

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

**CRIMINAL APPEAL NO.393 OF 2014**

Ayyub s/o Yakub Shaikh,  
age 39 yrs, Occ. Labour,  
R/o Village Itkal,Tq. Tuljapur,  
District Osmanabad.

..Appellant..  
(orig. accused)

Versus

State of Maharashtra,  
Through Police Station,  
Naldurg.

..Respondent..

...

Advocate for Appellant : Mr.Sanjaykumar Chavan (Appointed)  
APP for Respondent : Mr. R V Dasalkar

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.

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Reserved on : 23.8.2021  
Pronounced on : 08.09.2021

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**JUDGMENT :- ( Per V. K. JADHAV, J.)**

1. This appeal is directed against the judgment and order of conviction passed by the Sessions Judge, Osmanabad dated 30.4.2014 in Sessions Case No.10 of 2013.

2. Brief facts of the prosecution case, are as follows :-

a] PW-1/informant Rajabhai Imam Bhambharte (Shaikh) is resident of village Itkal. The

appellant/accused Ayyub is son-in-law of the complainant. Deceased Anwarbee was given in marriage to the appellant/accused and they were having two children out of their marital wedlock. After marriage, they were residing at village Itkal. On 10.8.2012 PW 1 Rajabhai came to know that his daughter Anwarbee was not returned from her place of employment. Hence, he had made inquiry with his relatives, but he could not trace out her though he has made every efforts to find out. Hence, on 12.8.2012 PW 1 Rajabhai had lodged the missing report of his daughter exhibit 14 at police station, Naldurg. It was registered as missing report no.15 of 2012 and inquiry was handed over to Bit Head constable Giri.

3. On 13.8.2012 however, PW 1 Rajabhai has lodged the complaint exhibit 13 in the concerned police station at Naldurg alleging therein that husband of deceased Anwarbee used to suspect about character of deceased Anwarbee and some 3 to 4 years prior to the incident, assaulted her and also caused injury to her by using axe. Even, PW 1 Rajabhai has lodged the complaint

about the said incident in the police station. PW 1 Rajabhai has expressed his suspicion that by suspecting about the character of deceased Anwarbee, the appellant/accused had committed her murder and also disposed off the dead body.

4. On the basis of his complaint, crime no.135 of 2012 came to be registered in the concerned police station for the offence punishable under section 302, 201 of the Indian Penal Code. API Shetkar took over the investigation of the crime. He has effected arrest of the appellant/accused. On 13.8.2012 the appellant/accused has made a voluntary statement in presence of the panchas that he had buried the dead body of the deceased Anwarbee in the house and, he has shown his willingness to point out the said place. Accordingly, PW 12 API Shetkar has drawn memorandum of panchnama exhibit 38 and also drawn the panchnama of the place where the accused has buried the dead body of Anwarbee. It was accordingly exhumed from the said buried place at his house. Said panchnama is marked at exhibit 38. Necessary permission was obtained from the

Tahsildar for exhuming the body and in presence of Naib Tahsildar, panch witnesses, Medical Officer, the dead body of was taken out from the buried place and, accordingly, postmortem was conducted on the spot itself. PW 9 Dr. Vishwanath Mallinath Swami has conducted postmortem examination on the spot itself, which is marked at Exhibit 32. Dr. Swami has noticed ligature mark around neck between larynx and chin above (thyroid cartilage) running along line of mandible bone, around whole neck except at a point over left side of neck (anteriorly aligning left border of the mandible where it is interrupted and is directed obliquely upwards. Length of ligature mark was 33 cm, breadth 1 1/2 cm and depth was 1/2 cms. There was minor abrasion in bed of groove. Said injury was ante-mortem in nature. In his opinion, death of deceased was caused due to 'asphyxia due to strangulation'. After completion of the investigation, Investigating officer has submitted charge-sheet before the Court.

5. The learned Sessions Judge, Osmanabad has framed the charge vide exhibit 4 against the

appellant/accused for the offence punishable under sections 302, 201 of the Indian Penal Code. The contents of the charge were explained and read over to the accused in vernacular and accused pleaded not guilty to the charge and claimed to be tried.

