

Appa Vs. The State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Nov-24-2014

Judge : S.S. Shinde & a.I.S. Cheema

Appeal No. : Criminal Appeal No. 101 of 2012

Appellant : Appa

Respondent : The State of Maharashtra

Judgement :

S.S. Shinde, J.

1] This appeal is filed by the accused, aggrieved by the Judgment and Order passed by the Sessions Judge, Ahmednagar, on 26.09.2011, thereby convicting the appellant for the offence punishable under Section 302 of IP Code. Appellant is sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine, he shall undergo rigorous imprisonment for one year.

2] The case of the prosecution, in brief, is as under:

The marriage between the accused and deceased Jaya, daughter of one Mohan Baburao Walhekar, was solemnized on 29.03.2003. After marriage, she started cohabiting with accused at his house at Bhavadi and gave birth to a son. Accused, however, used to ill-treat her on very minor causes, and used to give threats to kill

her. One year prior to the date of the incident, on 24.05.2010, there was quarrel between accused and Jaya. Accused beat Jaya and left her at her parents' house. He did not come to see Jaya and son and, therefore, Jaya's brother Laxman Mohan Walhekar, her father Mohan Bapurao Walhekar and one Pandurang Laxman Guldagad, Nana Mhasu Karande and Tulsiram Sitaram Thombare on 2-3 occasions went to the house of the accused to convince him and request him not to torture Jaya. Accused, however, asked them to take legal action against him. Therefore, they went to the Police Station Shrigonda and lodged the complaint. Thereafter, there was settlement between accused and Jaya by the intervention of Police Officer in the police Station, and after settlement Jaya went to matrimonial house with Pandurang Laxman Guldagad, Nana Karande, Uttam Dynandeo Ghogare. They requested accused to treat Jaya properly and not to torture her.

3] On 22.05.2010, accused and Jaya went to her parents' house in the evening and had a dinner and stayed there for the night. On 23.05.2010, the maternal cousin [son of maternal uncle of Jaya], Bapu Tulsiram Thombare came at the house of Jaya's parents, and requested Jaya and her husband i.e. accused to come to his house for 'Aamras' meals. Accordingly, accused and Jaya went to Bapu's house at Mahandulwadi. On 24.05.2010, Pandurang Guldagad and Bhau Thombare went along with accused and Jaya at Bus Stop, Accused and Jaya boarded in Nagar-Shrigonda bus. Shri Pandurang and Bhau saw bus leaving the bus stop.

4] On 25.05.2010, Jaya's brother Laxman Mohan Walhekar read a news item published in the news paper, whereby he came to know that, his brother in law i.e. accused, had been to Shrigonda Police Station as some offence was registered against him for creating chaos in Tahsil office. The complainant Laxman Mohan Walhekar, therefore, went to Police Station to see accused and his sister. His sister Jaya was not with accused and, therefore, he requested police to ask the accused as to, where is Jaya? The accused, initially, avoided to answer, but subsequently gave a statement that, he and Jaya, after leaving Mahandulwadi stepped down from the bus at Khakibaba bus stop, and thereafter, went to Komjaj Devi and had a Darshan of Komjai Devi. Thereafter, they were sitting on the western side of the Mandir and while talking with each other, there was dispute between them, in the

said dispute, the accused throttled Jaya with the help of saree, and then assaulted her with a stone on her head and committed her murder.

5] Shri Laxman Mohan Walhekar, the brother of deceased Jaya, immediately lodged the complaint at Police Station and on the basis of his complaint, Crime No.190/2010 was registered under Section 302 of I.P. Code.

6] P.I. Shri Madhukar Thakajirao Aute investigated into the crime against accused. The accused was already in police custody in Crime No.186/2010 under Sections 353, 427 of I.P. Code, as he had assaulted the public servant i.e. Tahsildar, and while in custody, he disclosed about commission of crime No.190/2010. He interrogated accused in presence of panchas. The accused had agreed to show the place of incident where his wife was murdered and where dead body was lying. In consequence of his information, the police went to the place as shown by the accused. The dead body of Jaya was found at the place shown by the accused. The inquest panchanama of the said dead body was recorded.

The panchanama of place of incident was also recorded in presence of panchas, from spot of the incident one big stone and small stone, mud stained with blood, simple mud, one chappal pair and one purse were seized. After recording the inquest panchanama and the panchnama of place of incident and memorandum panchanama, the dead body of Jaya was sent for post-mortem and after post-mortem her clothes were seized in presence of panchas. The accused was arrested in Crime No.190/2010. His clothes were seized.

7] During police custody the accused shown willingness to state, as to show the spot, where crime was committed. His statement was recorded in presence of panchas, in which he agreed to show Vasti where they visited for drinking water. In consequence of his information, he had shown the place of incident, and the way how they approached the place of incident. His statement and memorandum was recorded in presence of panchas. The P.I. then sent the seized articles to C.A. Nasik along with P.C.Kangude on 04.06.2010. He recorded the statements of the witnesses.

8] The post-mortem on the body of Jaya was carried out by Dr.Sandip Balasaheb Pund, Medical Officer, Rural Hospital, Shrigonda on 25.02.2010. He found following external injuries on the dead body of Jaya:

- (1) Crush injury of face and head with depressed flat face antero-posteriorly;
- (2) Abrasion on left shin measuring 5x5 c.m. and right shin measuring 3 x 4 c.m.;
- (3) Multiple abrasions on abdomen, chest and both arms ranging from 1x1 c.m. to 5x5 c.m. Their surface is whitish in colour. S/o postmortem injury;
- (4) Multiple abrasions on face ranging from 1x1 c.m. to 3x3 c.m. whitish in colour;
- (5) Multiple C.L.Ws. on face ranging from 1x1 c.m. to 3x3 c.m. whitish in colour;
- (6) Horizontal contusion [imprint type] on neck measuring 9 c.m. x 1 c.m. anteriorly and laterally. It is dark brown coloured and is at the level of Thyroid cartilage. Sign of strangulation mark.

