

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.49 OF 2001

1) Ramakant s/o Chandrasen Jadhav,
Age-25 years, Occu-Agril.,
R/o-Musalewadi, Tq. Renapur,
Dist-Latur.

2) Chabubai w/o Chandrasen Jadhav,
Age-45 years, Occu-Household,
R/o-As Above.

...APPELLANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Joydeep Chatterji, Advocate for Appellants.
Mr. A.R. Borulkar, A.P.P. for Respondent-State.
...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 28TH JUNE, 2017.

DATE OF PRONOUNCING JUDGMENT: 4TH AUGUST, 2017.

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

1. This Appeal is directed against the

Judgment and order dated 6th January, 2001, passed by the Additional Sessions Judge, Latur in Sessions Trial No.59 of 1999 thereby convicting accused No.1/Appellant No.1 - Ramakant s/o Chandrasen Jadhav and accused No.4/Appellant No.2 - Chabubai w/o Chandrasen Jadhav for the offence punishable under Section 302 read with 34 of the Indian Penal Code (for short "I.P. Code") and sentencing them to suffer imprisonment for life and to pay fine of Rs.5000-/ each, and in default, to suffer rigorous imprisonment for six months. The trial Court also convicted accused No.1/Appellant No.1 - Ramakant s/o Chandrasen Jadhav and accused No.4/Appellant No.2 - Chabubai w/o Chandrasen Jadhav for the offence punishable under Section 201 read with Section 34 of the I.P. Code and sentenced them to suffer rigorous imprisonment for two years each and to pay a fine of Rs.2000/- each, and in default, to suffer rigorous imprisonment for two months. All the sentences were directed to be run concurrently. Hence this

Appeal is filed by both the Appellants challenging the conviction and sentence.

2. Before the trial Court there were in all five accused including Appellant No.1/ accused No.1 - Ramakant s/o Chandrasen Jadhav, his brother accused No.2 - Rajabhau s/o Chandrasen Jadhav, his father, accused No.3 Chandrasen s/o Shankar Jadhav, his mother Appellant No.2/ accused No.4 Chabubai w/o Chandrasen Jadhav and wife of his brother accused No.5 Sunanda w/o Rajabhau Jadhav. The trial Court acquitted accused Nos.2, 3 and 5 from the offence punishable under Sections 302, 201, 498-A read with 34 of the I.P. code, with which they were charged. The trial Court also acquitted Appellant No.1/accused No.1 - Ramakant s/o Chandrasen Jadhav and Appellant No.2/ accused No.4 - Chabubai w/o Chandrasen Jadhav from the offence punishable under Section 498-A read with Section 34 of the I.P. Code.

3. The prosecution case, in brief, is as under:-

A) Prosecution case is that victim Mrs. Aruna Jadhav was legally wedded wife of accused Ramakant Jadhav. Accused Rajabhau Jadhav is brother of accused Ramakant. Accused Chandrasen and Mrs. Chabubai Jadhav are their parents. Accused Mrs. Sunanda Jadhav is the wife of Accused Rajabhau Jadhav. Accused reside at village Muslewadi, Tahsil Renapur, PW-1 Balasaheb Kadam is the father of Mrs. Aruna Jadhav.

B) It is the case of prosecution that marriage of Aruna was solemnized with accused Ramakant Jadhav prior to four years. After marriage Aruna started to cohabit with accused Ramakant Jadhav at his matrimonial home at Muslewadi. On 22nd December, 1998, an informant PW-1 Balasaheb Vishwanath Kadam received information that on the said date at 4.00 p.m. his

daughter Aruna was burnt. When Balasaheb came to the village Muslewadi and saw Mrs. Aruna, he found that she was no more. On the strength of the said report, P.S.O. Renapur Police Station registered A.D. No. 40 of 1998 and started the investigation.

C) PW-7 Shri. A.D. Kshirsagar, P.S.I. of Renapur Police Station investigated the A.D. No. 40 of 1998. He recorded inquest panchnama of the dead body of the deceased (Exhibit-15). He recorded the spot panchnama (Exhibit-21). He sent the dead body of Aruna to Medical Officer, Primary Health Center, Renapur, for post-mortem. He collected the post-mortem note of the dead body of Aruna from the Medical Officer. He recorded the statements of the witnesses.

