

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

**CRIMINAL APPEAL NO.514 OF 2014**

1] Laxman s/o Pandurang Shinde,  
Age : 36 years, Occu: Agriculture  
R/o: Village Sautada, Taluka  
Patoda, District : Beed

2] Bibishan s/o Uttam Yeole,  
Age : 32 years, Occu: Agriculture  
R/o: Village Wadachiwadi,  
Taluka: Patoda, District : Beed.

... **Appellants**  
(Orig. Accused  
Nos. 1 and 2)

**VERSUS**

The State of Maharashtra,  
through the Police Station Officer,  
Ashti Police Station, Ashti,  
Taluka : Ashti, District : Beed.

... **Respondent**  
(Orig. Complainant)

...

Advocate for Appellants : Mr. Govind S. Kulkarni h/f Mr. Rajendrraa S.  
Deshmukkh Senior advocate  
APP for Respondent/State: Mr. S.J. Salgare

...

**CORAM : T.V. NALAWADE &  
MANGESH S. PATIL, JJ.**

**Reserved on 18.08.2020**

**Pronounced on : 03.09.2020**

**JUDGMENT (PER: MANGESH S. PATIL, J)**

This is an appeal under Section 374 of the Code of Criminal Procedure.

2. Briefly stated the prosecution case is to the effect that deceased Ramkisan was resident of Matkuli Tq. Ashti District Beed. He was serving as

a lecturer. There were illicit relations between him and the wife of the appellant No.1. It is alleged that the family members of both the sides were aware about such intimacy. Even attempts were made to sever such illicit relations with the intervention of some persons. It is alleged that on 26.05.2013 a quarrel ensued between the appellants and Ramkisan in a cattle camp of village Pokhari on account of the same cause. Soon after the incident Ramkisan informed his brother Kailas (PW-2) who advised him to approach police. Accordingly he went to Ashti Police Station and lodged a complaint about which a Non-Cognizable case Report (Exhibit-36) was registered by police constable Gaikwad (PW-5). The appellant No.2 happens to be the cousin of the wife of appellant No.1.

It is then alleged that in the night intervening 26.05.2013 and 27.05.2013 Ramkisan along with his family and Kailas (PW-2) who was residing in the same house separately had dinner and went to sleep. Ramkisan and his family members were sleeping in the yard of the house. It is then alleged that during that night Ramkisan had telephonic conversation with the appellant No.2 and left the house, even while his wife Savita (PW-6) was asking him as to where was he going in the midnight. Assuring her that he would return he left the house. It is then alleged that in the early morning Ambadas (PW-4) who was resident of the same village Matkuli, while going to his field saw Ramkisan dead in the bank of a river. He went to the house of Kailas (PW-2) informing about it. It is then alleged that Kailas (PW-2) along with Savita (PW-6) rushed to the spot, shifted

Ramkisan to the Civil Hospital at Ashti where he was declared dead.

Accidental Death Case No.13/2013 was registered at Police Station Ashti. An inquest was drawn. The dead body was shifted to Ghati Hospital at Aurangabad where the post mortem examination was performed by Dr. Kailas Zine (PW-7) he noticed following injuries:

1. *Contused abrasion present over infra clavicular region of right chest of size 8x6.5 c.m., reddish,*
2. *Contused abrasion present over lateral aspect of upper 1/3<sup>rd</sup> of right arm of size 5x3 c.m., reddish,*
3. *Abrasion present over posterior aspect of right elbow joint of size 2x1 c.m., reddish,*
4. *Abrasion present over right deltoid region of size 1x1 c.m., reddish,*
5. *Abrasion present over middle part of right aspect of mandible region of size 1x1 cm., reddish,*
6. *Abrasion present 2 c.m., below injury No.5 of size 2x1 c.m., reddish,*
7. *Contused abrasion present over medial aspect of right elbow joint of size 3x2 c.m., reddish,*
8. *Multiple contused abrasion present over lateral aspect of middle part of left thigh of size 2x1 c.m., to 1x1 c.m., reddish,*
9. *Multiple contused abrasion present over lateral aspect of upper part of left arm of size 2x2 c.m. to 1x1 c.m., reddish,*
10. *Contused abrasion present over left deltoid region of size 2x1 c.m., reddish,*
11. *Contused abrasion present over scapular area of right back of size 3x2 c.m., reddish,*
12. *Two abrasions 5 c.m. apart present over lower part of anterior aspect of left knee joint of size 1x1 c.m., of each., reddish.*

