

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

CRIMINAL APPEAL NO. 149 OF 2015

Sarlabai Chandrajit Patil
Age: 37 years, Occu.: Agri.,
R/o Dhanwadi, Tq. Chopda,
Dist. Jalgaon

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

**WITH
CRIMINAL APPEAL NO. 236 OF 2015**

Chandrajit Damu Patil
Age: 44 years, Occu.: Agri.,
R/o Dhanwadi, Tq. Chopda,
Dist. Jalgaon

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. N.S. Ghanekar, Advocate for appellants
Mr. R.V. Dasalkar, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.**

**RESERVED ON : 25th NOVEMBER, 2022
PRONOUNCED ON : 06th DECEMBER, 2022**

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Both these appeals are being decided by this common judgment since the challenge therein is to one and the same judgment and order of conviction and consequential sentence passed by the learned Additional

Sessions Judge, Amalner on 17th January, 2015 in Sessions Case No. 12 of 2013. Vide the impugned judgment and order, the appellants have been convicted for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code ('I.P.C.') and, therefore, sentenced to suffer imprisonment for life and rigorous imprisonment for one year, respectively with fine of Rs.10,000/- and Rs.5,000/- each respectively with default stipulation.

2. Appellant - Sarlabai (Criminal Appeal No.149 of 2015) is the wife of Appellant – Chandrajit (Criminal Appeal No. 236 of 2015). It is the case of prosecution that Kailash Patil (deceased) was serving as a labour in the agricultural field of the appellants on daily wages. There was an extra-marital relationship between the deceased and appellant – Sarlabai. He started harassing her. Both the appellants, therefore, committed his murder in the field of one Sunil Patil (P.W.7) on 28th January, 2013. Since the deceased did not return home for lunch, his brother, P.W.2 – Bhaskar took search for him. He noticed dead body of his brother – Kailas concealed under the heap of sticks of cotton crop. He, therefore, immediately reported the matter to the police. Based on his report (Exh.40), crime vide C.R. No.7 of 2013 came to be registered against unknown persons. During investigation, it was revealed that the deceased was seen in the company of the appellants in the morning of the fateful day. The deceased had left his house for

working in the agricultural field of the appellants. It was also found the deceased to have had illicit relationship with appellant – Sarlabai. Both the appellants, therefore, came to be arrested. Appellant – Chandrajit made a disclosure statement (Exh.50) pursuant to which a nylon rope, a *pata*, clothes on the person of both the appellants at the relevant time, came to be seized from two different places. The seized articles were forwarded to Regional Forensic Science Laboratory, Nashik for analysis and report. Said reports indicate all the articles to have blood stains of blood group 'B'. On completion of the investigation, both the appellants were proceeded against by filing the charge-sheet.

3. On committal of the case, trial Court framed charged (Exh.22). The appellants pleaded not guilty. Their defence was of false implication. The prosecution examined nine witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence, convicted and consequentially sentenced the appellants as stated above.

4. Learned counsel for the appellants would submit that it is a case based on circumstantial evidence. There is no admissible evidence against appellant – Sarlabai. So far as regards appellant – Chandrajit is concerned, the only material is in the nature of disclosure statement (Exh.50) made by him pursuant to which a nylon rope and a *pata* came to be seized from his agricultural field and blood stained clothes on the person of the appellants at

the time of commission of offence came to be seized from his residence. According to learned counsel, there was no evidence as regards blood group of the appellants to exclude the possibility of the seized articles to have blood stains of their blood. According to him, not a single circumstance relied on against appellant – Chandrajit has been conclusively proved. There is no chain of circumstances complete to rule out possibility of involvement of someone else in the crime in question. He, therefore, urged for allowing the appeals.

5. Learned A.P.P. would, on the other hand, submit that there is eye witness account to indicate the deceased to have been in the company of the appellants in the morning of the fateful day. There is also evidence to suggest the deceased had illicit relationship with appellant – Sarlabai. Pursuant to disclosure statement (Exh.50) made by appellant – Chandrajit, a *pata* and a nylon rope, with which the deceased was assaulted and strangled, came to be recovered. Moreover, clothes on the person of both the appellants at the time of commission of crime have also been recovered pursuant to his disclosure statement. All the seized articles borne blood stains of group 'B'. Clothes of the deceased had blood stains of the very group. According to learned A.P.P., the chain of circumstances thus complete to hold the appellants and none other to be the authors of the crime. He, therefore, urged for dismissal of the appeals.

