

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.439 OF 2013

Anil s/o Namdev Naiknavare,
Age-35 years, Occu:Labour,
R/o-Renapuri, Tq-Majalgaon,
Dist-Beed.

...APPELLANT

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Majalgaon Police Station,
Tq-Majalgaon, Dist-Beed.

...RESPONDENT

...

Mr.S.B. Chavan Advocate appointed for
Appellant.
Mr.Y.G. Gujrathi, A.P.P. for Respondent.

...

WITH

CRIMINAL WRIT PETITION NO.915 OF 2014

Anil Namdev Naiknavare,
Through Jail.

...PETITIONER

VERSUS

The State of Maharashtra

...RESPONDENT

WITH

CRIMINAL WRIT PETITION NO.1240 OF 2014**IN****CRIMINAL WRIT PETITION NO.915 OF 2014**

Anil Namdev Naiknavare,
Age-36 years, Occu:Labourer,
R/o-Renapuri, Tq-Majalgaon,
Dist-Beed.

...PETITIONER**VERSUS**

The State of Maharashtra,
Through Police Station Officer,
Police Station Majalgaon City,
Tq-Majalgaon, Dist-Beed.

...RESPONDENT**...**

Mr.S.B. Chavan Advocate appointed for
Petitioner in both the Writ Petitions.
Mr.Y.G. Gujrathi, A.P.P. for Respondent.

...

**CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.**

DATE OF RESERVING JUDGMENT : 23RD JULY, 2018.

DATE OF PRONOUNCING JUDGMENT: 1ST AUGUST, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the
Judgment and order dated 2nd September, 2013,

passed by the Additional Sessions Judge, Majalgaon in Sessions Case No.47 of 2012, thereby convicting the accused/Appellant - Anil s/o Namdev Naiknavare for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to undergo rigorous imprisonment for life and to pay fine of Rs.20,000/- (Rupees Twenty Thousand), and in default of payment of fine, to suffer rigorous imprisonment for nine months.

2. Criminal Writ Petition No.915 of 2014 is filed by the Petitioner-Appellant praying therein to release him on bail considering the HIV disease infected to him and his wife. Criminal Writ Petition No.1240 of 2014 is filed by the Petitioner-Appellant praying therein that pending hearing and disposal of Writ Petition No.915 of 2014, the Petitioner-Appellant be released on bail.

3. The prosecution case, in brief, is as

under:

A) The accused is a resident of village Renapuri, which is at a distance of 2 Kms. from Majalgaon town. Pursuant to partition, the accused and his brother Ramesh Namdeo Naiknavare, who is informant in this case, started staying separately in the same house. The mother of the accused, namely Kamalbai (PW-6) stays with the informant in the adjoining house of the accused. The wife and children of the accused reside with Kamalbai at Renapuri.

B) As per the prosecution, the accused is addicted to liquor. He is quarrelsome in nature and on one occasion, he assaulted his mother Kamalbai. He brings prostitutes to his house. One and half months prior to the incident dated 24th May, 2012, deceased Sarika started residing with the accused in his house. The accused used to physically torture Sarika by demanding money. On 24th May, 2012, at 7.00 p.m., the accused started

beating deceased and due to which deceased was crying and shouting. The informant and his mother Kamalbai were at home. The informant and his mother did not intervene on account of the terror of the accused. The informant found the said incident serious, and therefore he went to police station, Majalgaon (City) and informed about the aforesaid fact to P.I. Gaidhani (PW-9). Accordingly P.I. Gaidhani along with other police personnel namely, Khodve (PW-8), Kamble, Sasane, and Matin, rushed to the house of the accused on motorcycles. At that time the accused was found sleeping in his house. However, upon noticing the police party, he ran away from the spot. Police head constable Khodve and other police officials chased him and the accused was caught near the hospital of Dr. Sable on Majalgaon-Gadhi road. Meanwhile, the informant took P.I. Gaidhani to another room in the house of the accused. The nude dead body of Sarika was found in the house of the accused. She had suffered injuries on her head, right ear and her hand was dislocated from the

shoulder. The injuries were also noticed on her abdomen, knees and both the legs. Sarika was found dead. P.I. Gaidhani conducted inquest panchnama (Exhibit-31) of the dead body at the spot, in presence of the panch witnesses. The dead body was referred for post-mortem to Rural Hospital, Majalgaon.

