

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

CRIMINAL APPEAL NO. 78 OF 1997

The State of Maharashtra

..APPELLANT

-VERSUS-

1. Ramesh Ambadas Joshi
Age : 30 years, Occ : Service,
R/o Sevli, Tq. Jalna,
Dist.Jalna.
2. Vijay Ambadas Joshi,
Age : 30 years, Occ : Service,
R/o Sevli, Tq. Jalna,
Dist.Jalna.
3. Avinash Ambadas Joshi
Age : 28 years, Occ : Service,
R/o Sevli, Tq. Jalna,
Dist. Jalna.

..RESPONDENTS

...
APP for Appellant : Mrs. P.J. Bharad
Advocate for Respondents : Mr. Joydeep Chatterji

...
**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

**RESERVED ON : January 22, 2015
PRONOUNCED ON : February, 09, 2015**

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JUDGMENT (PER S.S. SHINDE,J):-

1. This appeal is filed by the State of

Maharashtra, aggrieved by the judgment and order passed by the Additional Sessions Judge, Jalna on 28th November, 1996, thereby acquitting the Respondents for the offence punishable under sections 302 and 498-A read with 34 of the Indian Penal Code.

2. In short, the prosecution case is that, deceased Madhavi daughter of PW 3 – Madhukar Lambe was married to accused No.1 before three years of her death. Accused made demand of Rs. 3,000/- for purchase of T.V. and suspected her character. In furtherance of common intention, all the accused committed murder of Madhavi and thereafter set her dead body on fire.

3. The prosecution examined Ramrao Kulkarni as PW-1, who is panch to inquest pachanama, Sitaram Lambe was examined as PW-2, grand father of deceased, Madhukar Lambe was examined as PW-3, father of the deceased, Dr. Bhadre was examined as

PW-4 and Arun Bharaskar was examined as PW-5.

Inquest panchanama is at Exhibit-10, Spot panchanama is at Exhibit – 11, Seizure Panchanama is at Exhibit – 12, P.M. Report is at Exhibit – 18, Complaint is at Exhibit – 22, C.A. Report is at Exhibit – 23 and provisional death certificate is at Exhibit – 29.

4. The trial Court after appreciation of evidence on record, acquitted all the accused. Hence this appeal by the State of Maharashtra.

5. The learned Additional Public Prosecutor appearing for the State invited our attention to the evidence of prosecution witnesses and also the Medical evidence and submits that, the prosecution did place on record satisfactory evidence so as to prove the case against the accused. It is submitted that, the death of deceased Madhavi occurred in a rented premises

wherein the accused persons and deceased were residing. It is submitted that, if the evidence of prosecution witnesses about illegal demand and harassment is taken into consideration, it leads to a conclusion that, the accused persons are responsible for the death of Madhavi. Therefore, the learned Additional Public Prosecutor submits that, appeal may be allowed.

6. On the other hand, the learned counsel appearing for the original accused, relying upon the findings recorded by the trial Court and also omissions and contradictions in the version of the prosecution witnesses, submits that, the trial Court has rightly given benefit of doubt to the accused. The possible view has been taken by the trial Court and therefore, this Court may not interfere in the acquittal order.

7. We have given careful consideration to the submissions advanced by the learned Additional Public

Prosecutor for the State and the learned counsel appearing for the original accused. With their able assistance, we have perused the entire evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence on record or otherwise. The prosecution case rests upon the circumstantial evidence. There is no direct evidence, and therefore, in the case based upon circumstantial evidence, the motive assumes importance.

