



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Appeal No. 89 of 2021

Ghagru S/o Bhimrao Atram
Occ :- Agriculturist, Aged about 24 years,
Convict No. C-10426,
Detained in Nagpur Central Prison,
R/o. Sorekasa, Tahsil :- Jivti,
Tq. and District - Chandrapur.

... Appellant

- Versus -

State of Maharashtra,
Through P.S.O., Police Station Bhari,
Tahsil Jivti,
District Chandrapur.

... Respondent

Mr. M. N. Ali, Advocate for the appellant
Mr. S. S. Doifode, APP for the State/respondent

**CORAM : ANIL L. PANSARE AND
RAJ. D. WAKODE, JJ.**

Date of reserving judgment : 11-11-2025
Date of pronouncing judgment : 13-11-2025

JUDGMENT (Per : ANIL L. PANSARE, J.)

The appellant and co-accused, namely, Laxman Bhimrao Atram were chargesheeted for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code (IPC). They faced trial in Sessions Case No. 29/2017. The Sessions Court, Chandrapur, vide judgment dated 10-6-2019, held appellant guilty of

offence punishable under Section 302 and 201 of the IPC. The co-accused, however, was held guilty only for the offence punishable under Section 201 of the IPC. The appellant has been sentenced to suffer imprisonment for life with fine of Rs. 3,000/- for the offence under Section 302 of the IPC. He has been sentenced to suffer three years rigorous imprisonment and fine of Rs. 1,000/- under Section 201 of the IPC. The appellant is aggrieved by the judgment and hence present appeal. Co-accused has not filed appeal.

2. We have heard Mr. Mir Nagman Ali, learned counsel for the appellant and Mr. S. S. Doifode, learned Additional Public Prosecutor (APP) for the State/respondent.

3. The case is based on extrajudicial confession made before P.W. 4. As such, learned APP submits that the case is based on circumstantial evidence, however, we do not find that such case has been made out through any witness. As regards extrajudicial confession, the argument is that it is inadmissible.

4. We may note here that there is no serious dispute about the homicidal death of the deceased, who was wife of appellant and was found hanging to a tree. The allegation is that appellant and co-accused have, on 3-11-2016, at the field of appellant situated at

Sorekasa, Tahsil Jivti, District Chandrapur killed his wife by pressing her neck and by hanging her to a tree projecting suicide to escape legal punishment.

5. Since the appellant has not disputed homicidal death, we need not examine the said issue. The question, however, is whether there is sufficient evidence to show appellant's involvement in the crime. We have gone through the impugned judgment, evidence and documents. We will refer to the same to the extent necessary to decide whether appellant is guilty of committing murder of his own wife.

6. P.W. 1 is father of deceased. He deposed that his daughter Nirmala was earlier married to Tukaram Atram. He died due to T.B. Thereafter, Nirmala got married to appellant Ghagru. He further deposed that Nirmala and appellant were in love affair and Nirmala became pregnant. After marriage, she was residing with appellant. He deposed that appellant asked Nirmala to go to field for plucking cotton. Appellant killed Nirmala and hanged her on the tree near the river. In the cross-examination, this part of his evidence as regards the incident is shown to be omission. He further admitted that police told him that Ghagru hanged Nirmala and hence he deposed so. He also deposed that relations between appellant and Nirmala were good. Thus P.W. 1

has not seen the incident. His evidence, therefore, is of no use, rather, it shows that appellant and his wife were in cordial relations.

7. P.W. 2 is neighbour of Nirmala. On the day of incident, he went to his field to graze bullocks. He came back home in the evening. Thereafter he came to know that Nirmala died of hanging on a tree. He and other villagers went to the spot. They saw dead body of Nirmala hanging to tree near nullah. He then deposed that field of appellant is abutting his field. The prosecution declared him hostile and cross-examined him. P.W. 2 denied that he met appellant and asked why Nirmala is sleeping, and further asked as to what happened to her. He denied that appellant told him that he and co-accused killed Nirmala. He admitted that on 4-11-2016, he went to the field to graze bullocks, returned home at 8.00 Hours. That time, he came to know that dead body of Nirmala is hanging on a tree near nullah.

8. Thus, on one hand, the prosecution has given suggestion that P.W. 2 met appellant and enquired about Nirmala and on the other hand, the prosecution put up a case that on 4-11-2016, he came back home and thereafter came to know about death of Nirmala. Such evidence will prove nothing about involvement of the appellant.

9. P.W. 3 is another villager, who is acquainted with appellant and Nirmala. He deposed that Nirmala's mother told villagers that appellant took her and hanged her. The villagers then approached the appellant and enquired about Nirmala, to which, he showed ignorance. His evidence is, therefore, also of no use as he has not seen the incident.

10. P.W. 4 is panch witness to spot. The spot was shown by the appellant. He deposed that accused persons disclosed on spot that they killed Nirmala by pressing her mouth. The defence took objection to record evidence. The trial Court has, accordingly, noted so. We find that objection was valid. The confession, if any, before police is inadmissible. Such evidence, which is inadmissible, should not have been recorded. Learned counsel for the appellant has rightly argued that such confession cannot be said to be extrajudicial confession because the same was made in the presence of police after being arrested and taken to spot of incident.

11. P.W. 5 is Deputy Superintendent of Police. He prepared spot panchanama. He has prepared seizure panchanama of the articles found at the spot. He conducted investigation and filed charge-sheet.

12. P.W. 6 is Police Sub Inspector, who registered merg and conducted preliminary enquiry.

13. This is how, the prosecution led evidence to prove the involvement of appellant in the crime.

14. Learned APP submits that the trial Court has rightly convicted the appellant, taking aid of Section 106 of the Evidence Act because death occurred in the field owned by the appellant.

15. We do not find merit in the submission. It is well settled that before invoking Section 106 of Evidence Act, the prosecution is under obligation to establish involvement of accused in the crime, then only can burden be shifted upon the accused.

16. In the present case, the evidence indicate that relations between the appellant and Nirmala were cordial. In fact, they were in love with each other. Nirmala became pregnant. They were residing together and had good relations. It is nobody's case that their relations were strained. None of the witnesses have deposed that on the date of incident, they have seen appellant and Nirmala together in the field allegedly owned by the appellant. That being so, merely because Nirmala having found hanging to the tree near nullah, which is in close proximity of appellant's alleged field, will not be sufficient to jump to the conclusion that appellant played vital role in the alleged crime and to shift burden upon him under Section 106 of the Evidence Act. The

trial Court committed manifest error of law in shifting the burden on appellant in term of Section 106.

17. The trial Court has also taken aid of Chemical Analyser's report. The blood group of appellant is 'B', that of co-accused is 'O'. The trial Court took note of the fact that nicker of deceased and her *dupatta* were stained with blood, having Blood Group 'A'. Similarly, clothes of appellant were also stained with blood of Group 'A'. The trial Court then observed that appellant has not explained the aforesaid incriminating evidence. Accordingly, the trial Court held that Nirmala had Blood Group 'A'. Said blood was found on the clothes of appellant and, therefore, he was in physical contact with Nirmala.

18. This finding is apparently erroneous in as much as it is not even the case of prosecution that blood sample of deceased was taken and sent for chemical analysis. In other words, there is nothing on record to show that Nirmala's blood group was 'A'.

19. Further, learned counsel for the appellant has invited our attention to clothes' seizure panchanama to show that the blood stains on the clothes were not found. Learned counsel submits that in the clothes seizure panchanama, the Investigating Officer and panch have not stated that clothes of appellant were stained with blood, which

means that there were no blood stains. In such circumstances, the prosecution was under obligation to show as to how blood was found on the clothes of appellant when it was sent to Forensic Science Laboratory.

20. We find substance in the aforesaid argument. The trial Court has not given any reason on this aspect and in absence of justification by the prosecution as to how the blood stains were found subsequent to recovery of clothes, the trial Court could not have connected appellant with the crime on the basis of blood stain of common blood group found on the clothes of deceased and appellant.

21. Put altogether, the trial Court's approach is contrary to the Evidence Act. The trial Court failed to assess the evidence in the light of well settled principles of law. There is absolutely no incriminating material against the appellant. The finding of trial Court that he is guilty of murder is apparently illegal. The judgment is liable to be quashed and set aside. Hence, we pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The judgment and order dated 10-6-2019 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No. 29/2017 as

regards appellant is quashed and set aside. Appellant Ghagru S/o Bhimrao Atram is acquitted for offence punishable under Sections 302 and 201 read with Section 34 of the IPC. He shall be released forthwith, if not required in any other case.

(RAJ D. WAKODE, J.)

(Anil L. Pansare, J.)

None present for the appellant. It is unfortunate that when the appeal is fixed for pronouncement of judgment, none appears. The conduct is deprecated. Counsel for the appellant should be careful.

(RAJ D. WAKODE, J.)

(Anil L. Pansare, J.)

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