

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

CRIMINAL APPEAL NO.59 OF 2014

Satish Maganrao Jadhav
Age: 24 years, Occu.: Agri.,
R/o.Waluj, Taluka Gangapur,
District Aurangabad.

..Appellant

VERSUS

The State of Maharashtra

..Respondent

...
Advocate for Appellant : Shri.Nilesh S.Ghanekar
APP for Respondent-State : Shri S.G.Karlekar

...
**CORAM : S.V.GANGAPURWALA &
M.G.SEWLIKAR, JJ.**

**RESERVED ON : 07.08.2020
PRONOUNCED ON : 11.09.2020**

JUDGMENT (Per M.G.Sewlikar J.):

1. This appeal is preferred by the original accused No.1 against the Judgment and order dated 09.01.2014 in Sessions Case No.263 of 2012 (Old Sessions Case No.178 of 2009) passed by the Additional Sessions Judge, Vaijapur, whereby the appellant – accused No.1 has been convicted for the offence punishable under Section 302, 201 and 498-A of the Indian Penal Code (IPC) and is sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 302 of the IPC and to suffer rigorous imprisonment for seven years and to pay

fine of Rs.2,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 201 of the IPC, and to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 498-A of the IPC . By the same Judgment and order, accused No.2 - Ashabai w/o. Maganrao Jadhav (the mother of accused No.1) is acquitted of the offences punishable under Sections 302, 201 and 498-A of the IPC.

2. Facts giving rise to this appeal are as under;

The deceased-Varsha was the daughter of the informant Manik Kacharu Chavan (PW-1). Varsha at the age of 19 years got married with accused No.1, the appellant herein. Acquitted accused No.2 - Ashabai w/o. Maganrao Jadhav is the mother of accused No.1. Varsha was maintained well for a period of six months after the marriage by the appellant and accused No.2. Thereafter, they started doubting her chastity and used to beat and ill-treat her. They used to say that she had illicit relations with some boys in the village. Resultantly, she was driven out of the house. She was pregnant at that time. The deceased started living at her maternal place. She delivered a baby boy. The appellant did not come to take her back for a period of one year.

Thereafter, the appellant filed a petition for divorce (infact it is the petition for restitution of conjugal rights). Finally, this case was amicably settled in Lok Adalat and on the same day i.e. on 18.01.2009, the deceased went for cohabitation with the appellant.

3. It is further alleged that on 12.02.2009, the deceased made a telephonic call to the informant and informed him about beating by the appellant and accused No.2. The informant and his wife (PW-6) by the name of Alka immediately went to Waluj i.e. matrimonial place of the deceased. On enquiry, the deceased stated that the appellant and accused No.2 used to say that the deceased Varsha had illicit relations with someone at Turkabad. They used to say that she came to her matrimonial house against their will and they would eliminate her some day. She was subjected to beating for the whole night. The informant and his wife confronted the aforesaid incident to the accused No.2 and appellant and they apologized and assured to maintain the deceased well.

4. It is further alleged that in the same night, at 09:30 p.m., the appellant called up on landline of the informant and told him that he killed Varsha on the Railway track and disconnected the

phone. The informant and his relatives immediately went to the Police Station. The police, the informant and his relatives searched for the deceased. Since the deceased could not be traced, the informant lodged the missing report on 13.02.2009. On 15.02.2009, the appellant made a telephonic call on the mobile of Kishor (PW-3), the son of the informant and informed him that he had killed the deceased Varsha at flyover and disconnected it. The informant intimated the Police about this development. Police searched the tower location and it was revealed that the appellant was speaking from Latur.

5. It is further alleged that on 17.02.2009, the informant got the information that the appellant had come to the house of his brother in law - Dilip Vaidya at Chikalthana. Accordingly, the Police went to that place and brought the appellant to the Police Station. On interrogation, the appellant disclosed that on 12.02.2009, he had taken the deceased Varsha on Motorcycle to the east of Golwadi Phata and at a ditch, he strangled the deceased by means of wire. He mutilated her by means of stone, extracted some petrol from his Motorcycle and poured on the deceased and set her on fire. When the accused led the Police there, the clothes of deceased, one anklet, a pair of chappal were found. At that place, the skull of the deceased, her

jaw bones of various body parts, hair, a plastic bottle and a stone stained with blood were found scattered. Therefore, the informant lodged a First Information Report (FIR) on 17.02.2009, on the basis of which Crime No.20 of 2009 for the offences punishable under Sections 302, 201 and 498-A of the IPC came to be registered with Police Station, Waluj, Tq.Gangapur, Dist.Aurangabad.

6. The investigation was taken up. Statements of the witnesses were recorded. Memorandum of the accused was recorded. He stated in the memorandum that he would show the place where he had committed the murder of the deceased and thereafter, led the prosecution to that place. Accordingly, Panchanama (Exhibit-34) was drawn. At the instance of the accused, a wire was recovered. Inquest Panchanama (Exhibit-42) was drawn. His Motorcycle was seized. The accused No.1 gave memorandum (Exhibit-58) that he would produce the clothes, which he was wearing at the time of the incident and at his instance, the said clothes i.e. T-Shirt and Pant were seized vide Panchanama (Exhibit 59). Personal search of the accused was conducted vide Panchanama (Exhibit 68) on 17.02.2009, in which a travel ticket from Latur to Aurangabad of date 16.02.2009 and other articles were found. Post Mortem on the dead body of the

deceased was conducted vide Post-Mortem report (Exhibit-72). Samples were taken for D.N.A. test and they were sent to the Forensic Science Laboratory (FSL). Other seized articles were sent to the FSL for opinion. D.N.A. report (Exhibit 106) shows that the D.N.A. of the dead body matches with the informant and after disclosure of the offence, charge-sheet was submitted against the accused.

7. Since the offence was triable by the Court of Session, case was committed to the Sessions Court,Vaijapur.

8. Charge was framed, read over and explained to the accused. They pleaded not guilty to it and claimed to be tried. Their defence is of total denial and false implication. The accused No.1 has given written statement under Section 233(2) read with Section 313 of the Code of Criminal Procedure, in which he has stated that he never ill-treated the deceased Varsha. He has stated in his written statement that she went missing when she was staying with her parents. Her parents had enquired with him whether the deceased had been to him and he had informed them that she did not come to him. The deceased was not living with him before she went missing. The Police and the informant and his relatives had got the information of tracing of the dead

body of the deceased at the flyover. He was called to the Police Station. The false memorandum was prepared that at his instance, the place where the dead body was lying was disclosed. The informant had cordial relations with all the Panchas and a false case has been prepared against him.

9. The learned Trial Court examined as many as 12 witnesses. The learned Trial Court found the appellant-accused No.1 guilty of the offence punishable under Sections 302, 201 and 498-A of the IPC. Therefore, the learned Trial Court convicted the appellant-accused No.1 for the aforesaid offences and sentenced him as stated above. The learned Trial Court did not find accused No.2 guilty and therefore, acquitted her of all the offences.

10. Heard Shri N.S.Ghanekar, learned counsel for the appellant and Mr.S.G.Karlekar, learned APP for the respondent State. Shri Ghanekar, learned counsel for the appellant argued that entire case of the prosecution is based on circumstantial evidence. He argued that in case of circumstantial evidence, chain of circumstances must be complete and each and every circumstance must be firmly established. It should be of definite tendency and it should rule out all the possibilities of innocence

of the accused and point towards guilt of the accused. He argued that chain is broken at several places. According to him, the prosecution failed to prove that the appellant had any motive to kill the deceased. According to him, the allegation against the accused is that he had suspicion that the deceased had illicit relations with someone at Turkabad, but no evidence in this regard was adduced.

11. He further argued that the entire case is fabricated against the appellant. It has come in the evidence of PW-1, the informant that the Investigating Officer had told the informant that the deceased was traced. He had engaged a photographer to take the photographs of the deceased, which goes to show that the Investigating Officer was aware of the place where the dead body was lying and in such a situation, it cannot be said that the recovery was at the instance of the appellant. He argued that spot panchanama does not show the presence of bones or their seizure. He argued that therefore, there is no evidence to show that these bones were of the deceased. He further argued that the evidence of the witnesses is inconsistent with each other.

12. Last seen theory is a weak type of evidence. Unless it is

shown that the time gap between last seen with the accused and the death is so small that there is no possibility of any other person to be author of the crime, last seen theory cannot be believed. He argued that there is no evidence that deceased was last seen with the appellant. The learned Trial Court did not consider all these aspects in their proper perspective. He, therefore, prayed for acquittal of the appellant.

13. Shri S.G.Karlekar, learned APP for the respondent-State argued that the deceased had gone from the Court to the appellant for resumption of cohabitation and thereafter, she went missing. He further argued that she was found at Police Station Waluj and from there, the deceased went with the appellant for cohabitation and since then the deceased went missing. He argued that the Investigating Officer did not know the place where the dead body was found. The identification of the dead body was established subsequently and therefore, it cannot be said that the Investigating Officer was aware of the place where the dead body was lying. He further argued that the D.N.A. of the deceased matched with the D.N.A. of the informant (PW-1), his wife (PW-6) and son Kishor (PW-3). He argued that the accused had motive to eliminate the deceased as the accused harboured suspicion that the deceased had illicit relations with

someone. He argued that this was the motive for eliminating the deceased. He argued that the conduct of the accused in not intimating the Police or the informant about missing of the deceased speaks volumes of his involvement in the offence. He argued that the appellant had given extrajudicial confession to PW-1 and PW-2 that he had done away with the deceased. He argued that the learned Trial Court has properly appreciated the evidence and has come to a right conclusion and therefore, interference in the order of the learned Trial Court is not warranted.

14. To prove that the deceased died homicidal death, the prosecution has examined Dr.Kailash Ukhirdaji Zine (PW10) at Exhibit 71. It has come in his evidence that the dead body was skeletonized and was having only the bones i.e. Skull, Mandible, Ribs, one Radius, one Humerous, one Clavicle, two Tibia and one Fibula. The soft tissue was missing and rest of the body was also missing. On examination of the Skull, there was evidence of reddish dis-colouration present over frontal, both parietal and occipital bone with infiltration staining. Injuries on the skull was ante mortem in nature. He has further stated that there was fracture of left side of occipital bone. Brain matter was missing. Spine and spinal cord were also missing. Samples were

preserved for D.N.A. analysis, Blood grouping, detection of poison and hystopathological examination. Accordingly, Post-mortem report (Exhibit 72) was prepared. He noted following injuries:-

“Injury in column No.17 i.e. on the Skull evidence of reddish discolouration present over frontal, both parietal and occipital bone with infiltration staining present and,

Injury in column No.19 i.e. evidence of reddish discolouration present over frontal both parietal and occipital bone with infiltration staining present. Evidence of fracture of left side of occipital bone. No infiltration seen on gross piece of bone.”

He has opined that these two injuries are sufficient to cause death in ordinary course of nature.

15. This witness was not cross-examined. The learned Trial Court has rightly held that the death was homicidal. The Medical Officer has initially stated that he could not give exact cause of death, but has again stated that the evidence of head injury is sufficient to cause death. On receipt of the reports from C.A. and hystopathological examination, he opined that the evidence of head injury is sufficient to cause death. It is worth noting that apart from this injury, there is other evidence like burnt pieces of clothes of deceased to indicate that the deceased died homicidal death. This aspect of the matter will be considered at proper

stage in this Judgment.

16. The entire evidence of the prosecution is based on circumstantial evidence. In case of circumstantial evidence law is well settled. It has been held in the case of ***Sharad Birdhichand Sarda Vs.State of Maharashtra [Air 1084 SC, 1622]*** as under:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

17. In the case of ***Hanumant Govind Nargundkar Vs.State of M.P. [1952 SCR 1091]***, the Hon'ble Supreme Court has laid down following principles for appreciation of circumstantial evidence.

“It is well to remember that in cases where the evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

18. Relying on the case of **Hanumant Govind Nargundkar** (supra), the Hon’ble Supreme Court in the case of **Naseem Ahmed Vs. Delhi Admn. [(1974) 3 SCC 668]** has held as under;-

“This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in

isolation and divorced from the context of the overall picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect."

19. Thus, in case of circumstantial evidence prosecution has to prove each and every circumstance on which it proposes to rely. The circumstances so proved should have a definite tendency of incriminating the accused, they should form a complete chain so as to exclude every hypothesis of innocence of the accused and unerringly point towards the guilt of the accused.

20. The circumstance on which the prosecution relies for proving its case are as under:-

- i) The appellant used to doubt the fidelity of the deceased Varsha and used to ill-treat the deceased Varsha on that count.
- ii) The appellant had filed a petition for restitution of conjugal rights, which was compromised and thereafter the deceased Varsha had resumed cohabitation with the appellant.
- iii) On 12.02.2009, the appellant informed the informant (PW-1) about taking of the deceased to the hospital for

treatment.

iv) Thereafter, the deceased went missing and on 13.02.2009, PW-1, the informant lodged missing report in the Police Station.

v) The appellant gave extrajudicial confession to the informant (PW-1) and Kishor (PW-3) about the murder of the deceased on landline of PW-1 and on mobile phone of PW-3.

vi) Tracing of the dead body at the instance of the appellant.

vii) Finding of the skeleton at the spot with burnt pieces of sari. Chappal, metal chain and other articles.

viii) Detection of kerosene on the clothes of the appellant.

ix) Matching of D.N.A. of the skeleton with the D.N.A. of father, mother and brother of the deceased i.e. identification of the skeleton to be of the deceased.

x) Conduct of the accused in not intimating the Police about the incident and not taking any efforts in searching of the deceased.

21. PW-1 is the father of the deceased. It is not in dispute that deceased Varsha got married with appellant on 23.01.2007. It is also not in dispute that the appellant had filed application for restitution of conjugal rights against deceased Varsha, which was

amicably settled in the Lok Adalat and the deceased had resumed cohabitation with the appellant.

22. It has come in the evidence of PW-1 that the appellant used to beat the deceased Varsha alleging that she had illicit relations with someone and used to drive her out of the house.

23. Coming back to the examination-in-chief of PW-1, the informant, he stated that the appellant had filed a petition for restitution of conjugal rights which was amicably settled on 18.01.2009 and the deceased Varsha went to leave with the appellant. On 12.02.2009, the informant got a call from Varsha on his landline. She told him that both the accused were ill-treating her and beating her. Therefore, PW-1, the informant and his wife went at about 09:00 a.m. to the house of the appellant. When PW-1 confronted parents of the appellant, the appellant apologized and assured to maintain her well. On the same day at 02:00 p.m., he got a call from the appellant that the deceased Varsha had been taken to the hospital by the appellant, accused No.1.

24. According to this witness, this information turned out to be false. When he went to the house of the appellant, the accused

No.2 was there in the house. They waited there for the deceased Varsha to come back till 06:00 p.m., but she did not come and therefore, he started searching the deceased Varsha. On 12.02.2009, at about 09:30 p.m., the appellant made a telephonic call on the landline of the PW-1, which was received by the son of PW-1 by name of Kishor (PW-3). It was the call made by the appellant in which he stated that he killed Varsha and her dead-body was lying on the Railway track at Manmad. Thereafter, he immediately went to the Police Station and lodged a missing report on 13.02.2009.

25. PW-1 has further stated that the appellant called Kishor (PW-3) on his mobile and informed him that he committed murder of Varsha at the flyover at Aurangabad. When Police checked the location of the appellant, it was revealed that said call was made by the appellant from Latur.

26. PW-1, the informant further deposed that on 17.02.2009 Police informed him that the appellant had come to the sister Swati at Chikalthana. After some time, villagers brought appellant. The appellant was taken to the Police Station, where he admitted his guilt and expressed willingness to point out the spot of the incident.

27. In the cross-examination, he stated that he made no enquiry with the appellant about the name of the person with whom the deceased Varsha was having illicit relations.

28. Kishore (PW-3), the son of PW-1, the informant, corroborated the testimony of the informant (PW-1) in all material particulars. He has stated that the deceased was treated well for six months. Thereafter, the appellant and accused No.2 started beating the deceased. The deceased Varsha had come to attend funeral of paternal grandmother and thereafter, she stayed at her matrimonial place.