6. Prosecution has examined in all 12 witnesses to substantiate the charges levelled against the accused. The defence of the accused is of denial. According to him, the complainant Rajabhai used to demand money from him and deceased Anwarbee for consuming the liquor and deceased Anwarbee refused to give money to the complainant. Even, PW 1 Rajabhai and his wife used to insist Anwarbee to take divorce from the appellant/accused, to which deceased Anwarbee had refused. The informant had a grudge against Anwarbee so also against the appellant/accused. It is the defence of the accused that informant himself has killed his daughter and buried her. After completion of the prosecution evidence, the statement of the accused under section 313 of the Cr.P.C. came to be recorded.

7. By judgment and order dated 30.4.2014 the learned Sessions Judge, Osmanabad in Sessions case No.10 of 2013 has convicted the appellant/accused for the offence punishable under sections 302, 201 of the Indian Penal Code, which is as follows :-

- 1- The accused Ayyub Yakub Shaikh is convicted u/s 235(2) of Cr.P.C., of the offence punishable under section 302 of IPC and sentenced to suffer R.I. for life and to pay a fine of Rs.1000/- (Rs. One thousand only), in default of payment of fine, he is directed to undergo further R.I. for three months.
2. The accused Ayyub Yakub Shaikh is further convicted u/s 235 (2) of Cr.P.C. of the offence punishable under section 201 of IPC and sentenced to suffer R.I. for 7 years and to pay a fine of Rs.1000/- (Rs. one thousand only). In default of payment of fine, he is directed to undergo further R.I. for three months.
3. Both the sentences shall run concurrently.
4. The accused Ayyub Yakub Shaikh is in jail since his arrest on 13.8.2012 till the date. Subject to the provisions of section 433-A of Cr.P.C., he is entitled to set off, as provided u/s 428 of Cr.P.C.
5. The muddemal property pick-axe and spade be destroyed after the period of appeal is over, if appeal is preferred, then the decision of appeal.
6. The accused is informed that he has right to prefer appeal against this judgment before Hon'ble High Court.
7. Certified copy of this judgment be given free of costs to accused, forthwith.

8. Learned counsel for the appellant/accused submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. The appellant/accused and deceased Anwarbee were living happy married life as deposed by their daughter PW 2 Parvin Shaikh. Learned counsel thus submits that the circumstances relied upon by the prosecution are not proved, and, as such, the guilt of the accused is not established. Learned counsel submits that the prosecution has not proved the memorandum panchnama and recovery panchnama exhibit 38. The witnesses on the said panchnama are the habitual panch witnesses. The appellant/accused is entitled for the benefit of doubt.

9. Learned counsel for the appellant/accused, in order to substantiate his contentions, placed reliance on the following judgment :-

Sandip Baburao Waidande Vs. State of Maharashtra Through, Kurlap Police Station reported in 2021 SCC online 560.

10. Learned APP for the respondent-State submits that the prosecution case rests upon the circumstantial evidence and the circumstances relied upon by the prosecution are conclusive in nature pointing out the guilt of the appellant/accused. There is evidence about homicidal death of deceased Anwarbee. Her dead body was found buried in the house itself and said place was within the exclusive knowledge of the appellant/accused. At his instance dead body was removed from the buried place. The appellant/accused has given false explanation about death of his wife and on the other hand, made wild allegations against the father of the deceased Anwarbee. The Trial Court has rightly convicted the appellant/accused. There is no substance in this appeal. The appeal is liable to be dismissed.

11. We have carefully considered the submissions advanced by the learned counsel for the appellant-accused and the learned APP for the respondent-State. With their able assistance, we have perused the grounds taken in the appeal, annexures thereto, the record and

proceeding and the case laws cited by the respective parties.

12. PW 1 Rajabhai, who happened to be the father of the deceased Anwarbee, has noticed the absence of deceased Anwarbee from 10.8.2012. After searching her extensively, PW 1 Rajabhai has lodged the missing report in the concerned police station on 12.8.2012 and inquiry of the missing report was assigned to Bit H.C. Giri. It is to be noted here that the appellant/accused has not filed any missing report about his wife in the police station nor he has informed to the parents of the deceased about her missing. On 13.8.2012 PW 1 Rajabhai has lodged the complaint exhibit 13 expressing his doubts against the appellant/accused for having committed the murder of deceased Anwarbee and disposed off her dead body. According to PW 1 Rajabhai, the appellant/accused was suspecting about character of deceased Anwarbee and some 2 to 3 years prior to the incident and he has also assaulted the deceased Anwarbee and used weapon axe in the assault by suspecting about her character. PW 1 Rajabhai has

lodged the complaint about it in the concerned police station.

13. PW 3 Abdul Pathan, who is the brother-in-law of the accused has deposed that after deceased Anwarbee found missing from the house, he alongwith his father PW 1 Rajabhai took search of deceased Anwarbee for two days, but they did not find her. He has also deposed that some 3 to 4 years prior to the incident accused assaulted deceased Anwarbee by axe by taking doubt over her character. There is nothing in the cross-examination to disbelieve the version of PW 1 Rajabhai so also PW 3 Abdul Pathan. In our considered opinion, the prosecution has established and proved the motive for the appellant/accused to commit murder of his wife. It is necessary to mention here that the motive plays a prominent role when the prosecution case rests upon the circumstantial evidence.

14. It further appears that on the basis of the complaint exhibit 13, crime no.135 of 2012 came to be registered in the concerned police station for the offence punishable under section 302, 201 of IPC against the

appellant/accused. Consequently, PW 12 API Shetkar has effected arrest of the appellant/accused on 13.8.2012 itself. Arrest panchnama is marked at exhibit 41. On the same day, the appellant/accused has made a voluntary statement that he is ready to show the place of incident where he had buried the dead body of his wife and said place of the incident is in his house itself. We have carefully gone through the contents of the panchnama exhibit 38. The prosecution has proved the contents of this panchnama through PW 11 Raosaheb Waghmare. There is nothing in his cross-examination to disbelieve the same. It appears that after recording this memorandum panchnama, accused took the panch witnesses, police party and other persons to the spot of the incident and shown the place. After recording the memorandum panchnama, PW 12 API Shetkar has called the Tahsildar and Medical Officer. On arrival of the Tahsildar and Medical Officer, they went to the spot as shown and lead to them by the appellant/accused. They have reached to village Itkal and the appellant/accused took all of them to his house. Even, API Shetkar has called the photographer on the spot.

PW 12 API Shetkar has called 2 to 3 persons for digging the place. After digging out the place, dead body was exhumed.

15. The prosecution has examined PW 5 Bharat Suryawanshi, who is serving as Nayab Tahsildar at Tahsil Office, Tuljapur. On 13.8.2012 he had received a telephonic call of API Shetkar and also gave a letter and requested him to attend the exhumation of dead body to remain present on the spot of village Itkal. On the basis of the said letter, API Shetkar, Tahsildar has directed him to attend exhumation of dead body. Said letter/order issued by the Tahsildar is placed on record and marked at exh.20. According to him, he went to Naldurg police station and PW 12 API Shetkar and the appellant/accused were present in the police station. Thereafter, all of them went to the spot as shown by the appellant/accused. He further deposed that the appellant/accused has pointed out the place where he buried the dead body, which was situated in the middle room of his house. He has further deposed that after digging 2 to 3 feet, there was a pungent smell. They saw

the part of dead body. The dead body was exhumed from the ditch and brought on the floor. Father of the deceased identified the dead body of his daughter. The panchnama of the dead body was carried out and PW 9 Dr. Swami has performed postmortem examination on the spot itself.

16. Prosecution has examined PW 4 Ravindra Lakade, who was called by the police inside the house of the accused for digging the floor. According to him, alongwith some other persons, he dug the place shown to him by the appellant/accused. After digging to some extent, they found dead body of the wife of the accused and there were ligature marks on the neck of the dead body.

17. Prosecution has examined PW 6 Kundlik Nivrutti Gaikwad, who is panch witness on the spot panchnama exhibit 23. Prosecution has proved the contents of the spot panchnama through PW 6 Pundlik Gaikwad. He has supported the contents of the spot panchnama. Spot is in the middle room of the house of the accused.

