

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

CRIMINAL APPEAL NO. 577 OF 2014

Sangita S/o. Pandurang Shingare,
Age – 40 years, Occupation – Labour,
R/o. Modha (BK), Tq. Sillod,
Dist. Aurangabad.

...Appellant
(Original accused no.2)

Versus

The State of Maharashtra,
Through Police Station Officer,
Sillod (Rural) Police Station,
Tq. Sillod, Dist. Aurangabad.

...Respondent.

**WITH
CRIMINAL APPEAL NO. 573 OF 2014**

Noorshah Yakub Shah,
Age – 23 years, Occupation – Labour,
R/o. Modha (BK), Tq. Sillod,
Dist. Aurangabad.

...Appellant.
(Original accused no.1)

Versus

The State of Maharashtra,
Through Police Station Officer,
Sillod (Rural) Police Station,
Tq. Sillod, Dist. Aurangabad.

...Respondent.

.....

Advocate for Appellants in both appeals : Mr. Somnath G. Ladda
APP for Respondent-State : Mr. Shashibhushan P. Deshmukh

.....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATED : 03rd SEPTEMBER, 2021

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

1. These appeals are directed against the judgment and order of conviction dated 27.08.2014 passed by the Additional Sessions Judge, Aurangabad in Sessions Case No. 288 of 2009.

2. The prosecution story in brief is as under:

a. As per the prosecution story, there were illicit sexual relations between the appellants-accused *inter se*. Appellant-accused no.2 is the wife of deceased Pandurang. The appellants thus committed murder of deceased Pandurang. On the basis of the complaint lodged by PW-4 Tukaram i.e. father of deceased Pandurang, crime no. 71 of 2009 for the offence punishable under Section 302 of IPC came to be registered at the Sillod City Police Station. PW-12 P.I. Changdeo Tambde has investigated into the crime. It has been revealed during investigation that both the appellants-accused hatched conspiracy and in prosecution of the same, committed murder of the deceased. There were illicit sexual

relations, between them and in order to remove the obstacle in their sexual relations, they have committed murder of deceased Pandurang.

b. PW-12 P.I. Tambde visited the spot, drew the spot panchanama and seized various articles from the spot i.e. a bicycle, liquor bottles, one testor, glass, mineral water bottle as well as blood mixed soil and simple soil. He also drew seizure panchanama of the clothes of the deceased in presence of the panchas. The dead body was thereafter forwarded to the Government Hospital, Sillod for postmortem and the concerned Medical Officer conducted postmortem and issued report to PW PI Tambde. He also recorded the statements of the witnesses. He also recorded the supplementary statement of the informant. On 26.05.2009, PW-12 P.I. Tambde arrested both the accused by drawing arrest panchanama. He seized the mobile handsets of both the accused.

c. According to the prosecution story, on 28.05.2009, the appellant-accused no.2 Sangita made a voluntary statement and produced the ash from the furnace where she burnt the blood stained shirt of appellant-accused no.1. On the same day,

appellant-accused no.1 Noorshah has also made a voluntary statement and shown the place where he has thrown the knife. On 29.05.2009, PW P.I. Tambde forwarded the muddemal articles to the Forensic Science Laboratory for chemical analysis. After completion of the investigation, PW PI Tambade filed charge-sheet on 21.08.2009.

d. Learned Additional Sessions Judge, Aurangabad has framed charge against both the accused vide Exhibit 8 under Sections 302, 201, 120-B read with Section 34 of IPC. The contents of the charge-sheet were read over and explained to the appellants-accused in vernacular, to which they pleaded not guilty and claimed to be tried. Their defence is of total denial and false implication. The prosecution has examined in all 12 witnesses to substantiate the charge leveled against the accused persons. After completion of the prosecution evidence, statements of the appellants-accused came to be recorded under Section 313 of Cr.P.C. The learned additional Sessions Judge, Aurangabad, by judgment and order dated 27.08.2014 in Sessions Case No. 288 of 2009, convicted both the appellants-accused for the offences punishable under Section 302 read with 34 of IPC, Section 120-B of IPC and under Section 201

read with 34 of IPC and sentenced them in terms of the operative part of the order which is as follows:

