
(2007) 02 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 59 of 2000

Vilas Nagpure

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34

Citation : (2007) 02 BOM CK 0036

Hon'ble Judges : S.R. Dongaonkar, J;K.J. Rohee, J

Bench : Division Bench

Advocate : A.S. Mardikar and R.M. Sambre, for the Appellant; D.B. Patel, APP, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Rohee, J.—These appeals are directed against the conviction of the appellants for the offences punishable under Sections 120B, 302/34 and 201/34 of IPC and sentence of imprisonment for life and fine of Rs. 5000/-in default to imprisonment for 2 months each imposed by the Additional Sessions Judge, Wardha in Sessions Trial No. 111/98 decided on 18.1.2000.

2. The case of the prosecution in brief is that PW1 Prabhakar Kesharao Kadam, aged about 65 years, is a cultivator and resides at village Vijaygopal, P.S. Pulgaon. He had three sons namely Shyam, Shrikant (PW2) and Shashikant (the deceased). Shyam is serving at Chandrapur, Shrikant is a cultivator residing at Wardha and Shashikant was serving as Leprosy Technician at Primary Health Centre, Kharangana (Gode). Shashikant was residing in House No. MIG 80/11 at Wardha with his wife Sandhya (accused No. 1), daughter PW6 Samruddhi, aged about 7 years, and son Shubham, aged about 4 years.

3. Shashikant used to go to Kharangana (Gode) daily. Shashikant became acquainted with Vilas Nagpure (accused No. 2) who is resident of Sawali Sastabad. Accused No. 2 Vilas became the family friend of Shashikant. About six

months before the incident, accused No. 2 Vilas resided at the house of Shashikant for about 8 months. During the stay of accused No. 2 Vilas at the house of Shashikant, intimacy developed between accused No. 2 Vilas and accused No. 1 Sandhya. Accused No. 1 Sandhya and accused No. 2 Vilas took disadvantage of the absence of Shashikant from the house. Accused No. 1 Sandhya started avoiding to go to her matrimonial house at village Vijaygopal and kept little contact with her in-laws.

4. The intimacy between accused No. 1 Sandhya and accused No. 2 Vilas (hereinafter referred to as .A/1 Sandhya. and .A/2 Vilas. for short) did not remain a secret and Shashikant learnt about it. Hence A/2 Vilas had to leave the house of Shashikant. A/2 Vilas shifted to another house. However, the relations between A/1 Sandhya and A/2 Vilas continued. A/1 Sandhya used to send tiffin for A/2 Vilas. She also used to send love letters to him. During these communications, they hatched a conspiracy to get rid of Shashikant by killing him, so that they would be able to continue their relations.

5. Shashikant was on tour with PW24 Gulab Motiram Mahalle from 18.5.1998 to 22.5.1998. 23.5.1998 and 24.5.1998 were holidays. The tour was to be resumed from 25.5.1998. However, on 25.5.1998 Shashikant did not report to duty.

6. On 23.5.1998 Shashikant was last seen alive. Thereafter he was not seen by anybody. A/1 Sandhya was at her house. She gave false information about the whereabouts of Shashikant to various persons who inquired about him. She left her house and went to her parental house at Pulgaon by giving the key of the house to the maid. At that time there was injury to her left hand. She called her father-in-law at Pulgaon and told him that on 23.5.1998 in the late night Shashikant had come to the house at Wardha with a woman and man. The said woman claimed that she was pregnant from Shashikant and she wanted to reside with him at the house. When Sandhya protested, Shashikant beat her and started leaving the house with the woman and man by motorcycle. However, Sandhya did not allow him to take the motorcycle. Thereupon Shashikant left the house by telling Sandhya that he would never come back.

7. Thereafter the father and brother of Shashikant took search of Shashikant, but he was not found. On 9.6.1998 PW1 Prabhakar lodged report (Exh.33) at P.S. Wardha City that Shashikant was missing. On the next day, i.e. on 10.6.1998 PW2 Shrikant lodged another report (Exh.35) at P.S. Wardha City describing the mysterious circumstances in which Shashikant was missing. On suspicion, the open space within the rear compound of the house of Shashikant was dug. It was found that there was a recent pit which was covered with earth. On removing the earth, the dead body of Shashikant was found. Some portion of the body was decomposed. The tongue had partly protruded. The hair near left ear were seen stained with blood. A piece of cloth as well as nylon rope was found tied around the throat. The skin on chest and abdomen was seen decomposed. A sword, one sheath of sword , two guptis, two handles of guptis, one leather belt of waist, one chappal, blood stained bed-sheet, blood stained petticoat, two blood stained

