



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

CRIMINAL APPEAL NO.320 OF 2021

Ramdas s/o Keruba Salve,
Age 47 years, Occ. Labour,
R/o Balkheda, Tq. Kannad,
District Aurangabad
(presently in jail)

...APPELLANT

VERSUS

The State of Maharashtra
Police Station, Kranti Chowk,
Aurangabad
(Copy to be served on Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad)

...RESPONDENT

.....
Mr. S.G. Bobde, Advocate for appellant
Mrs. S.N. Deshmukh, A.P.P. for respondent
.....

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

Date of reserving judgment : 10th February, 2025

Date of pronouncing judgment : 1st April, 2025

J U D G M E N T (PER : R.G. AVACHAT, J.) :

The challenge in this appeal is to the judgment
and order of conviction and consequential sentence, dated

20/05/2021, passed by the Court of Additional Sessions Judge, Aurangabad in Sessions Case No.36/2015. Vide impugned judgment and order, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of R.3000/-, in default to suffer S.I. for six month.

2. The facts giving rising to the present appeal are as follows :-

The appellant had married Jyoti (deceased). Both of them were residing as husband and wife for long. The couple was blessed with a child. Both Jyoti and the appellant were previously married. Jyoti had, however, deserted her first husband Vilas for some reason.

3. The appellant along with Jyoti and children would reside initially at Rajiv Nagar, Aurangabad. Then they shifted their residence to Abrar Colony. The appellant started suspecting fidelity of his wife. Their used to be frequent quarrels between the two. The appellant again took a room at Rajiv Nagar on rent. It was just few days before the incident

dated 15/16th November 2014, the appellant went to his earlier room. Took Jyoti with him. After some hours, he alone came back to the house of his parents-in-law at Abrar Colony itself and told that Jyoti left him midway. A search was made for Jyoti. Her dead body was found in the room taken on rent by the appellant at Rajiv Nagar. There were multiple injuries on her person.

4. P.W.1 Ashabai, sister of Jyoti, therefore, lodged F.I.R. (Exh.17) against the appellant with Kranti Chowk Police Station, Aurangabad. A crime vide C.R. No.544/2014 was registered for offence punishable under Section 302 of the Indian Penal Code. A crime scene panchanama (Exh.26) was drawn. Inquest (Exh.34) and autopsy (Exh.117) were conducted on the mortal remains of Jyoti. The appellant was arrested. Pursuant to the disclosure statement made by him, a scarf/ dupatta was seized with which he allegedly strangled Jyoti. Statements of persons acquainted with the facts and circumstances of the case were recorded. Clothes on the person of the deceased and the appellant were seized. The seized articles were submitted to Forensic Science Laboratory.

On completion of the investigation, the charge sheet was filed against the appellant.

5. The Trial Court framed the Charge (Exh.10). The appellant pleaded not guilty. His defence was that, someone else committed murder of his wife. He made search for her. He even lodged missing person's report with a Police Station. His son Aditya is with his maternal grandparents. His daughter from first wife has been kept in Residential School in Camp, Aurangabad.

6. To bring home the charge, the prosecution examined 15 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court passed the order impugned herein.

7. Heard. Learned Advocate for the appellant would submit that, the case is based on circumstantial evidence. The appellant had no motive to commit murder of his wife. Jyoti had been previously married. She deserted her first husband. Her first husband was relative of her sister's husband. He used to visit Aurangabad and even meet Jyoti. His first

husband might have committed the crime. The appellant had made frantic efforts to search for his wife. He even approached the Police Station and lodged missing person's report. Most of the witnesses are relatives of the deceased Jyoti. A false cast of last seen together has been introduced. Mere fact of last seen would in no way lead the Court to conclude the appellant to be the culprit. The learned Advocate relied on the judgment in case of **Ashok Vs. State of Maharashtra (2015) 4 SCC 393** and **Nagendra Sah Vs. State of Bihar (2021) 10 SCC 725** and ultimately urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, submit that, the appellant cried wolf. He would suspect fidelity of his wife Jyoti. There used to be frequent quarrels between the two. The appellant had taken a room on rent at Rajiv Nagar. On the morning of the fateful day, he took Jyoti with him to the said room. He banged her head against a wall and strangled her with Dupatta. He did assault her as well. The appellant then went to the house of his parents-in-law and informed Jyoti to have left him midway. According to learned

