

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

CRIMINAL APPEAL NO. 679 OF 2002

Laxmibai w/o. Datta Shrirame,
Age 30 years, Occu. Household,
R/o. Salagara (Bk.), Tq. Mukhed,
Dist. Nanded.

....Appellant.

Versus

The State of Maharashtra
Through Police Station Mukhed,
At the instance of Digambar
Shrirame, R/o. Salagara (Bk.),
Tq. Mukhed, Dist. Nanded.

....Respondent.

Mr. M.D. Narwadkar, Advocate for appellant.

Mr. V.S. Badakh, APP for respondent/State.

WITH
CRIMINAL APPEAL NO. 681 OF 2002

Sk. Sadiq s/o. Sk. Hussainsab,
Age 35 years, Occu. Labour,
R/o. Salgara (Bk.), Tq. Mukhed,
Dist. Nanded.

....Appellant.

Versus

The State of Maharashtra
Through Police Station Mukhed,
At the instance of Digambar
Pandhari Shrirame, R/o. Salgara (Bk.),
Tq. Mukhed.

....Respondent.

Mr. M.V. Deshpande, Advocate for appellant.

Mr. V.S. Badakh, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.**

RESERVED ON : 04/10/2017
PRONOUNCED ON : 06/10/2017

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

. Both the appeals are filed against judgment and order of Sessions Case No. 14/2002, which was pending in the Court of learned Additional Sessions Judge at Biloli, District Nanded. The Trial Court has convicted both the appellants for the offence punishable under section 302 r/w. 34 of Indian Penal Code ('IPC' for short) and each appellant is sentenced to suffer imprisonment for life. Both the sides are heard.

2) In short, the facts leading to the institution of the appeals can be stated as follows :-

Deceased Datta was brother of first informant Digamber. Manohar and Ankush are also brothers of first informant and these brothers are resident of village Salgara (Bk.), Tahsil Mukhed, District Nanded. The houses of these brothers are situated adjacent to each other and they were living separate from each other at the relevant time. Accused No. 1 is the widow of deceased Datta and accused No. 2 had an affair with accused No. 1 and there was dispute due to this affair between the deceased and accused No. 1. The deceased has left behind three issues aged about 14, 12 and 10 years. The

deceased, accused No. 1 and three issues were living in the house of deceased. Accused No. 2 is also resident of the same village.

3) The incident in question took place on the night between 11.12.2001 and 12.12.2001 in the house of deceased. On the evening of 11.12.2001 the deceased had returned from out station after attending a marriage function. On 11.12.2001 the harvesting of sugarcane crop which was standing in the land of first informant was to be started. When the first informant was proceeding to his field at about 10.00 p.m. of 11.12.2001 he noticed that quarrel was going on between the deceased and accused No. 1. The deceased was quarreling with accused No. 1 as the deceased was feeling that accused No. 1 was keeping relations with accused No. 2 and he wanted to see that she remains away from accused No. 2. The first informant tried to convince this couple not to quarrel. Along with first informant, his two brothers Ankush and Manohar left their respective houses for the field as the harvesting of the sugarcane crop was to start. The first informant had requested the deceased also to come to the field, but the deceased had refused to come to the field. The youngest issue of the deceased was sent to the house of mother in law of accused No. 1 by her and two other issues, sons went to the field to help the first informant. Thus, after leaving of all these persons for the field, there were only the deceased and

accused No. 1 in the house of deceased and in the house of first informant, his wife Anusayabai was there.

4) On the night between 11.12.2001 and 12.12.2001 after mid night hours Anusayabai heard noise and she woke up from sleep. She opened the door of the house and then she noticed that the deceased was virtually tied on cot which was kept in the shed in front of the constructed portion of the house of deceased and accused Nos. 1 and 2 were strangulating him by pulling rope from two sides. Anusayabai got frightened, she closed the doors and she remained inside of the house. Anusayabai waited till the morning and after sunrise she rushed to the field to inform the incident to first informant. The first informant and his brothers returned to home and they visited the place of the deceased. After seeing the dead body, they gave information to Police Patil of the village. In turn, Police Patil gave report to Mukhed Police Station and on the basis of report of Police Patil, A.D. came to be registered as A.D. No. 35/2001.

