

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

CRIMINAL APPEAL NO. 1519 OF 2018

Sampat Namdeo Tongare ..Appellant
Versus
The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO. 1166 OF 2025
WITH
INTERIM APPLICATION NO. 2759 OF 2025
IN
CRIMINAL APPEAL NO. 1519 OF 2018**

Ms. Swapana Pramod Kode (through V.C.) a/w. Divya Kakkar for the Appellant.

Mr. K. V. Saste, Addl. PP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
ADVAIT M. SETHNA, JJ.**

DATE : 22 AUGUST 2025

JUDGMENT: (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 11.05.2017 passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No. 169 of 2015.

2. The Appellant was convicted and sentenced as follows:-

- i) He was convicted for commission of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short “IPC”) and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, and in default to suffer simple imprisonment for one month.
- ii) He was convicted for the offence punishable under Section 498-A of the IPC and was sentenced to suffer imprisonment for one year and to pay a fine of Rs.500/-, and in default to suffer simple imprisonment for 15 days.
- iii) He was further convicted for commission of the offence punishable under Section 201 of the IPC and was sentenced to suffer imprisonment for one year and to pay a fine of Rs.500/-, and in default to suffer simple imprisonment for 15 days.

All the substantive sentences were directed to run concurrently. He was given set off under Section 428 of the Code of Criminal Procedure, 1973. The Appellant is in custody since 17.01.2015.

3. Heard Ms. Swapana Kode, learned counsel for the Appellant and Mr. Saste, learned Addl. PP for the State.

4. The prosecution case is that the Appellant was suspecting the character of his wife Latabai. On one occasion, he had beaten her and therefore she had gone to her parents' house. After the

father of the deceased intervened and called a meeting of the elders, the Appellant had assured to treat her well. She was taken back by the Appellant to his house. But on 15.01.2015, he committed her murder by giving blows with a wooden log on her face. According to the prosecution case, she was assaulted in the house and her dead body was thrown in an agricultural field. The villagers got to know about the incident. The relatives of the deceased were informed. Her father and her uncle came to the Appellant's village. They saw the dead body. Her father lodged the FIR vide CR No.I 7 of 2015 at Dindori Police Station on 15.01.2015. It was registered at 3:30p.m. The investigation commenced. The spot panchnama where the dead body was lying, as well as, the panchanama of the house where some blood was found were conducted. The Appellant was arrested subsequently. At his instance, a wooden log was recovered from the bushes. In the meantime, the postmortem examination was conducted. The seized clothes of the deceased and the weapon were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

5. During the trial, the prosecution examined seven witnesses. They were the father and the uncle of the deceased, the panchas, the medical officer who had conducted the postmortem examination and the investigating officer. The defence of the Appellant was of total denial.

6. The learned Judge relied on the evidence of recovery of the weapon. The weapon showed presence of blood of 'A' group which was also the same group of blood found on the clothes of the deceased and also of the blood found in the house. The learned Judge also relied on the circumstance of motive as deposed by the father and the uncle of the deceased. The learned Judge considered the effect of presumption under Section 106 of the Indian Evidence Act, 1872. On the basis of the circumstances and the presumption, the learned Judge recorded his findings.

7. PW-1 Shivram Shinde was the father of the deceased and the first informant. He deposed that, he had two daughters and two sons. Latabai was married to the Appellant two years before the deposition. After the marriage, she was treated well by her

husband for one and a half month, but then the Appellant started suspecting her character. He used to beat her. She used to disclose the same whenever she visited PW-1's house. About 15-20 days before the incident, she was mercilessly beaten by the Appellant and therefore she had come to PW-1's house at village Kochargaon. PW-1 has further deposed that as she was beaten by the Appellant, PW-1 took her to a private hospital. After the treatment, PW-1 took her to her maternal uncle's (PW-6 Hiranman Bendkule) house at Pimpriaj, Taluka Dindori, District Nashik. PW-1 had called the Appellant's brother and father and other four to five persons from the village Kochargaon to village Pimpriaj. The Appellant's relatives assured PW-1 that, in future, there would be no complaints of beating. Based on that assurance, PW-1 sent her for cohabitation to the house of the Appellant. Within 15 days, he got information that Latabai was assaulted by the Appellant. PW-1 then went to the Government Hospital, Dindori. He saw that Latabai had sustained injuries on the right eye and ear. She was dead. PW-1 then approached the police station and lodged his report. It was treated as an FIR. It is produced on record at Exhibit 9. He identified the

clothes of the deceased produced in the Court.

In the cross-examination, he deposed that there were other residential houses around the Appellant's house. His daughter had not given details of the suspicion expressed by the Appellant. He denied that his daughter - the deceased was suffering from fever and cold prior to 15 days of the incident. He admitted that the police had recorded his statements on two occasions. But he denied that he had stated before the police that his daughter was suffering from fever, she was medically examined and as she was feeling well she was sent to her matrimonial house. This fact was recorded in portion marked 'A' in his statement dated 09.02.2015. PW-1's attention was drawn to this portion from the supplementary statement, but he denied having stated so before the police. He could not explain as to why this portion marked 'A' was appearing in his supplementary statement. Incidentally, that statement bears the signature of PW-7 I.O. Bhaskar Ganakwar, but in his deposition, when he was examined as PW-7 he has not specifically stated that he had recorded the statement of PW-1 after the FIR. Therefore, the learned defence counsel was right on

relying on this contradiction. No other police witness was examined, from whom this contradiction could have been proved. This contradiction has some importance in the background of the case. The rest of the cross-examination is in the form of the suggestions that PW-1 was deposing falsely, but these suggestions were denied by him. The FIR produced at Exhibit-9 is almost similar to his deposition.

8. In this context, the evidence of PW-6 Hiranman Bendkule is also on the similar lines. He has deposed that the deceased got married with the Appellant in 2014. For about two to three months she was treated well by the Appellant, but after that, he started suspecting her character and used to illtreat her. According to PW-6, he came to know about this illtreatment from the deceased, as well as, from his sister (i.e. the mother of the deceased). PW-6 has further deposed that on two to three occasions he had dropped the deceased at her matrimonial house after pacifying both of them.

9. On 15.01.2015 when he was working in his agricultural

field, his brother approached him and told him that he had received a call that PW-6 Hiranman's niece Latabai was assaulted by the Appellant and she had died. Therefore, PW-6 and others went to Kochargaon. They saw the dead body of Latabai. She had sustained injury near her right ear. The police recorded his statement.

In the cross-examination, he denied the suggestion that the Appellant was treating Latabai properly.

10. PW-2 Nikita Bava, was a pancha for the inquest panchanama and seizure of clothes of the deceased.

11. The injuries are described in detail by the Medical Officer PW-4 Dr. Sahebrao Jirwad. He deposed that on 15.01.2015, they received the dead body of Latabai at about 4.30 p.m. He conducted the postmortem examination between 6.00p.m. to 6.30p.m. There was swelling on the right side of the face. Blood was oozing from mouth, right eye and right ear. There was swelling on the right eye. There was injury caused with blunt hard object on the right side of the face. There was blunt trauma to

right maxilla causing a fracture. The cause of death was death due to, 'hemorrhagic shock due to facial injury coupled with cerebral injury'. He prepared the postmortem reports, which are produced on record at Exhibit 21. He opined that the injury was possible by the wooden log produced before the Court at Article-E.

In the cross-examination, he deposed that there were no injuries on the scalp and on the skull.