ladies gowns, blood stained sandow baniyan were also found in the pit. There was lock to the house. It was opened in presence of the panchas. Blood stained carpet, blood stained mattress, blood stained pillows, blood stained tiles were found in the house. The floor of the entire house was seen washed. All the articles described above were seized. Inquest panchanama was drawn. Crime No. 332/98 u/s 302, 201 read with 34 of IPC was registered against A/1 Sandhya. A/1 Sandhya was arrested. PW32 Dr. Vyankateshwaralu, General Hospital, Wardha, conducted post mortem examination on the next day. He found multiple stab injuries on chest and abdomen and rope mark around the neck of the body of Shashikant. The injuries were ante mortem. In his opinion, the cause of death was multiple stab injuries over larynx , chest and abdomen along with asphyxia due to strangulation by nylon rope.

8. On 11.6.98 Sandhya was examined by the Medical Officer, Wardha. Lacerated wound on left wrist 7 X 2 cm and bruise on left forearm 1 X 1 cm was noted. On the same day accused No. 2 Vilas was arrested.

9. On 13.6.1998 during interrogation A/2 Vilas agreed to discover certain things from his house. Accordingly blood stained full-pant, blood stained shirt, ash , as many as 43 letters and chits were discovered at his instance.

10. On 15.6.1998 A/1 Sandhya agreed to discover spade and saree. Accordingly spade and blood stained saree was discovered at her instance from her house. Some letters and diaries were also discovered at her instance. Later on specimen handwriting of A/1 Sandhya was obtained. The love letters and specimen handwriting of A/1 Sandhya were sent to Handwriting Expert. The report of PW36 Shri Dhotre, Examiner of Documents, State CID shows that the love letters are in the handwriting of A/1 Sandhya. During the course of investigation, test identification parade was also held in respect of both the accused. The property was sent for chemical analysis. After completion of investigation, charge sheet was filed.

11. The defence of A/2 Vilas is of total denial. The defence of A/1 Sandhya since beginning is that Shashikant himself left the house in the night of 23.5.1998 with a woman and a man by saying that he will never come back. Thus she feigned ignorance as to how the dead body of Shashikant was found in the pit in the compound of the house where she was cohabiting with Shashikant.

12. The prosecution examined as many as 36 witnesses in order to establish the guilt of the accused persons. There is no eye witness to the incident of murder of Shashikant as well as hiding his dead body in the pit along with the weapons. The prosecution entirely rested on circumstantial evidence. The trial Court discussed those circumstances and evidence which proved those circumstances and held that the chain of circumstances is complete. The circumstances lead to the only conclusion that A/1 and A/2 are guilty of the offences with which they are charged and the circumstances are opposed to their innocence. Accordingly the trial Court convicted and sentenced A/1 and A/2 as stated earlier. The said

conviction and sentence is under challenge.

13. We have heard Mr. R.M. Sambre, Advocate for A/1 Sandhya, Mr. A.S. Mardikar, Advocate for A/2 Vilas and Mr. D.B. Patel, APP for the State. We have also gone through the entire record and proceedings of the trial with the assistance of the learned Counsel for the parties.

14. The learned Counsel for the accused/appellants pointed out that there is no direct evidence against any of the accused. The case of the prosecution is entirely based on circumstantial evidence. They further submitted that firstly the chain of circumstances is not complete and secondly the circumstances are not proved beyond doubt. They submitted that the trial Court did not properly appreciate the evidence and arrived at a wrong conclusion that the guilt of the accused is proved. The learned APP on the other hand justified the impugned judgment. He submitted that the chain of circumstances is complete, no link is missing and that every circumstance has been proved beyond doubt. He pointed out that no explanation has come forth from any of the appellants/accused about the incriminating circumstances. The defence raised by A/1 Sandhya is falsified by the evidence on record. Thus the conviction of both the appellants is proper and no interference is called for.