D) During investigation of the A.D. No. 40 of 1998, PW-1 Balasaheb Kadam lodged report against the accused in the Police Station vide Exhibit-18. In the said report, the informant

stated that, in the marriage of Aruna, he was to pay an amount of Rs.31,000/- as dowry and one tola gold. But he paid amount of Rs.26,000/- as dowry and one tola gold to accused Remakand Jadhav in the marriage. He was to pay remaining amount of Rs.5,000/- towards balance of dowry amount to the accused Ramakant Jadhav. Aruna complained him that all the accused started to give ill-treatment to Aruna because the informant did not pay remaining amount of dowry. On 16th December, 1998, he paid remaining amount of dowry i.e. Rs. 5,000/- to the accused, but the accused subjected Aruna to cruelty on the ground that by this time the remaining amount of Rs.5,000/- would be doubled. He further stated in the report that on 22nd December, 1998 at 4.00 p.m. two persons came on motor-cycle and informed him that Aruna sustained burn injuries because of bursting of stove and died. Then the informant and other relatives came to Muslewadi at 7.30 p.m. and found the dead body of Aruna. The accused subjected Aruna to cruelty

on the ground that the informant was to pay remaining amount of Rs.5000/- towards balance of dowry amount to them. He further stated in the report that the accused committed murder of the victim Aruna and thereafter they poured kerosene on her body, and set her on fire with intention to screen themselves from legal punishment.

E) On the strength of the said report, Shri Bhagat, Police Head Constable of Renapur Police Station registered the offence vide Crime No. 68 of 1998 against the accused and handed over the papers of this offence to PW-7 Kshirsagar, P.S.I. for further investigation.

F) Shri Kshirsagar, P.S.I. recorded the statements of the witnesses, seized the articles as per the seizure panchnama (Exhibit-31). He seized the pillow from accused Ramakant vide Exhibit-32. During investigation it was transpired that on 22nd December, 1998 in the morning victim

Aruna drunk milk. Hence, initially the quarrel took place between accused Chabubai and Aruna. Thereafter quarrel took place between Aruna and accused Ramakant Jadhav. Accused Chabubai Jadhav pushed Aruna on ground, then the accused Ramakant Jadhav brought pillow and put the same on the mouth and nose of victim Aruna and sat on the said pillow. Accused Chabubai Jadhav caught hold the legs of Aruna. Hence, Aruna died because of smothering and suffocation. Accused Chabubai and accused Ramakant thereafter poured kerosene on the dead body of Aruna and set her on fire pretending that victim Aruna was burnt because of flames of stove and died. They committed the said act with intention to screen themselves from the legal punishment. After completion of investigation, P.S.O., Renapur Police Station submitted charge-sheet against the accused for the offence punishable under Sections 498-A, 302 and 201, read with Section 34 of the Indian Penal Code in the court of learned Chief Judicial Magistrate, Latur,

who committed the said case to the court of Sessions, because the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions.

G) A charge for an offence punishable under Sections 498-A, 302, 201 read with Section 34 of the I.P. Code was framed against the accused and the same was explained to them. Accused pleaded not guilty and claimed to be tried. The defence of the accused is that, Aruna was accidentally burnt because of the flames of stove when she was preparing food. Their defence is that they were not present on the spot when Aruna burnt and died.

4. After recording the evidence and conducting full fledged trial, the trial Court convicted accused accused No.1/Appellant No.1 - Ramakant s/o Chandrasen Jadhav and accused No.4/Appellant No.2 - Chabubai w/o Chandrasen Jadhav for the offence punishable under Section

302, 201 read with Section 34 of the I.P. Code and sentenced them to suffer the imprisonment and to pay fine, as afore-stated. Hence this Appeal is preferred by the accused No.1/Appellant No.1 - Ramakant s/o Chandrasen Jadhav and accused No.4/Appellant No.2 - Chabubai w/o Chandrasen Jadhav challenging the conviction and sentence.

5. Heard learned counsel appearing for the Appellants and learned A.P.P. appearing for the State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

6. The prosecution examined PW-6 Dr. Ramrao Narsing Pawar. He deposed that on 23rd December, 1998 he was attached to Primary Health Center, Renapur. On that day he received dead body of Mrs. Aruna Ramakant Jadhav for post-mortem. It was

brought by Kande, police constable, Renapur police station. He conducted post-mortem. He found ante-mortem injuries on her dead body which are stated in Column No.17 of the post-mortem report. The said injuries are as follows:

"Body was found totally burnt, black scald without vesicles"

. PW-6 Dr. Ramrao Pawar further deposed that on page No.7 of post-mortem notes he gave probable cause of death of deceased is "due to cardio respiratory arrest due to asphyxia due to smothering or suffocation". Accordingly, he prepared post-mortem note Exhibit-25.