The Medical Officer opined that the injury i.e. fracture of thyroid cartilage caused to Jaya was due to strangulation with the help of saree or rope. He also found this injury i.e. injury No.6, as ante-mortem injury which was horizontal contusion having strangulation mark. The other external injuries on the person of Jaya were found to be post-mortem. According to the Medical Officer, this post-mortem injury was possible if person is strangulated and thereafter hit with the help of stone. The viscera was preserved to find out the possibility of death by any other means such as poisoning etc. The C.A. Report revealed that, there was no poisoning, and therefore, the death of Jaya was confirmed to be by strangulation.

9] After due investigation, it was noticed that, the accused took Jaya to Komjai hill on the pretext of Darshan and there he committed her murder by strangulating her with the help of her saree and assaulted her with the stone. In order to show that the accused was in custody of the police, he went to Tahsil office and created a scene, tried to assault Tahsildar and other public servants and got himself arrested. However, the news of the so-called scene created by him was published in the news paper which was read by his brother in law Laxman Mohan Walhekar

and as already stated, after reading the said news item, Laxman went to Police Station, where everything was disclosed.

10] After due investigation, a charge-sheet was filed in the form of RTS No.192/2010 in the Court of JMFC, Shrigonda. The JMFC vide his order dated 24.08.2010 committed the case for trial to the Court of Sessions and on receiving the said case-papers, it was registered as S.C.No. 200/2010.

11] The Additional Sessions Judge, Ahmednagar, was pleased to frame charge vide Exh.1. The accused was charged under Sections 498-A, 302 and 201 of IP Code. The contents of the charge were read over and explained to him in Marathi, to which he pleaded not guilty and claimed to be tried. Due to some technical defects, said charge was altered and read over and explained to the accused. Accused pleaded not guilty.

12] In order to prove the charge, the prosecution examined as many as 9 witnesses, out of these 9 witnesses, PW-1 Laxman Mohan Walhekar (Exh.13) is the brother of deceased. PW-2 Mohan Bavurao Walhekar (Exh.17) is the father of deceased. PW-3 Bapu Tulshiram Thombare (Exh.18) is the cousin of Jaya on whose request accused and Jaya had been to Mahadulwadi. PW-4 Pandurang Laxman Guldagal (Exh.19) is the witness at whose house accused and Jaya stayed over night at Mahadulwadi. He is also a panch on memorandum and panchanama of places disclosed by accused where accused and Jaya visited prior to offence PW-5 Dr.Sandip Babasaheb Pund (Exh.23) is the Medical Officer, who performed post-mortem on the dead body of the body of Jaya and issued p.m. Report Exh.24 and certificate Exh.25. PW-6 Sou. Surekha Gorakh Vithekar (Exh.31) is resident of Dhawlewasti, Khandgaon where accused and Jaya drunk water before incident. PW-7 Regendra Eknath Wagh (Exh.37) is the Tahsildar, Shrigonda. PW-8 Bhausahab Tulshiram Thombare (Exh.38) is the witness on the memorandum and panchanama whereby accused disclosed to show the place of incident was also recorded and the incriminating articles were seized from the place of incident and inquest panchanama was also recorded. PW-9 Madhukar Thakajirao Aute (Exh.44) P.I., who recorded the statements of the witnesses and investigated into the crime and filed charge sheet against accused.

13] The accused was given an opportunity to explain incriminating circumstances. He denied the allegations and also submitted written statement in support of his defence at Exh.50.

14] The prosecution examined PW-1 Laxman Mohan Walhekar, who is brother of the deceased Jayabai. His evidence is at Exhibit 13. In his evidence before the Court, he stated that, deceased Jayabai, sister of the complainant, was married with accused Appa on 29.03.2003. Out of wedlock, couple was blessed with a son aged about 5 Years. He further deposed that, initially, relations between Jaya and accused were good. Thereafter, accused started ill-treating Jaya for one reason or the other. He used to torture mentally as well as physically. Accused used to beat Jaya and used to insist her to bring money for construction of house. Whenever Jaya used to meet complainant or intermittently visit the house of the complainant, she used to tell about torture by the husband. Since there was torture to Jaya, the complainant called his relatives namely Pandurang Laxman Guldagad, Munshiram Sitaram Thombare, Mohan Baburao Walhekar and along with them complainant went to the house of the accused to convince him not to torture Jaya. However, accused continued ill-treatment, and therefore, complainant was constrained to file complaint against the accused in the Police Station. Thereafter, Police called accused as well as family members of the complainant and tried to conciliate the matter. Thereafter, Jaya went to co-habit with the accused. She cohabited with accused for 5-6 months. Even during that period, ill-treatment continued and Jaya used to tell about illtreatment by the husband to the complainant.

It is further deposed by the complainant that, on 22.05.2010, the accused and Jaya came to Mandavgan at the house of the complainant in the evening. During said night, couple stayed in their house. In the morning of 23.05.2010 they took breakfast. One Mr. Bapu Tulshiram Thombare maternal uncle's son of the complainant came to the house of the complainant so as to request Jaya and her husband to come to his house for meal, and accordingly, they acceded to his request. Jaya and accused went to Mahandulwadi at the house of Bapu. They stayed there on 23.05.2010. They left village Bhawadi on 24.05.2010. At the time of their departure from Bhawadi, Bapu accompanied them to bus stand. Bapu saw the deceased Jaya in the company of husband at the time of leaving village

Bhawadi by the bus proceeding towards Shrigonda.