3. Post Mortem Notes (Exhibit-39) were prepared. A provisional opinion (Exhibit-42) was given about the death having been caused by poisoning with fracture of cervical spine. The viscera was preserved and was sent for chemical analysis. After receipt of the report of the chemical analysis final cause of death certificate (Exhibit-40) was issued, certifying

that the cause of death was ‘*Organochloro insecticide – Endosulfan poisoning with fracture of cervical spine at C6 level with multiple injuries*’.

4. In the meanwhile Kailas (PW-2) lodged a report (Exhibit-31) *inter alia* alleging that both the appellants have committed the murder. The offence was registered as Crime No.57/2013 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and the investigation was carried out by P.S.I. Bhikulal Wadade (PW-11). He conducted spot panchnama, collected the papers from the accidental case inquiry. It is alleged that Kailas (PW-2) produced the mobile handset of the deceased which was picked up by Savita (PW-6) when she visited the spot and handed it over to Kailas PW-2. It was seized by police under a panchnama. Both the appellants were arrested and their mobile handsets were also seized from their person under a panchnama (Exhibit-48).

5. P.S.I. Wadade (PW-11) thereafter, requisitioned the Call Data Record (C.D.R.) through the service providers namely Idea Cellular Ltd. and Bharti Airtel Ltd. It was noticed that the mobile handset of Ramkishan was having three SIM cards of three different service providers having numbers:

- i. 9823183097 (Vodaphone)
- ii. 9096742669 (Airtel)
- iii. 9763664109 (Idea)

6. The SIM card in the phone of appellant No.1 was found to be of Airtel having No.8698222698, whereas that of appellant No.2 was of the same company having No.9975435166. After receiving the Call Data Records of the cell phone of Ramkisan and that of the appellant No.2 it was

found that former had made four phone calls to the latter between 3:10 am and 3:28 am of different duration. It is alleged that these calls were made during the same time in the midnight when he was found by Savita (PW-6) speaking to someone on phone and left home. Since his dead body was found soon after the telephonic conversation, the Investigating Officer, Wadade (PW-11) inferred that in all probability the appellants must have killed Ramkisan for the obvious motive of his illicit relations with the wife of the appellant No.1. Accordingly he submitted the Charge Sheet. The Magistrate took the cognizance and committed the case to the Sessions Court.

7. The learned Sessions Judge framed the charge, conducted the trial and by impugned judgment and order convicted both the appellants and sentenced them to suffer life imprisonment and to pay fine of Rs.1000/- in default of payment of fine he also sentenced them to three months rigorous imprisonment.

8. The learned advocate for the appellants vehemently submitted that there is no direct evidence. The prosecution is relying upon only few circumstances which do not make a complete chain. The investigation itself was faulty and has been conducted in a lopsided manner. Inference sought to be drawn by the Investigating Officer is not based on sound material. So far as appellant No.1 is concerned except motive and the alleged previous day incident about which the Non-Cognizable Report (Exhibit-36) was lodged there is no iota of material against him justifying such inference. So

far as appellant No.2 is concerned, though the C.D.R., reveals about there being some telephonic conversations between him and Ramkisan, conspicuously all the four calls were made by Ramkisan to him and there is absolutely no record or entry in the C.D.R., revealing that the appellant No.2 had drawn Ramkisan to the spot. Besides the Investigating Officer has also not made any attempt to trace out/inquire with the holder of the SIM card of phone No.9975435166 which stands in the name of Dadasaheb Guruling Lohar. Even the tower location of that SIM is not the same from which the deceased Ramkishan had made these phone calls. No other incriminating material except such C.D.R., has been recovered from either of the appellants. Thus according to the learned advocate except the C.D.R., which also is not conclusive there is absolutely no material to reveal complicity of the appellants in commission of the crime. The learned advocate submitted that the appellants cannot be convicted and sentenced on mere suspicion howsoever strong it may be. The learned Sessions Judge has committed error in appreciating the facts, circumstances and evidence in the proper perspective and has drawn a jumping conclusion based on conjectures and surmises. He has not appreciated the evidence in the correct prospective which has resulted in returning the conviction which is liable to be quashed and set aside.

