THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.24 OF 2011

Shrikant Bapurao Gaikwad,
Age-31 years, Occu:Service,
R/o-Phulewadi, First Bus Stop,
Kolhapur, At present in Kolhapur Jail,
Dist-Kolhapur. **...APPELLANT**

VERSUS

The State of Maharashtra
(At the instance of Shahapur
Police Station, Kolhapur) **...RESPONDENT**

...

Mr. Rushikesh Kale Advocate i/b. Mr. V.V. Purwant Advocate for Appellant.
Ms. M.H. Mhatre, A.P.P. for Respondent- State.

...

CORAM: S.S. SHINDE AND
A.S. GADKARI, JJ.

DATE: 9TH OCTOBER, 2018

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

1. This Appeal is directed against the Judgment and order dated 20th April, 2009, passed

by the Sessions Judge, Kolhapur in Sessions Case No.138 of 2007, thereby convicting the Appellant/accused – Shrikant Bapurao Gaikwad for the offence punishable under Section 302 the Indian Penal Code [for short 'IPC'] and sentencing him to suffer rigorous imprisonment for life and also to pay a fine of Rs.1,000/-, in default of payment of fine to suffer further rigorous imprisonment for a term of six months. Hence this Appeal is filed by the Appellant challenging the conviction and sentence.

2. The prosecution case, in brief, is as under:

A) The incident has occurred in Room No.103 of Hotel Raj Delux situate on Station Road, Kolhapur. Said hotel has in all three floors and twelve rooms. Room No.103 situate on the first floor. On 3rd October, 2007, at about 1.00 p.m. one

couple, husband and wife, along with an infant came to the hotel and inquired about availability of room. On being informed that room was available, they took on rent one Room (No.103). The appellant wrote his name in English in the hotel register as “Shrikant B. Gaikwad, resident of Kadawe, Tq-Shahuwadi”. One waiter escorted the couple to the said room. The couple along with the infant stayed in that room.

. On the next day morning, the sweeper of the hotel went to Room No.103 for the purpose of cleaning the same. However, the door was not opened and sweeper heard cries of an infant from the said room. Sweeper told said fact to the hotel manager. A hotel manager in anticipation that door would be opened asked the sweeper to wait for sometime. At around 12.00 to 12.30 noon, the hotel manager took round of the hotel to check, whether

cleaning of the hotel had been completed or not, at which time he had gone near Room No.103. He found the door has been closed from the inside. He also heard cries of the infant coming from that room. There was one window adjacent to the door. He peeped inside from that window to see, what was going on in the room. He found that the woman was lying asleep on the bed inside the room and the infant was crying by her side. He also noticed that, the man accompanying said woman was not seen inside the room. Due to suspicion, he informed the said fact to the hotel owner. The hotel owner came to the hotel and verified the fact that the appellant is not present in the room. Then the hotel manager as well as the hotel owner went to the police station, Shahupuri and reported the said facts. Police arrived at the lodge and found that nobody was responding and opening the door. The police kicked on the said door so as to open

the same. Upon entering into the room, from inside of the said room, it was found that the said woman was lying dead on the bed with her tongue having protruded out of her mouth and blood having discharged from nose and mouth. It was also found that one cloth was tied around her neck tightly, and having a knot on it. Police also found one chit kept on the drawing table inside the room. It was written on the said chit that, the writer of the chit had killed his wife Rajashree working as a teacher at Kadawe, Tq-Shahuwadi, and he would be surrendering himself to the police authority. It was further mentioned that, his mother in law be called from Shahuwadi for taking custody and care of the child. At that time, it was also noticed by police as well as hotel manager that, stopper of the window of said room was out of order, and therefore, one could latch the room from inside by inserting the hand from inside of the said window

while standing outside the room.

B) Police obtained complaint of the hotel manager at the spot itself and prepared inquest panchnama. The dead body was sent for conducting of postmortem examination. The spot panchnama was prepared. Articles lying in the room were seized. Police found out the address of mother in law of the appellant and she was called from Shahuwadi to Kolhapur. The custody of the infant was given to her. An inquiry was made with her. It was revealed during the inquiry that the accused had performed love marriage with Rajashree and from the said marriage, she had begotten the child, Piyush. It was also revealed that accused was already married and yet he had performed second marriage with Rajashree. It was further revealed in the inquiry that accused was working as a salesman at one seeds shop, while Rajashree was working as a

teacher at Kadawe, Tq-Shahuwadi. The mother in law also told police that accused Shrikant used to constantly harass Rajashree (deceased) by demanding the salary earned by her, every month. She further told that the accused used to pick up quarrels with Rajashree on her refusal to part with her salary. She also told that before birth of her child Piyush, Rajashree (deceased) used to give her salary to the accused, but after addition of another member in their family, she found it difficult to give her monthly salary to the accused and over this attitude, the accused was annoyed with her. Mother in law of the appellant also told that, on 3rd October, 2007, the accused had made a telephone call to Rajashree and called her to Kolhapur on the pretext that 'Nawas' made to Goddess Mahalaxmi at Kolhapur was to be ceremoniously returned, and believing him deceased Rajashree along with her child, had gone to

Kolhapur and stayed along with accused in hotel Raj Delux.