15] PW-1 i.e. complainant further deposed that, on 25.05.2010, he read news paper 'Sakal' in the morning and came to know that, there was news that one young person misbehaved in tahsil office. Upon reading the said news, the complainant came to know that, said person was accused - Appa. Thereafter, complainant went to Shrigonda Police Station. The accused was in the Police Station. Complainant made enquiry about the accused. Complainant saw that his sister was not with the accused. Therefore, complainant asked the Police to ask accused where is the sister of the complainant. However, the accused avoided to give answers. When Police again asked accused about Jaya, accused told that, accused and his wife Jayabai stepped down at the bus stop of Khakibaba and from there, they went to Komjai Dongar for darshan of Komjai. He further told that, after having darshan, he took Jayabai on the western side of the temple and throttled her neck with the help of Saree and assaulted her with a stone on head. The complainant voluntarily stated before the Court that, accused wanted the share in the property of his wife. Thereafter, complainant lodged the complaint in the Police Station. He identified his signature on the complaint.

16] The complainant was cross-examined by the Advocate of the accused. In cross-examination, complainant stated that, he is not aware about the Petition filed by the accused for restitution of conjugal rights against his sister. When question was asked to the complainant that, whether the accused and his sister did not stay at Mahandulwadi, he refused the said suggestion, he stated that, conciliation between his sister and accused took place 8 or 9 months prior to the incident and not prior to the 11 months and 24 days. At the time of conciliation, accused told that, he will maintain Jaya properly. He further stated that, daughter gets right in the property of her father. He denied suggestion that, his sister alone went to Komjai Devi for darshan and accused alone went to Shrigonda for acquisition work. He admitted that, he himself, his father and some relatives went to Shrigonda Police Station when they read news. They directly went to Shrigonda Police Station and did not go to the house of the accused. He denied suggestion that, accused told Police that, Jaya had been to the Komjai Devi Mandir when Police interrogated him. He further deposed that, Police took him with the accused

to Komjai Devi Mandir for identifying dead body. They reached Komjai Devi Mandir at about 2.30 p.m. The Mandir of Komjai is at a distance of about 1200 ft. from Khakibaba bus stop. The road to the said Mandir is not easy to walk. There is a footpath on the hill. He denied suggestion that, the accused searched for dead body for long time and thereafter the dead body found in a pit. He further deposed that, accused directly took them to the dead body. The dead body was at a distance of about 600 ft. on the western side of Mandir. He denied suggestion that, his sister fell down as she slipped down when she went for darshan of Komjai Mandir. He further stated that, accused stated before the Police that, he throttled the neck of his sister with the help of veil of sari and assaulted with a stone on head. He further deposed that, accused's son Gaurav is residing with him. He denied suggestion that, accused is falsely implicated in the commission of offence. He denied suggestion that, accused was not ill-treating or torturing his sister Jaya. He further deposed that, they were at the Mandir for about 1 to 2 hours. He further denied suggestion that, the accused never demanded share in their property.

17] Upon careful perusal of the version of the complainant, it appears that, one Bapu i.e. PW-3, saw the deceased Jaya in the company of the accused on 24.05.2010. Bapu i.e. PW-3, went to bus stop with the accused and his wife Jaya. He saw couple boarded in a bus going towards Shrigonda.

It is not in dispute that, on the way to Shrigonda, there was a stop called 'Khakibaba' and from the said stop, there is a way to the Komjai Devi Mandir. Therefore, PW-3 is the prosecution witness to support theory of last seen together. As per the prosecution, it appears that, after PW-3 saw Jaya last in the company of the accused, within few hours she died. It is also clear from the evidence of the complainant that, earlier there was ill-treatment and torture by the accused to Jaya and there was a police complaint and after conciliation, Jaya went for cohabitation with the accused. It has come in his evidence that, accused wanted share in their property. It has also come in his evidence that, after reading news in newspaper about incident which had taken place in the office of Tahsildar, they went to the Police Station so as to find out about the accused and also his sister. When he went to the Police Station, he saw accused there, however, did not see his sister and he requested the police to ask the accused whereabouts of Jaya. However,

initially, the accused avoided to give answer, and subsequently, he disclosed before the police that, he along with Jaya went for darshan of Komjai Devi. After taking darshan, accused took Jaya on the western side of the temple and throttled the neck of her with the help of veil of sari and assaulted with a stone on head. So far suggestion given by the defence that, there was no ill-treatment or torture by the accused to Jaya, he firmly denied the said suggestion. Therefore, it is established from the evidence of PW-3 that, there was ill-treatment and torture by the accused to Jaya earlier. Accused, then having been in custody, the self implicating part may be ignored. However it has come in his evidence that, PW-3 had lastly seen deceased in the company of the accused when he went on 24.05.2010. Nothing substantial has been brought on record by the defence so as to disbelieve evidence of PW-1. On the contrary, the evidence of PW-1 appears to be natural.

Evidence of PW-1 is challenged by the appellant on the ground that, in his cross examination, he has not stated about any previous litigation in respect of restitution of conjugal rights in between the appellant and deceased Jaya. He further admitted that, appellant and deceased Jaya went to the house of Bapu happily. He further admitted that, there is no dispute on asking share for accused and deceased. If evidence of PW-1 complainant is considered in its entirety, in our opinion, so far as visit of the accused to the house of the complainant and leaving the house of the complainant on 23rd May, 2010 along with PW-3 by the accused and his wife deceased Jaya deserves acceptance. He has also stated about ill-treatment given to the deceased Jaya by the accused. He further stated that, Police intervened in the matter and there was a settlement, and accordingly, Jaya went for cohabitation in the matrimonial house.