1. Accused No.1 Noorshah s/o Yakub Shah Age : 28 years, Occ : Labour, and accused No.2 Sangita Wd/o Pandurang Shingare, Age : 35 years, Both R/o : Modha (Bk.) Taluka Sillod District Aurangabad are hereby convicted as per the provisions of section 235 (2) of the Criminal Procedure Code, for the offence punishable under section 302 r/w 34 of Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.2000/- each, in default to suffer S.I. for three months.
2. Accused No.1 Noorshah s/o Yakub Shah and accused No. 2 Sangita Wd/o Pandurang Shingare, are hereby convicted as per the provisions of section 235(2) of the Criminal Procedure Code, for the offence punishable under section 120-B of Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.2000/- each, in default to suffer S.I. for three months.
3. Accused No.1 Noorshah s/o Yakub Shah and accused No.2 Sangita Wd/o Pandurang

Shingare, are hereby convicted as per the provisions of section 235(2) of the Criminal Procedure Code, for the offence punishable under section 201 r/w 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1000/- each, in default to suffer S.I. for one month.

4. All sentences shall run concurrently.
 5. Set off be given u/s 428 of the Code of Criminal Procedure.
 6. Muddemal property i.e. Mobile be sold in public auction and its sale proceeds be credited to the State, cash amount of Rs.500/- be credited to the State and rest of the muddemal property be destroyed, after the appeal period is over.
 7. Copy of the judgment be given to the accused free of costs.
3. The appellants have preferred two separate appeals against this judgment and order of conviction.

4. The learned counsel appearing for both the appellants submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that the prosecution claims that there were illicit sexual relations between the appellants *inter se* and the same was the motive for them to commit murder of deceased Pandurang. Learned counsel submits that PW-4 Tukaram, who is the father of deceased Pandurang, has lodged the complaint Exhibit 60 against unknown assailant. In the said complaint, he has not made a whisper about the said illicit relations between the appellants, nor expressed any suspicion against them. Learned counsel submits that the dead body of deceased Pandurang was found on 25.05.2009 in one Umber Stream situated within the village Rajalwadi, Taluka Sillod.

5. Learned counsel submits that as per the prosecution story, the deceased was lastly seen alive in the company of appellant-accused no.1 Noorshah. In order to substantiate the same, the prosecution has examined PW1 Sitaram Pardhe. Learned counsel submits that evidence of PW1 Sitaram Pardhe is vague. He has not mentioned any date and simply referred one Sunday of one year

ago. According to him, he met deceased Pandurang in Sillod near Hotel Haridwar. Accused no.1 Noorshah came towards them near India Garage. Accused No.1 Noorshah and deceased Pandurang went away. Learned counsel submits that as per the evidence of PW-4 Tukaram (father of the deceased), 13 months ago on one Sunday, which was the market day of Sillod, his son deceased Pandurang went to Sillod Market, but he never returned. However, he has voluntarily deposed that on Saturday, his son Pandurang went in the Market of Sillod. Learned counsel submits that without mentioning the dates it is very difficult to say positively as to on what date or day the appellant-accused no.1 Noorshah met with the deceased. Learned counsel submits that the circumstantial evidence in the form of last seen together is vague and inconclusive in nature.

6. Learned counsel for the appellant-accused submits that certain articles shown to have been seized at the instance of both the appellants-accused. The Investigating Officer has drawn memorandum and recovery panchanama for the same. Learned counsel submits that so far as the memorandum and recovery panchanama at the instance of appellant-accused No.2 Sangita is

concerned, the same pertains to the ash of the burnt shirt. Learned counsel submits that there is no further connecting evidence to indicate as to whose shirt was found in burnt condition and recovered at the instance of appellant-accused no.2 Sangita. Learned counsel submits that the trial court has considered the statement of appellant-accused no.2 Sangita recorded in the memorandum panchanama, which is not admissible in evidence, and held that the said ash was of the burnt shirt of appellant-accused no.1 Noorshah. Learned counsel submits that similarly at the instance of appellant-accused no.1 Noorshah, one knife shown to have been recovered from the water of a lake. Learned counsel submits that the said lake is neither guarded nor fenced or surrounded with compound wall. It is an open lake accessible to all. If at all the weapon is found in the said lake, and for the sake of discussion accepting that it was within the exclusive knowledge of appellant-accused no.1 Noorshah, however, there is no connecting evidence in respect of the said knife. Learned counsel submits that though the Investigating Officer claims that all the seized articles were sent to C.A., however, report of the C.A. was never submitted before the trial court. Furthermore, there were no blood stains on the knife as mentioned in the recovery panchanama. Learned