C) The police party, the informant and the accused then proceeded to police station. The informant lodged first information report (Exhibit-17/5), which was recorded by P.I. Gaidhani. Vide Crime No.28 of 2012, the offence under Section 302 of the I.P. Code came to be registered. The further investigation was carried out by P.I. Gaidhani. He then went to the spot and drawn spot panchnama (Exhibit-19) in presence of the panch witnesses. He collected the blood found at the spot. Thereafter, P.I. Gaidhani has recorded the statements of the witnesses, including Kamalbai (PW-6) and Nitin Choure (PW-7) on 24th May, 2012.

D) At the time of arrest of the accused on 24th May, 2012, clothes on his person were seized by P.I. Gaidhani by drawing a panchnama (Exhibit-28/1) in presence of panch witnesses Prakash Maske (PW-5) and Rahul Maske.

E) During the police custody, on 25th May, 2012, the accused expressed a desire to discover the weapon used in commission of the crime. The said memorandum statement (Exhibit-21/1) was reduced into writing in presence of two panch witnesses, namely Shaikh Pasha (PW-3) and Dattatraya Dukre. The accused also signed the same. Thereafter, the accused led the police party and the panch witnesses to his house and discovered a wooden stick, which was kept hidden above the tin-sheets of the kitchen of the house of the accused. The wooden stick was stained with blood and also hair were found adhered on the stick. It was seized by drawing a discovery panchnama (Exhibit-22/1), in presence of panch

witnesses.

F) Pursuant to the post-mortem conducted by Dr. Rudrawar (PW-4), he issued a provisional medical certificate on 25th May, 2012. In post-mortem report (Exhibit-26), the medical officer opined that the death has occurred on account of cardio respiratory arrest owing to hemorrhagic and neurogenic shock as a result of multiple injuries, including the head injury. The viscera was preserved for chemical analysis.

G) During the investigation, P.I. Gaidhani came to know that the name of the deceased was "Sarika". Her further details were not known. However, it was revealed to him that she was a prostitute. In order to reveal her complete identity, wireless messages were broad-casted to the adjoining Districts.

H) On 6th June, 2012, the viscera of the deceased as well as the blood found at the spot,

the plain and blood stained hair of the deceased obtained at the time of conducting the inquest panchnama, the blood stained clothes seized from the accused at the time of his arrest, the blood sample of the accused, wooden stick stained with blood and hair discovered by the accused, were sent for chemical analysis through police constable Sasane along with communications (Exhibit-40 and 41) respectively. The C.A. reports dated 14th March, 2013 (Exhibits-42 to 44) were included in the papers.

I) Upon completion of the investigation, as there was sufficient evidence against the accused, P.I. Gaidhani filed charge-sheet in the Court of J.M.F.C., Majalgaon. In due course, learned J.M.F.C., committed the case to the Court of Sessions.

J) A charge for the offence punishable under Section 302 of the I.P. Code was framed against the accused, and the same was explained to him.

Accused pleaded not guilty and claimed to be tried, with the defence of total denial.

4. After recording the evidence and conducting full fledged trial, the trial Court convicted the accused for the offence punishable under Section 302 of the I.P. Code and sentenced him to undergo rigorous imprisonment for life and to pay a fine, as afore-stated. Hence this Appeal by the accused.

5. Heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the State, at length. Learned counsel appearing for the Appellant, in support of his submissions, placed reliance upon the exposition of law in the case of K. Venkateshwarlu vs. State of A.P.¹, and in the case of Manisha w/o Ravindra Humbe and another vs. the State of Maharashtra². With the able assistance of learned counsel appearing for the parties, we have carefully perused the entire

1 A.I.R. 2012 S.C. 2955

2 2017 ALL M.R.(Cri) 1215

notes of evidence, so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

6. The prosecution has examined in all nine witnesses. PW-1 Ramesh Namdev Naiknavare, is the brother of the accused, who is informant. PW-2 Shaikh Jamil Shaikh Babu is a panch to the spot panchnama (Exhibit-19). PW-3 Shaikh Pasha Shaikh Osman is the panch to the recovery panchnama of wooden raft. PW-4 Dr. Gajanan Rudrawar is the medical officer who has carried out the post-mortem examination over the dead body of Sarika. PW-5 Prakash Dadarao Maske is a panch to seizure panchnama of clothes of the accused. PW-6 Kamal Namdev Naiknavare is the mother of the accused. PW-7 Nitin Bhagwat Choure is the person whose parents are residing in the neighbourhood of the accused. PW-8 Pandit Karbhari Khodve is police constable, who deposed that he chased and caught the accused. PW-9 Dinkar Bhika Gaidhani, police

inspector, is the investigating officer.

