



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

CRIMINAL APPEAL NO.361 OF 2018

Balasaheb @ Bala Laxman Vaidya,
Age : 40 years [at present 44],
Occ. Labour, r/o. Navgan Rajuri,
Tq. and Dist. Beed

..Appellant

Vs.

The State of Maharashtra,
Through Police Station, Beed (Rural)
Tq. and Dist. Beed

..Respondent

AND

CRIMINAL APPEAL NO.1066 OF 2019

Ashabai wd/o. Tukaram Panchal,
Age : 40 years, Occ. Household,
r/o. Belura, Tq. and Dist. Beed,
At present in Yerwada Womens Central Jail
Pune

..Appellant

Vs.

The State of Maharashtra,
Through Police Inspector,
Police Station Beed (Rural),
Tq. and Dist. Beed

..Respondent

Mr.B.B.More and Mr.M.B.Ubale, Advocates for appellant in Criminal
Appeal No.361 of 2018

Mr.Saeed S. Shaikh, Advocate for appellant in Criminal Appeal No.1066
of 2019

Mrs.S.N.Deshmukh, APP for respondent-State in both appeals

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : FEBRUARY 12, 2025
PRONOUNCED ON : MARCH 11, 2025**

JUDGMENT [Per R.G.Avachat, J.] :-

Both these appeals are decided by this common judgment, since the appellants therein take exception to the judgment of their conviction and consequential order of sentence dated 25.04.2018, passed by learned Addl. Sessions Judge, Beed (Trial Court), in Sessions Case No.135 of 2014. Vide the impugned judgment and order, the appellants have been convicted and consequently sentenced as under :-

Sr. No.	Section	Punishment
1	302 r/w.34 of I.P.C.	Imprisonment for life and pay fine of Rs.2,000/-, in default, R.I. for three months
2	120-B of I.P.C.	Imprisonment for life and pay fine of Rs.2,000/-, in default, R.I. for three months
3	Section 201 r/w.120-B of I.P.C.	R.I. for three years and pay fine of Rs.2,000/-, in default, R.I. for three months

All the sentences were directed to run concurrently.

2. The facts, in brief, giving rise to the present appeals are as follows:-

The appellant in Criminal Appeal No.1066 of 2019 - Ashabai (original accused no.2) had extra-marital relationship with the appellant in Criminal Appeal No.361 of 2018 - Balasaheb @ Bala (original accused no.1). Both would meet each other frequently and even go out of village. They had been to Shirdi twice and stayed there overnight in a lodge. The appellant - Ashabai has three children. In the month of May, 2014, her both sons had been to their maternal grand-parents. As such, the appellant Ashabai was alone at her residence along with her husband - Tukaram (deceased). On the intervening night of 22nd and 23rd May, 2014, Tukaram was strangled to death. He was taken to a private clinic under the pretext of he to have suffered heart-attack. She even informed the village Police-Patil accordingly. The cousin of deceased (PW1 - Yuvraj) was informed. He rushed to the village of the deceased. He found the dead body of Tukaram at his house. He noticed ligature mark around his neck. In the meanwhile, the police were informed. Mortal remains of deceased Tukaram were subjected to autopsy. The Medical Officer opined it to be a case of death due to "asphyxia due to hanging". PW1 - Yuvraj, therefore, lodged the First Information Report (FIR - Exh.38) against both the appellants.

3. A crime, vide C.R. No.67 of 2014, was registered with Beed Rural Police Station. Both the appellants were arrested. It was revealed during investigation that appellant – Balasaheb brought ‘Restyl-0.5 mg.’ pills. The pills were administered to the deceased and during his sleep, he was strangled. The statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the charge sheet was filed against both the appellants.

4. The trial Court framed charge(Exh.14). The appellants pleaded not guilty. Their defence was of false implication.

5. The prosecution, to bring home the Charge, examined twenty-three witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the order impugned herein was passed.

