

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 601 OF 2014

Punja Pandurang Godhade
Age 36 years, Occupation labour,
Resident of Korhale, Taluka Rahata,
District Ahmednagar.
At present in jail.

... Appellant

Versus

The State of Maharashtra,
Through Police Inspector,
Rahata Police Station,
Taluka Rahata,
District Ahmednagar.

... Respondent

.....

Mrs. A. N. Ansari, Advocate for the Appellant.
Mr. K. S. Patil, APP for the Respondent-State.

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 09th SEPTEMBER, 2021**

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

1. This appeal is directed against the judgment and order of conviction dated 05.09.2014 passed by the Additional Sessions Judge, Kopergaon in Sessions Case No. 42 of 2012.

2. Brief facts giving rise to the prosecution case are as under:

a. Deceased Gangubai was the wife of the appellant-accused Punja. It was her second marriage. Her first marriage was performed in the year 2000, but she started residing with her mother PW-1 Anjanabai as she was not keeping well with her first husband. Thereafter, deceased Gangubai got married with the appellant-accused by performing the ritual of garlanding. After marriage, deceased Gangubai was treated well for a period of six months and thereafter, the appellant-accused started suspecting about her chastity and used to beat her under the influence of liquor. Deceased Gangubai had given birth to one daughter PW-8 Priyanka @ Bhagyashri and one son.

b. As per the prosecution story, some 8 to 10 days prior to 28.03.2012, appellant-accused Punja extended beating to his wife deceased Gangubai with a wooden log and killed her by suspecting about her chastity. At the time of incident, the appellant-accused, deceased Gangubai and the children were residing in a hut in land Gat No. 713 in village Korhale, Taluka Rahata, District Ahmednagar. After killing deceased Gangubai, the appellant-accused threw her dead body in one ditch in his agricultural land with an intention to cause disappearance of evidence.

c. On 28.03.2012 at about 4.00 p.m., two persons namely, Eknath Sonaji More and Babu Tulshiram Gorde had been to the house of PW-1 Anjanabai and informed her that the appellant-accused has kept his two children with PW-6 Sakharam by informing him that a quarrel took place between himself and his wife deceased Gangubai and that he wanted to go outstation. Said Eknath Sonaji More and Babu Tulshiram Gorde further told PW-1 Anjanabai to find out as to what happened to her daughter Gangubai. Thus, PW-1 Anjanabai along with one Dasharath Pandharinath Rajput and other relatives went to village Korhale. On reaching there, PW-6 Sakharam informed to them that in the agricultural field of the appellant-accused near the *bandh*, a skeleton, a sari and a blouse were lying.

d. On the basis of the complaint Exhibit 19 lodged by PW-1 Anjanabai, crime no. 31/2012 came to be registered for the offence punishable under Sections 302, 201 of the Indian Penal Code in the concerned police station against the appellant-accused. PW-9 Police Inspector Suresh Warade took over the investigation of the crime. On 29.03.2012, he drew spot panchanama in presence of two

panch witnesses. He has seized one pestal colour sari and one red colour blouse having blood stains, one steel bracelet, one white colour hair clip, one shirt and one pant having blood stains under the spot panchanama marked at Exhibit 44. He has thereafter carried out inquest panchanama Exhibit 21 of the skeleton found at the spot of offence in presence of panch witnesses. He has also recorded statements of the daughter of deceased, namely, Bhagyashri @ Priyanka and other witnesses on the same day. He has collected blood samples of PW-8 Priyanka, daughter of deceased Gangubai and sent it for DNA test. Exhibits 33, 29 and 31 are the reports pertaining to the DNA test. On 18.04.2012, he has effected arrest of appellant-accused Punja by drawing arrest panchanama Exhibit 45. Further, on 21.04.2012, at the instance of the appellant-accused, a wooden rod came to be seized from the hidden place by drawing memorandum panchanama Exhibit 38 and recovery panchanama Exhibit 39. The said wooden rod was of a *babhul* tree having blood stains. He has sent the seized muddemal articles to the Chemical Analyzer. After completion of the investigation, PW-9 PI Suresh Warade filed charge-sheet against the appellant-accused on 22.05.2012 for having committed the offence punishable under Sections 302 and 201 of IPC.

