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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1036 OF 2015

Sheshmani Magdum Pal

Age: 30 years,
R/o. Bisapur, Thana - Hussainganj.
Dist. Fattepur. U.P.
R/o. Kumawat Nagar,
Panchawati, District: Nashik.
(At present at Nashik Road Central
Prison)

Appellant
.. (Orig. Accused)

Versus

State of Maharashtra,
Through Police Station-Panchawati,
District: Nashik.

Respondent
.. (Orig. Complainant)

Mr. Yashpal M. Thakur, Advocate appointed for Appellant
Mr. Ajay Patil, APP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

**Reserved on : 29th August 2022.
Pronounced on : 6th September 2022.**

JUDGMENT (PER : MILIND N. JADHAV, J.)

. This Appeal questions the legality of Judgment and Order dated 27th March 2015 passed by the learned Additional Sessions Judge – 4, District Nashik in Sessions Case No. 142 of 2012, convicting Appellant (original accused) under Section 235(2) of the Code of Criminal Procedure (for short “Cr.P.C.”) for offences punishable under Section 302 read with 201 of the Indian Penal Code (for short “IPC”) and sentencing him to suffer rigorous imprisonment for life for

committing the murder of his wife Sangita and two minor sons Shiva (2½ years) and Chotu (7 months) and to destroy evidence and cause disappearance of their murder by throwing/disposing their dead bodies in the banks of Godavari river and Padolmala canal.

2. Prosecution case is based on circumstantial evidence. The gist of the prosecution facts which emerge for consideration are as under:-

2.1. Appellant and deceased were married on 22.04.2009. After marriage, Sangita went to stay with Appellant at Nashik but Appellant sent her back to Bisapur (U.P.). Appellant meted ill-treatment to Sangita hence, PW-9 Amitkumar Jayaprasad Pal, brother of deceased Sangita lodged complaint against Appellant about ill-treatment to Sangita at Bisapur Thana – Hussainganj, Dist. Fattepur (U.P.). Appellant was summoned to the police station at Hussainganj by police Authorities and was told not to ill-treat Sangita. Pursuant thereto on 27.12.2011, Appellant brought Sangita back to Nashik along with their two sons.

2.2. PW-9 – brother of Sangita regularly kept in touch with Sangita and made enquiry of her well being on the mobile phone of Appellant. Sangita used to tell him about ill-treatment by Appellant. On 18.01.2012, PW-9 and younger sister of Sangita called her on the mobile phone of Appellant and had conversation with her. Sangita

informed them that on that day, they were moving out from their rented house and hence she was packing the household articles.

2.3. Thereafter, PW-9 and his sister were not able to speak to Sangita and establish any contact with her. Hence on 24.01.2012, they contacted Lavlesh Dharmpal, maternal brother of Appellant and asked him to enquire about Sangita's well being. Lavlesh contacted Appellant on phone but was unable to speak to Sangita. On 29.01.2012 Appellant informed Lavlesh on phone that she had eloped from their matrimonial house along with the two sons. Hence, on 31.01.2012 Lavlesh reached Nashik to meet Appellant but Appellant did not meet him as he was in Uttar Pradesh. Lavlesh accordingly informed PW-9.

2.4. On 03.02.2012, PW-9 met Appellant in Bisapur and made enquiry about Sangita and her two sons. Appellant informed that Sangita had run away from their house along with the two sons and he did not know her whereabouts. On 28.02.2012 PW-9 reached Nashik and lodged a missing report of Sangita and her two sons at Panchavati Police Station. PW-9 also expressed apprehension about Appellant's conduct; police authorities therefore summoned Appellant for enquiry. On 28.02.2012 Appellant gave evasive answers to police, hence on 29.02.2012, Appellant was once again subjected to enquiry by police authorities, during which he confessed about having killed Sangita by

strangulating her neck and his two sons Shiva and Chotu and disposed their bodies on the banks of Godavari river beneath Indraprastha bridge and into the Nala beneath the canal at Padolmala road near Makhmalabad road.

2.5. Appellant led police to the aforementioned places for recovery and seizure. One plastic gunny bag tied with rope was recovered from beneath Indraprastha bridge on the banks of Godavari river; the gunny bag was opened in the presences of pancha witnesses; one decomposed dead body of female was found inside the gunny bag; PW-9 identified that the dead body was of Sangita on the basis of saree; so also Appellant identified before the police that the dead body was of Sangita; thereafter, accused led police to the Nala beneath the canal at Padolmala road where two black plastic bags were found and recovered at the instance of Appellant; they found three pieces of human skull, one T-shirt, one Nehru Shirt which were identified by Appellant as that of Shiva and Chotu and also by PW-9, since he had gifted these clothes to Shiva and Chotu.

2.6. Police authorities sent the dead body of Sangita and pieces of skull for post-mortem to Civil Hospital, Nashik.

2.7. On the basis of report, C.R. No. 90 of 2012 for offences punishable under Sections 302, 201, and 323 IPC was registered against Appellant on 29.02.2012 and criminal law was set into

motion; Appellant was arrested.

2.8. Spot Panchanama was prepared vide Exh.19 by PW-17 Narayan D. Ghule of the scene of crime i.e., the rented room of Appellant at Kumawat Nagar, Nashik where Appellant resided with his wife Sangita and their two children which was the spot of incident on 08.01.2012. Investigating officer (I.O.) during panchanama of the dead bodies called photographer Suresh Potdar (PW-12) who took photographs of the gunny bag and plastic bags which were recovered and conditions of the female dead body and skulls and clothes. I.O. produced in all 29 photographs vide Exh. Nos. 42/1 to 42/29 in evidence. I.O. carried out investigation, recorded statements of witnesses, sent the seized articles to the laboratory for chemical analysis vide letter at Exh. 59. Bones of deceased were seized and sent for testing to Anatomy Section of Bhausaheb Hire Govt. Medical College, Dhule vide letter at Exh. 61 and 61-A respectively. After completion of investigation, charge-sheet came to be filed against Appellant before Judicial Magistrate First Class, District Nashik. Since the offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate First Class committed the case for trial to the Sessions Court.

2.9. Charge was framed vide Exh. 04 and read over and explained to Appellant in vernacular to which Appellant pleaded not

guilty and claimed to be tried. His defence is that of total denial. From his statement under section 313 of Cr.P.C., it is revealed that he has shown his ignorance about the happening of incident. According to Appellant, he has been falsely implicated in this case by the complainant due to grudge against him.

2.10. Prosecution examined 17 witnesses to bring home the guilt of Appellant. No defence witness was examined.

3. It is to be noted here that Exh. 42/1 to 42/9 are photographs in evidence exhibited through PW-12 photographer; these photographs are kept in a sealed plastic cover between page Nos. 79 and 80 of the R & P. We have directed the Court Sheristedar to open the said envelop to peruse the photographs. Accordingly, under our directions the Court Sheristedar opened the same. We have perused the photographs and the Court Sheristedar has again kept the photographs in the same condition on record.

4. Case of the prosecution is based on circumstantial evidence. Homicidal death of Sangita and her two sons occurred on 08.01.2012 at about 9:30 p.m. in the rented house belonging to PW-6 at Plot No. 28, Kumawat Nagar, Nashik. Appellant resided in the rented house until 08.01.2012 and from 09.01.2012 shifted to a new rented house belonging to PW-10 at Ashwamedh Nagar, Peth Road, Nashik. PW-6 in his evidence has deposed that Appellant was residing with his wife

and two children in his house on leave and license until 08.01.2012, on which date he vacated the house and shifted to the new house. PW-10 in his evidence has deposed that Appellant finalized his premises on rental basis on 08.01.2012 and shifted to the premises on 09.01.2012 alone, without his wife and two children. He has further deposed that Appellant resided alone in the premises for 20 to 22 days and thereafter went to his native place.

5. PW-9 in his evidence has deposed in detail about the harassment meted out to Sangita by Appellant after her marriage; he has further deposed that Sangita informed him and other family members that Appellant used to suspect her character and chastity and therefore ill-treated her; he has given an account of how Appellant evaded him about disclosing the well being and whereabouts of Sangita and her children from 09.01.2012 until 28.02.2012. PW-9 accompanied Appellant and police authorities at the time of recovery of dead bodies of Sangita and the two children's, he identified Sangita's dead body on the basis of the saree which she regularly used to wear at home; he also identified dead bodies of Shiva and Chotu on the basis of clothes which were recovered since he had gifted the said clothes to them. In his elaborate and detailed cross-examination, he has given specific answers to the aforementioned issues; PW-9's deposition hinting and proving the motive is therefore, considered

reliable. PW-9 had identified the dead bodies of victim Sangita, Shiva and Chotu and thus his deposition is considered reliable and an important piece of circumstantial evidence.

6. In this context, recovery evidence relied upon by the prosecution proves importance. PW-15 Jagdish Bhambal, Assistant Police Inspector is the first I.O. who registered the FIR. He recorded the statement Exh. 53 and proceeded along with Appellant, PW-9 (complainant) and other pancha witnesses to recover the dead bodies of Sangita and the two children; he recovered the dead bodies at the instance of Appellant, prepared map of the place of recovery vide Exh. 54 and Exh. 55; conducted inquest panchanama of the dead bodies vide Exh. 18 and sent the dead bodies for post-mortem.

7. The most important piece of circumstantial evidence is the deposition of PW-7- Amit Suresh Nayak, neighbour and shop keeper residing on the adjacent Plot Nos. 26 and 27, Kumawat Nagar, Nashik. He has deposed that Appellant along with his wife and two sons were residing as tenant in room no. 2 on Plot no. 28 belonging to PW-6. He has identified Appellant in Court. In his evidence, he has deposed that on 08.01.2012 at about 8 p.m. when he was in his shop he heard the quarrel between Appellant and Sangita; he has stated that considering it was an usual quarrel, he did not pay attention; then at about 10:00 p.m. when he was putting his goods inside his shop, he saw Appellant

going out of his house on his bicycle and carrying two black coloured plastic bag which were hung on both sides of the bicycle handle; that he saw Appellant returning back after some time but the two black plastic bags were missing; that thereafter at about 10:30 p.m. when he was closing the shutter of his shop, he saw Appellant carrying one gunny bag of cement kept on the petrol tank of his motor cycle. He has stated that after 15 days when police brought Appellant to his room he came to know that Appellant had committed murder of his wife and two sons. In his cross-examination, he has answered the questions pointedly, his answers are reliable and deserve to be accepted. Evidence of PW-7 assumes significance because he is the person who has last seen the Appellant outside the spot of incident. This incriminating fact is an important piece of circumstantial evidence; PW-7 saw Appellant taking two plastic bags on his bicycle at 10:00 p.m.; thereafter he saw Appellant returning on his bicycle without the said two plastic bags and lastly at 10:30p.m. he saw Appellant taking a cement bag on his motorcycle. This evidence proves the prosecution case that Appellant after committing the crime between 8:00 p.m. and 10:00 p.m. on 08.01.2012 disposed of the dead bodies of his two sons by using his bicycle and the dead body of his wife Sangita by using his motorcycle. This fact stands proved when one considers the evidence of PW-10, owner of the new house rented by Appellant, since on the following day i.e. 09.01.2012 Appellant shifted to the new house alone

and stayed there alone for the next 20-22 days. The bicycle and motorcycle used by Appellant to transport the dead bodies of the victims were seized by prosecution. The accused gave disclosure statement about the same as per Exh. 22 and aforesaid vehicles were seized under panchanama (Exh. 23) by I.O. On 03.03.2012.

8. Mr. Yashpal Thakur, learned Advocate appointed to represent Appellant has argued that in the present case, DNA and bone reports received from the Forensic Science Department were filed in the Trial Court after filling of the charge-sheet and the same therefore cannot be taken cognizance of. It is seen that the learned Trial Court has taken judicial notice of the contents of the said reports even though they were placed on record after filing of charge-sheet. It is stated in the said reports that the DNA blood group of Appellant does not match with the DNA of the two sons whose skulls and bones were recovered and thus, the Appellant was not the biological father of the two children. This aspect is not of much relevance or help to the defence case since the chain of circumstances proving involvement of Appellant in committing the murder of Sangita and the two children is so well established that it proves beyond all reasonable doubt that it is the Appellant and Appellant only who is the author of the crime. Mr. Thakur had also vehemently submitted that in the presence case, post-mortem report is not proved in evidence and hence benefit of doubt be

given to Appellant. Once again we reiterate that the bodies of victims were found in a highly decomposed state after 51 days and therefore, it may be possible that the post-mortem report was not made available, but identification of the bodies has been done by PW-9 which has gone unchallenged. He has further argued in the present case that the prosecution has not proved any motive. In our opinion, the chain of circumstances stands proved by the prosecution, hence even though motive may not be present, the same becomes significant. However we find that in the present case, prosecution has successfully proved the motive also; PW-9 brother of deceased Sangita has deposed about Sangita informing him and his family members about the demand of money by Appellant, the harassment and ill-treatment meted out to her by suspecting her chastity and character.

