



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

CRIMINAL APPEAL NO. 824 OF 2025

WITH

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 153
OF 2025**

Nagnath Gunwant Nilewad
Age : 49 Years, Occ. Agriculture,
R/o. Anupwadi, Tq. Udgir, Dist. Latur **..Appellant**

VERSUS

1. The State of Maharashtra.
2. Dnyaneshwar Shivaji Nilewad,
Age : 26 Years, Occ. Agriculture,
3. Shital Anil Nilewad,
Age : 25 Years, Occ. Labour,
Both R/o. Anupwadi Tq. Udgir,
Dist. Latur **..Respondents**

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Advocate for the Appellant : Mr. R. D. Biradar.

A.P.P. for Respondent/State : Mr. P. S. Patil.

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**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

**RESERVED ON : 27.01.2026
PRONOUNCED ON : 03.02.2026**

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

1. The appellant Nagnath Gunwant Nilewad, who is the informant, has challenged the acquittal of present respondents / original accused in Sessions Case No. 17 of

2016 from the offences punishable under Sections 302, 120-B, 201, 109, 114 read with 34 of the Indian Penal Code, at the hands of learned Additional Assistant Sessions Judge, Udgir (hereinafter referred to as the “learned Trial Judge”), under judgment and order dated 30.07.2025 in the aforesaid case.

2. As per the prosecution case, respondent No.2 Shital, who is the wife of the deceased Anil Nilewad, was having illicit relations with respondent No.1 Dnyaneshwar Shivaji Nilewad. As per the appellant/informant, on 15.12.2015, at about 5.30 p.m., when other brother of Anil by name Suryakant had gone to house of Anil, he saw Anil lying on the cot in dead condition and there were ligature marks on his neck as well as abrasion over the body. Accordingly, A.D. No. 74 of 2015 was registered in Udgir Police Station on the report of father of deceased. However, on subsequent day, i.e. on 16.12.2015, the appellant lodged report in the aforesaid police station, alleging that both the respondents/accused committed murder of Anil Nilewad. Accordingly, the investigation started and both the respondents were charge sheeted for the aforesaid offence. However, the learned Trial Judge, after conducting the trial, acquitted the respondents.

3. The learned counsel for the appellant vehemently argued that the learned Trial Judge did not appreciate the evidence in proper perspective and ignored the evidence of witnesses specially in respect of illicit relations between respondents/accused and the threatening to the deceased by respondent No.1, prior to the incident on that count. He pointed out that, the ropes allegedly used in commission of crime, are recovered at the instance of the accused and fresh injuries were also found on the person of the respondents/accused, indicating that the deceased must have retaliated at the time of commission of the offence. According to him, there were CDR on record regarding conversation of respondents with each other from the Mobile handsets recovered from them. He submitted that, despite such evidence, the learned Trial Judge refused to accept the same merely on the ground that those mobiles were not in their name. According to him, the prosecution has definitely established the complete chain of circumstances indicating the guilt of respondents/accused.

4. With the able assistance of learned counsel for the appellant, we have gone through the evidence of witnesses as well as the impugned judgment.

5. Admittedly, this is the case based entirely on circumstantial evidence and there is no eye witness to the incident. The case of the prosecution is based on story of illicit relations between respondents and when the deceased opposed for the same, both the accused removed him from their way, by strangulating him with the help of ligature material i.e. nylon rope. Admittedly, as per the evidence of Medical Officer, the death of Anil is homicidal. However, the learned Trial Judge has acquitted the respondents/accused on the basis of discrepancies in the evidence of witnesses and specially on the basis that the rope used in commission of crime was not properly recovered with the aid of Section 27 of the Indian Evidence Act.

6. It is to be noted that the motive, as claimed by the prosecution in committing this crime, is the illicit relations between accused No.1 and accused No.2 i.e. the wife of deceased Anil. For that purpose, it is claimed by the witnesses that two years prior to the incident, it was learnt from one Vilas that he had seen the respondents in compromising position in the hut. However, in the cross-examination itself it has come on record that, Vilas had already died by that time, and therefore, the very genesis of

the story of the prosecution has become doubtful. Moreover, it is also alleged by the witnesses that four months prior to the incident, they had seen respondents talking with each other and on that count, there was quarrel between deceased Anil and respondent No.1/accused. However, on this aspect also, there are omissions on the part of the witnesses.

7. Further, in respect of recovery of nylon ropes also, there is absence of memorandum statement of accused No.1. Moreover, though the CDR from the mobiles seized from the respondents/accused are on record, but the mobiles were not found in the name of respondents and there is no evidence on record to show that the respondents/ accused had in fact applied for those SIM Cards by using the documents of other persons. Therefore, merely on the basis of those CDR, it cannot be jumped on the conclusion that there was illicit relations between respondents and to continue the same, they eliminated Anil. In view of the same, it appears that the prosecution has not established the complete chain of the circumstances, indicating the guilt of accused beyond all reasonable doubts. Unless, the foundational facts are clearly established by the prosecution, leading to the guilt of the accused in case based on circumstantial evidence, the

absence of plausible explanation from the accused, is not fatal.

8. It is now settled that, if the acquittal is recorded by the learned Trial Judge, after proper appreciation of evidence on record, then it cannot be set-aside, merely because another view is possible. Therefore, considering the scope of appeal against acquittal, we do not find any reason to interfere with the impugned judgment. Accordingly, the appeal stands dismissed. Application for Leave to Appeal by State No. 153 of 2025 also stands disposed of.

(ABASAHEB D. SHINDE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

Y.S. Kulkarni