29. He has further stated that the appellant had filed a petition for restitution of conjugal rights, which was amicably settled on 18.01.2009 and thereafter, the deceased went with the appellant for resumption of cohabitation. On 12.02.2009 at about 07:00 to 07:30 a.m., the appellant had come to his house and asked whether deceased Varsha had come to their house and thereafter, all of them started taking her search. Thereafter, the appellant went to Police Station where Varsha was present there. Varsha told him in the Police Station that the appellant had beaten her. The appellant apologized and assured to maintain her well and thereafter, deceased Varsha went with him for

cohabitation. On that day, at about 03:30 p.m., the appellant informed Kishor (PW-3) on phone that deceased had consumed sleeping pills and he was taking her to the Ghati hospital for treatment. Since, deceased Varsha was not traced, his father, the informant (PW-1) lodged report on 13.02.2009 about missing of deceased Varsha. On 13.02.2009, the appellant made a telephonic call on the landline of the informant (PW-1) and informed that he had committed murder of Varsha. He has further stated that on 14.02.2009, the appellant called him on the cell phone of Kishore (PW-3) and informed that he had killed Varsha and thrown her dead body near Railway bridge. In his presence, P.I. Bohure, obtained tower location of the appellant and it was found that the appellant was at Latur. He has further stated that the brother of Dilip Vaidya called him on his mobile and informed that the appellant had been at his house at Chikalthana. The appellant was taken to the Police Station, where it was disclosed that he killed Varsha. This witness was subjected to lengthy cross-examination, but nothing could be extracted so as to discredit his testimony.

30. Alka (PW-6), the mother of the deceased, has stated that the accused No.2 and the appellant started ill-treating the deceased after 5-6 months of marriage. Both of them used to

beat deceased Varsha. She has further stated that deceased Varsha had come to her maternal place after the death of her mother in law. After funeral, deceased Varsha went back to her matrimonial place. For tenth day ceremony, the deceased Varsha came back to her maternal place. At that time, she saw injuries of assault on the back and lap of Varsha. Thereafter, she did not send Varsha to her matrimonial house. Deceased Varsha was pregnant at that time.

31. She has further stated that on 12.02.2009, at about 07:00 to 07:30 a.m., Varsha called her up and stated that since three days her husband and her mother in law were beating her. Deceased Varsha also told her that she had come to Waluj Police Station. Thereafter, she and her husband went to Police Station. Varsha was there. Thereafter, Varsha went with the appellant for cohabitation. At about 05:00 to 05:30 p.m., upon the phone call of Varsha, her husband (PW-1) went to the house of Varsha at about 09:30 to 09:45 p.m. appellant gave phone call to her and told her that he killed Varsha.

32. Thus, from the statements of all these witnesses, it is evident that the deceased Varsha had settled the petition for restitution of conjugal rights amicably with the appellant and

went to live with the appellant. On 12.02.2009, the deceased Varsha was in the Police Station, where the appellant, PW-1, PW-3 and PW-6 went there. Thereafter, Varsha went with the appellant for cohabitation. It is also established from the evidence of PW-1, and PW-3 that the appellant had informed PW-1 that the deceased Varsha was taken to the hospital. According to PW-3, the deceased Varsha was taken to the hospital as she had consumed sleeping pills. However, this information given by the appellant turned out to be false as thereafter, the deceased went missing. The appellant also went missing. Thus, the appellant was the person with whom the deceased was last seen and thereafter, there was no trace of the deceased. Therefore, on 13.02.2009, PW-1, the informant lodged report in the Police Station.

33. It is pertinent to note that after the deceased was allegedly taken to the hospital by the appellant, there was no trace of her. The conduct of the accused in not placing true facts before PW-1, the informant, PW-3 and PW-6 about the deceased, speaks volumes about his involvement in the offence. Thus, the conduct of the accused shows his guilty mind. In normal course, he would have lodged missing report with the Police Station. There is no explanation from the accused as to why he did not lodge

the missing report.

34. It is the prosecution's case that the dead body of the deceased was traced at the instance of the appellant. Kalyan Baburao Patekar (PW-2) is the witness on the memorandum. He has stated that the accused showed willingness to show the place of offence. Accordingly, memorandum (Exhibit 33) was drawn. Signatures of Panchas were taken and thumb impression of the accused was taken. Thereafter, the appellant led to the place where the skeletonized body of the deceased was found. At that place, some burnt pieces of sari, bones, stone stained with blood, a plastic bottle, a metal chain, a pair of *Jodwe*, hairs, burnt knicker were found and they were seized vide the panchanama (Exhibit 34).

35. In the cross-examination, he has stated that the information of death of Varsha was given by him to the informant. He was knowing about the death of Varsha before going to the Police Station. The evidence of PW-12, the Investigating Officer shows that he had informed Photographer Shivaji Gaikwad that one lady was murdered and photographs are to be taken. In the evidence of PW-1, the informant, it has come that the informant PW-1 was told by the Investigating

Officer that deceased Varsha was traced.

36. On the basis of this evidence, learned counsel Shri Ghanekar submitted strenuously that the Investigating Officer was aware of the spot of the alleged murder. Therefore, it cannot be said that the bones, hair and other articles were recovered and spot was located at the instance of the appellant.

37. We do not agree with this submission. The inference, which learned counsel Shri Ghanekar wants us to draw is a far fetched one. What the Investigating Officer has said in the cross-examination is that the dead body of a lady was found. It is pertinent to note that when the accused led them to the spot of the incident what they found was a skeletonized body i.e. some bones and skull, some burnt pieces of sari, chappal and golden chain. It is not the case of the prosecution that at that time and at that place only the dead body was identified to be of deceased Varsha. It needs no expertise to tell that simply on the basis of a skull and bones, no one can identify the dead body to be of a particular person. It was virtually impossible for anyone, leave alone the Investigating Officer and the informant to state that the skeletonized body was of the deceased Varsha. On receipt of D.N.A. report, it was established that those bones were

of the deceased Varsha. Therefore, it is not possible for us to accede to the submission of learned counsel for the appellant that the Investigating Officer was aware that the dead body of the deceased was lying at the spot. Therefore, the evidence on record clearly shows that the spot of incident was discovered at the instance of the appellant.

38. The seized articles were sent to the FSL for analysis vide letter (Exhibit 104). The D.N.A. report is produced at Exhibit 106. It shows that pieces of bones and teeth, blood samples of PW-1, the informant Manikrao, PW-6, Alka, the mother of deceased and one Prajwal Jadhav (son of deceased) and hair were sent for analysis. The report shows that the D.N.A. of the deceased matches with the D.N.A. of her parents.

39. Learned counsel Shri Ghanekar argued that there is no evidence to show that the bones of the deceased were seized. Therefore, it cannot be said that the skeleton lying at the spot of the incident was of the deceased. He is right in making these submissions. There is no evidence to show that the bones were seized. However, the hair of the deceased were seized and they were sent for the analysis. The report of the Chemical Analyzer shows that the D.N.A. of the deceased matched with the D.N.A.

of her parents and her son. The D.N.A. report is not challenged by the accused. Therefore, it cannot be said that skeletons were not of the deceased.

40. PW-8 is the witness on seizure of clothes of the appellant, accused No.1. The appellant gave the memorandum that he had kept the T-shirt in ditch in tank and pant in bush by the side of the road near Sara Vaibhav Colony and that he was ready to produce T-shirt and pant. Accordingly, memorandum Exhibit-58 was recorded. Accused then led them to a ditch and took out T-shirt and produced the same before him. The T-shirt was of black colour. It was seized vide seizure panchanama Exhibit-59.

41. He has further stated that thereafter, two panch witnesses, Police and accused went in Jeep to Sara Vaibhav Colony. The appellant stepped out of the Jeep and brought pant from the bush and produced the same before him and Police. It was seized vide Panchanama Exhibit-60. Seized pieces of burnt sari and earth, burnt knicker, half cut plastic bottle, blouse pieces, burnt chappal, half T-shirt were referred to Chemical Analyzer for analysis vide letter Exhibit-104. The C.A. report Exhibit-76 shows that blood was detected on all these articles and it was of human but blood group could not be determined as the same were inconclusive. Similarly, burnt pieces of sari, knicker, half cut

plastic bottle, white metal chain were found to have kerosene residues.

42. Thus, this shows that the deceased must have been set on fire at the spot of the incident.

43. Thus, the evidence adduced by the prosecution and as discussed above, establish the fact that skeletons were of the deceased, the skull had head injury, the burnt pieces of sari and knicker had kerosene residues. The Medical Officer has opined that death could be caused by head injury. It is pertinent to note that the dead body did not have any soft tissue. It was a skeletonized body. The skull had head injury and it was found at a deserted place with burnt pieces of sari and chappal and blood was detected on the chappal, metal chain and other articles. The deceased was abandoned with these injuries. Naturally, the deceased did not get any treatment and therefore, the opinion of the Medical Officer that the death was due to head injury becomes acceptable. Therefore, the prosecution has proved that death was homicidal. It is not the defence of the accused either that the death was accidental. Therefore, it can be safely said that the deceased died a homicidal death.

44. PW-9 is the witness, who has proved the seizure of tickets of the appellant. He has stated that on taking personal search on 17.02.2009 at 04:30 p.m. of the appellant, leather vallet was found containing two currency notes of denomination of Rs.10 each, driving licence and travel ticket from Latur to Aurangabad. Panchanama Exhibit-68 shows that the said travel ticket was of the date 16/2 and pertained to travel from Latur to Aurangabad. This clearly shows that on 16.02.2009, the appellant travelled from Latur to Aurangabad.

45. As discussed above, on 12.02.2009, the appellant and the deceased Varsha left the Police Station for resumption of cohabitation and in the evening, it was informed to PW-1 that the deceased was taken to the hospital. If really the decesaed had been taken to the hospital, the appellant could have produced the evidence to that effect. Since then the appellant was not traceable. No explanation is coming from him as to how he parted company of the deceased.

46. Therefore, it is an additional factor to prove that the deceased was murdered by the appellant. In normal course, instead of going to Latur, he would have participated in the search of the deceased conducted by the informant (PW-1) and

others.

47. Shri Ghanekar, learned counsel for the appellant placed reliance on the case of ***Ashok s/o. Sonaji Bedke Vs. State of Maharashtra [2005 ALL MR (Cri.) 965]*** for the proposition that in case of circumstantial evidence motive plays an important role. If there is no motive for commission of offence, appellant is entitled to benefit of doubt. For this proposition, he placed reliance on the case of ***State through C.B.I. Vs. Mahender Singh Dahiya [2011 All MR (Cri.) 1295 (S.C.)]*** .

48. It cannot be said that the accused had no motive to eliminate the deceased. According to PW-1, the informant, the appellant used to doubt the chastity of the deceased. The appellant had filed application for restitution of conjugal rights. He had misrepresented the informant stating that he was taking the deceased for treatment and thereafter, there was no trace of the deceased. On the basis of these facts, it cannot be said that applicant had no motive to eliminate the deceased. Motive is a state of mind.

49. The prosecution has also placed reliance on the extrajudicial confession of the accused No.1, the appellant. According to the prosecution, on 15.02.2009, the appellant called

Kishor (PW-3) on his mobile phone and informed him that he had killed Varsha under overbridge at Aurangabad. It has come in the evidence of PW-1 that on obtaining tower location of the appellant, it was found that he was at Latur. This fact has been subsequently confirmed by the evidence of Mr. Ankush Dalvi (PW-9), panch on seizure panchanama of the articles found in personal search of the appellant. The dead body was accordingly found at the instance of the appellant at Golwadi Phata. This extrajudicial confession has been corroborated by the finding of the dead body at the instance of the appellant.

50. The learned counsel for the appellant placed reliance on the case of ***Vandana wd/o. Yogesh Mankar Vs. The State of Maharashtra [2015 ALL MR (Cri.) 1910]*** for the proposition that extrajudicial confession is a weak type of evidence.

“15. It can thus clearly be seen that after considering the law on the question, the Apex Court has in unequivocal terms held that the extra-judicial confession is a weak piece of evidence by itself and it has to be examined by the court with greater care and caution. It should be made voluntarily and should be truthful. It has been further held that it should inspire confidence. The apex court has further held that an extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. The apex court further held that if the basis of conviction is an extra-judicial confession then it

should not suffer from any material discrepancies and inherent improbabilities."

51. Extrajudicial confession was made on phone, which was subsequently confirmed by the tracing of the dead body.

52. Shri Ghanekar, learned counsel for the appellant submitted that the conduct of PW-1 in not confirming the place of the incident after receiving extra-judicial confession is unnatural. In normal course, the PW-1, the informant would have certainly gone to the spot mentioned by the appellant. Therefore, this conduct belies the theory of extra-judicial confession.

53. This submission has no force. The dead body was not found at the over-bridge. It was found at Golwadi Phata. Therefore, this submission cannot be accepted. Thus, the prosecution has established all the circumstances beyond reasonable doubt, mentioned above.

54. In view of the above, there is no force in the appeal. Hence, it is dismissed.

(M.G.SEWLIKAR)
JUDGE

(S.V.GANGAPURWALA)
JUDGE