

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

CRIMINAL APPEAL NO. 448 OF 2013

Sampat S/o Tatyaba Narwade,
Age: 37 years, occ: Labour
R/o: Takalwadi, Post. Raimoha,
Tq. Patoda, Dist. Beed.

... Appellant
(Ori. Accused)

Versus

The State of Maharashtra,
Through : Police Officer
Patoda Police Station,
Tq. Padota, Dist. Beed.

...Respondent
(Ori. Complainant)

...

Mr. Nitin V. Gaware, Advocate for Appellant-Accused.
Mr. A.A. Jagatkar, APP for appellant – State

...

**CORAM : T.V. NALAWADE &
SMT VIBHA KANKANWADI, JJ.**

DATED : 14th SEPTEMBER, 2018.

JUDGMENT :- (Per : Smt. Vibha Kankanwadi, J.)

1. Present appeal has been filed by appellant-original accused challenging his conviction by the learned Sessions Judge, Beed, for the offences punishable under sections 302 and 201 of the Indian Penal Code, 1860 (for short, "IPC"), in Sessions Case No. 131 of 2012, on 08-10-2013.

2. The prosecution had come with a case that an information in respect of dead body of Sau. Gangubai Sampat Narwade found in the well of her field called as "*Malai*" was lodged by

Gaonkamgar Police Patil - Rangnath Dagdu Shelke on 23-05-2012. Accidental Death (AD) under Section 174 of the Code of Criminal Procedure, 1973 (Cr.P.C.) came to be registered at Patoda Police Station, District Beed. The dead body of Gangubai was found floating on the surface of water in the well. Said Gangubai was wife of present appellant-accused. Police Patil informed about the said fact by one Shivaji Govind Ware.

3. After registration of said AD, panchnama of the spot came to be executed with the help of two panchas. Thereafter, the Inquest Panchnama was prepared and dead body of the deceased was sent for post mortem. At the time of executing spot panchnama and taking out dead body from the well, photographs were taken. After conducting post-mortem, the clothes on the person of deceased Gangbai came to be seized by the Police under another panchnama.

4. It is further prosecution story that on 24-05-2012 Appa Bayaji Bhakare, who is father of the deceased Gangubai, lodged First Information Report (FIR) with Police Station Patoda, Taluqa Patoda, District Beed. On the basis of said FIR, offence vide Crime No. 63 of 2012 came to be registered for the offences punishable under Sections 302, 498-A and 201 of the IPC against the present appellant. Thereafter, investigation of the said crime was entrusted to P.W. 12 - PSI Mr. Suresh Savaleram Budhwant.

5. During the course of investigation, the Investigating Officer recorded the statements of witnesses. Thereafter, accused came to be arrested. When he was in police custody, on 26-05-2012, he gave memorandum statement and discovered the banyan, pant, as well as, shirt, which had blood stains and stone by which murder was committed. The said memorandum was taken in presence of two panchas. The panchnamas regarding discovery and seizure of articles were prepared. Even, at that time also, photographs were taken.

6. The seized articles were sent to the Chemical Analyzer (CA) for analysis. The documents in the form of 7/12 and 8-A extracts in respect of the agricultural land of accused came to be collected. After collecting post mortem report and taking further statements of witnesses, charge-sheet came to be filed.

7. The accused was produced from Jail, from time to time, before the learned Sessions Judge, Beed. The charge came to be framed against him for the offences punishable under Sections 498-A, 302 and 201 of the IPC. The contents of the charge were read over and explained to the accused. He claimed not guilty, and therefore, trial has been conducted. The prosecution has examined in all (12) witnesses in order to bring home the guilt of accused.