7. First of all we will examine the evidence of PW-4 Dr. Gajanan Anantrao Rudrawar. He deposed that on 25th May, 2012, he was on duty as a Medical Officer at Rural Hospital, Majalgaon. On that day police station, Majalgaon (City) referred dead body of a female namely, Sarika for the purpose of post-mortem. He had carried out the autopsy of the dead body. He further deposed that, he noticed following external injuries on the person of Sarika:

"1] C.L.W.s

(a) Laceration to the lateral canthus of right eye, 7 X 2 X 3 cm.

(b) Right sided temporal region of scalp behind right ear, 8 X 2 X 3 cm.

(c) Laceration of pinna right ear in full thickness, 4 X 1 X 1 cm.

(d) Left temporal region of the scalp, 6 X 3 X 3 cm.

(e) Right occipital region of scalp 5 X 3 X 3 cm.

. PW-4 Dr. Gajanan Rudrawar further deposed that the aforesaid injuries can be caused on account of assault by a hard and blunt object. The injuries were caused within six hours. He further deposed that he noticed following injuries on the person of Sarika:

"2] Contusions:

- (a) Right arm middle 1/3rd 12 X 10 cm.
- (b) Right forearm anterior aspect, 5 X 5 cm.
- (c) Left side of the face, 6 X 6 cm.
- (d) Shin of the tibia right side 4 X 4 cm.
- (e) Right thigh lower 1/3rd anterior aspect, 6 X 6 cm.
- (f) Right calf 6 X 6 cm., right thigh posterior aspect, 6 X 6 cm., lateral aspect 5 X 3 cm.
- (g) Left thigh lateral aspect 10 X 4 cm.
- (h) Left leg lateral aspect, upper 1/3rd 8 X 4 cm.
- (i) Left buttock whole,
- (j) Right buttock 8 X 4 cm.
- (k) Left arm upper 1/3rd lateral aspect 8 X 4 cm.

. PW-4 Dr. Gajanan Rudrawar further deposed that the injuries aforesaid can be caused by hard

and blunt object. Except aforesaid injury (c), other injuries were caused within 48 hours, whereas the injury (c) was caused within 6 hours of the post-mortem. He further deposed that he noticed following injuries on the person of Sarika:

3] Superficial to deep burns:-

(a) Left breast upper outer quadrant 6 X 3 cm.

(b) Left groin 12 X 2 cm.

(c) Supra pubic region of abdomen 16 X 4 cm.

. PW-4 Dr. Gajanan Rudrawar further deposed that he noticed following injuries on external examination/palpation as fractures:

1] Fracture right temporal bone mastoid region corresponding to injury No.1 b.

2] Fracture of right occipital bone, corresponding to injury 1 e.

3] Fracture of right humerus corresponding to injury 2 a.

4] Fracture of right ramus of mandible corresponding to injury 2 c.

. PW-4 Dr. Gajanan Rudrawar further deposed that he noticed following internal injuries during post-mortem:

- 1] Fracture of temporal bone in mastoid region right side, 4 X 2 X 2 cm.
- 2] Fracture of occipital bone on right side, 3 X 2 X 2 cm.
- 3] Meninges were hemorrhagic.
- 4] Laceration with surrounding contusion seen in right temporal and right occipital lobes and brain. Intra cranial bleeding present.

8. PW-4 Dr. Gajanan Rudrawar further deposed that pursuant to post-mortem, he came to the conclusion that the death was caused "on account of neurogenic and hemorrhagic shock due to head injury and associated multiple injuries". He preserved the viscera for the purpose of chemical analysis. He had also taken blood samples for chemical analysis. On 25th May, 2012, he prepared post-mortem notes (Exhibit-26). The post-mortem

notes are in his handwriting and bears his signature. He further deposed that the injuries detailed above by him were ante-mortem. The injuries can be caused by a wooden rafter.