A.P.P., it is for the appellant to explain where did he leave his wife when she was in his company. Jyoti's dead body was found in the room of the appellant. This speaks in volumes, suggesting the appellant to be the perpetrator of the crime. According to learned A.P.P., there is no reason to interfere with the order impugned herein.

9. Considered the submissions advanced. Perused the impugned judgment and order. Let us advert to the evidence on record and appreciate the same.

Jyoti met with homicidal death is a fact not in dispute. P.W.10 Dr. Sachin conducted autopsy on the mortal remains of Jyoti on 17/11/2014. He noticed following 8 injuries on her person.

- (i) Contused abrasion of size 1.5 cm. vertically placed over right forehead region of face, reddish in colour.
- (ii) Abrasion of size 2x1 cm. over right nasal ala, reddish.
- (iii) Abrasion of size 3x2 cm. over right side of neck, placed 6 cms. from right mastoid and 8 cms. from midline, reddish.

- (iv) Abrasion of size 5x1 cm. over left angle of mandible, placed obliquely downwards and backwards, reddish.
- (v) Abrasion of size 6x1 cm. horizontally placed over sub-mental and right sub-mandibular region, reddish.
- (vi) Multiple abrasion of size ranging from 4x1 cm. to 0.2x0.2 cm. over left elbow and upper 1/3rd of left forearm, whitish in colour.
- (vii) Multiple abrasion of size ranging from 1x1 cm. to 0.2x0.2 cm. over right arm and elbow, whitish in colour.
- (viii) Multiple abrasion of size 0.2x0.2 cm. over left flank and back whitish in colour.

The injuries noted under injury No.(i) to (v) were ante mortem in nature and injuries noted under (vi) to (viii) are post mortem injuries.

In the opinion of P.W.10 Dr. Sachin, the cause of death of Jyoti was manual strangulation with head injury. According to him, the death occurred within 36 to 48 hours next before commencement of autopsy.

10. P.W.1 Ashabai was the younger sister of Jyoti. She testified that, her parents were residing at Abrar Colony, Aurangabad. The appellant would also reside in the nearby of her parent's house. Jyoti had 1½ year old son of her first marriage. The appellant would harass and beat her up, suspecting her character. The appellant too was married. He has a daughter of first marriage. Then both the appellant and Jyoti shifted their residence to Rajiv Nagar. She further testified that, on 15/11/2014 by 11.00 in the morning, her brother Sunil (P.W.14) informed her to have seen the appellant taking with him Jyoti to Rajiv Nagar by 10.00 in the morning. Thereafter her sister-in-law Lalita made enquiry with her as to whether Jyoti came to her house. Thereafter the appellant had been to the house of Jyoti's parents at Abrar Colony. He enquired with them about the whereabouts of Jyoti. He took away his son from the custody of Jyoti's parents. Thereafter she (P.W.1) along with her husband, brother, his wife went to the room of the appellant in search for Jyoti. The room was found locked. There was one bed sheet (Chadar) placed as a curtain. She looked into the room by lifting the said Chadar. She noticed Jyoti lying on the floor. Blood was oozing from her

ears and nostrils. She (P.W.1) broke down. Her husband called the police. Police arrived. Jyoti was rushed to Ghati Hospital, Aurangabad. Jyoti was declared dead there. Then P.W.1 Ashabai lodged the F.I.R.