9. The learned APP supported the impugned judgment and order. He submitted that there was a strong motive for both the appellants to kill the deceased. There was a previous day incident which stands corroborated

in the form of lodging of Non-Cognizable case Report (Exhibit-36) which is further corroborated by the four telephonic conversations between Ramkisan and the appellant No.2. The latter is conspicuously silent throughout the trial including his examination under Section 313 of the Code of Criminal Procedure as to these conversations which have taken place at odd hours. His such silence gives rise to a strong suspicion about his active involvement and the circumstances brought on record by the prosecution are sufficient enough to unerringly point to the guilt of the appellants. No error has been committed by the Sessions Judge in appreciating the evidence and the appellants have been rightly convicted and sentenced.

10. Admittedly, there are no eye witnesses and the prosecution heavily relies on various circumstances which according to it are sufficient enough to draw a conclusive inference that in all probability the appellants must have committed the murder. The prosecution case is thus based on circumstantial evidence and the circumstance being relied upon are as under:

- a) Deceased Ramkisan had illicit relations with the wife of the appellant No.1.
- b) The family members of both the sides were aware about such relations including Savita (PW-6) who happens to be the wife of Ramkisan.
- c) In Diwali of the year 2012 some sort of mediation had taken place to give a full stop to such illicit relations.
- d) On the previous day of murder i.e. on 26.03.2013 in the afternoon a

quarrel had taken place between Ramkisan and the appellants at Pokhari cattle camp for the same reason of illicit relations.

- e) Ramkisan had left home in the midnight while talking to somebody on phone and left home assuring Savita (PW-6) that he would come back after a while and soon thereafter Ramkisan met with homicidal death in the early hours of 27.03.2013.
- f) The Call Data Record reveals that Ramkisan had telephonic conversation with appellant No.2 during the same time when he left home in the midnight.

11. As can be seen from the impugned judgment and order, the learned Sessions Judge has proceeded to examine authenticity of each of these circumstances on the basis of the evidence led by the prosecution. We have no manner of doubt that he has meticulously scanned the evidence and has reached a well reasoned conclusion about the prosecution having established and proved all these circumstances. One could have safely proceeded on the premise that all these circumstances stand duly proved as has been held by the learned Sessions Judge. However, we deem it proper to reappreciate the evidence and to reach an independent conclusion as regards veracity or otherwise of the circumstances.

12. Starting with the all important motive, there does not seem to be a serious dispute about the fact that Ramkisan was having illicit relations with the wife of the appellant No.1 and the family members of both the sides were aware about it. Rather the fact stands duly established in the FIR

(Exhibit-31) and the testimony of not only Kailas (PW-2) but even Savita (PW-6). Again existence of such illicit relation clearly stands admitted on behalf of the appellants not only from the questions and the manner of cross examination of Savita (PW-6) but also from their stand in the written statement filed by them during examination under Section 313 of the Code of Criminal Procedure. Not only this but the defence version as can be appreciated from such cross examination and the written statement is to the extent that there was an attempt to mediate in the dispute and to sever such relations due to the intervention of maternal uncles of Ramkisan who were residing at Sautada which is the place of residence of the appellant No.1. It is also the defence version that since after such mediation the relations between the couple were severed which fact has also been duly admitted by Savita (PW-6) during her cross-examination. Therefore irrespective of such admission there is enough material to substantiate the conclusion drawn by the Sessions Judge that the prosecution has been successful in proving that there was strong motive for both the appellants to kill Ramkisan.