9. During the course of cross-examination, PW-4 Dr. Gajanan Rudrawar stated that the dead body was brought in the hospital at about 10.00 a.m. on 25th May, 2012. On the basis of edges of the injuries the probable weapon can be opined. He did not mention about the edges and margins of the injuries in the post-mortem report. He did not mention the nature and direction of the injuries in the report. The age of the injury can be determined on the basis of its colour. In respect of burn injuries, he did not specify the age. He denied the suggestion that the Contused Lacerated Wounds mentioned in the report can be caused by more than one weapon. He stated that the said injuries are possible by a single weapon also. He denied the suggestion that he did not perform the post-mortem carefully and diligently.

10. Thus, upon careful perusal of the evidence of PW-4 Dr. Gajanan Rudrawar, it is clear that Sarika received multiple injuries like contused lacerated wounds, burn injuries, fracture injuries including the head injuries. Sarika received as many as six fracture injuries. The medical officer opined that "death was caused on account of neurogenic and hemorrhagic shock due to head injury and associated multiple injuries". Thus, from the perusal of the evidence of PW-4 Dr. Gajanan Rudrawar, the injuries mentioned in the post-mortem notes, it is clear that death of Sarika was homicidal.

11. There is no doubt that Sarika died homicidal death. But real question is - who is author of the injuries caused to Sarika? To find out the same, now we will examine the evidence of other prosecution witnesses. PW-1 Ramesh Namdeo Naiknavare is the informant in this case. He deposed that the accused is his elder brother.

Since last 10 to 12 years accused is residing separately from him. They however, stay in the same house, which is partitioned. The accused had a son and two daughters. The accused resides with his wife and children. The wife of the accused is from village Rajegaon. He deposed that he did not know whether the accused is addicted to the vice of liquor. He further deposed that it did not happen that the deceased was addicted to liquor and he has kept Sarika with him and that he committed her murder on 24th May, 2012. Thus, it is significant to note that this witness, who is informant, turned hostile and did not support the prosecution case.

. As this witness has retracted from his first information report, with the permission of the trial Court, the learned A.P.P. cross-examined him. During the course of cross-examination by learned A.P.P., PW-1 Ramesh Naiknavare has admitted that he had been to Majalgaon (City) police station on 24th May, 2012. He denied the

suggestion that police authorities recorded his first information report as per his instructions and thereafter he signed it after going through it. He denied all further suggestions put to him.

12. Thus, it is clear from the perusal of entire oral evidence of PW-1 Ramesh Naiknavare that he turned hostile and did not support the prosecution case. Therefore, the evidence of this witness is not at all useful for the prosecution. The first information report itself is not proved.

13. PW-2 Shaikh Jamil Shaikh Babu has deposed that on 24th May, 2012, police authorities called him at the house of accused for the purpose of drawing a panchnama. There were two rooms in the house. He noticed that the utensils and the household articles were lying on the floor. Thereafter police prepared the spot panchnama in his presence. He and another panch witness Pramod Pawar signed the said panchnama (Exhibit-19). It bears his signature and the contents thereof are

true and correct.

. During the course of his cross-examination, PW-2 Shaikh Jamil has stated that Renapuri is at a distance of about 2 Kms., from his house. At the time of conducting the panchnama, he was present at his Restaurant, which is at Mouje Brahamagaon on Majalgaon-Gadhi road. Renapuri is at a distance of about half Kilometer away from his Restaurant. The police were present near Sambhaji Chowk on Gadhi road. He signed the panchnama at the Sambhaji Chowk only.

14. Thus, evidence of this witness PW-2 Shaikh Jamil is not at all useful to the prosecution. Though he is a panch witness to the spot panchnama, careful perusal of his cross-examination reveals that, he has not visited the spot at the concerned time, and he has signed on the spot panchnama at Sambhaji Chowk on Gadhi road, which is about half Kilometer away from the spot of incident.

15. The prosecution has examined PW-3 Shaikh Pasha Shaikh Osman. He deposed that he was called by the police authorities on 25th May, 2012, at some hotel on Mondha. Police obtained his signatures on blank forms at one place. He further deposed that, it did not happen that on the said day accused Anil Namdeo Naiknavare made a statement in his presence to discover a wooden raft used in furtherance of the offence and it was recorded by the police authorities in presence of the panch witnesses, including him. Thus, this witness also turned hostile and did not support the prosecution case. Thus a memorandum statement and discovery of the weapon allegedly used in the crime, at the instance of the accused is not all proved by the prosecution.