9. ***PER CONTRA***, Mr. Patil, learned APP has pointed out an important aspect of circumstantial evidence. He has submitted that Sangita and her two children went missing within 11 days after she came back to reside with Appellant at Nashik; that the place of disposal of dead bodies of Sangita and the two children was exclusively to the knowledge of Appellant; that he led the police authorities to the two spots for effecting recovery of the dead bodies; that these dead bodies were in the plastic bags and cement bag lying in the bushes on the banks of Godavari river and the Padolmala canal

and both these spots were inaccessible and were shown by Appellant to the police authorities. We fully agree with the submissions advanced by the learned APP.

10. After carefully scrutinizing the evidence on record, we are of the considered opinion that prosecution has proved the following circumstances to bring home the guilt of Appellant and has thus proved its case against the Appellant beyond all reasonable doubts:-

- (i) that Appellant resided in the rented house in Plot No. 28, Kumawat Nagar Nashik till 08.01.2012 along with his wife Sangita and their two sons Shiva and Chotu;
- (ii) that on 08.01.2012 Sangita had a telephonic conversation with her sister and brother (PW-9) and informed them that Appellant had gone to finalized the new rented house and she was packing the household articles for shifting;
- (iii) that on 08.01.2012 at 8:00 p.m., PW-7 neighbor heard Appellant and Sangita quarreling; that at 10:00 p.m. PW-7 saw Appellant taking two black plastic bags on his bicycle and return back after some time without the bags; that at 10:30 p.m. PW-7 saw Appellant taking a cement bag on the tank of his

motorcycle and driving away with it;

- (iv) that the bicycle and motorcycle used by the Appellant to dispose the dead bodies were recovered and seized; that prosecution proved that possession of the motorcycle was with the Appellant, though its registration was in the name of the earlier owner;
- (v) that on 09.01.2012 i.e., on the next day after the incident Appellant shifted to the new rented house alone without Sangita and the two children; this fact was proved through the deposition of PW-10, owner of the new rented house;
- (vi) that on 29.01.2012 at about 1:30 a.m. in the middle of night Appellant informed PW-7 on phone call that Sangita had run away along with the two sons in the morning;
- (vii) that Appellant evaded and avoided answering the phone calls from PW-9 and Sangita's relatives after 09.01.2012;
- (viii) that after 29.01.2012 Appellant switched off his mobile phone and evaded answering phone calls from her parents and relatives;

- (ix) that despite the above, Appellant did not lodge missing complainant on search for Sangita and their two sons and this conduct of Appellant speaks volume above his motive;
- (x) That on 29.01.2012 Appellant led the police to the two spots near Godavari river and Padolmala canal and from there, dead bodies of Sangita and the two children were recovered;
- (xi) that the motive for committing murder of Sangita and the two sons has been proved through the evidence of PW-9, brother of Sangita;
- (xii) that the dead bodies of Sangita and their two children were identified by PW-9;
- (xiii) that spot panchanama was done and photographs taken by PW-12 of the dead bodies after recording of panchanama were marked in evidence and proved by the prosecution.

10.1. Thus, from the aforesaid proven circumstances, the chain of circumstance relied upon by the prosecution stands completely proved and it can be safely inferred that Appellant has committed the murder of Sangita and their two children.

10.2. The Hon'ble Apex Court in the case of ***G. Parshwanath Vs. State of Karnataka***¹ while adverting to the law relating to appreciation of evidence in a case based on circumstantial evidence when there is no direct eye witness account has in paragraph No. 11 held as under :-

"11. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eye-witness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The Court thereafter has to consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of

1 (2010) 8 SCC 593

which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

10.3. That apart we would also like to state about the conduct of Appellant. In the facts and circumstances of the present case, if it was the case of Appellant that Sangita and her two children had eloped and run away from their matrimonial home on 08.01.2012, then as a prudent husband and father, it was his duty to lodge a missing complaint with the police authorities to trace them; that Appellant did not do so. Learned Trial Court has in its judgment referred to 17 specific circumstances relied upon by the prosecution to prove the guilt of Appellant. On carefully scrutinizing the evidence on record we find no infirmity with the judgment of the Trial Court. We would like to add that Appellant committed a cold blooded murder of his wife Sangita and their two children Shiva (2 ½ years) and Chotu (7 months) and also attempted to cause disappearance of the evidence.

11. In view of the above, we do not find any merit in the appeal and entirely concur with the Judgement dated 27.03.2015 returned by the learned Trial Court and uphold the same.

12. Criminal Appeal No. 1036 of 2015 dismissed.

13. Before parting with the Judgment, we would like to place on record appreciation for the efforts put in by Mr. Yashpal M. Thakur, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant; he was thoroughly prepared in the matter and rendered proper and able assistance to the Court.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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