

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 500 OF 1996

The State of Maharashtra.

... **APPELLANT**
(Original Complainant)

VERSUS

Suresh Ganesh Jadhav,
Age 26 years, Occu. Agri.,
R/o Dahegaon, Tq. Jafrabad,
Dist. Jalna.

... **RESPONDENT**
(Original Accused)

...
Mr. M. M. Nerlikar, APP for Appellant / State.

Mr. Govind Kulkarni, Advocate i/b Mr. S. A. Deshmukh, Advocate for
Respondent.

...

**CORAM : A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATED : 05th October, 2015.

JUDGMENT: (Per Indira K. Jain, J.)

. Appellant / State of Maharashtra has preferred this
appeal against the judgment and order dated 3rd February, 1996
passed by the learned Additional Sessions Judge, Jalna in

Sessions Case No. 154 of 1991. By the said judgment and order learned Additional Sessions Judge acquitted the sole Accused of the offence punishable under Section 302 of the Indian Penal Code.

2 For the sake of convenience, we shall refer the Respondent as Accused as he was referred before the Trial Court.

3 Facts as are necessary for deciding the present appeal may be stated as follows:

- i. PW-2 Daulatrao Yadavrao Lahane was resident of Dahegaon, Tahsil Jafrabad, District Jalna. PW-1 Dhurpadabai Daulatrao Lahane is wife of PW-2 Daulatrao. Chaya was their daughter. She was married to Accused before 10 months of her death. Accused was resident of the same village.
- ii. It is the prosecution case that at the time of marriage of Chaya her parents had given Rs.21,000/- to the Accused as dowry. After marriage she started residing with Accused. She

was visiting her parents house. During her visits Chaya informed her parents that Accused was suspecting her fidelity. He used to tell her that she was from inferior community and threatening to kill her. Before 15 days of Sankrant festival Chaya was brought to her parents house.

- iii. On 29th December, 1990 in the night Accused came to the house of father of Chaya and asked them to arrange for a separate bedroom for him and Chaya. Accordingly her parents made arrangements and couple slept in the room during night. On the next day morning Accused woke up and left to his house.
- iv. On 30th December, 1990 in the noon Accused again came to the house of parents of Chaya. He took her to the farm. In the evening he returned to the house. Chaya did not come back and so her parents and brother made her search. She was not found. Prakash (since deceased) brother of Chaya and other villagers were going to Police Station Tembhurni to inform police. On the way PW-3

Police Patil Mansukhrao Deshmukh met them. PW-3 Police Patil Mansukhrao asked them that he would inquire from the Accused about the whereabouts of Chaya. So Prakash and others returned and did not lodge report.

- v. PW-3 Police Patil Mansukhrao alongwith villagers then came to the house of Accused. PW-3 Police Patil Mansukhrao took the Accused in confidence and asked him about the whereabouts of Chaya. Accused disclosed to them that he committed murder of Chaya by strangulating her neck with the rope and dead body was lying in the land of her parents.
- vi. Thereafter PW-3 Police Patil Mansukhrao and other villagers went to the place mentioned by Accused and saw dead body of Chaya in the land. Then Prakash and others went to Tembhurni Police Station and lodged FIR.
- vii. Crime No. I-64 of 1990 came to be registered against Accused under Section 302 of the Indian

Penal Code. On 31st December, 1990 PW-8 Police Head Constable Vidyachandra Nawkar visited the spot. Inquest panchanama was drawn in the presence of panch witnesses. Clothes of the deceased were seized. Spot panchanama was drawn. Witnesses Dhurpadabai Lahane mother of Chaya was examined. Accused was arrested. Investigation was handed over to PW-9 PSI Anil Patil.

viii. On 2nd January, 1991 PW-9 PSI Patil visited the place of incident and recorded statements of several witnesses. On 8th January, 1991, PW-9 PSI Patil was deputed for training and further investigation was entrusted to ASI Naval. On completion of investigation charge-sheet was submitted to the Court of Judicial Magistrate First Class, Jafrabad, who in turn committed the case for trial to the Court of Sessions.

4 On committal of case to the Sessions Court charge was framed against the Accused at Exhibit 7. Accused pleaded

not guilty and claimed to be tried. His defence was of total denial and false implication.

5 In support of its case prosecution examined in all 9 witnesses. On appreciation of their evidence Trial Court recorded the finding of homicidal death in the affirmative and considering the circumstantial evidence, negated the authorship of Accused in causing death of Chaya. Benefit of doubt was extended and Accused was held not guilty. Being aggrieved State has challenged the judgment and order of acquittal of the Accused.

6 We have heard the learned counsel for parties. We have perused the facts and evidence on record. We have also carefully appreciated the contentions of both the parties. On the basis of facts and evidence on record, we are of the opinion that there is substantial material evidence on record which if considered in its entirety regards the decision of the Trial Court as perverse and manifestly erroneous. We find that prosecution has succeeded in proving the guilt of Accused beyond reasonable doubt and interference is warranted in appeal against acquittal for the following reasons.

7 Before advertng to the evidence we would address

the crucial issue relating to interference of this Court in an appeal against acquittal after a long 24 1/2 years. It is extremely unfortunate. Whichever way one looks at the unacceptable delay, in our view it is the criminal justice delivery system which has ultimately suffered.

8 We are conscious of our limitations in an appeal against acquittal. In this regard, we may fruitfully remind ourselves the principles culled out in *Chandrappa v. State of Karnataka*¹:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

1 (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding

of acquittal recorded by the trial court."

9 On the bedrock of aforesaid settled principles it is our obligation to consider and identify the error in the decision of the trial court and then decide whether the error is gross enough to warrant interference. This court is not expected to merely substitute its opinion for that of the trial court only because of the first two principles in the decision referred above permit it to do so and because it has the power to do so – it has to correct an error of law or fact significant enough to necessitate overturning the verdict of the trial Court. We are cautious that in such a situation discretion is to be exercised very cautiously, keeping in mind the acquittal of the accused and the rights of the victim. The paramount consideration is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of guilty is no less than from the conviction of an innocence.

10 Admittedly, the case on hand is based on circumstantial evidence alone. It has been consistently laid down by the Apex Court that 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. A legal trend would further show that for a conviction in murder case on circumstantial evidence, following conditions must be fulfilled :

- i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, 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.
- 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 it must show that in all human probability, the act must

have been done by the accused and the accused alone.

11 Keeping in view the settled legal trend, we shall examine the following circumstances on which reliance is placed by the prosecution.

- A. Homicidal death of Chaya;
- B. Deceased was last seen with Accused;
- C. Extra-judicial confession made by Accused before PW-3 Police Patil Mansukhrao and PW-7 Vitthalrao Deshmukh; and
- D. Motive.

A. Homicidal death of Chaya–

- i. To establish homicidal death prosecution examined PW-5 Dr. Ramgopalrao Rambaksh, who conducted postmortem and PW-6 Atmaram Deshmukh panch on inquest panchanama. It can be seen from the evidence of PW-6 Atmaram that on 31st December, 1990 he was called by Police in the land Palsi at village Dahegaon. He went there and saw dead

body of Chaya lying in said land. They saw strangulation marks on the neck and black marks on the throat. In his presence and presence of other panch witnesses inquest panchanama Exhibit 20 was recorded.

ii. PW-5 Dr. Ramgopalrao was attached to Rural Hospital Tembhurni. On 31st December, 1990 dead body of Chaya was brought to the hospital at 04:30 pm for postmortem. PW-5 Dr. Ramgopalrao was on duty. He performed postmortem. On examination Medical Officer found—

- (i) Ligature marks transverse, well defined and depressed on the neck.
- (ii) The part of cord (rope) of single turn about 12 inches in length and 1/2 inch in diameter around the neck.
- (iii) Two knots of cord (rope) present below thyroid cartilage.
- (iv) The base of ligature marks dry and hard.
- (v) Abrasions around the ligature marks.
- (vi) Contusion present around the neck.

- iii. On performing postmortem PW-5 Dr. Ramgopalrao opined that cause of death was due to acute cardio respiratory failure due to asphyxia due to strangulation. Postmortem report Exhibit 17 proved by PW-5 Dr. Ramgopalrao shows that injuries were ante-mortem.
- iv. It is thus clear from inquest panchanama and medical evidence not seriously challenged by the defence that factum of homicidal death was duly proved by the prosecution.

B. Deceased was last seen with Accused–

- i. PW-1 Dhurpadabai and PW-2 Daulatrao are the witnesses on last seen. They are parents of Chaya residing in the same village. It is not in dispute that before 15 days of Sankrant festival Chaya had come to her parents house. It is stated by PW-1 Dhurpadabai mother of Chaya that one day prior to the incident Accused came to her house and asked them to make separate sleeping arrangement for

him and Chaya. Accordingly arrangements were made and couple slept in the room during night. On the next day morning Accused woke up and left to his house.

- ii. According to PW-1 Dhurpadabai on the same day between 12:00 noon and 01:00 pm Accused again came to their house and took Chaya to the field. In the evening Chaya did not return and so her son Prakash and villagers made her search in the village. Thereafter, they came to know that Accused committed murder of Chaya by strangulation in their field.
- iii. PW-2 Daulatrao is father of Chaya. His evidence on last seen is on the line of PW-1 Dhurpadabai. He fully supports the testimony of PW-1 Dhurpadabai on the theory of last seen. The evidence of PW-1 Dhurpadabai and PW-2 Daulatrao is consistent throughout. No material omission or contradiction could be elicited in their cross-examination. Testimonies of these two star

witnesses is attacked only on the ground that independent witnesses have not been examined and singular piece of substantial evidence cannot be the sole basis for conviction.

- iv. In this connection learned counsel for Respondent placed vehement reliance on the decision of the Honourable Apex Court in ***Kanhaiya Lal Vs. State of Rajasthan***² and submitted that howsoever strong evidence of prosecution witnesses may be Accused cannot be convicted only on circumstance of last seen.
- v. We have gone through the above referred authority. Needless to stated that application of last seen theory requires a possible link between the time when the person was last seen alive and the fact of the death of the deceased coming to light. There should be a reasonable proximity of time between these two events. This proposition of law does not admit of much excuse but what has to be seen is that this principle is to be applied depending upon

² 2014 (4) SCC 715

the facts and circumstances of a given case.

- vi. The reasonableness of the time gap is, therefore, of some significance. If the time gap is very large, then it is not only difficult but may even not be proper for the Court to infer that the Accused had been last seen alive with the deceased and the former, thus, was responsible for commission of the offence. The purpose of applying these principles, while keeping the time factor in mind, is to enable the Court to examine that where the time of last seen together and the time when the deceased was found dead is short, it inevitably leads to the inference that the accused person was responsible for commission of the crime and the onus was on him to explain how the death occurred.
- vii. In the present case based on evidence of PW-1 Dhurpadabai and PW-2 Daulatrao prosecution has proved that on 30th December, 1990 Accused took away Chaya with him between 12:00 noon and 01:00 pm. Chaya was last seen with Accused by these two witnesses. Further from the evidence of

PW-3 Police Patil Mansukhrao it is apparent that dead body was found in the same night in the field of parents of Chaya in pursuance to information given by Accused. Prosecution has thus established the possible link between the time when Chaya was last seen alive and the fact of death of the deceased coming to light. In view of reasonable proximity of time between these two events inevitable conclusion could be drawn that Accused was responsible for commission of the crime and the onus was on him to explain how the death occurred.

- viii. In a case resting on circumstantial evidence, if Accused fails to offer a reasonable explanation under Section 106 of the Indian Evidence Act, in our view that itself provides an additional link in the chain of circumstances proved against Accused. We are aware that Section 106 of the Indian Evidence Act does not shift the burden of proof in a criminal trial which is always upon the prosecution and it lays down the rule that when the Accused

does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

- ix. It is important to note that in his statement under Section 313 of the Code of Criminal Procedure Accused had not given any explanation whatsoever for the clinching circumstance of last seen. Further silence on the part of Accused is a very strong circumstance against him as the dead body of Chaya was found in pursuance to the information given by him on the same day.
- x. It appears from the reasons recorded by the Trial Court that the evidence of PW-1 Dhurpadabai and PW-2 Daulatrao was disbelieved on two grounds (i) neighbours were not examined, and (ii) in FIR Prakash stated that at 03:00 pm Accused had taken away Chaya whereas PW-1 Dhurpadabai and PW-2 Daulatrao deposed that between 12:00

noon and 01:00 pm Chaya was taken away by Accused. On overall and close scrutiny of the evidence of PW-1 Dhurpadabai and PW-2 Daulatrao we do not find that discrepancies considered by the Trial Court can be said to be fatal to the prosecution case. Prakash was not available for evidence as he died pending trial. FIR came to be proved through the police officer. FIR is not a substantive piece of evidence. It only sets the criminal law in motion. We therefore, do not agree with the finding recorded by the Trial Court that theory of last seen has not been proved by the prosecution.

C. Extra-judicial Confession–

- i. On the law relating to extra judicial confession learned counsel for Respondent strenuously submitted that extra judicial confession is a weak piece of evidence and in the absence of corroboration conviction cannot be founded on such evidence.

- ii. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the Court to base a conviction on such a confession. In such circumstances, the Court would be fully justified in ruling such evidence out of consideration.
- iii. Keeping in mind the above settled principles we have to examine now whether extra-judicial confession relied upon by the prosecution can be said to be voluntary, true and made in the fit state of mind. In this respect, evidence of PW-3

Mansukhrao Deshmukh and PW-7 Vitthalrao Deshmukh is important. PW-3 Mansukhrao Deshmukh was the Police Patil of village Dahegaon. On that day he had been to Jalna. He returned to village between 09:00 pm and 10:00 pm. On the way to his village he met Prakash brother of Chaya and other villagers. They informed PW-3 Police Patil Mansukhrao that Chaya was missing and they were going to lodge report with police station. Police Patil told them that he would make inquiry from Accused and accordingly, he inquired from Accused about whereabouts of Chaya. It is stated by PW-3 Police Patil Mansukhrao that on inquiry Accused admitted that he committed murder of Chaya by strangulating her neck in the land known as Palsi belonging to Prakash. He also told him that her dead body was lying in Tur crop in the said land. Thereafter, alongwith PW-7 Vitthalrao and other villagers they had been to the place stated by Accused and they saw strangulated dead body of Chaya.

iv. PW-7 Vitthalrao had accompanied Prakash and other villagers in making search of Chaya. The evidence of PW-7 Vitthalrao further shows that in his presence when PW-3 Police Patil Mansukhrao inquired from Accused about the whereabouts of Chaya, Accused told them that he committed murder of Chaya and her dead body was lying in Tur crop in the land Palsi. The evidence of PW-3 Mansukhrao and PW-7 Vitthalrao could not be shaken in cross-examination. There was no reason for them to depose a lie. Accused and the witnesses were residents of the same village. Their evidence is trustworthy and based on their evidence prosecution has established that confession made by Accused was true, voluntary and in the fit state of mind. In our considered opinion Trial Court had committed an error of law and fact as well in disbelieving this clinching circumstance established against the Accused and holding that extra-judicial confession cannot lead to only one hypothesis proving the guilt of Accused

alone. In our view, the evidence on record unhesitatingly points to the guilt of Accused and Accused alone as there is no reason to disbelieve the evidence of Police Patil and an independent villager.

- v. In the given facts and circumstances and the evidence adduced by prosecution, we hold that prosecution has also succeeded in proving the extra-judicial confession made by Accused to the witnesses PW-3 Police Patil Mansukhrao and PW-7 Vitthalrao. We have no reason to disbelieve this clinching circumstance duly proved against the Accused.

D. Motive—

- i. In a case based on circumstantial evidence motive assumes great significance. Through the evidence of PW-1 Dhurpadabai and PW-2 Daulatrao prosecution has proved that whenever Chaya was visiting their house, she informed them that Accused did not like her, he wanted to remarry, she

was from inferior caste and he would kill her. Marriage between Chaya and Accused took place just before 10 months of her death. It appears from the evidence that Chaya was pregnant. In this situation there was no reason for Chaya to falsely complain against her husband. Taking into consideration evidence of the above star witnesses we hold that prosecution has proved the motive behind commission of murder of Chaya.

12 Thus in the totality of the facts and circumstances and on careful perusal of evidence led by prosecution, we find that the impugned judgment is contrary to law, weight of evidence, probabilities and the circumstances proved in the case. The impugned judgment in our considered view is thus unsustainable in law and deserves to be set aside by allowing the appeal. Accordingly the following order:

ORDER

- I. Criminal Appeal No.500 of 1996 filed by the State is allowed.

- II. The judgment and order dated 3rd February, 1996 passed by the learned Additional Sessions Judge, Jalna, is set aside.
- III. Respondent - Suresh Ganesh Jadhav is held guilty of the offence punishable under Section 302 of the Indian Penal Code for commission of murder and is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, further rigorous imprisonment of one month.
- IV. Benefit of set off under Section 428 is allowed.
- V. Respondent - Suresh Ganesh Jadhav who is present in the Court is ordered to be taken in custody to serve the sentence.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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