16. The prosecution has examined PW-5 Prakash Dadarao Maske, who is a panch witness to the seizure of clothes of accused. However, this witness also turned hostile and did not support

the prosecution case.

17. The prosecution has examined PW-6 Kamal w/o Namdeo Naiknavare, who is mother of the accused. She deposed that she did not know about any incident dated 24th May, 2012. It did not happen that the accused committed murder of a lady called "Sarika" on 24th May, 2012, at about 7.00 p.m. Thus, it is clear from the perusal of entire oral evidence of PW-6 Kamal Naiknavare that she turned hostile and did not support the prosecution case. Though learned A.P.P, with the permission of the trial Court, cross-examined PW-6 Kamal Naiknavare, nothing useful to the prosecution has been elicited.

18. The prosecution has examined PW-7 Nitin Bhagwat Choure. He deposed that he did not know about any incident dated 24th May, 2012, having involvement of the accused. He further deposed that it did not happen that on 24th May, 2012, the accused committed murder of his paramour Sarika in

his house. Thus, this witness also turned hostile and did not support the prosecution case. Therefore the oral evidence of this witness is also not useful to the prosecution.

19. PW-8 Pandit Karbhari Khodve has deposed that he was working in the capacity of police head constable at police station, Majalgaon (City). On 24th May, 2012, Mr. Gaidhani was the police inspector at the said police station. On that day, he himself and other police constables namely, Kamble, Sasane, Shaikh and P.I. Gaidhani were on duty. At about 10.30 a.m., Ramesh Namdeo Naiknavare (informant) came to the police station and intimated that his brother i.e. the accused was assaulting to his keep in his house. Accordingly, P.I. Gaidhani, witness himself, Kamble, Sasane and Shaikh along with the informant, went to Renapuri at the house of the accused. When they reached at the house of accused, they noticed that there were two rooms in the house. In the first room, they saw the accused

sleeping and in the second adjoining room dead body of Sarika was lying. Upon hearing their noise, the accused came out of the room and suddenly ran away towards the hospital of one Dr. Sable. They all chased and caught the accused in front of Dr. Sable hospital. They brought him to the police station and handed him over to the station in-charge. Again they all along with P.I. Gaidhani, went to the spot. They saw that the dead body of Sarika was lying on a bed-sheet. He noticed head injuries, her right hand was fractured from shoulder. The dead body was nude. The mother of the accused, namely, Kamalbai had come to the spot. P.I. Gaidhani then conducted inquest panchnama. Thereafter the body was referred for post-mortem to Rural Hospital, Majalgaon. On 26th May, 2012, the dead body was handed over to Mr. Kadam, who was employed with Municipal Council, Majalgaon, for cremation. He further deposed that his statement was recorded by the investigating officer.

20. During the course of cross-examination, PW-8 Pandit Khodve has stated that he reported for duty at about 9.00 a.m., on 24th May, 2012. On that day he was the Beet Amaldar of Renapuri-Shelapuri villages. When Ramesh Naiknavare (informant) came to the police station, he first met P.I. Gaidhani. He did not know about the conversation between P.I. Gaidhani and the informant. As per the directions of P.I. Gaidhani, he himself along with Kamble, Sasane, Shaikh and the informant proceeded to Renapuri. Renapuri is at a distance of 2 Kms. from police station. Sambhaji Chowk is situated on Majalgaon-Gadhi road at a "T" point from where a road proceeds towards the South, which is a by-pass. Gadhi road is towards West. He did not know that at a distance of about 100 ft. from Sambhaji Chowk, "Moreshwar" hotel run by the accused is situated on North side of the road. From the Gadhi road, the house of the accused is at a distance of about 2000 ft., on the cement road on Western side of it. The door of the first room of the accused opens on West and that

of the another room opens on North. There was a cot in the first room, where they saw the accused sleeping. They did not notice the household kitchen utensils in the said room. He stated that there are three rooms in the house of the accused. He further stated that a room was adjoining the first room having an entrance towards North with only a frame and without door panels. Thereafter there is an open space and its width may be about 5 to 10 ft. Thereafter there is a room on East, where the dead body was lying. There is a ground in front of the house, on North side. There are perennial shrubs and trees in the ground. He did not notice the household kitchen articles in the room where the dead body was found. The dead body was taken in custody on 24th May, 2012. He knew the accused since a year before the incident. It was on account of his arrest in respect of the offence punishable under Section 326 of the I.P. Code. The accused was not engaged in any gainful occupation.

