

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 245 OF 2014

1. Sachin S/o Jalindar Chavan
Age : 27 years, Occ – Labour
R/o. Pawalwadi, Taluka Pathardi
District Ahmednagar.

2. Babasaheb S/o Jalindar Chavan
Age : 31 years, Occ – Labour
R/o. Pawalwadi, Taluka Pathardi
District Ahmednagar.

... Appellants
(Orig. Accuses)

Versus

The State of Maharashtra

... Respondent

.....

Mr. N. C. Garud, Advocate for the Appellants
Mr. S. D. Ghayal, APP for the Respondent-State.

.....

**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.**

**RESERVED ON : 30.06.2021
PRONOUNCED ON : 09.07.2021**

JUDGMENT (PER V. K. JADHAV, J.) :

1. This appeal is directed against the judgment and order of conviction dated 24.02.2014 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 132 of 2013.

2. Brief facts giving rise to the present appeal are as under:

a. The informant Sanjay Ware is having an agricultural land at Lohasar, taluka Pathardi and he has constructed his residential house in the field itself. He was residing there along with his wife Vaishali (deceased), two sons and one daughter. The appellant-accused no.1 Sachin Chavan was working in his field since one and half year prior to the incident. The informant's wife, namely deceased Vaishali, was having a sim-card of Idea Cellular Company. It was given to appellant-accused no.1 Sachin. The informant or his wife Vaishali used to contact appellant-accused no.1 Sachin on the said sim-card/cell phone in connection with the agricultural work. According to the prosecution, due to frequent visits to the house of the informant by appellant-accused no.1 Sachin and also due to use of the said sim-card for contact purposes, the appellant-accused no.1 Sachin had developed intimacy with the wife of the informant, namely, Vaishali (deceased). It is also the case of the prosecution that the appellant-accused no.1 Sachin had developed an evil eye on deceased Vaishali. Even deceased Vaishali had informed the same to the informant Sanjay. About two months prior to the incident, the appellant-accused no.1 Sachin had made an attempt to outrage the modesty of deceased Vaishali and she had beaten him with the help of her slippers. It is also the case of the

prosecution that thereafter, informant Sanjay and deceased Vaishali both had asked the appellant-accused no.1 Sachin not to come to their house. However, accused no.1 Sachin was trying to remain in contact with deceased Vaishali.

b. On 08.01.2013, deceased Vaishali had gone to the weekly market at Karanji for purchasing the essentials on the eve of the Sankrant festival. She had taken Rs.5,00/- from the informant-husband Sanjay and left the house at about 9.00 a.m. However, she did not return to the house from the weekly market. The informant Sanjay and his brother-in-law had tried to search Vaishali, however they could not trace out her for about two days.

c. On 11.01.2013, informant Sanjay Ware lodged a missing report Exhibit 28 in Pathardi Police Station. Thereafter, while searching for deceased Vaishali, informant Sanjay noticed that there was a call from the cell number of his wife Vaishali which was handed over to accused no.1 Sachin Chavan. Informant Sanjay had informed this fact to the Pathardi Police Station. Thus, Pathardi Police Station obtained the call details and noticed that the call was from accused no.1 Sachin Chavan.

d. On 16.01.2013, the Pathardi Police caught hold of accused no.1 Sachin at Nepti Naka. During the course of investigation, it was transpired that both the appellants-accused took deceased Vaishali with them under the pretext of going to the temple situated in the Vruddheshwar valley. Thereafter, both the appellants-accused had committed murder of deceased Vaishali by smashing her head with the help of a stone. During investigation, accused no.1 Sachin pointed out the spot of incident where the dead body was lying. PW Sanjay Ware-informant identified the dead body as of his wife Vaishali. PW Sanjay Ware then lodged a report at the Pathardi Police Station. The said report is marked at Exhibit 29. On the basis of his complaint, crime no. 8 of 2013 for the offence punishable under Sections 302, 201 read with 34 of Indian Penal Code came to be registered in the Pathardi Police Station.