. During the course of cross-examination, PW-6 Dr. Ramrao Pawar stated that he issued provisional post-mortem report Exhibit-26 with cause of death. It was issued soon after completion of autopsy. Referring column No.18-A of

post-mortem report he was unable to say definitely as to whether the injuries mentioned in the said Column are ante-mortem or post-mortem. He did not notice any injury on any part of dead body. He did not notice any injuries over the lip by pressure of teeth. He did not notice any contusion over the gum. Burn injuries are possible, if a person is in standing position or in rolling position. He further stated that suffocation means blockages of the air-way. It is possible that burn flames can suffocate. If flames enter in mouth then larynges spasm could be possible. He agrees with the opinion given by Dr. Parikh in his medical jurisprudence page No.376 Vth Edition that death may occur without inhaling smoke due to rapid consumption of Oxygen by intense fire. If larynges spasm is found then black suit may not be there. He admits that in the present case cause of death may be possible due to hot flames causing suffocation. Congestion is common symptoms of asphyxiate death. Finding of symptom is

asphyxiate death. In Column No.16 he mentioned that lower limbs and upper limbs were flexed from elbow and limbs. He found both the hands were flexed towards outside the shoulder. The same thing was found in case lower limb. This position shows that it is protective attitude. He again said that about upper limb it is protective attitude. Smothering is pressure from outside. In suffocation there may not be smothering from outside. In cases of smothering application from outside, then injuries over the lip, gum and face part are found.

7. The prosecution examined PW-1 Balasaheb Vishwanath Kadam. He deposed that he has three daughters and one son. Deceased Aruna was his daughter. Her marriage was solemnized prior to four years from the date of recording his evidence. Her marriage was solemnized at Muslewadi. He paid an amount of Rs.31,000/- as dowry and one Tola gold in marriage. He paid an

amount of Rs.26,000/- and gold in marriage. The remaining amount of Rs.5,000/- was to be paid by him in next year. After marriage Aruna started to cohabit with the accused Ramakant at Muslewadi. She was treated nicely for six months after marriage. Thereafter the accused were asking her to bring remaining amount of dowry. He went to Muslewadi and told the accused that he was unable to pay the amount and he will pay the said amount after some days. He paid remaining amount of Rs.5000/- to the accused on 16th December, 1998. The accused told him that upto that date the amount would have been doubled. After 5-7 days he received message about demise of Aruna from the accused. He along-with his relatives, went to Muslewadi. At Muslewadi, he saw the dead body of Aruna. It was burnt. Then he went to the police station and lodged report Exhibit-17. Thereafter police came to Muslewadi and dead body of Aruna was sent to Primary Health Center, Renapur. After the post-mortem, he brought the dead body of Aruna

at Muslewadi and cremated the same.

. During the course of cross-examination, PW-1 Balasaheb stated that accused Rajabhau is serving as lecturer in the college at Renapur. Accused Ramakant, Chandrasen, Chabubai are agriculturists. Accused Ramakant is illiterate and Aruna was also illiterate. His family is agriculturist. He is having five acres of land and the same is irrigated. He further stated that name of accused Ramakant was suggested by Narayan and Ashok. Uttam Jadhav of Muslewadi had also suggested the name of accused Ramakant. Uttam and Narayan are sons of his maternal aunt. He further stated that incident happened on 22nd December, 1998. Dashrath Jadhav and Dnyanoba Jadhav came to him at 4.00 p.m. and they gave him the message that Aruna burnt because of bursting of stove and died. Then he along with his wife and other persons came to Muslewadi by jeep at about 7.00 p.m. He did not enquire with his relatives about

the demise of Aruna. Accused paid marriage expenses of Aruna. After one year of the marriage of Aruna, marriage of Rajabhau was solemnized in the month of May, 1998. He further stated that in June, 1998 he brought Aruna at his house for delivery. Aruna delivered a female child on 24th July, 1998. At the end of October, 1998 accused Chandrasen came to him and had taken Aruna and her daughter with him at Muslewadi. He further stated that he has not stated in the report Exhibit-17 that he was to pay remaining amount of Rs.5,000/- in next year and that on 16th December, 1998 he paid Rs.5000/- to the accused and the accused told that during the said period the amount would have been doubled. He further stated that Aruna's daughter Pooja is with the accused. He denied that firstly he gave in writing that he did not want to lodge report against the accused and thereafter his villagers told him to take amount of Rs.1,00,000/- from the accused and hence he filed false report against the accused.

8. The prosecution examined PW-2 Ashok Tatyarao Bhise. He deposed that he knows informant Balasaheb Kadam, residing at Gadwad. House of Balasaheb is near his house. He was knowing Aruna, the daughter of Balasaheb. He was present to settle marriage of Aruna. An amount of Rs.31,000/- and one Tola gold was to be given in the marriage. Balasaheb paid Rs.26,000/- as dowry amount in marriage and an amount of Rs.5,000/- was to be paid afterwards. After one and half year of marriage, Aruna complained about ill-treatment on account of non-payment of Rs.5,000/-. He along with Balasaheb had been to Muslewadi. He told the parents of accused Ramakant not to ill-treat Aruna. But the ill-treatment was continued. Balasaheb and he himself had been to the accused to pay an amount of Rs.5,000/- to parents of Ramakant. Soon thereafter there was demise of Aruna. He had been to Muslewadi. He saw dead body of Aruna.