6. Heard learned counsel for the parties. Learned counsel for the appellants would submit that the case was based on circumstantial evidence. There is no evidence to indicate that the appellant – Balasaheb was at the house of the appellant – Ashabai on

the fateful night. They would further submit that the evidence in the nature of the entries in the check-in registers of the lodge do not bear photograph of the appellant – Balasaheb. The name recorded therein was Balaji and not Balasaheb. Even if the evidence of some of the witnesses is accepted that both the appellants were emotionally involved with each other, there is nothing to indicate that they had conspired to eliminate the deceased. The Police-Patil (PW21 - Tukaram Dhawale) testified that the dead body of deceased Tukaram was seen on Opla (outside) of his residence. The prosecution did not examine any witness to prove that appellant – Ashabai and deceased Tukaram were together on the fateful night. It also failed to prove that no third person was with them during that night. No sooner she realised her husband to have been critical, she rushed him to a local clinic. The same rules out her involvement in the crime. Both learned counsel, therefore, urged for allowing the appeals.

7. Learned APP would, on the other hand, took us through the entire evidence on record. She would submit that the son (PW2-Samadhan) of the appellant – Ashabai has no reason to speak against her. She would submit that there is voluminous evidence to suggest extra-marital relationship *inter se* the appellants. The

appellant – Ashabai was reasoned with. She, however, continued with her relationship. There used to be frequent quarrels between her and deceased over the said issue. As such, the deceased was an obstacle in her relationship with appellant – Balasaheb. On the fateful night, appellant Ashabai and her husband Tukaram only were present at her residence. Tukaram died of strangulation. It would not be an act of single person, that too, of a lady. The appellant – Balasaheb must have been a privy to the crime along with her. There is evidence to indicate that in the early morning, both the appellants took the deceased to the clinic of Dr. Vijaykumar Muley (PW6). Same suggests this appellant too was with the other appellant by the time the deceased met with homicidal death. The Call Details Record (CDR) of the cellphones of both the appellants would indicate that on the fateful day and night and even for long there-before, both of them were in contact with each other. Both of them used to visit Shirdi. They would stay in lodge overnight. There used to be frequent quarrels between the deceased and his wife (appellant-Ashabai). As such, the deceased was an obstacle for the appellant – Ashabai. No other inference than both the appellants conspired to eliminate the deceased and executed their intention into action by strangling him, can be drawn. Learned APP would, therefore, urge for dismissal of the appeals.

8. Considered the submissions advanced. Perused the judgment impugned herein.

9. The case is based on circumstantial evidence. Before advertizing to the evidence on record, let us refer to the judgment of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** as under :-

“153. A close analysis of this 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.

(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.”

10. The following circumstances are relied on to bring home the charge:-

- (i) Homicidal death;
- (ii) Motive;
- (iii) False Explanation;
- (iv) Both the appellants to be together in the early morning of the fateful day.

Homicidal Death:-

11. PW11 – Dr. Hanumant was Medical Officer attached to the Civil Hospital, Beed. On 23.05.2014, he was on post mortem duty. He testified that Dr. Swati Pawar (PW12) was on duty on the same day. The police referred the dead body of Tukaram for post mortem. Dr. Swati Pawar conducted autopsy. He (PW11 – Dr. Hanumant) assisted her in the said exercise. PW12 – Dr. Swati referred to the post mortem report under her signature (Exh.63). In her opinion, the cause of death of Tukaram was “asphyxia due to hanging”. She had preserved blood and heart of the deceased for C.A. analysis and histopathology. The C.A. reports thereof find place at Exh.66 and 67. In her opinion, it was a case of homicidal death. The deceased was done to death 6-8 hours prior to the post mortem. Her remark at column no.17 of post mortem report reads thus :-

- “- Oblique ligature mark present over neck 2.3 cm. below mandible of size 35 x 3 cm.
- Knot mark absent
- Ecchymosis present in subcutaneous place corresponding to ligature mark
- Hyoid bone fractured.”

12. The histopathology report rules out the deceased to have been administered with sleeping/sedative pills. We, therefore, do not propose to refer to the evidence of the three witnesses (PW5- Dr.Ajaykumar, PW7 - Bharat and PW 9 - Raju) examined relation to the appellant - Balasaheb to have obtained prescription from Doctor and purchased `Restyl-0.5 mg.' pills. The fact, however, remains the deceased met with homicidal death.