21. Thus, evidence of police head constable PW-8 Pandit Khodve shows that, when he visited the spot of incident, the dead body of Sarika was lying in one room and in another room the accused was found sleeping. Both the rooms had separate doors and both the doors open at different directions. Considering the over-all situation, it is difficult to accept that accused committed murder of Sarika and then he went in another room and slept there. In such situation, the natural conduct of the accused would be to go far away from the spot of incident. The evidence of PW-8 Pandit Khodve shows that, when accused noticed the presence of police party in his house, the accused ran away from his house. In this respect, it is argued on behalf of the accused that previously one crime was registered against the accused and when accused saw that police party had visited his house, due to fear of arrest in previous crime, the accused ran away.

22. PW-9 Dinkar Bhika Gaidhani, police

inspector, is the investigating officer, who deposed about the manner in which he has carried out the investigation.

23. Thus, upon careful perusal of the entire evidence on record, it is clear that PW-1 Ramesh Naiknavare, who is the informant in this matter, turned hostile and did not support the prosecution case and therefore the first information report itself is not proved. PW-2 Shaikh Jamal who is panch to the spot panchnama, also turned hostile and did not support the prosecution case. He has specifically admitted in his cross-examination that he signed the spot panchnama in Sambhaji Chowk on Gadhi road, which is far away from the spot of incident. PW-3 Shaikh Pasha, is a panch to the seizure panchnama of the wooden raft, the alleged weapon used for committing injuries on Sarika. He also turned hostile and did not support the prosecution case. Therefore discovery of the alleged weapon at the instance of the accused, which was used in the crime, is also not proved.

PW-5 Prakash Maske is a panch to the seizure panchnama of the clothes of the accused which were on the person of the accused at the time of alleged incident. This witness also turned hostile and did not support the prosecution case. PW-6 Kamal Naiknavare, is the mother of the accused and she is the star witness of the prosecution, but she also turned hostile and did not support the prosecution case.

24. It is the case of the prosecution that during investigation police recorded statement of PW-7 Nitin Choure wherein he stated about the involvement of the accused in the crime. However this witness PW-7 Nitin Choure also turned hostile and did not support the prosecution case. Thus, the star witnesses of the prosecution like informant PW-1 Ramesh Naiknavare, PW-6 Kamal Naiknavare, mother of the accused and PW-7 Nitin Choure, whose parents are residing near the house of accused, all turned hostile and did not support the prosecution case. Thus, it is clear that

except the police head constable PW-8 Pandit Khodve and PW-9 Dinkar Gaidhani, who is the investigating officer in this case, there is absolutely no evidence against the accused. None of the witness has stated that deceased Sarika was last seen in the company of accused Anil within the proximity of time and date of the incident.

25. The oral testimony of PW-8 Pandit Khodve, police head constable shows that when accused saw that police has visited his house, the accused ran away from the house. The said conduct of the accused cannot be said to be abnormal, and any person after noticing that police had visited his house, his natural conduct would be, to go away from the police due to fear of involvement in the crime. Therefore, the said circumstance cannot be used as a circumstance against the accused. As observed earlier, it is the case of the prosecution that when the police party visited the spot of incident, the dead body of Sarika was lying in one room of the house, and in another

room the accused was sleeping. It is not the case of the prosecution that accused is a person of unsound mind. The prosecution has not proved the circumstance beyond reasonable doubt that if at all the accused had committed murder of Sarika, how he was found sleeping in another room instead of running away from the spot of incident, when police party visited the said spot. The prosecution has not proved the circumstance beyond reasonable doubt that, how the doors of both the said two rooms were kept open, when it is the case of prosecution that in one room there was dead body of Sarika and in another room the accused was found sleeping.

