

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 563 OF 2002

The State of Maharashtra
Through S.H.O. Police Station
Kasar-Shirshi, Tq. Nilanga,
Dist. Latur

**....Appellant.
(Ori. Complainant)**

Versus

1. Vijay s/o. Vithalrao Gundare,
Age 21 yrs, Occu. Agri.

(Appeal abated against
respondent No. 1 as per
Court order dated 29.9.2008)

2. Gangubai w/o. Shahu Petkhar,
Age 28 years, Occu. Household
& Labour,

Both R/o. Badur, Tq. Nilanga,
Dist. Latur.

....Respondents.

Mr. R.V. Dasalkar, APP for appellant/State.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

DATED : September 11, 2017.

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed against judgment and order of Sessions Case No. 8/2001, which was pending in the Court of learned Additional Sessions Judge, Nilanga, District Latur. Both the respondents are acquitted by the Trial Court of the offence punishable under section 302 r/w. 34 of Indian Penal Code ('IPC' for

short).

2) Complainant - Shivmurti Petkar, resident of Badur is the father of deceased Shahu. At the relevant time, Shahu was working as a labour in the field of accused No. 1 - Vijay Gundare. It is the case of State that accused No. 1 had developed illicit relations with accused No. 2, wife of deceased Shahu and Shahu was proving to be obstacle in this relationship. Shahu used to give beating to accused No. 2 due to the aforesaid relationship.

3) From about 10 days prior to 22.12.2000 Shahu was missing. The dead body of Shahu was found in a well of Navnath Premnath Birajdar at Aundha. Water of this well was being used for public drinking water supply scheme. After noticing the dead body first A.D. was registered. During the course of inquiry, father of deceased gave report and the crime came to be registered at C.R. No. 172/2000 for aforesaid offence. As the suspicion was expressed against the two accused persons, they came to be arrested. On the basis of statement given by accused No. 1 - Vijay, some incriminating articles like his clothes stained with blood were recovered. Two weapons were also recovered. C.A. report shows that there was human blood on these articles. The investigation revealed that in the last incident, there was quarrel between the deceased

and accused No. 2 and since then the deceased was missing. Chargesheet came to be filed for aforesaid offence and the charge was framed. Both the accused persons took the defence of total denial. The Trial Court has acquitted the accused by holding that the evidence is circumstantial in nature and the chain of circumstances is not completed to point the finger only to accused persons.

4) Accused No. 1 is dead and he died during pendency of the present matter. By the order dated 29.9.2008 the appeal as against accused No. 1 - Vijay is already disposed of as abated. In view of this circumstance, the evidence given as against accused No. 2, widow of the deceased only needs to be considered.

5) It is not disputed that Shahu died the homicidal death. The dead body was found in the well and it was found to be tied by using rope and one stone was tied with the dead body to see that the dead body does not come to the top of water. There were injuries on the dead body and the doctor who conducted the P.M. examination gave opinion that the death took place due to cardiorespiratory failure due to the injury found on the neck which had cut trachea and carotid artery.

6) Shivismurti (PW 3), father of deceased has given evidence

which is mainly on motive. However, his evidence in examination in chief itself shows that due to the quarrels with wife, the deceased had left the house already, prior to incident. In view of this circumstance, there is no evidence from the father which can be used for asking the accused to explain the things as required under section 106 of Evidence Act. His evidence and the F.I.R. show that he was not in touch with the deceased and he also did not know that the deceased was missing. The F.I.R. was given only when inquiry was started after registering the A.D.

7) Tukaram (PW 6), brother of the deceased is examined, but his evidence is similar to the evidence of father of deceased showing that he was also not in touch with the deceased. Sukha Petkar (PW 9) is younger sister of the deceased and she has tried to say that she had witnessed the quarrels between Shahu and accused No. 2. Her evidence is also mainly on motive. She has deposed that on one day before the day since the deceased was not seen, the deceased had given slap to accused No. 2 due to her relations with accused No. 1. Her evidence also shows that she was not visiting the residential place of accused No. 2.

8) The evidence of witness Laxman (PW 10) need not be discussed as that evidence was against accused No. 1 - Vijay

showing that in his room some blood stains were found. Similarly, the evidence of witnesses, who were examined to prove that two weapons like axe and knife were recovered on the basis of statement given by Vijay need not be considered as that evidence could not have been used against accused No. 2. The evidence of Police Officers, who made investigation and prepared panchanama is mainly against accused No. 1. Most of the other witnesses even on motive have turned hostile.

9) The aforesaid evidence which was given against accused No. 2 shows that it is only on motive. There is no convincing evidence even to show that the deceased and accused No. 2 were cohabiting in the same house at the relevant time. Due to these circumstances, it was not possible for the Trial Court to convict accused No. 2. This Court sees no reason to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

ssc/