6. Considered the submissions advanced. Perused the evidence relied on. It is a case based on circumstantial evidence. The circumstances relied on are of motive :-

- (i) illicit relationship between the deceased and appellant – Sarlabai
- (ii) The deceased was serving with them as a farm labourer
- (iii) on the fateful day, he was seen in the company of the appellants (last seen)
- (iv) recovery of articles used in commission of crime and blood stained clothes of the appellants pursuant to the disclosure statement made by appellant – Chandrajit.

7. The case is based on circumstantial evidence. In case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, the Apex Court has observed thus :-

“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."*

8. Let's advert to the evidence on record. P.W.9 – Dr. Vinod conducted autopsy on the dead body of Kailash. Postmortem report (Exh.54) indicates the deceased died of cardio-respiratory arrest due to multiple head injuries associated with strangulation around the neck. It is in his evidence that in the month of February 2013 the investigating officer had been to him. He showed him (doctor) the weapons and solicited his opinion as to whether the injuries on the person of the deceased were possible thereby. In his opinion, injuries of the deceased were possible due to assault by means of a hard and blunt object like *pata*. He was also shown the cotton rope. In his opinion the deceased might have been strangled therewith.

9. P.W.1 – Shantaram Choudhary is a witness to the inquest panchanama and scene of offence (Exh.31 and 32 respectively). His evidence only suggests that the dead body of Kailas was found in the *shivar* of village Kathora.

10. P.W.2 – Bhaskar, brother of the deceased, testified that on the fateful day the deceased left the home for the agricultural field of the appellants. It was 07:30 a.m. The deceased did not return home for lunch.

He had received one phone call from the cell phone of the deceased. The caller was someone else. The caller only said “Kaldin”. Since balance from his mobile had run out, he could not call back on the cell phone of the deceased. He, therefore, set out in search for the deceased. He did not find the deceased in the field of the appellants. He had, therefore, to return home. His father told him that the deceased did not return home even by little past 04:00 p.m. He, therefore, again went to the field to take search of his brother. He noticed agricultural implements of his brother were lying in that field. On enquiry, the adjacent land owner – Mulchand (P.W. 5) told him to have had seen the deceased alongwith the owners of the land. He, therefore, went there. There was sugarcane crop grown up to the height of 7-8 ft. He also noticed a heap of cotton sticks. He noticed some body part of an unknown person. He identified the person to be his brother. He, therefore, rushed back to the village and reported the matter to villagers and police as well. The F.I.R. lodged is at Exhibit 40.

11. It is further in his evidence that on the following day he gave a supplementary statement expressing suspicion against the appellants. It is further in his evidence that about two and half years before, the deceased and appellant – Sarlabai were seen in a compromising position. Appellant – Chandrajit had threatened the deceased. The deceased had, therefore, left his work for over one and half month and stayed at home itself. He resumed

the work with the appellants only on their (appellants) request. During cross-examination he testified that the deceased had left home informing to have been going for work upon the land. He alone had gone. He had not carried any articles with him.

12. P.W.3 – Shantaram Patil is a witness to the panchanama (Exh.42) as to seizure of clothes on the person of the deceased. P.W.4 – Hiralal testified that on the fateful day, he was proceeding towards his land. It was little past 08:00 in the morning. He met both the appellants on the way to field. The appellants went towards the village. Thereafter he came to know about the incident.

13. Evidence of P.W.4 – Hiralal is of no assistance to the prosecution. It was nothing unusual for him to meet the appellants by 08:00 in the morning on the fateful day. As per his evidence, appellant – Sarlabai was holding crop of gram in her hand. As such, his evidence only suggests that both the appellants were proceeding together towards the village.