8. Taking into consideration the evidence on record,

statement of the accused under Section 313 of the Cr.P.C. and after hearing both sides, the learned Sessions Judge has come to the conclusion and held that the prosecution has proved that the accused has committed murder of his wife and then in order to screening himself, he has dumped the dead body in the well. Therefore, offence under Sections 302 and 201 of the IPC has been proved beyond reasonable doubt. Accused has been sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs. 5000/- (Rs. Five Thousand) in default of payment of fine to suffer further Rigorous Imprisonment for (03) months for the offence punishable under Section 302 of the IPC. He has been further sentenced to suffer Rigorous Imprisonment for one year for the offence punishable under Section 201 of the IPC. The appellant-accused has been acquitted for the offence punishable under Section 498-A of the IPC. Thus, the accused-appellant has challenged the said conviction in this appeal.

9. Heard Mr. Nitin V. Gaware, learned counsel for the appellant and Mr. A. A. Jagatkar, learned APP for respondent - State. Perused the record and proceedings.

10. It has been submitted on behalf of the appellant that learned Sessions Judge has not appreciated the evidence properly. As per the prosecution, the dead body of the deceased was floating in the well belonging to the accused on 23-05-2012 around 5.00 p.m. As per charge, murder is stated to have been

committed between 11.00 a.m. to 12.30 p.m. on 23-05-2012. Thus, though it is alleged that the murder has been committed in broad day-light, the prosecution is not relying on the direct evidence, but, has adduced only circumstantial evidence. It was, therefore, for the prosecution to prove the complete chain of circumstances arraigning only against the accused. The marriage of deceased Gangubai *Alias* Tai was solemnized with accused-appellant about (13) years back. They have two sons, by name, Bharat and Mahadeo. None of them has been examined in order to show that while going out Gangubai had informed them. None of the family members have been examined to show that accused and Gangubai left the house together. As per Police Patil P.W.1- Rangnath Shelke, he was informed about the floating of dead body in the well by Shivaji Ware. Said Shivaji Ware has been examined as P.W. 3, but he is totally silent on the point that he had noticed the dead body first and then he had informed about the same to P.W.1 - Rangnath Shelke. He has been examined as *panch* to the Inquest Panchnama (Exhibit-21) and spot panchnama (Exhibit-22). The prosecution has also examined informant P.W.5 - Appa Bhakare, who is father of the deceased, and P.W. 6 - Sanjay Bhakare, brother of P.W. 5 - Appa Bhakare. Admittedly neither they both were present nor they have stated that they have received any such information that the accused has committed murder of Ganguabai. It appears that FIR (Exhibit-30) was filed by informant, P.W.5 Appa Bhakare, only on

the basis of suspension. He has also stated that the accused was ill-treating his daughter on the ground that she could not do the work properly. Two months prior to the incident accused had pushed Gangubai in the well, but at that time Gangubai had saved herself as she could swim. Thereafter also after one month accused had pushed Gangubai in the well. It is to be noted that no complaint was filed either by Gangubai or by these witnesses about those incidents. The testimony of P.W. 5-Appa and P.W. 6-Sanjy has been disbelieved by the learned trial Court on the count of offence punishable under Section 498-A of the IPC. Under such circumstances, the prosecution could not prove the motive for the accused to commit murder of his wife.

11. Learned Advocate appearing for the appellant has also submitted that the prosecution has examined P.W. 4-Jagannath Sahebrao Tambe, who was panch witness to the memorandum panchnama and who had discovered the Articles. The memorandum is at Exhibit-24, further panchnamas are at Exhibit-25 and 25/A. P.W.12-PSI Suresh Budhwant - Investigating Officer has deposed in his examination-in-chief that the photographs at Serial Nos. 49/1 and 49/2 have been produced. He has stated that those photographs are of the shirt, which were hidden by the accused. He has admitted that those photographs were not taken while accused was taking clothes from the soil. P.W.7 Ashok Jadhav is photographer. He has stated that he had taken only eight photographs, which have been marked as Exhibits - 36/1 to

36/8. He does not say that he had accompanied accused and the panchas as well as Investigating Officer on the day of which memorandum and discovery panchnams were prepared/executed. According to P.W.12-Suresh Budhwant, he had also taken photographs in his mobile. They were five in numbers and those photographs are at Exhibits - 49/1 to 49/5. Thus, his examination-in-chief shows those photographs were taken on 23-05-2012, whereas, memorandum came to be executed on 26-05-2012. Under such circumstance, said discovery ought not to have been held to be proved under Section 27 of the Indian Evidence Act, 1872. The place was already known to the Police, when they had allegedly gone with panchas on the spot on 26-05-2012.