C) Meanwhile, postmortem report disclosed that Rajashree's death was by strangulation and accordingly, further investigation was carried out. Accused was arrested. Clothes of deceased were seized which were received from the hospital. One diary was seized at the instance of the accused. Specimen handwriting and signatures of the accused were obtained. Statements of witnesses were recorded. Seized articles were sent to Chemical Analyzer's Office for analysis and report. The chit and the diary along with the specimen of handwriting and signatures of accused were sent to handwriting expert for his opinion and report. After completion of the investigation, police had filed a charge-sheet against the accused. In due course of time, the case was

committed to the Court of Sessions, as the offence punishable under Section 302 of the I.P. Code is exclusively triable by the Court of Sessions.

D) A charge for an offence punishable under Sections 302 of the IPC was framed against the accused and the same was explained to him. The accused pleaded not guilty and claimed to be tried. His defence was of total denial. In his statement under section 313 of Criminal Procedure Code, accused took the defence by raising plea of alibi that, he was at Pune during the period from 1st October, 2007 to 6th October, 2007 for promoting sale of seeds for his Company. According to him, he was arrested by Police suddenly on 6th October, 2007 near Pune Railway Station and his signatures on some documents were taken by Police.

3. After recording the evidence and

conducting full-fledged trial, the trial Court convicted the appellant – accused for the offence punishable under Section 302 of the IPC and sentenced him to suffer life imprisonment and to pay fine, as afore-stated. Hence this Appeal is preferred by the accused – appellant challenging the conviction and sentence.

4. Mr. Rushikesh Kale, learned counsel appearing for the appellant submitted that, there was no eye witness to the incident and the case of the prosecution is based upon the circumstantial evidence only. There is no direct evidence against the accused. He further submitted that the chain of circumstances on which reliance was placed by the prosecution, has not been established beyond reasonable doubt by the prosecution. He further submitted that there are several contradictions, omissions, discrepancies and improvements in the

evidence of the prosecution witnesses in respect of various circumstances, and therefore, it is unsafe to rely upon the oral testimony of the said witnesses. He further submits that the accused has taken probable defence of alibi but the trial Court has not properly appreciated the evidence brought on record and came to the wrong conclusion. He further submits that, there was no motive for the accused to commit murder of his wife. The prosecution failed to prove that deceased was last seen in the company of the accused. Learned counsel therefore submits that the appeal may be allowed.

5. As against this, Mrs. M.H. Mhatre, learned A.P.P. appearing for the State submitted that, though the case of the prosecution is based upon the circumstantial evidence, the chain of circumstances upon which the reliance has been

placed by the prosecution, has been established beyond reasonable doubt. She further submits that, after considering the entire evidence on record, the Trial Court has convicted the accused and the findings recorded by the Trial Court are in consonance with the evidence brought on record. Learned A.P.P. therefore submits that the appeal deserves to be dismissed.

6. To prove its case, the prosecution has examined as many as thirteen witnesses. The prosecution has examined PW-2 Navnath Dattatraya Rabade, who deposed that at the time of incident, he was serving with Hotel Raj Delux as Manager. Dhananjay Dhanpal Awati is the owner of the hotel. Hotel Raj Delux is on Station road and it has in all three floors and twelve rooms.

7. PW-2 Navnath further deposed that, an incident took place on 3rd October, 2007. At that

time he was present in the Lodge at the counter. At about 1.00 p.m. in the afternoon, one couple, husband and wife, along with an infant, came to the counter. They inquired about availability of room and its charges. He informed that room is available and its rent is Rs.364/- per day. They hired one room and paid him Rs.400/- as advance rent. He kept before them Register of customers for entering their names etc. Male person from the couple wrote name and other details in English. The name written was “Shrikant B. Gaikwad, R/o. Kadve, Tq. Shahuwadi”. He further deposed that, he allotted them room No.103, which was on the first floor. He deposed that the said register i.e., Article No.17, bears an entry in the name of Shrikant B. Gaikwad and the said entry was written by the said customer in his presence. He identified said Shrikant Gaikwad who was present in the Court. He further deposed that the said

couple along with infant stayed in that room.

8. PW-2 Navnath further deposed that on the next day morning Reshma Jadhav, Sweeper arrived in the hotel for cleaning purpose. After cleaning other rooms, when she knocked at the door of room No.103, nobody opened the door. However, she heard cries of an infant coming from inside the room. The Sweeper came to manager and told those facts. He told her that the customers must have been asleep and after they got up, she should clean the room. Some time after, she again knocked at the door, but there was no response. PW-2 took round at about 12.00 to 12.30 p.m. to check as to whether the cleaning of the entire lodge had been completed or not. At that time, he had gone to Room No.103 and when knocked at the door, nobody had opened it, but he heard the cries of an infant coming from inside the room. There was window