. During the course of cross-examination, PW-2 Ashok stated that Balasaheb is his distant Bhauband. He did not remember how many days before the marriage the settlement took place. He did not remember the date on which Saksh-Gandh took place. He was present at the time of post-mortem conducted on the dead body of Aruna. He came to know the cause of death after post-mortem, that due to suffocation Aruna died. He received information that Aruna died because of flames of stove. In the statement recorded by the police he stated before the police that he had been to the accused with Balasaheb to pay an amount of Rs.5,000/- before demise of Aruna. He was unable to assign any reason as to why the police has not mentioned the said fact in his statement. He has not stated before the police in his statement that Balasaheb alone went to Muslewadi with amount of Rs.5,000/- and he came to know about the said fact when Balasaheb met him in the village. He had

stated before the police in his statement that Balasaheb was to pay an amount of Rs.5,000/-. He was unable to assign any reason as to why the said fact is not mentioned in his statement. He denied the various suggestions put to him by the defence.

9. The prosecution examined PW-3 Jyotiram Madhav Jadhav. He deposed that on 23rd December,1998 he was called by police to act as a Panch. Police recorded spot panchnama Exhibit-21 in his presence. Another panch Parshuram was present with him.

. During the course of his cross-examination, he stated that house of Ramakant is situated in thick locality. House of Ramakant consists of three rooms. Kitchen is to the North. There is one room and thereafter another room to the South of the kitchen. There are two doors in the rooms adjoining to the kitchen, one is for the kitchen and another for exit. There are two doors

fixed in the kitchen, one is towards bathroom and another towards courtyard, facing East and North. Police recorded inquest panchnama of dead body of Aruna. Dead body of Aruna was lying in the kitchen. They did not receive kerosene smell in kitchen or of dead body. There was aluminum pot lying by the side of the dead body. Other articles like stove, pin and utensils were lying in the kitchen. Police had not broke open the lock or seized the same. Oily spot found on the spot, where food was prepared. Burnt pieces of polyester sari were lying on the spot. There was Parat, tin of Jawar flour. He further stated that there is a field of Ramakant in Muslewadi admeasuring 8-9 acres and the accused are cultivating the same personally. He went to the spot after the incident at about 11.30 a.m. to 12.00 noon. He knows that Baburao Shankar Jadhav, Hanumant Jadhav, Dhondabai Shankar Jadhav were extinguishing the fire. None of the accused were present on the spot when they went there. Pooja, daughter of Aruna, was sleeping

in another room. They sent Ashok Jadhav and Shankar Jadhav to call accused Ramakant and his mother Chabubai from field. Accused Ramakant, his mother and others returned from field. They sent Nanasaheb and Shankar on motorcycle to call accused Chandrasen to Dharmapuri. Accused Sunanda, wife of Rajabhau was called from Patoda by sending a message of demise of Aruna. Kondiba sent message to Renapur to accused Rajabhau who came at about 3.30 p.m. All the accused were present at the time of cremation of dead body of Aruna. Whole body of Aruna was burnt. Her both hands were turned towards head.

10. The prosecution examined PW-4 Shagunabai Mohan Kadam. She deposed that deceased Aruna was her niece. Marriage of Aruna was solemnized with accused Ramakant. An amount of Rs.31,000/- was to be paid as dowry and one Tola gold was to be given in marriage. An amount of Rs.26,000/- was paid and it was decided that remaining amount of Rs.5,000/-

would be paid afterwards. Aruna was treated nicely for six months and thereafter accused started ill-treating Aruna. Aruna used to tell her the said facts. Aruna stated her that accused were ill-treating her due to non-payment of Rs.5,000/-. Thereafter her husband and father of Aruna went to the village of accused for settlement. After eight days Ashok Bhise and Balasaheb went to the accused and paid remaining amount. After eight days, two persons came to her village on motor-cycle and told that Aruna died. They all went to Muslewadi. She saw that Aruna was burnt and her dead body was lying in the kitchen.

. During the course of cross-examination, PW-4 Shagunabai stated that a person came on motor-cycle told that Aruna sustained burn injury because of burst of stove. She denied that sari on the person of Aruna was burnt because of flames of stove and her mother extinguished the fire. She denied that amount of Rs.5,000/- was remained to

be paid and the same was not paid thereafter. She denied that Aruna was suffering from Typhoid at the time of Diwali. Chabubai, the accused is crippled by one hand.