11. During her cross-examination, it was brought on record that, Jyoti was heightened than the appellant. She, however, denied that Jyoti was stronger than the appellant. She admitted that, Jyoti was previously married. She had stayed with her first husband in Mumbai for 6-7 years. As she did not conceive, she left her first husband and came back to her parents. She admitted to have had no occasion to visit Jyoti's room at Rajiv Nagar. This admission must be taken in the sense that she had no such occasion prior to the fateful day. The appellant was working as a Mason. She denied to have not known location of appellant's room at Rajiv Nagar. She admitted to have not been on good terms with the appellant. She, however, admitted to have grudge against the appellant. We have to take this fact, since according to the witness, it was the appellant who killed her sister.

12. She further testified that, at Kranti Chowk police Station, her husband narrated the incident to the police. It was reduced into writing. She put her thumb impression below the same. After having elicited this admission, she was again suggested that she lodged the false F.I.R. against the appellant. She flatly denied the same. The witness appears to be illiterate and rustic. The evidence was recorded three years after the incident.

13. P.W.2 Deelip is the husband of P.W.1 Ashabai. He gave evidence on the lines of evidence of P.W.1 Ashabai. According to him, the appellant would suspect character of Jyoti. Six month prior to the death of Jyoti, the appellant had quarreled with her. He along with his father-in-law and brother-in-law had, therefore, reasoned with the appellant and requested to be kind enough with Jyoti. The appellant, however, did not listen. He further testified that, 15 days before the incident, the appellant shifted his residence to Rajiv Nagar from Abrar Colony. He alone went to reside in that room. Jyoti along with her son continued to stay in a room at Abrar Colony. He testified that, his brother-in-law Sunil

informed him on phone on 15/11/2014 that he saw the appellant and Jyoti and told that Jyoti left him midway. All of them, therefore, made a search for Jyoti. They even overpowered the appellant and took him to the police station. The officials of Satara Police Station asked them first to take search for Jyoti.

14. This witness too was subjected to a searching cross-examination. He admitted that, Jyoti was previously married. Her first husband was his relative. He would visit his residence at Aurangabad. The witness has, however, flatly denied that Jyoti and her first husband would meet each other at Aurangabad. The defence wanted to suggest that it was that fellow and not the appellant who might have committed the crime.

15. It was suggested to this witness that both Jyoti and appellant would reside at Rajiv Nagar area until the date of the incident. It was also admitted by the appellant that both, he and Jyoti would reside at Abrar Colony (suggestion to P.W.2, para 7). The witness further testified that, he had been to the house of appellant's in-laws. The appellant had come there in

the morning of 16 November. He along with the appellant and his brother-in-law went to the Police Station. From Police Station they came back to Abrar Colony. At the Police Station, missing person's report was lodged. He, however, flatly denied that the appellant was in their company all along, but they have falsely doubted the appellant's involvement.

16. P.W.3 Vijay is a witness to the crime scene panchanama (Exh.26). He did not stand by the prosecution. He acknowledged his signatures on the panchanama (Exh.26).

17. P.W.4 Sachin is a witness to the inquest panchanama (Exh.34). While P.W.5 Gautam is a witness to the panchanama as to seizure of clothes of the deceased (Exh.40). He is also a witness to the disclosure statement made by the appellant (Exh.41) on 18/11/2014, pursuant to which a scarf, a blue colour Jean Pant and full shirt came to be seized from Rajiv Nagar hutment area.

18. The cross-examination of P.W.3 Vijay indicates that he would assist the police as and when required. We,

therefore, do not propose to place much reliance on the evidence of this witness.

19. P.W.6 Sanjay was a Police Head Constable attached to Satara Police Station. It is in his evidence that, on 15/11/2014 the appellant had come to the Police Station and stated that his parents-in-law were threatening him. He further informed that his wife left home. Whatever was reported by him was reduced into writing. A station diary entry was also made. He then went to Abrar Colony. This witness further testified that, the appellant that time was under influence of liquor.

