



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

CRIMINAL APPEAL NO. 921 OF 2018

Sadik S/o. Shabash Shaikh
Age: 51 years, Occu: Service
R/o Sadaphule Vasti, Jamkhed,
Tal. Jamkhed, Dist. Ahmednagar
At present R/o Attarwadi,
Bangdiwala Chawl, Room No.29/46 G,
Kureshinagar, Kurla, Mumbai – 70 ... Appellant

Versus

The State of Maharashtra ... Respondent

...

Mr. K. P. Rodge (appointed) and Mr. Mohsin Khan, Advocate for
Appellant
Mrs. V. S. Chaudhary, APP for the Respondent/State

...

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved on : 17.01.2024
Pronounced On : 23.01.2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. Heard Mr. Rodge and Mr. Mohsin Khan, learned Advocates
for the Appellant and Mrs. Chaudhari, learned APP for the
Respondent / State. Perused the paper book.

2. The Appellant is convicted by the learned Additional
Sessions Judge, Ahmednagar, in Sessions Case No.11/2016, for

the offences punishable under Sections 302 and 201 of the Indian Penal Code [for short 'IPC'] and sentenced to suffer rigorous imprisonment for life till end of his natural life and to pay fine of Rs.15,000/-, in default, to undergo rigorous imprisonment for three (3) years and further to suffer rigorous imprisonment for seven (7) years and to pay fine of Rs.5000/-, in default, to undergo rigorous imprisonment for one (1) year, respectively.

3. The aforesaid Sessions Case arose out of Crime No.144/2015, registered with Jamkhed Police Station, Ahmednagar on the report lodged by the Informant – Shakil Sattar Shaikh [PW-1]. It is the prosecution's case that the Informant is the resident of Sadaphule Vasti, Jamkhed, Ahmednagar. The Informant's father and step mother resides in the same locality near BSNL tower. The Appellant has constructed his house near the house of Informant's father and prior to one and half year [1 ½], the Appellant was residing there with his mother – Chandbi, first wife – Gulshanbi and two sons. However, due to harassment by the Appellant, his family members left the house.

3.1. On 19/09/2015 around 11:00 am, the Informant's cousin – Sayeed Mehboob Shaikh (deceased) and Haider came to the house of Informant. On inquiry with them, Sayeed told him that, he came along with Appellant, second wife of Appellant–

Mahmooda and Haider and also told him that the first wife of Appellant has made Application to the Mumbai Port Trust where the Appellant was working, demanding her share in the property, and to sort out the issue in that regard, the Appellant brought him from Mumbai and the brother of first wife of the Appellant was contacted for settlement. The deceased – Sayeed stayed in the house of Appellant in the night. The Informant returned to his house in the night, after closing his shop.

3.2. In the morning of 20/09/2015 between 05:00 to 05:15 am, the Informant's father – Sattar telephonically informed the Informant's step-mother that Sayeed and Mahmooda i.e. second wife of the Appellant, were lying in a pool of blood in front of their house. The Informant immediately rushed to the spot which was the premises of the Appellant's house and saw dead bodies of Sayeed and Mahmooda with injuries on their head. The Informant lodged report with the Police Station and the aforementioned crime came to be registered against the Appellant.

3.3. The Police reached the spot of incidence to take charge of the dead bodies for postmortem and prepared the inquest. The Appellant came to be arrested and the weapon – *Sattur* came to be seized at his instance. The muddemal / articles seized during the investigation were referred for forensic examination. The death certificates, postmortem reports and the reports of

Chemical Analyser came to be collected. On completion of the investigation, the Appellant came to be Charge-Sheeted for the offences punishable under Sections 302 and 201 of IPC.

3.4 The learned Trial Court framed the Charge against the Appellant at Exhibit-6 for the offences punishable under Sections 302 and 201 of IPC, to which, the Appellant pleaded not guilty and claimed to be tried vide plea at Exhibit-7. The prosecution examined in all eleven (11) witnesses and brought on record the relevant documents. After examination of the prosecution witnesses, the learned Trial Court recorded the statement of the Appellant under Section 313(1)(b) of the Code of Criminal Procedure [for short 'Cr.PC'] at Exhibit-69. The Appellant denied the prosecution case. By the impugned Judgment and Order, the learned Trial Court convicted the Appellant for the offences as mentioned in Para No.2 above.

4. It is submitted by the learned Advocates for the Appellant that the case is based on the circumstantial evidence and the circumstances brought on record by the prosecution do not conclusively prove that the offence is committed by the Appellant. They submitted that the prosecution has not examined the person Haider Ali, who is referred by the PW-1 – Shaikh Shakil Sattar [Informant]. They further submitted that no motive is proved by the prosecution. They submitted that if the chain of circumstance

is not complete, the benefit should be given to the Appellant. In support of their arguments, they cited the Judgment in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra; 1984 AIR 1622.**

5. It is submitted by the learned APP that the prosecution has successfully proved the circumstances which conclusively establishes that the offence is committed by the Appellant only and none other. He submitted that the Trial Court has properly appreciated the evidence available on record and no interference is called for.

6. Before evaluating the evidence available on record, it is to be noted that the prosecution's case is based on circumstantial evidence. The law on the point of circumstantial evidence is well settled by catena of Judgment of the Hon'ble Supreme Court of India and various High Courts. In the above referred Judgment, the law on circumstantial evidence is reiterated as:

"1. The circumstances from which the conclusion of guilt is to be drawn should be fully established; [163D]

2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; [163G]

3. The circumstances should be of a conclusive nature and tendency;[163G]

4. They should exclude every possible hypothesis except the one to be proved; and [163H]

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. [164B]. These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus delicti”.

In Manjunath and Others Vs. State of Karnataka; 2023 SC Online SC 1421 (in Criminal Appeal No.866/2011 decided on 06/11/2023), the Hon’ble Supreme Court of India in Paragraph No.14 has observed thus;

“14. The law on circumstantial evidence, is well settled. The locus classicus on the issue is Sharad Birdhichand Sarda, (supra) which stands consistently followed up until very recently in Kamal v. State (NCT of Delhi) [2023 SCC OnLine SC 933 [2 Judge Bench]

14.1 Illustratively, in Gargi v. State of Haryana [(2019) 9 SCC 738[2 Judge Bench] this court has, referring to various earlier judgments, summarised the principles relating to circumstantial evidence. The principle, is that the sum total of circumstances, when examined should point to the guilt of the Appellant, while ruling out all other possible hypotheses including his innocence and absence of second party guilt. Further reference may be made to Indrajit Das v. State of Tripura [2023 SCC OnLine SC 201 [2 Judge Bench] and Prakash Nishad v. State of Maharashtra [2023 SCC OnLine SC 666 [3 Judge Bench].”

7. Coming to the case in hand, the prosecution has brought on record the following circumstances to prove the charge;

- (i) Homicidal death of Sayeed Mehboob Shaikh and Mahmooda Sadik Shaikh.
- (ii) House of Appellant at Jamkhed as the place of Homicidal death of the said persons.
- (iii) Presence of Appellant at Jamkhed at the time of Incident.
- (iv) Discovery of weapon at the Instance of Appellant.

(v) Motive.

8. The evidence brought on record by the prosecution to prove the above circumstances is discussed below:

**(i) HOMICIDAL DEATH OF SAYEED MEHBOOB SHAIKH
AND MAHMOODA SADIK SHAIKH**

a) The evidence of the Informant, who is PW-1 – Shaikh Shakil Sattar, show that he knew the Appellant and both the deceased person. There is no dispute on this aspect. Deceased – Sayeed along with Haider met him on 19/09/2015 in the morning and informed that they had come with the Appellant and deceased – Mahmooda to Jamkhed. In the early morning of 20/09/2015, he got the information that Sayeed and Mahmooda were lying in a pool of blood near the gate of the house of Appellant. Thereafter, he went on the spot and saw the dead bodies of Mahmooda and Sayeed.

b) The evidence of PW-5 – Dr. Yuvraj Haribhau Kharade show that he was the Medical Officer at Rural Hospital, Jamkhed at the relevant time and performed Postmortem on two dead bodies i.e. of Sayeed Mehboob Shaikh and Mahmooda Sadik Shaikh. In his evidence, he has described the injuries on the dead bodies. The injuries on the body of Sayeed Mehboob Shaikh are described as under:

"(1) Incised wound over right tempo parietal occipital region of scalp at five sites from lateral to medial side, measurements are as

follows:

(1) 7x1x1 cm. (2) 10x1x1.5 cm. (3) 9x1x1 cm. (4) 10x1x1.5 cm (5) 12x1x1.5 cm.

(2) Contused lacerated wound over right cheek two sites 6x1x1 cm And 1x1x1 cm.

(2) CLW over forehead 5x1x0.5 cm.

(3) CLW over chin 9x1x1 cm.

(3) Contused abrasion over chest.

Other injuries discovered by external examination of following nature -

1) Fracture right temporal bone with fracture occipital bone with fracture parietal bone with fracture right mandible.

I have also found following injuries on the head of body:

1) Injury under scalp was present.

2) Skull – fracture with right temporal bone with fracture occipital bone with of parietal bone

Brain – congested and subdural and subarchnyd heamotoma + large size”.

He opined the cause of death of Sayeed Mehboob Shaikh as **“due to head injury by hard and sharp object”**.

c) The injuries on the body of Mahmooda Sadik Shaikh are described as under:

“Crush injury over left frontal and left temporal and parietal of scalp with left side of face.

I also found Brain coming out of skull.

I have found other injuries on her body which are as under:

Fracture left frontal bone with fracture left parietal bone with fracture left temporal bone with left zygomatic arch with left mandible with all facial bones left sides”.

He opined the cause of death of Mahmooda Sadik Shaikh as **“due to head injury by hard and blunt object”**.

d) The postmortem reports show the names of deceased as Sayeed Mehboob Shaikh and Mahmooda Sadik Shaikh, which are proved in the evidence of PW-5 and are at Exhibits – 33 and 34, respectively. The postmortem reports corroborate the testimony of this Medical Officer.

e) The inquest at Exhibits – 17 and 18, which are admitted by the defence, show the names of deceased as Sayeed Mehboob Shaikh and Mahmooda Sadik Shaikh.

f) The evidence of PW-5 – Doctor show that he was confronted with seized *Sattur* – article-30 and big stone – article-2. The evidence of PW-5 – Doctor go to show that the sharp injuries on the deceased – Sayeed were possible by Article No.30 – *Sattur* and the injuries on the deceased – Mahmooda, which were mentioned in Column Nos.17 and 18, were possible by means of big stone like Article No.2. The suggestion of defence that the said injuries were not a possible by use of the said articles, are denied by this expert witness.

g) The above referred evidence available on record clearly establishes that the death of Sayeed Mehboob Shaikh and Mahmooda Sadik Shaikh is homicidal. Moreover, as can be seen from the tenor of cross-examination of the prosecution witnesses, the homicidal death of the said persons is not disputed. It is thus clear that the prosecution has established the

circumstance no.(i).

(ii) HOUSE OF APPELLANT AT JAMKHED AS THE PLACE OF HOMICIDAL DEATH OF THE SAID PERSONS

a) On this point, the evidence of PW-1 – Shaikh Shakil Sattar show that when he learnt that Sayeed Mehboob Shaikh and Mahmooda Sadik Shaikh were lying in a pool of blood, he went on the spot. His evidence show that he saw the dragging blood marks of dead body from the house of Appellant towards gate.

b) There is evidence of panch witness for spot panchnama, who is examined as PW-3 – Pandurang Gahininath Raut. His evidence show that in the morning of 20/09/2015, he went to Jamkhed as he was called by the Police. The Informant had shown the spot of incident, which comprised of two room with compound wall and two dead bodies were lying inside the compound. There were blood stains on the wall of compound and spot. Two mobile handsets, brick pieces and one stone of cement, stained with blood were lying. He went inside the room and found blood stains in the room, one liquor bottle, two glasses and one stove, were lying there. The articles were seized from the said spot under the panchnama at Exhibit-22. The testimony of this panch witness remained unshaken in the lengthy cross-examination. The spot panchnama corroborates the testimony of

this panch witness.

c) There is document in the form of map of the spot of incident prepared by the office of Deputy Superintendent of Lands Records, Jamkhed [Nimtandar No.2] at Exhibit-44, which is admitted by the defence.

d) The evidence of Investigating Officer, who is examined as PW- 11, show that he received 8A extract of the spot of incident and the same is brought on record at Exhibit-60. Perusal of the same show that in Column No.4 the names of owner are mentioned as 'Shaikh Shaikhlal Sadik, Shaikh Arifa Sadik, Shaikh Faizan Sadik', minors through mother Mahmoodabi Sadik Shaikh. His evidence also speak of preparing rough map/sketch of the spot of offence, which has been discussed above as Exhibit-44.

e) The cross-examination of prosecution witnesses show that the spot of incident is not disputed by the defence. The above discussed evidence show that the the circumstance no.(ii) is proved.

(iii) PRESENCE OF APPELLANT AT JAMKHED AT THE TIME OF INCIDENT

a) What can be seen from the evidence available on record is that the Appellant was working with the Mumbai Port Trust as a Senior Worker. There is no dispute on this aspect. Exhibits-45

and 46, which are the communications issued by the concerned Authority of Mumbai Post Trust to the Jamkhed Police and are admitted by the defence, establish the employment of the Appellant with the Mumbai Post Trust. The documents were collected by PW-11 – Balkrushna Janardhan Hanpude Patil [Investigating Officer] as can be seen from his deposition. The said Exhibit-46 show that the Appellant was away from his duty from 18/09/2015 to 20/09/2015 without informing or obtaining prior permission of the office.

b) As earlier seen from the evidence of PW-1 – Shaikh Shakil Sattar that the Appellant had constructed his house at Jamkhed. The evidence of PW-6 – Bashir Rasul Qureshi show that he had mutton shop at Jamkhed by the name Bhai-Bhai Mutton Shop in the year 2015 and he knew the Appellant. He read the news in the newspaper regarding murder of his wife. On earlier day of incident i.e. 19th, the Appellant had come to his shop and purchased 1 Kg. meat and he identified the Appellant at the time of his evidence. He deposed that his statement was recorded in that connection. The cross-examination show that he knew the Appellant as the customer and the Appellant had alone come to his shop to purchase the meat and after purchasing the meat, he paid the money and left. Nothing has come in the evidence of this witness to disbelieve him.

c) There is evidence of PW-2 – Gulshabi Sadiq Shaikh, who is the first wife of the Appellant. Her evidence show that she was residing at Jamkhed with two children and mother-in-law in Sadaphule Vasti and the Appellant used to occasionally come to meet them. As the Appellant used to abuse and beat her, she went to reside at Underkhed at her brother's house. On 19/09/2015, her husband i.e. the Appellant, his second wife, deceased – Sayeed and Haider came from Mumbai to settle the dispute with her and she came to know about the same from her brother. She deposed that they intended to come to her house at Underkhed on 20/09/2015, however, on 20/09/2015, they received the information on phone about the incident and she directly went to the Hospital at Jamkhed, where she saw the dead body of Mahmooda and Sayeed. The Police recorded her statement. This evidence is to be read with the evidence of PW-1, wherein, he deposed that deceased – Sayeed and Haider Ali came to his house at about 9:30 am on 20/09/2015 and after inquiry, deceased – Sayeed told him that the Appellant and his wife – Mahmooda had come to Jamkhed to settle the dispute with Gulshanbi i.e. PW-2 and they already talked with the brother of Gulshanbi – PW-2. Thus, the evidence of PW-2 becomes relevant by virtue of Section 6 of the Evidence Act.

d) The evidence of panch witness – PW-7 show that on 20/09/2015, he was called at Jamkhed Police Station and he

reached there with Talathi Sachin Bhaisade and the Appellant was produced. His evidence show that the blood stained clothes of the Appellant i.e. half shirt of blue-white squares and black pant were seized under the panchnama at Exhibit-38 and the Appellant was arrested under the panchnama at Exhibit-39. This evidence is corroborated by the evidence of PW-11 – Investigating Officer, wherein, he deposed that on 20/09/2015, he took the custody of the Appellant under the arrest panchnama and at that time, seized the clothes and other articles from the Appellant.

e) This evidence regarding arrest of the Appellant show that the Appellant was arrested on 20/09/2015 around 5:30 p.m. from Jamkhed, where the incident had happened.

f) The defence of Appellant is that of denial and alibi. To question No.22, the Appellant replied in his statement under Section 313 of Cr.PC that deceased – Mahmooda and deceased – Sayeed came together on 19/09/2015 and he came to Jamkhed on the next date. Except this, nothing is brought by the Appellant in the evidence that he was present elsewhere on the day of incident. Even on the touchstone of preponderance of probability, the defence of alibi is not made out. In the light of the evidence brought on record on this point, non-examination of Haider Ali [referred by PW-1 – Shaikh Shakil Sattar] is not fatal for the prosecution.

g) From the above discussed evidence, it becomes crystal clear that at the time of offence, the Appellant was at Jamkhed and as earlier discussed the Appellant was having his house at Jamkhed. Thus, the presence of the Appellant at Jamkhed at the time of incident is established and the circumstance no.(iii) is established.

(iv) DISCOVERY OF WEAPON AT THE INSTANCE OF APPELLANT

a) The evidence of PW-4 – Sachin Arjun Bhaisade, who was serving in the Tahsil Office, Jamkhed speak of discovery of weapon at the instance of Appellant. His evidence show that on 21/09/2015, he was called at Jamkhed Police Station. When he reached at 3:00 pm, he found the Appellant in the police custody and the Appellant had shown his willingness to show the place where he concealed the weapon and memorandum of the statement at Exhibit-24 was prepared. The Appellant led the vehicle to the spot which was near the BSNL Tower, near the girls hostel in Sadaphule Vasti. The Appellant showed the spot which was in the grass under the bush of Rui tree and one *Sattur* was produced by the Appellant from the said spot which was seized under the seizure panchnama at Exhibit-25. The evidence of this panch witness show that he identified the Appellant at the time of his evidence and also identified the *Sattur* – Article No.30, as the same weapon which was discovered and seized at the instance of Appellant. He denied that the Appellant was handcuffed. It has

come in the cross-examination that the spot of discovery was situated towards backside of the girls hostel and was not visible from the hostel. He denied that the spot of discovery was accessible to the public.

b) The evidence of PW-11 – Investigating Officer corroborate the evidence of the said panch witness that the article – 30 – *Sattur* was seized at the instance of the Appellant under the memorandum at Exhibit-24 and seizure panchnama at Exhibit-25.

c) The discovery at the instance of the Appellant is relevant by virtue of Section 27 of the Evidence Act, 1872 which reads as under:

"27. How much of information received from Appellant may be proved — Provided that, when any fact is deposed to as discovered in consequence of information received from a person Appellant of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".

The evidence as discussed above show that the discovery of the said *Sattur* was out of disclosure from the Appellant while he was in police custody. The Appellant was arrested soon after the incident and there was immediate discovery of article-30 *Sattur* at the instance of the Appellant. From the evidence available on record, the discovery of weapon i.e. *Sattur* – Article-30 at the instance of the Appellant, while he was in police custody, has been established by the prosecution and the circumstance no.(iv) is established.

(v) MOTIVE

a) In the cases based on circumstantial evidence, motive assumes significance. The motive for commission of crime in the cases in hand, as per the prosecution, is that both the deceased were in love relation with each other and therefore, the Appellant, who was the husband of deceased – Mahmooda, committed the crime. The evidence of PW-1 – Shaikh Shakil Sattar show that the deceased – Mahmooda was the second wife of the Appellant and PW-2 Gulshanbi, the first wife of the Appellant was real sister of deceased – Mahmooda. There is no dispute on these aspects. In the cross-examination of PW-1 – Shaikh Shakil Sattar, the factum of love affair between the deceased – Sayeed and deceased – Mahmooda is brought on record. He deposed that he was not aware whether PW-2 Gulshanbi was knowing about the love affair between deceased – Sayeed and deceased – Mahmooda and he was not aware whether the love affair of deceased – Sayeed and deceased – Mahmooda was known to the Appellant.

b) The evidence of PW-2 Gulshanbi, the first wife of Appellant and sister of deceased – Mahmooda, in her cross examination deposed that deceased – Sayeed was residing near their house at Mumbai and was usually coming to their house. It is brought on record in the cross-examination of PW-2 that deceased – Sayeed also used to come in the house of the Appellant when her sister

i.e. deceased – Mahmooda, was staying with him. It is also brought in the cross-examination that when she was staying with the Appellant at Mumbai, the Appellant used to leave the house at 6:00 am and return at 6:00 pm. This cross-examination fortifies the prosecution's case about the motive.

c) The evidence of PW-11 – Investigating Officer show that during the course of investigation, it transpired that, the deceased – Sayeed was having illicit relations with the deceased – Mahmooda who was the wife of the Appellant and due to the said relations, the Appellant brought them from Mumbai on the pretext to settle the dispute of his first wife at Jamkhed and the Appellant administered liquor to both of them and committed their murder. This aspect of liquor finds corroboration from the evidence of PW-5 – Doctor, which show that after opening the stomach of both the deceased, he found food articles with the smell of alcohol. The column no.21 of the postmortem reports corroborate the said testimony about the presence of alcohol in the stomach of both the deceased. As is clear from the evidence of PW-3 – Pandurang Gahininath Raut that there was one bottle like liquor bottle and two glasses on the spot of incident which were seized under the spot panchnama. Thus, the evidence on record show that the Appellant had the motive to commit the crime as his second wife deceased – Mahmooda and deceased – Sayeed were intimately involved with each other.

d) The above discussed evidence on record establishes the motive behind the crime.

9. The other evidence that of PW-8, PW-9 and PW-10, who are the police personnel, show that they had carried articles and DNA kit for chemical analysis. The reports of chemical analyser are brought on record in the evidence of PW-11 – Investigating Officer at Exhibits – 64 and 65. It only indicate stains on the articles. Though there are other CA reports, they are not exhibited before the Trial Court. Therefore, they are kept out of consideration.

10. The paper book show that the incriminating circumstances were put to the Appellant by the learned Trial Court pursuant to the provisions of Section 313(1)(b) of Cr.PC, wherein the Appellant accepted that he was residing near the house of Informant's father i.e. near BSNL Tower at Jamkhed and one dead body of male and another dead body of female were lying inside compound of his house. This response of the Appellant to the incriminating circumstances and denial to all other incriminating circumstances gives rise to additional link in the chain of circumstances to make it complete. On this aspect, it would not be out of place to quote the observations from the Judgment in **Trimukh Maroti Kirkan Vs. State of Maharashtra; (2006) 10 SCC 681**, in Paragraph Nos.15, 21 and 22, which read thus;

"15. 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 a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court.

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. [AIR 1972 SC 2077], it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra [(1992) 3 SCC 106], the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife".....

11. The above discussed circumstances are proved by the prosecution by credible evidence. The proved circumstances point towards the involvement of the Appellant in the crime and rules out all other possible hypotheses including the innocence of the Appellant and any other person. We maintain the conviction of the Appellant recorded by the Trial Court. The learned Trial Court has imposed punishment for the offence punishable under Section 302 of IPC as "*to suffer rigorous imprisonment for life, which shall mean, till end of his natural life*". The said punishment needs to be corrected / modified to bring it in consonance with the provisions of Section 302 of IPC.

12. The Appellant is also convicted for the offence under Section 201 of IPC for causing disappearance of evidence of the offence. Learned Trial Court recorded the impugned judgment that the Appellant had assaulted the Sayeed and Mahmooda in his house and after commission of the offence, he dragged their dead bodies out of the house upto the compound gate, with intention to disappear evidence in respect of the offence which had taken place in his house and concealed weapon – *Sattur* in the grass near Rui tree at some distance from the spot of offence. Therefore, ingredients of Section 201 of IPC were proved against him. Examining this observation of the learned Trial Court in the light of above referred proved circumstances, we see no reason not to concur with the said finding of the learned Trial Court.

13. In view of the above, we proceed to pass the

following order:

ORDER

- (i) The Appeal is dismissed.
- (ii) The Paragraph No.2 of operative order of the impugned Judgment dated 02/05/2018 is corrected/modified as under:

"The word "Accused is sentenced to suffer rigorous imprisonment for life, which shall mean, till end of his natural life" is corrected and be read as "Accused is sentenced to suffer imprisonment for life".
- (iii) The fees of appointed Advocate is quantified at Rs.10,000/- [Rupees Ten Thousand Only], which is to be paid by the High Court Legal Services Sub- Committee, Aurangabad.
- (iv) The Record and Proceedings be sent back to the Trial Court.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)