

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 243 OF 2006

The State of Maharashtra
Through Public Prosecutor
High Court Bench at Aurangabad

.. Appellant
(Prosecution)

Versus

Sau. Sangita Dagadu Mali,
Age 27 years, Occu. Labourer,
R/o Morfal, Tq. Parola,
Dist. Jalgaon

.. Respondent
(Orig. Accused No.1)

Mr. P.K. Lakhotiya, A.P.P. for the appellant-State
Mr. Sandeep D. Munde, Advocate for respondent

CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, JJ.
DATE : 24-11-2017

JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Informant lodged First Information Report on 30-05-2004 around 10 'O' clock in the evening in the Police Station, Parola that around 8:30 pm, three unknown persons had been to the house where accused no. 1 had been staying alongwith her husband and three children and mother-in-law and had tied

mother-in-law with nylon rope and set her ablaze by pouring kerosene and had taken her away and rape had been committed on her and while they heard the sound of vehicle nearing the house, they had fled leaving her naked and the same had been noticed by her husband and she was taken to his master's place where she was provided with a saree for covering her body and, thereafter, she had been to the Police Station for lodging F.I.R. Thereafter, the family and relatives had returned to the house with some police persons and further investigation had taken place.

2. While aforesaid is her report to the Police, it is the case of prosecution that after returning to the house, she had confessed to the relatives that it is her, who with the help of accused no.2 - Devidas, had tied her mother-in-law with a nylon rope and set her on fire since she had been resisting illicit relationship between accused no. 1 and accused no.2.

3. Thereafter, further investigations took place from 31-05-2004 *viz.* the inquest panchanama, spot panchanama, seizure panchanama, including the statements of witnesses. On completion of investigation, the accused no. 1 and 2 were chargesheeted by Pachora Police Station alleging offences punishable under sections

302, 201, 342, 203, 120-B of Indian Penal Code and since offence punishable under section 302 of I.P. Code being exclusively triable by Court of Session, the case had been committed to Additional Sessions Judge, Amalner. The Additional Sessions Judge had read over and explained the charge to the accused in vernacular to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as eight witnesses. Prosecution Witness no. 2 - Vicky Dagadu Mali, a six year old son of accused no. 1 has been examined without administering oath as referred to by learned Sessions Judge at Exhibit - 14. He has in his deposition stated that he had been staying along with his parents and grandmother and that his mother had tied legs of grandmother and set her on fire. In the cross-examination, however, he has stated that while he was residing with his parents, he found his father and grandmother beating and abusing his mother and has further stated that his father and paternal aunt had tutored him to give statement and, accordingly, he has given the statement.

5. Prosecution witness no. 3 - Dagadu Chintaman Mali, happens to be husband of accused no.1. He, in his statement

(Exhibit - 15) referred to that accused no. 1 had been of quarrelsome nature and hot tempered. He knew accused no.2 who had been son of Ratilal Chaudhari and their cattle shed is just opposite to his residence. Accused no. 2 had been visiting his house for pumping air in bicycle tyre and on some other grounds. His mother had told about illicit relations between accused no. 1 and accused no. 2, however, the same was not disclosed to save honour. His mother had told him that accused no.1 would finish her. Accused no.2 was told not to visit their house. Accused no. 1 had been threatening him by calling her father and brothers. He further stated that on 30-05-2004 while he had come back to his residence during 9 - 10 pm in a jeep, he saw his son Vicky, Dinesh and Manoj were sleeping and his wife had not been in the house. He also did not find his mother in the house. He carried search of mother by shouting but he did not get any response. His son Vicky was frightened and was not in a position to talk. He had then taken his three sons in the jeep to his master's place. On the way, he found his wife, who was in naked condition. She boarded the vehicle. After boarding the jeep, his wife told to drive the jeep speedily, as thieves had tied legs of his mother with a nylon rope, poured kerosene on her and had set her on fire and the thieves had

committed rape on her. All of them went to his master's place where she was provided with a saree. Thereafter, they went to Parola Police Station, where statement of accused no.1 had been taken down. Subsequently, Police persons along with them had been to the residence, where he had seen his mother in burnt condition. His son Vicky had told relatives and Police accused no.1 tied hands and legs of his mother and set her on fire and with the help of a person. It is his version that accused no. 1 had confessed to him and his relatives about accused no. 1 having set his mother on fire with the help of accused no. 2 and said confession had been in the absence of Police. In the cross-examination, he has stated that his mother had been a spiritual person and was often influenced and affected by spiritual spells. In cross-examination, he has dithered over about the duration for which he has been in his house after returning from work and has also purported to deny that he went inside the house and searched for mother. He has claimed that he suffers from night blindness and could not see anything in the house since it was dark. He has stated in the cross-examination that the Police statements recorded shown to him about him having taken search of the house for mother and wife while they were not found, is not correct. It was only after lodging