12. PW-3 Arun Lilake was a pancha examined to prove the recovery of weapon at the instance of the Appellant. He did not support the prosecution case initially, and therefore the learned APP was permitted to put leading questions in the form of cross-examination. PW-3 deposed that on 17.01.2015, he was called by Dindori police at the police station to act as a pancha. Ganesh Gangurde was another pancha. Police requested them to act as panchas for recovery of the weapon. They gave their consent. PW-3 has further importantly deposed that their signatures were obtained in the police station. The police obtained their signatures on the panchanama. The police had shown them a wooden log and

accordingly the panchanama was drawn. This completely destroyed the evidence of recovery at the instance of the Appellant. Therefore, the learned APP sought permission to cross-examine this witness by putting leading questions. The learned Judge granted permission to cross-examine this witness. After that, this witness has given all favourable answers to the leading questions put by the learned APP. In the cross-examination by the learned APP, he deposed that, in their presence the Appellant gave a statement that he would show the place where he had concealed the weapon of offence. Both the panchas put their signatures on that memorandum statement. It is produced on record at Exhibit 17. After that, the Appellant led them towards Tongare vasti in a private vehicle. He led them for about 500 meters by walking and he produced a wooden log kept in the bushes. The police seized the wooden log. The police drew another panchanama that is produced on record at Exhibit 18. He identified the wooden log.

In the cross-examination by the learned counsel for the accused, he deposed that on that date he had put only two signatures and both the signatures were put at the same time. This

admission again shows that there could not be a separate statement by the Appellant in the police station and the recovery panchanama at the spot subsequently. The memorandum statement shows the time between 11.30a.m. to 11.40a.m. and the recovery panchanama Exhibit 18 shows the time as 11.40a.m. to 1.45 p.m.

13. PW-5 Dilip Bendkule was a pancha for two spot panchanamas. He deposed that on 15.01.2015 he was called to the agricultural field of the Appellant. He and the other pancha saw the dead body of the deceased lying near a well in that field. A panchanama was drawn. The clothes of the deceased were seized in their presence. That panchanama is produced on record at Exhibit 23. It was conducted between 4.00 p.m. to 7.00 p.m. on 15.01.2015. After that, they proceeded towards the Appellant's house. They entered the house. They saw blood stains in the house. The police collected blood stained soil from the house. That panchanama was drawn between 5.00 p.m. to 6.00 p.m. and it is produced on record at Exhibit 23.

In the cross-examination, he admitted that he could not tell the distance between the two spots i.e. between the agricultural field where the dead body was found and the Appellant's house. He could not even tell the approximate distance. He could not remember as to how many houses were situated near that spot. Significantly, PW-5 Dilip was the original resident of Pimpraj as was PW-6 Hiranman. The police had not taken help of the local villagers for conducting these panchnamas.

14. PW-7 Bhaskar Ganakwar had conducted the investigation. He deposed that after registration of the FIR, he received the instructions to investigate the CR No. 7 of 2015 of Dindori Police Station. He went to the spot of the incident where the dead body was lying. He carried out the panchanama. He sent the dead body for postmortem examination. He then went to the house of the Appellant and carried out the panchanama. He arrested the Appellant on 17.01.2015. The wooden log was recovered at the instance of the Appellant on 17.01.2015. The articles were sent by him for chemical analysis. After completion of the investigation, he filed the charge-sheet.

In the cross-examination he deposed that he could not tell from which bush the Appellant had produced the said wooden log.

15. Apart from this oral evidence, the prosecution produced the C.A. report on record at Exhibit 34. The CA report shows that the blood stains collected from inside the house show presence of human blood, but it was inconclusive. The clothes of the deceased and the wooden log sent for analysis showed presence of human blood of 'A' group.

This, in short, is the evidence led by the prosecution.

16. Learned counsel for the Appellant made the following submissions:

According to her, the Charge was not correct. While framing the Charge, the learned Trial Judge had mentioned thus:-

“ Secondly that you accused on 15/1/2014 in between 1.00 to 1.30p.m. at your residential house at Kochargaon, Tal. Dindori, Dist. Nashik suspected the character of deceased Latabai and assaulted her near the right eye and right ear and committed her murder and thereby committed an offence punishable u/s.302 of I.P. Code and within my cognizance.