18. Prosecution has examined PW 9 Dr. Vishwanath Swami. He went to Naldurg police station as police had come to the hospital at about 11.00 am on 13.8.2012. Thereafter, he himself, police, Press reporter, cameraman, Tahsildar went to the village Itkal. According to PW 9 Dr.Swami, place was shown by the appellant/accused and he disclosed to them that he had buried the dead body of his wife in the house after strangulation. After digging, dead body was taken out of the ditch. It was a female dead body. It was identified by PW 1 Rajabhai as his daughter. PW 9 Dr. Swami has inspected the dead body which was having ligature mark around neck. On inspection he noticed that one red cloth was tied around the neck of the dead body. He performed the post mortem of the dead body on the spot. According to him, deceased died due to strangulation. On external examination Dr.Swami found following injuries :-

\* EXTERNAL INJURIES \*

Ligature mark around neck between larynx and chin above (thyroid cartilage) running along line of mandible bone, around whole neck except at a point over left side of neck. Anteriorly alining left border of the mandible where it is interrupted and is directed obliquely

upwards. Length of ligature mark was 33 cms, breadth 1 1/2 cm and depth was 1/2 cm. There was minor abrasion in bed of groove.

Said injury was antemortem. According to him, injury was possible by pressing the neck by clothe. In his opinion, death of deceased Anwarbee was caused due to 'Asphyxia due to strangulation'.

19. Prosecution has examined PW 2 Parvin Shaikh, aged 15 years the daughter of the deceased. She has deposed that on 9.8.2012 it was Thursday and she was in the house for the entire day. Her parents had been to work. On that day, her mother returned home in the evening. Her mother Anwarbee left PW 2 Parvin and her brother Tohir to the house of her grand father. She has further deposed that her mother (deceased Anwarbee) was alone in the house. On the next day, at about 7 am she returned to her house. She has deposed that her mother was not in the house. Appellant/accused was there in the house. He had disclosed that her mother went to job. Then, she went to Masjid (Mosque). She further deposed that she had given Laddu and Jilebi in the Masjid and she returned home and gave Laddu and

Jilebi to her father. PW 2 Parvin has further deposed that hands of her father was having mud, and she had asked her father to wash his hand, but he refused and taken Jilebi and ate. Thereafter, the appellant/accused gave her Rs.10/- and asked her to go alongwith her aunt Dilshan to Naldurg. She went to Naldurg alognwith Aunt Dilshan. She returned home at about 7.30 p.m. on the same day. She had again asked the appellant/accused as to whereabouts of her mother. The appellant/accused told that she did not return and he had visited the place of the employment of the deceased Anwarbee twice. It is thus clear that the appellant/accused was in the house on 9.8.2012 and when PW 2 Parvin left the house, her mother was in the house. Thus, PW 2 Parvin had seen her mother deceased Anwarbee alive lastly in the house. PW 2 Parvin has also deposed about the presence of the appellant/accused in the house.

20. In a case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in 1984 SC 1622, the Supreme Court has laid down the following principles to

appreciate the evidence when the prosecution case rests upon the circumstantial evidence.

The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence.

1. The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established.
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

21. The circumstances relied upon and proved by the prosecution is having a definite tendency to point out guilt of the accused. The circumstances so proved are consistent only with the hypothesis of the guilt of the accused and cumulative effect of the circumstances does not leave any reasonable ground for the conclusion

consistent with the innocence of the accused shows that in all human probabilities the act must have been done by the accused.

22. In a case of Sandip Waidande (supra) relied upon by the learned counsel for the appellant/accused, in the facts of the said case, the Division Bench of this Court decided the appeal and no principle is laid down as such.

23. In view of the same, we find that the trial court has rightly convicted the appellant/accused for the offence punishable under section 302, 201 of the IPC. There is no substance in this appeal. The appeal is thus liable to be dismissed. Hence, following order.

### **ORDER**

- i. Criminal appeal is hereby dismissed.
- ii. Criminal appeal is accordingly disposed off.
- iii. Since Advocate Mr. Sanjaykumar Chavan is appointed to represent the cause of the appellant/accused, we quantify his legal fees and expenses @ Rs.10,000/- (Rs.Ten Thousand)

to be paid by the High Court Legal Services  
Sub-Committee, Aurangabad.

**( SHRIKANT D. KULKARNI, J. )      ( V.K. JADHAV, J. )**

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