5) During inquiry of A.D. inquest report came to be prepared in presence of panch witnesses and the dead body was referred for post mortem ('P.M.' for short) examination to Mukhed Government Hospital. Spot panchanama came to be prepared. The

P.M. came to be conducted on 13.12.2001 between 9.00 a.m. and 10.45 a.m. The doctor, who conducted P.M. examination, gave opinion that the death had taken place due to asphyxia due to strangulation.

6) On 13.12.2001 police recorded report of Digambar, first informant at about 2.15 p.m. On the basis of this report, the crime at C.R. No. 145/2001 came to be registered in Mukhed Police Station for aforesaid offence against appellants. During the course of investigation, statement of Anusayabai came to be recorded and statements of other brothers of deceased came to be recorded. The statement of one neighbour of the deceased viz. Baliram Shrirame also came to be recorded.

7) Both the accused persons came to be arrested. During the course of investigation the accused persons gave separate statements under section 27 of Evidence Act and on the basis of those statements, two ropes came to be recovered. One rope was used for strangulation and other rope was used for tying the deceased on the cot. The viscera was sent to C.A. Office. But no poison was detected. Chargesheet came to be filed for aforesaid offences.

8) The charge was framed for offence punishable under section 302 r/w. 34 of IPC. Accused pleaded not guilty. The prosecution examined in all nine witnesses. During the cross examination of witnesses and the statements given under section 313 of Criminal Procedure Code ('Cr.P.C.' for short), accused took the defence of total denial. However, accused No. 1 admitted that she was living in the house with deceased where the incident took place. No defence evidence is given. The Trial Court has believed the prosecution witnesses who include Anusayabai (PW 5), Baliram (PW 2). Some circumstantial evidence is also given including on motive. The points raised by the learned counsels of the appellants are being discussed at proper places.

9) The tenor of the cross examination of all the prosecution witnesses who were living in the vicinity shows that defence is not disputing that on that night the sugarcane cutting was to be started in the field of first informant. Anusayabai (PW 5) has given evidence that she remained in the house and she had also noticed that quarrel was going on between the deceased and accused No. 1. She has deposed that she was sleeping with her child and in the night, after short sleep, she woke up and she heard some noise of a man like groaning (as घरघर). She felt that the noise was coming from the

tin shed of the deceased. This tin shed is not surrounded by walls or any cover and so, the events from the tin shed are visible from outside. She has deposed that Datta was sleeping on the cot and she noticed that both his legs were tied to the cot by using string and the two accused persons were pulling rope which was tied around the neck of Datta from two ends and they were standing in opposite direction. She has deposed that there was one electric bulb in the tin shed and due to that she could witness the incident. It is not disputed that she knew accused Nos. 2 also. She has deposed that after some time, accused removed the string from the neck of the deceased and that was done when the deceased had stopped groaning. She has deposed that accused No. 2 then left the house by using back door. She has described the clothes which the two accused persons were wearing at the relevant time.

10) The evidence of Baliram (PW 2) needs to be considered with the evidence of Anusayabai (PW 5). He also knows accused No. 2 and he had knowledge about the illicit relations which accused No. 1 was having with accused No. 2. He has given evidence that on that day (11.12.2001) when he was doing agricultural operation like sowing in his land at about 11.00 a.m. to 11.30 a.m. he had seen accused Nos. 1 and 2 chit-chatting in the field of the deceased. He has deposed that at about 3.00 p.m. on the same day when accused

No. 1 came near his field, he asked her as to whether the deceased had intention to sow the land or not. He has deposed that accused No. 1 replied that the deceased was wandering here and there without doing any work and she explained that she was requesting accused No. 2 to give some money to her and he had assured to give money on the next day. Thus, evidence is given on one meeting which had taken place between accused Nos. 1 and 2 on 11.12.2001 by this witness.

11) Baliram (PW 2) has given evidence that ordinarily he sleeps in front of the house. He has one shop which is run at the residential place. He has deposed that in the night time when he woke up to give fodder to bullocks, he heard some noise, of groaning (घरघर) coming from the house of Datta. He has deposed that first he tried to guess as to what was happening, then the noise stopped. He has deposed that after some time, he saw accused No. 2 coming out of house of Datta from back door. He has described the clothes which accused No. 2 was wearing at the relevant time. He has deposed that in the street light he saw accused No. 2, but then he went to bed. His evidence shows that only on the next morning he came to know that Datta was dead.