26. Admittedly, in the present case, there is no eye witness and the entire prosecution case is based upon circumstantial evidence. None of the prosecution witness has stated that he had actually seen the accused while he was assaulting Sarika. As observed earlier, all the star witnesses of the prosecution, turned hostile and

did not support the prosecution case. Even the panch witnesses also turned hostile and did not support the prosecution case. Therefore, there is no eye witness to the incident and the entire prosecution case is based upon circumstantial evidence only. From the perusal of entire evidence on record, we are of the opinion that the chain of circumstances on which reliance has been placed by the prosecution, has not been established beyond reasonable doubt by the prosecution. If all circumstances are taken together and examined in the light of evidence brought on record, they do not form complete chain. The Supreme Court in the case of Shankarlal Gyarasilal Dixit vs. State of Maharashtra reported³ in paras 13, 31 and 32 held thus :-

"13. Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and

3. 1981 (2) SCC 35

cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.

31. It causes us some surprise that the learned Additional Sessions Judge, Akola, who tried the case, has not shown any awareness of the fundamental principle which governs cases dependent solely on circumstantial evidence. Nowhere in his judgment has the learned Judge alluded, directly or indirectly, to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must

show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

32. The High Court, it must be said, has referred to the recent decisions of this Court in Mahmood v. State of U.P. and Chandmal v. State of Rajasthan in which the rule governing cases of circumstantial evidence is reiterated. But, while formulating its own view the High Court, with respect, fell into an error in stating the true legal position by saying that what the court has to consider is whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the "shadow of doubt". In the first place, 'shadow of doubt', even in cases which depend on direct evidence is shadow of "reasonable" doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt."

27. The Supreme Court in the above-said Judgment held that, in a case of circumstantial

evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In the test as to whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the 'shadow of doubt', the 'shadow of doubt', even in cases which depend on direct evidence, is shadow of 'reasonable' doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt. As already observed, in the present case the prosecution has not proved some of the circumstances beyond reasonable doubt and there is no complete chain of the circumstances, which would lead to only hypothesis of the guilt of the accused.

28. In the present case, as already observed, there is no direct evidence against the accused. There is only suspicion against the accused that he might have committed the alleged crime. In the

case of State of Punjab V/s Bhajan Singh and others⁴, the Supreme Court held that, suspicion, by itself, however strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused.

29. In the light of discussion in foregoing paragraphs, we are of the considered view that the entire prosecution case rests upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient and convincing so as to prove the offence against the Appellant beyond reasonable doubt.

30. The Supreme Court, in case of Kali Ram V/s. State of Himachal Pradesh⁵ observed as under :

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are

4. AIR 1975 SC 258

5. AIR 1973 SC 2773

possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

31. The prosecution has utterly failed to brought on record any positive act on the part of the appellant to connect him with the crime. The case of the prosecution is surrounded by suspicious circumstances. The possibility of somebody killing Sarika at another place and keeping her dead body in the room of the house of the accused, cannot be ruled out. When at the spot of incident there were two rooms, both the rooms had separate doors and doors of both the rooms were found open, and in one room dead body of Sarika was lying and in another room accused was found sleeping. In such a situation, it cannot be convincingly said that accused alone and alone is responsible for the death of Sarika. Therefore,

an inevitable conclusion is that the Appellant is entitled for the benefit of doubt. Hence we pass the following order:-

O R D E R

(I) The Criminal Appeal is allowed.

(II) The impugned Judgment and order dated 2nd September, 2013, passed by the Additional Sessions Judge, Majalgaon in Sessions Case No. 47 of 2012, convicting and sentencing the Appellant - Anil s/o Namdev Naiknavare for the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.

(III) The Appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be

refunded to the Appellant.

(IV) The Appellant - Anil s/o Namdev Naiknavare is in jail, he be set at liberty forthwith, if not required in any other case.

(V) The Appellant shall furnish Personal Bond of Rs.15,000/- and surety in like amount under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Majalgaon.

(VI) In view of the order passed in Criminal Appeal, nothing survives for consideration in both the Writ Petitions. Hence, Criminal Writ Petition No.915 of 2014 and Criminal Writ Petition No.1240 of 2014 stand disposed of, accordingly.

(VII) Since, Mr.S.B. Chavan, learned

counsel is appointed to prosecute the
cause of the Appellant/Petitioner -
Anil s/o Namdev Naiknavare, his fees
and expenses are quantified at
Rs.7,000/- (Rupees Seven Thousand).

[V.K. JADHAV, J.]

asb/JUL18

[S.S. SHINDE, J.]