8. The prosecution examined Dr. Pratibha Bhadre as PW-4. Her evidence is at Exhibit – 17. PW-4 in her examination-in-chief stated that, on external examination of the dead body, she found there was smelling of kerosene. The percentage of burn was 100%. The cause of death due to asphyxia due to obstruction of upper respiratory track by pack of cloth. However, during cross examination, this witness stated that, in the rare burn cases there is possibility of death due to asphyxia. If there is infection in the lungs then

in burn cases, there is possibility of death by asphyxia. She further admitted that, in burn cases the lungs are congested. Therefore, if the evidence of Medical Officer PW-4 is perused carefully, though she stated in her examination-in-chief that, death was due to asphyxia due to obstruction of upper respiratory track by pack of cloth, however, in her cross-examination she stated that, if there is infection in the lungs then in burn cases there is possibility of death by asphyxia.

9. So far, whether mouth of the deceased was racked with cloth about size 5 x 4 x 4 x cm., is concerned, the prosecution examined Ramrao Kulkarni PW-1, whose evidence is at Exhibit -9. In his deposition, he stated that, he saw the dead body of Madhavi. He was knowing her. Madhavi was burnt. Her body was in the room. There were burn injuries on the dead body. There were domestic articles in the said room. He signed the inquest panchanama. He further stated that, size of room was 10 x 10 feet. The room

had wooden door of 2 planks. The dead body was lying in the said room. There were tins on the roof of the room. There were domestic articles in the said room. There was also Can of kerosene in the said room. The clothes on the body of deceased were burnt.

10. He was cross-examined by the defence. In his cross examination he stated that, accused no.1 and this witness were residing in a Wada of Nanasaheb Deshpande as tenants. In addition to that, there were four tenants residing in the said Wada. Accused was in possession of only one room. There was wall in the room of this witness and room of accused no.1. Some portion of said wall, there was wooden partition between their room. The wooden partition was of permanent nature and it was always closed and nobody could open it. Their landlord was residing in the same Wada. There was common wall in the room of landlord and the room of accused no.1. The doors of the room of accused no.1 and the room of land-lord Deshpande

were abutting to each other. In the front room of accused there was Otta of 8 to 10 feet and after that Otta, there was road of lane which was running east-west. There were houses on both sides of the road. There was window to the eastern wall of the room of the accused. The said window was at a height. The distance between door of room of this witness and the said window was about 5 to 6 feet. He further stated that, almost all domestic articles had become black due to the fire. On the floor, there was water and some burned pieces of clothes. The wooden partition between the room of this witness and room of accused was broken. The said partition was broken by the persons to save the deceased. However, at the relevant time, he was not present in the room. He further stated that, when he saw the dead body, he did not see pieces of clothes in her mouth. He further stated that, even panchanama was also not read over to him.

Upon perusal of the evidence of this witness

and in particular his cross examination, it is abundantly clear that, he did not see a piece of cloth in her i.e. victim's mouth. This witness is not declared hostile and therefore, his evidence assumes importance. He was the person, who had opportunity to see the dead body at the earliest. Therefore, this witness has created a doubt about the prosecution case that, mouth of the deceased was racked with cloth about size 5 x 4 x 4 x cm.

11. As already observed since the prosecution case rests upon the circumstantial evidence, the motive assumes importance. According to the prosecution case, there was illegal demand of Rs. 3000/- for purchasing T.V. by accused and on account of non-fulfilment of the said demand, the deceased was harassed by the accused. It is also the prosecution case that, the accused were abusing Madhavi and suspecting on her character. On the point of illegal demand, the prosecution examined PW-3 Madhukar

Sitaram Lambe. In his evidence, he stated that, deceased Madhvi was his daughter. The accused nos. 2 and 3 are the brothers of accused no.1. After the marriage Madhavi was staying with accused no.1 in old Jalna. The accused Nos. 2 and 3 were residing along with accused no.1 in old Jalna. He came to know on 25th August, 1991 that, Madhavi was burnt. Thereafter he along with his father, brother, wife and son came to Jalna. He has further stated that, when he visited the Civil Hospital, Jalna on the next day, he saw that, there was piece of cloth in the mouth of Madhavi. He further stated that, his statement was recorded on 26th August, 1991 and at that time, his mental condition was not fit and again his Supplementary statement was recorded on 2nd September, 1991. He further stated that, 15 days before her death Madhavi had come to his house. She stated him that, the accused had demanded Rs. 3000/- for purchase of T.V. and she was harassed by the accused. She also told him that, accused were abusing her and suspecting her character. She shown her

inability to pay Rs. 3,000/- as economic condition is not good. He further stated that, the accused committed murder of Madhavi by thrusting piece of cloth in the mouth and after her death kerosene was poured on her body and dead body was set on fire.