20. During his cross-examination, he stated to have not taken any action against the appellant on account of having visited the Police Station in drunken state. A suggestion was given to this witness, denying the appellant to have visited the Police Station and lodged such report.

The fact is that the report is on record and before this Court, has been relied on.

21. P.W.7 Ashok was a Police official serving with Kranti Chowk Police Station, Aurangabad. It is in his evidence that, the appellant had visited the Police Station to state that his wife was missing. The appellant had a trouble in speaking. He left the Police Station, telling that he would make further search with his wife and will again visit the Police Station. According to him, since Abrar Colony was not within the jurisdiction of Kranti Showk Police Station, he made no further enquiry.

22. P.W.8 Umarkhan claimed to be the owner of a 6 room premises located at Abrar Colony. He claimed to have given one of the rooms to the appellant on rent. Both the appellant and Jyoti would reside in the said room. According to this witness, there used to be frequent quarrels between the two. About 15 days before the incident, the appellant had started beating up his wife. To get rid of the situation, he had asked the appellant to vacate the room. The appellant, therefore, alone shifted to Rajiv Nagar slum area. Jyoti with her child resided in his room at Abrar Colony. P.W.8 Umarkhan further testified that, on 15 November, the appellant came to

his room in the morning. He took Jyoti with him. The appellant alone returned by 3.30 p.m. and on enquiry about his wife, the appellant told that Jyoti is with her relatives. When Jyoti's other relatives came there and enquired about her whereabouts, the appellant was evasive. The appellant went and again returned. That time he was under influence of liquor. Jyoti's brother and brother-in-law came and took the appellant with them.

23. We have closely perused the cross-examination of this witness to find nothing fruitful for the appellant has been elicited. He denied to have given the police statement at the behest of Jyoti's brother.

24. P.W.9 Bakabai was owner of one of the tin sheet rooms located at Rajiv Nagar. She testified that, she let out the said room to the brother of one Uttam Salve. She meant to say that, it was let out to the appellant. She had been to Newasa. Neighbour informed her murder to have taken place in the said room. She, therefore, returned to Aurangabad.

During cross-examination, she denied to have not known anything about the incident.

25. Evidence of P.W.11 to P.W.13 pertain to CCTV footage. There is no Section 65-B certificate. Neither the appellant nor the defence relied on this evidence.

26. P.W.14 Sunil, brother of Jyoti, testified that, the appellant was Jyoti's husband. The couple was residing at Rajiv Nagar, Near Railway Station. After their one year's stay there, they started residing at Abrar Colony in a premises of Rashida Khan. Jyoti and appellant have a son. The appellant thereafter started raising doubt about Jyoti's character. He and his father tried to reason with the appellant. The appellant did not listen. The appellant again shifted his residence to Rajiv Nagar. Jyoti continued to stay at Abrar Colony along with her son. On 15 November, he had come to the house of his parents. He was on the terrace of the house. He saw the appellant and Jyoti leaving the room for Rajiv Nagar. In the evening the appellant alone came and started enquiring as to whether Jyoti came there. He told that Jyoti left him midway for answering nature's call. He (P.W.14), therefore, made a

call to his relative to find whether Jyoti had been there. As the appellant was evasive, he and his brother-in-law took the appellant to Satara Police Station, Aurangabad. The police there directed to approach Kranti Chowk Police Station. They, therefore, went to Kranti Chowk Police Station. The police asked them to take search for Jyoti first.

27. He further testified that, his sister Ashabai and her husband had gone to Rajiv Nagar for search of Jyoti. They made him call. He, therefore, went there. Jyoti was found dead. The appellant had fled away to Ambedkar Nagar. He overpowered the appellant and handed over to officials of Kranti Chowk Police Station.

28. During the cross-examination, this witness claimed ignorance about Jyoti's first husband. He admitted that, he is residing at village Shivna. This question was put in present tense. The same suggests that, this witness was residing at village Shivna when he gave evidence in the month of March 2021 i.e. 7 years after the incident. This does not wash away the case of this witness that he stayed in Abrar Colony in the year 2014.

