

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

CRIMINAL APPEAL NO.94 OF 2001

Balasaheb s/o.Namdeo Bhale,
Age: 35 Years, Occ. Tailoring Work,
R/o. Gade-Pimpalgaon, Tal. Parali,
District : Beed. **APPELLANT**

VERSUS

The State of Maharashtra **RESPONDENT**

...
Mr.Satej S. Jadhav, Advocate for the
appellant
Mr.S.D.Ghayal, APP for the Respondent / State
...

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

Reserved on : 03.07.2017
Pronounced on : 17.07.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Appeal is filed by the
appellant-accused, challenging the judgment
and order of conviction passed by the
Additional Sessions Judge, Ambajogai, dated
15th February, 2001, in Sessions Case

No.118/1999, thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.10,000/-, in default of payment of fine to suffer further rigorous imprisonment for one month.

2. The prosecution case in nutshell is as under:

Sumanbai w/o.Vishwanath Rupnar, the informant, is residing at Kauthali, Taluka Parali. A daughter of the informant, namely Ashabai [deceased], was married with Balasaheb Namdeo Bhale i.e. the accused, sometime in the year 1991.

3. Since 1996, the accused along with his wife Ashabai [deceased], came to reside in the house of the informant at Kauthali. The house of the informant was comprised of

two rooms. The accused and the deceased were residing in front room, and the informant was residing in rear room. Since the accused and the deceased started residing at Kauthali, the accused was making allegation against the deceased that she has illicit relations with others, and he used to ill-treat her, and used to give threat that he will kill her by giving electric shock.

4. On 30th November, 1999, at about 8.00 p.m., the accused came to the house after consuming liquor. The accused made allegation against the informant and the deceased about their illicit relations and started giving abuses. The accused also beat the deceased by means of fist blows and slaps. At midnight also, the accused beat the deceased, the neighbours were gathered for intervention. The accused enquired with them, whether they have illicit relations with the deceased, and

that's why they came to intervene, hence the neighbours returned to their house.

5. On 1st October, 1999, at about 5.00 a.m. Ashabai [deceased] shouted for help hence the informant went in the room of the deceased. The deceased in coherent speech told that the electric shock was given to her, and with the help of hand showed the place where the shock was given. At that time the accused, by throwing wire from his hand in the room, ran away. The informant by lifting saree of the deceased saw that there was injury on the left buttock of the deceased.

6. The informant carried the deceased in rickshaw for taking her to the Hospital at Parali. However, on the way the death occurred, hence returned to Kauthali.

7. The brother of the informant, namely Vishnu Hake, filed the A.D. report. Then the A.D. was registered as A.D. No.37/1999. The Police visited the spot. The inquest panchnama and spot panchnama were recorded. The dead body was sent for the postmortem. The informant lodged the complaint. On the basis of said complaint, crime was registered as Crime No.175/1999 for the offence under Section 302 of the I.P. Code against the accused. The accused was arrested. During investigation, the statements of witnesses were recorded. The provisional certificate of cause of death and postmortem report were collected. The electric wires were discovered at the instance of the accused. After completion of the investigation, the charge sheet was filed against the accused under Section 302 of the I.P. Code in the Court of the learned Judicial Magistrate First Class, Parali.

8. The learned Magistrate committed the case to the Court of Session as the offence punishable under Section 302 of the I.P. Code is exclusively triable by the Court of Session. The Sessions Court framed the charge against the accused for the offence punishable under Section 302 of the I.P. Code. The charge was read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried.

9. After full-fledged trial, the trial Court convicted the appellant for the offence punishable under Section 302 of the IPC. Hence this Appeal filed by the appellant—accused.

10. Heard the learned counsel appearing for the appellant—accused, and the learned counsel appearing for the respondent—State. The learned counsel appearing for the

appellant submits that there is absolutely no evidence to indicate that the accused gave electric shock to his wife Asha and committed her murder. The medical evidence indicates that the death was due to cardio respiratory and it took place at about 9.00 a.m. on 01.10.1999 while the prosecution case is that she received electric shock at about 5.00 a.m. on that day. The evidence of Doctor, who performed the postmortem examination, does not show that there was any exit entry of the electricity and he also admitted that in case of heart attack sometimes symptoms appear like symptoms of receiving electric shocks. The prosecution has tried to bring on record that there were quarrels between the husband and wife, and the accused gave electric shock to her, however, no convincing evidence is there. The two prosecution witnesses i.e. neighbourers examined by the prosecution are not giving convincing evidence. The learned

