murder. Let us therefore enumerate the circumstances that are proved by the prosecution:

- i] Prosecution amply proved that accused had strong grudge against his wife and thus had a motive to eliminate her.
- ii] Prosecution witness could prove through deposition of witness No.8 that the accused had come to village Therla, Tq. Patoda, Dist. Beed a day prior to the incident.
- iii] Soon after arrested accused produced his clothes

which were found stained with blood of group-B which was blood group of deceased.

iv] The accused also led the police to secluded place where he discovered one of the weapons used while committing the offence i.e. a stone which accused produced was also found stained with blood of group-B.

14. The question is whether these circumstances would form chain which would lead us to unescapable conclusion that it was accused alone who could have committed this offence.

15. Admittedly there is no eye witnesses to the incident. The incident took place during the night between 07.12.2004 to 08.12.2004. Victim was alone in her house and some one entered in her house during night and brutally killed her. The question is-who could have killed her? It is also not in dispute that the accused did not stay at village Therla, Tq. Patoda, Dist. Beed. He stayed at Hyderabad. It has come in evidence that he had taken leave from his office. And on 07.12.2004 he was found at village Therla, Tq. Patoda, Dist. Beed. His presence at village Therla, Tq. Patoda, Dist. Beed and the motive that could be attributed to him would give rise to a strong suspicion. There is no witnesses who saw accused entering in or coming out of the victim's house at the

relevant time. In absence of this material, one must appreciate other two apparently strong circumstances: that the accused produced his bloodstained clothes and the murder weapon. The blood on the clothes of the accused can easily be explained. It has come on record that the accused used to meet and assault victim from time to time. There was thus possibility that his clothes would get stained with her blood. Besides the accused is a compounder. He could have come in contact with a patient who were bleeding.

16. In order to establish the complicity of accused in commission of offence the prosecution has heavily relied on circumstance that accused was seen on 07.12.2004 at village Therla, Tq. Patoda, Dist. Beed by prosecution witness No.8-Maruti. We have already discussed in foregoing para that the testimony of P.W.8 is worth to be relied. Although the prosecution has approached with the case that the accused had secured leave from 07.12.2004 to 10.12.2004. But the prosecution has not examined any witness from the office where the accused was working. No doubt, the copy of the leave application made by the accused is admitted in the evidence with consent of counsel for accused and marked as Exhibit-92/C. However, same is of no use to conclusively establish that accused was on leave on 07.12.2004. In the

application the period of leave is shown as three days with w.e.f. 08.12.2004 to 10.12.2004. However, in the application, there appears to be overwriting as to total period of leave and duration of the leave. The accused in his statement (Exhibit-100/C) in defence has taken categorical stand that the correction was carried out at the level of his office and he was present on duty on 07.12.2004. The stand taken by accused is supported by copy of attendance register, which is produced at Exhibit-94/C. In the attendance register the accused is shown to be present in his office at Hyderabad on 07.12.2004. Although the prosecution has relied on the circumstance that the accused was on leave from 07.12.2004 as a one of the incrementing circumstances to establish the complicity of accused in commission of offence but the evidence to that effect has not been put to the accused in the statement recorded under Section 313 of Criminal Procedure Code. It is settled law that unless the accused is offered an opportunity to explain the incrementing circumstance brought against him, the same cannot be made as basis to convict the accused. In the instant case no such incrementing evidence as relied by the prosecution to base the conviction has been put to the accused in statement recorded under Section 313 of the Criminal Procedure Code. In absence of cogent and convincing evidence that accused was absent from his duty

on 07.12.2004 in his office at Hyderabad, the case of accused being seen at village Therla, Tq. Patoda, Dist. Beed on 07.12.2004 cannot be accepted.

17. The discovery of stone does not inspire confidence because the stone was lying on an open space. It cannot be therefore said that the stone was concealed by the accused. The medical evidence indicated that injuries on the head of the deceased was probably caused by iron rod which was found near dead body. Having such weapon handy for committing this murder, there was no reason for the accused to use other weapon such as stone. Comparatively stone is a crude weapon and one would not use it if an iron rod is available. The discovery of stone at the behest of the accused is thus not a strong circumstance that can be used against the accused.

18. One of the strong circumstances against the accused is that P.W.No.8 Maroti Abaji saw him during previous day at about 11:00 a.m. in the village Therla, Tq. Patoda, Dist. Beed going towards the house of deceased. We are not inclined to believe this witness. In the cross-examination he admitted that he had previously seen the accused about three years prior to the day of incident. In view of this it is clear that this witness had very few occasion to see and remember the face of the

accused. He further admitted in cross-examination that though he had seen the accused on the main road he did not inform about it to any one.

19. If one discards circumstance that the accused was seen in the village on the previous day from the chain of the event, it becomes, impossible to connect him to the incident. As said above the circumstances that are brought on record create strong suspicion but only few circumstances are not sufficient to convict the accused.

20. In view of this the appeal succeeds. Hence the following order.

O R D E R

- i] Criminal Appeal No.235 of 2013 is allowed.
- ii] The judgment and order passed by the learned Sessions Judge, Beed dated 01.06.2013 in Sessions Case No.33 of 2005 is quashed and set aside.
- iii] The appellant/accused-Mohammed Irshad Ahmed Siddiqui S/o. Mohammed Akhil Ahmed Siddiqui is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

- iv] Since the appellant/ accused is in jail, he be set at liberty, if not required in any other case.
- v] The seized property, be destroyed after appeal period is over.
- vi] The fine amount, if deposited by the appellant/accused be refunded to him.
- vii] Criminal Appeal No.300 of 2013 is dismissed.

[V.L.ACHLIYA, J.]

[A.V.NIRGUDE, J.]