

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.474 OF 2016

GOPAL SHANKARAPPA RATHOD)
Age – 27 years, R/o. A/O. Gorvantala Tanda)
Taluka Lingsur, District Raychur, Karnataka)
At present : Kolhapur Central Prison)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Payoshi Roy i/b. Mr.Yug Chaudhary, Advocate for the Appellant
Mr.V.B.KondeDeshmukh, APP for the Respondent – State.

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 22nd SEPTEMBER 2020

JUDGMENT : (PER : V. G. BISHT, J.)

1 This appeal has been preferred against the judgment of conviction and order of sentence passed by the learned Sessions Judge, Kolhapur, in Sessions Case No.49 of 2014 on 22nd April 2015 convicting the appellant-accused for the offence punishable

under Section 302 of the Indian Penal Code (IPC) and sentencing him to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- (Rupees One Thousand Only), in default, to further suffer simple imprisonment for one month.

2 In short, the prosecution case runs as under :-

- (a) Tarasing Narayan Powar, Informant, at the relevant time was working on a stone crusher belonging to one Adinath Bharmappa Mahajan of Village Madilge Budruk, Taluka Bhudargad, District Kolhapur. Gopal Shankarappa Rathod (accused), his wife Smt.Savita Gopal Rathod (deceased), Pundlik Bhinglu Chavan, Smt.Vidyabai Pundlik Chavan and their family members were also employed with said Adinath Bharmappa Mahajan. The deceased was informant's cousin.
- (b) According to the prosecution, the accused is addicted to liquor and used to beat the deceased by suspecting her infidelity and was of the view that she was having physical relations with his brother Jayram. The informant and one Baliram, Mukadam used to persuade him.

(c) On 6th November 2013, there was a weekly market of Village Gargoti. The informant and others started at about 11.30 a.m. and even asked the accused to accompany them for the weekly market. The accused, according to the prosecution, told them that he had stock of necessities and therefore, would not accompany them. At about 4.30 p.m., the informant found the seven months old son of the appellant-accused crying and therefore, he enquired with the boys of the area. The boys told him that after he (informant and others) left for market, the accused and his wife went to a forest which was near the stone crusher for collecting firewood and did not return. The informant and others started searching for them. At about 6 p.m., they found the deceased in a rivulet of Gairan Pathar forest within the limits of Madilge Budruk village, having sustained injuries on head and near ear and in a pool of blood. However, the accused was found nowhere. The deceased was taken to the government hospital of Village Gargoti where the doctor declared her dead.

- (d) The informant, on the ground of suspicion, lodged the report against the appellant-accused alleging therein that the appellant-accused might have committed murder of the deceased on the ground of her infidelity.
- (e) The First Information Report (FIR) was registered vide C.R.No.93 of 2013 by Bhudargad Police Station for the offence punishable under Section 302 of the IPC. Investigation was taken up by PW9 Rohidas Sukhdev Powar. He visited the place of occurrence, prepared Inquest Panchnama and Spot Panchnama. He also prepared Seizure Panchnama of the various articles found on the spot, collected advance cause of Death certificate, seized clothes of deceased and that of accused, recorded statements of five prosecution witnesses, sent the seized articles to the Forensic Science Laboratory and after collecting the Chemical Analyzer's Report and on completion of investigation, forwarded the charge against the appellant-accused under Section 302 of the Indian Penal Code and the case was committed to the Court of Sessions, Kolhapur.

(f) To substantiate the Charge against the appellant-accused, the prosecution has examined as many as nine witnesses and exhibited number of documents. The accused was questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.) about the incriminating evidence and circumstances and the appellant-accused denied all of them as false and pleaded that he has been falsely implicated in the case. Upon appreciation of the oral evidence and the circumstances, the trial Court convicted the appellant-accused for the offence punishable under Section 302 of the IPC and sentenced him in the manner stated hereinabove. Hence, this appeal.

3 Ms.Payoshi Roy, learned counsel for the appellant/accused, has advanced twofold submission. First submission advanced by the learned counsel is in respect of delayed forwarding of FIR to the concerned Magistrate sans explanation. On this aspect alone, the truthfulness of the contents of the FIR needs to be questioned seriously, according to the learned counsel. Secondly, the whole case is based on circumstantial evidence and the learned trial

Court misdirected itself while appreciating those circumstances, in as much as, those circumstances which have been relied by the prosecution are not sufficiently established and therefore, the learned trial Court committed patent illegality in convicting the accused based on those circumstances. For all these reasons, the appeal deserves to be allowed, argued learned counsel. The learned counsel also placed reliance in Mahadeo Kundalik Vaidya and Others vs. State of Maharashtra¹ and Anant Bhujangrao Kulkarni vs. State of Maharashtra².