13. As far as the incident which had taken place on 26.03.2013 at Pokhari cattle camp, the prosecution version stands duly corroborated and therefore proved by the lodgement of a Non-Cognizable Report (Exhibit-36) which was duly received and registered as such by Police Head Constable Gaikwad (PW-5). He has stated about having registered the Non-Cognizable case on a report lodged by Ramkisan about occurrence of the incident at

Pokhari Cattle Camp.

14. There is also a testimony of Sandip (PW-3) who has stated about having met Ramkisan on an earlier day i.e. 25.03.2013 and who had arranged a meeting between the appellants and Ramkisan at Pokhari Cattle camp on 26.03.2013. Independent of his testimony which is being sought to be assailed for being partisan in as much as he happens to be a friend of Kailas (PW-2) lodgement of the complaint and registration of Non-Cognizable report (Exhibit-36) is sufficient to substantiate and prove that indeed some incident had taken place at Pokhari Cattle Camp in the afternoon hours of 26.03.2013 of which the a Non-Cognizable Report (Exhibit-36) was registered.

15. As can be seen from NC report (Exhibit-36) it was lodged at 18:15 hours and *inter alia* reads that the appellants had abused and threatened Ramkisan of dire consequences on account of previous quarrel/dispute. Since the report has been received and registered by Police Head Constable Gaikwad (PW-5) in the ordinary course of his official duty, one can safely proceed, as has been rightly done by the learned Sessions Judge, by holding the circumstance to have been duly proved.

16. Now turning to the next circumstance, Savita (PW-6) has specifically stated that in the midnight which according to her was about 2:00 am., she woke up having heard Ramkisan talking to some one on phone. He told her that he was talking to somebody. She further stated that thereafter he left home stating that he would return. She then stated about

having woke up Kailas (PW-2) and about having informed him that Ramkisan had left while talking to some one on phone. She thereafter stated that in the early morning when she woke up at 5:00 O'clock, having found that Ramkisan had not returned, they started a search but in a short while Ambadas (PW-4) informed them that Ramkisan was lying on the bank of the river and accordingly they all went to the spot where Ramkisan was found dead. The dead body was taken to the Government Hospital at Ashti. So far as this episodes is concerned, the version of Savita (PW-6) duly establishes the fact that Ramkisan had left home in the midnight while talking to some one on phone and his dead body was found early in the morning.

17. Same dispute is sought to be raised as to the exact cause of death, whether it is due to poison or because of fracture of cervical spine or both. The fact remains that Dr. Zine (PW-7) has performed the Post Mortem examination as per the Post Mortem report (Exhibit-39) and has issued the Final Cause of Death Certificate (Exhibit-40) certifying that the cause of death was due to poisoning and fracture of cervical spine which is based on a Chemical Analysis Report (Exhibit-41) certifying that it contained poison of the nature described therein. Therefore It is more than clear that Ramkisan has died a homicidal death and it could neither be accidental or suicidal. The learned Sessions Judge has also correctly appreciated the evidence in this regard and has reached a similar conclusion which cannot be faulted with.

18. This takes us to the all important Call Data Record and the circumstance establishing that indeed there was same telephonic conversation between Ramkisan and the appellant No.2. Before turning to it, it is necessary to emphasis that so far as this circumstance is concerned, in fact this is a circumstance being relied upon to implicate the appellant No.2. Independently, except the prosecution version that both the appellants were sharing common intention for the motive sought to be attributed to them, the Call Data Record does not reveal and cannot be resorted to and is not available *qua* the appellant No.1.

19. The prosecution has examined one Mr. Dattaram Aangare (PW-9) who happens to be the Nodal Officer of the Idea Cellular Ltd. and who produced the Call Data Record (Exhibit-58) of the Phone No.9763664109 which belonged to Ramkisan and Phone No.9975435166 which is alleged to be used by the appellant No.1. He specifically stated on the basis of this C.D.R. that there was a telephonic conversation between these two members at 3:10:11, 3:13:1, 3:20:46, 3:27:21 hours of 27.03.2013 and the tower location of Ramkisan's phone where from the calls were originated was 40422-10083-1177 which was of location Karhewadi Tq. and District Beed. The version of this witness Aangare (PW-9) also stands supported by a witness Chetan Patil (PW-10) who is the Nodal Officer of Bharati Airtel Ltd. who produced the CDRs (Exhibit 65 to 67) and who has stated that there were indeed four telephonic conversations between phone Nos.9763664109 and 9975435166.

20. Some capital is sought to be made out from the fact that this witness Chetan Patil (PW-10) has admitted that SIM No.9975435166 was issued to one Dadasaheb Guruling Lohar, resident of Mohol District Solapur but the Investigating Officer Wadade (PW-11) has not made any attempt to make any inquiry with that person to ascertain as to how this sim card has landed with the appellant No.2. At the first blush the submission of the learned advocate for the appellants on this count does seem to be attractive. However, one cannot but point out that according to the prosecution the mobile handset found in the personal search of the appellant No.2 was seized under a panchnama (Exhibit-48) and during that search the handset was found with this SIM card. More importantly such seizure has been admitted on their behalf as can be seen from the endorsement put by their learned advocate Mr. Hange who admitted this Panchnama and allowed it to be exhibited. If this is the state of affairs, the appellants cannot now be allowed to raise any dispute on this count. Certainly the Investigating Officer Mr. Wadade (PW-11) should have but has not made any investigation or made any inquiry with Dadasaheb Guruling Lohar. But since the SIM card has been found in the handset being used by the appellant No.2 and which fact stand admitted on his behalf, the submission of their advocate seeking to gain some ground on this count is liable to be discarded. It is thus quite clear that there is enough evidence to show that the deceased Ramkisan and appellant No.2 had indulged in four telephonic conversations in frequent succession at odd hours between 3:10 am and 3:28 am of

duration 86 sec, 35 sec, 38 sec and 109 sec on 27.03.2013.

21. We have no manner of doubt that this is a startling circumstance where a man who has met with a homicidal death within 2/3 hours of such conversations had indulged in such frequent phone calls with the appellant No.2. As can be seen, this circumstance has heavily weighed with the learned Sessions Judge. But then after a careful scrutiny we have come to the conclusion that though this link is all important, it does leave a room to doubt if independently this could be the only circumstance which would on its own sufficient to jump to a conclusion that in all probability, the appellant No.2 is involved in the crime.

22. It is to be noted that all these four calls were made by deceased Ramkisan. The Call Data Record (Exhibit-58) does not show that before such conversations there was any such telephonic talk between Ramkisan and appellant No.2 at any previous point of time much less soon before these four conversations. No call was initiated by the appellant No.2 so that one could have reasonably inferred that he could have drawn Ramkisan to the spot. The fact that Ramkisan himself has initiated all the four calls creates a serious doubt if really it was the appellant No.2 who had made Ramkisan to go to the spot by leaving the house in the midnight with only the inner wears and the full pant on his person. One cannot comprehend as to how and what had prompted Ramkisan to initiate such conversation in the midnight. Therefore even if it is a matter of fact which stands duly proved that Ramkisan and appellant No.2 had had four telephonic

conversations, without there being any other material one cannot jump to the conclusion that the latter had made Ramkisan to reach the spot where he was subsequently found to have been killed.

23. A careful perusal of the impugned judgment reveals that the learned Sessions Judge was conspicuously alive to the fact that all the four phone calls were initiated by Ramkisan and none was initiated by the appellant No.1 but has over looked this circumstance which according to us is an important aspect of the matter. To repeat, the telephonic conversation was initiated by Ramkisan and is not preceded by any other telephonic call whereby the appellant No.2 could be said to have expected Ramkisan to initiate such phone calls in the midnight.

24. True it is that the appellant No.2 could have but has not come out with any plausible explanation about such conversations, either during the course of the cross-examination of the prosecution witnesses or during his examination under Section 313 of the Code of Criminal Procedure. However, suffice for the purpose to observe that the prosecution has to stand or fall on its own legs and it is the right of an accused to keep mum. In our considered view, it would not be proper to seek an explanation from the appellant No.2 in this regard and to jump to the conclusion holding him guilty of the murder because of his absence to accord any explanation in respect of such telephonic conversations. Needless to state that the prosecution has to travel the distance between 'may' and 'must'. Mere suspicion howsoever strong cannot take the place of proof. A fact has to be

established as a conclusive proof in order to hold a person guilty of the crime. Existence of such circumstance showing that Ramkisan had four telephonic conversations with the appellant No.2 in the midnight, 2 to 3 hours prior to his murder though is a strong circumstance, it is not decisive of the matter.

25. There is one more aspect which according to us is equally important. The tower location of the place from where Ramkisan had initiated the telephonic conversation is Karhewadi Tq. Beed, whereas according to Patil (PW-10) the tower location of the SIM card of the appellant No.2 was Kuslumb Tq. Patoda. There is no evidence to draw any inference that appellant No.2 could have reached the spot inviting Ramkisan through such telephonic conversation. The learned Sessions Judge has held this to be a minor circumstance while brushing it aside. In our considered view it was a duty of the prosecution to weed out this circumstance. It has miserably failed to do so and the learned Sessions Judge has committed an error in overlooking it. Though this circumstance showing that Ramkisan and appellant No.2 were involved in a telephonic conversation few hours before the former met a homicidal death, it is not strong enough to reach to a conclusion of guilt, on its own, and there are not enough circumstances to connect this link so as to make a complete chain to draw a reasonable hypothesis regarding guilt of the appellants in commission of murder.

26. The learned Sessions Judge has pointed out that soon after the incident the appellants had indulged in several telephonic conversations

inter se, to draw an inference that in all probability they must have killed the deceased by sharing common intention else there was no reason why the two would have had these many conversations. In our considered view when the appellants are relatives and even according to the prosecution they both were together even on the previous day during the course of the episode which took place at the Pokhari Cattle Camp, one cannot draw any inference merely because the C.D.R. reveals that they had indulged in infrequent telephonic conversations during the day time of 27.03.2013. Though by virtue of Section 8 of the Indian Evidence Act, subsequent conduct of an accused is relevant, in our considered view such multiple telephonic conversations between the appellant *inter se* on 27.03.2013 after Ramkisan was killed, do not lead us to draw any inference much less as is drawn by the learned Sessions Judge.

27. True it is, as has been laid down in the case of **Sucha Sing and Anr Vs. State of Punjab; 2003 Supreme Court Cases 1697** that the prosecution is not required to meet any and every hypothesis put forward by the accused. However, the facts and circumstances in the matter in hand discussed herein above clearly leave a reasonable doubt in our mind as to the guilt of the appellants. Though there was a strong motive for both of them, the motive itself cannot take the place of proof howsoever strong it might be.

28. Thus what we have in the final analysis is that there was a strong motive in the form of illicit relations between Ramkisan and the wife

of appellant No.1, then there was an incident of quarrel on 26.03.2013 between them about which a Non-Cognizable Report (Exhibit-36) was lodged and that there was a telephonic conversation in the midnight between Ramkisan and the appellant No.2 and he was found murdered 2 to 3 hours thereafter. According to us these circumstances do not form a complete chain which would unerringly point at the guilt of the appellants. The learned Sessions Judge ought to have given a benefit of doubt to them to which according to us they are entitled to.

29. To sum up, the circumstances sought to be relied upon by the prosecution in our considered view though have been duly established by cogent evidence, those do not make a complete chain so as to reach a conclusion about guilt of the appellants, who therefore are entitled to a benefit of doubt.

30. The appeal is allowed. The impugned judgment and order convicting the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code is quashed and set aside. They are acquitted and be set at liberty forthwith.

31. They shall, however, execute a personal recognizance for an amount of Rs.50,000/- each as contemplated under Section 437 A of the Code of Criminal Procedure.

**(MANGESH S. PATIL, J.)**

**(T.V. NALAWADE, J.)**