counsel submits that the prosecution has examined PW-11 Sarfaraj, who is a sharpener of weapons like knife etc. Learned counsel submits that his evidence is as vague as it could be. As per the information given by appellant-accused no.1 Noorshah, he was taken to the place of said sharpener PW-11. In his presence, the appellant-accused no.1 Noorshah has made a disclosure statement and thus PW 11 Sarfaraj has deposed that he has sharpened the knife brought by appellant-accused no.1. There is no reference as to when appellant-accused no.1 went to his shop along with the knife and when he sharpened it. Learned counsel submits that on the basis of such a scanty evidence, learned Judge of the trial court has convicted both the appellants-accused for the offence punishable under Section 302 read with Section 34 of IPC. Learned counsel submits that there is absolutely no evidence about conspiracy and even then the trial court has recorded separate conviction under Section 120-B of IPC sentencing thereby both the accused to undergo imprisonment for life.

7. Learned counsel submits that it is well settled that the circumstances brought on record must be clear and cogent and the same are to be established by satisfactory evidence. The

circumstances are to be of such nature as to exclude every other hypothesis over the one that the accused is guilty of the offence with which he is charged. Learned counsel submits that in this case the circumstances brought on record are having no definite tendency to point out the guilt of the accused. Learned counsel submits that both the appellants-accused are thus entitled for acquittal.

8. Learned counsel for the appellants-accused, in order to substantiate his contention, placed reliance on the following cases:

1. ***Shankarala Gyarsilal Dixit v. State of Maharashtra***, reported in AIR 1981 SC 765
2. ***Dharam Deo Yadav v. State of U.P.***, reported in 2014 Cri. L.J. 2371
3. ***Suresh and another v. State of Haryana***, reported in 2018 (6) Mh.L.J. (Cri.) (S.C.) 1

9. Learned APP submits that there is no direct evidence in this case and the prosecution case entirely rests upon circumstantial evidence. However, the prosecution has established the chain of

circumstantial evidence by leading satisfactory evidence. Learned counsel submits that PW-4 Tukaram has deposed about the illicit sexual relations of the appellants. He himself has seen that in absence of his son Pandurang, appellant-accused no.1 Noorshah used to come to his house to meet appellant-accused no.2 Sangita. Learned APP submits that the prosecution has proved the motive in this case.

10. Learned APP submits that evidence of PW-1 Sitaram is on the point of last seen together. In the weekly market of Sillod, PW-1 Sitaram when proceeding and reaching towards India Garage along with deceased Pandurang, appellant-accused no.1-Noorshah came towards them near India Garage and thereafter, appellant-accused no.1 Noorshah and deceased Pandurang went away. Learned APP submits that this was the last time deceased Pandurang was seen alive in the company of appellant-accused no.1-Noorshah.

11. Learned APP submits that at the instance of both the appellants-accused certain incriminating articles came to be seized such as ash of the burnt pieces of blood-stained shirt of appellant-accused no.1 Noorshah so also the knife. Learned APP submits that

though the knife was recovered from the lake water, however, the said place was exclusively within the knowledge of appellant-accused no.1 Noorshah. He took the *panchas* and the police party towards the lake and pointed out that he has thrown the said knife in the water of the lake.

12. Learned APP submits that there is satisfactory evidence in the form of motive, last seen together and recovery of the incriminating articles. Learned APP submits that there cannot be any direct evidence about conspiracy and an inference could be drawn about it. Prosecution has proved the illicit sexual relations between appellant-accused no.1 and appellant-accused no.2 and as such, an inference could be drawn that both of them hatched a conspiracy and eliminated deceased Pandurang. Learned APP submits that the trial court has thus rightly convicted the appellants-accused. There is no substance in the appeal and the appeal is thus liable to be dismissed.

13. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statements of the appellants-accused recorded under Section 313 of

the Criminal Procedure Code, the evidence of the appellants-accused themselves and the impugned judgment. After giving our thoughtful reflection to the matter, we find much substance in this appeal.

14. So far as the homicidal death of deceased Pandurang is concerned, learned counsel for the appellants-accused fairly submits that the same is not disputed. The prosecution has examined PW-6 Dr. Mosin Kazi who has conducted postmortem examination. PW-6 Dr. Mosin Kazi has noted five contused lacerated wounds over forehead, left eyebrow, left ear, nose and left forehead respectively. PW Dr. Mosin Kazi has also noted one cut throat injury extending from left to right cutting the throat. He has also mentioned stab wound over abdomen around umbilicus two in numbers and the ligature mark over back extending over abdomen. According to him all the injuries mentioned in column no. 17 in the postmortem report are antemortem in nature and possible by knife. It is opined that cause of death is 'due to sudden cardio-respiratory arrest, secondary to hypovalumic shock due to cut throat injury with stab wounds over abdomen under influence of alcohol. Death was homicidal'.