e. During the course of investigation, the Investigating Officer Ashok Amle (PW 14) prepared spot panchanama Exhibit 31 in the presence of the panchas and seized certain articles including the blood stained stone lying at the spot. He also prepared the inquest panchanama Exhibit 37 on the dead body. He also sent the dead body of deceased Vaishali to Sub-District Hospital, Pathardi for postmortem examination. After receipt of the report of viscera, the

medical officer, who has conducted the postmortem examination, gave opinion that deceased died due to head injury. PW 14 Investigating Officer Ashok Amle has also seized the cloths on the dead body and seizure panchanama was also drawn. During the course of investigation, while in police custody, accused no.1 Sachin has made a disclosure statement to produce the sim-card which was handed over to him by Vaishali and accordingly the same was recovered by drawing memorandum panchanama. Appellant-accused no.2 Babasaheb Chavan also made a voluntary statement to produce mangalsutra and ear-rings belonging to deceased Vaishali and accordingly, the memorandum of recovery was drawn in presence of the panchas. PW 14 Investigating Officer Ashok Amle also seized the cloths on the person of both the accused under the panchanama. During investigation, the call detail record of both the accused persons was collected from the Idea Cellular Company. The Investigating Officer then sent the cloths having blood stains and the articles seized from the spot to the Chemical Analyzer and after receipt of the report from the Chemical Analyzer, submitted charge sheet against both the accused for having committed offence punishable under Sections 302, 201 read with 34 of IPC.

f. The learned Additional Sessions Judge framed charge against both the accused under Sections 302, 201, 404 read with 34 of IPC. Both the accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all 14 witnesses to substantiate the charge leveled against the accused. The defence of both the accused is of total denial and false implication. Their statements under Section 313 of Cr.P.C. came to be recorded.

g. The learned Additional Sessions Judge, Ahmednagar, by the impugned judgment and order dated 24.02.2014, has convicted the accused persons as follows:

1. *Accused No. 1 Sachin Chavan is hereby convicted of the offence of murder punishable under section 302 of Indian Penal Code and sentenced to suffer imprisonment for life.*
2. *Accused No. 2 Babasaheb Chavan is hereby acquitted of the offence punishable under section 302 of Indian Penal Code.*
3. *Accused Nos. 1 Sachin Chavan and No. 2 Babasaheb Chavan are hereby acquitted under section 201 of Indian Penal Code.*
4. *Accused Nos. 1 Sachin Chavan & accused No.2 Babasaheb Chavan are hereby convicted under section 404 of Indian Penal Code and sentenced to suffer*

Rigorous Imprisonment for period of one year and to pay fine of Rs.1,000/- (Rs. One thousand) each, in default of fine to undergo simple imprisonment for further period of Three Months.

5. *Both sentences awarded to accused Nos. 1 Sachin Chavan and No.2 Babasaheb Chavan shall run concurrently.*

6. *Accused Nos. 1 Sachin Chavan and No. 2 Babasaheb Chavan are entitled for set off/remission under section 428 of the Code of Criminal Procedure.*

7.

3. Hence this Appeal.

4. Learned counsel for the appellants-accused submits that the prosecution case rests entirely upon circumstantial evidence and there is no direct evidence in this case. PW Sanjay Ware has lodged the missing report in Pathardi Police Station after a considerable gap. Deceased Vaishali was found missing from 08.01.2013. However PW Sanjay Ware has lodged the missing report Exhibit 28 on 11.01.2013 in Pathardi Police Station. In the said missing report Exhibit 28, PW Sanjay Ware has neither made any allegations against accused no.1 Sachin nor expressed any suspicion against him. PW 3 Laxman Auti, Police Naik was entrusted with the inquiry of the missing report Exhibit 28. According to said Police Naik PW

3 Laxman Auti, he came to know from PW Sanjay Ware (the informant) that several calls were made on the cell number of deceased Vaishali and those calls were received from one particular number. Thus, he obtained the call details of the said number and also traced out the location of the said cell phone. The said call detail reports are marked at Exhibits 34 and 35 respectively. PW Sanjay Ware has informed the Police Naik PW 3 Laxman Auti that those calls are from the cell phone of accused no.1 Sachin Chavan. On 14.01.2013, the Police party went to Nepti Naka and effected arrest of accused no.1 Sachin Chavan in presence of the complainant PW Sanjay and his brother-in-law. Learned counsel for the appellants submits that it is the case of the prosecution that accused Sachin has made a voluntary statement to show the spot where the dead body was lying and accordingly the police party, the informant and others went to the spot of incident and the police had drawn the spot panchanama Exhibit 31. Only thereafter, PW Sanjay Ware has lodged the complaint Exhibit 29. Learned counsel submits that there is no memorandum panchanama drawn by the police for the alleged statement made by accused Sachin before showing the spot of incident where the dead body was lying. The learned counsel submits that the statement to that effect recorded in the spot panchanama Exhibit 31 is not admissible in evidence.