13. Now, the question is, whether the appellants are the authors of the crime. PW1 - Yuvraj was cousin of Tukaram (sister's son). He testified that all was not well between Tukaram and his wife (appellant Ashabai) since one and half years prior to the incident. He came to know about the illicit relationship between the appellants. There, therefore, used to be quarrels between deceased Tukaram and appellant Ashabai. He along with his father and other elderly persons had been to the house of Tukaram. Appellant Ashabai was reasoned with. She was advised to disassociate from appellant - Balasaheb. He further testified that she, however, did not listen; the

relationship continued. He further testified that on 23.05.2014, in the early morning, he was informed of death of Tukaram. He along with his father, therefore, rushed to village Belura in a private vehicle. He went to the house of the appellant - Ashabai. He noticed the dead body laid in a tin-sheet shed. He noticed ligature mark on the throat of the deceased. There was bleeding from both the ears. He suspected something amiss. He, therefore, lodged the FIR (Exh.38). True, the evidence of PW1 - Yuvraj indicates that he lodged the FIR based on suspicion. He testified that both the grown up sons of the deceased had come to his place for summer vacation. As such, the appellant Ashabai and deceased Tukaram were the only persons at their residence.

14. PW2 - Samadhan is none other than the elder son of the appellant Ashabai. He testified that there used to be quarrel between his parents on account of appellant Balasaheb visiting their residence in the absence of his father. He further testified that on one or two occasions, when he came home, he saw appellant Balasaheb coming out of his residence; that time, his father was not at their residence. He further testified that his mother would ask him and his younger brother to go out of the house whenever the appellant Balasaheb would visit her. He further testified that about

one and half months prior to the incident, quarrel had ensued between his parents. His maternal uncle, grand-father and some of the villagers had worked out settlement. His mother was reasoned with to disassociate herself from appellant Balasaheb. She, however, did not pay heed.

15. During the cross-examination of PW2 - Samadhan, an omission that, when on two-three occasions, he visited the residence, he saw appellant Balasaheb coming out of his house, was brought on record. Although the same may sound material omission, we find no reason to discard the evidence of PW2- Samadhan, son of appellant Ashabai. He has no reason to have axe-to-grind against his own mother. On the relationship between the appellants, we have evidence of PW3 - Kisan Gawte, resident of the very village. He testified to have seen both the appellants moving together on motorbike. He, however, could not state the day, date and time thereof.

16. PW4 - Sanjay was Manager of Hotel Sai Vishwakarma Palace, Shirdi. He testified that about three years before, Balasaheb and one lady had checked in the hotel. They stayed in room no.301 overnight. He placed on record an office copy of the bill and entry in

the check-in register, wherein the name of appellant is appearing as 'Balaji' and not 'Balasaheb'. The lady stayed with him was stated to be one Ashabai. She represented herself to be the wife of appellant Balasaheb.

17. PW8 – Kisan Bhawar was another villager. He testified that after visiting Paithan for *Shasthi Yatra*, he along with his relative Nandabai went to Shirdi. He met both the appellants. At the instance of appellant Balasaheb, they stayed in a hotel. Since he did not have money to pay the hotel charges, it was the appellant Balasaheb, who had paid the same. The entries in the check-in register of the hotel have been placed on record. Same indicate both the appellant Balasaheb and this witness, along with one lady each, stayed in two separate rooms in the hotel. This witness was categorical to state that appellant Ashabai was with appellant Balasaheb.

18. PW10 – Mohammad Rafiq was the owner of the mobile shop. He testified to have issued a sim-card to the appellant Ashabai. He gave the number as 8308595937. PW13 - Narayan is panch witness to the crime scene panchnama (Exh.70). The crime scene is the house of appellant Ashabai. PW14 – Shaikh Sadeq is

panch witness to the seizure of Odhani/Dupatta. He did not stand by the prosecution. PW15 – Pandurang Aahir is another witness to the panchnama relating to obtaining specimen handwriting of the appellant Balasaheb. PW16- Pandurang Gavate is panch to the seizure of cellphone of appellant Balasaheb. PW17 – Vasant is Manager of hotel Sai-Kishor Lodge. He testified that on 26.05.2014, the police had visited his hotel and seized the check-in register. It is at Exh.100. Room Nos.104 and 105 were given to the appellant Balasaheb and Kisan (PW8) to stay along with one lady each. PW18 – Bhausahab is the witness relating to collection of C.C.T.V. footage of the hotel. PW19 – Rangnath is the police official, who conducted inquest under panchnama (Exh.71). He carried out investigation of the crime two days thereafter. PW20 - Jyotsna is the police official who recorded the case of unnatural death on the basis of the report lodged by the Police Patil of the village (PW21).