e. Learned Additional Sessions Judge, Kopergaon, has framed charge against the appellant-accused vide Exhibit 7 for the offence punishable under Sections 302 and 201 of IPC. The contents of the charge were read over to the appellant-accused in vernacular. The appellant-accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined 9 witnesses to substantiate the charge levelled against the appellant-accused. After completion of the prosecution evidence, the statement of the appellant-accused under Section 313 of the Criminal Procedure Code (Exhibit 55) came to be recorded. The defence of the appellant-accused is of complete denial. The learned Additional Sessions Judge, Kopergaon, District Ahmednagar, vide judgment and order of conviction dated 05.09.2014 in Sessions case No. 42 of 2012, convicted the appellant-accused for the offence punishable under Section 302 of IPC and acquitted him for the offence punishable under Section 201 of IPC. The operative part of the order of conviction reads as under:

“1. Accused Punja Pandurang Godhade is hereby convicted under section 235(1) of Code of Criminal Procedure for offence under section 302 of Indian Penal Code to suffer life imprisonment and to pay

fine of Rs.1,000/- in default two months simple imprisonment.

2. Accused Punja Pandurang Godhade is hereby acquitted under section 235 (1) of Code of Criminal Procedure for offence punishable under section 201 of Indian Penal Code.
 3. Accused Punja Pandurang Godhade was under trial prisoner.
 4. Accused Punja Pandurang Godhade is entitled for set off of period of his pre trial detention in prison under section 428 of Code of Criminal Procedure.
 5. Muddemal property in this case comprised wearing clothes of deceased Gangubai and accused Punja Godhade and wooden log which is worthless, be destroyed after the period of appeal.
 6. Issue conviction warrant accordingly.
 7. Copy of this judgment be furnished to accused free of charge today itself.”
3. Learned counsel for the appellant-accused submits that there is no direct evidence to the actual commission of the crime. PW-8

Priyanka, who happened to be the daughter of the appellant-accused, was seven years of age at the time of her evidence before the court. Even she was not administered oath. Learned counsel submits that the evidence of PW-8 Priyanka is not free from doubt. She is a tutored witness. Learned counsel submits that the prosecution has failed to prove the case against the appellant-accused beyond reasonable doubt. The prosecution could not establish the motive on the part of the appellant-accused to commit murder of his wife.

4. Learned APP submits that the prosecution has succeeded in proving the homicidal death of deceased Gangubai and also established the identity of the deceased. Even though a skeleton was found, on the basis of the DNA test, comparing the blood sample of the daughter of deceased Gangubai, the prosecution has established that the skeleton was of deceased Gangubai. Learned APP submits that PW-8 Priyanka is the eye witness to the incident and she is not a tutored witness. Learned APP submits that if the deposition of the child witness inspires confidence of the court and there is no embellishment or improvement therein, the court may rely upon the child's evidence. However, the evidence of a child

witness must be evaluated more carefully with greater circumspection because he/she is susceptible to tutoring.

5. Learned APP submits that it was a custodial death. The appellant-accused has committed crime in complete secrecy in his agricultural field. Thus, the nature and amount of evidence required to establish the charge cannot be of the same degree as required in other cases of circumstantial evidence. Admittedly, deceased Gangubai and the appellant-accused were residing in the hut situated in his agricultural land. There is evidence about ill-treatment being extended to deceased Gangubai by suspecting about her chastity. In the C.A. report pertaining to the clothes of the accused, human blood was detected. Learned APP submits that the appellant-accused has failed to explain the homicidal death of deceased Gangubai.

6. Learned APP submits that in view of Section 106 of the Indian Evidence Act, corresponding burden is on the appellant-accused to give cogent explanation as to how the homicidal death of deceased Gangubai occurred in his agricultural field. On the other hand, the appellant-accused had taken a defence that PW-8 Priyanka was tutored by the other prosecution witnesses which he could not

establish. Furthermore, post incident conduct of the appellant-accused is also suspicious. After commission of murder, the appellant-accused took his children to PW-6 Sakharam and left them there under the pretext that he had a quarrel with his wife and that he wanted to go outstation. Appellant-accused had not informed the incident to anyone including the mother of the deceased. Learned APP submits that, the prosecution has proved its case beyond reasonable doubt against the appellant-accused. There is no substance in this appeal. The appeal is liable to be dismissed.