11. The prosecution examined PW-5 Haribhau Mukind Shitole. He deposed that Aruna was his sister's daughter. He deposed about the settlement of marriage of Aruna with accused Ramakant and that an amount of Rs.5,000/- towards dowry was remained to be paid. He further deposed about the ill-treatment given to Aruna by the accused persons.

. During the course of cross-examination, PW-5 Haribhau stated that he did not inquire with his relatives Ashok and Narayan at Muslewadi about death of Aruna. Khuntephal is at the distance of 4 to 5 Kms. from Gadwad. He did not know the name of the persons who had been to Muslewadi and paid the amount of dowry at the time of marriage.

12. PW-7 Ashokkumar Dagadu Kshirsagar, P.S.I. attached to Renapur police station, was the Investigating Officer. He deposed about the manner in which he has carried out the investigation in the crime.

13. The defence examined DW-1 Bhagwat Baliram Shinde. He deposed that he is serving as clerk in Shivaji Mahavidyalaya, Renapur since 1993. He brought original record of their college. The said record pertaining to the Muster Roll of teaching staff, notice, certificate issued to accused Rajabhau and time table. The copies of the said record are filed at Exhibit-44 to 47. Accused No.2 Rajabhau is serving as Lecturer in their college in the year 1998. In the year 1998, Shri Borade was the Principal of the college. Nick name of the accused Rajabhau is Raja. He further deposed that college timings in the year 1998 were from 8.10 a.m. to 2.15 p.m. On 24th September, 1998 he

circulated the notice to the teaching staff of their college, signed by Principal. He has also signed the said notice. He obtained signatures of the Lecturers after circulating the notice. The notice bears the signature of accused Rajabhau. He further deposed that on 22nd December, 1998 he was in the office. After perusing the Muster Roll of 22nd December, 1998 he stated that there is signature of accused Rajabhau in the Muster Roll of the said date. Lecturers used to sign in the Muster Roll in his presence. Accordingly accused Rajabhau signed the muster roll on the said date. He further deposed that on 22nd December, 1998, Principal of their college received police message from Muslewadi, at about 2.00 p.m. Principal called him in the cabin and told him to inform accused Rajaram that wife of his brother was burnt due to flames of stove. Then he went to the class of accused Rajaram where he was teaching. He told the said message to Rajaram and returned to his office. On 24th December, 1998 accused Rajaram was

in the college from 8.00 a.m. to 2.00 p.m. Certificate to that effect was issued to Rajaram on 28th December, 1998. The said certificate bears his signature and signature of Principal. As per time table accused Rajaram had taken four periods in the college, on that day. Accused resides at Renapur since prior to the incident.

. During the course of his cross-examination by the prosecution, DW-1 Bhagwat stated that the college maintains the register about receiving of phones. He has not produced the said register. Rajaram was taking English class in Room No.2 of B.A. first year. Lecturers used to sign in muster roll immediately after their arrival at 8.00 a.m. He used to keep the said muster roll in the cupboard after Lecturers signed the same. Muslewadi is 30 Kms. away from Renapur.

14. The defence examined DW-2 Prabhakar Rangrao Borade. In the year 1998 he was serving as

Principal of Shivaji Mahavidyalaya, Renapur. He has corroborated the version of DW-1 Bhagwat. He deposed that accused Rajaram was present in the college on 22nd December, 1998. He deposed that he circulated the notice dated 14th September, 1998 to the Lecturers of the college, stating therein that all the Lecturers should come to the college before 8.00 a.m. and should not leave the college till 3.30 p.m. Certificate Exhibit-46 was issued by him stating therein that on 22nd December, 1998 accused Rajaram was present in the college from 8.10 a.m. to 2.10 p.m. Accused Rajaram had taken the periods on 22nd December, 1998 as per the time table. He personally saw that accused Rajaram had taken period on the said day. He further deposed that on 22nd December, 1998 he received telephonic message from Muslewadi informing him that wife of brother of accused Rajaram received burn injuries due to flames of stove. He was cross-examined by the prosecution.

15. The defence examined DW-3 Dnyanoba Nivruti Jadhav. He deposed that he knows all the accused who reside at Muslewadi. Wife of accused Ramakant is dead. The incident happened about two years from the date of recording his evidence. He was in the village. The incident happened at about 11.30 a.m. Wife of Ramakant sustained injuries because of flames of stove. He heard noise, and went to the spot. He saw that Dhonidba, Baburao, Hanumant were on the spot. They extinguished the fire. He also started to extinguish the fire. He personally extinguished the flames of stove. Narayan, Ashok, Jyotiram, Parasram, Shobha, Pratibha and many females assembled on the spot. He saw brass Parat, one Patile, a tin, a pin of stove and a pot containing of water in the kitchen. Nobody from family of Ramakant was present on the spot. Shankar and Ashok went to accused Ramakant on motor-cycle and brought Ramakant. Mother of Ramakant came on the spot few minutes after arrival of Ramakant. Ramakant was

brought from field. Shankar and Nanasaheb went to Dharmapuri on motor-cycle to bring Chandrasen who had gone there to sell the cotton. Thereafter, they went to Patoda to inform the incident to Sunanda, to inform about the incident. He along with Dashrath went to Gadwad on motor-cycle to inform the incident to father-in-law of Ramakant. He told father-in-law of Ramakant that wife of Ramakant sustained burn injuries because of flames of stove. He informed about the incident to relatives of Narayan. The guest of Gadwad inquired about the incident. They went to police station, Renapur and afterwards returned to Muslewadi from police station and resided at Muslewadi at night. Accused were at Muslewadi during night. On next day police came to Muslewadi and recorded panchnama. Then police recorded their statements. He was present when dead body of deceased was cremated. Narayan and Ashok are his cousin brothers. Shobha is wife of Narayan. Relatives from Gadwad demanded Rs.1,00,000/- to Chandrasen

and others. Accused refused to pay the amount.

. During the course of his cross-examination by the prosecution, DW-3 Dnyanoba stated that accused Chandrasen and Ramakant are his Bhau-band. Kitchen room was closed when he went on the spot. Dhondubai pushed the door and the kitchen was opened. Dhondubai and Hanmant were at the house of Ramakant before his arrival. They went on the spot five minutes before his arrival. Dhondubai and Hanmant were found in kitchen. Clothes on the person of victim and other clothes were burning. When he went to the spot, the victim died. The victim was burning for about 10 to 15 minutes before his arrival. He extinguished the fire of stove and Dhonubai extinguished the fire of dead body. He heard the cry of Dhonubai and Hanmant and went to the spot. He stated that accused Chandrasen was going to Dharmapuri and he saw Chandrasen when he was going to Dharmapuri. Wife of Chandrasen and accused Ramakant did not

tell him that Ramakant and wife of Chandrasen were going to field but he knows that Ramakant and wife of Chandrasen were going to field. Firstly Ramakant went to the field at about 8.00 a.m. and his mother went to the field at about 8.30 a.m. to 9.00 a.m. He was standing on the road. He was in the chowk. He was present when Ramakant and his mother returned home. He had not seen from where Ramakant was brought by Dattu. He denied that Ramakant and his mother set wife of Ramakant on fire and went outside the house.

16. We have discussed in detail, the entire evidence brought on record by the prosecution and defence. In all five accused were tried in the trial Court, however, the trial Court acquitted accused No.2 - Rajabhau Jadhav, accused No.3 - Chandrasen Jadhav and accused No.5 - Sunanda Jadhav from all charges levelled against them. Even the present Appellants are acquitted from the offence punishable under Section 498-A read with

34 of the I.P. Code. Therefore, there is considerable force in the submission of the counsel appearing for the Appellants that in view of acquittal of all the accused from the offence punishable under Section 498-A of the I.P. Code, there was no any motive for commission of an offence and the motive assumes much importance in the case based upon the circumstantial evidence.

17. In order to prove the prosecution case, the prosecution placed reliance upon the circumstances mentioned by the trial Court in Para-62 of the impugned Judgment. The trial Court, in relation to those circumstances, has appreciated the evidence brought on record and convicted the Appellants for the offence punishable under Section 302 of the I.P. Code. Those circumstances are reproduced herein below:

"1) The place where the tragic incident is happened is in possession and in

occupation of the accused.

2) Positive opinion of the Doctor that the death was not due to asphyxia as well as apart from 100% burns. If it would have been pure case of burning, there must be evidence of vomiting.

3) No stove was found on the spot. Nothing has stated in the spot panchnama about the stove or stove-pin.

4) There was total absence of any shouts or cries of the victim when she was burning.

5) Blood in heart was not found clotted.

6) DW-3 Dnyanoba Jadhav found that the accused Ramakant and accused Mrs. Chabubai were going to the field and immediately after some time he came on the spot and found that the deceased was burning.

7) At the time of incident accused

Ramakant and Chabubai were found in the village and other accused were not in the village.

8) The latch of the house of the accused was found bent, and the lock was found broken.

9) In burn, brain is usually shrunken and firm. But in this case the brain was simply found congested.

10) The accused did not inform about the death of victim to the police station, though there was ample time for them to inform about it."

18. So far as the first circumstance is concerned, it is not in dispute that the place where the tragic incident is happened is in possession and in occupation of the accused. Therefore that circumstance has been proved by the prosecution.

19. Second circumstance is, positive opinion

of the Doctor that death was not due to asphyxia as apart from 100% burns and if it would have been pure case of burning, there must be evidence of vomiting. In order to find out the correctness of the findings recorded by the trial Court that medical evidence fully supports the prosecution case, it would be necessary to refer the evidence of PW-6 Dr. Ramrao. We have already discussed the evidence of PW-6 Dr. Ramrao. The medical officer in his cross-examination stated that referring column No.18-A of post-mortem report he cannot say definitely as to whether the injuries mentioned in the said Column are ante-mortem or post-mortem. He did not notice any injury on any part of dead body. He did not notice any injuries over the lip by pressure of teeth. He further stated that suffocation means blockages of the air-way. He further stated that it is possible that burn flames can suffocate. The medical officer agrees with the opinion given by Dr. Parikh in his medical jurisprudence page No.376 Vth Edition that

death may occur without inhaling smoke due to rapid consumption of Oxygen by intense fire. The medical officer further admitted that in the present case cause of death may be possible due to hot flames causing suffocation. He further stated that smothering is pressure from outside and in suffocation there may not be smothering from outside.

. Thus, it is clear from the evidence of medical officer PW-6 Ramrao that he has not expressed the clear opinion that death of Aruna had occurred due to smothering and thereafter body of Aruna was burnt by the accused so as to cause disappearance of the evidence. The medical officer has admitted that in the present case cause of death may be possible due to hot flames causing suffocation. Therefore, it cannot be said that the medical opinion expressed by the medical officer completely supports the case of the prosecution. On the contrary, the admissions given by him in

the cross-examination makes the prosecution case doubtful.

20. Coming to the third circumstance that, no stove was found on the spot and nothing has stated in the spot panchnama about the stove or stove-pin, in this respect the evidence of PW-3 Jyotiram, who acted as panch to the spot panchnama, is material. We have already discussed his evidence in detail. PW-3 Jyotiram admitted in his cross-examination that there was aluminum pot lying by the side of dead body. He further stated that other articles like stove, pin and utensils were lying in the kitchen. It appears that the trial Court did not appreciate the evidence of PW-3 Jyotiram in its entirety and only proceeded to conclude that no stove or stove-pin was found on the spot after perusal of spot panchnama. It is not correct appreciation of evidence by the trial Court. Therefore, that circumstance is not proved by the prosecution. In fact, whether three

circumstances discussed above are incriminating or otherwise, has also not been discussed by the trial Court. it is only the incriminating circumstances are required to be taken into consideration while appreciating the circumstantial evidence brought on record by the prosecution.

21. The fourth circumstance is that there was total absence of any shouts or cries of the victim when she was burning. In that respect, evidence of DW-3 Bhagwat is important. During the course of recording his evidence, PW-3 Bhagwat stated that the incident occurred at about 11.30 a.m. wherein wife of Ramakant sustained burn injuries due to flames of stove. He stated that he heard noise and immediately he went to the spot and tried to extinguish the fire. Thus, the fourth circumstance is not proved by the prosecution.

22. The fifth circumstance is that, blood in

heart was not found clotted. In fact it was for the concerned medical officer to elaborate on the said aspect during the course of recording his evidence, however, it appears that the medical officer has not highlighted the said aspect during his deposition.

23. The sixth circumstance is that DW-3 Dnyanoba found that accused Ramakant and accused Chabubai were going to the field and immediately after some time he came on the spot and found that the deceased was burning. DW-3 Dnyanoba deposed in his examination-in-chief that incident took place at 11.30 a.m., and during his cross-examination he categorically stated that Appellant No.1 Ramakant went to the field at about 8.00 a.m. and his mother i.e. Appellant No.2 Chabubai went to the field at about 8.30 a.m. to 9.00 p.m. PW-3 Jyotiram and other prosecution witnesses and also DW-3 Bhagwat have stated in their evidence that at the relevant time both the Appellants were in

their agricultural field. The said field is 2 and 1/2 Kms. away from the house and after the incident message was sent to them and then Appellant No.1 along with other accused arrived at the spot of the incident.

24. Coming to the seventh circumstance that at the time of incident accused Ramakant and Chabubai were found in the village and other accused were not in the village, that circumstance would support the case of the Appellants and other co-accused, in as much as, it is their contention that Aruna died in accidental burns while cooking food at about 11.00 to 11.30 a.m. It is also relevant to mention that the medical officer has stated in his evidence that semi-digested food was found in the stomach of Aruna. It means before the said incident which took place in between 11.00 to 11.30 a.m., prior to that in between 8.00 to 9.00 a.m. deceased had break-fast. Apart from this, medical officer has not mentioned exact/proximate

time of death of Aruna. Thus, in the present case, the prosecution has not brought on record the exact time when the death of Aruna took place.

25. So far as 8th circumstance that the latch of the house of the accused was found bent and the lock was found broken, in this respect the prosecution has not brought on record cogent and clinching evidence to prove said circumstance.