12) To ascertain as to whether Anusaya (PW 5) and Baliram (PW 2) had the opportunity to hear something or to see something, the spot panchanama needs to be seen. Sambhaji (PW 3) is examined to prove the spot panchanama and there is also the evidence of Vinayak More (PW 7), Police Head Constable who prepared the spot panchanama. The tenor of cross examination of these witnesses shows that the spot panchanama is not seriously disputed and Sambhaji cannot be called as interested witness. It needs to be kept in mind that the spot panchanama was prepared during inquiry of A.D.No. 35/01 and not after registration of the crime. Spot panchanama at Exh. 18 shows that Digamber was present when the spot panchanama was prepared. The spot is situated in the Osari portion of house of Datta and Osari portion was covered by roof of tin sheets. After the shed, there was the door of house of Datta. On eastern side of this house, there is wall of house of Bajirao Vithalrao. On southern side of house of deceased, there is the house of Baliram and there is wall in between two houses. On northern side, there is the house of Ankush, brother of deceased. The hand sketch map was prepared in spot panchanama and it shows that beyond the house of Ankush, on northern side, there is house of Digambar. The doors of the house of these brothers open towards the open space situated on eastern side. The spot of incident is shown in the open space situated in front of constructed

house of deceased though it had roof of tin sheets. This open space was not closed and so, the incidents taking place in the open space can be seen from the open space situated in front of houses of Digambar and Ankush. The public road is situated on the eastern side where the properties of Bajirao and Baliram are situated. To the house of deceased, there was back door and beyond that also, there was one road. One can come to this road situated on eastern side through the aforesaid open space situated in front of the houses of these brothers. If anybody who leaves the house of Datta from backside can also come from that side to the eastern road and if he comes to that side, a person sleeping in front of the house of Baliram can see him.

13) Inquest panchanama is admitted by defence and it is at Exh. 39. It was prepared on 12.12.2001, but at that time the dead body was kept in the Osari portion of house of Ankush. The inquest panchanama shows that on both the sides of nostrils, there were injuries like scratches, abrasions and the left portion of the nostril has become blackish. There were blackish marks on left and right side of the neck. There were abrasions on great toes of both the legs.

14) Prosecution has examined Dr. Suryawanshi (PW 9) to

give evidence on the P.M. examination. In her evidence, P.M. report is proved as Exh. 37. Her evidence shows that she found following injuries on the dead body which are mentioned in column No. 17 of P.M. report :-

- (i) 1 Cm breadth mark of ligature is seen all around the neck at the level of below cricoid cartilage.
- (ii) Abrasion about 2 cm in size present on Lt. great toe.
- (iii) Abrasion about 2-3 cm in size on the Rt. great toe present.

15) PW 9 has given evidence that the death took place due to asphyxia due to strangulation. Her evidence shows that viscera was sent to C.A. Office. But the C.A. report at Exh. 38 shows that no poison was detected and so her opinion given before receipt of C.A. report is confirmed. She has given evidence that injury No. 1 mentioned above can be caused due to the ligature material like plastic string and the death took place due to injury No. 1. She has given explanation as to why P.M. was conducted on 13.12.2001 even when the dead body was reached to hospital on 6.15 p.m. of 12.12.2001.

16) Dr. Suryawanshi (PW 9) is cross examined to suggest that the injuries mentioned by her can be caused when dead body or

a person on death bed is shifted from one place to another. She has denied this suggestion. It is suggested to her that she was not that experienced to give definite opinion, but that suggestion is also denied by her. The description of ligature mark given by this witness and the substantive evidence is sufficient to prove that it is a case of strangulation and not hanging. This evidence along with the evidence of inquest report is sufficient to prove that Datta died homicidal death.

17) The other evidence of prosecution like seizure of clothes of two accused persons after their arrest or evidence given on statements made by two accused under section 27 of Evidence Act and discovery of two nylon ropes on the basis of statements need not be discussed in detail. The article which was recovered as ligature material was not shown to doctor. This material was not sent to C.A. Office. The clothes were also not sent to C.A. Office. Thus, the evidence with regard to the seizure of clothes of accused persons can be used only to ascertain as to whether they had the clothes of the description given by Anusayabai and not for any other purpose. The seizure was made on 17.12.2001 and so, it can be said that the clothes which are described by Anusayabai are recovered by the investigating agency.