15. The prosecution case entirely rests upon circumstantial evidence. There is no direct evidence in this case. The prosecution mainly relies upon the circumstance of last seen together. The prosecution has examined PW-1 Sitaram Pardhe to establish this circumstance. We have carefully gone through the evidence of PW-1 Sitaram Pardhe. He was doing work as electrician in the village. According to him in the year 2007, he has seen accused Noorshah. He has deposed that one year ago, on the Sunday market day of Sillod, he met deceased Pandurang in Sillod near hotel Haridwar. They both were intending to go towards India Garage for work and accordingly they went there. He has further deposed that appellant-accused no.1 Noorshah came towards them near India Garage and appellant-accused no.1 and the deceased Pandurang went away. He has further shown his ignorance as to where they went.

16. In order to appreciate the evidence of PW-1 Sitaram, we need to go through the evidence of PW-2 Sandu Sable. Though PW-2 Sandu has not supported the prosecution case and he was subjected to cross-examination at length by learned APP with

permission of the court, and even though he is a hostile witness, however, certain portion of his evidence can be relied upon. According to him, on 23.05.2009 at about 7.00 to 7.30 p.m. he met with deceased Pandurang near Haridwar Hotel at Sillod. Deceased Pandurang said to him that he was intending to halt in his house for the night and accordingly took a halt in his house. On the next day, at about 8.00 a.m., deceased Pandurang left his house. Then again on the same day, at about 9.30 a.m. they met at Kamgar Chowk, Sillod. Deceased Pandurang demanded Rs.50/- from him and accordingly he gave him Rs.50/- and thereafter, PW-2 Sandu went towards his work.

17. It is not clear from the evidence of PW-1 Sitaram as to on which date he went towards India Garage along with deceased Pandurang. It is not explained by the prosecution witnesses as to which day falls on which date, however, judicial note can be taken that 25.05.2009 was Monday. The dead body of deceased Pandurang was found on 25.05.2009 at about 8.00 a.m. Even accepting the evidence of PW-1 Sitaram as it is, it appears that deceased was lastly seen alive on Sunday in the company of appellant-accused no.1 Noorshah in the morning time and the dead

body was found on the next day at about 8.00 a.m. i.e. after 24 hours. It thus appears that the time gap is much more and there is no further connecting evidence as to how deceased went to the spot and with whom. Further, considering the articles seized from the spot, as per the contents of the spot panchanana Exhibit 66 certain articles including liquor bottle, glasses etc were found. It is not clear as to with whom deceased Pandurang had consumed liquor at the spot of the incident. Even assuming that there were some sexual relations between the appellants, however, as admitted by PW-4 Tukaram, deceased Pandurang was unaware about the same. Even PW-4 Tukaram had never disclosed the said relations between the appellants-accused at any point of time to deceased Pandurang. There is no evidence that there used to be quarrels between deceased Pandurang and his wife appellant-accused Sangita on account of said illicit relations. In absence of any quarrel or in absence of any evidence that deceased Pandurang was knowing about their sexual relations, it is very difficult to accept that in order to eliminate deceased Pandurang, who was found to be an obstacle in maintaining illicit sexual relations, the appellant-accused eliminated deceased Pandurang.

18. The prosecution heavily relies upon the circumstance of recovery of certain incriminating articles at the instance of both the appellants-accused persons. The prosecution has examined PW-8 Sunil Dudhe. According to PW-8 Sunil, appellant-accused no.1 disclosed before the pancha witnesses that he is ready to show the place where the incident had taken place and also ready to show the person from whom he purchased the knife and also from whom he got the knife sharpened. It appears that without any recovery from the spot allegedly shown by appellant-accused no.1 Noorshah in terms of his disclosure statement, learned Judge of the trial court has considered the said memorandum and the spot of incident as mentioned in the recovery panchanama. As per the prosecution story, on 25.05.2009 the spot panchanama Exhibit 66 was drawn where the dead-body was found and certain articles came to be seized from the spot itself. According to the prosecution story, the incident had taken place at the spot shown in the spot panchanama Exhibit 66. In view of the same, there is no propriety as such to record memorandum panchanama of the disclosure statement of appellant-accused no.1 to the effect that he was ready to show as to where the incident had taken place. Further, the prosecution has examined PW-11 Shaikh Sarfaraj Sk. Suleman. He is doing the