FIR, he had come to the residence along with the Police. In the cross-examination, it has emerged that him having told by mother only once about illicit relations between accused no.1 and accused no. 2 about 4-5 days before the incident. It further has come in his deposition that residential house of accused no. 2 is about half a mile away from his residence and that he had not been married and further that accused no. 2 was residing along with his parents and four brothers in their residential house. Accused no. 1 had been sent back to the parents house often, as he did not want to cohabit with her. It has also been elicited from his cross-examination that Police Inspector Choudhari had disclosed about accused no. 1 having admitted the guilt before him. He purported to feign ignorance about same. He purported to claim that the confession had been by accused no. 1 while by Mr. Choudhari, Police Inspector had been looking for thieves and Mr. Patil, Police Inspector was also searching for thieves, two Police Constables were near the dead body of his mother while the confession was being made.

6. Prosecution witness no.4 Sakharam Mahadu Mahajan is sister's husband of PW 2 - Dagadu. He is examined at Exhibit-17. He stated that he had been to the Police Station, Parola after having been informed about death of the mother-in-law. He

accompanied with his wife and accused no. 1 along with their children had been to the spot of incident - residence of PW 2 - and accused no. 1. He claims that having asked to Vicky, elder son of accused no. 1, who is five year old boy, he had told that accused no.1 had tied his grandmother and had set her on fire with the help of one person. Thereafter, Police came and he had summoned accused no. 1 and had asked her about the incident. Thereupon, accused no. 1 told that when she had set mother-in-law on fire with the help of accused no.2. The relatives were present and thereafter, the Police prepared panchanama and arrested the accused. In his cross-examination, it emerges that accused no.1 was having quarrels with her husband and mother-in-law. He was cross-examined in respect of the complaints against him by accused no.1, which he purportedly denied. It also emerges from his cross-examination that when he enquired with accused no.1 about the incident, Police Inspector Choudhari and other Police officers and relatives were present.

7. Prosecution witness no. 5 is the Medical Officer of Cottage Hospital, Parola, who had conducted post-mortem on dead person's body brought to the hospital. He found that the death has been caused because of extensive I, II and III degree 94% burns

with shock. He refers to that he had examined accused Ganesh Ratilal Chaudhari. On his clinical examination, he found him capable of sexual intercourse. He had also examined accused no.1 and found her to be capable of sexual intercourse.

8. Prosecution witness no. 7 - Bandu Bhalchandra Pawar had been examined at Exhibit-28. He had been witness to spot panchanama along with one more person as also the seizure panchanama. In his deposition, he has stated that nylon rope, kerosene container were found near the spot of incident and one saree, blouse, petticoat were also found at some distance from the house which were seized under the panchanama. He and accused no. 1 were called to the Police Station and in his presence, she had told that ornaments were secured concealed in the house under a brass pot. Accordingly, the ornaments were recovered while he was to the house along with accused person and Police.

9. Prosecution witness no. 8 - Devidas Trimbak Chaudhary, Police Inspector is examined at Exhibit-33. In his deposition, he has stated that crime was registered on 30-05-2004 bearing no. 110 of 2004 around 11 pm. On 31-05-2004, he had visited the spot. He had sent the staff in search of accused and had forwarded

dead body of Dwarkabai - mother-in-law of accused no. 1 to the hospital. He prepared inquest panchanama of the dead body in the Cottage hospital, Parola and again he went to the spot on the same day, prepared spot panchanama. Nylon rope, plastic can, match box, two burnt match sticks, burnt clothes with kerosene smell, pieces of bangles, saree, blouse, petticoat and nicker were seized. Sari, blouse and petticoat were found at some distance from the house. He got suspicious since the clothes were found at some distance and had interrogated the complainant and accordingly her statement came to be recorded. During such course of examination, it has come out that accused no.1 had committed crime with the help of accused no.2. He also recorded statements of about 8-10 persons on 31-05-2004. As such, the offence was converted into an offence punishable under section 302 of the Indian Penal Code. On the very day i.e. 31-05-2004, accused no.1 was sent for examination to Cottage Hospital, Parola in order to ascertain and examine allegations with regard to rape. Accused no.2 was also sent on 01-06-2004 to Cottage Hospital, Parola for examination. On 01-06-2004 as well, statements of some witnesses were recorded. On 17-06-2004, articles were sent to Chemical Analyst for examination. In the cross-examination, it

has emerged that PW3 - Dagadu had stated in his portion marked "A" of his statement. He could not reason out as to why the FIR had not been lodged at his instance for offence punsiahable under section 302 of the Indian Penal Code.

10. The Session Court after trial and scanning the evidence, found it insufficient to bring guilt to accused no. 1 and 2 and, as such, has acquitted both of them.