12. However, in his cross examination, he admitted that, accused no.1 works in Water Supply Department. At the time of marriage, the accused no.1 was employed at Hiradpuri in Paithan Tahsil. Thereafter he was transferred to other places and then to Jalna. He has specifically admitted that, after the marriage accused no.1 and Madhavi were residing together, separately from their family, till her death. He has further narrated the details about his visit to the house of accused no.1. It appears that, on number of occasion he visited the house of his sister and accused no.1, and also the accused visited his house after marriage. The suggestion was given to this witness that, accused no.1 was having portable T.V. of Binatone

Company, however, he denied the said suggestion. He further stated in his cross-examination that, though he has stated before the police that, accused had demanded Rs. 3000/- for T.V., the same was not mentioned in his first statement recorded by the police. It is further stated by him that, though he stated before the police that, accused was demanding Rs. 3000/- for purchase of T.V. and accused used to suspect about character of Madhvi, however, he cannot tell reasons why the said version is not appearing in his police statement. He has specifically admitted in cross-examination that, the dowry was not given to accused no.1 in marriage. He has also admitted that, Madhavi was nervous as she had no issue.

If the evidence of this witness is considered in its entirety, this witness has specifically admitted that, accused no.1 was residing separately after his marriage from other accused. Therefore, the trial Court has rightly given benefit of doubt to accused nos. 2 and

3. It has also come in his evidence that, accused no.1 is in Water Supply Department and therefore, it appears that, the financial position of accused no.1 was good. The suggestion was also given to this witness that, accused no.1 has already purchased the T.V. and same was denied by this witness. It appears from reading the evidence of prosecution witnesses that, the alleged demand was just once prior to 15 days of the incident, and never before it, and therefore, it create a serious doubt, whether really there was illegal demand and on non-fulfillment of same there was harassment.

13. The prosecution further examined Sitaram Ambadas Lambe as PW-2. He stated in his evidence that, deceased Madhavi was his grand daughter. He further stated that, on coming to know that, Madhavi died, he came to Jalna. He stated that, there was piece of cloth in the mouth of dead body. He was cross-examined. It appears from his cross-examination that, the accused persons and also this witness were on

visiting terms.

14. This witness was reexamined by the A.P.P. In his reexamination he stated that, about 5 to 6 days after the incident, he had sent application to the Police of Jalna with request to make inquiry of the incident. His evidence can be referred to the extent that, he saw piece of cloth in the mouth of deceased Madhavi. However, as already observed, PW-1 who was panch witness and immediate neighbour of accused no.1 has stated that, when he saw the dead body, there was no piece of cloth in the mouth of deceased. Therefore, the evidence of this witness is not useful to the prosecution.

15. The prosecution further examined PW-5 Arun Rangnathrao Bharaskar, who was working as P.S.I. PCR branch, Jalna and who acted as Investigating Officer. In his statement, he stated details about preparation of spot panchanama and inquest

panchanama. It was stated that, there was piece of cloth in the mouth of dead body. He further stated details about recovery from spot, location of spot of incident. He further stated that, he recorded the statements of witnesses. This witness was cross examined by defence. Suggestion was given to this witness that, whether Chandrashekhar is the same person, who is panch on inquest panchanama, he admitted that, he is the same person, who is the panch to the inquest panchanama. He admitted that, because of the information given by Chandrashekhar, he visited the spot. He has admitted in his cross-examination that, he found one chit and Postcard written by the deceased to her father. However, the same was not produced on the record. Suggestion was given to this witness that, since the contents of the said Chit and Postcard are not supporting the prosecution case, therefore, he has not produced the same on record. However, he denied the said suggestion. So far, spot of incident is concerned, he has stated minute details