7. Learned APP, to substantiate his contention, has placed reliance on the following cases:

1. Supreme Court's order dated 28.07.2021 in ***Pramila v. The State of Uttar Pradesh*** [Criminal Appeal No. 700 of 2021 arising out of S.L.P. (Crl.) No. 3319 of 2021].
2. ***Rajinder Singh v. State of Haryana***, reported in AIR 2013 SC 2529.
3. ***State of Rajasthan v. Thakur Singh***, reported in (2014) 12 SCC 211.

4. *Dhanaji Bhagwan Madne v. State of Maharashtra*,
reported in 2014 All M.R. (Cri.) 2837.

5. *Trimukh Maroti Kirkan Vs. State of Maharashtra*
reported in 2007 Cri.L.J. 20.

8. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statement of the appellant-accused recorded under Section 313 of the Criminal Procedure Code, the evidence of the appellant-accused himself and the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is no substance in this appeal and it must be dismissed.

9. On 29.03.2021, a skeleton of one female body was found in the land Gat No. 713. One parrot colour sari and one red colour blouse having blood stains were also found. PW-1 Anjanabai has identified those clothes as belonging to deceased Gangubai. Further, at some distance, a female hair clip, a steel bracelet, a faint white colour shirt and a faint colour jeans pant were found. PW-1 Anjanabai has also identified those clothes as belonging to the appellant-accused. All those articles came to be seized under

the spot panchanama Exhibit 44. The inquest panchanama is marked at Exhibit 21. The prosecution has proved the same through PW-2 Kanifnath Bapu Rajput. One skeleton without legs and hands was found in the land Gat No. 713.

10. PW-5 Dr. Jame Baser M. Farooqui has conducted postmortem examination on the dead body on the spot itself. On reaching there, he found the skeletonized body with missing bones of both forearms, hands, right upper arm, sternum, anterior middle to lower thoracic cage, left clavicle, both fibula, right tibia, both foot were missing and right scapula, left clavicle, few ribs with fragment, left humerus found in separated condition near the body. It was the dead body of a 35 years old female. PW-5 Dr. Farooqui has noted the following injuries on the dead body.

1. Wound with clear margins over preximal aspect of left parietal region 1 c.m. lateral to midline of size 3.4 x 1.7c.m. x bone deep. After dissection underneath of this wound dark blackish colour stain seen, which can not be washed with flow of water, suggestive of blood which is spread in the area of 6 x 4 c.m.

2. Wound with clear margins over left parietooccipital region of size 4.2 cm x 1.3 cm x bone deep. After dissection underneath of this wound, dark blackish colour stain seen, which can not be washed with flow of water. Suggestive of blood spread in the area of 5.3 x 4.2 c.m. Both above injuries were ante mortem in nature.
3. Post mortem fracture of lower 1/3rd of left tibia, both condyles of left femur, condyles of right femur, right iliac crest, right ischeal tubrocity, right scapula and few ribs.
4. Post mortem separation of right scapula, left clavicle, 12 ribs and left humurus.

According to him, injury nos. 1 and 2 are *ante mortem* and injury nos. 3 and 4 are *post mortem* in nature. On examination of the skull, PW-5 Dr. Farooqui has noted linear fracture over proximal part of left parietal bone of size 1.5 c.m. in length with stain over the margin which can not be washed out with flow of water. Suggestive of *ante mortem* fracture. In his opinion, the cause of death is "Death suggestive of due to head injury". The prosecution has proved the postmortem report Exhibit 30, which is

in the hand-writing of Dr. Farooqui which bears his signature and also the final cause of death certificate Exhibit 29.

11. PW-5 Dr. Farooqui has further deposed that he has received the requisition for taking blood sample of Priyanka i.e. the daughter of the deceased vide requisition letter Exhibit 32. He has also noted the identification form of PW Priyanka and the same is at Exhibit 33. As per the guidelines, he has taken blood samples of Priyanka, packed and sealed it and given the same to the concerned police constable. He has also given oral instructions to the said police constable to maintain temperature at 4 degree Celsius of the blood sample and the sample has to reach immediately to the Forensic Science Lab. PW-5 Dr. Farooqui has also referred the report of the Director of Forensic Science Laboratory, Mumbai. As per the said DNA report Exhibit 34, the femur bone of deceased Gangubai match with the blood group of Priyanka showing that Gangubai was the biological mother of Priyanka. There is nothing in the cross-examination of Dr. Farooqui to draw any other inference. The prosecution has proved beyond doubt the identity of the skeletonized body so also the homicidal death.

12. PW-8 Priyanka is the material witness in this case. Though she was seven years of age at the time of recording of her evidence before the court, the trial court after questioning the girl has recorded the opinion that the witness is competent to give evidence. PW-8 Priyanka has deposed that she was residing at Korhale with her mummy, pappa and bal. The bal is her brother having name Vinayak. They were residing in one agricultural field below a tamarind tree in one hut. The said field was belonging to them having standing *bajara* crop at the time of the incident. PW-8 Priyanka has further deposed that name of her mother was Gangi (deceased Gangubai) and her mother was not alive. She has further deposed that her mother was beaten by her father. She has further deposed that her mother was beaten by her father with a handle of axe and there was bleeding to her mother. She has further deposed that her pappa put her mother in a ditch after digging hole in the soil. Thereafter, her pappa kept herself and her bhau (brother) with Sakha Tatya (PW-6 Sakharam). Her father told Sakha Tatya that he will come back after seeing their mummy. There is nothing in the cross-examination to disbelieve the evidence of this material witness. PW-8 Priyanka has denied in her cross-examination that

she was tutored by the counsel or by the other prosecution witnesses. We find the evidence of PW-8 Priyanka cogent, reliable and trustworthy. There is no reason to discard her evidence merely on the basis that she is a child witness. Even after carefully scrutinizing her evidence, we find that her evidence inspires confidence.

13. In addition to this, the prosecution has also proved its case on the basis of the chain of circumstantial evidence. The appellant-accused Punja was suspecting about the chastity of deceased Gangubai. He used to beat deceased Gangubai. The appellant-accused Punja along with deceased Gangubai and the children were residing in a hut situated in the agricultural land and there is no denial of this fact. Though PW-1 Anjanabai has admitted in her cross-examination that the persons accompanying her had narrated the contents of the complaint to the police, however, it cannot be ignored that PW-1 Anjanabai, who happened to be mother of deceased Gangubai, had seen the dead body of Gangubai in the field and she had seen the trunk of deceased Gangubai without hands and legs in naked condition.

14. The prosecution has also examined PW-6 Sakharam. He is the neighbour. Land of the accused is adjacent to his land in Gat No. 713. PW-6 Sakharam was also residing in his agricultural land. He has further deposed that the distance between his house and the house of the accused is about 300 feet. He has further explained that the appellant-accused was residing in his land with his wife and two children. According to him, after marriage of the accused, his marital life was going softly for some period. However, thereafter, there used to be quarrel between the accused and his wife. Though he had given understanding to the accused as not to quarrel with deceased Gangubai, however, the quarrel was persistent. PW-6 Sakharam has further deposed that on 23.03.2012 the accused came to him along with his children and kept the children with him saying that a quarrel has taken place and went away. PW-6 Sakharam has further deposed that the son of the accused was breast feeding and therefore he himself and his wife had taken both the children to the brother of the accused, namely, Haribhau residing at Ashvi. Some 8 to 10 days thereafter, when he had seen one sari, blouse and ladies hair in his field, he got frightened. He called the brother and the neighbours of the accused. All of them had seen a human skeleton and a skull.

Though PW-6 Sakharam has not fully supported the prosecution case and he was subjected to cross-examination by learned APP by declaring him hostile, however, the aforesaid part of his evidence can be believed. Furthermore, PW-8 Priyanka has also referred his name. She has deposed that after keeping the body of her mother in the ditch, the appellant-accused took them to Sakha Tatya (PW-6 Sakharam) and left them there.

