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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.164 OF 2025
WITH
INTERIM APPLICATION NO.2655 OF 2025**

Suraj @ Surath Aparati Shetty
Age 43 years, presently lodged in
Kolhapur Central Prison,
R/at Arvind Patil Wadi,
Khardeonagar, Ghatla, Chembur
Mumbai 400 071

... Appellant/Applicant

V/s.

State of Maharashtra
(Through Govandi police station)

... Respondent

Mr. Sushil Inamdar, appointed Advocate for the Appellant/Applicant.
Smt. M. H. Mhatre, APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 13th JANUARY 2026
PRONOUNCED ON : 13th FEBRUARY 2026**

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Present Appeal is directed against the Judgment and Order dated 18th November 2024, passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.67 of 2018, thereby, the Appellant-sole accused has been convicted under Section 302 of the Indian

Penal Code (for short 'I.P.C.') for committing murder of his wife and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- with default stipulation.

2) Heard Mr.Inamdar, the learned appointed Advocate for the Appellant and Smt.Mhatre, the learned APP for the Respondent-State.

3) The prosecution case was that, the deceased Babita was daughter of first informant-Kavita Panchal (PW-1), r/o. Sambhaji Nagar, Chembur, Mumbai. Babita got married to the Appellant in the year 2005 out of their love relationship. The couple used to reside at Kalva. In the year 2006 Babita became pregnant and therefore she had come to stay with PW-1. After the delivery, Babita resided with PW-1 for two years. During that period, the Appellant had gone to his native place at Cuttack, Orissa. Subsequently, the Appellant returned to Mumbai and the couple alongwith their daughter resided at Sanpada, Navi Mumbai. In the year 2011, Babita became pregnant for the second time. At that time, the Appellant took her and their daughter to his native village at Cuttack, Orissa where Babita delivered a male child named Soham.

3.1) In the year 2012, Babita was arrested in a case of theft registered with Kalwa police station but the Appellant was not found by the police. Subsequently, Babita was released on bail. Since then, she used to reside with PW-1. Meanwhile, the Appellant returned to Mumbai. However,

he was not visiting at PW-1's house. Yet, the couple used to meet outside. In the same year 2014, Babita gave birth to a third child (a daughter). Since about one and half month prior to the incident, the Appellant, Babita and their children used to reside in a rented room at Kharve Nagar. The Appellant was working as a watchman in a Nursery at Chembur and Babita was engaged in selling fish near a school, at Chembur. Therefore, her children used to be at the informant's place.

3.2) On 14/10/2017, at about 7.00 pm, Babita alongwith her children came to the house of PW-1. After having dinner, Babita left her elder daughter with PW-1 and she returned to her room with her two younger children. At about 10.45 pm, Babita's son Soham, aged 6 years, came running to PW-1's room and informed her that, "Papa killed Mummy by assaulting her with a cement tile, Mummy's head is bleeding". Immediately, PW-1 alongwith neighbour Prathiba Kumbhar (PW-2) rushed to Babita's room. When they arrived near that room, they saw that the Appellant was present there at a distance of 5 to 6 ft and he was running in the opposite direction. The light outside her room was switched on but the door of the room was locked from outside. Therefore, they peeped through the window but only to see that Babita was lying in a pool of blood on the kitchen floor and her head was bleeding. Therefore, PW-2 dialed numbers '100' and '108' and called the police and an Ambulance. One person from

the crowd broke open the door of the room with a stone. Meanwhile, police arrived at the spot. Babita was taken to Shatabdi Hospital but she had expired.

3.3) Therefore, PW-1 filed a report (Exh.25), wherein, she narrated the incident as aforestated. Said report came to be recorded and registered by API Priyanka Patil (PW-11) at FIR being C.R. No.222 of 2017, with Govandi Police Station, under Section 302 I.P.C.. Police Inspector Shashikant Pawar (PW-12), conducted the investigation. During police custody, the Appellant made a voluntary disclosure leading to recovery of the key of the room. Upon completion of investigation, charge-sheet was submitted.

4) The trial Court framed the charge. The Appellant pleaded not guilty to the charge and claimed to be tried. The defence of the Appellant was of total denial, false implication and *alibi*.

5) To prove the charge, the prosecution examined 12 witnesses which include the informant, Pratibha Kumbhar (PW-2), Babita's son Soham (PW-4), her brother Rakesh Panchal (PW-9), pancha witnesses, autopsy surgeon, API Priyanka Patil (PW-11) who had done the initial investigation, Ramrao Jadhav, PHC – careier (PW-10), and PI Shashikant Pawar – the Investigating Officer (PW-12). However, Babita's son Soham (PW-4), the eye -witness, did not support the prosecution case.

6) On closure of the prosecution evidence, the trial Court recorded the statement of the Appellant under Section 313 of Cr. P. C. Therein, the Appellant has stated that he and Babita got married out of their love relationship. His mother-in-law (PW-1) was against their marriage and was angry on them on account of their love-marriage. Appellant further stated that, on 22/10/2017, when he was on duty at Vashi, his son-Soham (PW-4) called him and informed that Babita fallen on the ground, sustained injuries and her head was bleeding. Then phone call was switched of. Later on, PW-4 again called him on phone and informed that Babita has expired in the hospital and said him to come home, soon. Hence, he came home. Police were present there. The police took him to the *chowki* and told him that his mother-in-law has filed the complaint of the murder against him. Thus, he has been falsely implicated in the case.

7) The trial Court appreciated the prosecution evidence in the light of the rival arguments and held the Appellant guilty of the murder of Babita. Hence, convicted and sentence him as stated in paragraph 1 above.

8) Mr. Inamdar, the learned appointed Advocate submitted that, there is no evidence that prior to the incident, the Appellant used to ill-treat Babita and doubt her fidelity. PW-4, the only eye witness to the murder, clearly deposed that at the relevant time, Babita had fallen down and therefore she had sustained the head injury. PW-4 was just aged 6 years and

therefore, naturally, he would be with his mother. As such his testimony cannot be disbelieved. There is material inconsistency in the testimonies of the prosecution witnesses which clearly indicate that they have falsely deposed that when they arrived at the room of the occurrence, they had seen that the Appellant was present near the room and he was running away. The recovery of the key of the room is also not reliable as the evidence of the related witnesses is inconsistent. He urged that, the panch to the seizure of the clothes of the accused was an interested witness and therefore his testimony is not reliable. In this background, mere presence of the blood on the clothes of the Appellant would not be sufficient to convict him for murder. However, the trial Court did not consider these aspects. Therefore, the impugned Judgment and Order is not sustainable in law.

9) In reply, Ms Mhatre the learned APP submitted that, the testimonies of the informant – Kavita Panchal, Pratibha Kumbhar and Rakesh Panchal are very consistent and in line with the text of the report (Exh.25) filed by PW-1. The report was filed very promptly and it ruled out the possibility of concocting a false story of murder. She submitted that the recovery of key of the house and seizure of the blood stains clothes of the Appellant added an additional strength to the testimonies of the material witnesses. Babita and the Appellant were married for 12 years. During this period, PW-1 had never filed any complaint against the Appellant. On the

contrary, PW-1 used to take care of the children of the couple. As such, question of false implicating of the Appellant does not arise. The Appellant has failed to explain the homicidal death of Babita in his custody. The Appellant has also failed to prove the plea of the alibi. All these facts and circumstances have been properly considered by the trial Court before handing over the conviction and sentence to the Appellant. As such, his Appeal is meritless.

10) We have considered these submissions and to appreciate same, we have perused the prosecution evidence. Record reveals that, the accused has not disputed that he and Babita got married out of their love-relationship; that, they were blessed with three children; that, they used to reside in the said room; that, Kavita had sustained the injuries in the said night when she was present in the said room and that, she died due to said injuries. Therefore, and looking at the defence of the accused, two questions arise for our determination, *i.e.*, whether the death of Babita was homicidal or not? And, whether the Appellant has committed her murder?

11) Since PW-4, the sole eye-witness has resiled from his previous statement, the proof of the charge was based on circumstantial evidence. Therefore and considering the facts and circumstances of the case, the decision in case of *Trimukh Maroti Kirkan V/s. State of Maharashtra*, reported in (2006) 10 SCC 681, is relevant here. Therein, the Hon'ble

Supreme Court has observed that, If an offence takes place inside the privacy of a house and in such circumstances where the assailant has all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. ... The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case." In paragraph 15 it is enunciated that, "Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. ..." Guided by these principles we have carefully scrutinised the evidence of record.

12) In so far as the question of the homicidal death is concerned, PW-5 Dr. Sandeep Ingle, Medical Officer had conducted the postmortem

examination on the body of Babita and noted the following injuries :-

External Injuries as per Column No.17 :-

1. Contused crushed lacerated wound, 5cm x 1.5cm x bone deep, obliquely placed over frontal area of scalp, 2cm above right eye.
2. Contused crushed lacerated wound, 2cm x 0.5cm x bone deep, obliquely placed over right fronto-parietal area of scalp, 3cm above injury no. 1.
3. Contused crushed lacerated wound, 2cm x 0.5cm x bone deep, obliquely placed over right left fronto-parietal area of scalp.
4. Contused crushed lacerated wound, 2.5cm x 1cm x bone deep, obliquely placed over left eyebrow.
5. Contused crushed lacerated wound, 6cm x 1cm x 1cm bone deep, obliquely placed over right clavicular area of chest.
6. Contused crushed lacerated wound, 3cm x 1cm x bone deep, obliquely placed over right parieto-temporal area of scalp.
7. Contused crushed lacerated wound, 8cm x 3cm x bone deep, obliquely placed over left parieto-temporal area of scalp.
8. Contused crushed lacerated wound, 4cm x 2cm x bone deep, obliquely placed over left occipital area of scalp.
9. Contused crushed lacerated wound, 2cm x 1cm x bone deep, obliquely placed over left temporal area of scalp, 2 cm behind left mastoid.
10. Contused lacerated wound, 5cm x 1cm x 1cm, obliquely placed over left nape of neck.
11. Contused lacerated wound, 3cm x 1cm x 1cm, obliquely placed over left nape of neck 2cm below injury no.10.
12. Contused abrasion, 10 x 2.5cms, obliquely placed over left side of neck.

13. Contused abrasion, 4 x 1.5cms obliquely placed over left clavicular region.
14. Contused abrasion, 2 x 1cms obliquely placed on left shoulder joint.
15. Contused abrasion, 4 x 1.5 cms obliquely placed on left area of chest.
16. Contused abrasion, 3 x 1.5cms obliquely placed over right clavicular region.
17. Multiple Contused abrasions, size varying from 1 x 0.5cms to 5 cm x 2cm, placed over left forearm dorsally.
18. Contused abrasion, 2.5 x 1cms obliquely placed on right forearm on flexor aspect.”

Internal injuries :-

Head Injuries :-

- (i) 200 gms hematoma, at left parieto-occipital region
- (ii) Skull- Vault and base-describe fractures, their sites, dimensions, directions etc.
 1. Comminuted depressed fracture seen at left parieto-temporo-occipital bone.
 2. Linear fracture seen at lesser wing of sphenoid bone.
 3. Hinged fracture seen at base of skull.
- (iii) Brain-

Subdural hemorrhage seen over left cortex and subarachnoid hemorrhage seen allm over the cortex as thin film.

Brain: multiple hemorrhage contusions seen at paces and Oedematous.

12.1) PW-5 deposed that he had issued the postmortem report (Exh.39), accordingly it bears his signature and its contents are correct and true. In his opinion, the cause of the death was “*Shock due to craniocerebral injury associated with multiple injuries over neck and chest*”. Said injuries were ante-mortem in nature and were sufficient in the ordinary course of the nature to cause her death. Said injuries mentioned in column Nos.17, 19, 20 and 21 were possible by the tile (Art.3) and tube-light fixture (Art.9). All the said injuries were possible by the tile (Ar.3). The external injury Nos.12 to 18 of column No.17 were possible by the tube-light fixture. The head and brain injuries mentioned in column No.19 were possible by the said tile.

12.2) The testimony of PW-5 is consistent with the postmortem report. Nothing material has emerged in his cross-examination to disbelieve his testimony, the postmortem report and the cause of the death mentioned in the Cause of Death Certificate (Exh.40). Looking at the nature and numbers of the external injuries, it is apparent that, said injuries were not possible due to a fall on a hard surface. On the contrary, the injuries appear to be the result of a violent and deliberate assault with the tile and tube-light fixture. In the wake of above, we hold that the death of Babita was homicidal.

13) Now, we advert to the question as to the author of the crime. In

this regard PW-1 has testified that the Appellant was resident of Cuttack. In the year 2011, a theft case was registered against Babita and, she was in jail for three years. After Babita was released from the jail, she alongwith Appellant and their children used to reside in a rented room at Chembur. There, they stayed for about a month and half. PW-1 deposed that her room was at about 15 to 20 minutes walking distance from the room of the Appellant. The Appellant used to work as a security guard and Babita used to sell fish. That Babita's children were staying with her.

13.1) PW-1 has deposed that, on 14/10/2017, at 5.30 pm, Babita had come to her place. At about 10.30 pm, Babita went to her room alongwith two children Soham (PW-4) and Poonam. At about 10.45 pm, PW-4 came to her and informed that the Appellant killed Babita. Immediately, she and her friend PW-2 rushed to the spot. PW-1 deposed that when they were proceeding towards the room of the Appellant, they saw him while crossing the road from the opposite direction. PW.1 deposed that, when they reached at the room of the Appellant, the door of the room was locked and Poonam was outside the house. On enquiry, Poonam told her that Babita was inside the room. PW-1 deposed that she then peeped inside the room through the window and saw that, Babita was lying in a pool of blood. She deposed that PW-2 then dialed number '100' and called for police help. PW.1 deposed that, meanwhile, she broke open the lock and

entered the room. Babita was lying motionless. By then, the police had arrived at the spot and removed Babita to the hospital. However, by then, Babita was expired. PW.1 deposed that the police recorded her statement-cum-report (Exh.25) and registered the crime *vide* printed FIR (Exh.25A).

14) The aforesaid testimony of PW-1 is well supported with the testimony of PW-2. In brief, PW-2 deposed that PW-1 was her neighbour. She knew Babita and the Appellant. The couple used to reside in the said room, situated opposite Karnataka High School. PW-2 deposed that she used to leave for work at about 6.00 am and return at 6.00 pm. On 14/10/2017 she had come to her room and had lunch. While going back, she had taken with her Babita's daughter Gouri. She has deposed that, after returning from the work, she went to have dinner at Chembur station and returned at about 10.00 pm. At that time, PW-4 came at PW-1 and informed that the Appellant assaulted Babita and he was coming to assault him. Therefore, she, PW-1, PW-9 Rakesh and Gouri rushed to the room of the Appellant. While going to that room, they had seen the Appellant in the said lane. When they reached there, the door of room was closed and the light was switched on. She deposed that they opened the sliding window and saw that Babita was lying in a pool of blood with injury over her head. She called the police and the Ambulance. Meanwhile, the police arrived at the spot and removed Babita to Shatabdi hospital. But, Babita had expired.

PW-2 deposed that thereafter, the police recorded inquest panchnama of the body of Babita in presence of her and the co-panch-Krishni Kadoo. She has identified the inquest panchnama and deposed that, it bears her signature and its contents are correct.

15) The aforesaid testimonies of PW-1 and PW-2 are very consistent with each-other. It is corroborated with the report (Exh.25) which was filed very promptly. Their said testimonies did not receive sufficient challenge in the cross-examination. In fact, the evidence of PW-1 and PW-2 indicates that PW-4 had informed them that the Appellant killed Babita; that, immediately, they rushed to the spot with other persons; that, they spotted the Appellant near his room and the said fact has not been sufficiently denied. The testimonies of PW-1 and PW-2 are corroborated with the proof of the homicidal death as noted by PW-5.

16) Admittedly, the incident had occurred in the night. PW-4 was just aged 6 years. Babita was selling fish and her work time was over. It was natural that, at the time of the incident, both PW-4 and Babita were present in their room. This conclusion is fortified by the defence taken by the Appellant that from PW-4 he had come to know that Babita had sustained the injury. Meaning, it was only PW-4 who had seen Babita first immediately after she had sustained the injury. Admittedly, Babita used to reside at some distance from the room of PW-1 and PW2, therefore, they

were not expected to know how Babita had sustained the injuries. The conduct of PW-4, *i.e.*, going to the house of PW-1 and promptly informing her that the Appellant killed Babita and the response of PW-1, PW-2 and others to that news, are relevant facts under Sections 6 and 8 of the Evidence Act. Even PW-4's evidence indicates that, at the relevant time, he was present in the room and that on getting the news of the incident, PW-1 had come there. Therefore, the testimonies of PW-1 and PW-2 appear natural and reliable.

17) PW-3 Naresh Shinde was the spot panch. He has deposed that on 15/10/2017, at about 3.30 pm, the police had recorded the spot panchnama (Exh.31) in presence of him and the co-panch. Various blood stained clothes, pieces of tile (Art.3), the tube-light fixture (Art.9) etc. lying at the spot were seized by the police under the Panchnama. PW-3 has identified said articles.

18) Panch PW-7-Sunil Telvekar has deposed that on 15/10/2017, at about 3:00 pm, the police had conducted the person search of the Appellant. One chit was found in the pant pocket of the Appellant. The chit was containing a matter in Hindi but written in English alphabets. Thereby, the Appellant had revealed that his wife had illicit relation with other person, therefore, he assaulted her with the tile and committed her murder. The police seized that chit, kept it in an envelope and sealed in presence of

him the co-panch. He deposed that the Appellant had produced the clothes which were on his person. Said clothes were stained with blood. The police seized the said clothes. Accordingly, the police recorded the Arrest-cum-Seizure Panchnama (Exh.48). It bears the signatures of both the panchas. Its contents are correct and true. PW-7 deposed that on 15/10/2017, at about 4.00 pm, the police had seized the blood stained clothes of Babita before him and the co-panch. Accordingly, the police recorded the Seizure Panchnama (Exh.49). PW-7 has identified the seized clothes of the Appellant, *i.e.*, Shirt and Jeans Pant (Arts.10 & 11) and of the deceased, *i.e.*, *payjama* (Art.12) and purple Top (Art.13).