about the adjoining house and also the fact that, there is a common wall between the room of accused and the room of landlord. The sum and substance of his cross examination appears to be that, the room where the incident had taken place is surrounded by various other rooms and same is crowded place. He was specifically asked whether witness Madhukar has stated before him that, accused nos. 2 and 3 were residing with accused no.1, this witness has specifically stated that, witness Madhukar has stated before him in his statement that, accused nos. 2 and 3 were not residing with accused no.1. He further stated that, prosecution witness Madhukar has not stated before him in the first statement that, accused no.1 was demanding Rs. 3,000/- and T.V. or the accused were suspecting about the character of Madhavi. He further stated that, in the present case, he has worked as complainant and also as Investigating Officer.

16. Therefore, if the entire evidence of the

prosecution witnesses is considered, irresistible conclusion is that, so far accused nos. 2 and 3 are concerned they were not residing with the accused no.1 at the relevant time, and therefore, the trial Court has rightly acquitted them by granting benefit of doubt.

17. So far accused no.1 is concerned, though it is stated by PW-2 that, he saw cloth of piece in the mouth of the deceased Madhavi, the panch witness namely PW-1 specifically stated that, he did not see piece of cloth in her mouth. PW-1 had an earliest opportunity to see the dead body since he is immediate neighbour of accused no.1. Therefore, when the prosecution witnesses have stated two different versions, the trial Court has rightly given benefit of doubt to accused no.1.

18. So far illegal demand/harassment is concerned, except the evidence of father of deceased Madhavi that, there was demand of Rs. 3,000/- 15

days prior to the date of incident, there is no other evidence placed on record. On the contrary, it appears that, accused no.1 was serving in the Water Supply Department, and naturally receiving salary for his services. Therefore, possibility of such illegal demand that too after considerable time gap from the date of marriage, appears to be doubtful.

19. Upon considering the entire evidence placed on record by the prosecution, the prosecution has not led evidence suggesting the presence of the accused in the house at the time of incident. The prosecution should have discharged its burden to show that, the accused was present in the house at the relevant time of incident. However, the prosecution has not led any evidence on that aspect. Accused no.1 in his statement under Section 313 of Code of Criminal Procedure stated that, he was alone residing with his deceased wife. Accused no.2 was residing at Sevli and he was at Sevli on the day of incident. On the day of incident accused

no.3 was at Dabhadi. He was also not in his house at the time of incident. He had been to the house of one Shri. Deshpande.

20. Upon reappreciating the entire evidence on record, we are of the view that, the prosecution has failed to prove beyond reasonable doubt that, the accused persons in furtherance of common intention subjected Madhavi to harassment in connection with demand of Rs. 3,000/- for purchasing T.V. Since the entire case rests upon the circumstantial evidence, and the prosecution had not proved any motive for commission of offence, the trial Court has rightly acquitted the accused by giving benefit of doubt. The findings recorded by the trial Court appears to be in consonance with the evidence on record. The view taken by the trial Court is plausible, hence there is no reason to interfere in the order of acquittal. The Supreme Court in the case of **Nepal Singh vs. State of Haryana**¹ held, thus:

¹ AIR 2009 SC 2913;

“In case of acquittal, there is a double presumption in favour of the accused- firstly, the presumption of innocence is available to him-secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.”

Yet the Supreme Court in the case of ***State of***

A.P. vs. M. Madhusudhan Rao.² held, thus:

“13. There is no embargo on the appellate court to review, reappreciate 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.”

21. In the light of discussion in foregoing paragraph, the appeal sans merits, hence dismissed.

Sd/-
(**A.M. BADAR, J.)**

Sd/-
(**S.S. SHINDE, J.)**

...

sga/-