Lastly that you accused on 15/1/2014 in between 1.00 to 1.30p.m. at your residential house at Kochargaon, Tal. Dindori at your residential house committed the murder of deceased Latabai and to screen yourself from legal punishment thrown her dead body near the agricultural field near the well and thereby committed an offence punishable u/s.201 of I.P. Code and within my cognizance.”

Learned counsel submitted that the incident had not taken place on 15.01.2014. The Charge is misleading. The date of the incident is important and, therefore, the entire trial is vitiated.

17. She submitted that the case is based only on circumstantial evidence. The prosecution has failed to prove each of the circumstances separately beyond a reasonable doubt. Those circumstances do not form a complete chain pointing only to conclusion of guilt of the Appellant. The learned Judge committed an error in relying on those circumstances. The motive is not proved by the prosecution. The evidence of PW-1 Shivram and PW-6 Hiranman in that behalf lack in material particulars. There are no specific instances mentioned. PW-1 Shivram's cross-examination shows that he has made a major improvement in his deposition over the statement made in his supplementary statement. The

improvement made by him in the deposition assumes importance because, as per his deposition, before 15 days of the incident, the victim was beaten badly by the Appellant and, therefore, she had to take treatment in the hospital. However, the portion marked 'A' in the supplementary statement of PW-1 shows that she was suffering from high fever and for that purpose she was taking treatment. After she recovered, she was sent to the Appellant's house. Therefore, the very premise of this allegation is not very solid. The prosecution case fails on the allegations of illtreatment meted out to the deceased. PW-1 Shivram has referred to one meeting held at Pimpraj in the presence of PW-6 Hiranman, but PW-6 in his evidence himself has not made reference to any such meeting. Nobody from that alleged meeting was examined by the prosecution. According to PW-1 Shivram, that meeting had taken place in PW-6 Hiranman's house at Pimpraj. There is no independent corroboration to this allegation. Not only that, but even PW-6 has not referred to that meeting. These are the main statements made by PW-1 Shivram in his deposition regarding the motive in this case. According to both PW-1 Shivram and PW-6

Hiraman, the Appellant was suspecting the character of the deceased and, therefore, this incident had taken place. To establish motive, PW-1 Shivram has deposed about the past history including the meeting. It is not supported by independent evidence and it is not supported by the deposition of PW-6 Hiranman. The F.I.R. is lodged out of anger against the Appellant.

Learned counsel further submitted that, the next circumstance which the learned Judge has relied on is about the recovery of a wooden log, but it was recovered from an open place. The evidence of pancha shows that the police had merely shown that wooden log at the police station and had obtained the signature of the pancha on the panchanama which was already prepared. Therefore, the evidence of recovery of the weapon is extremely doubtful. It cannot be taken into consideration to reach a conclusion that the offence is proved against the Appellant.

Learned counsel further submitted that, another incriminating piece of circumstance, according to the prosecution, is about finding of blood in the house of the Appellant. She

submitted that, the pancha for this panchanama of collecting the blood mixed earth from the house was a resident of Pimpraj i.e. the village where PW-6 Hiranman was residing. This pancha was not from the village where the house in question was situated. Therefore, even this evidence is doubtful. She further submitted that, if it was the prosecution case that the Appellant had committed the murder in the house and then had dragged the dead body to the place in the field, there could be other signs of trail of the blood stains on the way or finding of the blood on the clothes of the Appellant. However, no such evidence is forthcoming. The Appellant's clothes were not seized. There is nothing to show that the Appellant's clothes showed presence of blood. Except on the place in the house and in the field there was no trail of blood anywhere; which is highly suspicious.

Learned counsel further submitted that the learned Trial Judge erred in taking recourse to the Section 106 of the Evidence Act to hold that the Appellant has not discharged his burden to explain the circumstances which were within his special knowledge. She submitted that the prosecution has not proved the

basic facts against the Appellant and, therefore, this presumption is not applicable in this case.

18. Learned APP opposed these submissions. According to him, the error in mentioning the date in the Charge was a typographical error. It does not go to the root of the matter, and the trial is not vitiated, in view of the provision of Section 464(1) of the Cr.P.C.. In any case, the Appellant had never raised any such issue before the Trial Court and he had not showed any prejudice caused to him because of the same. The F.I.R., the panchanamas and all other documents specifically referred to the commission of the offence on 15.01.2015 and, therefore, it cannot be said that the Appellant was not aware of the exact date of the incident, for which he was facing the trial. He submitted that, since the blood stains were found inside the house of the Appellant, it was the duty and, in fact, it was the burden on the Appellant to explain this particular incriminating circumstance; but he has not discharged that burden and, therefore, presumption is rightly drawn against the Appellant U/s.106 of the Evidence Act. Learned APP further submitted that, PW-1 Shivram and PW-6 Hiranman are consistent in

deposing that the Appellant was suspecting the character of the deceased, and that was the motive due to which the Appellant had given blows on the face of the deceased. He further submitted that, recovery of a wooden log at his instance is another incriminating circumstance. Learned APP relied on the C.A. report to contend that the wooden log showed presence of blood of 'A' group, which was the blood group of the deceased. All these circumstances along with the presumption U/s.106 of the Evidence Act effectively proves the prosecution case against the Appellant beyond a reasonable doubt.

19. We have considered these submissions. Since this case is based on circumstantial evidence, the motive assumes importance. The prosecution needed to prove existence of motive beyond reasonable doubt. For the purpose of proving motive, the prosecution has examined PW-1 Shivram - the father of the deceased and PW-6 Hiranman - maternal uncle of the deceased. According to PW-1 Shivram, 15 days prior to the incident, the deceased had come to his place because the Appellant had allegedly assaulted her. Because of this assault, PW-1 had taken her

to the hospital for treatment. However, the prosecution has not led any evidence from any hospital to show that the deceased had taken treatment for such assault. On the contrary, contradiction from his supplementary statement shows that the deceased was suffering from fever and, therefore, she had taken the treatment. There is a clear attempt to allege motive against the Appellant. According to PW-1 Shivram, 15 days prior to the incident, the deceased was allowed to go and reside with the Appellant after she was assured of good behaviour on the part of the Appellant. However, a contradictory version from his supplementary statement shows that after the deceased had recovered from fever she was sent to the Appellant's house. More importantly, there is a reference to a meeting held in the house of PW-6 Hiranman at Pimpraj. PW-1 Shivram deposed that, after the deceased had recovered, PW-1 Shivram took her to the house of PW-6 Hiranman. There he had called the brother and the father of the Appellant and other four to five persons from the village Kochargaon to the village Pimpraj. The Appellant was residing at village Kochargaon and PW-6 Hiranman was a resident of village Pimpraj. Nobody from

those villages was examined by the prosecution to establish that said meeting had, in fact, taken place. Very significantly, if the meeting had taken place in the house of PW-6 Hiranman at Pimpriaj, PW-6 Hiranman would be the most natural and important witness to depose about the meeting, but he has not spoken a word about this meeting. Therefore, the meeting where the Appellant's brother, father and other relatives had assured PW-1 Shivram thereby practically admitting the illtreatment meted out to the deceased is not proved by the prosecution. PW-6 Hiranman's evidence in respect of motive is vague. He has not given any specific details. There is a general statement that the deceased was illtreated by the Appellant because he was suspecting her character. Thus, we find that the circumstance of motive is not proved by the prosecution beyond a reasonable doubt.

20. Another incriminating circumstance in this case is about recovery of blood stained wooden log. As we have already discussed, PW-3 Arun - pancha who was allegedly present at the time of the memorandum statement and recovery, is not a reliable witness at all. In his deposition, he has clearly stated that he was

called at the police station, his signatures were obtained on the panchanama and a wooden log was shown to him and the other pancha in the police station. After that, the learned APP was permitted to cross-examine him and thereafter he gave all the answers favourable to the prosecution in response to the leading questions put to him. Thus, it can be seen that this witness was not won over by the Appellant, but there is a strong possibility that he was telling the truth that his signatures were obtained at the police station and a wooden log was also shown at the police station. This is supported by the cross-examination conducted on behalf of the Appellant, wherein, he has admitted that he had put his signatures only at two places and those signatures were obtained in the police station. As we have already discussed, the memorandum statement panchanama was recorded earlier and the actual recovery panchanama was recorded subsequently. Therefore, he had to put his signatures on two separate occasions on two separate documents. But his cross-examination shows that he had put his signatures two times on one and the same time. Those were obtained in the police station. Thus there is further

doubt on the veracity of both these panchanamas. Even otherwise, the wooden log was recovered from the bushes. That place was accessible to all. It was not even mentioned that the wooden log was concealed in those bushes. The investigating officer was unable to describe the bushes from where the wooden log was taken out. Thus, we find that the evidence of recovery of wooden log is extremely doubtful.

21. The next circumstance is about finding of blood inside the house of the Appellant. In this context, it must be noted that the pancha for this panchanama was PW-5 Dilip. He was a resident of village Pimpraj which was the same village of PW-6 Hiranman. The police had not taken assistance of any local villager for this important panchanama. As rightly submitted by the learned counsel for the Appellant, there was no trail of blood from the house of the Appellant to the spot where the dead body was found. There is another indication that the panchanama of the house of the appellant is not reliable because PW-5 Dilip in the cross-examination has admitted that he could not tell the distance between the house of the Appellant and the agricultural field

where the dead body was found. He could not tell the distance even approximately. If he had really visited those two places with the police, it should not have been difficult for him to state the distance, at least, approximately. Therefore, even the panchanama of the house of the Appellant from where the blood mixed earth was seized appears to be doubtful.

22. Considering the evidence led by the prosecution, the effect of presumption U/s.106 of the Evidence Act will have to be tested. As we have discussed, the prosecution has not led cogent and reliable evidence in respect of these circumstances. The prosecution has not led any evidence of any other villager including the neighbours of the Appellant. It is not the prosecution case that the incident had taken place at odd hours or in the night when only the Appellant and the deceased could be at home. The dead body was found in an open field. There were some blood stains inside the house. It was at some distance from the agricultural field. The exact or approximate distance is not brought on record. Nobody had seen any person carrying the dead body from the house of the Appellant to the field. In this background, it

cannot be said that the Appellant had some information especially within his knowledge. In that case, the burden can not shift on him. Section 106 of the Evidence Act reads thus:-

“106. Burden of proving fact especially within knowledge - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

23. It cannot be said that, there were some facts incriminating or otherwise which were especially within the knowledge of the Appellant. In these circumstances, the prosecution cannot take help of Section 106 of the Evidence Act to contend that the burden was on the Appellant to prove his innocence.

24. As rightly submitted by the learned counsel for the Appellant, this is a case purely based on the circumstantial evidence. None of the above circumstances was proved by the prosecution beyond a reasonable doubt. Resultantly, these circumstances cannot form a complete chain of circumstances pointing unerringly only to the hypothesis of the guilt of the Appellant. As a result, the benefit of doubt must go to the

Appellant and he deserves to be acquitted.

25. Hence, the following order:

O R D E R

- i) The Appeal is allowed.
- ii) The Judgment and order dated 11.05.2017 passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No. 169 of 2015, convicting and sentencing the Appellant, are set aside.
- iii) The Appellant is in custody. He shall be released forthwith if not required in any other case.
- iv) Before being released, the Appellant shall execute P. R. Bond in the sum of Rs.25000/- U/s.481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (correspondingly U/s.437A of the Cr.P.C.) for his appearance, in case an Appeal is preferred against his acquittal.
- v) The Appeal is accordingly disposed of.
- vi) With disposal of the Appeal, the connected Applications are also disposed of.

(ADVAIT M. SETHNA, J.)

(SARANG V. KOTWAL, J.)