4 Mr.V.B.KondeDeshmukh, learned APP, on the other hand, taking exception to the above stated submissions, wholeheartedly supported the impugned judgment and order of conviction passed by the learned trial Court. According to the learned APP, the circumstances relied on by the prosecution are duly established on record and therefore, in such circumstances, it would be wrong to say that the prosecution was not able to bring home the guilt to the accused. There being no merit in the appeal, the same is liable to be rejected, urged learned APP.

¹ 2001 SCC Online Bom 1119 : 2001 Cri.L.J. 4306

² 1993 Supp (2) Supreme Court Cases 267

5 It is seemly to state here that the whole case of the prosecution rest on the circumstantial evidence. Where a case is totally hinges on the circumstantial evidence, it is the duty of the Court to see that the circumstances which lead towards the guilt of the accused have been fully established and they must lead to a singular conclusion that the accused is guilty of the offence and rule out the possibilities which are likely to allow the presumption of innocence of the accused.

6 The Honorable Apex Court in Hanumant Govind Nargundkar v. State of M.P.³ has laid down the principles as under :-

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be 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

3 AIR 1952 SC 343

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.”

7 In Sharad Birdhichand Sarda vs. State of Maharashtra⁴ the five golden principles which have been stated to constitute the panchsheel of the proof of the case based on circumstantial evidence are (i) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established, (ii) 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, (iii) the circumstances should be of a conclusive nature and tendency, (iv) they should exclude every possible hypothesis except the one to be proved, and (v) there must be a chain of evidence so complete as not to leave any

4 (1984) 4 SCC 116 : AIR 1984 SC 1622

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.

8 In the case of Dharam Deo Yadav vs. State of U.P.⁵ the Hon'ble Apex Court held as under :

“Each and every incriminating circumstances must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. Even when there is no eye witness to support the criminal charge, but prosecution has been able to establish the chain of circumstances which is complete leading to inference of guilt of accused and circumstances taken collectively are incapable of explanation on any reasonable hypothesis save of guilt sought to be proved, accused may be convicted on the basis of such circumstantial evidence.”

5 2014 Cri.L.J. 2371 (S.C.)

9 With the assistance of the learned counsel and the learned APP, we have thoroughly gone through the evidence led by the prosecution witnesses.

10 It appears from the record that the appellant-accused was last seen accompanying the deceased to the forest for collecting firewood, a case which is put forth by the prosecution through its witness PW5 Laxmi @ Papi Seu Rathod. Next, there was a motive for committing murder of the deceased because the appellant-accused suspected her infidelity and extra-marital affairs with his own brother Jayram. Before adverting to the other evidence in the form of alleged discovery and forensic science report, we intend to appreciate homicidal death first and then would like to ascertain whether in essence the above noted two circumstances are successfully and satisfactorily established by the prosecution or not.

11 PW6 Dr.Swapnil Sharadchandra Malavade stated in his evidence (Exh.21) that on 7th November 2013, the dead body of the deceased was brought to Rural hospital Gargoti for

postmortem. On examination, he found the following external injuries on the person of the deceased :

- “1. E.N.T. Bleed seen (ear and nose)
2. Right ear pinna cut with avulsion injury in upper 1/3rd region
3. CLW over the right temporal area measuring 4 x 2 x 2 cms
4. CLW over occipital region of 6 x 2 x 5 cm with evidence of underline fracture
5. CLW over left temporal area 4 x 2 x 2 cm
6. CLW over right parietal area 4 x 2 x 2 cm
7. CLW over left occipital parietal region 3x2x2 cm
8. Scalp haematoma with underline fracture over occipital region 4 cm in length

12 On further examination, he found the following internal injuries :

- “1. Scalp haematoma present over occipital region
2. CLW seen over (i) right temporal region 4 x 2 x 2 cms, (ii) occipital region 6 x 2 x 5 cms (iii) left temporal regional 4 x 2 x 2 cms (iv) right parietal region 4 x 2 x 2 cm (v) left occipital parietal region 4 x 2 x 2 cms

3. Fracture at Occipital region with evidence intracranial haemorrhage on right occipital temporal region
4. Evidence of brain laceration over the right occipital temporal region.”

13 It is his further evidence that in his opinion, the probable cause of death was head injury with intracranial haemorrhage. The external injuries were corresponding to the internal injuries. It is his further evidence that the external injuries nos.3 and 4 were individually sufficient to cause death in the ordinary course of nature and so were the internal injuries nos.3 and 4. Those injuries were on the vital part of the body and were possible by a blunt object like an axe (Art. 1). He then proved the postmortem report at Exh.22.

14 Needless to note here that the homicidal death of the deceased is not disputed in any manner by the learned counsel for the appellant-accused. Having regard to the nature of injuries sustained by the deceased on the vital part of the body and the

fact that the injuries were collectively sufficient to cause death in ordinary course of nature, we hold that the deceased died a homicidal death.

15 In the case of **Ashok vs. State of Maharashtra**⁶, the Hon'ble Apex Court at paragraph 13 observed as under :

“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 Indian 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 the deceased, may lead to a presumption of guilt.”

16 In **Purushotham and Another vs. State by Sindhanur Police, Karnataka**⁷ the learned Singh Judge of Karnataka High Court

6 AIR 2015 SC (Supplementary) 709

7 2016 Cri.L.J. 1453

observed that “last seen” theory comes into play where the time gap between both the deceased and accused were seen last alive and when the deceased found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

17 PW3 Tarasing Narayan Powar, the informant, stated in his evidence (Exh.16) that at the relevant time he was working on a stone crusher of Adinath Bharmappa Mahajan. The accused and the deceased were also working on the said stone crusher. The deceased was his cousin.

18 It is his further evidence that the accused used to consume liquor and rake up quarrels with Savita i.e. the deceased as he suspected that she had extra-marital relation with his brother Jayram.

19 On 6th November 2013, he and others started to visit the weekly bazaar at Gargoti and, therefore, asked the accused to accompany them but the accused replied that he still had the stock

of necessities and that if required, he would get the things in small quantity from Village Madilge. They returned to the stone crusher at about 4.30 p.m. The accused and the deceased were not at home. His sister-in-law Laxmi @ Papi (PW5) informed him that the accused and the deceased had gone to bring the firewood after entrusting their baby to her. However, the accused and the deceased did not return. He and others then started searching and found the deceased lying in a rivulet and was wailing. She had sustained injuries on the back of her head and ear. The injuries were bleeding. She was not in a condition to speak. He and others then took the deceased to Rural Hospital, Gargoti. The Medical Officer examined her and declared her dead.

20 It is his further evidence that thereafter, he went to Bhudargad Police Station and lodged the report. He then proved his report at Exh.17.

21 From the plain and simple reading of the evidence of the informant, it does not take much prescience to note that this witness has no personal knowledge as to the accused and

deceased leaving from the house to forest for collecting the firewood. According to his evidence, it was PW5 Laxmi @ Papi who told him that the accused and the deceased had gone to forest to collect firewood. Even this piece of evidence, in our studied view, does not corroborate from his own FIR. According to the FIR, the informant had seen the seven months old son of the accused and the deceased crying and it is then that he confronted the boys around there and from them he came to know that the accused and the deceased had left for forest to collect firewood. As against this, the substantive evidence of the informant depicts an altogether different story and there is material improvement. We say so because the substantive evidence brings in the role of PW5 Laxmi @ Papi and it was she who was not only taking care of the son of the appellant-accused and the deceased but on being asked, she told the informant about the appellant-accused and the deceased having gone to forest for collecting firewoods. We are not satisfied with the nature of evidence of this witness though he is a formal witness. Even if he

is a formal witness, he was expected to testify in accordance with the contents of his own FIR.

22 What matters us most is the testimony of PW5 Laxmi @ Papi for all purposes. We find it from the record that the learned trial Court placed heavy reliance on the testimony of this material witness, who appears to be a child witness. It is seen from her deposition that at the relevant time, she was 10 years old and as she was not able to understand the language of the court and rather was comfortable with her native language, her evidence came to be recorded with the help of Dr.Kishan Chandu Rathod, an interpreter.

23 According to the PW5 Laxmi @ Papi, on the day of occurrence, her sister and brother-in-law, Motibai, Pundalik, Vidyabai and Baliram had gone to the market. Gopal (accused), Savita (deceased) and their son, herself and the children of her sister were at the stone crusher. Gopal and Savita told her to look after their son as they were going to the hill to collect the

firewood. They also told her to call them if the boy cried more. When the boy cried, she gave a call but they did not return.

24 It is her further evidence that the persons who had gone to the market, returned to the stone crusher. They enquired as to where Gopal and Savita had gone. She told them that they had gone to the hill to collect firewoods and inspite of she giving them a call, they did not return.

25 From the examination-in-chief of this material witness, we notice two things. One, before leaving the house, the appellant-accused and the deceased had handed over the custody of their son to this witness with an understanding that if their son cries, they can be summoned by this witness by calling them. Secondly, the hill where the appellant-accused and the deceased intended to go to collect firewood was quite nearer to their house and that is why they asked this witness to give them a call if their son happens to cry. It is also clear from the evidence of this witness that she did give a call to them but to no avail. This in itself shows that the appellant-accused and the deceased were not at an

audible distance. What is of great concern is that the whole evidence is not a part of the FIR. In normal course, it would have been there, as the informant himself had ascertained about the whereabouts of the appellant-accused and the deceased from this witness. This is all about the examination-in-chief. There is something more in the cross-examination which certainly puts the prosecution in a bad light.

26 The evidence which we are referring is in relation to the examination-in-chief discussed earlier. This witness stated in her cross-examination that the hillside to which Gopal and Savita had allegedly gone was located at a considerable distance from the stone crusher site. This being so, in our opinion, the appellant-accused and the deceased could not have asked to this witness to fall back on them if their son cried. Either of the piece of evidence is wrong.

27 Her cross-examination then shows that she was called to the police station on the second day of death of Savita. PW3 Tarasing and PW4 Baliram accompanied her. As she does not understand

Marathi, the Police Officer used to put questions to Baliram and Tarasing and they used to translate those questions to her in Lamani language and the replies given by her were again translated by them into Marathi. According to her, she was again called at the police station in connection with an inquiry. At that time also, PW3 Tarasing and PW4 Baliram had accompanied her. When enquiry was made with her at the first occasion, her statement was not reduced into writing. Her thumb impression was obtained on a document. On the second occasion also, her thumb impression was obtained on a document.

28 There are two questionable bits. From the cross-examination it is more than clear that she was summoned by the police twice for enquiry in connection with the death of the deceased. She was interrogated first time with the help of PW4 Baliram and PW3 Tarasing as she was not able to understand Marathi. Why her statement was not recorded at the very first available opportunity by the investigating machinery is quite baffling and no explanation to that effect is forthcoming. Even

her thumb impression was also taken. On the second occasion, it seems she was again enquired and her statement seems to be recorded by the investigating machinery. There is, therefore, quite a scope to question the sincerity of the investigating machinery.

29 Lastly, the damaging piece of evidence which gives death blow to the credibility and testimony of the sole witness upon which the whole edifice of the prosecution case rests. She was asked following question by the defence :

“Question : Is it correct to suggest that Tarasing and Baliram had tutored you to depose as a witness ?

Answer : They had informed me that, if inquired, I should say that the accused Gopal and deceased Savita had entrusted their son to me.

30 From the answer so given by this witness, it is quite clear that this witness was asked by PW3 Tarasing/informant and PW4 Baliram to depose in a particular fashion. The matter does not end here. She further admitted that she had stated before the police as she was asked to state by PW3 Tarasing and PW4

Baliram. She then admitted that she had deposed before the court as she had stated before the police. This admission speaks volumes in itself. This admission is also a clear pointer to the fact that whatever statement of the witness came to be recorded by the investigating machinery was in the fashion as this witness was asked to state before the investigating machinery and that is how her statement became part of the evidence and naturally what was stated by her in statement came in her substantive evidence. To sum up, there is not much difficulty in holding that this witness is a got up witness and came to be prepared and posted at the instance of the informant /PW3 Tarasing and PW4 Baliram. It would be absolutely hazardous to place any explicit reliance even remotely on the testimony of this witness. Needless to say, we are not encouraged to accept the testimony of this witness.

31 PW4 Baliram Naik stated in his evidence (Exh.18) that on 6th November 2013, they returned from weekly bazaar at about 4 to 4.30 p.m. The son of Gopal and Savita was in custody of PW5 Laxmi @ Papi and was crying. He made enquiry with PW5 Laxmi

@ Papi. She told him that after a while of they leaving the stone crusher for weekly market, the appellant-accused and Savita left the stone crusher on the pretext of bringing firewoods from Madilge hillside and did not return.

32 First of all, the version of this witness that after returning from the market, he saw the son of the appellant-accused and Savita in custody of PW5 Laxmi @ Papi and that he was crying, does not get corroboration from the mouth of PW3 informant, apart from being the fact that the prosecution has not come up with this kind of case. Secondly, according to this witness, he only made enquiry with PW5 Laxmi @ Papi about the appellant-accused and the deceased and then PW5 Laxmi @ Papi replied that they had gone for bringing firewoods from Madilge hillside and had not returned. Even this piece of evidence also does not get support and corroboration from the mouth of the PW3 informant. We say so because according to the PW3 informant, he only had asked or he only had made an enquiry with PW5 Laxmi @ Papi as to whereabouts of the appellant-accused and the

deceased, which again, as noted by us, is not in consonance with the contents of the FIR. Therefore, we hesitate to place reliance on the testimony of this witness.

33 PW7 Sachin Powar is on the point of discovery of place of occurrence. His evidence (Exh.23) shows that on 15th November 2013, at about 11.25 a.m., he was called at Gargoti Police Station. Another panch witness viz., Sushant Lokare was with him. They were called in the police station as accused was to make a statement. His evidence then shows that accused made a statement to the effect that he suspected that his wife had illicit relations with his brother and that, he would show the place where the incident occurred. The Memorandum of Disclosure Statement, accordingly, came to be recorded in his presence and he then proved the said Memorandum of Disclosure Statement at Exh.24.

34 From the evidence of PW7 Sachin Powar it is clear that the alleged disclosure statement was purportedly given by the accused under Section 27 of the Evidence Act on 15th November 2013, at

about 11.25 a.m., whereas much to the chagrin of prosecution, if we read the evidence of PW1 Shripati Khade then it would appear that the Spot Panchnama (Exh.11) came to be prepared on 7th November 2013. This fact is plainly admitted by PW9 Rohidas Powar, Investigating Officer, in his cross-examination. PW9 Investigating Officer admitted in his cross-examination that pursuant to the disclosure statement, the accused had led them to the very same scene of occurrence, at which they had already drawn Scene of Occurrence Panchnama (Exh.11). This necessarily implies that the place of occurrence was known to the Investigating Officer well before the time when the alleged disclosure statement came to be given by the accused. Therefore, the prosecution cannot derive and deduce any advantage from the so called recovery statement recorded under Section 27 of the Evidence Act.

35 Now we are left with the motive. The prosecution has alleged that since the accused was suspecting the infidelity of the deceased, the very factor drove him to do away with the life of the

deceased. PW8 Laxmibai Pawar – mother of the deceased is examined by the prosecution on that point only. PW8 Laxmibai Pawar stated in her evidence (Exh.25) that the accused used to rake up quarrels with the deceased as he was suspecting her character. According to her, it is her claim that the accused killed the deceased as he suspected that the deceased had an extra-marital relations.

36 Needless to say motive is that which impels a person to do a particular act. There can be no action without a motive. Motive may create a very strong suspicion but it cannot take the place of proof. Mere possibility of existence of motive cannot make the accused guilty, as held by the Hon'ble Apex Court in the case of Sarwan Singh Rattan Singh vs. State of Punjab⁸. Where the prosecution case depends on circumstantial evidence, motive assumes significance and goes a long way to prove the case of the prosecution as held by the Hon'ble Apex Court in the case of Shivaji vs. State⁹.

8 AIR 1957 SC 637

9 AIR 1973 SC 55

37 Mere existence of motive by itself is not an incriminating circumstance and it cannot give rise to an inference of guilt nor can it form the basis for conviction. Motive for the crime, even if adequate, cannot by itself sustain a criminal charge. In the case in hand, we have discussed elaborately how the prosecution is found wanting in establishing the “last seen” theory. Therefore, practically, there is no evidence to establish any of the circumstances, which in such type of cases, need to be established by the prosecution and even if we assume for the sake of argument that the accused was harboring a motive to commit the murder of the deceased, that in itself, for want of other positive evidence, will not sail the prosecution through.

38 This brings us to the law point which is raised by the learned counsel for the appellant-accused during the course of arguments. It is to the effect that the FIR registered by the Police Station was not dispatched to the concerned Magistrate forthwith and there is every room to believe that it was lodged much later. In this regard, we would like to refer the observations of this court

(Coram : Vishnu Sahai and A. S. Bagga, JJ.) in **Mahadeo Kundalik Vaidya and Others (supra)** as under :

“23 We also have doubts whether the FIR was actually lodged by Prakash P.W.4 on 11-6-1994 at 12.30 noon as claimed by A.P.I. Bankar, P.W.11, the Investigating Officer, because, during the course of his cross-examination, in paragraph 12, he has admitted that the copy of the FIR was sent from the Police Station to J.M.F.C., Partur, bearing Outward No.688 on 13-6-1994 and the distance between the Police Station, Partur, and the court of J.M.F.C., Partur is only about half a kilometer. The Supreme Court in the case reported in (1980) 4 SCC 425 : AIR 1980 SC 638 : (1980 Cri.L.J. 446) (Marudanal Augusti v. State of Kerala) has frowned upon the delay in the FIR being dispatched to the Magistrate.

In our view, if the FIR had seen the light of the day at 12.30 noon on 11.6.1994, as alleged by the prosecution, then there was no earthly reason for its being sent as late as on 13.6.1994 to the Court of J.M.F.C. and if it was as is the case here, in view of the provision contained in Section 157 of the Code of Criminal Procedure, it was obligatory for the prosecution to furnish an explanation and the same has not been done here.

Section 157 of the Code of Criminal Procedure reads thus :

“(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers, not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender.....”

A perusal of the said provision would show that Section 157 of the Code of Criminal Procedure makes it obligatory for the officer in charge of a Police Station to forthwith send a copy of the FIR to the Magistrate empowered to take cognizance of the case.

Since, in this case, the FIR was purported to have been lodged on 11.6.1994 at 12.30 noon, but its copy was only sent to the Magistrate on 13-6-1994, the statutory mandatory obligation cast by Section 157 of the Code of Criminal Procedure has not been discharged by the prosecution.”

39 From the record and more particularly from the FIR it appears that the same was purported to have been lodged on 6th

November 2013 at 19.45 p.m. But from the endorsement given thereon, it appears that the same was received by the concerned Magistrate on 8th November 2013. Necessarily, the statutory obligation cast by Section 157 of the Cr.P.C. has not been discharged by the prosecution.

40 Having regard to the nature of evidence discussed so far and the fact that the prosecution has not been able to discharge its burden, we find merit in the submissions of the learned counsel for the appellant-accused that in all probability, the FIR was not lodged on 6th November 2013 but was lodged much later.

41 In Anant Bhujangrao Kulkarni (supra) the only circumstances that were found to be established were that the deceased was last seen alive in the company of the appellant on 13th October 1975 and that the dead body of the deceased was found in the Ladni near the residential portion of the appellant. In the opinion of the Hon'ble Apex Court, these two circumstances could not be said to be inconsistent with the innocence of the appellant and on the basis of these two circumstances alone, it

could not be held that the appellant was a party to the murder of the deceased. However, in the case in hand, there is no evidence at all to prove the last seen theory whereas in the case cited supra, the appellant was lastly seen in the company of the deceased and despite that, the Hon'ble Apex Court held otherwise.

42 On re-appreciation of the evidence, we are of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Whatever evidence brought on record in the form of circumstances are incapable of inference that it was the accused and accused alone, who committed the murder of his wife. On a studied scrutiny of the evidence on record, we are of the considered view that the prosecution has not been able to prove that it was the accused alone who authored the death of his wife.

43 In view of above, we pass the following order :

ORDER

- i) Criminal Appeal is allowed.
- ii) The judgment and order dated 22nd April 2015 passed by the learned Sessions Judge, Kolhapur in Sessions Case No.49 of 2014 is hereby quashed and set aside and the appellant-accused is acquitted of the offences charged against him. The appellant be set at liberty forthwith, if not required in any other case.
- iii) Fine amount paid, if any, be refunded to the appellant.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)