18] PW-2 in his evidence stated that, accused along with his wife Jaya visited his house on 22.05.2010 and on 23.05.2010, Accused and Jaya went to Mahandulwadi along with PW-3. His evidence also clearly demonstrates that, earlier there was ill-treatment by the accused to the deceased Jaya. As there is evidence of PW-3 and PW-4 on last seen together, there is evidence of PW-5 Medical Officer, which unequivocally indicates that, deceased Jaya died due to strangulation. Though, it is argued by the learned counsel appearing for the appellant that, there was no motive disclosed by the prosecution for commission of

offence, the prosecution has brought on record the circumstances that, initially, there was dispute between the accused and deceased Jaya and said matrimonial dispute reached to the Court. According to the accused, he was forced to file Petition for restitution of conjugal rights, and then, there was some settlement in which he had taken his wife for cohabitation. The prosecution has also brought on record through evidence of PW-1 and PW2 that, there was something in the mind of the accused about share of his wife in her father's estate. Therefore, we have no reason to disbelieve the findings recorded by the trial Court in para No.40 of the impugned Judgment about motive and intention for commission of offence by the accused.

Panchanama of place of incident Exh.43 discloses place, which is a hilly and isolated area, dead body of Jaya was lying in such isolated area in a pit and Medical Officer has also stated that, death was caused due to strangulation and same may be possible if a person personally strangulated with the help of sari. Though, C.A. Report discloses that, human blood was found on the clothes of the accused, however, result is inconclusive, nevertheless it is fact that, the blood was found on the clothes of the accused and other articles as such saree, blouse, parkar of the deceased and full shirt of accused shows human blood of 'A' group. C.A. Report Exh.27 as regards sample of blood of deceased shows that, her blood group was 'A'.

18] PW-3 Bapu, in his evidence stated that, deceased Jaya was the daughter of his paternal aunt. She married with accused on 29.03.2003. Initially, for 5-6 months, accused treated her well, thereafter, accused started quarreling with her. The accused was insisting her for claiming share in the property of her father. Jaya used to tell about torture. However, they used to convince her to stay with the accused.

19] He specifically deposed that, on 23.05.2010, he had been to Mandavgan at his maternal uncle's house. Jaya and accused also came there on that day. He requested the couple to come to his house at Mahandulwadi for Amras.

Accordingly, Jaya and accused came to his house at Mahandulwadi. After meals, the accused told this witness that, he desire that, he shall be given share in the

property of his wife. His brother in law Pandurang was also called for meals at that time he was present. Thereafter, accused and Jaya went to the house of Pandurang. During night, they stayed at the place of Pandurang. Again next day morning, they came back to his house. Then, after meal, they went to bus stand, at that time Pandurang also accompanied this witness along with Jaya and accused. He specifically deposed that, accused and Jaya boarded in the bus going towards Shrigonda. They came back after the bus went towards Shrigonda.

On 25.05.2010, PW-3 received telephonic call from Laxman Walhekar. He told that, accused was at Police Station Shrigonda and he learnt this after reading news paper and he is going to Shrigonda.

20] It appears that, this witness was cross examined by the Advocate of the accused. He deposed that, distance between Mahandulwadi and Mandavgan is about 5 to 7 Kilometers. Khakibaba bus stop is at a distance of 7-8 kilometers from Mahandulwadi. He stated in his cross examination that, he requested the accused to come to his house as the couple came to father in law's house about after 1 or 2 years. He specifically stated that, he came to know about the demand of share in the property of the parents of the deceased for the first time when the accused came to his house. He further stated that, he told the accused that, they will consider his demand and then couple left the house happily.

It is clear from the evidence of PW-3 that, he saw Jaya in the company of the accused on 24.05.2010 at bus stop of Mahandulwadi. He specifically deposed that, he saw the bus going to Shrigonda in which Jaya and accused boarded leaving the bus stop. Therefore, one thing is clear that, on 24.05.2010, during morning hours, they went to this witness with Pandurang. Jaya and accused along with PW-3 and PW-4 went to the bus stand in between 9.30 to 9.45 a.m. This fact is also stated by PW-4 in his evidence. There is evidence of PW-3 and PW-4 that, they saw couple boarded in Nagar-Shrigonda bus and after bus left stop, they came back. Therefore, evidence of PW-3 and PW-4 unequivocally indicates that, both of them saw deceased Jaya in the company of the accused on 24.05.2010 in between 9.30 to 9.45 a.m., and further that couple boarded in Nagar-Shrigonda bus, and said bus left the bus stop.

21] PW-4 Pandurang has also deposed before the Court that, PW-3 Bapu is the husband of his sister. They reside in same village. On 23.05.2010, accused and his wife Jaya had been to the Bapu's house. He was also invited for dinner. During talk at dinner, accused demanded share in the property of Jaya's father. After dinner, he took them at his house. They stayed at his house for a night and left to Bapu's house in the morning after having cup of tea. Along with them, he also went to Bapu's house. At about 9.30 to 9.45 a.m., he himself, Bapu, accused and his wife Jaya went to the bus stand. Accused and Jaya boarded in Nagar-Shrigonda bus. After the said bus left, they returned back.

He further deposed that, he received telephone call from Laxman that, Laxman has read one news item published in daily news paper 'Sakal' and accused is arrested and he is in the Police Station at Shrigonda. Accordingly, he went in the premises of the Shrigonda Police Station, did not enter inside the Police Station. It is further deposed that, Laxman went in the Police Station and this witness along with other stayed outside.