14. P.W. 5 – Mulchand testified that the deceased was serving with the appellants on yearly wages. He claimed to have had seen the deceased and both the appellants together by little past 08:00 in the morning of the fateful day. Admittedly, his land is adjacent to the land of the appellants. His evidence only suggests him to have had seen the appellants and the deceased

together in the morning of the fateful day. As such, it is a case of last seen together.

15. P.W.6 – Yograj testified to have had seen appellant – Sarlabai and deceased – Kailas in a compromising position in the cotton crop in the field of Sunil (P.W.7). His evidence is silent to state as to whether he had seen them on the fateful day or few years before. Even if we accept his evidence as it is, that would suggest appellant – Sarlabai to have had extra-marital affair with the deceased. P.W.7 – Sunil Patil is the owner of the land in which the dead body of the deceased was found concealed. His evidence does not take the appellants closer to the charge. Then there is evidence of P.W.8 – Ishwar, panch witness and P.W.10 – Sunil Gosavi, investigating officer. The evidence of both these witnesses is to the effect that appellant – Chandrajit made a disclosure statement (Exh.50) on 31st January, 2013. Appellant – Chandrajit first took them to his field and produced one iron *pata* and rope. As per the evidence of panch witness, they were taken to the place of incident. While the evidence of P.W.10 suggests the place was in the field of the appellant. From the place an iron *pata* and rope came to be seized. Then he took them to his residence. A nylon bag was hanged on a wall. It contained a sari of appellant – Sarlabai and shirt and trouser of appellant – Chandrajit. All these articles came to be seized. Disclosure statement is at Exhibit 51.

16. Admittedly, P.W.10 – investigating officer had taken the seized articles – pata and nylon rope to P.W.9 – Dr. Vinod in the month of February 2013. Same suggests that the wrapper containing those articles was uncovered to show them to the medical officer. True, the investigating officer again drew the panchanama regarding seizure of those articles. The C.A. reports (Exh.63 and 64) regarding all these seized articles suggest there were blood stains of blood group ‘B’. There is no evidence to suggest sari, shirt and trouser seized pursuant to disclosure statement (Exh.50) made by appellant – Chandrajit were on the person of the appellant at the material time. There is also no evidence to suggest what was the blood group of the appellant to exclude all possibilities. We will go even further to observe that there is no C.A. report to indicate the deceased had blood group ‘B’.

17. Admittedly, the F.I.R. was lodged against unknown persons alleging to have killed the deceased for unknown reason. The evidence of witnesses that they had seen the appellants and the deceased together by 08:00 in the morning of the fateful day, does not suggest anything more. It is just difficult to accept the evidence of brother of the deceased that when appellant – Chandrajit had realised the deceased to have illicit relationship with his wife and he had threatened to kill him, pursuant to which the deceased had left the work and confined himself in the home, appellant – Chandrajit again came to him to request him to resume the work and the

deceased did resume. The dead body was found in the agricultural field of P.W.7 – Sunil Patil and not in the field of the appellants. At the most what could be inferred from the evidence of prosecution that the deceased had illicit relationship with appellant – Sarlabai and the same could be the motive for appellant – Chandrajit. Recovery of *pata* and rope pursuant to the disclosure statement would *ipso facto* does not lead us to infer appellant – Chandrajit to have killed the deceased therewith. The said recovery loses its efficacy in view of the fact that post seizure of those articles, the investigating officer removed wrapper thereon and took those articles to the medical officer to solicit his opinion. The wrapper in which those articles were kept while seized pursuant to the disclosure statement, were not placed before the Court. Needless to mention suspicion, however strong, cannot take place of proof.

18. All in all we are of the view that the prosecution has failed to establish the charge beyond reasonable doubt. In the result appeals succeed.

Hence, the following order :-

ORDER

(I) Criminal appeal is allowed.

(II) Impugned order of conviction and sentence to the appellants dated 17th January, 2015 passed by learned Additional Sessions Judge, Amalner in Sessions Case No. 12 of 2013 is hereby set aside.

(III) The appellants stand acquitted of offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

(IV) Bail bonds of the appellants shall stand cancelled.

(V) Fine amount, if paid, be refunded to them.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD