

(2020) 02 BOM CK 0078
In the Bombay High Court
Case No : Criminal Appeal No. 434 Of 1999

State Of Maharashtra

APPELLANT

Vs

Sanjay Rajaram Mugade And Anr

RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 02 BOM CK 0078

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : M.M. Deshmukh, Rahul Kate

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This Criminal Appeal takes an exception to the judgment and order dated 29/04/1999 IInd Additional Sessions Judge, Satara in Sessions Case No.

82 of 1997 acquitting both the accused from the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code.

2. The prosecution story in nutshell is as under:

On 19/12/1996 one Bajarang Kundalik Patil noticed a dead body of a woman lying in his field. There were injuries on the said dead body. On the basis

of the information given by Bajarang Kundalik Patil, the police of Sangli (R) Police Station registered a crime vide Cri. No.115/96 for the offences

punishable under Sections 302, 201 r/w 34 of the Indian Penal Code. Thereafter police went to the field of Bajarang Patil, prepared inquest

panchanama, spot panchanama and then sent the dead body to Government Hospital for post-mortem. As the dead body was of woman, the

photographs of the said dead body were taken, and published in various news paper and circulated in the District of Sangli, Kolhapur, Satara, etc. PSI

Vijay Uttam Bagal of Sangli (R) Police Station started inquiry and investigation. When PSI Bagal found that the dead body started to decompose, he

gave it to municipality, Sangli to dispose it off. On 18/01/1997 PSI Bagal received a missing pamphlet of Dhebewadi Police Station bearing Missing

No.1/97, from which he learnt that Sunita Mugade and Sanjay Rajaram Mugade of village Sanbur are missing from 14/12/96. PSI Bagal found that the

photograph of dead body and the photograph of missing woman were practically same. He, therefore, deputed one constable to make inquiry. It was

reported to PSI Bagal that Sau. Akkatai Rajaram Jadhav identified the photograph that of her daughter. On 23/01/1997 the said Akkatai and her son

Prakash came to the police station where they identified the photographs and the ornaments which were found on the dead body and told that the

photograph and ornaments are of Sunita. At that time, Prakash â?" the brother of Sunita, produced photo copy of inland letter received from his

brother in law Sanjay Mugade. From the contents of said letter it was disclosed that murder of Sunita was committed by her husband Sanjay Mugade,

her brother in law Vijay and maternal uncle Udhav Shedage with the help of jeep driver Guruling Atyal. During investigation it was revealed that

Sunita was killed in Divashi Ghat and her dead body was carried and thrown in the field between Sangali and Ashta. Thereafter PSI Bagal went to

village Sanbur where Sanjay and his brother Vijay were residing. Sanjay could not be traced and it was learnt that Vijay went to Bombay. PSI Bagal

arrested Udhav Shedage. On inquiry being made it was disclosed that Jeep bearing registration No. MH-11-E-1250 was belonging to Sunil Yashwant

Patil of Mendh, Tal. Patan. Guruling Atyal was his driver. The said jeep was attached. Blood stains on the tarpaulin hood and on the back side seat of

the said jeep were found. Satara Police arrested Sanjay. During inquiry he admitted the contents of letter alleged to have been sent by him. Accused

Sanjay confessed the commission of offence to one Suresh Shedage. On 29/01/1997 accused Sanjay taken panchas and police to village Tung where

dead body of Sunita was found, and then to Divashi Ghat where he alleged to have assaulted and killed Sunita.

As the place of crime was within jurisdiction of Patan Police Station, the case was transferred to Patan police Station wherein it was registered as

Cri. No.10/97 at Patan Police Station. On 03/02/1997 ASI Shirtikar obtained custody of Sanjay, Vijay and Guruling Atyal. On the behest of accused

Sanjay a knife which was alleged to have been used to kill his wife Sunita was recovered from Mori No.10/64 in Divashi Ghat and the same was

attached under a panchanama. Thereafter the attached knife, blood stains cloths of deceased, blood stained and plain earth collected from the place

where dead body was found were sent to Chemical Analyzer for examination. The CA reported that the blood detected on seat cover cloth, tarpaulin

hood, knife, earth collected and cloths of deceased was of human and the blood group of deceased was of A+ and the same was detected on the

knife and the blouse. The doctor who performed the Post Mortem of dead body opined that the cause of death of deceased was, "due to cranio-

cerebral injuries and intra peritoneal hemorrhage due to stab injury on the abdomen and head.

3. After completing the investigation, a charge sheet came to be filed against accused Sanjay Mugade, his brother Vijay Mugade, maternal uncle

Udhav Shedage and jeep driver Guruling Atyal. Thereafter Accused No.3 Udhav Shedage and Accused No.2 Vijay Mugade preferred application

Exhibits 6 and 16 respectively for their discharge as, according to them, there was no prima facie evidence to frame charge against them. After

considering the facts and evidence on record, for the reasons stated in the orders, both the accused came to be discharged.

4. Thereafter charge came to be framed against Accused 1 Sanjay Mugade and Accused No.4 Guruling Atyal for the offence punishable under

Sections 302, 201 r/w 34 of the IPC. The charge was read over and explained to both the accused. They pleaded not guilty and claimed to be tried.

The defence of the accused was of total denial. According to the accused, they have been falsely implicated. To bring home the guilt of the accused,

during the trial the prosecution has examined in all 17 witnesses in support of its case. The learned Additional Sessions Judge, Satara has recorded

statements of accused under Section 313 of the Criminal procedure Code. The learned Additional Sessions Judge, after considering the material on

record and the evidence adduced by the prosecution, came to a conclusion that the prosecution failed to prove beyond reasonable doubt that the body

found was of deceased Sunita, the wife of accused No.1 only and none-else. As stated herein above, the learned Additional Sessions Judge, by the

impugned judgment and order, acquitted both the Respondents "accused for the offences punishable under Sections 302, 201 r/w 34 of the IPC.

5. We have heard Mrs. M M Deshmukh, learned APP appearing for the Appellant State and Mr. Rahul S Kate, learned counsel appearing for the

Respondent No.1. With their able assistance perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the documents

produced on record and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment.

6. It is submitted by the learned APP that the learned Additional Sessions Judge did not consider the evidence led by the prosecution in proper

perspective. The learned Additional Sessions has failed to properly appreciate the evidence of PW-5 Bajarang Patil and PW-9 Prkash who is the

brother of the deceased Sunita. It is submitted that the mother and brother of deceased Sunita have identified the dead body of Sunita on the basis of

photograph and ornaments which were found on the dead body, and therefore, the Trial Court ought to have considered properly the circumstantial

evidence adduced by the prosecution. It is also submitted that Accused No.1 Sanjay made a confession of commission of offence to PW-3 Suresh

Shedage and PW-10 Kishan Ingalwale. She further submits that the contents of the inland letter written by Accused No.1 clearly disclosed that

murder of Sunita was committed by Sanjay with the help of other accused. The learned APP submits that the weapon i.e. knife used in the incident

was recovered at the instance of the accused No.1 Sanjay however, the learned Additional Sessions Judge has failed to consider the evidence of the

pancha witnesses. The learned APP further submits that the learned Additional Sessions Judge did not appreciate and/or rely upon the evidence of the

panch witnesses and other evidence on record properly. According to the learned APP there is enough evidence to connect the accused with crime.

She therefore submits that the impugned judgment and order passed by the learned Additional Sessions Judge dated 29/04/1999 in Sessions Case

No.82 of 1997 is not legally sustainable and the same is liable to be quashed and set aside.

7. The learned counsel for the Respondent No.1 submits that the prosecution has failed to bring home the guilt of the accused. It is also submitted that

the prosecution has failed to prove the motive of the accused to commit murder of Sunita. He submits that there is no enough material to establish the

fact that accused left the dead body to some unknown place and burnt the cloths on the body. He further submits that so far as the contents of inland

letter are concerned, the prosecution has not examined handwriting expert. There is no sufficient material and evidence to show that the said letter has

been written by accused No.1 Sanjay as he denied that this letter has been sent by him. The prosecution has not examined the hand writing expert or

there is no evidence to show that the handwriting in the said letter is of accused, and therefore without corroborative evidence it cannot be held that

the accused is guilty. He submits that the prosecution case is based on the information and circumstantial evidence. According to the learned counsel

for Respondent No.1, when the dead body was found, it started decomposing, and accordingly Municipality, Sangli disposed it of. Hence it cannot be

said that the dead body found was of Sunita and none else. He also submits that there is no eye witness to the incident as nobody has seen the

accused committing the alleged offence. The learned counsel for the Respondent No.1 submits that the learned Additional Sessions Judge after

considering the evidence and material on record has rightly acquitted the accused. The impugned judgment and order passed by the learned Additional

Sessions Judge is well reasoned order and needs no interference. He therefore submits that the Appeal filed by the State may be dismissed.

8. Before scrutinizing the evidence adduced by the prosecution to bring home the guilt of the accused, it is necessary to place on record some

undisputed facts so as to consider whether the death of deceased is homicidal or not. It is not disputed that Bajarang Patil (PW-5) noticed dead body

of woman lying in his field. There were about 24 injuries on the said dead body. From the evidence of prosecution it appears that some of the injuries

might have been caused by sharp edged and pointed weapon and some of the injuries by hard and blunt substance. According to medical officer, left

parietal bone of the dead body was fractured. It is not in dispute that the said dead body was of woman. The decomposition of the said dead body had

already started and therefore, PSI Bagal sent the dead body to Municipality, Sangli to dispose it off, and accordingly it was disposed off. Considering

the nature of injuries found on the dead body, as rightly held by the trial Court, the death was homicidal.

9. The next material question remains to be considered is, whether the dead body of woman found in the field of Bajarang Patil (PW-5) was of Sunita

and the accused are the authors of the injuries found on the dead body? For that purpose, the evidence adduced and the material brought on record

during the course of trial by the prosecution is necessary to be considered.

10. The entire prosecution case rests upon the circumstantial evidence inasmuch as there is no direct evidence available on record in the nature of eye

witnesses. As stated herein above, the prosecution has examined as many as 17 witnesses to prove its case. We have carefully perused the evidence

adduced by the prosecution.

11. The prosecution has examined Bajarang Kundalik Patil as PW-5 who noticed the dead body lying in his field. He stated that on 19/12/96 while he

was going to his field, he noticed a dead body of woman lying in his field. It was about 25 to 30 feet away from the road. There were injuries on it. He

went to police station and informed the police about it. Police wrote it down and obtained his signature. He stated that if photographs are shown, he

may identify it. PW-5 identified the woman from the photo-state copy of photograph published in Cr.No.115/96 on 20/12/96, however, he could not

identify body by other photographs which is produced on record with police papers.

This witness Bajarang Patil (PW-5) informed the police that dead body of a woman was lying in his field and accordingly police wrote it down and

obtained his signature.

12. The prosecution has examined Vasant Anna Harale (PW-1) as a panch to the inquest panchanama. He stated that the police asked him and

another panch Birnale to sign on panchanama as witness as a dead body of woman was lying in the field of sugarcane. The said field was of one Patil

of their village. PW-1 noticed the dead body. There were injuries around the neck, stomach. Police prepared panchanama and PW-1 and other panch

signed on it. In the cross examination P.W.1 stated that when police called him near body, it was smelling and because of that they did not go near the

dead body and saw it from some distance. PW-1 further stated that there were worms in eye, mouth and ear of the deceased and there were knife

injuries signs on the face. There was some blood on the face. There were no blood stains on the ground They did not notice any Mangalsutra around

the neck. The dead body was lifted by keeping it on the gunny bag and it was rotten.

From the evidence of PW-1 it is clear that the dead body was of woman and it was smelling. He did not notice Mangalsutra around the neck. The

body was completely rotten i.e. decomposed.

13. The prosecution has also examined Dr. Vijaykumar Annasaheb Mule (PW-4) who did the post mortem of dead body. He stated that he did the

post mortem of dead body from about 7-45 pm to 9-45 pm. On examination of the dead body he found that it is of a woman aged about 25 years.

There was tattooing mark on the forehead. He found that rigor mortis were absent, body was swollen, putrefied swell, maggots were present in right

ear, mouth and scalp region. Bullae present on the skin peeled off at many places and greenish discolouration of body. He found in all 25 injuries on

the body which have been specifically stated in col. No.17 of his report. Those were anti-mortem injuries. The Medical Officer (PW-4) stated that

Injuries Nos.1 to 7, 10, 13, 14, 16 to 19 and 24 might have been caused by sharp edged and pointed weapon, and Injuries Nos. 8, 9, 11, 12, 15, 20, 21,

22 and 23 might have been caused by hard and blunt object. Those can be caused by substance like stone. Injuries Nos.11, 12, 20 to 23 can be caused

in a scuffle. According to Dr. Vijaykumar (PW-4) the cause of death is due to cranio cerebral injuries and intra peritoneal hemorrhage due to stab

injury on abdomen and head.

In the cross examination Dr. Vijaykumar (PW-4) stated that there were signs of decomposition on the body. It was swollen and discoloured. The

Medical Officer stated that after 8 hours of death, decomposition starts. There was no half digest food in the stomach of body. She must have been

killed after 6 hours after last meal. He stated that Injury No.1 in Col. 17 and Injury No.1 in Col.19 though correlated cannot cause by same weapon

at the same time. Injury 1 in col.19 can be caused by any hard and blunt substance. He further stated that, it cannot be said that while causing injury

No.1 in col. no.17, injury no.1 in col. no.19 would have been caused. He stated that it is necessary to have weight and force to a weapon to cause

fracture. Fracture to head can be caused if a person hit with knife having blade of 5 to 6â?. In this case fracture has been caused by hard and blunt

object. He further stated that in this case more than one weapon or instruments have been used to cause injuries to deceased, and it cannot be said

that all these incise wound have been caused by one and the same weapon. He

stated that microscopic blood stains can be seen to any weapon, and if the earth is stuck to weapon blood can be seen there.

It appears from the evidence of Medical Officer that there are 25 injuries on the dead body and some of the injuries might have been caused by sharp and edged weapon and some of the injuries might have been caused by blunt and hard object like stone. While performing post mortem, he did not find half digest food in the stomach of dead body.

14. The evidence of Medical Officer (PW-4) shows that the injuries found on the dead body were caused with the knife which was allegedly

recovered at the instance of Accused Sanjay. The prosecution case is that Sanjay inflicted injuries by the said knife and killed Sunita. It is clear from

the evidence of Dr. Vijaykumar Mule (PW-4) that all injuries found on dead body were not incised wound. According to Dr. Vijaykumar Mule (PW-4)

Injuries Nos. 1 to 7, 10, 13, 14, 16 to 19 and 24 might have been caused by sharp edged and pointed weapon, and Injuries Nos. 8, 9, 11, 12, 15, 20, 21,

22 and 23 might have been caused by hard and blunt object. Those can be caused by substance like stone. It is required to be noted that except

recovery of alleged knife, the prosecution has not recovered any hard or blunt object/weapon to show that deceased has been assaulted by hard and

blunt object/weapon. Perusal of the deposition of Medical Officer shows that there are two kinds of injuries, some of the injuries might have caused by

sharp edged and pointed weapon and some of the injuries might have caused by hard and blunt object. Therefore it cannot be said that the injuries

alleged to have been caused by the accused to the deceased and the injuries which were found on the dead body substantially tally. Therefore the

medical evidence does not help the prosecution case.

15. The prosecution has examined Rajendra Hanmant Sonawane (PW-2). He acted as a panch to the panchanama of recovery of knife. He stated

that he was called by the police in the police station. Accused was sitting in the police station. Accused told his name as Sanjay Rajaram Mugade r/o

Sanbur. Accused also told them about the incident, how he committed the offence and that he has kept the knife used in the incident under a stone in

Divashi Ghat near a small bridge. Police recorded his statement. Thereafter they went to Divashi Ghat by a jeep. The accused asked to stop the jeep

near a turn. There was a small brooklet. The accused went there, removed stone

and took out knife which was kept under it. The police prepared panchanama and obtained signature on the panchanama. In the cross examination PW-2 stated that the knife was rusted and there was soil on the knife. There is no soil stuck to it and there is no stickiness on any portion of the knife.

From evidence of Rajendra PW-2 it is clear that the knife recovered at the instance of accused Sanjay was rusted and there was soil on the knife. No hard and blunt object has been recovered from the accused. Vijaykumar (PW-4) in his deposition stated that fracture has been caused by hard and blunt object.

16. The star witness of the prosecution case is Suresh Sitaram Shedage (PW-3) to whom the Accused alleged to have had confessed commission of

offence. He stated that he knows the accused Sanjay Mugade since childhood. On 24/01/97 accused had come to PW-3 and told him that he killed his

wife on or about 16/12/1996 and thrown her dead body somewhere in between Sangali and Ashta. Accused also told PW-3 that he would involve his

brother Vijay and maternal uncle Udhav Shelke and that Vijay had illicit relation with his wife. On 16/12/1996 at about 9.30 pm the accused took his

wife from Math, Karaje in a jeep, the jeep was of Guruling Atyal. They took dinner near Shendre Patha and then they went to Divashi Ghat. After

reaching to the centre of Divshi Ghat, he asked Atyal to stop the jeep. He got down and took his wife to some distance from the road. He hit her with

knife. She shouted, driver Guruling Atyal came there. Accused asked Atyal to hold her hand. Accused gave 2-3 blows. Thereafter they took her to

jeep. On the way in between Sangali and Asta they stopped the jeep, took out her body and threw it in a sugarcane field. From there they came to the

house of accused at Sanbur and on the way they stopped the vehicle at Dhebewadi and washed the cloths. PW-3 Suresh further stated that the

accuse was working at Bombay and he married about 2 years prior to the incident. He further stated that 2 ½ months before this incident, the

accused Sanjay had come to PW-3 and told that he suspect that there is illicit relation between his wife and his brother Viju, and that he would kill

both of them.

In his cross examination PW-3 stated that accused Sanjay is resident of Sanbur, and PW-3 is the resident of Mahind. PW-3 further stated that though

Sanjay told him about 2 ½ months before the incident that he would kill his wife and brother, he did not inform the police. PW-3 did not tell Vijay that his brother would kill him. PW-3 did not tell the parents of Vijay about intention of accused that he would kill Vijay. After Sanjay disclosed his intention to kill his brother, Sanjay (accused) met this witness (PW-3) again and at that time accused told him that he killed his wife. At that time he met him in the evening at about 4 to 5 pm. PW-3 asked him where he killed her, how he killed her, with what weapon he killed her and where he threw her dead body. Suresh (PW-3) did not make inquiry whether police found her dead body. PW-3 did not ask accused where he went after killing her and when he came to Satara. Suresh (PW-3) did not inform the police that Sanjay (accused) killed his wife. PW-3 stated that he does not know the educational qualification of Sanjay. PW-3 does not know since how many years he works at Bombay and how many issue he has. PW-3 does not know the residential address of accused at Bombay and where accused was serving. PW-3 was asked by the police to go to Sangali and PW-3 was taken to Sangali to record his statement by Magistrate.

In the statement recorded before Magistrate this witness stated that Udhav Tanaji Shedage is his cousin brother, however, in the cross examination PW-3 stated that it is wrong and he is his cousin cousin brother. Udhav Shedage was arrested in connection with same offence of murder. PW-3 stated that Udhav was arrested about 5-6 days before his statement was recorded by the police. A suggestion was given to this witness that to save his cousin brother Udhav who was arrested by the police in this case, he gave false statement to involve the accused, which suggestion was denied by PW-3. PW-3 admitted that in his statement before Magistrate the name of Guruling is not specifically stated as Guruling and that he held the hands and Sanjay hit his wife with knife.

It appears from the evidence of PW-3 Suresh Shedage that he was knowing accused since child hood and Udhav Shedage is his cousin brother. After narrating the incident by accused to this witness, PW-3 did not think it necessary to inform the police or brother of accused. This witness did not specifically disclose the name of Guruling that he held the hands of deceased. The evidence of PW-3 is not trustworthy. No implicit reliance can be placed on his evidence.

17. The next witness is Sunil Yeshwant Patil (PW-6) who is the owner of the jeep. He stated that MH 11-E-1250 Commandar Jeep belongs to him. He

stated that Guruling Shabu Mali alias Atyal is his driver on the jeep since last two years. He stated that on 16/12/96 their jeep was his house. He does

not remember who was driver on it on 16/12/96 and 17-12-96. This witness (PW-6) has turned hostile. The learned APP has cross examined PW-6,

however, nothing helpful to the prosecution case has come on record. This witness Sunil Patil (PW-6), who is the owner of the jeep alleged to have

been used in the commission of offence, does not support the prosecution case.

18. The next witness is Hanmant Parasharam Shedge (PW-7). According to the prosecution case, he is the witness who has last seen the deceased in

the company of the accused and thereafter deceased was never seen. He stated that accused Sanjay is son of his sister Pushpa. He married about 2

to 3 years prior to this incident. After marriage Sanjay met him once or twice. Once he had come along with his wife. For the last time Sanjay met

him in November 1996. After meeting him, they left for Bombay. Sanjay and his wife had not come to him on 15th or 16th December 1996. This

witness has also turned hostile. He stated that he has seen Sunita once or twice and he will be able to identify her. From the photographs shown to

him, he cannot say that the said photographs are of Sunita.

19. Rajaram Anna Kore (PW-8) has been examined by the prosecution as a panch witness to the panchanama of attachment of inland letters, jeep

and knife. PW-8 stated that on 24/01/97 in their presence Prakash Shamrao Jadhav produced 3 inland letters. Police attached the same and prepared

its panchanama. Again on 28/01/97 he was called by the police to witness panchanama. Jeep was attached in their presence. PW-8 stated that he

does not recollect its number, its make and what was in it. Etc. PW-8 does not recollect what had happened on that day and the contents of the

statement and panchanama.

In his cross examination, Rajaram Kore (PW-8) stated that he read those letters but he does not remember its contents. He does not recollect

whether they found knife. He admitted that he had gone to see his friend who is the driver of jeep of police. He stated that he does not recollect

where his signatures were obtained on panchanama of search in the forest. He further stated that he does not recollect whether anything was found

at that place.

PW-8 Rajaram is the panch witness, through whom, the prosecution tried to prove the panchanama of attachment of jeep and knife. However, he

does not recollect whether anything was found at that place. Therefore his evidence is also not helpful to the prosecution.

20. The next witness is Prakash Shamrao Jadhav (PW-9) who is the brother of deceased Sunita. He stated that Deceased Sunita was his sister. She

married with the accused about 3 to 3 ½ years before the incident. Accused was working at Bombay in Vijay Transport. He stated that there often

used to be quarrel between his sister and accused on minor matters. He used to intervene and pacify them. One day accused told him that, he has

noticed that there is illicit relation between his brother Vijay and Sunita. PW-9 asked his sister about it. She told him that it is false. PW-9 asked Vijay

about it. He denied the relation and told him that if his brother suspects then he is ready to leave the house. He left the house of accused and went to

reside at his sister's house at Sion. He further stated that on 06/12/96 he had gone to his in laws house, and when he returned he learnt from his

mother Sunita and accused had come to their house and stayed there for 10 to 15 minutes and went out saying that grand mother of accused is sick.

He stated that 3-4 days thereafter his mother went to Sanbur to see grand mother of accused. After returning she told PW-9 that Sunita and Sanjay

were there. Two days thereafter father PW-9 went to Sanbur to see grand mother of the accused. On 18-12-96 PW-9 went to Sanbur to see her.

The mother of accused told father of PW-9 that Sanjay and Sunita has gone to Bombay. Then PW-9 went to Bombay where he found that his sister

and accused were not at Bombay at their house. The neighbour told him that accused alone had come to his house. PW-9 stated that on 09/01/97 his

father received a letter (Exh.60) from accused. It was an inland letter. PW-9 knows the handwriting of accused. Prior to this, they had received two

letters (Exhibits 61 and 62). Letters were handed over to police during investigation. One of the letters is addressed to the sister of PW-9 by name

Sharada Shamrao Jadhav and another is addressed to deceased, who was at that time residing with them at Dhamani. PW-9 went to Dhebewaid

police station where he gave description of his sister and missing report. During course of his examination in chief, the prosecution has shown to this

witness (PW-9) the photo-state copy of the missing complaint which he had given to police at that time. PW-9 further stated that Sangali Police

showed them two photographs. They identified them as those were of his sister. The police showed PW-9 painjan, two finger rings, note ring, ear ring.

Prakash (PW-9) found that those were of Sunita. A photo-state copy of photographs which was published in Cr. No.115/96 was to this witness (PW-9) during his deposition.

In his cross examination PW-9 stated that when letter Exh.62 was received his sister Sunita was residing at Dhamani. Handwriting of this letter is of

accused. It does not bear his signature. He stated that letter Exh.61 addressed to Sharada. The contents refers to Sunita. There is no date on it. It

bears his signature. It is in the handwriting of Sanjay. PW-9 does not know who is Ashok Jadhav referred in this letter. In the next breath PW-9

admitted that one person by name Ashok Jadhav brought Sunita to Dhamani. At the time of recording statement before Police, he did not tell when he

went to make inquiry of accused at Bombay. Though PW-9 could not find Sunita at Bombay, he did not feel that she would have been killed by

Sanjay. He stated that about 4-5 days after returning from Bombay, he learnt that accused resides in Trupti lodge at Karad. He stated that there is no

special identifying marks on the toe rings, and these things can be purchased from the market. He further stated that in the lodge register, he wrote his

true name. When PW-9 came to know that accused alone resides in the lodge, PW-9 did not feel that he should give complaint to police. PW-9 stated

that at the time of narrating her description, he told that she was wearing Mangalsutra.

21. Now coming to the letters Exhibit 60, 61 and 62. According to Prakash (PW-9) his father received inland letter (Exhibit 60), and prior to that the

accused sent two letters, one was addressed to Sharada Jadhav and another was to Sunita. Prakash (PW-9) stated that the handwriting in the said

letters is of accused Sanjay. However, this witness PW-9 admitted that letter Exh.62 does not bear signature of accused. In so far as Letter (Exh.61)

which was addressed to Sharada is concerned, PW-9 stated that there is no date on it. It is important to note that PW-9 Prakash is the brother of

Sunita and he is interested witness. Admittedly, the prosecution has not examined handwriting expert to prove that the hand writing in the said letters is

really of accused. Unless the contents of the letters are proved, it cannot be said that accused was having ill will towards Sunita, though it is revealed

from the said letters that their relation was not cordial. It appears from the record that accused did not like Sunita going to her parent's house with

one Ashok Jadhav. Prakash (PW- 9) at one place stated that he does not know who is Ashok Jadhav referred in this letter (Exh.61), however, in the

next breath he stated that one person by name Ashok Jadhav Brought Sunita to Dhamani. He is not trustworthy witness.

22. Through this witness Prakash Jadhav (PW-9), who is brother of Sunita, the prosecution tried to place on record the relations of Sunita and accused

Sanjay were not cordial, there were quarrels between them. However, the letters referred by PW-9 allegedly written by the accused were not sent to

hand writing expert. Rajaram (PW-8), who was the panch witness to the panchanama of attachment of inland letters, in his cross examination has

specifically stated that he read those letters but he does not remember its contents.

23. Vijay Uttam Bagal (PW-15), who is the IO, in his deposition has stated about the investigation carried out by him in this case. He stated that he

called the photographer and took photograph of dead body. He printed the copies of photographs and necessary particulars of dead body and published

it in news papers daily Kesari, Tarun Bharat, Lalkar. On 21/12/96 he recorded the statements of some witnesses, by that time as the dead body

started to decompose, therefore he gave it in the custody of municipality Sangli to dispose it off. On 18/01/1997 he received missing pamphlet of

Dhebewadi Police Station, thereupon he learnt that Sunita Rajaram Mugade and Sanjay Rajaram Mugade of village Sanbur were missing from

14/12/1996 He found that the photo of missing woman and the photograph of the dead body which they took are practically same. Therefore PW-15

deputed head constable to make inquiry. Sau Akkatai Rajaram Jadhav identified the photographs saying that it is of her daughter.

In his cross examination, IO stated that there was little bit smell to the body. There were injuries on face. PW-15 " IO cannot give the nature of

injuries. He stated that sari was lying near the dead body. He attached it by preparing panchanama and he does not recollect its colour. However in

the next breath he stated that sari was not found near the dead body or anywhere. He further stated that in case of unknown bodies, they take note of

every minor details and the articles etc. found on it. He stated that he knows that in such cases it is necessary to take photographs, to record the statement of photographer and to obtain negatives of photographs from the photographer. He stated that at the place where dead body was found, he did not find mangalsutra or its beads. PW-15 stated that he recorded the statement of Suresh Shedage on 30/01/97. He did not tell to PW-15 that on 24/12/96 Sanjay Mugade had come to him in the evening at Satara at the place of his work. PW-15 also recorded statement of Prakash Shamrao Jadhav on 23/01/97. He did not tell before PW-15 that he had gone to Bombay to the house of accused to see his sister. PW-15 stated that the place of incident was within the jurisdiction of Patan Police Station, the case was transfer to Patan Police Station.

24. The prosecution examined Shankar Algunda Shirtikar (PW-16), who at the relevant time was attached to Patan Police Station and who did further investigation. He has also stated about the further investigation carried out by him. He stated that in the lodge in which accused Sanjay stayed, he gave his real name to concern person of those lodges. He stated that the blade of knife is not rusted and the knife appears to be a new. He did not make any inquiry with doctor who did PM as to whether injuries found on the dead body can be caused by this knife. He stated that he did not try to make search to find out Mangalsutra of deceased.

From the evidence of both the Investigating Officers i.e. PW-15 and PW-16 it is clear that the police did not take much pains to find out Mangalsutra.

Police also did not make inquiry so as to find out whether any other weapon was used in commission of offence. The dead body had already started decomposing, and therefore, disposed off before police received missing complaint of Sunita. Though IO Vijay Bagal (PW-15) admitted in his cross examination that in cases of unknown bodies, it is necessary to take photographs, to record the statement of photographer, to obtain negatives of photographs from the photographer, in the present case the prosecution neither produced any positives or negatives of photographs, nor did examine the photographer who took the photograph of the dead body.

25. It is clear from the aforesaid evidence that when the dead body was found in the field of Bajarang (PW-5), it had already started decomposing, and therefore, the Investigating Officer Bagal (PW-15) sent the dead body to the

municipality, Sangali to dispose it off, and accordingly it was disposed off on 21/12/96/22/12/96. Though Prakash (PW-9), who is the brother of Sunita, identified her sister from the photographs taken by the police during investigation, the prosecution, for the reasons best known to it, has not produced the negative and positive photographs of the dead body on the basis of which Sunita was identified by her brother. Admittedly the photographer has not been examined by the prosecution. In the absence of proof of negative and positive photographs and, non-examination of photographers who took the said photographs, it cannot be said that the prosecution has proved that the said photograph is of Sunita. It appears that the prosecution has placed on record the photo-state copy of the photograph of the dead body. There is absolutely no evidence to show that who has prepared the said photo-state copy, which appears to have been prepared on the basis of positive. The negative or positive of photographs are not brought on record and the whereabouts of the photographer who took the said photographs is not known. The explanation given by the prosecution is not satisfactory. It is when PSI Bagal (PW-15) received missing pamphlet of Dhebewadi Police Station, he came to know that Sunit and Sanjay of village Sanbur were missing from 14/12/1996. He found that the photographs of missing woman and the photograph of dead body were practically same. During the course of inquiry, the mother and brother came to the police station and identified the dead body on the basis of photographs and ornaments which were found on the dead body. It is important to note that the original missing report and the photograph sent along with it were not produced on record, and what was produced on record was the photo-state copy of missing report which is at Exhibit 63. Reading of Exhibit 63 shows that there is no reference about the photographs of missing persons, and the description given in the report shows that deceased wearing six meter sari, blouse, having mangalsutra, her face was rectangle shape and slim body. Prakash (PW-9) stated that Sunita was wearing Mangalsutra, however, from the evidence of Vasant Harale (PW-1) and PSI Bagal (PW-15), it is clear that they did not notice or find Mangalsutra around the neck of dead body or at the place where the dead body was lying, even the beads of Mangalsutra were not found at the place where the accused alleged to have assaulted the deceased i.e. at Devashi ghat. So far as ornaments found

on the dead body are concerned, they are easily available in market and have no special identification marks. Even Prakash (PW-9) admitted that

there were no special marks on those things and can be purchased from the market.

26. One more important aspect which is required to be taken into consideration is that the accused did not conceal his identity while staying in the

lodge at the relevant time. From the evidence of the managers of lodge it is clear that the accused gave his true name to the concerned managers and

accordingly wrote his real name and signed in the registers. According to the prosecution, the accused Sanjay was trying to run from one place to

another. On the contrary, the learned counsel for Respondent No.1 submits that accused Sanjay stayed in the said lodges as he was searching for his

wife during the relevant period and, non-concealing his identity itself shows that his stay was for bonafide purpose to search his wife.

27. To sum up, there is no eye witness to the incident. The prosecution case is based upon circumstantial evidence. The photographer who took the

photographs of dead body has not been examined. According to medical evidence two kinds of injuries were found on the dead body, some of injuries

might have been caused by sharp edged weapon and some of by hard and blunt object. Only knife alleged to have been recovered at the instance of

accused. It is pertinent to note that evidence of PW-2 shows that the knife was rusted. The evidence of PW-16 shows that it was not a new knife,

while knife produced appears to be a brand new. There is no recovery of any hard or blunt object. The prosecution has not examined the hand writing

expert in support of the contents and handwriting in the alleged letters. On the point of last seen together, the evidence of PW-7 Hanmant Shedage is

vague. As stated herein above, Accused No.2 and Vijay and Accused No.3 Udhav have been discharged by the Trial Court on the ground that there

is no prima facie evidence against them to frame charge. As per prosecution story, the accused Sanjay with the help of other accused assaulted and

Killed Sunita in the night in Divashi ghat and thereafter brought the body in a jeep and threw it in the field of which is situated on road known as

Sangali-Ashta. It is difficult to understand that if accused assaulted and killed Sunita in Divashi Ghat, which is a mountain area, they would not have

brought the dead body and threw it in the field which is situated at long distance. It was so easy for the accused to throw the body in mountain area

i.e. Divashi Gat where he alleged to have killed her. As alleged, if Sunita was having illicit relation with Vijay then it is not clear from the prosecution

story that as to why and how Vijay would participate or help accused Sanjay to kill her and how accused Sanjay took his help in commission of

offence. In the same way it is not clear as to why Udhav would have helped accused Sanjay. Accused Guruling Atyal was the driver of jeep owned

by PW 6 Sunil Patil and it appears that accused No.1 had hired it. It means accused Guruling Atyal had no personal knowledge or interest in helping

Accused Sanjay to kill his wife. If the entire evidence of the prosecution is taken into consideration, it appears that except accused No.1 other 3 have

no motive and intention to kill the deceased. Considering the evidence and material brought on record and as rightly held by the Trial Court, the

prosecution has failed to prove beyond reasonable doubt that the body found is of Sunita, the wife of accused No.1 only and none else and in the

circumstances, there are two possibilities, either Sunita is dead or still she is missing.

28. In so far as test laid down for appreciating circumstantial evidence including theory of last seen together is concerned, a useful reference could be

made to the judgment of Supreme Court in the matter of Sharad Birdhichand Sarda v/s. State of Maharashtra(1984) 4 SCC 116 the Apex Court in

paragraphs 153 and 154 has observed 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.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a

grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v.

State of Maharashtra where the following observations were made.

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between

'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.â??

In paragraph 143 of the said Judgment, the Supreme Court observed that it is vital that any circumstance adverse to the accused must be put to him in

his statement under Section 313, CrPC 1973; otherwise it must be completely excluded from consideration because the appellant did not have any

chance to explain them.

29. In aforesaid Sharad Birdhichand Sardaâ??s case (supra) in paragraphs 162 and 613 the Supreme Court has also considered the aspect as to

when the benefit of doubt can be given to the accused. In the said paragraphs 162 and 163 it is observed thus:-

162 Moreover, in M.G. Agarwal's case (supra) this Court while reiterating the principles enunciated in Hanumant's case observed thus:

If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the

benefit of doubt.

In Shankarlal's (supra) this Court reiterated the same view thus:

Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the

judgment".

163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the

evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is

undoubtedly entitled to the benefit of doubt.

In *Kali Ram v. State of Himachal Pradesh*, this Court made the following observations.

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence

adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be

adopted. This principle has a special relevance in cases where the guilt of the accused is sought to be established by circumstantial evidence.

In the concluding paragraph 218, the Supreme Court observed as under :-

“218 In view of the fact that this is a case of circumstantial evidence and further in view of the fact that two views are possible on the evidence on

record, one pointing to the guilt of the accused and the other his innocence, the accused is entitled to have the benefit of one which is favourable to

him. In that view of the matter I agree with my learned brothers that the guilt of the accused has not been proved beyond all reasonable doubt.”

30. As already stated herein above, the evidence of PW-7 is not reliable on the point of last seen together of the deceased in the company of accused.

It is an important circumstance, so as to connect the accused with the alleged commission of offence. In the light of discussion in foregoing

paragraphs, if the prosecution case is considered in its entirety, an irresistible conclusion is that the prosecution has not proved its case beyond

reasonable doubt against the accused. The Trial Court has rightly come to a conclusion that the prosecution has failed to bring home the guilt of

accused beyond reasonable doubt and therefore they deserve to be acquitted, and as stated herein above, has rightly acquitted the accused.

31. We are of the considered view that the findings of acquittal recorded by the trial Court are in consonance with the evidence brought on record and

there is no perversity as such. The prosecution has utterly failed to prove the case against the Respondents/Accused. The view taken by the trial

Court is plausible and therefore there is no reason to cause interference in the order of acquittal. Even if for a moment it is assumed that another view

is possible on the strength of evidence brought on record by the prosecution, that is not a ground to interfere with the order of acquittal.

32. In the light of discussion in foregoing paragraphs, an inevitable conclusion is

that the Appeal filed by the Appellant/State shall fail. There is no merit in the Appeal. Accordingly, the Criminal Appeal stands dismissed. Bail bonds, if any, shall stand cancelled.