15. Let us deal with the circumstances on which the prosecution is rested. The first circumstance is the acquittance of Shashikant (the deceased) with A/2 Vilas and A/2 Vilas staying at the house of Shashikant for about eight months. In this respect the evidence of PW2 Shrikant Prabhakar Kadam (the real brother of deceased Shashikant) is material. PW2 Shrikant deposed that that Shashikant was serving at P.H.C. Kharangana. Village Sawali was under his jurisdiction. Shashikant used to go to village Sawali. A/2 Vilas introduced himself to Shashikant. Their relations became thick. Mother of A/2 Vilas requested Shashikant to give him some job. Shashikant gave job to A/2 Vilas at the shop of Kashikar. As the financial condition of A/2 Vilas was not sound, Shashikant told him to stay in his house. The testimony of PW2 Shrikant in this respect has not been challenged by A/2 Vilas. Hence it can safely be believed that Shashikant and A/2 Vilas were acquainted with each others and A/2 Vilas resided at the house of Shashikant.

16. Another circumstance is that during the stay of A/2 Vilas at the house of Shashikant intimacy developed between A/1 Sandhya and A/2 Vilas. In this respect, evidence of PW6 Samruddhi (the daughter of Shashikant and A/1 Sandhya) is material. She was 7 years old when her evidence was recorded. Considering her tender age, no oath was administered to her. At the time of recording her evidence, she was studying in 3rd standard. She deposed that she was studying in 1st standard at the time of incident. She deposed that A/2 Vilas was residing in her house. She was calling him as Mama. She had been to village Sawali with her parents. A/2 Vilas used to send her out for taking chocklets and used to close the door and speak with her mother. He mother used to receive phone calls from A/2 Vilas. Her mother used to tell her to take chocklets and to

play and thereafter her mother used to speak on phone. It may be noted that all these things were not stated by PW Samruddhi to the Police when her statement was recorded. However, Only because of these omissions, her testimony cannot be disbelieved. She is an innocent child and there is no reason for her to speak lie against her own mother. Hence though no oath was administered to her and though there are omissions in her statement recorded during investigation, we find her evidence trustworthy because she was the only person who could have an opportunity to observe the behaviour of A/1 Sandhya and A/2 Vilas during the absence of her father.

17. Apart from the testimony of PW Samruddhi, the intimacy between A/1 Sandhya and A/2 Vilas can be seen from the letters seized from the house of A/2 Vilas at his instance. Those letters are at Exhs. 153 to 161 and 170 to 174. The evidence on record shows that the specimen handwriting of A/1 Sandhya was obtained during investigation and the specimen handwriting of A/1 Sandhya and the letters seized at the instance of A/2 Vilas were sent to handwriting expert. The evidence of PW36 Shri Dhotre, Examiner of Documents shows that the specimen handwriting of A/1 Sandhya and the handwriting of the letters is of the same person. It is thus obvious that those letters were written by nobody else than A/1 Sandhya.

18. None of the letters referred to above bear any date. None of them bear the name of the writer as Sandhya. Instead it is seen that they are signed as "Sakhi". All of them are addressed to A/2 Vilas. It can be gathered from those letters that Shashikant has been referred to as "SK". A perusal of those letters would show that A/1 Sandhya was in love with A/2 Vilas. She often used to send letters expressing her deep love for him and displeasure for her husband. They show that she wanted to get rid of her husband and to enjoy life with A/2 Vilas. A careful reading of those letters also shows that A/1 Sandhya suggested a plan to kill her husband. Thus from the letters the intensity of illicit intimacy between A/1 Sandhya and A/2 Vilas can be imagined. It was urged by Mr. Sambre, the learned Counsel for A/1 Sandhya that the evidence of intimacy simpliciter is not enough to prove that A/1 Sandhya and A/2 Vilas conspired to kill Shashikant. We do not find force in this submission because the conspiracy is spelt out from the letters written by A/1 Sandhya to A/2 Vilas.

19. In several letters Sandhya requested Vilas to send reply to her. However, there is not a single letter written by A/2 Vilas to A/1 Sandhya. But this would not show that there was no intimacy between the two. Because all those letters were preserved by A/2 Vilas in his house. They were neither destroyed nor returned by him to A/1 Sandhya. That itself shows that he was responding to the love expressed by A/1 Sandhya. It may be noted that A/2 Vilas was aware that A/1 Sandhya is a married woman, having husband and two children from him. Still he did not warn her not to keep relations with him, but as would be seen from further evidence their relations continued. Thus there was love affair between the two.