12. Learned Advocate for the appellant has lastly argued that P.W.10-Dr. Shashikant Ganpatrao Thombare, who had conducted post mortem, had noticed two injuries on the person of deceased one was communitated depressed fracture over right front temporal joint and second was depressed fracture over frontal bone, shape of brain distorted due to fracture and brain matter was out of the fracture side. He had given probable cause of death as head injury. He has not ruled out the possibility of accidental fall. He has admitted that the injuries mentioned in the Post Mortem Report are possible by fall on the stone inside the well. Merely, because well was situated in the field of the accused and he being the husband of deceased, he cannot be said to be author of

the crime.

13. The learned Advocate for the appellant has relied on the following decisions of the High Court and Supreme Court :-

Nos.	Name of Parties in the Citations		Reported in
I	Kiran Ashok Jadhav Versus State of Maharashtra	..	2014 (3) Bom. C.R. (Cri.) 33
II	Prabhoo Versus State of Utter Pradesh	..	1962 DGLS (SC) 194 : 1963 AIR (SC) 1113
III	State of West Bengal Versus Mir Mohammad Omar	..	2000 DGLS (SC) 1327 : 2000 (8) SCC 382
IV	State of Rajasthan Versus Chiranjilal	..	2001 DGLS (SC) 168 : 2001 (5) Supreme 255
V	Jaffar Hussain Dastagir Versus State of Maharashtra	..	1969 DGLS (SC) 340 : AIR 1970 (SC) 1934
VI	Sohel Mehaboob Shaikh Versus State of Maharashtra	..	2009 DGLS (SC) 637 : 2009 AIR (SC) 2702
VII	Dwarkadas Gehanmal Versus State of Gujrat	..	1998 DGLS (SC) 1080 : 1998 (6) Scale 204 : 1999(1) SCC 57.
VIII	Janardhan Ramaji @ Ramrao Bannagare Versus State of Maharashtra	..	2015 DGLS (Bom) 617 : 2016 (3) Bom. C. R. (Cri) 661
IX	Raju Brijmohan Mayura Versus State of Maharashtra	..	2008 All MR (Cri) 2632
X	Shrirang Nagorao Chavan and another Versus State of Maharashtra	..	2013 (10) LJ SOFT 150
XI	Dinesh @ Dhebarya Virendra Bhatkar Versus State of Maharashtra	..	2013 (10) LJ SOFT 85
XII	Sharad Birdhichand Sarda Versus State of Maharashtra	..	1984 DGLS (SC) 173 : 1984 AIR (SC) 1622 : 1984 (4) SCC 116
XIII	State of Maharashtra Versus Ashok Hanmant Atkar	..	2015 BCI 27 : 2006 All M.R. (Cri.) 15

XIV	Sujit Biswas Versus State of Assam	..	2013 DGLS (SC) 432 : 2013 AIR (SC) 3817
XV	Durgavati Ramparvesh Sharma Versus State of Maharashtra	..	2011 (2) Bom.C.R. (Cri.) 652 : 2011(1) Mh.L.J. (Cri) 221
XVI	Bodh Raj Versus State of Jammu and Kashmir	..	2002 DGLS (SC) 762 : 2002 AIR (SC) 3164
XVII	Babu Versus State of Kerala	..	2010 DGLS (SC) 588 : 2010 AIR (SCW) 5105

14. In view of aforesaid facts and circumstances, the learned counsel appearing for appellant-accused prayed to allow the appeal and acquit the appellant-accused from the charges levelled against him.

15. Per contra, learned APP submitted that testimony of P.W.1- Rangnath Shelke would show that accused had not gone to inform him about the dead body of his wife found in the well. The accused was not present even at the time of execution of spot panchnama, inquest panchnama and post mortem. P.W. 5- Appa Bhakare has stated that accused was not even present when funeral was performed. This will have to be taken as conduct on the part of the accused as he went abscond immediately after the incident. The testimony of P.W. 4 Jagannath would show that accused was in police custody on 24-05-2012 and he had led the discovery of articles, which were at nearby distance from the well. The stone, which was found from that place was having blood stains. The CA report shows that it had human blood and there was hair to the stone. Blood was also found on the shirt, which was discovered by the accused. There is absolutely no

explanation by the accused as to how blood stains appeared on his shirt. The testimony of Medical Officer would show that Gangubai died due to head injury. The deceased Gangubai was in the custody of accused, therefore, in view of Section 106 of the Indian Evidence Act, it was for the accused to explain the circumstance under which his wife was found in dead condition. Therefore, taking into consideration all these pieces of evidence, though there is no direct evidence, the learned Sessions Judge has rightly convicted the accused for the offence punishable under Sections 302 and 201 of the IPC. He prayed for dismissal of the appeal.

16. Learned APP for the respondent – State relied on the decision in the case of ***Vijay Prabhakar Desale Versus State of Maharashtra*** reported in ***2015 (3) Bom. C.R. (Cri.) 783***, wherein there was no explanation offered by the accused as to how in which circumstances the homicidal death of his wife took place. It provides additional link in chain of circumstantial evidence against him. In that case also parents of the deceased have turned hostile, however, on the basis of circumstantial evidence, it was held that the prosecution had succeeded in proving the guilt of the accused under Sections 302 and 201 of the IPC beyond reasonable doubt.

17. It will not be out of place to mention here that the learned trial Court has acquitted the accused of the offence punishable

under Section 498-A of the IPC. Under such circumstance, testimony of P.W. 5 Appa Bhakare and P.W. 6 Sanjay Bhakare, who is uncle of the deceased, cannot be considered for the point of motive. Even if, for the sake of arguments, their testimonies are considered, it is to be noted that the deceased had married to the accused about 10/12 years back and had two sons out of wedlock. A vague statement is made that the accused was ill-treating the deceased on the ground that she was not doing work properly. Exactly, what were the acts done by accused amounting to ill-treatment have not been disclosed by them. Further, both of them have stated that two months prior to the incident, the accused had pushed Gangubai into the well. She had saved herself as she can swim and again after one month the accused had pushed her into the well. According to them, it is the same well in the field, where accused had pushed deceased earlier. However, conduct of P.W. 5 Appa Bhakare, even after getting such kind of information is surprising. He does not say that he had ever tried to pursue the accused and tried to gather from him, reason behind his alleged act. When her life was in danger, what prevented Gangubai from approaching police or even what prevented P.W.5 Appa Bhakare from holding meeting with respectable persons from the village to give understanding to the accused. Mere such statement after the incident is over just to corroborate thing, which has happened later, cannot be considered at all. Prosecution has failed to prove motive for the

accused to commit murder of his wife.

18. P.W.5 Appa Bhakare and P.W.6 Sanjay Bhakare approached the village of accused after they were informed about dead body of deceased was found in the well. They both have stated that the accused was not present at the time of funeral of his wife. In clear words, P.W.6 Sanjay says that they suspected accused for killing his wife, when they had found marks of pushing dead body from stream towards well. They had seen the pieces of broken bangles and blood stains lying in the stream. Merely because, dead body was found in the well belonging to accused, such inference cannot be drawn. The said well is in the field not in the house of accused.

19. Learned Advocate for the appellant tried to say that accused was made to sit in the Police Station on 23-05-2012, though his arrest was shown on 24-05-2012. This was the reason why accused was not present at the time of funeral. However, it is to be noted that there is no specific suggestion given to P.W.12 Suresh Budhwant to that effect. However, another fact, that has come in the cross-examination of P.W.5 Appa that, after police had taken body to Raimoha Primary Health Center and in the hospital till night hours, police had made enquiry with him. According to him, he had told about the incident, but he says that he did not tell police, at that time, he has suspicion against his son-in-law. Thus, it is to be noted that when his examination-in-

chief is silent on the point as to whether he had made enquiry about the whereabouts of accused when he reached to field of accused, till enquiry was made by police with him, mere raising suspicion alone cannot take the place evidence. It was suggested to him that after funeral was over, there was a meeting between him and accused as well as his relatives. He denied the same, but, he says that on the next date, he had come to Takalwadi at about 10.00 a.m. He was there till 11.00 a.m. He has then denied that he insisted the agricultural land should be transferred in the name of grandson and he should be appointed as guardian. He has also denied the suggestion that he had asked by the accused to bring the document. He has admitted that the land was got transferred in the name of grandsons i.e. sons of deceased and accused and he has been shown as guardian for the minors. That means, his demand to that effect appears to have been satisfied. Further, it was suggested that he had demanded amount of Rs.5,00,000/- (Rs. Five Lakhs) from the accused and it was told that if it is not given then he would file case against him and his brother; this suggestion is denied by him. But then, he admits that accused had come at the time of registration of sale deed at Sub-Registrar's Office, Shirur. That means, he waited till that time for something else to happen, but then he denied that since accused did not comply with the monetary demand till night hours, he lodged report with police station at night time.

20. It is to be noted that FIR (Exhibit-30) has been lodged at 21.00 hours on 24-05-2012. Thus, when dead body was found around the evening on 23-05-2012, why FIR has been lodged belatedly, has not been explained by the prosecution from the evidence of PW-5 Appa. The said delay coupled with suggestion though denied shows that the FIR is outcome of the some discussion.

21. Testimony of P.W.1 Rangnath Shelke, who was Police Patil, is formal in nature. He says that he was informed by Shivaji Ware about the incident. He went to the spot, saw the situation and then lodged A.D. The fact is required to be noted that there is no corroboration to the testimony of P.W.1 Rangnath Shelke by P.W.3 Shivaji Ware. As per testimony of P.W.3 Shivaji Ware, he did not inform the fact to P.W.1 Rangnath Shelke. Then question is that, who was the first person, had an occasion, to see the dead body of Gangubai in the well.

22. There is absolutely no direct evidence in this matter, therefore, prosecution has heavily relied on the circumstantial evidence. The circumstantial evidence is mainly discovery and alleged absence of the accused. As regards absence of the accused at the time of funeral, that fact alone cannot be the incriminating circumstance warranting conviction. P.W.12 PSI

Budhwant has not stated from where accused was arrested. Unfortunately, the document of which registration was done appears to have not been placed on record by the accused. It was not shown to P.W.5 Appa.

23. As regards discovery is concerned, P.W.4 Jagannath Tambe has supported the memorandum panchnama. It is to be noted that this witness is resident of Umbr Veera, Taluka Patoda, District Beed, which is different village, either from the village of accused or village of the informant. According to this witness, accused had shown well from his field and then went inside the well and took out a sharp stone from the well. He does not say that there was any sign on the said stone. He further says that thereafter accused went at a distance of 150 feet near the stream and then took out another stone weighing 300 grams of which hair was stuck and there were blood stains on the stone. Now question is, which was the exact stone with which murder was committed and why another sharp stone which was taken from the well. There is no explanation for the same from Investigating Officer. The second stone to which hair was stuck and allegedly there was blood stain is stated to be only 300 grams. Said article was not shown to P.W.10 Dr. Shashikant Thombare, who had conducted post mortem report. His opinion has not been sought on the point that whether murder can be committed with the help of such stone which is of 300 grams.

24. Another point that discards the discovery under Section 27 of the Indian Evidence Act is that as per P.W.12 Suresh Budhwant, he had taken photographs at Serial No. 49/1 to 49/5, which are in respect of discovery of stone and shirt, etc. According to him, those photographs were taken on 23-05-2012 from his mobile. In his cross-examination, in clear terms he has stated that those photographs are of the shirt, which was hidden by accused. If as per the testimony of P.W.4 Jagannath, memorandum was given and discovery was made by the accused on 26-05-2012, then how photographs of the same could have been taken by P.W.12 PSI Suresh Budhwant on 23-05-2012. Every kind doubt is raised in respect of the role played by Investigating Officer in this case while collecting such evidence. When such doubt is created, such discovery which is alleged to be under Section 27 of the Indian Evidence Act cannot be relied on for convicting the accused.

25. As per testimony of P.W.3 Shivaji Ware, who has executed spot panchnama, the dead body was floating in the water of well. This can also be seen from the photographs taken by P.W.7 Ashok Jadhav. This fact also come on record from the evidence of other witnesses also. P.W.10 Dr. Shashikant Thombare had noted two injuries as aforesaid. He had given opinion that cause of death was head injury. In clear terms in his cross-examination, he has admitted that depressed fracture can be caused by sharp and blunt object. According to P.W.4 Jagannath and memorandum

panchnama, accused had taken out one stone which was sharp having 3 kg weight from the well. P.W.10 Dr. Shashikant has further admitted the injuries mentioned in post mortem report are possible by fall on stone inside the well. If these facts are considered then possibility of Gangubai fall in the well and her head banging on the sharp stone inside the well causing depressed fracture to her skull resulting into her death cannot be ruled out. Therefore, on the basis of these facts, when possibility of accidental death has been created, it would have been first and foremost for the prosecution to rule out the said possibility; then only it can be considered the death was homicidal in nature.

26. Here, at the cost of repetition, it is stated that the said possibility of accidental death has not been ruled out. All the above-said facts and reasons, have not been considered by the learned Trial Court in proper prospective. Therefore, the conviction awarded to the accused is not sustainable. We do not agree with submission advanced on behalf of the prosecution that it was custodial death. Death had occurred in the well, which was situated in the field, it could have been accessed by anybody. The finding in *Vijay Prabhakar Desale's case (supra)* is also not helpful to the learned A.P.P. for the simple reason that, in that case the dead body was found inside the house and as per the panchnama, witnesses to the spot went to the room and when door was found to be locked, it was broken and plank of the door was lying there. Under such circumstance, when naturally

husband and wife are stated to be residing together, dead body was found in the locked house, presumption was attracted regarding custodial death, but not in the present case.

27. As regards various citations relied on by learned counsel for the appellant, observation can be made that ratio laid down in the same cannot be disputed and they may be applicable, if facts are similar.

For the reasons stated above, appeal deserves to be allowed. Hence, we proceed to pass the following order :-

ORDER

- (a) The appeal filed by the appellant is allowed.
- (b) The Judgment and order of learned Sessions Judge, Beed in Sessions Case No. 131 of 2012 dated 8th October, 2013, convicting the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, is hereby quashed and set aside.
- (c) The appellant stands acquitted for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860.
- (d) Fine amount, if any, deposited by the accused, be returned to him.

- (e) The appellant be set at liberty forthwith from jail, if not required in any other case.
- (f) Bail bonds of the amount of Rs.15,000/- with one solvent surety of like amount be obtained from him for the period of six months as provided under Section 437-A of the Code of Criminal Procedure, 1973.

(SMT. VIBHA KANKANWADI, J.)

(T.V. NALAWADE, J.)

MTK.