11. Mr. Lakhotiya, learned A.P.P. submits that it emerges that there had been no veracity in the FIR as lodged by accused no.1. The incident as recorded in the statement appearing in the FIR was a contrived incident in order to hide the guilt. Ornaments which were allegedly stolen were found intact and were seized. It has come on record, accused no. 1 had no good relations with the mother-in-law and it also emerges that accused no.1 was very much at the residential place when the incident of burning had occurred. Thus, the surrounding circumstances clearly point out that the offence has been committed by accused no.1 with the help of person who is accused no. 2. He submits that accused no.1 had confessed about her guilt before the relatives while she could not bear with the contrived incident. The truth had come out in the

confession. The same is sufficiently borne out from the events and the circumstances and the recovery of objects. He submits that the Session Court has been patently in error in getting swayed by that the deceased used to be affected by attacks of spiritual spells. He submits that even if it be so, it is highly impossible that in such a feat, a person is likely to cause self-immolation.

12. On the other hand, counsel for respondent - accused no. 1 submits that it is an accepted position that mother-in-law of respondent had been suffering and getting attacks of spiritual spells and in such a case, it is not unknown that people lose out on consciousness and reasonableness and can go to any extent and also to the extent of immolation. Thus, while it has come on record that mother-in-law died of burning, and accused no.1 alone had been at the residential place along with the three children, it is difficult to conceive that she would be able to tie down mother-in-law and commit a heinous act as alleged against her. Presence of accused no.2 has to be ruled out since the evidence discloses that he has been residing at a distant place along with parents and brothers around half a mile away. Further deposition of PW3 itself suggests that he used to move on bicycle and often being visiting his residence for pumping air into his bicycle tyre. It has also come

on record that he is 15 year old boy. His presence in the night on that day could not be established conclusively and much less at the time of incident. No trace of his presence has been noticed nor it has come on record. Further it comes on record that the boy had been admonished, upon PW3's - mother having once told her son about the alleged suspicious relationship. He submits that the record fairly bears that two reports have been lodged with Police Station by accused no.1 about ill-treatment to her by husband, his relatives including mother-in-law. She has been bearing with the same all along. In the circumstances, according to him, it is highly improbable that accused no.1 would have committed the crime, as rightly adjudged by learned Session Judge. He submits that the prosecution has failed to bring sufficient material on record to convincingly bring guilt to accused no.1. He therefore submits that the appeal is not tenable on merits and deserves to be dismissed.

13. It appears that respondent - accused no.1 has been arraigned in the case upon confessional statements having been allegedly made in the presence of relatives by her about she setting her mother-in-law on fire with the help of accused no.2. It has come on record that for the first time, PW3 - Dagadu had been made known about the illicit relationship between accused no.1 and

accused no.2 by the Police since it is claimed that she had told the Police about the same.

14. It has also emerged on record that accused no. 1 suffered strained relationship with her in-laws. The record also bears that accused no.1 had lodged atleast two information reports with Police for the offences punishable under section 323, 504 and 506 of the Indian Penal Code against Chintaman Mahajan, Dwarkabai - parents of PW3, Indubai Chintaman Mahajan - sister of PW3 and PW4 - Sakharam Mahajan, which were recorded as non-cognizable reports.

15. The Chemical Analyzer's reports could not detect any blood or semen on the objects collected. While Chemical Analyzer's report refers to that sample of kerosene residue found on nylon rope and burnt cloth, yet, the nylon rope does not show traces of skin of the deceased. Neither histo-pathological report about the same had been collected during the investigation.

16. The presence of accused no.2 could not be proved beyond reasonable doubt at the time of incident. On the contrary, it has emerged in the cross-examination of PW3 - Dagadu that

accused no.2 had been staying half a mile away from the spot of incident. Further the most important part is, while the deposition of PW3 does disclose that he had searched for his mother in the house after returning from the work around 9:30, he did not find her, whereas, he purports to reside from the same.

17. It has also come on record that the Police for the first time had informed PW3 about the illicit relationship and, thereafter, there have been improvements while he had given evidence before the Court about his mother having told him about the same. There is no explanation whatsoever coming forth for the same. If that was a confessional statement made before him neither him nor any other person with reference to the same had lodged any information report to the Police making allegations against accused no.1 and accused no.2. Further such confessional statements appear to have been recorded in the presence of the Police and, as such, have been rightly discarded by the Session Court and have to be discarded keeping in view section 25 and 26 of the Indian Evidence Act. Evidence of PW3 in the surrounding circumstances, is not reliable. It has emerged on record that Vicky - 5 years son of accused no.1 and PW3 has stated that his evidence is tutored one.

18. In the face of such record, it would not be proper for us in appeal, in the absence of any convincing material, to cause reversal of the decision rendered by the Sessions Court. Criminal Appeal is dismissed. Respondent is set at liberty. Her bail bonds stand cancelled. Fine amount, if deposited by respondent, be refunded to her.

19. Criminal Appeal is accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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