20. PW34 Yashwant Vithoba Gulhane stated so many things about the intimacy between A/1 Sandhya and A/2 Vilas. However, his testimony is full of omissions. The trial Court rightly discarded his evidence. We are also not inclined to rely on PW34 Yashwant.

21. It may be seen that A/2 Vilas was required to leave the house of Shashikant and consequently the company of A/1 Sandhya. However, the affair between A/1 Sandhya and A/2 Vilas continued. That could be seen from the evidence of PW18 Namdeo Shankar Yerpude, who was acquainted to A/2 Vilas and used to frequently go to the room of A/2 Vilas. He deposed that A/1 Sandhya used to come to the room of A/2 Vilas. A/1 Sandhya even sent tiffin for A/2 Vilas for about 7-8 times through PW Namdeo. When PW Namdeo came to know about the love affair between A/1 Sandhya and A/2 Vilas, he stopped carrying tiffin. It may be noted that the evidence of PW Namdeo is not seriously challenged on behalf of the accused persons.

22. PW19 Manoj Champat Patil deposed that at the instance of A/2 Vilas he carried tiffin from A/1 Sandhya to him for about one month. He also deposed that A/1 Sandhya used to carry tiffin for A/2 Vilas. It may be noted that the evidence of PW Manoj is not seriously challenged by the accused.

23. The evidence of PW20 Gajanan Vasant Raut shows that A/2 Vilas used to come to his room and used to chitchat with PW Gajanan, his brother and cousin, who were residing with him. A/2 Vilas introduced A/1 Sandhya to him. Once he had also visited the house of A/1 Sandhya. His evidence is not at all challenged on behalf of the accused persons.

24. From the above evidence, it has been established beyond doubt that there was love affair between A/1 Sandhya and A/2 Vilas and the love affair continued even after A/2 Vilas left the house of A/1 Sandhya.

25. The next circumstance is that Shashikant was on tour from 18.5.1998 to 22.5.1998. This can be seen from the evidence of PW24 Gulab Motiram Mahalle who was attached to the Head Office and was supervising the leprosy work. He deposed that he had gone on tour from 18.5.1998 to 22.5.1998 and Shashikant was present in that tour. There were holidays on 23rd and 24th May. The tour programme was to resume from 25.5.1998. However, Shashikant remained absent from 25.5.1998. The testimony of PW Gulab is corroborated by the extract of muster roll for May 1998 (Exh.74) and extract of tour diary register (Exh.75). From this evidence, it can be seen that Shashikant was on tour till 22.5.1998.

26. The next circumstance is that Shashikant was last seen alive on 23.5.1998 at Wardha. In this respect, the evidence of PW21 Sudhir Vasantrao Shinde and PW22 Sanjay Khushalrao Dange is material. PW21 Sudhir was serving in the Dinshaw Ice-cream Shop of Raju Bhure situated in Renuka Complex. He was knowing Shashikant. On 23.5.1998 Shashikant came to the shop for ice-cream at 12 in the noon. Shashikant purchased a family pack of Butter Scotch. PW22

Sanjay corroborated the testimony of PW21 Sudhir by stating that he runs electronic shop styled as .Om Sai. in Renuka Complex. Ice-cream parlour of Rajendra Bhure is situated in the said complex. On 23.5.1998 at 12 in the noon, Shashikant came to the shop of Sudhir Shinde when PW22 Sanjay and PW21 Sudhir were sitting outside the shop. There is nothing to disbelieve these witnesses. It was urged by Mr. Sambre, the learned Counsel for A/1 Sandhya that not a single neighbour of Shashikant has been examined to show that he was seen alive on 23.5.1998. He, therefore, submitted that theory of Shashikant having been last seen together with A/1 Sandhya cannot be propounded. We are not impressed by this submission. It may be seen that though no neighbour is examined in this respect, the neighbours might not have noted the presence of Shashikant since Shashikant was residing in an independent bungalow. However, there is evidence that on that day Shashikant purchased family pack of ice-cream from shop.

27. The next circumstance against the accused persons has come from the testimony of PW9 Prashant Sudarshan Kawale. He deposed that on 23.5.1998 when he went on duty A/2 Vilas came to his Xerox Shop and gave him a packet. Tablets were kept in the said packet. PW Prashant handed over the said packet to A/1 Sandhya. During cross-examination, he stated that he and A/2 Vilas became friends after acquaintance. He frankly admitted that he had no knowledge about the contents of the said packet. At this stage, it may be noted that the Chemical Analyser's report dated 13.10.1998 (Exh.126) shows that Diazepam was detected in the viscera of deceased Shashikant. It thus appears that before killing Shashikant, these tablets containing diazepam must have been administered to him.

28. The next circumstance is that from the afternoon of 23.5.1998, A/1 Sandhya went on hiding the whereabouts of her husband Shashikant. In this respect the testimony of two witnesses is material. One of them is PW25 Dr. Ramesh Laxman Pimparkar. He deposed that during 1998 he was serving as Medical Officer at PHC Kharangana. On 23.5.1998 he had been to the house of Shashikant between 3.30 and 4 p.m. He had gone there to take bills of pulse polio. When he reached there, A/1 Sandhya was standing in the gate. A/1 Sandhya told him from the gate that he was called on last Sunday but he did not come. She further told that her husband was out of station and she was going to Pulgaon. Her son was with her and she was scolding her son. PW25 Dr. Pimparkar asked A/1 Sandhya to let him search the bills. However, she did not allow him to enter in the house and drove him from the gate. Though there are omissions in his testimony about asking by him to A/1 Sandhya to search the bills and A/1 Sandhya not allowing him to enter into the house and driving him from the gate, he can be believed because he has no reason to depose false against A/1 Sandhya.

29. Another evidence in this regard is of PW2 Shrikant Prabhakar Kadam, the real brother of Shashikant. He deposed that on 23.5.1998 he had been to the house of Shashikant at 7 p.m. A/1 Sandhya was alone in the house. PW Shrikant

asked her as to where Shashikant had gone. A/1 Sandhya replied that Shashikant had gone to reception. PW Shrikant waited for Shashikant till 10 p.m. At that time A/1 Sandhya told PW Shrikant that he should inform his mother that she should not come to Wardha on the next day and that A/1 Sandhya has to go to Pulgaon on the next day as her mother was serious. PW2 Shrikant left the house of Shashikant at 10.30 p.m. This evidence shows that A/1 Sandhya made false statement about the whereabouts of Shashikant, the reason being that by that time Shashikant might have been killed.

30. Another witness in this regard is PW30 Balwant Vitthalrao Choudhary. He is the resident of village Vijaygopal. On 24.5.1998 at about 7 to 7.30 p.m. he had gone to Wardha. He went to the house of Shashikant. A/1 Sandhya was standing in the door. PW Balwant asked her as to whether Shashikant was at home and A/1 Sandhya replied that Shashikant had gone out. PW Balwant saw bandage to the left hand of A/1 Sandhya. When he asked A/1 Sandhya what had happened to her hand, she told him that she sustained injury to her left hand as she fell in the bathroom. Thereafter PW Balwant left the house.

31. Another circumstance is purchase of salt, tikes and spade by A/2 Vilas and reaching those articles to the house of A/1 Sandhya. In this respect PW11 Sureshkumar Pratapchand Bed deposed that he runs a shop styled as Mahavir Trading Company. On 24.5.1998 one boy came to his shop and purchased three bags of salt. One bag contained 25 kgs. of salt. The boy paid him Rs. 120/- towards the price of the bags. The boy took away the salt by rickshaw. This witness did not state as to whether A/2 Vilas was the same boy.

32. PW8 Sharad Champat Koram deposed that on 24.5.1998 he was working in the shop of Fidahusain Isaji as helper. Agricultural implements are sold in the shop. On that day one person purchased tikes and spade for Rs. 45 and Rs. 42/-. This witness also did not state whether A/2 Vilas is the same person who purchased tikes and spade. He, however, identified spade (Article 7).

33. PW5 Sk. Karim Sk. Hamid deposed that he is a rickshaw puller. He used to park his rickshaw in Panachand Chowk. During summer a slim boy came to him from Kirana Shop. The boy asked PW Sk. Karim to carry three bags of salt in MHADA Colony and agreed to pay Rs. 15/- as charges. Then three bags of salt were taken from the shop of Parasmal. The boy kept the bags in the rickshaw. Then they went to Hinganghat stop. The boy purchased spade from the shop. The boy was on the cycle. PW Sk. Karim followed him. The said boy halted the rickshaw at a distance of 100 ft. paid charges of Rs. 15/- and told him that he should go straight to the house where one lady would come out. Accordingly PW Sk. Karim went to the house. He stood outside the gate of the house, a lady came out from the house and opened the gate. She was having bandage to her left hand. She asked him to keep the bags of salt under the cot. Accordingly he put the bags and left the premises. PW5 Sk. Karim further deposed that he identified A/2 Vilas as the said boy in identification parade.

34. PW17 Pravin Prashant Telrandhe is a panch in whose presence identification parade was held in respect of A/2 Vilas as well as A/1 Sandhya. He deposed that the witnesses including Sk. Karim identified A/2 Vilas and A/1 Sandhya.

35. PW27 Prakash Rajaram Desai is the Executive Magistrate who held identification parade in respect of A/2 Vilas and A/1 Sandhya and in which the witnesses including Sk. Karim identified A/2 Vilas and A/1 Sandhya.

36. It was urged by Mr. Mardikar, the learned Counsel for A/2 Vilas that the evidence about identification parade shows that there was glaring dissimilarity in the persons who were made to stand in queue for identification. The Executive Magistrate did not ask the identifying witnesses why did they are identifying the accused. He submitted that the test identification parade was not properly held. We are not impressed by these submissions. PW Sk. Karim is a rickshaw puller and a rustic witness. Still he emphatically stated to have identified A/2 Vilas and A/1 Sandhya. He has no reason to depose false against them. Hence we rely on his testimony and accept his evidence.

37. PW23 Kantabai w/o Shamraoji Balbudhe deposed that she was working as maid at the house of A/1 Sandhya. She used to go the house of A/1 Sandhya at 3 or 4 p.m. About 7 days after 17.5.1998 she had gone to the house of A/1 Sandhya at 4 p.m. At that time A/1 Sandhya told her that her husband had gone to Nagpur. The testimony of PW Kantabai was not challenged by the defence and hence it can be safely accepted.

38. Another circumstance is about digging of pit in the rear side of compound of the house of Shashikant. In this respect evidence of PW7 Ramrao Sakharam Harale, a labour, is material. He deposed that on Sunday a person of blackish face came to him. He asked PW Ramrao to dig a pit for septic tank in MHADA colony. Labour charges were fixed at Rs. 600/-. PW Ramrao, his wife, his elder brother and younger brother went to MHADA colony. A fair looking lady came out from the house. There was bandage to her left hand. She took them to the rear side of the house. There was water tank. The lady told them to dig pit admeasuring 4 ft. x 5 ft and 5 ft. in depth. They worked till 12 in the noon. The lady paid them labour charges. The labours washed their hands and returned home.

39. PW Ramrao further stated that after a fortnight he learnt that a dead body was found in MHADA colony. Hence he went to the spot. He deposed that the pit which he dug was the same. He further deposed that after a fortnight he was called in the jail. He identified A/2 Vilas as a person who called him to dig the pit. He also identified A/1 Sandhya as the lady in the rear compound of whose house the pit was dug. We find no infirmity in his evidence. There is no reason for him to depose false against the accused persons. Hence we accept his evidence.

40. PW28 Rekha w/o Prabhakar Hivrale deposed that her mother-in-law was working at the house of Shashikant. A/1 Sandhya used to call her for household work. On Monday PW Rekha had gone to Dehankar layout for work. A/1 Sandhya

came from opposite side by auto. A/1 Sandhya called PW Rekha and gave her key. A/1 Sandhya told PW Rekha to go to home and work. After a week, Shashikant's brother came with Police and she gave key to them. Her testimony is also not challenged by the defence. So it can safely be relied. This shows that on 25.5.1998 A/1 Sandhya locked her house, handed over key to PW28 Rekha and left Wardha.

41. The most important circumstance is finding of the dead body of Shashikant from the pit in the rear side of his house on 10.6.1998. It may be noted that there are houses on either side of the house of Shashikant. It is also surrounded by a compound wall. It is not easily accessible to the outsiders. A/1 Sandhya was residing with her husband Shashikant and children in the said house. It has come in evidence that her daughter PW Samruddhi was sent to Pulgaon about 2 months before the incident and her son Shubham, aged about 4 years only was with her. In these circumstances, it was for A/1 Sandhya to explain as to how the dead body of her husband was found in the said pit. However, she feigned ignorance and set up a story that on 23.5.1998 in the late night Shashikant came with a woman and a man to the house. The said woman claimed that she was pregnant from Shashikant and expressed desire to reside in the same house. It was opposed by A/1 Sandhya. Thereupon Shashikant beat A/1 Sandhya. Shashikant tried to leave the house with the said woman and man by motorcycle but A/1 Sandhya did not allow him to take motorcycle. Hence Shashikant left the house by saying that he would never come back. If that is so, how the dead body of Shashikant was found in the pit in the compound of his own house is a mystery. A/1 Sandhya is the only person who is expected to throw light on the mystery. However, instead of stating anything in that regard, she set up a defence which appears absolutely false.

42. It was urged by Mr. Mardikar, the learned Counsel for A/2 Vilas that no suspicion was expressed against A/2 Vilas either in the FIR (Exh.33) lodged by PW1 Prabhakar or second report (Exh.35) lodged by PW2 Shrikant. On the contrary PW2 Shrikant during cross-examination admitted that he suspected Ambadas Deshmukh who used to visit house of Shashikant. We are not impressed by this submission. Though PW2 Shrikant suspected Ambadas, other circumstances show that Ambadas was not in picture and the murder of Shashikant can be attributed only to Sandhya and Vilas. Mr. Mardikar further submitted that the circumstances are not sufficient to connect A/2 Vilas with the alleged murder of Shashikant. We find no force in this submission.

43. On 10.6.1998, the dead body of Shashikant was taken out from the pit. A sword, one sheath of sword, two guptis, two handles of guptis, one leather belt of waist, one chappal, blood stained bed-sheet, blood stained petticoat, two blood stained ladies gowns, blood stained sandow baniyan were also found in the said pit.

44. The post mortem report (Exh.107) shows that the following ante mortem injuries were found on the dead body of Shashikant:

- i) Stab injury, upper border of pharynx long X 2 cm width 8 cms. deep. 3 cms
- ii) Rope mark round the neck 34 cms length 2 cms width. Nylon rope is present round the neck. One Dhupatta also present stretching round the neck.
- iii) Stab injury on chest on left side parasternal region 2 cms X 1 cm.
- iv) Stab injury on chest on left side 6 cms below the above said injury 2 cms X 1 cm.
- v) Four stab injuries over abdomen on left side between Ziphisternum and Umbilicus.
 - a) 2 cm X 1 cm X muscle deep.
 - b) 1 cm X 1 cm muscle deep.
 - c) 2 cm X 1 cm muscle deep.
 - d) 1 cm X 1 cm muscle deep.

In the opinion of PW32 Dr. Vyankateshwaralu the cause of death might be multiple stab injuries over larynx, chest and abdomen along with asphyxia due to strangulation by nylon rope.

45. It may be noted that weapons like sword and Guptis were found in the pit with the dead body. Though no blood was detected on these weapons, it can very well be inferred that those weapons must have been used for killing Shashikant.

46. It may further be seen that on 15.6.1998 spade and blood stained saree were detected at the instance of A/1 Sandhya. The C.A. Report (Exh.127) shows that human blood was found on the saree of A/1 Sandhya. A/1 Sandhya did not offer any explanation for this. This shows her active involvement in the murder of Shashikant.

47. In Sharad Birdhichand Sarda Vs. State of Maharashtra, while dealing with the circumstantial evidence following requirements were laid down:

- i) .the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- ii) 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;
- iii) the circumstances should be of a conclusive nature and tendency;
- iv) they should exclude every possible hypothesis except the one to be proved; and
- v) 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.

48. In *Padala Veera Reddy Vs. State of Andhra Pradesh and others*, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- ii) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

49. In *C. Chenga Reddy v. State of A.P.* 1996 SCC (Cri) 1205 it has been observed thus :

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

50. After referring the above case law in *Vilas Pandurang Patil Vs. State of Maharashtra*, it was held that :

For a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principle fact or *factum probandum* may be proved indirectly by means of certain inferences drawn from *factum probans*.

Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

51. Bearing in mind the above principles it would be seen that in the present

case the prosecution has succeeded in fully establishing the circumstances which point towards the guilt of the accused persons. The above circumstances taken cumulative form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused persons and none else. We find that the trial Court has properly scrutinized the circumstantial evidence and has come to a correct conclusion. We do not see any reason to disagree with the conclusions drawn by the trial Court. Hence we pass the following order: Both the appeals are dismissed.