

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.177 OF 2010

Ishwar Sampatrao Kadam

Age 21 years, Occ. Agriculturist

R/o Dhanora, Post Hasti Pimpalgaon,

Dist. Jalna

(In jail Yerwada Pune)

... Appellant

vs.

The State of Maharashtra

(Shikrapur Police Station)

(C.R.No.81 of 2006)

... Respondent

Mr. Pramod R. Arjunwadkar for the Appellant.

Mr. Rajan Salvi, APP for the Respondent/State.

Coram : **A.A. Sayed &
Sarang V. Kotwal, JJ.**

Date : 29 September 2017

JUDGMENT (per SARANG V. KOTWAL, J.) :

1 The present Appeal is filed by the Appellant who was the original Accused No.2 in Sessions Case No.362 of 2007 before the Additional Sessions Judge-2, Pune. Alongwith the present Appellant there were three other accused namely, Sampatrao Dagadoba Kadam who is the father of the present Appellant, Chatrabhuj Sampatrao Kadam and Babasaheb Sampatrao Kadam who were the brothers of the Appellant.

At the conclusion of the trial the Appellant i.e. Accused No.2 was convicted for the offence punishable under sections 302, 201 and 404 of the Indian Penal Code. The Appellant was sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.1,000/- and in default to suffer Rigorous Imprisonment for three months for the offence punishable under section 302 of Indian Penal Code. The Appellant was further convicted for the offence punishable under section 201 of the Indian Penal Code and was sentenced to suffer Rigorous Imprisonment for three years and was directed to pay a fine of Rs.1,000/- and in default to suffer Rigorous Imprisonment for three months. The Appellant was also convicted for the offence punishable under section 404 of the Indian Penal Code and he was sentenced to suffer Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer Rigorous Imprisonment for three months. The Appellant was acquitted from the charges of commission of offence punishable under sections 498A and 304B read with section 34 of the Indian Penal Code. The other accused were charged for commission of offence punishable under sections 498A and 304B read with section 34 of the Indian Penal Code and they were acquitted from the said charges. By way of the present Appeal the Appellant is challenging the said impugned judgment and order dated 15th January 2010 passed by the Additional Sessions Judge-2, Pune in Sessions Case No.362 of 2007.

2 The prosecution case is in respect of murder of the Appellant's wife Gangubai who went missing from 13th May 2006 and her dead body was found floating in a well on 19th May 2006. Initially a Complaint that Gangubai was missing was lodged by the Appellant himself before the police on 15th May 2006. He had mentioned that on 13th May 2006 he himself and his wife Gangubai were working in sugarcane field of one Mr. Kautkar. In the afternoon Gangubai expressed that she wanted to go home and therefore she left from there. According to the Appellant, he went home after his work in the evening but did not see his wife Gangubai. Thereafter, he made search for her and on 15th May 2006 he gave his Complaint with Shikrapur police station regarding missing of his wife.

3 On 19th May 2006, her dead body was found floating in a well belonging to one Bapu Dagadu Borate. A stone was tied to her saree. The police with the help of local people took out the dead body. The dead body was identified as being that of Appellant's wife Gangubai. On 20 May 2006 an FIR was lodged by the paternal uncle of the deceased Gangubai which was registered vide C.R. No.81 of 2006 at Shikrapur police station, District Pune, under sections 302, 498A, 201 read with section 34 of the Indian Penal Code. He had made allegations that the Appellant and his co-accused were demanding money from the parents of Gangubai and on that count she was being

harassed. It was his further case that the Appellant was suspecting Gangubai's character and therefore, committed her murder. The post-mortem examination conducted on the dead body shows that Gangubai had died because of throttling. On these allegations Gangubai's uncle Ambadas Tirukhe lodged his FIR. Thereafter, investigation was carried out. The Appellant and his co-accused were arrested and as per the prosecution case, on 21st May 2006 at the instance of the present Appellant, some ornaments belonging to deceased Gangubai were recovered from a heap of stones in the nearby field. As per the prosecution case, the Appellant showed the spot where the murder was committed and from where the dead body was dragged to the well belonging to Bapu Borate. It was thrown in the water with a heavy stone tied to the saree. The investigation was carried out and the charge-sheet was filed in the Court of Judicial Magistrate First Class, Ghodnadi (Shirur) and thereafter, the case was committed to the Court of Sessions at Pune.