29. P.W.15 Manohar was a Police Officer serving with Kranti Chowk Police Station, Aurangabad. It is in his evidence that, he paid visit to Rajiv Nagar Slum area pursuant to the telephonic information. He noticed dead body of Jyoti in a tin sheet room. There was a ligature mark around her neck besides injuries to her head. He met P.W.1 Ashabai there. She lodged the report (F.I.R.).

30. The aforesaid is the evidence in the case. Necessarily, the case is based on circumstantial evidence.

31. In case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)**, the Apex Court observed :

“152. A close analysis of the decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned must or should and not ‘may be’ established. There is not only a grammatical but a legal distinction between

‘may be proved’ and ‘must be or should be proved’ as was held by this Court in (Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, where the following observations were made :

“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(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 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.”

32. The appreciation of the evidence in the case goes a long way to indicate that the appellant admittedly married Jyoti. The couple was residing at Rajiv Nagar hutment area. Then they shifted their residence to Abrar Colony. In the

nearby of their residence, parents of Jyoti would reside. Most of the witnesses testified that the appellant started suspecting fidelity of Jyoti. He would, therefore, ill-treat her. Her relations had reasoned with him. There was, however, no let-up. The landlord (P.W.8 Umarkhan), therefore, asked the appellant to quit the room. The appellant, therefore, shifted to Rajiv Nagar again. Jyoti continued to stay with her son at Abrar Colony. On the fateful day, the appellant went to the room at Abrar Colony. He took away Jyoti with him. Since then Jyoti was not seen alive. The appellant alone had come back. He made two false statements, one is that, Jyoti went to her relative. He then said that Jyoti left midway for answering nature's call. When Jyoti was not found for long, her relatives, namely her sister (P.W.1 Ashabai) and Deelip (husband of P.W.1 Ashabai), Jyoti's brother Sunil (P.W.14) made search for Jyoti. They took the appellant with them, suspecting his involvement. Even they took him to the Police Station. Before that, the appellant alone had been to the Police Station to give missing person's report. The said report finds place at Exh.127. When P.W.1 along with her husband visited the appellant's room in Rajiv Nagar, they noticed Jyoti lying in injured state. Kranti Chowk

Police Station was informed on phone. P.W.14 Sunil rushed to Rajiv Nagar. He found Jyoti was dead. Jyoti's dead body was shifted to Ghati Hospital, Aurangabad. As stated above, the post mortem report indicates Jyoti died of manual strangulation associated with head injury. All this evidence indicates that, the deceased was in the company of the appellant. Thereafter the deceased was not seen alive. The dead body of Jyoti was found in a room taken on rent by the appellant. The appellant had every motive to eliminate his wife since he was suspecting her character. This entire evidence and appreciation thereof lead us to conclude that, the appellant did not offer any plausible explanation as to when did Jyoti leave him. On the contrary, the evidence and appreciation thereof referred to hereinabove undoubtedly lead us to conclude that it was the appellant and none else to have committed murder of Jyoti and under a false pretext, the appellant visited the Police Station to lodge missing person's report.

33. Since it is seen in many a cases that without hearing the convict or finding his financial position, particular quantum of fine is imposed. The convicts some times are

found to be unable to pay fine amount. Then they prefer Writ Petition before this Court. Legally, even the convict undergoes sentence in default of payment of fine, still the amount of fine stands recoverable, subject to certain provisions of the Indian Penal Code and Code of Criminal Procedure, as an arrears of land revenue.

34. In the facts and circumstances of the case, and on appreciation of the evidence, we find no reason to interfere with the order impugned herein. The appeal, therefore, stands dismissed. However, the quantum of sentence in default of payment of fine is reduced from simple imprisonment for 6 months to simple imprisonment for 15 days.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-