beside door of Room No.103. When he peeped inside from the said window, he noticed that the woman was lying asleep on the bed inside the room and the infant was crying by her side. The man accompanying that lady was not seen by him inside the room. Due to suspicion, he made telephone call to hotel owner and called him to the lodge. Hotel owner arrived at the lodge. PW-2 further deposed that he told the entire facts to the hotel owner and thereafter both of them went to Police Station, Shahupuri. Police came to lodge along with them and knocked the door but in vain. Then Police kicked open the door. Both of them along with Police entered the room. Then they found the lady already dead and lying on the bed. They also noticed that her tongue had slightly come out of the teeth and the blood which had discharged from nose and mouth, had dried near nose and lips. He deposed that the said lady had come to the hotel

along with Shrikant Gaikwad, yellow cloth had been tightly wrapped around the neck of that lady and it appeared to be having a knot on it. He further deposed that he found one chit kept on a dressing table, the said chit was written on a lined paper. The contents of the chit were:-

> "I have killed my wife Rajeshree. She was working as a teacher at Kadve, Tq. Shahuwadi. I would be presenting myself before any Police Station in Kolhapur. My mother-in-law be called from Shahuwadi for taking care of my child."

. PW-2 Navnath further deposed that said Shrikant Gaikwad was not present inside the room. He further deposed that at that time, he noticed that stopper of shutter of window of that room was out of order and therefore one could lock the room from inside by standing outside the room. He further deposed that they could then realized that said person had stood outside the room and putting

his hand through the window inside the room, locked the room from inside. He further deposed that thereafter he lodged a complaint (Exhibit–15) with Police.

9. During the course of cross examination, PW-2 Navnath was asked and he stated about the location of Hotel Raj Delux and surrounding areas. He further stated that rooms in their hotel are hired out on days basis and not on hourly basis. He admits that the Police had given directions to hotel owners to make detailed inquiry in case couple approaches the hotel for taking rooms on rent, and that such information should be entered in the hotel register. He further stated that the name disclosed by a customer at the time of taking the room on rent, is only entered in the register and they do not verify its correctness or otherwise. He further stated that if the person

taking a room on rent is accompanied by a woman purporting to be his wife, they do not make any verification as regards her status to be a wife. This witness volunteered that if the couple carries with it an infant child, it cannot be doubted that they are not husband and wife.

10. PW-2 Navnath further stated that he did not see if said woman was wearing around her neck any Mangalsutra. He further stated that he already knew that stopper of shutter of window of the room was out of order and the said fact was also known to other staff members. This witness was further extensively cross-examined by the defence, however nothing useful to the defence was elicited from him.

11. Thus, the evidence of this witness PW-2 Navnath shows that on 3rd October, 2007, accused

along with his wife Rajashree and an infant came to Hotel Raj Delux and hired one room on rent, stayed there and on next date he has noticed that nobody was opening the door of the said room and due to suspicion when he peeped from the window of the said room, he noticed that said woman (Rajashree) was lying on the bed, the child was crying near her and the person who accompanied her, was not seen in the room. Therefore, PW-2 Navnath called Police and along with Police when entered in the room, he noticed Rajashree as dead lying on the bed, her tongue had come out of the teeth and blood was discharged from her nose and mouth. Yellow cloth had been tightly rapped around neck of that lady. His evidence further discloses that one chit was found kept on a dressing table, wherein it was written that the writer of that chit has killed his wife Rajashree, who was working as a teacher at Kadave, Tq. Shahuwadi, and

soon he would be surrendering before any Police Station in Kolhapur. It was further written in the chit that the mother-in-law of the writer of that chit be called from Shahuwadi for taking care of his child. His evidence further shows that accused Shrikant was not present inside the room. At the relevant time, PW-2 noticed that stopper of shutter of window of the said room was out of order, and therefore one could lock the room from inside by standing outside the room. Thus, it is clear that PW-2 Navnath is an independent witness, who has no reason to depose against accused. The evidence of this witness is consistent, reliable, trustworthy and not at all shattered in the cross-examination. From the evidence of this witness, the prosecution has proved that deceased Rajashree was last seen in the company of the accused and thereafter nobody has seen her alive.

12. The prosecution has examined PW-5 Suresh Dattatraya Patil. He deposed that he works as Deputy Inspector with K.D.C.C. Bank, Padal Branch, Tq. Panhala. He has an agricultural land. In addition to work with the bank, he also run a shop at Bazar Bhogav under the name and style “Siddhi Agro Agencies”. The said shop is in the name of his wife and he used to assist her in running the shop. He used to visit Bazar Bhogav once or twice in a week in connection with the work of the shop. He further deposed that he knows accused Shrikant Bapurao Gaikwad. He further deposed that accused Shrikant was working with him as a Sales Manager for the said Agro Agencies. Shrikant started his work from 1st January, 2007 and continued it for about 6 to 7 months. He identified Shrikant Gaikwad as an accused, who was present in the Court. He further deposed that accused Shrikant used to reside at Phulewadi in the house of one

Nivruti Patil on rent. along with his wife Vaishali Gaikwad and two daughters. He further deposed that he knows Vaishali, wife of the accused and he had visited the house of accused on one occasion.

13. PW-5 Suresh further deposed that about four months prior to the incident, he saw the accused near Shivaji bridge when another woman was accompanying him. Thereafter when he again met the accused and asked about the other woman, accused replied that she was his second wife, namely Rajashree Nagne, resident of Solapur and that she was a teacher at Kadve, Tq. Shahuwadi. He further deposed that about the incident he learnt from the news papers. Thereafter he contacted Police Station, Shahupuri and informed P.S.I. Rathod that he could show the house of the accused. Thereafter, along with Police he went to Phulewadi

and showed house of the accused, which was locked.

14. PW-5 Suresh further deposed that then he received a phone call on his mobile phone from Shrikant Gaikwad informing that he has killed Rajashree Nagne in Room No.103 of Hotel Raj Delux, and that he was in Kalyan. Accused Shrikant further requested him to give some money to his wife Vaishali and to request her to go along with the children to her maternal place. He further deposed that accused also informed him that he would surrender before the Police in two to three days. He further deposed that he informed this fact to Shri Rathod, P.S.I. He further deposed that P.S.I. Rathod dialed that number and found that it was of a P.C.O. Booth from Ulhasnagar.

15. During the course of cross-examination, PW-5 Suresh stated that he got the licence of Agro Agencies in October, 2006. He does not manufacture

the articles and goods kept in his shop. He sell the good manufactured by the companies from his shop. Companies appoint salesmen for promoting their products by giving information to various farmers and these salesmen visit various villages and towns in entire Maharashtra and promote the sale of the company. Accused Shrikant was working in such a way. He admitted that it is not mentioned in his Police statement that Shrikant Gaikwad was working with him as a salesman and he was unable to assign any reason for the same. He further stated that the fact that he inquired after four days to accused about other woman is not mentioned in his Police statement and he was unable to assign any reason for the same. He was further asked and he stated about his visit along with the Police to the house where the accused was residing with his first wife and two daughters. He further stated that when he received the phone

call from the accused, he had a talk with him for about five minutes. He further stated that his telephone number on which he has received call from the accused was not with him while recording his evidence. He further stated that the Police did not ask him for SIM card.

16. Thus, through this witness PW-5 Suresh, the prosecution has brought on record that accused Shrikant was already married with one Vaishali and was having two daughters out of the said wedlock. Through the evidence of this witness, the prosecution has further brought on record that accused Shrikant performed second marriage with Rajashree (deceased). The evidence of this witness further shows that after the incident the accused had made phone call to this witness and stated that he had killed Rajashree in Room No.103 of Hotel Raj Delux and that soon he would surrender

before the Police, and also requested this witness to give some money to his first wife Vaishali as a fare for reaching her to maternal place. Through this witness, the prosecution has brought on record that accused Shrikant has given extra judicial statement to this witness PW-5 and stated that he has killed his wife.

17. The prosecution has examined PW-6 Balasaheb Dnyanu Khot, who was Police Patil of village Kadve at the relevant time. He deposed that he knew deceased Rajashree, who was working as a teacher with the Primary School. He knows Shrikant Gaikwad, who was husband of Rajashree and used to visit Kadve village on holidays. Mother of Rajashree and Rajashree's small child used to reside with her. He further deposed that on 4th October, 2007, Police had approached him and inquired about Rajashree. Thereafter along with

mother of Rajashree he came to the CPR hospital at Kolhapur where Laxmibai, mother of Rajashree identified the dead body of Rajashree and Police gave its custody to Laxmibai. He identified Shrikant Gaikwad, who was present in the Court.

18. During the course of cross-examination, PW-6 Balasaheb stated that Police came to village Kadve at about 4.00 p.m. and while coming to Kolhapur along with Laxmibai no one else from the said village Kadve Paiki was with them. He admits that he was not knowing about killing of Rajashree till the time he was informed about the same by the Police.

19. Thus, the evidence of this witness is consistent and nothing contrary brought on record by the defence during the course of cross-examination. The prosecution has brought on record through the evidence of PW-6 Balasaheb,

police patil of village Kadve, that Rajashree was working as a teacher with primary school at village Kadve, accused Shrikant was her husband who used to visit Kadve on holidays. Rajashree used to reside at Kadve with her small child and mother, namely, Laxmibai.

20. The prosecution has examined PW-7 Sau. Megha Mallinath Darphale. She deposed that deceased Rajashtree was her sister. Since about one and half year prior to the incident, Rajashree was working as a teacher at Kadve Paiki Varilgaon. Rajashree was married to Shrikant Gaikwad about one year prior to the incident. She identified Shrikant Gaikwad, who was present in the Court. She further deposed that Rajashree and accused Shrikant performed love marriage before the Court. She further deposed that for attending the marriage of her brother, seven months prior to the

incident, accused Shrikant along with Rajashree came to her house at Solapur and stayed there for two days. Thereafter again Rajashree and Shrikant came at her house at Solapur when Rajashree was pregnant. Shrikant dropped Rajashree at Solapur and then left. About six days later, Rajashree delivered a baby boy and thereaftr, Shrikant visited Solapur for seeing Rajashree and her baby.