26. The 9th circumstance is that, in burn, brain is usually shrunken and firm but in this case the brain was simply found congested. In that respect, it appears that the trial Court on its own referred to the passage on page Nos.237 and 238 of the book, namely, "The Essentials of Forensic Medicine and Toxicology" of Dr. K.S. Narayan Reddy, without confronting said passage to the medical officer. The parties were also not aware that the trial Court is going to place reliance upon the said passage from the said book.

27. The last circumstance is that the accused did not inform about the death of victim to the police station, though there was ample time for them to inform about it. It cannot be taken as incriminating circumstance and therefore no reliance can be placed on such circumstance when the prosecution is not able to establish the chain of circumstance brought on record.

28. There are also other reasons why the benefit of doubt deserves to be extended in favour of the Appellants. It is the case of the prosecution that accused Chabubai Jadhav pushed Aruna on the ground, then the accused Ramakant Jadhav brought pillow and put the same on the mouth and nose of victim Aruna and set on the said pillow, accused Chabubai Jadhav caught hold the legs of Aruna, and Aruna died due to smothering and suffocation. However, PW-4 Shagunabai admitted in her cross-examination that Chabubai, the

accused is crippled by one hand. Therefore, the prosecution case becomes doubtful as the defence has brought on record that Appellant No.2 Chabubai is crippled by one hand and is not physically so fit. Secondly, the First Information Report was lodged belatedly with delay of one day, without any explanation. Therefore, it strengthens the defence of the Appellants that the informant and his relatives were asking for an amount of Rs.1,00,000/- to settle the matter and as they refused to pay the said amount, the First Information was lodged with ulterior motive.

29. Admittedly, in the present case there is no eye witness to the prosecutions case and the prosecution case is entirely based upon the circumstantial evidence. So far as the appreciation of the circumstantial evidence is concerned, the law is well settled. The Supreme Court in the case of Hanuman Govind Nargundkar and

another Vs. State of M.P.¹, held thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

30. The Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra² has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength

1 AIR 1952 SC 343

2 (1984) 4 SCC 166

from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. It is also to be borne in mind that the case in hand is a case of circumstantial evidence and if two views are possible on the evidence on record, one pointing to the guilt of the accused and other their innocence, the accused are entitled to have the benefit of one which is favourable to them.

31. The Supreme Court in the case of Shankarala Gyarsilal Dixit Vs. State of Maharashtra³ in para 13 held thus :

"13. Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory

³ AIR 1981 SC 765

evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him."

. After discussing the circumstances brought on record and the evidence available therein, in the case of Shankarala Gyarasilal Dixit (supra), the Supreme Court observed that though 12 circumstances have been relied upon by the prosecution, the important circumstance is that the appellant therein was present in the house, was not proved by the prosecution. Therefore, in the facts of that case, Supreme Court held in Para-26 of the Judgment that the crucial link in the chain of circumstances is the

presence of the appellant in his house at the time when the dead body of Sunita was discovered. Once that link snaps, the entire case would have to rest on slender tit-bits here and there. This discussion disposes of the second part of the 4th circumstance, part of 5th circumstance and circumstances (6) and (7). The Supreme Court acquitted the appellant therein. In the present case also the chain of circumstances on which reliance was placed by the prosecution has not been established beyond reasonable doubt by the prosecution. Therefore, benefit of doubt in favour of the Appellants deserves to be extended.

32. In the light of discussion in foregoing paragraphs, we are of the considered view that the entire prosecution case rests upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient and convincing so as to prove the offence against the Appellants beyond reasonable

doubt. Therefore, an inevitable conclusion is that the Appellants are entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The impugned Judgment and order dated 6th January, 2001, passed by the Additional Sessions Judge, Latur in Sessions Trial No.59 of 1999 convicting and sentencing Appellant No.1 - Ramakant s/o Chandrasen Jadhav and Appellant No.2 - Chabubai w/o Chandrasen Jadhav for the offence punishable under Section 302, Section 201 read with Section 34 of the Indian Penal Code, is quashed and set aside.

(III) Appellant No.1 - Ramakant s/o Chandrasen Jadhav and Appellant No.2 - Chabubai w/o Chandrasen Jadhav are acquitted of the offence punishable under Section 302, Section 201 read with Section 34 of the Indian Penal

Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellants.

(IV) The Appellants are released on bail during the pendency of this Appeal. The bail bond of the Appellants shall stand cancelled.

(V) Appellant No.1 - Ramakant s/o Chandrasen Jadhav and Appellant No.2 - Chabubai w/o Chandrasen Jadhav shall furnish the fresh personal bonds of Rs.15,000/- each and surety of like amount each under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Latur.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

asb/JUL17