5. Learned counsel for the appellants submits that the prosecution has failed to prove the chain of circumstantial evidence. The motive as alleged by the prosecution is very weak in this case. The prosecution case entirely rests upon the sole circumstance that deceased Vaishali was lastly seen alive in the company of accused no.1 Sachin in the weekly market of village Karanji. The prosecution has examined one Mithu Gite (PW 5) on that point. According to PW 5 Mithu Gite, on 08.01.2013, at about 11 a.m. to 11.30 a.m., he had seen deceased Vaishali on the motorcycle of accused no.1 Sachin Chavan. Learned counsel submits that this evidence is contrary to the motive as alleged by the prosecution. If at all deceased Vaishali had extended beating to accused no.1 Sachin because of his mis-behaviour some two months prior to the incident, and even though deceased Vaishali and her husband PW Sanjay had told accused no.1 Sachin not to come to their house, it was very unlikely on the part of deceased Vaishali to sit on the motorcycle of accused no.1 Sachin in the weekly market. In the backdrop of the evidence of PW 5 Mithu Gite, there was no apparent reason for accused no.1 Sachin to murder deceased Vaishali by taking her to an isolated place in the valley of Vrudhreshwar. Learned counsel submits that even if this circumstance of last seen together is accepted as it is, there is considerable time gap between the said last seen together and the

death of deceased Vaishali. Some eight days after the said circumstance of last seen together, the dead body of deceased was located.

6. Learned counsel for the appellants submits that there was no identification of the dead body and as per the opinion expressed by the medical officer, who has conducted the postmortem examination (PW 8 Dr. Manisha Hange), the dead body was in decomposed condition with disfigurement of face. Thus, personal identification of the body could not have been ascertained.

7. Learned counsel for the appellants submits that so far as the recovery of sim-cards from accused no.1 Sachin is concerned, the said recovery is meaningless for the reason that admittedly the said sim-card was given to him by PW Sanjay and deceased Vaishali during the course of employment of accused Sachin with them. Furthermore, the recovery of motorcycle has also no meaning. Learned counsel submits that even though one mangalsutra shown to have been recovered at the instance of accused no.2 Babasaheb Chavan, however, there is no further connecting evidence through PW Sanjay Ware that the said mangalsutra was belonging to deceased Vaishali. Learned counsel submits that as per the allegations made in the complaint, two sim-cards were given to

accused Sachin and the same shown to have been recovered under memorandum of recovery panchanama Exhibits 53 and 54 respectively. Learned counsel submits that even though the call detail records Exhibits 34 and 35 are accepted as it is, it indicates that several calls were made using the cell number of Vaishali and even till 15.01.2013 calls were made on the cell number of deceased Vaishali from those sim-cards. Learned counsel submits that if at all accused no.1 Sachin along with his brother accused no.2 Babasaheb have committed murder of deceased Vaishali, there was no reason for accused no.1 to make phone calls on the cell phone of deceased Vaishali. Learned counsel submits that there is no chain of circumstantial evidence unerringly pointing out the guilt of the accused. Both the appellants-accused nos. 1 and 2 are entitled for the benefit of doubt.

8. Learned APP submits that the prosecution has proved its case beyond reasonable doubt. The prosecution has proved the homicidal death beyond doubt and the dead body was duly identified by PW Sanjay as of his wife deceased Vaishali on the basis of the cloths and other articles found on the dead body. Learned APP submits that there is strong motive for the appellant accused no.1 Sachin to commit murder of deceased Vaishali. Deceased Vaishali had beaten accused no.1 Sachin because of his

mis-behaviour. Thus accused no.1 Sachin had a grudge against her. On the day of incident i.e. on 08.01.2013 deceased Vaishali was lastly seen alive in the company of accused no.1 Sachin at about 11 a.m. to 11.30 a.m. in the weekly market at village Karanji by PW 5 Mithu Gite. Prosecution has examined PW 5 Mithu Gite to prove the said circumstance of last seen together. The dead body was recovered on the basis of the disclosure statement made by accused no.1 Sachin. Learned APP submits that at the instance of accused no.1 Sachin, the sim-cards came to be seized by drawing memorandum of recovery panchanama Exhibits 53 and 54 and also recovered the mangalsutra of deceased Vaishali at the instance of accused no.2 Babasaheb by drawing memorandum panchanama and recovery panchanama Exhibit 52 and 52A. Learned APP submits that learned Additional Sessions Judge, Ahmednagar has rightly convicted accused no.1 Sachin for the offence punishable under Section 302 of IPC and also convicted both the accused persons for the offence punishable under Section 404 of IPC. There is no substance in this appeal and the appeal is thus liable to be dismissed.

9. The prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case.

10. The prosecution has examined PW 8 Dr. Manisha Hange and PW 12 Dr. Pandit Raosaheb Shirsath. Both the doctors have conducted postmortem examination on the dead body of Vaishali. In column no. 17 of the report Exhibit 48, it is mentioned as :

“Surface wound injuries over face & head are noted as follows : there is total disfigurement of jaw and facial structure, fragmentary remains of maxillary arch, fracture mandible, total dislodgment from TM joint, absence of facial structure including facial skin, soft tissue, eyeballs, nose, tongue, lips and cheek. Skull has been crushed with fragmentary remains of skull bone, absence of brain tissue noted.”

In addition to this, in column no. 16 :

“there is absence of right hand, right forearm, lower 2/3rd of right arm exposing right humerus shaft”

Certain injuries are also noted those may be due to body part eaten by animals. It is mentioned that the injuries mentioned over the extrimities are postmortem in nature. However, the injuries mentioned in column no. 17 are anti mortem in nature.

11. Initially, the opinion was reserved till the report of viscera. However, after receipt of viscera PW 12 Dr. Pandit Shirsath has

opined that deceased might have died due to head injury. Both the medical experts have accepted that the body was in highly decomposed condition and therefore, the final cause of death could not be given. On the basis of certain injuries on head, Dr. Pandit Shirsath (PW 12) has given the opinion that deceased might have died due to head injury. It appears from the evidence of both the medical experts that due to disfigurement of face, personal identity of the body could not be ascertained. On the basis of the injuries as detailed in column no. 17 of the postmortem report Exhibit 48, an inference could be drawn about homicidal death. However, the prosecution has not firmly established that the said dead body was of deceased Vaishali.

12. PW Sanjay Ware has deposed that he had identified the dead body as of his wife Vaishali on the basis of her ear-rings, mangalsutra, scarf and slippers. He has further explained that accused no.2 Babasaheb had taken out the ornaments and other articles from the dead body of Vaishali. According to him, he had identified the dead body of Vaishali on the basis of the sari on her body, bangles and slippers. We have carefully gone through the contents of the spot panchanama and the articles seized from the spot. It appears that the said spot panchanama Exhibit 31 was drawn on 17.01.2013 and the Investigating Officer has seized five

articles. Those articles are (1) the long hairs soaked in blood of deceased, (2) stones stained with blood, (3) the blood mixed earth, (4) black scarf from the head of the deceased and (5) the sample of simple earth. The inquest panchanama Exhibit 37 was drawn on 16.01.2013 and there is no reference to the scarf on the head of the deceased. One seizure panchanama Exhibit 56 of the seizure of the clothes on the person of deceased shown to have been drawn on 18.01.2013 wherein for the first time a reference has come about the sari and the blouse. PW Sanjay Ware has deposed that he has identified the dead body of Vaishali on the basis of the sari on her body, bangles and slippers. So far as the bangles and slippers are concerned, those are neither shown in the spot panchanama nor the inquest panchanama, nor seized by the Investigating Officer at any point of time. Even though PW Sanjay Ware allegedly identified the dead body on the basis of the sari, however, said sari was not shown as an article seized during the spot panchanama Exhibit 31. The said sari shown to have been seized only on 18.01.2013 i.e. two days after the said dead body was found. We are of the considered opinion that there is no proper identification of the dead body in this case. Even the Investigating Officer has failed to opt for a DNA test to identify the dead body.

13. It is needless to say that motive plays a prominent role when the prosecution case rests upon circumstantial evidence. In the instant case, the prosecution has shown the motive of accused no.1 Sachin that some two months prior to the incident, deceased Vaishali had beaten him with slippers on account of his misbehaviour and therefore, accused no.1 Sachin along with his brother accused no.2 Babasaheb had committed murder of deceased Vaishali. We find the motive very weak in this case. According to PW Sanjay, two months prior to the incident, accused no.1 Sachin had made an attempt to outrage the modesty of deceased Vaishali and thus, deceased Vaishali had beaten him and told him not to come to their house. In the backdrop of this, it is surprising that PW Sanjay Ware though searched his wife extensively from 08.01.2013 to 11.01.2013, however, he has not expressed any suspicion against accused no.1 Sachin in the missing report. It is also equally surprising that till 11.01.2013 PW Sanjay Ware has not filed the missing report Exhibit 28 in the concerned police station.