21. PW-7 Sau. Megha further deposed that on 13th September, 2007 Rajashree went back to village Kadve as her school was to start. At that time, along with Rajashree her mother as well as baby also went to village Kadve. She further deposed that at about 8.00 p.m. of 21st September, 2007, she made telephone call to her mother, who informed that Shrikant was not a good person and used to beat Rajashree continuously, he used to demand monthly salary from Rajashree and on that

count, he used to beat Rajashree and for last one year Shrikant was taking monthly salary of Rajashree and in return was not bringing anything for Rajashree or her house. She further deposed that her mother also told her that Shrikant was giving threats of killing Rajashree. She further deposed that she had inquired with Rajashree about the same and Rajashree had also told her the said facts.

22. PW-7 Sau. Megha further deposed that on 23rd September, 2007 at about 6.30 p.m. Shrikant Gaikwad made her telephone call and told that she should advise her sister to give him her monthly salary and that if Rajashree did not give him her monthly salary, he would kill Rajashree and run away along with the baby. She further deposed that in the same evening, at about 7.00 p.m. she made telephone call to Rajashree and requested her to

part with her monthly salary in favour of Shrikant. She further deposed that Rajashree informed her that since last one year, she had been giving her monthly salary to Shrikant but Shrikant did not give anything back to her to meet domestic expenses and therefore, it was difficult to her to part with her salary. She further deposed that she tried to convince her sister Rajashree. She further deposed that on 4th October, 2007 at about 4.00 p.m. she was informed by Shahupuri Police that Rajashree was strangulated to death by Shrikant Gaikwad.

23. During the course of cross-examination, PW-7 Sau. Megha admits that she used to render financial assistance to the family of her mother. She was working as Gram Sevika. She further stated that at Solapur, Shrikant Gaikwad had visited her place on three occasions in all. After delivery,

Rajashree did not come to Solapur. She admits that Rajashree had not disclosed her about alleged harassment till the time she had made a phone call to Rajashree on 21st September, 2007. This witness was further extensively cross-examined by the defence, but nothing contrary was brought on record.

24. Thus, it is clear that through the evidence of PW-7 Sau. Megha, the prosecution has brought on record that Shrikant Gaikwad performed love marriage with Rajashree which was his second marriage, through the said wedlock Rajashree delivered a male child, Shrikant was constantly demanding monthly salary from Rajashree and was ill-treating and beating Rajashree on the count of non-payment of her salary.

25. The prosecution has examined PW-8 Laxmibai Parsuram Nagane. She deposed that she had

two daughters and two sons, names of her daughters are Megha and Rajashree. Rajashree was serving as a teacher at Kadve since about one and half years prior to the incident. After Rajashree got the service, she visited Solapur on two occasions. She further deposed that about one year prior to the incident, Rajashree told that she had performed marriage with Shrikant Gaikwad. She further deposed that marriage of her son Mallinath was solemnized about seven months prior to the incident and Rajashree and Shrikant attended the said marriage at Solapur and stayed there for two days. She further deposed that about three months thereafter Rajashree and Shrikant came to Solapur for the purpose of delivery of Rajashree. Six days later, Rajashree delivered a baby boy, thereafter Shrikant came to Solapur for seeing Rajashree and her baby. She further deposed that she herself, Rajashree and her baby named Piyush went to Kadve

on 13th September, 2007. She had accompanied Rajashree for looking after her baby. On 13th September, 2007 Shrikant picked up quarrel with Rajashree on the count of money. Shrikant was asking to give him monthly salary of Rajashree and she was denying for the same. For the said reason, Shrikant beaten Rajashree in the presence of her mother Laxmibai and also threatened to kill Rajashree. Thereafter Shrikant left for Kolhapur, two days later he again came to Kadve and demanded monthly salary from Rajashree and when she refused to part with it, Shrikant beat Rajashree.

26. PW-8 Laxmibai further deposed about the telephone call and inquiry made by her daughter Megha and the information given by her about ill-treatment given to Rajashree by her husband Shrikant. She further deposed that Shrikant came to Karve on 24th September, 2007 and subjected

Rajashree to beating and also gave threats on the count of non payment of money. She further deposed that at that time Rajashree disclosed her that Shrikant has already performed a marriage, due to which Shrikant got annoyed.

27. PW-8 Laxmibai further deposed that on 3rd October, 2007 at about 8.00 a.m. Shrikant made a telephone call at her neighbour's house, called Rajashree and told her that Navas made to Goddess Mahalaxmi at Kolhapur was to be ceremoniously returned, and therefore, Rajashree should come to Kolhapur. Rajashree informed Shrikant that she did not have any money to come to Kolhapur, thereupon Shrikant made telephone call to the neighbour and made him to pay Rs.50/- to Rajashree. Thereafter Rajashree went to Kolhapur along with Piyush at 10.30 a.m. and while leaving Rajashree told that she would return by evening, but did not come. She

further deposed that on the same day at about 10.00 p.m. in the night, Rajashree made a telephone call and informed her that Piyush and Shrikant were with her, three of them had stayed in Room No.103 of Raj Hotel and that she would come back in the next day morning. She further deposed that Rajashree did not return home. At about 5.00 p.m. in the evening on the next day Police came to her house at Kadve and informed that Shrikant had strangulated to death Rajashree and run away. She along with police went to CPR Hospital and identified the dead body of Rajashree. Custody of Piyush was given to her.