business of sharpening scissors. According to him on 27.05.2009 the police along with appellant-accused no.1 had been to his shop. He has further deposed that the appellant-accused no.1 in front of him disclosed that on 24.05.2009 he got sharpened a knife. It thus appears that on the basis of said disclosure statement PW-11 Shaikh Sarfaraj Sk. Suleman has deposed that he had sharpen the knife and the accused before the court is the same person who had been to his shop for sharpening the knife. He has also admitted in his cross-examination that even the police did not show him the knife. He therefore could not explain as to what sort of knife appellant-accused no.1 had brought to his shop for sharpening. Further, in the light of the disclosure statement before him, PW-11 Shaikh Sarfaraj has deposed in vague manner. Learned Judge of the trial court has believed his evidence without looking into the aspect of its admissibility.

19. The prosecution has examined PW-10 Ashok Gaikwad. He was on the point of recovery panchanana at the instance of both the appellants-accused. According to him, appellant-accused no.2 Sangita disclosed to him about the shirt of the appellant-accused no.1 Noorshah burnt by her and shown her readiness to point out

the place where she burnt it. Learned counsel for the appellant has rightly pointed out that such a statement in the memorandum panchanama referring that the shirt of the accused Noorshah was burnt by her is not admissible in evidence. Further, PW-10 Ashok Gaikwad has deposed that appellant-accused no.1 Noorshah has made a disclosure statement that the pant which was on his person and the knife used by him is kept in the house and shown his readiness to point out the place and the articles. Initially, appellant-accused Sangita went ahead and shown the place where she burnt the shirt. The said place was near the house of accused Sangita and some small pieces of half burnt shirt were there and the police seized those pieces. There is no further connecting evidence as to whose shirt's burnt pieces came to be seized by the police since the statement to that effect allegedly made by the appellant-accused no.2 Sangita in her memorandum panchanama is not admissible in evidence. As per PW-10 Ashok, thereafter appellant-accused Noorshah had taken him to his house which was at the backside of the house of appellant-accused Sangita and he had produced a pant from his house. It is merely recovery of a pant without indicating as to how the said piece of evidence is important in connection with the present crime. Even though appellant-accused no.1 Noorshah

has allegedly made a disclosure statement that he has kept the pant and the knife in his house, the appellant-accused Noorshah has changed his statement and made a statement that the knife is thrown by him in the lake. We have perused the panchanama of the said lake. It appears that the knife was taken out from the water of the lake. However, the place where the lake is situated is open and accessible to all. Even assuming that the particular place where the knife was thrown was within the exclusive knowledge of appellant-accused no.1 Noorshah, however, unfortunately there is no further connecting evidence so far as the said knife is concerned. The prosecution case rests only to the extent that one knife came to be recovered from the water of the lake at the instance of appellant-accused no.1 Noorshah. The prosecution case also rests upon the evidence of burnt pieces of shirt (presuming that those burnt pieces are of appellant Noorshah's shirt) seized at the instance of appellant-accused no.2 Sangita. However, there is no further connecting evidence since the C.A. report pertaining to those articles was never placed before the trial court. Even learned Judge of the trial court has also observed about the same.

20. In case of ***Shankarala Gyarasilal Dixit v. State of Maharashtra*** (supra), relied upon by learned counsel for the appellants, the Hon'ble Supreme Court in para 13 has made the following observations:

“13. Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.”

The Supreme Court in the above case has observed that “in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the

judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis”.

21. In the case of ***Dharam Deo Yadav v. State of U.P.*** (supra), relied upon by learned counsel for the appellants, in para 18 the Supreme Court has dealt with the circumstance of last seen together. Para 18 reads as under:

“18. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of last seen together plus other circumstances have to be looked into. Normally, last seen theory comes into play when the time gap, between the point of time

when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. It will be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. However, if the prosecution, on the basis of reliable evidence, establishes that the missing person was seen in the company of the accused and was never seen thereafter, it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company. Reference may be made to the judgment of this Court in Sahadevan Alias Sagadeven v. State represented by Inspector of Police, Chennai (2003) 1 SCC 534. In such a situation, the proximity of time between the event of last seen together and the recovery of the dead body or the skeleton, as the case may be, may not be of much consequence. PWs 1, 2, 3, 5, 9 and 10 have all deposed that the accused was last seen with Diana. But, as already indicated, to record a conviction, that itself would not be sufficient and the prosecution has to complete

the chain of circumstances to bring home the guilt of the accused.”

22. In the case of ***Suresh and another v. State of Haryana*** (supra), after referring the ratio laid down in ***Sharad Birdhichand Sarda v. State of Maharashtra [1984 MhLJ Online (S.C.) 1]*** and ***Charan Singh v. State of Uttar Pradesh [AIR 1967 SC 520]***, the Supreme Court in para 39 and 40 has made the following observations:

“39. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidences, which may lead to the accused’s guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of ‘chain link theory’ and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the ‘chain link theory’ since

Hanumant Case (supra), which of course needs to be followed herein also.

40. We need to consider five aspects and their impact on the case at hand, before we put forth our analysis. It is well settled that motive is an important aspect in circumstantial evidence case. In *Shivaji Genu Mohite v. State of Maharashtra*, AIR 1973 SC 55 -

“In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye witness is rendered untrustworthy”.

In this case the motive has an important role as this case is based on circumstantial evidence, motive herein forms one of the intermediate fact/circumstances. In this case, the motive of killing Chander Bhan (deceased) was to foist a false case on Dharampal son of Beg Raj. If the motive was to foist a false case, then it is quite strange to believe that the accused went to the extent of killing their own (supporter of Maha Singh) to avenge the loss in the elections. Even if the motive is taken to be proved, then this too only forms one of the circumstances for adducing the guilt of the accused.”

23. In the instant case also, the prosecution has not been able to discover an impelling motive. The circumstances from which the conclusion of guilt is to be drawn are not established by the prosecution. Even the circumstances brought on record and heavily relied upon by the prosecution have no definite tendency and those circumstances are not conclusive in nature to point out unerringly the guilt of the accused. There is no chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and showing that in all human probability the act must have been done by the accused. In the

instant case, the circumstantial evidence in the form of last seen together is quite vague. There is no further chain of circumstantial evidence to connect both the appellants with the crime. The prosecution has miserably failed to prove conspiracy to eliminate deceased Pandurang. There is no evidence indicating that deceased Pandurang was a hurdle for the appellants to continue their illicit sexual relations. On the other hand, it appears from the prosecution evidence itself that deceased Pandurang was not knowing about their illicit sexual relations, if any. There are no incidents reported by any of the prosecution witnesses indicating that there used to be frequent quarrels between accused no.2 Sangita and deceased Pandurang on account of her illicit sexual relations with accused no.1. The FIR Exhibit 60 is also silent about it. PW-4 Tukaram seems to have improved the story during recording of his supplementary statement, as deposed by PW-12 API Kamble, disclosing the same for the first time after a considerable gap. In view of the same, we are of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubt against both the appellants-accused persons. In the result, both the appellants-accused deserve to be acquitted. Hence, we proceed to pass the following order:

ORDER

I. Criminal Appeal No. 577 of 2014 and Criminal Appeal No. 573 of 2014 are hereby allowed.

II. The judgment and order dated 27.08.2014 passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 288 of 2009 convicting thereby appellant-accused no.1 Noorshah s/o Yakub Shah and appellant-accused no.2 Sangita wd/o Pandurang Shingare for the offence punishable under section 302 r/w 34 of Indian Penal Code and sentencing them to suffer life imprisonment and to pay fine of Rs.2,000/- each, in default to suffer S.I. for three months, further convicting them for the offence punishable under Section 120-B of Indian Penal Code and sentencing them to suffer life imprisonment and to pay fine of Rs.2,000/- each, in default to suffer S.I. for three months and further convicting them for the offence punishable under section 201 r/w 34 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each, in default to suffer S.I. for one month, is hereby quashed and set aside.

III. The appellant-accused no.1 Noorshah s/o Yakub Shah and appellant-accused no.2 Sangita wd/o Pandurang Shingare are hereby acquitted of all the charges levelled against them.

IV. The fine amount, if deposited, shall be refunded to them.

V. The appellant-accused no.1 Noorshah s/o Yakub Shah and appellant-accused no.2 Sangita wd/o Pandurang Shingare be released forthwith if not required in any other case.

VI. The appellant-accused no.1 Noorshah s/o Yakub Shah and appellant-accused no.2 Sangita wd/o Pandurang Shingare shall execute P.B. of Rs.20,000/- each, with one solvent surety each of the like amount 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. Both the appeals are accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)