15. The prosecution has examined PW-7 Babasaheb Dashrath Shelar, who is the panch witness of the memorandum and recovery panchanama Exhibits 38 and 39 respectively. The appellant-accused has made a disclosure statement in presence of PW-7 Babasaheb and other panch witnesses and in accordance with the said statement, produced the wooden log before the panch witnesses concealed by him in the leaves of sugarcane. There is nothing in the cross-examination to discard the evidence of PW-7 Babasaheb.

16. PW-9 PI Suresh Warade had sent the seized articles to the Chemical Analyzer for analysis. So far as the articles sari, blouse, hair clip, steel bracelet, full shirt and jeans pant are concerned, on

perusal of the C.A. report Exhibit 59, we find that human blood was detected on the clothes of the accused so also on the sari.

17. The appellant-accused has failed to give any explanation about the homicidal death of deceased Gangubai.

18. In the case of ***Rajinder Singh v. State of Haryana*** (supra) relied upon by learned APP, the Supreme Court in para 15 has made the following observations:

“15. Section 106 of the Evidence Act does not relieve the burden of prosecution to prove guilt of the accused beyond reasonable doubt but where the prosecution has succeeded to prove the facts from which a reasonable inference can be drawn regarding the existence of certain other facts and the accused by virtue of special knowledge regarding such facts fail to offer any explanation then the Court can draw a different inference.”

19. In the case of ***Pramila v. The State of Uttar Pradesh*** (supra), relied upon by the learned APP, the Supreme Court has made the following observations :

“Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to 12 years certainly has reasonably developed mental faculty to see, absorb and appreciate. In a given case the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the Courts have regularly held that where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the Court is satisfied with regard to the reliability and genuineness of the evidence of the child witness. PW-2 was examined nearly one year after the occurrence. The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth.

The evidence of a child witness and the manner of its consideration has been dealt with in State of M.P. vs. Ramesh, (2011) 4 SCC 786, as follows:

“14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require

corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment of improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.””

20. In the case of ***Trimukh Maroti Kirkan vs. State of Maharashtra*** (supra) relied upon by the learned APP, the Supreme Court in paragraph no.12 of the judgment has made following observations :-

“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial

merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads : 2003 AIR SCW 4065

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence.

The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

21. In view of the ratio laid down by the Supreme Court in the cases cited above, particularly, in the case of ***Trimukh Maroti Kirkan***, we are of the opinion that the prosecution has proved its case beyond reasonable doubt against the appellant-accused. PW-8 Priyanka, though a child witness, has inspired confidence of the court. Her evidence is cogent, reliable and trustworthy. There is nothing in her cross-examination to indicate the possibility of tutoring. The prosecution has also proved its case through the chain of circumstantial evidence. The prosecution has established the motive on the part of the appellant-accused to commit murder of deceased Gangubai. The prosecution has proved the homicidal death of deceased Gangubai and it was a custodial death. The pre-incident and post-incident conduct of the appellant-accused also

provides additional linkage. The appellant-accused has neither tried to take search of his missing wife nor informed to the mother of deceased Gangubai nor to anyone in the village about the same. On the other hand, he took his children to PW-6 Sakharam and left them there under the pretext that he had a quarrel with his wife and that he wanted to go outstation.

22. In our considered opinion, the ratio laid down by the Supreme Court in *Trimukh Maroti Kirkan's* case (supra) squarely applies to the facts and circumstances of the present case. In the facts of the present case, it is extremely difficult for the prosecution case to lead the evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence is insisted upon. In the facts of the present case, initial burden to establish the case has been discharged by the prosecution. Said initial burden is comparatively lighter in character in terms of the observations made by the Supreme Court in *Trimukh Kirkan's* case. In view of the provisions of section 106 of the Indian Evidence Act, there is a corresponding burden on the appellant-accused to give cogent explanation.

23. In the instant case, the accused has failed to discharge the burden by giving a cogent explanation. It is a strong circumstance pointing to his guilt. We are of the opinion that the approach of the Trial Court is the correct approach. The trial court has rightly convicted the appellant-accused for the offence punishable under Section 302 of IPC. There is no substance in this appeal. Hence, we proceed to pass the following order.

ORDER

The Criminal Appeal is hereby dismissed.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)