28. During the course of cross-examination, PW-8 Laxmibai admitted that Rajashree had been to Kolhapur for interview prior to getting service. She further stated that she does not remember as to when Rajashree got married after she got

service. She admits that at the time of marriage of her son Mallinath, Rajashree told her that she performed marriage with Shrikant about one year ago. She admits that Rajashree had come to her place at Solapur only on three occasions after Rajashree got the service. She admits that on each occasion Rajashree had visited her place along with Shrikant. Rajashree had stayed at Solapur for three months after she had come there for delivery. She admits that during the period of those three months and also on each of the occasion when Shrikant had come to Solapur for meeting her, Rajashree did not tell anything about alleged harassment. Further, this witness PW-8 was extensively cross examined by the defence but nothing contrary was brought on record and her evidence remained un-shattered in the cross examination.

29. Thus, evidence of this witness PW-8 Laxmibai discloses that Shrikant performed second marriage with Rajashree, out of the said wed-lock Rajashree delivered a baby, Shrikant was constantly demanding money from Rajashree and on the refusal he used to harass and beat Rajashree. The evidence of this witness discloses that Shrikant made telephone call to Rajashree and called her to Kolhapur on the pretext of returning Navas of Goddess Mahalaxmi. The prosecution has brought on record that Rajashree was not having any money for travelling to Kolhapur and at that time Shrikant requested the neighbour to give Rs.50/- to Rajashree and then she went to Kolhapur along with her child. The evidence of this witness further discloses that while she was in Kolhapur, in the night hours at 10.00 p.m. on 3rd October, 2007, Rajashree made telephone call to her mother

Laxmibai and told that she herself and her husband Shrikant along with their baby Piyush stayed in Room No.103 of Raj Hotel and she would return on the next day.

30. The prosecution has examined PW-9 Namdev Hari Patil. He deposed that he knew Rajashree who was serving as a teacher at Kadve. He further deposed that at Kadve, Rajashree used to reside as her neighbour. He knows Shrikant Gaikwad as he was husband of Rajashree. Shrikant used to come to Kadve to the house of Rajashree and visit her house on and often. He further deposed that on the day of incident, at about 8.00 a.m. he received telephone of Shrikant who asked to call Rajashree. Accordingly he called Rajashree, who talked with Shrikant on telephone. Thereafter Rajashree called Dashrath Patil to his house and demanded money and Dashrath gave her an amount of Rs.50/-.

31. During the course of cross-examination, PW-9 Namdev stated that the telephone call was received on mobile phone of her sister. He admits that there is no land line telephone connection in his house. He admits that he does not know mobile number of her sister. In his police statement he has not stated that said mobile belongs to him. He stated that it is incorrect and he cannot assign any reason as to why it is so mentioned in his police statement.

32. Thus, through the evidence of this witness the prosecution has brought on record that on the day of incident near about 8.00 a.m. Shrikant made telephone call at the house of this witness and talked with Rajashree. The evidence of this witness PW-9 further shows that Rajashree demanded Rs.50/- from one Dashrath Patil, who gave the said amount to Rajashree.

33. The prosecution examined PW-10 Dashrath Shripati Patil, who deposed that on the day of incident, Shrikant requested him through telephone call, to pay an amount of Rs.50/- to her wife Rajashree and accordingly, he paid the said amount to Rajashree.

34. The prosecution has examined PW-11 Dr. Pravin Ganpatrao Naik. He deposed that on 4th October, 2007 he conducted postmortem on the dead body of Rajashree Shrikant Gaikwad. He started post mortem at 6.10 p.m. On external examination, he noticed the following :-

a. Well marked rigor mortis all over the body.

b. P.M. lividity was present on posterior aspect of thinghs, back, legs, it was fixed.

c. Entire face was cyanosed and there was minimal oedima.

d. Tongue was slightly protruding out with evidence of bite injuries on both sides.

e. Pedish fluid was coming out through mouth and nose.

. He further deposed that he also noticed external injury as below :-

f. Ligature mark around neck which was complete throughout the neck measuring about 29 c.m. in length, breadth varies from 5 c.m. from posterial aspect middle to 2 c.m. anterio middle. This mark was horizontal and below thyroid cartilage. Base was dry, pale with reddish ecchymosed margin, margin was hard.

35. PW-11 Dr. Pravin further deposed that, on dissection there was evidence of tissue crushed with blood infiltration more on margin. This injury is ante mortem. He further deposed that, on dissection he found following internal injuries :-

a. Brain was congested and there was marked oedima.

b. Larynx, trachea and Bronchi were congested there was marked oedima, there were evidence of reddish fluid and petaechial hemorrhage.

c. Both lungs-there was marked congestion and marked oedima, both were dark purple in colour on cut section there was dark reddish fluid.

d. Heart congested, right chamber full of blood and left were empty.

e. large vessels - pulmonary aorta was full and aorta was empty.

f. Casophagus – Whitish froth with red stain.

g. all organs were congested.

h. Stomach – evidence of 35 C.C. clear fluid without any odour, tissue were congested.

36. PW-11 Dr. Pravin further deposed that in his opinion the cause of death was “Asphexia due

to strangulation". Accordingly he issued P.M. Report (Exhibit—35) under his handwriting and signature. He further deposed that in his opinion, death of said lady would have occurred between 24 hours to 12 hours prior to start of P.M. examination.

37. During the course of cross-examination, PW-11 Dr.Pravin stated that for release of rigor mortis from the body further 12 hours are necessary. There are three stages of rigor mortis i.e. formation, retention and release. When he opined that well marked rigor mortis was present in the body he meant that it was in the second stage. Rigor mortis is nothing but body stiffening after death. He admits that decomposition follows the rigor mortis. Postmortem lividity is fixed because of gravity of the earth. He admits that P.M. lividity starts after 2 to 4 hours from

death. Lividity does not appear in those parts, which are in direct surface contact and it is seen in the floating parts.

38. PW-12 Vijay Anant Gurav, Police Constable is the carrier who carried muddemal articles to C.A. office. PW-13 Kashinath Kesu Rathod is the Investigating Officer, who deposed about the manner in which he has carried out investigation.

39. Admittedly, there is no eye witness or direct evidence in the present case and the prosecution case is entirely based upon circumstantial evidence. The prosecution, therefore, relied upon the following circumstances:

i) Appellant performed second marriage with Rajashree and was ill-treating and beating her on her refusal to part with her salary.

ii) Before the incident, appellant made telephone call to Rajashree and asked her to come at Kolhapur.

iii) Deceased was last seen in the company of the accused.

iv) The cause of death of Rajashree was “Asphexia due to strangulation”.

40. To prove the first circumstance of 'second marriage' of the appellant with Rajashree and ill-treatment given to her, the prosecution has examined PW-7 Sau. Megha and PW-8 Laxmibai, the sister and mother of Rajashree. Even PW-5 Suresh has specifically stated that accused was residing with his wife Vaishali Gaikwad and two daughters. It has also come in evidence that after some days when he met with the accused, another woman was accompanying with the accused and when asked accused told him that she was his second wife, namely, Rajashree Nagne. Even it has come in

the evidence of PW-6 Balasaheb, Police Patil of Village Kadve that Rajashree was working as a teacher with Primary School and he knows Shrikant as he was husband of Rajashree and used to visit Kadve on holidays. The prosecution witnesses, PW-7 Sau.Megha and PW-8 Laxmibai have specifically stated that since after the marriage, Shrikant used to demand the amount of salary from Rajashree and on her refusal, used to beat and harass her. PW-8 Laxmibai has specifically stated that on 13th September, 2007, Shrikant picked up quarrel with Rajashree on the count of money and beaten her in presence of Laximbai. She further stated that two days later Shrikant again came to Kadve and demanded monthly salary from Rajashree and on her refusal given beating to her. It has also come in the evidence of Laxmibai that on 24th September, 2007 also Shrikant subjected Rajashree to harassment and gave threats to her. Thus the

prosecution has proved that Shrikant used to ill-treat and beat Rajashree on the count of non-payment of salary and thus, brought on record that the relations between the couple were not cordial and thus there was motive.

41. To prove the second circumstance that, before the incident appellant made telephone call to Rajashree and asked her to come at Kolhapur, the prosecution has examined, PW-8 — Laxmibai, PW-9 Namdeo and PW-10 Dashrath. Through the evidence of these prosecution witnesses, the prosecution has proved that on the day of incident in the morning hours, Shrikant made telephone call at the house of PW-9 Namdeo and asked him to call Rajashree and accordingly Rajashree talked with her husband Shrikant who told her to come at Kolhapur and when she replied that she had no money to travel to Kolhapur, Shrikant requested

PW-10 Dashrath to give Rs.50/- to Rajashree. The prosecution has brought on record that accused Shrikant was taking out entire salary of his wife Rajashree and at one point of time she had even no Rs.50/- with her for travelling expenses. Thus, the prosecution has proved that before the incident accused Shrikant made telephone call to Rajashree and asked her to come at Kolhapur where further incident took place.