18) The prosecution has given evidence on motive and that can be seen from the evidence of Digambar (PW 1), Baliram (PW 2) and Anusayabai (PW 5). Their evidence directly and indirectly indicate that everybody knew that accused No. 1 had illicit relations with accused No. 2 and due to that the deceased used to quarrel with accused No.1. The tenor of cross examination of these witnesses do not show that any probability is created that they are lying.

19) The learned counsels for the appellants submitted that aforesaid evidence cannot be believed due to circumstances like lodging F.I.R. late and recording the police statements of the witnesses late. It is true that F.I.R. came to be registered on 13.12.2001 at about 2.15 p.m. and the P.M. was conducted between 9.00 a.m. and 10.45 a.m. of 13.12.2001. Though on Exh. 37, P.M. report, the time is mentioned as P.M. time, in the evidence doctor has admitted that P.M. time is wrongly mentioned and it was conducted between 9.00 a.m. and 10.45 a.m. Thus, it can be said that the F.I.R. was given after giving opinion by doctor who conducted the P.M. examination.

20) The learned counsels of appellants submitted that the material on the record like spot panchanama, inquest panchanama

and even the report which was given by Police Patil to Police Station which is admitted document, Exh. 32 show that on 12.12.2001 there was an opportunity to Digambar, Anusayabai and Baliram to disclose the incident to police, but on that day, the incident was not disclosed to police. It is true that Anusayabai has given evidence that early in morning of 12.12.2001 she went to the field and she narrated the incident to Digambar. Digambar had shown the spot of offence to police, who prepared the spot panchanama during inquiry of A.D. No. 35/01. The record shows that the Police Patil gave report on the basis of information collected by him from accused No. 1 and it was reported to police in Exh. 32 on 12.12.2001 and A.D. was registered at 11.00 a.m. He had informed that accused No. 1 had disclosed that on the morning of 12th, she noticed that her husband was dead and she had informed that the deceased had probably consumed liquor or other intoxicant like Shindi at the place of marriage. Thus, indirectly she had informed that something had happened due to liquor which the deceased had probably consumed in the marriage function on 11.12.2001. Surprisingly, the Police Patil did not see the dead body and only on the basis of information supplied by accused No. 1, he gave report at Exh. 32.

21) The evidence of Police Head Constable More (PW 7) shows that when he went to the village of deceased for recording the

statements of witnesses, the brother of deceased wanted to give information that it was murder and he had expressed to him about that. He has deposed that due to the insistence of the witnesses, he produced the brother of the deceased before the Superior Officer and then F.I.R. came to be recorded and registered. It needs to be kept in mind that in the past the things were taken very lightly and the crime was not registered for offence of murder or even for any other offences and due to that Police Head Constable had conducted the inquiry into the A.D. This was continued even after giving of the opinion by doctor, who conducted the P.M. examination. It can be said that opinion was available after completion of P.M. i.e. after 10.45 a.m. of 13.12.2001. In ordinary course, after getting such opinion, police officer himself could have given report about the crime. It can be said that after getting the opinion of the doctor, the investigating agency realized that some action was warranted and then the F.I.R. given by the brother of the deceased was recorded. All these circumstances cannot be ignored while considering the challenge of defence against the evidence given by aforesaid prosecution witnesses on the ground of delay caused in giving of the F.I.R. and giving of the police statement late. It can be said that after recording the F.I.R. Jadhav, Superior Officer (Dy.S.P.) took over the investigation. He recorded the statements of the witnesses on 14.12.2001 when the F.I.R. came to be recorded on 13.12.2001.

These circumstances have sufficiently explained the delay caused in giving of the F.I.R. and also recording of the police statements of other witnesses late. The persons from complainant side appear to be very poor and earning livelihood by doing labour work and so, they had to wait till the investigating agency had formed opinion that it was a case where steps were warranted. Poor persons cannot insist for anything and they are ordinarily taken lightly by Government machinery including the police officers. It can be said that the things like recording F.I.R. late happened due to the latches on the part of the police officers. Due to aforesaid circumstances, accused cannot be given benefit of these circumstances.