19) PW-8 Dilip Panchal deposed that on 20/10/2017, in the presence of him and the co-panch Mr.Jaiswal, the Appellant had made the voluntarily disclosure that he had locked his room and ran away. He had stayed at Govandi station in the night. He would produce the said key. The police recorded the memorandum (Exh.51) of said disclosure. The Appellant then led the police and the panchas to one canteen, near Govandi bus stand. There, the Appellant produced the key which was hidden under a stone. The police seized that key and recorded the recovery panchnama (Exh.52), accordingly. PW-8 has identified the memorandum, recovery panchnama and the recovered key (Art.14).

20) PW-11 Priyanka Patil, API has testified that, on 14/10/2017, she alongwith other police went to the hospital and recorded the report (Exh.25) and registered the crime *vide* printed FIR (Exh.25A). Meanwhile, she recorded the inquest panchnama, spot panchnama, seized the various blood stained articles found at the spot and seized the blood stained clothes of Babita. She has identified the said documents and the seized articles.

21) PW-12 Shashikant Pawar, API has testified about the steps he had taken during the course of further investigation including recording of the disclosure statement of the Appellant (Exh.51) leading to recovery of the key as per the recovery panchnama (Exh.52) and sending the seized articles to the FSL with his letter (Exh.55). As per his investigation, the Appellant used to suspect the fidelity of Babita and therefore he committed her murder. Hence, he submitted the charge-sheet. Lastly, he has referred the relevant reports of the C.A. (Exh.11 to 17). The testimony of PW-12 has remained unshaken in his cross-examination.

22) The aforesaid testimonies of PW-3, PW-7, PW-8, PW-11 and PW-12 successfully withstood the cross-examination. These witnesses had no enmity so as to falsely depose against the Appellant. Therefore, their testimonies cannot be disbelieved. The C. A. Reports (Exh.13) shows that the blood of the Appellant was of "Group-B". Whereas the blood of Babita was of "Group-A" (*vide* report of the C.A. at Exh.17). The Appellant has

not explained the presence of the blood of Babita on his seized clothes. The pieces of the tiles found in the hair of Babita during the postmortem tallied with the pieces of the tile seized from the spot. It is highly impossible that one would sustained 18 external injuries due to falling on a hard surface and the tile will break due to such falling. Therefore, there was no substance in the defence of the Appellant that Babita had fallen down on the floor and she had sustained the fatal injuries. The Appellant has not shown that he was at his work place when Babita had sustained the injuries. Consequently, there was no substance in the plea of *alibi* taken by the Appellant. In fact, it was completely a hollow and false defence taken by the Appellant. Therefore, and having regard to the evidence as a whole, it is safe to presume that, at the time of the incident, the Appellant was present in his room. However, the Appellant did not explain as to why Babita suffered the homicidal death while she was in his custody. As a result, he has failed to discharge the burden of explaining the death of Babita in his custody, as required in Section 106 of the Evidence Act. Therefore, an adverse inference was permissible against him.

23) In this context, a useful reference can be made to a decision in *Trimukh Maroti Kirkan V/s. State of Maharashtra* (supra), Therein, in paragraph 22, the Hon'ble Supreme Court has held that,

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. ... ”

Additionally, reference can also be made to the decision in case of *Nagendra Sah V/s. State of Bihar*¹. Therein, in paragraph 22, the Hon’ble Supreme Court has held that,

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.”

24) The net result of the above discussion is that, on the strength of the circumstantial evidence the prosecution has successfully proved that on the relevant date, time and place, the Appellant committed murder of Babita by assaulting her with the tile (Art.3) and the tube-light fixture

¹ (2021) 10 SCC 725

(Art.9). He then locked the door of his room, hide the key and fled away. Therefore, the learned Judge of the trial Court has rightly convicted and sentenced the Appellant under Section 302 I.P.C.

24.1) In view thereof, we do not find any infirmity in the impugned Judgment and Order so as to interfere with same.

25) As a result, the Appeal is liable to be dismissed and is accordingly dismissed. Consequently, Interim Application No.2655 of 2025 does not survive and is disposed off.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)