42. To prove the second circumstance of `last seen together', the prosecution has examined PW-2-Navnath, who was the Manager of Hotel Raj Delux at the relevant time. The prosecution has proved through the evidence of PW-2 that on 3rd October, 2007 a couple with infant arrived at the hotel and hired Room No.103 for stay and occupied the same. His evidence further discloses that the male person from the couple written his name in the

hotel register as Shrikant B. Gaikwad, resident of Kadve, Tq. Shahuwadi. His evidence further discloses that on the next day, it was noticed that the room was locked from inside and when Police kicked open the door, it was found that Rajashree was lying dead on the bed having a cloth tightly wrapped around her neck and Shrikant was not present in the said room. This witness along with the Police also noticed that stopper of shutter of the window of said Room No.103 was out of order and therefore, one could lock the room from inside by standing outside the room. His evidence further shows that they found one chit kept on the dressing table in the room wherein it was written that the writer of the chit has killed his wife Rajashree, working as a teacher at Kadve, Tq. Shahuwadi and soon he will be surrendering before the Police. Thus, through the evidence of this witness PW-2, the prosecution has proved that

deceased was last seen in the company of the accused. The prosecution has proved the circumstance that shutter of the window of the concerned room was out of order and it was possible to lock the door from standing outside the room. Therefore, the prosecution has proved the circumstance that after committing the offence the accused has came out of the room and by standing outside the room, closed the door of the room from inside.

43. To prove the fourth circumstance, the prosecution has examined PW-11 Dr.Pravin who conducted autopsy on the dead body of Rajashree. It is the case of the prosecution that accused Shrikant, by tightening the cloth around the neck of Rajashree and killed her by strangulation. The prosecution has proved through the evidence of PW-11 that cause of death of Rajashree was Asphexia

due to strangulation. Even this Medical Officer has opined that death of Rajashree would have been occurred between 12 to 24 hours prior to start of postmortem examination. This also corroborates the prosecution case that accused had done Rajashree to death in the earlier night in the hotel Room.

44. In the facts and circumstances of the present case, the prosecution has proved beyond reasonable doubt that Rajashree was last seen in the company of appellant on 3rd October, 2007 at about 1.00 p.m. in the afternoon and thereafter nobody has seen her alive. Therefore, the onus lies on the appellant to explain what happened to Rajashree when she was last seen in the company of the appellant. In this respect the appellant has not offered any explanation. Though the appellant has made feeble attempt to say that at the relevant time he was at Pune and taken the defence

of alibi, but no evidence either oral or documentary, is produced on record by the appellant in that respect. Even the appellant has not probabilized the defence of alibi. The Supreme Court in the case of Deepak Chandrakant Patil vs. State of Maharashtra[1], in Para-15 held thus:

> "15. In the instant case, we are satisfied that the trial court and the High Court rightly appreciated the evidence on record and the circumstances proved against the appellant conclusively prove his guilt. Mere fact that there is no evidence to show that he actually assaulted the deceased may not be of any consequence in the facts and circumstances of this case. We may only observe that in the face of the reliable evidence on record that the deceased had accompanied him at 10.30 p.m. on 29-12-1998, the accused-appellant did not offer any explanation as to whether they parted company thereafter. The fact that he knew about the dead body of the deceased lying in the garden behind the house of A-1 is almost clinching in nature and leaves nothing to doubt. Having considered the evidence on

1(2006) 10 S.C.C. 151

record, we are satisfied that there is no justification for interference with the order of conviction and the sentence imposed on the appellant. This appeal is, therefore, dismissed."

45. The Supreme Court in the case of Ashok vs. State of Maharashtra[2], in Para-12 held thus:

"12. From the study of abovestated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of

2(2015) 4 S.C.C. 393

> the deceased, may lead to a presumption of guilt."

46. The Supreme Court in the case of Rohtash Kumar vs. State of Haryana[3], in Para-34 held thus:

> "34. Thus, the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him."

47. All the circumstances proved by the prosecution clinchingly established the guilt of the accused and nobody else. These established circumstances rule out any reasonable possibility of innocence of accused from any point of view in respect of the offence of murder. The chain of circumstantial evidence is so complete against the accused as to rule out any other hypothesis about

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3(2013) 14 S.C.C. 434

his innocence.

48. The trial Court has considered the entire evidence brought on record and observed in Para-59 of the impugned Judgment that, if the accused was found to be present lastly along with deceased Rajashree, the entire onus would be upon him to explain as to how and in what circumstance Rajashree was found dead. Such an explanation is not forthcoming from the accused. The trial Court has further observed in para 87 of the Judgment that, from the discussion of the evidence, it could be inferred that the prosecution has established beyond any manner of doubt that deceased Rajashree was in the custody of the accused from 1.00 p.m. of 3rd October, 2007 till she being found dead in Room No.103 on 4th October, 2007. There was no possibility of anybody having an access to Room No.103 as nobody really knew

that inner latch to the door of that room could be closed or opened by anybody while standing outside the room. There is also absolutely no material available on record from which it could be inferred that there could have been possibility of some other barging into Room No.103 with a view to rob deceased Rajashree of her ornaments. The trial Court has lastly observed that, the prosecution has brought home the guilt of the accused for an offence of commission of murder of his wife. The trial Court has convicted the appellant—accused for the offence punishable under Section 302 of IPC and sentenced him, as afore-stated.

49. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the

findings of conviction of the appellant, which are in consonance with the evidence on record. The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

50. Hence, we are of the opinion that there is no merit in the Appeal. Accordingly, Criminal Appeal stands dismissed.

[A.S. GADKARI, J.] **[S.S. SHINDE, J.]**