



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**  
**CRIMINAL APPEAL NO.87/2020**

Jivan @ Ashok S/o Ajabrao Chapane,  
Aged about 30 years,  
R/o Ekatmata Nagar, Near Budha  
Vihar, Jaitala, Nagpur

**... APPELLANT**

**...VERSUS...**

The State of Maharashtra,  
through P.S.O., Police Station Sonegaon,  
Dist. Nagpur

**...RESPONDENT**

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Shri Nikhil Dawda, Advocate for appellant  
Shri A.R. Chutke, APP for respondent/State  
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**CORAM : ANIL L. PANSARE AND SIDDHESHWAR S. THOMBRE, JJ..**

**DATE OF RESERVING THE JUDGMENT: 15.09.2025**

**DATE OF PRONOUNCING THE JUDGMENT: 22.09.2025**

**JUDGMENT (PER: SIDDHESHWAR S. THOMBRE, J.)**

. Heard learned Counsel for both the parties.

2. The present appeal is filed against the judgment and order of conviction passed by learned Additional Sessions Judge-5, Nagpur dated 30.11.2019, whereby, accused was convicted for the offences punishable under Section 302 of the Indian Penal Code, 1860, (for short "IPC"), and sentenced to suffer rigorous imprisonment for life and directed to pay a fine of Rs.5000/-

(Rupees Five Thousand Only), in default of payment of fine he shall suffer rigorous imprisonment for two years.

**3.** Brief facts of the prosecution is that,

On 16.09.2015, the complainant Mangala Pandurang Yeole, filed a complaint stating therein that she has three daughters. Her elder daughter was married and was residing at her matrimonial house. Her second daughter Yugandhara, aged about 20 years, used to reside with her grandmother Shashikala and her younger daughter Janvhi, aged about 11 years, was studying in 7<sup>th</sup> standard at Gayatri Vidyalaya, Nagpur. In her report, she further stated that, at about 3.45 p.m., her daughter Yugandhara told her that she is going to house of her grandmother and will return at 6.00 p.m. to home and left the house with school bag. She did not return to home till 6.00 p.m. Complainant thought that she might have stayed at her grandmother's house.

**4.** On 16.09.2015 at about 8.30 p.m. Janvhi's friend Priyanka and her father came to their house and enquired about Janvhi and she informed that Janvhi is at home, but her daughter

Yugandhara is at her grandmother's house. She along with her daughter, Janvhi, Priyanka and her father went to Police Station, Pratap Nagar, Nagpur. On an enquiry at Police Station, she told that since 15.09.2015, Yugandhara was not in the house and, therefore, she along with police came at Isasani Camp MIHAN area, Nagpur. Police showed her one girl lying there and she identified her being her daughter, Yugandhara. There were scratches on the face of Yugandhara. She was wearing light gray coloured top, and her pink colour legging and knicker were stuck in her legs. There were ligature marks on her neck, scratching marks on her hand. Her footwear, school bag and purse were lying there. She alleged that somebody had committed rape on her daughter and committed murder and report was lodged against unknown person.

5. On the basis of her complaint, investigation was set into motion. The investigating officer went on the spot and prepared the spot panchanama. He collected plain soil, blood mixed soil, footwear of deceased, school bag, ladies purse and other materials from the spot. The Police prepared inquest panchanama and seized the clothes of deceased.

6. The investigation proceeded further and on the basis of secret information, it transpired that accused was driver of the school van of Gayatri School, Gayatrinagar, Nagpur, and younger sister of deceased, Janvhi used to go in the said school van. The accused took leave on 14.09.2025 and 15.09.2025 from the school and in the evening of 15.09.2025, in between 8.00 p.m. to 8.30 p.m. and met deceased at the last bus stop of Jaitala, made her sit in the van and took her at Isasani MIHAN Area and committed rape and murder. Accordingly, after completion of investigation, the investigating officer submitted charge-sheet in the Court of Judicial Magistrate First Class, Nagpur under Sections 302 and 376(1) of the IPC.

7. Charge was framed against the accused and he pleaded not guilty and claimed to be tried. The prosecution led the evidence. The statement of accused under Section 313 of the Criminal Procedure Code, 1973 was recorded which is at Exhibit 86. The accused/appellant denied all the allegations made against him and his defence was of total denial.

8. We have heard the learned Counsel for the appellant and the learned A.P.P. on behalf of the State. The learned Counsel for the appellant submitted that the case is based on circumstantial evidence and there is no evidence against the appellant/accused. He further submitted that there is no direct or indirect evidence against the appellant and even there is no evidence of 'last seen together.' and the prosecution has not proved any material on record to show that appellant is the person who committed the crime.

9. Learned Counsel for the appellant argued that the recovery of clothes of the appellant is from the open place and it was accessible to all and the seizure of the clothes also not proved by the prosecution. There is no evidence on record to show that after the incident, the accused had absconded. The prosecution has not proved any motive and as the case is based on circumstantial evidence, motive is important and prosecution has not brought on record the motive.

There are material omissions and contradictions in the evidence of prosecution witnesses and those were not

appreciated by learned Trial Court and wrongly convicted the appellant. At the same time, based on the same evidence, the Trial Court acquitted the appellant for the offence punishable under Section 376 (1) of IPC. Learned Trial Court has thus, reached a wrong conclusion which is based on conjectures and surmises. Accordingly, allowed the appeal.

**10.** On the contrary, learned APP opposed the appeal and submitted that the case is based on the circumstantial evidence and the prosecution proved the case beyond reasonable doubt. The prosecution relied upon the statement of PW-1 Mother of deceased, evidence of PW-7, evidence of PW-15 and considering entire evidence, learned Trial Court has rightly convicted the accused/appellant under Section 302 of the IPC.

**11.** To support the case, the prosecution examined in all 15 witnesses which are as follows:

PW-1- Smt. Mangala Pandurang Yeole,  
PW-2- Parag Pandurang Dorlikar,  
PW-3- Amol Dhanraj Bondrey,  
PW-4- Dr. Rajesh Punjabrao Kude,  
PW-5- WPC Sharda Mahdeo Khadgi,  
PW-6- Pramod Eknath Kadoo,

PW-7- Arun Sadan Mahalgawe,  
PW-8- Vitthal Pundlikrao Jumde,  
PW-9- Dr. Nitin Shamrao Barmate,  
PW-10- Ashish Bhimrao Manohare,  
PW-11- Janvhi Pandurang Yeole,  
PW-12- Dy.S.P. Arun Rambhau Jagtap,  
PW-13- P.S.I. Smt. Nisha Gunwantrao Bansod,  
PW-14- A.P.I. Pravin Bhila Patil,  
PW-15- Dutta Waman Mali

As the case is based on circumstantial evidence, we are required to consider whether the prosecution has proved the case to convict the accused/appellant, though the prosecution has examined in all 15 witnesses.

**12.** After hearing the learned Counsel for appellant and learned APP for the State, following points arises for our determination:

- (1) Whether the prosecution proves that, death of deceased Yugandhara was homicidal?
- (2) Whether the prosecution proves that the accused, in between 5.00 p.m. of 15.09.2015 to 08.30 p.m. of

16.09.2015, at Isasani MIHAN area, Nagpur committed murder of Yugandhara Pandurang Yewale?

(3) Whether the interference is called for in the judgment and order of conviction passed by the Trial Court?

### **REASONS**

13. **As to Point No.(1) :** To prove homicidal death the prosecution examined PW-9 Dr. Nitin Barmate, Medical Officer, who conducted the post mortem. He deposed that the death of Yugandhara was caused during 5.00 p.m. on 15.09.2015 to 6.15. of 16.09.2015. During the post mortem, he found following injuries:

- “1) Lacerated wound present over right sided labia majora, 1.5 x 0.5 cm. x mucosa deep.
- 2) Contusion present over right sided labia minora, 1 x 07 cm.
- 3) Contusion present over left sided labia minora, 1 x 0.5 cm.
- 4) Whitish secretion present in vaginal opening.
- 5) During external examination, I found the following injuries.

- 1) Pressure abrasion present over front and right side of neck, below the level of thyroid cartilage, extending from medial border of right sternocleidomastoid up to 2 cm. Left of the mid line, 6 cm. Below the tip of right



mastoid and 5 cm. Below the level of chin, obliquely placed, 11 cm x 5 cm, reddish.

2) Pressure abrasion present over right side of neck and right submandibular region, extend from mid line of neck, 2 cm. Below the chin, and 3 cm. Below tip of right mastoid, oblique, 6.5 cm. X 4 cm., reddish.

3) Abrasion present over chin and right side of mandibular region of face, continuation with upper margins of injury No.2, 11 x 2 cm. Reddish.

4) Abrasion present over right supraclavicular region, 3cm. Above clavicle and 5 cm lateral to the midline, 1 \* 5 cm., reddish.

5) Abrasion present over right supraclavicular region 1 cm. above clavicle and 6 cm. Lateral to mid line, 0.5 x 0.3 cm., reddish.

6) Abrasion present over right side of lateral aspect of neck, 9 cm. Below tip of right mastoid, 1.5 x 0.5 cm. Reddish.

7) Abrasion present over right side of posterior aspect of neck, 10 cm. Below tip of right mastoid, 2 x 1 cm. Reddish.

8) Abrasion present over right side of posterior aspect of neck, 1 cm. Below injury No.7, 1 x 1 cm. Reddish.

9) Abrasion present over right side of posterior aspect of neck, 0.5 cm below injury No.8, 0.3 x 0 cm., reddish.

10) Abrasion present over right shoulder joint, 5 cm. From tip of shoulder, 2 x 1 cm. Reddish.

11) Abrasion present over left angle of mandible, 1.5 x 1 cm. Reddish.

12) Abrasion present over upper 1/3rd of right arm, anteriorly, 1 \* 0.5 cm. Reddish.

13) Abrasion present over upper 1/3rd of right arm, anteriorly, oblique, 4 x 1 cm. Reddish.

14) Abrasion present over middle 1/3rd of right arm anteriorly, 2.5 cm. X 2 cm. Reddish.

15) Four abrasion present over lower 1/3rd of right arm, anteriorly, 0.5 x 0.5 cm. Each, reddish.

16) Abrasion present over lower 1/3rd of right arm anteriorly, oblique, 1.5 x 0.6 cm. Reddish.

17) Two abrasions present over lower 1/3rd of right arm anteriorly, 0.2 x 0.2 cm. Each, reddish.

18) Abrasion present over upper 1/3rd of right arm, dorsally, cm. Reddish. 7 x 5

19) Abrasion present over middle 1/3rd of right arm, dorsally, 6 x 4 cm. Reddish.

20) Three abrasion present over upper 1/3rd of right arm dorsally, 1 x 1 cm. Each, reddish.

21) Abrasion present over right cubital fossa, 2 x 1 cm. Reddish.

22) Three abrasions present over upper 1/3rd of right forearm, ventrally, 0.5 \* 0.5 cm. Each reddish.

[6] On internal examination I found brain congested and oedematous.

[7] The neck dissection.

a) Hematoma present over right sided strap muscle of 6 x 4 cm.

b) Hematoma present over left sided strap muscle of 5 x 4 cm.

c) Contusion present over both thyrohyoid muscle, 3 x 3 cm.

d) Contusion present over right sided sternocleidomastoid muscle, 3 x 2 cm.

- e) Fracture of right sided greater horn of hyoid bone.
- f) Petechial hemorrhage present over epiglottis, Mucosa congested.”

All the injuries were *ante-mortem*. The witness found that cause of death was ‘throttling’. Further it is nobody’s case that Yugandhara suffered accidental or suicidal death. In view thereof and considering the injuries and cause of death, the death of deceased Yugandhara was homicidal. Therefore, we answer point No.1 in the affirmative.

14. **As to Point No.(2) :** The case is based on circumstantial evidence. In this regard, we are guided by law laid down by the Hon’ble Apex Court in the case of ***Sharad Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622***, wherein the Hon’ble Apex Court has led 5 golden principles while appreciating the circumstantial evidence held thus:

*“(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 & Anr. v. State of Maharashtra (1973) 2 SCC 793*** 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."*

15. Keeping in mind, the aforesaid principle of law, we have scrutinized evidence. The prosecution relied upon the evidence of PW-1 who is mother of deceased. She has stated about the fact that on the day of incident, Janvhi had been to school and Yugandhara was at home. At around 3.45 p.m., Yugandhara asked that she would go to her grandmother for bringing the articles of Pooja. Her grandmother was residing at Pratap Nagar. Accordingly, Yugandhara went to her grandmother and carried school bag and mini purse with her. She had gone saying that she would return by

06.00 p.m. but she did not return till 09.00 p.m. At around 08.30 p.m., friend of Janvhi, Priyanka Khare and her father went to her home and they along with Janvhi went to the Police Station. In her examination-in-chief, she has specifically stated that Police asked her whether she has having any suspicion on anyone and PW-1 stated that accused had reached at home to drop Janvhi on his vehicle. Accused informed that he returned back on seeing a girl and he had seen Janvhi walking near Pioneer Square and so he taken her and dropped her to home on his vehicle. He inquired about her second eldest daughter and on inquiry, she informed that she had been to her grandmother's home and on listening, accused immediately left. Only this circumstance was considered by learned Trial Court to connect the accused to the offence as he inquired about Yugandhara. Except that nothing was brought about by the prosecution through the evidence of PW-1.

**16.** PW-2 is panch witness to the spot panchanama and PW-3 is panch to the memorandum statement of accused Exhibit-27. PW-4 is Dr. Rajesh Kude who examined the accused.

17. PW-3 is the panch to the memorandum of statement (at Exhibit 27). The testimony of PW-3, if considered minutely, he claims that he is friend of Lokesh and he stated that police called both of them in Police Station saying that, accused is giving his confessional statement. When they were in the police station, the accused Jeevan was also in the police station. He told that the girl was shouting while he was committing sexual assault with her and he killed the said girl by kicks and fist blows. The police asked him where the cloths worn by him at the time of incident. The Police in their presence recovered the clothes. In cross-examination, he has specifically admitted that the police had written the panchanama when the accused was in lock up. More particularly, when the witness has been examined for recovery of clothes, the evidence is admissible to the extent of discovery only and not as regards the confessional statement given by the accused before the police. Further this witness has specifically admitted in cross-examination, that the police had written panchanama when the accused was in lock up. His evidence therefore, doesn't inspire confidence. His evidence is thus of no help to the prosecution.

**18.** The prosecution further examined PW-6 Pramod Eknath Kadu, who was teacher working in Gayatri Vidyalaya, Gayatri Nagar, Nagpur. In his statement, he stated that on 14.09.2015, in the morning accused had come to school and at about 9.30 a.m. he went by showing the reason of death in his family. Accused had brought the students on that day in the morning shift and went away at 9.30 a.m. On 15.09.2015, accused was on leave. On 16.09.2015, accused brought the students of the morning shift and afternoon shift and left the students of the morning shift. He had left the students of afternoon shift in the evening at 5.30 p.m. to their respective houses. In cross examination, he specifically stated that accused was plying school van since one year prior to the incident. There was no complaint against the accused by any students or their parents in respect of behaviour with the students. His evidence, even if accepted, is not helpful to show nexus of appellant with the crime.

**19.** PW-7 stated that on the day of incident, at about 9.30 p.m., he had seen the accused in the square near his house. The pant of accused was stained with mud. Therefore, he asked accused

why his pant is stained with mud. He told that he had quarreled with boys therefore his pant was stained with mud. He narrated, on taking him to isolated place, that he had taken his girlfriend at Isasani and kissed her. Thereafter, altercation took place between them. Accused gave push to his girlfriend, thereafter, he left and returned. In fact this witness has gone further by stating that he along with accused went to the spot and he saw one girl lying unconscious in the said jungle and further he saw clothes of girl in the bushes. After three days when accused was arrested, he came to know that said girl is murdered. He went to the police and gave statement. In cross-examination, the entire evidence is proved being with omissions. The Trial Court though observed that there are material omissions still it held that the said witness is reliable and trustworthy. Such inference is contrary to law of evidence.

**20.** As regards PW-8, as per his statement, on 16.09.2015, Vilas Bole informed PW-8 that near Isasani Tekdi, beside water tank, one dead body of girl aged about 18 to 19 years is lying naked. Vilas Bole has milk dairy in Isasani. It was 4.30 p.m. to 5.30 p.m. Thereafter, he went to the spot and found that one dead body



of girl, aged about 18 to 19 was lying naked in the grass. Thereafter, he made a phone call to control room on 100 number. Police came there and started investigation. If we consider the testimony of this witness, he is the person who informed the Police Control Room that one Vilas Bole informed him about dead body lying in jungle. His evidence is thus hearsay. The prosecution has not examined Vilas Bole who first saw the dead body lying at the spot. Needless to say that hearsay evidence is inadmissible.

**21.** As regards PW-9, Dr. Nitin Shamrao Barmate who conducted post mortem, he has recorded that the death of deceased Yugandhara was homicidal.

**22.** As regards PW-10, Ashish Bhimrao Manohare was a friend of Nilesh and his motorcycle was seized from Nilesh and his evidence is in respect of giving his motorcycle to his friend Nilesh only.

**23.** The prosecution examined PW-11 Janvhi Yavle, the younger sister of deceased Yugandhara but nothing was brought by the prosecution against the accused through her statement.

**24.** The prosecution has examined PW-12 Arun Rambhau Jagtap who registered Crime No.175/2015 on 17.09.2015 and he stated that he received information that one girl was lying half naked condition and she was dead at Isasani, MIHAN and as per his statement, PW-1 Mangala Mother of deceased gave report against unknown person and offence was registered against unknown accused, he arrested the accused on the basis of suspicion. He stated that accused gave memorandum statement and he recorded it in presence of two panchas at Exhibit 27. He stated that the memorandum statement of clothes worn by accused were hidden under the bushes near closed railway line and he produced the same in presence of panchas.

**25.** As regards PW-13, Nisha Gunwantrao Bansod, she was Police Sub Inspector, and after receipt of information from control room along with staff had gone to the spot, the spot of incident was open ground and there was wall of M.I.D.C. and crowd of people had gathered there.

**26.** The prosecution further examined PW-14 Pravin Bhila Patil, who arrested the accused on 17.09.2015.

The prosecution further examined PW-15 Dutta Waman Mali, who was Assistant Chemical Analyer, who submitted the CA report. He stated that on 16.12.2015, he received total 15 samples of different soils for examination and in the said samples, there were simple soil, soil on the spot and blood mixed soil and after examination. He stated that Exhibit 1 and 2 tallied with Exhibit Nos.4, 11, 12, 13 and 14 by stating that these two soils are from one place. In cross-examination, he said that as per the layer of soil, after every one kilometer, some components of soil may change. The prosecution had relied upon this witness to prove that soils which are at Exhibit 1 and 2 tallied with soil attached with Exhibit Nos.4, 11, 12, 13 and 14. Such evidence doesn't connect appellant with the crime.

**27.** We have gone through the statement of all the witnesses but nothing has been brought on record by the prosecution to prove that it is the accused who committed the murder of deceased Yugandhara. As the case is based on circumstantial evidence, the prosecution has to bring the clinching evidence and to prove the entire circumstances.

**28.** We have considered the findings and the reasoning given by the learned Trial Court. The learned Trial Court observed that the prosecution had a suspicion over the accused as the accused visited the house and inquired about deceased Yugandhara.

**29.** Firstly, merely because appellant enquired about Yugandhara, the suspicion could not be drawn. Secondly, the conviction cannot be based only on suspicion. After going through the evidence of PW-1 who is the mother of the deceased, except by stating that accused/appellant enquired about the deceased and further nothing was brought by the prosecution to connect the appellant with the said crime through evidence of PW-1. PW-2 who was a witness to the spot panchanama and PW-3 is a panch to the memorandum of statement. PW-6 Pramod Eknath Kadu, who was a teacher working at Gayatri Vidyalaya has stated only regarding the leave obtained by the accused on that day. Even, he never stated about any wrong doing by the accused prior to the registration of the offence and there was no any complaint against the accused by his student or the parents in respect of the behavior of the students

and the evidence even if it is accepted is not helpful to show the nexus of the appellant with the said crime. PW-7 stated that he came to know about the murder of Yugandhara, only when he went to the Police Station and his evidence is proved being with omissions and though the Trial Court observed that there are material omissions, still, the Trial Court relied on such evidence which is contrary to the settled position of law of evidence. PW-8 has stated that he received an information from one Vilas Bole, who informed him that one dead body was found, except that nothing was brought by the prosecution and his evidence is hearsay. His evidence is hearsay and thus, inadmissible.

30. The aforesaid evidence if looked into on the touchstone, of the law laid down by the Hon'ble Apex Court in the case of *Sharad Sarda (supra)*, neither the circumstances brought on record are of the conclusive nature, nor is the chain completed. It would, at most, indicate needle of suspicion towards the appellant. The settled principle of law, however, is that for a suspicion, howsoever, strong it may be, the same cannot take place of the proof. Accordingly, we answer the point No.2 in the negative.

31. **As to the point No.(3) :** Having answered point No.2 in the negative, the result that follows is that the prosecution failed to prove the guilt of the accused and therefore, the order of conviction passed by the learned Trial Court requires interference. Therefore, we answer point No.(3) in affirmative. Accordingly, we proceed to pass the following order:

**ORDER**

- i) The appeal is allowed.
- ii) The judgment and order of conviction passed by learned Additional Sessions Judge-5, Nagpur in Sessions Trial No.81/2016 dated 30.11.2019 is hereby quashed and set aside.
- iii) The Appellant **Jivan @ Ashok s/o Ajabrao Chapane**, is directed to be released forthwith, if he is not required in any other case.
- iv) The fine amount, if deposited, shall be refunded to appellant.

v) The Appellant **Jivan @ Ashok s/o Ajabrao Chapane**, shall execute personal bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety of the like amount to appear before the Higher Court as and when the notice is issued in respect of any appeal or petition filed against the judgment passed by this Court, such bail bond shall remain in force for a period of six months from the date of its execution, in compliance with the provisions of Section 437-A of the Code of Criminal Procedure, 1973.

vi) The Criminal Appeal is disposed of in the aforestated terms.

(SIDDHESHWAR S. THOMBRE, J.) (ANIL L. PANSARE , J.)