4 The charges were framed against the Accused. The main charge against the present Appellant was framed under section 302 of the Indian Penal Code. The charge under section 304B read with section 34 of the Indian Penal Code was framed against all the Accused. In addition to that, charge under section 404 of the Indian Penal Code was framed against the Appellant. All the Accused pleaded not guilty to the charges and claimed to be tried.

5 During the trial the prosecution has examined six witnesses. P.W.1 Ambadas Tirukhe was the uncle of the deceased who was lodged the FIR which was exhibited vide Exhibit 32 during the trial. PW 2 Machhindra Masalkar was one of the panchas in whose presence the ornaments were allegedly recovered at the instance of the present Appellant and in his presence the Appellant allegedly shown the spot where the offence was committed.

6 PW3 Bapu Borate was the owner of the well in which the dead body was found floating. PW4 Dr. Shantilal Kamate had conducted post mortem examination and he had found four injuries on her person as follows:

- 1) Lacerated wound on right leg, lateral border of foot near 4th and 5th toe eaten by animal, measuring 25 x 3 cm.
- 2) Both upper and lower ribs were eaten by maggots and insects.
- 3i) Fracture of hyoid bone.
- 4) Fracture of larynges, cartilages.

The first two injuries were post mortem injuries and injury nos.3 and 4 were ante mortem. In his opinion, the cause of death was "asphyxia due to throttling'

7 PW5 Police Inspector Shri Ashokkumar Kshirasagar had conducted the investigation. PW6 Constable Shri Sultan Shaikh had made investigation into the Missing Complaint No.13 of 2006 of Shikranpur Police Station which was lodged by the Appellant in respect of missing of his wife.

8 We have heard Shri Pramod Arjunwadkar for the Appellant and Shri Rajan Salvi, APP for the Prosecution and with their assistance we have gone through the entire evidence.

9 Shri Salve learned APP had pointed out that there were number of incriminating circumstances against the present Appellant which were rightly considered by the trial Court. He has summarized those circumstances as follows:

- 1) There was an extra-judicial confession made by the Appellant in presence of PW1 Ambadas.
- 2) The Appellant was last seen with the deceased Gangubai.
- 3) Recovery of ornaments belonging to the deceased at his instance and the spot of incident having been shown by the Appellant.
- 4) The motive of demand of money.
- 5) Lodging of false report by the Appellant and the strained relations between the couple.

10 Shri Arjunwadkar, learned Counsel for the Appellant dealt with all these circumstances separately and has submitted that none of the circumstances is proved by the prosecution beyond reasonable doubt.

11 As far as the first circumstance of extra-judicial confession is concerned, the PW1 has stated that when he had reached the police station for lodging the FIR, the Appellant was present in the police station and in his presence he made confession to the Police Sub Inspector that he had committed murder of his wife by throttling, as he thought she had become pregnant and he further admitted having thrown the dead body in the well. This witness PW1 in his cross-examination has categorically admitted that the Appellant was in the custody of the police when he had reached there. Therefore, even though the Appellant was formally arrested at about 6 p.m. on 20th May 2006, when this witness PW1 had lodged his FIR at about 3.15 p.m., the Appellant was already in the custody of the police. Therefore, such confession cannot be held to be admissible in view of bar of section 25 and 26 of the Indian Evidence Act. Therefore, we cannot take this alleged confession into account.

12 The motive brought out by the prosecution that the Appellant and his co-accused were demanding money from the parents of the

deceased is not supported by any substantive piece of evidence. This witness did not have any personal knowledge that the deceased was harassed by the Appellant as the demand of money was not made. He has stated that the marriage took place between the Appellant and the deceased on 19th February 2006 and after one month of marriage the original Accused Nos.1 and 4 had come to their house and demanded Rs.20,000/- for running a grocery shop. This witness and the father of the deceased had expressed their inability to give the amount. After 7 to 8 days another brother-in-law of the deceased Gangubai had made the said demand and had threatened him, however, there is no evidence to show that the Appellant himself had demanded any money and that the Appellant had ever harassed the deceased Gangubai on that count. PW1 Ambadas did not have any personal knowledge about such harassment and therefore even the motive is not proved by the prosecution. After the missing Complaint was lodged it was enquired into but the father of the deceased had admittedly not made any grievance against the Appellant.