22] It appears that, this witness has also acted as Panch. On 4th June, 2010, he was called at Shrigonda Police Station. One Bajrang Hari Dhawale was another panch. Police interrogated accused in their presence. Accused told that, he will tell as to how he went to Vasti where he drank the water and he will show the said place.

23] Thereafter, PW-4, another panch Dhawale, accused and Police proceeded in jeep. The accused guided as to the place. They crossed the Khakibaba bus stop and went ahead. The accused asked to stop vehicle near one wasti. Accused asked them to stop before Shinde Wasti and Dhawale Wasti. From there they followed the accused on feet. He took them to Dhawale Wasti. One Surekha Vitekar identified accused. She gave water to the accused and his wife earlier. Accused also told that, Surekha gave him and his wife water, and further told that, thereafter they went towards Komjai Devi for darshan. Whatever stated by accused and disclosed by Surekha was noted down, and Investigation Officer obtained signatures of panchas on the statement of the accused. PW-4 identified his signature on said statement, which is at Exh.21. Self implicating portions can

be ignored. Material is identification of the route. Police also prepared panchanama of place of incident in his presence.

24] Evidence of this witness is challenged by the Advocate for the accused, on the ground that in cross examination, he admitted that, there is no 'Dhawale wasti' from Pisore road. He further admitted that, they reached Komjai at about 3.30 to 4.00 p.m. He further admitted that, he had been at Komjai Dongar about 1 to 2 hours i.e. about up to 5.30 to 6.00 p.m. This witness has also admitted in cross examination that, accused was handcuffed when he was taken to Komjai Dongar. He further admitted in his cross that, he did not accompany Police on 25.05.2010. He further admitted in the cross that, he signed on two panchanamas i.e. spot panchanama and memorandum panchanama on 04.06.2010.

25] It is true that, so far spot panchanama and memorandum panchanama are concerned, he has simply signed those panchanamas and his evidence so far as it relates to two panchanamas is concerned, same cannot be believed and deserves to be discarded to that extent. However, his evidence before the Court that, deceased Jaya was last seen in the company of accused on 25.05.2010 in between 9.30 to 9.45 a.m. deserves to be believed and consequently accepted. As already observed, even PW-3 in his evidence, has categorically stated about presence of Pandurang at the bus stop where the accused and Jaya boarded in the bus and said bus proceeded towards Shrigonda. Therefore, so far as deceased was last seen in company of the accused is concerned, evidence of PW-3 and PW-4 corroborates with each other.

26] PW-5 is the Medical Officer. In his evidence he has narrated, number of injuries sustained by the deceased Jaya. Already reference is made to the P.M. Report in para No.8 of this Judgment, therefore, it is not necessary to repeat said portion about injuries. Suffice it to say that, Medical Officer opined that, injury No.6 i.e. fracture of thyroid cartilage caused to Jaya was due to strangulation with the help of sari or rope. He further stated in his evidence that, fracture of thyroid cartilage caused was due to ante-mortem injury, which was having strangulation mark.

27] The learned counsel appearing for the appellant - accused criticized evidence of this witness, on the ground that, in cross examination he admitted that, there was no fracture of Hyoid bone. He further admitted that, injury Nos. 1 to 5 may be possible if person fell down, while ascending stony hill.

28] In our opinion, if the evidence of PW-5 i.e. Medical Officer is read in its entirety, there is no manner of doubt that, he opined that, death was caused due to strangulation with the help of sari or rope.

29] PW-6 is the witness of last seen. Her evidence is criticized by the learned counsel appearing for the appellant accused, on the ground that, all information about accused was received by her from police, and therefore, her evidence cannot be believed. Since the trial Court has not believed her evidence, there is no reason for us to upset findings recorded by the trial Court in respect of evidence of PW-6.

30] PW-7 Rajendra Wagh was working as Tahsildar at Shrigonda at the relevant time he deposed before the Court that, accused came to his office at about 2.00 p.m. on 24.05.2010 while he was doing his official work. According to this witness, on interrogation with the accused, he told that, his wife was not cohabiting with him and he wants divorce from her. He told that, this matter was not within jurisdiction of Tahsildar and advised accused to contact Advocate or to approach Taluka Legal Services Authorities for free legal aid, but, accused suddenly became violent and lifted the glass on the table. Clerk and Peons of the office, were trying to control the accused, however, accused assaulted them. Accused was taken to the Police Station and one of the peons Gore lodged a complaint against the accused. The evidence of PW-7 appears to be natural and trustworthy. The defence has not brought anything on record to suggest that, PW-7 was on inimical terms with the accused.

According to the learned counsel appearing for the appellant - accused, PW-7 admitted in his examination in chief that, his statement was recorded by the Police on 5th June, 2010 and he did not approach to Police to give statement earlier to it. Merely because statement of PW-7 was recorded by the Police after 10 days, is no ground to disbelieve his substantial evidence before the Court. In fact, accused

was immediately arrested on 24.05.2010 itself on the complaint filed by the Peon working in the office of PW-7. Therefore, there is no substance in the contention of the counsel appearing for the appellant that, evidence of PW-7 is not trustworthy or deserves to be discarded on the ground that, Police recorded his statement belatedly.

31] Upon considering evidence of PW-7 in its entirety, it appears that, his version is truthful and deserves acceptance. The fact that accused intentionally misbehaved in the office of Tahsildar so as to create a scene with an intention to conceal commission of offence or to misguide the police machinery. The reasonable inference can be drawn after commission of offence that, the accused entered in the office of PW-7 and did not say anything about his grievance that, he has not received any compensation for the acquired land, but told PW-7 that his wife was not cohabiting with him and he wants divorce from her. Inference can be drawn from the said incident in the tahsil office that, the accused wanted to create evidence so as to take defence that, on the date of incident, he was in the tahsil office for redressal of his grievance about not receiving compensation for acquisition of his land. Therefore, it appears that, trial Court has correctly drawn inference that, had it been the fact that, the accused was having very cordial relations with his wife and just prior to reach tahsil office, she left for darshan of Komjai Devi, there was no reason for accused to create a scene in the tahsil office. This shows that, said Show must have been created to get arrested with an intention to conceal his act or to misguide police machinery. It appears that, crime No.186/2010 was registered prior to the registration of the crime in the present case. Had it been the fact that, accused had been to the tahsil office only with an intention to express his grievance of not receiving compensation for acquisition of his land by the Government, there was no reason for Tahsildar not to mention the said reason in FIR or in the evidence before the Court. In the light of the discussion herein above, evidence of PW-7 deserves acceptance.

32] PW-8 Bhausahab Thombre in his evidence before the Court stated that, he was called in Shrigonda Police Station on 25.05.2010. One Appa Gajabapu Koradkar was also present in the Police custody. He started giving statement on his own. He agreed to show the place where he had committed murder of his wife

and also the place where dead body was lying. Police recorded his statement as per his statement. The statement shown to him, bears his signature as well as that of accused.

Thereafter, PW-8 Bhausahab Thombre, panch, Police Officers and accused boarded the police jeep and the accused guided them. They went to Komjai Dongar till the road was available for the jeep. Thereafter, they stepped down from the jeep. The accused went ahead to them and they followed him. He took them to the place where the dead body was lying. The said place was on the western side of the temple on backside. The dead body was found and the accused told that, it was his wife's dead body. The police written down the condition of the body. The police prepared the panchanama, shown to him. It bears his signature and that of panch and accused which is at Exh.40.

The dead body was lying on the ground and there was stone on the forehead. The face became blackish. There was a mark of injury on the neck. Police recorded the description and prepared inquest panchanama. The panchanama shown to him, bears his signature and that of witnesses, which is at Exh.41.

The place of incident where dead body was found was at a distance of 500 to 600 ft. on the backside of the temple. There was pit near the place of incident. One stone was on the forehead. There were another small stone. The big stone was stained with blood and the colour of the blood was blackish red. One small stone was there. There were also blood stains on that stone. The police seized simple mud and blood stained mud so also the stone from the place of incident. One ladies pocket of chocolaty colour was found near body and pair of slipper. Police seized all those articles in presence of panchas and prepared panchanama as per the situation. Said panchanama is at Exh.42. PW-8 further stated that, the articles 1 to 6 shown to him are the same, which were seized in their presence. The accused Appa is present in the Court. The witness identified him in the Court.

33] Evidence of this witness has been challenged by the learned counsel appearing for the appellant, on the ground that, he admitted in his examination in chief that, he is related to the mother of the deceased. He further admitted in cross examination that, they started from Police Station to Komjai Devi at about 4.00

p.m. and then went to Dongar via Khakibaba Mandir and Datta Mandir road. He further admitted in his examination in cross that, till 6.00 p.m. they were at Komjai hill and thereafter they started from Komjai hill to Police Station. He further admitted that, accused was handcuffed while taking to Komjai. He further admitted in his examination in cross that, one Aute Saheb contacted him on mobile.

In our opinion, evidence of PW-8 in his examination in chief remain unshattered, nothing substantial has been brought on record by the defence so as to disbelieve the evidence of PW-8. In his evidence, he has stated minute details about the discovery given by the accused. He has stated that, dead body was recovered at the instance of the accused, therefore, evidence of PW-8 inspires confidence and same is trustworthy and there is no reason to disbelieve his evidence. He specifically denied suggestion that, all panchanamas were written in Police Station and his signatures were taken in Police Station on all panchanamas. He specifically denied suggestion that, he falsely stated that, accused agreed to show the place where dead body was lying. He further denied that, panchanama was not prepared in his presence. He has signed the panchanama.

34] PW-9 Madhukar Aute was examined by the prosecution, at the relevant time he was working as Police Inspector. In his examination in chief, he stated that, from June 2009 to October, 2010, he was attached to Shrigonda Police Station as Police Inspector. On 24.05.2010, he received a complaint against accused and on the basis of which Crime No.186 of 2010 under Section 353 and 427 of Indian Penal Code was registered. Accused was arrested in the said crime on 24.05.2010. The said incident was published in number of news papers on 25.05.2010.

On 25.05.2010, at about 1.00 p.m., in the afternoon complainant Laxman Mohan Walhekar, his relatives and number of villagers came at Police Station. They told them that, the accused along with his wife left in a bus and therefore they wanted to know whether his wife is also with him. They also told that, accused's wife did not reach to her in laws house at Bhavadi. Therefore, they were worried as to where she was. He, therefore, took out the accused and interrogated him as to where his wife was. He recorded the statement of the accused as stated by him in

presence of panchas and also took entry in station diary as the information was given by him. Exh.39 is the statement, which he recorded. He further stated that, he along with panchas took the accused to the place, which he had shown them. The accused took them to Komjai hill. The jeep was stopped at that place there was no further road. From the said place, they went up the hill on feet. The accused had shown them the place where the dead body of his wife was lying. He recorded panchanama about the said place which was shown by accused in presence of panchas as per Exh.40. The complainant was brother of deceased and his relatives were also with them. They identified the dead body. He then recorded complaint of the complainant as per his say and the same is Exh.14. He sent that complaint for registration of offence along with a constable at Police Station. Thereafter, he recorded inquest panchanama of dead body of Jaya Appa Koradkar in presence of panchas as per Exh.41. Thereafter, he sent the dead body for postmortem and then recorded panchanama of place of offence in presence of panchas as per Exh.42. He seized one big stone, one small stone, simple mud, mud stained with blood, one chappal pair and one purse from the place of incident. Article 1 to 6 are the said articles.

On 26.05.2010, the clothes of the deceased were produced by constable Gade, which PW-9 seized. Panchanama shown to PW-9, is the same. It bears his signature as well as panchas. It is at Exh.45. The clothes shown to him are the same. He recorded statement of complainant's relatives on 26.05.2010. He recorded statement of PW-1 Laxman Mohan, Mohan Baburao Walhekar, Babu Tulshiram and Pandurang Laxman. On 28.05.2010, he collected post mortem notes as per Exh.24. He arrested accused with the permission of Court in this crime as he was already under custody in Crime No.186 of 2010. PW-9 seized his clothes on his person. PW-9 further stated that, the panchanama in this regard is shown to him, is the same. It bears his signatures and that of panchas. The contents are true and correct. The said panchanama is at Exh.46.

He obtained P.C.R. of the accused and during interrogation accused stated the way on which he approached to the Hill. PW-9 recorded the panchanama of the information given by him in presence of panchas as per Exh.20. Accused had shown them the wasti where he drank water. PW-9 recorded panchanama of that

place also in presence of panchas, as per Exh.21. He recorded the statement of the witnesses who had seen accused and his wife together at that place.

On 04.06.2010, PW-9 sent the seized articles in the crime to C.A. Nashik along with Police Constable Kangude. The office copy of this letter in this regard is at Exh.47. He recorded the statements of Tahsildar Rajendra Eknath Wagh and employees of the Tahasil office on 05.06.2010. He received the C.A. Report of viscera on 24.07.2010. He kept it on record. He has obtained final opinion as regards cause of death from medical Officer after receiving C.A.report. He got drawn the map of the place of incident from Circle Inspector. After due investigation, he filed the charge sheet against the accused.

35] Evidence of this witness PW-9 is challenged by the appellant, on the ground that, he stated in examination in chief that, accused was arrested with the permission of Court in the present crime. He further admitted in examination in cross that, he did not file arrest panchanama in Crime No.186/2010. He further admitted in his examination in cross that, statement of Tahsildar was recorded after 11 days. He further admitted that, accused was produced before the Court after 4.30 a.m. Therefore, according to the learned counsel appearing for the appellant, evidence of PW-9 is not trustworthy. Upon careful perusal of the evidence of this witness in examination in chief, he has stated minute details about entire incident, disclosure statement of the accused, panchanama prepared and further details about collecting of evidence, therefore, his evidence appears to be trustworthy, merely because, he stated in his examination in cross that, accused was produced before the Court after 4.30 p.m. is no ground to disbelieve him. It has come on record that, accused was arrested in Crime No.186/2010 for commission of offence by him in tahsil office. Therefore, accused was already in the custody of the Shrigonda Police Station.

36] The learned counsel appearing for the appellant pressed into service exposition of the Bombay High Court in the case of Lalsing Sutarya Pawara Vs. State of Maharashtra reported in 2011 (1) Mh.L.J.(Cri.) 333 and submits that, in the case of circumstantial evidence, there must be a chain of evidence so complete, which would lead to only conclusion that, accused alone and alone has

committed the offence. The learned counsel also placed reliance in the case of Rafik Hayachand Role Vs. State of Maharashtra reported in 2014 (1) Bom.C.R. (Cri.) 377 and Babu Vs. State of Kerala reported in 2010 AIR SCW 5105, for the same proposition that, in case of circumstantial evidence, the prosecution should establish chain of circumstance which would lead only to hypothesis that of the guilt of the accused.

37] We have considered the facts of the present case in the light of afore stated Judgments of the Bombay High Court and Kerala High Court. In our opinion, the facts of those cases are different. In the facts of the present case, the prosecution has proved through PW3 and PW4 that, Jaya was last seen in the company of the accused on 24.05.2010 at about 9.30 to 9.45 a.m. Both the witnesses have further stated that, they saw that, Jaya and accused boarded in the bus going towards Shrigonda and actually said bus left stop.

It appears that, incident of killing of Jaya had taken place within few hours thereafter. The prosecution has discharged burden to show that, deceased was last seen in the company of the accused few hours before incident of killing. The Supreme Court in the case of State of Rajasthan Vs. Thakur Singh reported in 2014 (8) Scale 82 has considered scope of section 106 of the Evidence Act. In the facts of that case in para Nos. 23 and 24, it is held thus:

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

In the present case, the accused in his statement recorded under Section 313 of Criminal Procedure Code has stated that, on the date of incident, wife Jaya told him that, she will go for darshan of Komjai Devi and she got down at Khakibaba stop and the accused travelled by the same bus to Shrigonda. He further stated that, he met his Advocate between 10.00 to 10.30 a.m. and then he went to the tahsil office. However, nothing has been brought on record by the accused to show that, in between 10.00 to 10.30 a.m., he met Advocate at Shrigonda. Though, accused stated in his statement, recorded under Section 313 of Criminal Procedure Code that, he went to the tahsil office so as to enquire about the compensation for acquired land. However, from the perusal of the evidence of PW-7, it is abundantly clear that, accused went there and told PW-7 that, he wants to take divorce from his wife, and PW-7 should redress his grievance. The false defence taken by the accused so as to save himself from commission of offence is one of the circumstances, which can be added in the chain of circumstance. His subsequent conduct of going to the tahsil office at 2.00 p.m. on 24.05.2010 and making an attempt to get himself booked in some other offence so as to save himself from commission of offence is also required to be taken into consideration. The said conduct is also taken into consideration by the trial Court while convicting the appellant for the offences punishable under Section 302 of Indian Penal Code.

The trial Court has not convicted the accused under the provisions of Section 498-A and 201 of IP Code. Since the appellant is acquitted for the offence punishable under section 498-A and 201 of IP Code, it is not necessary for us to appreciate the evidence in that respect and make some observations. It appears that, possible view has been taken by the Trial Court while acquitting accused of the offences punishable under Sections 201 and 498-A of IPC.

38] The learned counsel appearing for the appellant argued that, evidence of PW-3 and PW-4 on last seen together deserves to be discarded. In support of the

aforesaid contention, the learned counsel appearing for the appellant relied upon the Judgments of the Apex Court in - i) Sk.Yusuf Vs. State of W.B. (AIR 2011 SC 2283 (1)); ii) State of Goa Vs. Sanjay Thakran and another (AIR 2007 SC (Supp) 61) and iii) Manthuri Laxmi Narasaiah Vs. State of A.P. (AIR 2011 SC (Supp) 73).

39] We have carefully read the Judgment of the Supreme Court in the case of Sk. Yusuf cited supra, in the facts of that case, it appears that, father of the deceased therein had stated that, Sahanara Khatun had gone to pluck the jhinga and her dead body was recovered from there. The witnesses merely stated that the accused was present in the close proximity of that area. Therefore, in the facts of that case, Supreme Court observed that, merely because the accused was seen in the close proximity of that area would not mean that, deceased was seen together with the accused. In the facts of the case in hand, relationship between accused and deceased Jaya was husband and wife. Evidence of PW-3 and PW-4 unequivocally indicates that, Jaya was last seen in the company of the accused, not only that they saw couple boarded in bus, but actually said bus left the bus stop.

40] In the light of discussion made herein above, in our considered view, if the evidence of the prosecution witnesses is considered, PW-1 and PW-2 have stated about visit of the accused with his wife Jaya on 22.05.2010. Couple stayed in their house on 22.05.2010 and in the morning of 23.05.2010 the accused and deceased left with PW-3 and had dinner on the said night, then went along with PW-4 and stayed in his house during night. Again couple came back to the house of PW-3 and had meal, PW-4 accompanied couple, then, PW-3, PW-4 and accused along with Jaya went to the bus stop and in presence of PW-3 and PW-4 couple boarded in the bus going towards Shrigonda. PW-3 and PW 4 actually saw bus leaving the bus stop. It further appears that, accused went to the office of Tahsildar at 2.00 p.m. without Jaya. There, he by his act of aggression created a situation by abusing and assaulting clerk and peon of the said office, so as to create evidence that, he was in the tahsil office at 2.00 p.m. It has come on record that, about the incident in tahsil office, offence was registered against the appellant accused and he was arrested by the Shrigonda Police Station. The prosecution has proved beyond reasonable doubt through PW- 3 and PW-4 that, accused was last seen in

the company of the deceased Jaya on the date of incident i.e. 24.05.2010 in between 9.00 to 9.45 a.m. Therefore, it was incumbent upon the appellant accused to discharge his onus upon him, about what happened thereafter, since those facts were within his exclusive knowledge. When the appellant accused and deceased Jaya boarded in the bus and left Shrigonda, what happened in between 9.45 a.m. to 2.00 p.m. was within exclusive knowledge of the accused appellant. The defence taken by him that, deceased Jaya got down at Khakibaba bus stop and he alone went to the Komjai temple for darshan, and thereafter, the appellant accused went to Shrigonda and met his Advocate in between 10.00 to 10.30 a.m. and thereafter at 2.00 p.m. he went to the tahsil office for claiming compensation for his acquired land is falsified by the evidence of PW-7. No material is shown that defence of the accused that, he went to his Advocate in between 10.00 to 10.30 a.m. is probable. At the cost of repetition, it has to be stated that, contention of the accused that, he went to the tahsil office to enquire about compensation for his acquired land has been falsified by the evidence of PW-7. PW-7 in his evidence stated that, accused came to his office at 2.00 p.m. and told him that, he wants to take divorce from his wife and he should assist him. When PW-7 replied that, it is not in his jurisdiction, appellant accused become violent and lifted the glass on the table, not only that but accused assaulted peon and clerk working in the said office, and subsequently offence was registered to that effect speaks volumes about the conduct of the accused. In the facts of the present case, what happen from 9.45 a.m. onwards with Jaya was exclusively within the knowledge of the accused appellant, and therefore, once prosecution discharged his burden through PW-3 and PW-4 that, deceased was last seen in the company of the accused. It was for the accused to discharge onus upon him as to what happened.

41] As already observed, in pursuant to the statement of the accused, the new fact discovered was the place of killing of Jaya and where dead body was thrown. As already observed, upon perusal of Exhibit-43 i.e. spot of incident, discloses place which is hilly and isolated area. Dead body of Jaya was lying in such area in a pit. Therefore, evidence brought on record by the prosecution through prosecution witnesses and in particular Investigation Officer deserves acceptance. The circumstances proved on record, as discussed above, form complete chain and lead to no other hypothesis than that it was accused, and accused himself who

murdered his wife. The findings recorded by the trial Court appear to be in consonance with the evidence brought on record. In our considered view from any angle, the evidence brought on record by the prosecution only lead to one conclusion that, the appellant accused has committed murder of the deceased Jaya and he is rightly convicted by the trial Court for the offence punishable under Section 302 of I.P. Code. In the result, Criminal Appeal sans merit, and hence stands dismissed.

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