22) So far as the case of prosecution as against accused No. 1 is concerned, it is not disputed by her that she was living in the same house and on that night also she was in the company of the deceased. In ordinary course also, being a wife she was expected to be in the company of the deceased in his house. There is clear admission on that in statement given under section 313 of Cr.P.C. by accused No. 1. The aforesaid evidence shows that the death took place after taking meal and after 10.00 a.m. as per the versions of the witnesses. In view of these circumstances and in view of the provisions of sections 106 and 114 of Evidence Act, it was necessary for accused No. 1 to offer explanation as to where she was at the

relevant time and why she did not learn anything about the incident. No such explanation is offered by accused No. 1. This Court has already observed that she had passed false information to Police Patil to create a probability that the death had taken place due to poisonous liquor. This conduct of accused No. 1 also can be considered against her. Further, there is the evidence on motive against accused No. 1.

23) The circumstantial evidence already discussed shows that Baliram (PW 2) had the opportunity to hear the noise if it was coming from the house of deceased and he had the opportunity to see the person who was coming from the house of deceased towards the road situated on eastern side. Baliram (PW 2) is cross examined to suggest to him that he has reason to falsely implicate accused No. 1 in the case. It is true that land admeasuring 10 Gunta was purchased by Baliram from deceased. But he has denied that he had not paid some consideration to Datta. It is suggested to him that accused No. 1 was asking him to make the payment of remaining amount and so, he has given false evidence against accused No. 1. The cross examination of this witness shows that his evidence on material point remained unshattered. There was virtually no reason for him to give false evidence against accused No. 1 and 2. Close relatives of the deceased have given evidence on illicit relations

between accused Nos. 1 and 2 and it cannot be said that he had only suspicion about such relationship. This Court sees no reason to disbelieve this witness. Similarly, the evidence of Anusayabai (PW 5) remained unshattered during extensive cross examination. The circumstance that in the report given by Police Patil, there is no whisper about the information which could have been passed by Anusayabai is there, but the circumstances already discussed show that Police Patil did not take the matter seriously and he believed accused No. 1 on the information supplied by her. Only due to report of Police Patil at Exh. 32, the aforesaid circumstances were created. Atleast after preparing inquest panchanama, Exh. 39, the police ought to have realized on 12.12.2001 itself that it was not death due to poisoning and there was possibility of atleast hanging or strangulation.

24) As there is the evidence of Baliram (PW 2) as against accused No. 2 of aforesaid nature, he ought to have given some explanation about his presence in the vicinity of the house of deceased on that night. He has taken defence of only total denial. The injuries which are already described show that murder was committed by strangulation. The deceased was aged about 35 years and his body was well nourished. Accused No. 1 was aged about 30 years at the relevant time. These circumstances show that it was the

job of atleast two persons. Considering the age of accused No. 2 and the motive for him for the offence, this Court holds that the evidence as against him is sufficient to prove his involvement in the offence.

25) It appears that against the first informant, it was submitted that they wanted to get rid of accused No. 1 for grabbing the property of deceased and so, they have falsely implicated accused No. 1. This submission has no force. Firstly, the deceased was real brother of first informant and deceased has left behind two sons and one daughter, aged about 14, 12 and 10 years respectively. In ordinary course, the property will go to issues of deceased if accused No. 1 is convicted. Further, for getting rid of accused No.1, it was not necessary to implicate accused No. 2 in the matter and unless there was something, they would not have taken the name of accused No. 2. In the cross examination, the defence itself has brought on the record that the relations between these two families were strained. Thus, there was no reason for first informant or his wife and for that matter even for Baliram to give false evidence as against accused No. 2. The Trial Court has appreciated the oral evidence of these witnesses and as Appellate Court, this Court sees no reason for not maintaining the decision of the Trial Court which has base of oral evidence. This Court holds that the aforesaid evidence is sufficient to prove that accused Nos. 1 and 2 in

furtherance of their common intention committed the murder of Datta by strangulation on the night between 11th and 12th of December 2001. The Trial Court has given minimum penalty for the offence. Thus, there is no possibility of interference in the decision given by the Trial Court. In the result, both the appeals stand dismissed. Both the appellants to surrender to bail bonds for undergoing sentence.

[ARUN M. DHAVALA, J.]

[T.V. NALAWADE, J.]

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