14. The prosecution has come with a story of last seen together. PW 5 Mithu Gite has seen deceased Vaishali on the motorcycle of accused Sachin on 08.01.2013 at about 11.00 a.m. to 11.30 a.m. in the weekly market at Karanji. We will discuss this circumstance in

detail. However, so far as the motive as alleged by the prosecution is concerned, the evidence of PW 5 Mithu Gite appears to be contrary to it. If at all deceased Vaishali was unhappy and reacted in harsh manner due to mis-behaviour of accused no.1 Sachin two months prior to the incident and she further directed accused no.1 Sachin as not to come to their house, it was very unlikely on her part to sit on the motorcycle of accused no.1 Sachin as a pillion rider at the crowded place of weekly market at village Karanji. We are of the considered opinion that the prosecution could not establish the motive of accused no.1 Sachin to commit murder of Vaishali.

15. So far as the circumstance of last seen together is concerned, the prosecution has examined witness PW 5 Mithu Tatyaba Gite. On 08.01.2013 in the morning deceased Vaishali left the house for purchasing the essentials from the weekly market at Karanji on the eve of Sankrant festival. PW Mithu Gite has seen deceased Vaishali on the motorcycle of accused Sachin on the same day at about 11.00 a.m. to 11.30 a.m. in the weekly market at village Karanji.

16. In the case of Mohibur Rahman and another v. State of Assam, reported in **(2002) 6 SCC 715**, in para 10 the Supreme Court has made the following observations:

“10. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. As already noted the dead body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance between the two places is about 30-40 kms. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW 6) does not bear such close proximity with the death of the victim by reference to time or place. According to Dr Ratan Ch. Das the death occurred 5 to 10 days before 9-2-1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24-1-1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed the evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far

as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.”

17. The Supreme Court has observed that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. On account of the close proximity of place and time between the event of accused having been last seen with the deceased and the factum, an irresistible conclusion can be drawn that either the accused should explain the circumstance or he should own the liability for the homicide.

18. In the instant case, there is no such proximity of time and place. The dead body of Vaishali was recovered on 16.01.2013 from Vrudhleshwar valley which is at a distance of 40 kms from Pathardi. Village Lohasar, where PW Sajnay Ware and deceased Vaishali were residing, is at a distance of 3 kms from the weekly market of village Karanji. Deceased Vaishali was found missing on 08.01.2013 and the dead body was recovered eight days after the date on which deceased was last seen in the company of accused no.1 Sachin. The medical evidence does not positively establish that deceased Vaishali died on 08.01.2013 or soon thereafter.

Admittedly, there is no other evidence indicating the exact time of death of Vaishali.

19. Furthermore, PW 5 Mithu Gite has admitted in his cross-examination that he had not informed anyone the fact of last seen together till his statement was recorded by the police. He has further admitted in his cross-examination that he was aware that people were searching Vaishali and Police had also come to his village to search Vaishali. He has also admitted in his cross-examination that he has gone twice to the police. First time he had gone to the police when Vaishali had died and at that time he had not told about the said incident of seeing Vaishali in the weekly market of Karanji to the police. PW Sanjay Ware has also admitted in his cross-examination that PW 5 Mithu Gite and one Sarangdhar Gite met him on 09.01.2013 at Lohasar, Taluka Pathardi. PW Sanjay Ware has also admitted in his cross-examination that on 08.01.2013 his wife deceased Vaishali first went to her maternal house before going to the weekly market. PW Sanjay Ware has voluntarily stated in his cross-examination that deceased Vaishali left her maternal home for going to the weekly market at about 12.30 p.m. In view of this admission, the theory of last seen together, put forth by the prosecution as a material circumstance, appears to be unbelievable. We are of the opinion that witness PW

Mithu Gite is a got up witness. His evidence is unreliable, not inspiring confidence.

20. We have carefully gone through the call detail record. We are surprised to note that as per the call detail record from 08.01.2013 to 15.01.2013, there are calls from a particular cell phone to the cell phone of deceased Vaishali or the informant. Accused no.1 Sachin along with his brother, if committed murder of deceased Vaishali, then it is very unlikely on his part to make phone calls on the cell phone of deceased Vaishali by using the sim-cards given to him by deceased Vaishali during her life time when accused no.1 was working in their field. Otherwise also, we do not find any relevancy in the call detail record to establish the guilt of the accused. Even if the frequency of calls between the sim-card/cell phone in possession of accused no.1 Sachin and the cell phone of deceased Vaishali is considered, it appears that there were intimate relations between them. However, the same is contrary to the motive as put forth by the prosecution to prove the involvement of accused no.1 Sachin in commission of murder of Vaishali. Similarly, even though there is recovery of the sim-cards at the instance of accused no. 1 Sachin, however, admittedly those sim-cards were given to him by PW Sanjay Ware and his wife deceased Vaishali when he was working in their field. There is no further evidence to

indicate that despite their insistence, accused no.1 Sachin did not return those sim-cards to them.

21. So far as the involvement of accused no.2 Babasaheb in connection with the present crime is concerned, he has been convicted for the offence punishable under Section 404 of IPC along with accused no.1 Sachin only due to recovery of mangalsutra and ear-rings at his instance. The prosecution has examined PW 10 Raju Sontakke to prove the memorandum of recovery panchanama Exhibit 52 and the recovery panchanama Exhibit 52A for the recovery of mangalsutra and the ear-rings. PW Raju Saotakke has not supported the prosecution. If for the sake of discussion we accept that the said recovery of mangalsutra and ear-rings was at the instance of accused no.2 Babasaheb, as deposed by PW 14 Investigating Officer Ashok Amle, however, we do not find any further connecting evidence so far as the said recovery is concerned. PW Sanjay Ware has deposed that he has identified the dead body of Vaishali on the basis of the sari on her body, bangles and slippers. We have already dealt with this part of the evidence. Even PW 14 Investigating Officer Ashok Amle has also admitted that he has not seen bangles and slippers. Even the sari was not seized at the time of drawing of the spot panchanama or the inquest panchanama. It is pertinent that the sari was seized by

drawing a separate panchanama on 18.01.2013, i.e. two days after the dead body was found. Even there is no reference in the complaint Exhibit 29 that the mangalsutra and the ear-rings on the dead body are missing. Further, we do not find any evidence to indicate that the said mangalsutra and ear-rings were shown to PW Sanjay Ware and he has identified the said articles as belonging to his wife. Even those articles were not shown to PW Sanjay Ware in the court for identification purpose. On the other hand, PW Sanjay Ware has initially stated in his examination-in-chief itself that he has identified the dead body of Vaishali on the basis of her ear-rings, mangalsutra, scarf and slippers. He has corrected himself. However, we cannot ignore that initially he has given the fatal admissions in respect of the mangalsutra and ear-rings. Further, the said memorandum of recovery as per Exhibits 52 and 52A is much later i.e. on 18.01.2013.

22. We have also carefully gone through the contents of the C.A. report Exhibit 47. It appears that the cloths on the person of the accused are marked as articles 9, 10, 11 and 12. As per the result of analysis, no blood is detected on Exhibits 9, 10, 11 and 12. Even though there is recovery of motorcycle at the instance of accused no.1 Sachin, however, we find no connecting evidence by way of recovery of the motorcycle. The Investigating Officer PW Ashok Amle

has deposed that during investigation, it was revealed that accused no.1 smashed the head of deceased by means of stone. Accused no.1 Sachin had demanded sexual relations from Vaishali and so Vaishali had assaulted accused Sachin and on that count murder had taken place out of revenge with the help of accused no.2. However, we hardly find any evidence to draw a conclusion to that effect as deposed by the Investigating Officer. On the contrary, the evidence indicates otherwise. We are of the considered opinion that the prosecution has failed to prove the case beyond reasonable doubt against both the accused persons. Thus, both the appellants-accused are entitled for the benefit of doubt. We accordingly proceed to pass the following order:

ORDER

- I. Criminal Appeal No. 245 of 2014 is hereby allowed.
- II. The impugned judgment and order dated 24.02.2014 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 132 of 2013 is hereby quashed and set aside.
- III. Accused No.1 Sachin Jalinder Chavan and accused no.2- Babasaheb Jalinder Chavan are hereby acquitted of all the charges.

- IV. The fine amount, if deposited, shall be refunded to them.
- V. The appellant-accused no.1 Sachin Jalinder Chavan and the appellant-accused no.2- Babasaheb Jalinder Chavan shall execute P.B. of Rs.15,000/- each, with one surety of the like amount each to appear before the higher court as and when the notice is issued in respect of any appeal or petition filed against the judgment of this Court. Such bail bonds shall remain in force for a period of six months from the date of its execution.
- VI. Criminal Appeal No. 245 of 2014 is accordingly disposed off.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)