13 Shri Salve, APP pointed out that the Appellant was last seen together with the deceased on 13th May 2006. The prosecution has not examined any witness who could have deposed that the Appellant was last seen in the company of the deceased on 13th May 2006. However, the fact remains that the Appellant himself has lodged the Complaint

regarding missing of Gangubai on 15th May 2006 wherein he has stated that both of them were together till the afternoon of 13th May 2006. However, even this circumstance is not incriminating against the Appellant because the dead body was found on 19th May 2006 and there is no proximity of time when they were together and the point of time when the body was discovered. Therefore even this circumstance is not incriminating against the Appellant.

14 The conduct of the Appellant does not appear to be unnatural. If in fact the deceased had gone missing from 13th May 2006, after making initial search he lodged the Complaint with the police on 15th May 2006 and this action on his part appears to be normal and natural. There was nothing unnatural or false about the lodging of the Complaint on 15th May 2006.

15 The most important circumstances in this case is the recovery of ornaments at the instance of the Appellant, and the Appellant showing the spot of incident where there were signs of struggle. In this connection, the prosecution has examined PW2 Machhindra Masalkar who was the panch to this panchanama. Memorandum and Seizure Panchanama are exhibited vide Exhibits 41 and 42. According to him, on 21 May 2006 he was called at Shikrapur police station, at that time the Appellant was present in the police station and he had shown

willingness to show the place where the Mangalsutra, one Jodvi (silver ornament) and silver 'Payal' were concealed by him under a stone near the well. He had also shown willingness to show the spot where the murder was committed and from where the body was dragged to the well. This witness has further deposed as to how the Appellant led them near the well and on the spot from where he produced the ornaments. He has further deposed that thereafter they walked about 1000 feet towards northern side of the spot and at that time the Appellant allegedly showed the place where he was sitting with his wife. This witness has deposed that there was a standing sugarcane crop and it was found displaced and pressed. At some distance a pair of footwear was found and seized and one more silver Payal was found. This witness has further deposed that there were signs that something was dragged from the spot. This witness had also mentioned that green colour bangles were scattered at the spot. According to this witness, the Appellant took them to the well belonging to Bapu Borate. The prosecution relies heavily on this evidence. It is rightly submitted by Mr. Arjunwadkar, learned Counsel for the Appellant that the panchanama was carried out on 21st May 2006 i.e. after about eight days from the alleged date of incident dated 13th May 2006 therefore, it was impossible that the signs showing dragging of the body still being seen after so many days. He has submitted that the signs of dragging may not conclusively point to the dragging of the

body and since it was a sugarcane field, such marks would be present all over.

16 More importantly Shri Arjunwadkar invited our attention to the cross-examination of Police Inspector Shri Kshirasagar who was the Investigating Officer of the said case. He has categorically admitted that when the remand report dated 26th May 2006 was submitted to the Court there was no mention about the articles having been recovered at the instance of the present Appellant. We find that this admission goes a long way and throws considerable doubt on the prosecution case in respect of the recovery of the ornaments at the instance of the present Appellant. This was the main circumstance on which the prosecution has relied. The prosecution had to prove it beyond all reasonable doubt. We are of the opinion that the defence has been successfully enough to throw sufficient doubt on such recovery and therefore, we are unable to place much reliance on such recovery to record the finding of guilty against the Appellant. Even after finding of those ornaments, those ornaments were not identified either by PW1 or any other witness as the ornaments belonging to the deceased.

17 Thus taking overall view of the matter, we are of the opinion that the prosecution does not prove any of the circumstances beyond reasonable doubt. The prosecution has failed to form complete chain of

circumstances to prove the guilt of the accused. The prosecution has not proved the chain of the circumstances, consistent only with the guilt of the accused and has failed to rule out the hypothesis of his innocence. In the circumstances, we find that the finding recorded by the learned trial Judge is not correct. Hence, the following order:

O R D E R

- i) The Appeal is allowed.
- ii) The judgment and order dated 15 January 2010 of the conviction and the sentence recorded against the present Appellant by the Additional Sessions Judge-2, Pune, in Sessions Case No.362 of 2007, are hereby set aside and the Appellant is acquitted of all the charges.
- iii) The Appellant is in jail. He shall be released forthwith if not required in any other case.
- iv) The Appeal is disposed off accordingly.

(Sarang V. Kotwal, J.)

(A.A. Sayed, J.)