19. PW21 – Tukaram Dhawale was the Police-Patil of the village. He testified that on hearing hue and cry, he visited the house of the appellant Ashabai by 6.00 in the morning. He saw Tukaram's dead body. He inquired with Ashabai. She told him that Tukaram suffered chest pain. She further informed that she had called a villager – Shivaji Hole and took her husband to the clinic of

Dr. Muley and then brought back. During cross-examination, he testified that the relationship between the appellant Ashabai and her husband were cordial. The dead body was lying on the otla of the house. He further testified that anybody can go in front of the house of deceased Tukaram.

20. PW6 – Dr. Vijaykumar would run a clinic at village Rajure. He testified that in the wee hours (4 a.m.), the appellant Balasaheb along with one lady and one person had come with one patient. The appellant Balasaheb told him that there was chest pain to the patient. He (Doctor) found ligature mark around the neck of the said person. He also identified appellant – Ashabai.

21. Then, there is evidence in the nature of the C.D.R. and the tower location of the cellphones of both the appellants. Same has been duly admitted in evidence in view of the testimony of PW22- Sachin, Nodal Officer of Idea Cellular Company. The C.D.R. indicates that both the appellants were in contact with each other for long and on the given night as well. In our view, the same suggests that they were not together; but away from each other and hence, required to contact on cellphone.

22. Appreciation of the aforesaid evidence, undoubtedly, lead us to infer that there was illicit relationship between both the appellants. The deceased met with homicidal death at his residence. On the fateful night, appellant Ashabai and deceased were the only persons at their residence. Their son – Samadhan (PW2) and another son had been to their maternal grandparents for summer vacation. The appellant Ashabai falsely informed the Doctor and the Police-Patil, that Tukaram suffered chest pain. She wanted to make out a case of heart-attack. The Medical Officer has, however, specifically opined it to be a case of homicide. When both the appellants had been to the Doctor (PW6) to have the deceased Tukaram examined, a third person was with them. Same, therefore, do not lead us to infer that both the appellants were together on the given night and homicidal death was caused by both of them in pursuance of either common intention (Section 34 of IPC) or conspiracy (Section 120-B of IPC). Since appellant Ashabai told that her husband suffered chest pain, appellant Balasaheb may be presumed to have so told to the Medical Officer (PW6-Dr. Vijaykumar). The trial Court, relying on the judgment of the Apex Court in the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra (2006)10 SCC 681** has rightly convicted the appellant Ashabai.

Based on the said evidence, the trial court ought not to have convicted the appellant Balasaheb. In our view, there is no clinching and convincing evidence to establish the charge against appellant Balasaheb. He, therefore, deserves acquittal.

23. In the result, the appeals are disposed of in terms of the following order:-

(i) Criminal Appeal No.361 of 2018 preferred by appellant - Balasaheb @ Bala Laxman Vaidya is allowed. The impugned judgment and order dated 25.04.2018, passed by learned Addl. Sessions Judge, Beed (Trial Court), in Sessions Case No.135 of 2014, convicting and sentencing the appellant - Balasaheb @ Bala Laxman Vaidya for the offences punishable under Sections 302 r/w. 34, 120-B and Section 201 r/w. 120-B of Indian Penal Code is set aside. He is acquitted of the said offences.

(ii) Vide order dated 12.02.2025 passed by this Court, appellant - Balasaheb has been released on bail bonds. His bail bonds stands cancelled. Fine amount paid by the appellant-Balasaheb, if any, be refunded to him.

(iii) Criminal Appeal No.1066 of 2019 preferred by appellant - Ashabai wd/o. Tukaram Panchal is partly allowed. The conviction recorded against her vide the impugned order dated 25.04.2018, for the offences punishable under Sections 302 and 201 of Indian Penal Code, is maintained. The substantive sentences imposed against her for these offences too, stand maintained. Both the sentences shall run concurrently. She is, however, sentenced to pay fine of Rs.1,000/- and Rs.500/-, respectively, for the said offences, and in default thereof, to undergo R.I. for ten days, each.

(iv) The conviction and sentence recorded against appellant - Ashabai for the offences punishable under Section 120-B of Indian Penal Code is set aside. She is acquitted thereof.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP