

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

CRIMINAL APPEAL NO. 41 OF 1996

The State of Maharashtra

.. APPELLANT

VERSUS

- 1] Baban Kerba Jondhale,
Aged 22 Years, Occu. Agril.
R/o. Farkanda, Tq.Palam,
Dist. Parbhani
- 2] Kerba s/o. Purbhaji Jondhale,
Aged 60 Yrs., Occu. Agriculture,
R/o. As above.
- 3] Ranubai w/o. Kerba Jondhale,
Aged 55 years, Occu. Household.
R/o. As above.

**[Appeal dismissed as per Court's
Order dtd.20.11.98 against R.Nos.
2 and 3]**

..RESPONDENTS

...
Mr. S.G.Nandedkar, APP for Appellant – State
Mr. A.H.Kasliwal, Advocate for Respondent No.1
...

**CORAM : S.S. SHINDE &
N.W.SAMBRE, JJ.**

**RESERVED ON : 20.12.2014
PRONOUNCED ON: 20.02.2015**

JUDGMENT [PER S.S.SHINDE, J.]:-

- 1] This Appeal is filed by the State, challenging
the Judgment and Order of acquittal dated 31.08.1995

passed by Additional Sessions Judge, Parbhani in Sessions Case No.132/1994, thereby acquitting the respondent – accused for the offence punishable under Section 302 r.w. 34 of I.P. Code and Section 498-A r.w. 34 of I.P. Code.

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

The deceased Sarubai, was the daughter of complainant Jayabai [PW-3]. About 4 Years before the death of Sarubai, the marriage of Sarubai had taken place with accused No.1 Baban. As per the prosecution case before about one year of incident, the accused No.1 Baban demanded the amount of Rs.10,000/- and watch from the parental house of deceased Sarubai, but the complainant Jayabai, widow lady, was not able to give the amount of Rs. 10,000/-, but fulfilled the demand of watch. It is further the case of the prosecution that, the accused persons were used to beat and ill-treat deceased Sarubai, as the demand of Rs.10,000/- was not fulfilled. As the said amount was not given, the accused No.1 Baban had left deceased Sarubai with accused No.2 Kerba and accused No.3 Ranubai, who are his father and mother, and went to Mumbai.

Thereafter, the accused No.2 Kerba had brought deceased Sarubai to the house of complainant Jayabai [PW-3], at Borgaon, and left her there. Prior to about 15 days of the incident, the complainant Jayabai [PW-3] came to know that, the accused No.1 Baban had returned from Mumbai. The complainant Jayabai [PW-3], prior to 8 to 9 days of incident, left Sarubai at her matrimonial home at Farkanda. At that time, the accused No.1 Baban did enquire with deceased Sarubai, whether the amount of Rs.10,000/- has been brought or not. It was disclosed by Sarubai to the complainant Jayabai [PW-3] that, the accused No.1 Baban was enquiring about payment of Rs.10,000/-. The complainant Jayabai [PW-3], told that, she is a widow and not in a position to give said amount. Complainant left deceased Sarubai at the house of accused persons, and returned to Borgaon.

3] On 22.04.1994, the Police Patil at village Farkanda had given report [Exh.22] in Palam Police Station that, on 22.04.1994 at about 8.00 a.m. Kotwal Hiranman had informed him that, Sarubai died in between 2.00 to 3.00 a.m., due to tetanus. He enquired with accused No.2 Kerba

about death of Sarubai. The accused Kerba informed that, before 8 days of the incident, the complainant Jayabai had left deceased Sarubai at his house of the incident, and deceased Sarubai died because of tetanus. Accordingly, an accidental death No. 694 u/sec. 174 of Cr.P.C. was registered and the investigation was set in motion. Inquest panchanama [Exh.8] of the dead body of Sarubai was prepared at the house of accused No.2 Kerba in presence of panchas. The dead body of Sarubai was sent to Hospital for post mortem and the post mortem report [Exh.12] was received, and the probable cause of death of Sarubai was mentioned 'asphyxia due to throttling'. The spot panchnama [Exh.9] was prepared in presence of panchas and as per the said spot panchanama [Exh.9] one gunny bag having faint blood stains was seized. The clothes and articles on the person of deceased Sarubai were seized as per seizure panchanama [Exh.10] in presence of panchas. On 23.04.1994, the complainant Jayabai had given oral report in Police Station and the said report was reduced into writing as per [Exh.18]. On the basis of the said report [Exh.18], the entry was taken in Station diary and crime No. 43/1994 under Section 302, 498-A r.w. Section 34 of IPC was registered. The accused No.1 Baban was arrested as

per panchanama [Exh.13] in presence of panchas and one half bush shirt one banian and one lungi was seized from accused No.1 Baban in presence of panchas. The accused No.1 Baban while in Police custody had given information in presence of panchas that, he has kept a knife in tin box in his residential house below the clothes and accordingly, memorandum panchanama [Exh.15] was prepared in presence of panchas. Thereafter, the accused No.1 Baban had taken the investigating Officer and the panchas to his house, and he had taken out the knife which was in the tin box below the clothes, and the said knife was seized in presence of panchas as per Exh.16. During the course of investigation, it was revealed that, the accused No.1 Baban had told Ashok [PW-5] that, he has pressed neck of deceased Sarubai in the night and committed her murder, and he should not tell to anybody, and he should give information to his mother-in-law that, Sarubai died because of snake bite. Accordingly, the said Ashok [PW-5] had come to Borgaon and had informed complainant Jayabai [PW-5] that, Sarubai died because of snake bite. The complainant Jayabai had come to Farkanda after receipt of said information and she had seen the dead body of her daughter, injuries on the right leg and the blood oozing

from the private part of deceased Sarubai. The complainant came to know that, Sarubai was murdered by pressing of her neck. The statement of Ashok [PW-5] has been recorded by the Special Judicial Magistrate Mohd. Khaja [PW-7]. The said statement is at Exh. No.33. The statements of witnesses were recorded. The seized articles were sent to the office of C.A. as per letter [Exh.29]. The reports of C.A. [Exh.25] and [Exh.26] was received. After completion of investigation, the charge sheet was filed against accused persons.

4] As an offence u/sec. 302 and 498-A r.w. section 34 of IPC is exclusively triable by the Court of Session, the Judicial Magistrate First Class, Gangakhed committed the case to the Court of Sessions vide committal order dated 07.12.1994.

5] After hearing of the parties, Trial Court framed charge against accused persons, and the said charge was read over and explained to the accused persons in vernacular. The following charge was framed against the accused:

“That, you all on 22.04.1994 from 2.00 a.m. to 3.00 a.m. in the night at village Farkanda in furtherance of common intention committed murder by intentionally or knowingly causing the death of Sarubai Baban Jondhale aged about 20 years and thereby committed an offence punishable under Section 302 r/w. 34 of Indian Penal Code and within my cognizance.

Secondly, you the accused No.1 being the husband of said deceased Sarubai and you the accused Nos. 2 Kerba and accused No.3 Ranubai being the relatives of accused No.1 Baban on 22.04.1994 and before that in furtherance of your common intention had subjected the said deceased Sarubai to cruelty and harassed her and the said harassment was with a view to coercing the said Sarubai or any person related to her to meet your unlawful demand of Rs.10,000/- and on account of failure by her or any person related to her to meet the said demand and thereby committed an offence punishable under Section 498-A r.w. 34 of IPC and within my cognizance.”

6] The accused persons plead not guilty to the said charge. The trial Court acquitted the accused, hence this Appeal.

7] This Court granted leave to appeal qua accused Baban, and refused in respect of other two accused. Therefore, this Appeal is confined only against accused Baban.

8] The learned Additional Public Prosecutor appearing for the Appellant – State submits that, the trial Court has not properly considered the evidence of eye witnesses, the death occurred during night time in matrimonial home and the presence of the accused in the house has been established by the prosecution. The accused has not explained how and under what circumstances Sarubai died. It is submitted that, when the prosecution has discharged its burden and established that, the accused was present in the house, the accused should have discharged his onus under Section 106 of the Indian Evidence Act, and ought to have offered explanation as to circumstances in which deceased Sarubai died. Therefore,

relying upon the evidence brought on record by the prosecution, the learned Additional Public Prosecutor appearing for the Appellant – State submits that, Appeal deserves to be allowed.

9] On the other hand, the learned Counsel Mr. A.H. Kasliwal appearing for the respondent submitted that, the prosecution has not proved beyond reasonable doubt that, the accused No.1 Baban is responsible for the death of deceased Sarubai. It is submitted that, at the time of alleged incident i.e. during night time the other family members, and also sister of the accused No.1 was present. Since there were 3-4 persons in the house at the relevant time, and if the prosecution has confined its case only to accused No.1, the accused No.1 is entitled for the benefit of doubt like other accused. It is submitted that, the entire prosecution case rests upon the extra-judicial confession of PW-5 [Ashok Govindrao Jondhale], however, he turned hostile, and therefore, the trial Court has rightly given benefit of doubt to the accused. It is submitted that, in case of circumstantial evidence the prosecution has to prove chain of circumstances, and also each circumstance

independently. In support of the aforesaid contention, the learned counsel appearing for the respondent pressed into service exposition of the Supreme Court in the case of ***Manthuri Laxmi Narsaiah Vs. State of Andhra Pradesh***¹. It is further submitted that, the reliance on extra-judicial confession in case based upon circumstantial evidence has to be placed with great care. In support of aforesaid contention the learned counsel appearing for the appellant placed reliance in the case of ***Sahadevan and Anr. Vs. State of T.N.***². The learned counsel appearing for the appellant further placed reliance in the case of ***Satish Hiranna Pujari Vs. The State of Maharashtra***³ and submits that, accused cannot be convicted on the basis of suspicion. It is further submitted that, the prosecution has failed to establish motive for commission of the offence. In case of the circumstantial evidence motive assumes importance, and therefore, in absence of proving motive, prosecution case is rightly disbelieved by the trial Court. In support of the aforesaid contention, he placed reliance in the case of ***State of Madhya Pradesh Vs. Bhagirath and others***⁴.

1. [2011] 14 SCC 117

2. AIR 2012 SC 2435

3. 2013 ALL MR [Cri.] 1288

4. [2010] 15 SCC 665

10] We have given careful consideration to the submissions of the learned Additional Public Prosecutor appearing for the Appellant – State, and the learned counsel appearing for the respondent, with their able assistance, we have carefully perused the entire evidence on record so as to re-appreciate the same. The prosecution examined as many as 7 witnesses to prove the guilt of the accused. PW-1 [Dr.Bharat Lahane] is the Medical Officer. PW-2 [Umrao Bapurao Paul] is the panch witness to the seizure panchnama. PW-3 [Jayabai Maske] is the complainant and the mother of the deceased Sarubai. PW-4 [Bapurao Namdeo Waghmare] is the brother of deceased Sarubai. Ashok Govindrao Jondhale was examined as PW-5, is the witness on extra-judicial confession. PW-6 [Ismailkhan Yousuf Mohmad Khan] is the Investigating Officer, and PW-7 [Mohd. Khaja Mohd. Yousuf Hashimi] is the Magistrate, before whom the statement of the accused under Section 164 of Criminal Procedure Code was recorded.

11] In order to find out whether the death of deceased Sarubai occurred in the matrimonial house or at

any other place, it is necessary to make reference to the spot panchnama. The spot panchnama is at Exhibit-9. Upon perusal of the contents of the spot panchnama, it appears that, said was carried out in presence of two panchas namely; [1] Balasaheb Sadashiv Pol and Umrao Bapurao Pol. It is stated in the said panchnama that, the husband of the deceased Sarubai namely; Baban Kerba Jondhale was present on the spot and stated before the Investigating Officer and panchas that, Sarubai died due to tetanus. Accordingly, he showed the spot which is the house of the accused. The details about description of the said house has been incorporated in the spot panchnama. It appears that, one gunny bag with blood stains was noticed by the Investigating Officer and panchas. The said panchnama was carried out on 22.04.1994. The said panchnama is admitted by the accused, and therefore, the prosecution has proved beyond reasonable doubt the spot of incident, which was inside the house of the accused, and as stated by the accused, death occurred during the period 2.00 to 3.00 a.m. on 22.04.1994 in his house due to tetanus.

12] The inquest panchnama is at Exhibit-8. The same is also conducted on 22.04.1994 in presence of three

panchas. Upon perusal of the said panchnama, it appears that, multiple injuries were noticed on the dead body of Sarubai. Injuries were noticed on the right leg and thigh and blood stains were seen in between thighs of legs and blood was oozing from the private part of deceased Sarubai. An injury on the left knee was also noticed. Even on the waist, injuries were noticed. Other injuries were also noticed. There were injuries due to assault on the back, neck and throat. Upon careful perusal of the contents of inquest panchnama, it is abundantly clear that, number of injuries were noticed on the body of deceased. The said inquest panchnama is admitted by the defence.

13] The seizure panchnama is at Exhibit-10. The said panchnama is also carried out in presence of two panchas. As many as 8 articles were recovered by the Police. Clothes, some articles and ornaments of deceased were seized. It appears that, one piece of torn cloth of greenish colour with blood stains was recovered. Even the broken pieces of bangles were also recovered. Saree with blood stains was seized.

14] There is another seizure panchnama [Exhibit-13] of the clothes of the accused. One white colour *tericot* bush shirt having red, blue, small lining on it, and one pocket, four button on front portion of the said shirt was seized. At various places blood stains were appearing on said shirt. Baniyan and lungi was also recovered. Said panchnama was carried out on 23rd April, 1994 in between 16.30 to 17.00. Said document is admitted by the accused. It has come on record that, blood stains were found on said clothes.

15] In order to find out whether death of Sarubai was homicidal, accidental or suicidal, it is necessary to discuss the evidence of the Medical Officer. Dr.Bharat Vithalrao Lahane was examined as PW-1. In his deposition before the Court, he stated that, at the relevant time he was working as an Medical Officer at PHC, Palam. On 23.04.1994, the dead body of Sarubai was brought in the Hospital by Constable. He conducted post mortem of the said dead body. Dr. Masare was also with him. He found two types of injuries; one injury was lacerated injury on lower and of vagina measuring $\frac{1}{2}$ " x $\frac{1}{4}$ " deep and $\frac{1}{4}$ "

breadth and the second injury was contusion behind right knee joint measuring 1" x 1", and the said injuries were ante mortem. He had found fracture of Thyroid cartilage with laceration of muscle and there were anterior surface of bone thighs measuring 1" x 1". The probable cause of death of Sarubai was asphyxia due to throttling as there was swelling fracture Thyroid cartilage and laceration of Larynx. He has given said probable cause of death. The lacerated wound which he has mentioned in the post mortem report can be caused with knife Article 13 before the Court. The post mortem on record was prepared by him. It is in his hand writing. It bears his signature and the same is correct.

16] This witness was cross examined by the defence. He stated that, the lacerated injury is not mentioned in column No.17 of post mortem report at Exh. 12, but it is mentioned in the column of internal injury and he found the said lacerated injury while examining the lungs. There was no injury with knife on neck. This witness further stated that, the injuries mentioned in column Nos. 16 and 17 in post mortem report at Exh.12 are not possible

to cause death of a person in ordinary course. He further stated that, if both ends of a knife are sharp, then only incised injury can be caused by knife. He further stated that, throttling means pressing of neck by hand. He further stated that, there is always presence of ecchymosis in case of throttling and another feature is protruding of tongue and if the pressure is more the trichial ring can be damaged. He denied suggestion that, there can be a fracture of Thyroid cartilage in case the said part comes with the contact of hard and blunt substance.

17] Upon careful reading of evidence of this witness, it is abundantly clear that, death of Sarubai was homicidal.

18] The prosecution examined Jayabai Naroji Maske as PW-3. In her deposition before the Court, she stated that, deceased Sarubai was her daughter. Marriage of her daughter deceased Sarubai had taken place with accused No.1 Baban, 2 or 4 years prior to the date of incident. She further stated that, accused No.2 Kerba and accused No.3 Rajubai are the father in law and mother in law of deceased

Sarubai. After marriage, deceased Sarubai had cohabited for one year. Deceased Sarubai had told her that, accused No.1 Baban is demanding Rs.10,000/- and one watch. She further stated that, she had given watch to accused No.1 Baban, but she could not give Rs.10,000/-, and therefore, accused No.1 was harassing deceased Sarubai. She further stated that, accused No.1 Baban had left deceased Sarubai at matrimonial house and had gone away to Bombay and accused No.2 Kerba had left deceased Sarubai at her house. She further stated that, after 11 months and before 8 or 15 days of incident, she came to know that, accused No.1 Baban had returned from Bombay.

19] It is further stated by this witness that, upon coming to know that, accused Baban has returned from Mumbai, she went along with Sarubai at matrimonial house of the Sarubai, and at that time accused No.1 Baban had asked this witness to give Rs.10,000/-, and thereafter only he will co-habit with deceased Sarubai, else PW-3 should take Sarubai along with her. However, PW-3 left her daughter in matrimonial home and returned to her village.

It is further deposed that, Ashok Jondhale told her about death of Sarubai, then she went to Farkanda village, and she had seen the dead body of her daughter and noticed injuries on her legs, and blood was oozing from her private part. She further stated that, accused persons had killed her daughter. She had given oral report to the Police, and the same was reduced into writing by the Police. It bears her signature, which is at Exhibit-18.

20] This witness was cross examined by the defence. In her cross examination, she stated that, her brother had purchased a watch for accused No.1 Baban, and she does know how much amount was paid by him for purchasing the said watch. She further stated that, the receipt was also given to the accused No.1 Baban. She has specifically denied the suggestion that, accused No.1 Baban was not giving trouble to her daughter for not giving Rs. 10,000/-, and he had never demanded Rs.10,000/- and watch. It has come in the evidence of this witness that, when the accused No.1 Baban left his village and went to Bombay, the father of the accused No.1 Baban left deceased Sarubai to the house of this witness. It appears

that, this witness is rustic villager and was not able to tell specific period or dates of demand and ill-treatment. Nevertheless fact remains that the accused No.1 Baban went to Bombay alone and Sarubai was left to the house of this witness by the father of the accused No.1 Baban, and after period of long gap when this witness came to know that, the accused No.1 Baban has come to his village, this witness left Sarubai to the matrimonial house. Therefore, it appears from the evidence of this witness that, Sarubai was deserted by the accused No.1 Baban for considerable period. Accused Baban alone went to the Bombay. This witness has also stated that, Sarubai did disclose her about demand and ill-treatment at the hands of the accused No.1 Baban.

21] The prosecution examined Shri Bapurao Namdeo Waghmare, brother of PW-3 Jayabai. In his deposition before the Court, he stated that, before about 2-3 Years, PW-3 Jayabai had come to Parbhani and told him that, accused No.1 Baban is demanding Rs.10,000/- and watch, and accordingly, he had purchased the watch and had given to his sister. In his cross examination, he

specifically mentioned the name of the shop from which watch was purchased. The receipt was taken in the name of accused No.1 Baban and said was sent to Jayabai. The said watch was of '*Henri Sandoz*' company and it was purchased for Rs.350/-.

If the evidence of PW-3 and PW-4 is read in its entirety, it clearly emerges that, the accused No.1 Baban left Sarubai at matrimonial home and went to the Mumbai. The father of the accused No.1 Baban went to the house of PW-3 with Sarubai and Sarubai was left in her mother's house. Though the evidence is short to attract ingredients of the provisions of Section 498-A of I.P. Code, nevertheless it can safely be concluded that, there was motive for commission of offence, on the part of the accused Baban.

22] Mr. Ismail Khan Yousuf Mohmad Khan was the Investigating Officer [PW-6]. His evidence is at Exhibit-21/1. In his deposition before the Court, he stated that, on 22.04.1994, he was attached to Palam Police Station. He had received the report about the death of

Sarubai, and accordingly, he registered Accidental Death No. 6/1994 under Section 174 of Criminal Procedure Code and the said report is on record. It bears his endorsement and signature. It is at Exhibit 22. He further stated that, he had prepared inquest panchnama [Exh. 8], which bears his signature and signature and thumb impression of panchas. He sent dead body for post mortem under his covering letter, the copy of same is on record. It bears his signature at Exh.23. He had prepared spot panchanama [Exh.9] in presence of panchas and it bears his signature and signatures of panchas. The clothes and articles, which were on the person of deceased Sarubai were also produced by Constable B.No. 205, and the same were seized as per seizure panchnama [Exh.10]. He had also received post mortem notes [Exh.12]. The accused No.1 Baban had given information in presence of panchas that, the knife is kept in the iron box in his house, and accordingly, a memorandum panchnama was prepared at Palam, and it is at Exh. 15. It bears his signature and signatures of panchas. He further stated that, thereafter, he along with accused No.1 Baban and panchas had gone to Farkanda in jeep and the accused had taken them to his house and had taken out a knife, which was kept in iron

box. The said knife was seized as per the seizure panchanama [Exh.16] in presence of panchas. It bears his signature and the signature of panchas. The knife Article No.13 before the Court was sealed with the signature of panchas and it is the same. He further stated that, he had also prepared panchanama [Exh.13], which bears his signature. The complainant Jayabai [PW-3] had given the report [Exh.18] and it was reduced into writing by him, and accordingly, Crime No.43/1994 under Section 302, 498-A r.w.34 of I.P. Code was registered and the report at Exh.18 bears his endorsement with signature. He further stated that, he had recorded the statements of witnesses. The portion marked in the statement of PW-5 Ashok was recorded by him as Ashok had stated so before him. It is at Exhibit 24. He further stated that, the Special Judicial Magistrate has recorded the statement of PW-5 Ashok. He had sent the seized articles to the office of C.A. The report of C.A. are at Exhibits 25 and 26. He is producing the copy of letter sent to the office of C.A. It bears his signature, which is at Exhibit 28. After completion of the investigation, he has filed charge sheet. It bears his signature, which is at Exhibit 30.

23] This witness in his cross examination stated that, Farkanda village is at 4-5 kilo meters away from village Palam. He specifically stated that, he did record portion marked 'A' in the statement of PW-5 Ashok at Exhibit-24, as per his narration. He has specifically denied the suggestion that, accused No.1 Baban had not given information to him about the place where the knife was kept, and Baban had not taken out knife, and had not produced the same before him. He further denied the suggestion that, the knife Article 13 before Court was not seized from the house of accused. Therefore, the prosecution has proved the inquest panchnama, spot panchnama and recovery at the instance of the accused No.1 Baban. The evidence of Investigating Officer is fully trustworthy and inspires confidence. The Investigating Officer did send the articles such as; (1) gunny bag [torn], (2) Saree, (3) Pettycoat [cut], (4) blouse, (5) open shirt, (6) baniyan, (7) lungi, and (8) knife to C.A. The result of the analysis is as under:

RESULTS OF ANALYSIS

--- *Exhibit 1 has three blood stains all of about 1 cm in diameter on one side.*

--- *Exhibits 2 and 3 have considerable*

number of blood stains ranging from about 0.1 cm in diameter to big in size spread at places.----

--- Exhibit 4 is stained with blood on back portion.---

--- Exhibit 5 has few blood stains ranging from about 0.1 cm to 1 cm in diameter mostly on front portion on left side. -----

--- Exhibit 6 has a few blood stains all of about 0.2 cm in diameter on front upper portion.----

--- Exhibit 7 has few blood stains ranging from about 0.1 cm to 1 cm in diameter spread at places.----

--- Exhibit 8 is stained with blood on handle in traces.---

--- Blood detected on exhibits 1, 2, 3, 4, 5, 6, 7 and 8 is human.

--- Exhibits 2, 3 8 are stained with blood group "AB".---

--- Group of blood detected on exhibits 1, 4, 5, 6, and 7 cannot be determined as the results are inconclusive.

Therefore, upon perusal of the result of analysis, it is crystal clear that, blood stains were found on gunny bag, saree and petticoat. There are also blood stains on Exhibits 5, 6, 7 as mentioned above. Exhibit-8 is knife.

The knife was also stained with blood on handle in traces. Blood deducted on exhibits is human. Exhibits 2, 3 and 8 i.e. knife, are stained with blood group 'AB'.

24] The prosecution examined Ashok Govindrao Jondhale as PW-5 in order to prove extra-judicial confession given by the accused No.1 Baban before him. However, he turned hostile. The prosecution has proved portion marked 'A' from his Police statement through Investigating Officer. Portion marked 'A' reads thus:

"मी बबन यास बाजूला घेऊन त्यास विश्वासात घेऊन विचारले असता त्यांनी सांगितले की रात्री मी माझी पत्नी सरुबाई हिचा गळा दाबून खून केला आहे. कुणाला काही सांगू नको व माझे एवढे काम कर बोरगाव येथे जाऊन माझ्या सासूला निरोप दे कि, सरुबाई ला साप चावून मरण पावली आहे".

Even the prosecution examined PW-7 [Mohd. Khaja Mohd. Yousuf Hashimi], before whom PW-5 gave a statement under Section 164 of Criminal Procedure Code. However, we are not placing reliance on extra-judicial confession given by the accused No.1, since there is sufficient evidence placed on record by the prosecution to prove the guilt of accused Baban.

25] If the evidence on record is considered in its totality, the evidence of PW-3 and PW-4 is sufficient to hold that, there was motive on the part of the accused No.1 Baban for commission of offence. As a matter of fact demand of watch was fulfilled by the PW-3 and PW-4. It is true that, in strict sense all ingredients of Section 498-A of IP Code are not met, and therefore, conviction under Section 498-A of IP Code cannot be given, however, the prosecution has proved through PW-3 and PW-4 that, there was motive for commission of offence by the accused No.1 Baban. The motive is something which is always in the mind of the accused. The prosecution has proved spot of incident, inquest panchnama, seizure panchnama, recovery panchnama through Investigating Officer. The prosecution has also proved that, death was homicidal. Already evidence of Medical Officer is discussed in foregoing para 15 to 17. There is C.A. report that the blood group of 'AB' is found on the clothes of the accused No.1 Baban. The prosecution has established through PW-1 and medical report that death of the deceased Sarubai was homicidal. The death had occurred in the house of the accused during midnight hours. The accused spread rumor that death of Sarubai caused due to tetanus. This subsequent conduct is

also one of the circumstance, which can be added in the chain of circumstances. The inquest panchnama unequivocally indicates number of injuries on the body of deceased. It clearly emerges that, the accused No.1 Baban pressed neck of his wife Sarubai and killed her and then in order to cause disappearance of such evidence assaulted her by knife and further spread a rumor that she died due to tetanus.

Upon careful perusal of the Judgment of the trial Court, the trial Court has accepted that, the prosecution has proved that, the death was homicidal, spot of incident was inside the house of the accused, death occurred during the intervening night of 22.04.1994. Further C.A. Report at Exhibit 25 shows blood group "AB" on saree and petticoat of deceased Sarubai, and also blood group 'AB' on the knife. The said report further shows that, there was blood stains on shirt, baniyan and lungi of the accused No.1 Baban. However, it appears that, the trial Court acquitted the accused on the ground that on the date of incident the accused No.1 Baban along with his parents and sister was present in the house, and therefore, it is held

that, the prosecution has not proved that, who has actually committed the offence in question. In the light of discussion herein above, it clearly emerges from the evidence of PW-2 and PW-3 that, they have implicated only accused No.1 Baban, as per their version accused No.1 Baban harassed his wife and alone went to the Mumbai. Upon reading evidence of PW-3, it appears that, for considerable period the accused Baban deserted Sarubai. *Secondly*, the Investigating Officer has recovered knife at the instance of accused No.1 Baban. The said recovery is proved through Investigating Officer though panch turned hostile. Blood stains were found on the knife and also on the clothes of the accused No.1 Baban. Spot of incident is inside the house of the accused No.1 Baban. Death occurred in between 2.00 to 3.00 a.m. Therefore, if the entire evidence is considered, it points out the guilt towards only accused No.1 Baban and none else. There is no slightest doubt in the mind that, the accused No.1 Baban alone killed the Sarubai by pressing her neck and further assaulted her by knife to make a show that she died due to tetanus. A rumor was spread that, Sarubai died due to tetanus. Therefore, in our considered view accused No.1 Baban was responsible for the death of Sarubai. The trial Court committed an error

in law in ignoring material evidence on record. The trial Court observed that, the prosecution has not examined neighbourers of the accused. In our opinion, when there is sufficient evidence brought on record by the prosecution, merely because neighbourers were not examined, cannot be termed as a ground to acquit the accused, and more particularly when death occurred inside the house of the accused during 2.00 to 3.00 a.m.

26] It is true that the accused are acquitted and, therefore, it has to be presumed that their innocence has been reinforced. However, in order to prevent miscarriage of justice as a appellate Court, we have re-appreciated the entire evidence on record, and reached to the conclusion that, the conclusion recorded by the trial Court is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse.

It would be worthwhile to refer the observations of the Supreme Court in case of ***State of U.P. vs. Babu & Ors.***⁵, in paragraph 10 of the judgment, which reads, thus:

⁵ 2003 ALL MR(Cri) 2356 (S.C.);

“10. Recently in State of Punjab v. Karnail Singh (2003 AIR SCW 4065) it was observed that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and others v. State of Madhya Pradesh (2002 (3) JT (SC) 387). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and another v. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat (1996

(9) SCC 225) and Jaswant Singh v. State of Haryana (2000 (4) JT (SC) 114)."

[Emphasis added]

27] Yet in another exposition in the case of **State of A.P. vs. M. Madhusudhan Rao**⁶, the Supreme Court in para 13 held, thus :-

"13. There is no embargo on the appellate court to review, reappraise or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed. Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere."

[Emphasis added]

⁶ 2009 ALL MR (Cri) 547 (S.C.);

28] In our opinion, punishment should be related to the gravity of the offence. The Supreme Court in the case of **Jai Kumar vs. State of M.P.**⁷ while considering various theories of punishment, observed that Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to sub-serve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day.

29] In the light of the discussion in the foregoing paragraphs, we hold that, the accused No.1 Baban Kerba Jondhale is guilty of the offence punishable under Section 302 of Indian Penal Code. Accordingly, we pass the following order:

- i] The impugned Judgment and Order dated 31st August, 1995 passed by the Additional Sessions Judge, Parbhani in Sessions Case No.132 of

⁷ (1999) 5 SCC 1;

1994 is quashed and set aside to the extent of accused No.1 Baban Kerba Jondhale. Criminal Appeal filed by the State against the order of acquittal of original accused Baban Kerba Jondhale is allowed.

- ii] The accused No.1 Baban Kerba Jondhale is convicted for the offence punishable under Section 302 of IP Code and sentenced to suffer Life Imprisonment and to pay fine of Rs.5,000/-, in default, to suffer R.I. for one Year.
- iii] The accused No.1 Baban Kerba Jondhale shall surrender forthwith to undergo the aforesaid sentence.
- iv] The accused No.1 Baban Kerba Jondhale will be entitled for set off under Section 428 of Cr.P.C. for the period, if any, spent in Jail as under trial.

The Appeal filed by the State is allowed to above extent, and same stands disposed of accordingly.

Sd/-

[N.W.SAMBRE, J.]

Sd/-

[S.S. SHINDE, J.]

...
DDC