Judge has disbelieved the evidence of the prosecution witness no.6 and prosecution witness no.5, has admitted that the husband and wife were living happily. In such circumstances, there is the only evidence of mother-in-law of the accused but she also stated that accused was suspecting her character. It is submitted that merely because the appellant left the house on the date of incident cannot be considered as circumstance against the appellant. He was residing in the house of mother-in-law, namely Sumanbai [PW-4], and in case of his stay after the alleged incident, there would have been danger to his life. It is submitted that nobody saw that the appellant gave electric shock to the deceased Ashabai. It is submitted that Tukaram [PW-5] stated in his evidence that they tried to go in the room of the accused, they sustained electric shock as there was wet place, and electric wire was

laid on it. The another prosecution witness namely Prakash [PW-6] also stated in his examination in chief that he along with his wife went to intervene the quarrel of the appellant and his wife, when wife of Prakash [PW-6] touched wall of the house of Balasaheb, she received electric shock. As electricity wire was kept outside the door and because of that his wife sustained electric shock. The said wire was left outside from the house of accused. He further stated that Tukaram Kate [PW-5] also sustained electric shock. Therefore, he submits that the evidence brought on record by the prosecution it clearly shows that Ashabai died accidental death due to electric shock. It is submitted that as per the prosecution case the alleged incident had taken place at 5.00 a.m. however, the FIR was registered at 7.00 p.m. It is submitted that the maternal uncle of the deceased Ashabai

and brother of Sumanbai [PW-4] registered accidental death in the morning, even thereafter the Police Officer proceeded to cause investigation on the basis of the said A.D. Therefore, registration of the belated FIR crates serious doubt about truthfulness of the prosecution case that the accused gave electric shock to the deceased Ashabai.

11. On the other hand, the learned APP appearing for the respondent—State submits that this is a case wherein the accused has murdered his wife namely Ashabai by giving electric shock. The prosecution has unequivocally proved the charge framed against the appellant—accused by leading sufficient evidence in the form of medical evidence as well as circumstantial evidence, and the same is rightly appreciated by the Sessions Court while convicting the appellant, and the said judgment and order of

conviction, therefore, needs no interference. It is further submitted that Dr. Paras Mendlecha [PW-8], Medical Officer, who has conducted the postmortem on the body of deceased. In his report and evidence before the Court, he has specifically stated that the cause of death is due to cardio respiratory arrest due to electric shock. The injury, which has been seen on the hip of the deceased, was of cylindrical type, possible by article i.e. wire, which has been recovered at the instance of appellant-accused. He fully supported the prosecution case that death of Ashabai, who was the wife of the appellant, is not natural and / or accidental but homicidal one. The part of the body of deceased i.e. hip which has been chosen by the appellant-accused for giving electric shock is also required to be noted for ruling out case of the accidental shock. Sumanbai [PW-4] also stated before the Court

that when she rushed to the deceased, she by gesture with the help of left hand showed that electric shock was given to her on her left buttock. This also strengthen culpable homicidal death and rules out accidental shock death.

12. It is further submitted that the prosecution, by examining Sumanbai [PW-4], mother of deceased, Tukaram [PW-5] and Prakash [PW-6], who are neighbourers, has proved that the appellant – accused was suspecting chastity of the deceased and the informant as well. It has also been stated by the witnesses that immediately before main incident of giving electric shock, the accused has quarreled with the deceased and beat her during night time also i.e. at 8.00 p.m. and midnight. The prosecution by examining Sumanbai [PW-4], Tukaram [PW-5] and Prakash [PW-6] has sufficiently established

that the deceased was in the room with the accused on the day of incident. It is also established that on 30th September, 1999 at 8.00 p.m. and 12.00 p.m. there was quarrel and the accused beat deceased. It is also brought on record that the deceased shouted at 5.00 a.m. on 1st October, 1999 and when PW-4 to PW-6 went into room; they recorded the presence of the accused in the room. In this scenario, it is incumbent upon the accused / appellant to explain as to how the death of Ashabai occurred and how she suffered electric shock injury on her person that too on her hip. Sumanbai [PW-4] in her evidence stated that the deceased by gesture with the help of left hand informed her that the electric shock was given to her on her left buttock. This aspect of the matter is also required to be taken into consideration while deciding the appeal.

13. It is further submitted that Laxman Kishanrao Gaikwad [PW-3] in his evidence proved the spot panchnama and memorandum of recovery of wire which has been taken place at the instance of the appellant – accused. The inquest panchnama drawn during 14.00 to 15.00 hours. The spot panchnama drawn during 15.15 to 16.00 hours and the postmortem conducted during 05.00 to 06.00 p.m. on 01.10.1999. After conducting the postmortem, when it was revealed that the death was caused due to cardio respiratory arrest due to electric shock, the accused on 03.10.1999 has made statement in presence of panchas [PW-3] that he is ready to produce wire which has been used in giving electric shock to the deceased. So only after statement of the accused that wire was recovered. Only because Laxman [PW-3], the spot panch in his cross examination admitted that the wire was there in the room at the time of drawing the spot

panchnama, recovery of wire at the instance of the accused connecting him with the crime cannot be discarded. The use of recovered wire for the purpose of giving electric shock to the deceased is the fact within special knowledge of the accused. At the time of drawing the spot panchnama, the Investigating Officer might not have suspected the wire as incriminating article of crime and therefore might not have seized that wire. Sumanbai [PW-4] identified the wire article 1 before the Court.

14. It is further submitted that in the complaint Exh.18, Sumanbai [PW-4], mother of deceased, simply noted that she took deceased to the Government and Private Hospital and in next breath she explained that since her daughter died on the way, she returned with her dead body to village Kauthali. So she never intended to note that she actually

admitted her daughter to any hospital. The portion marked 'A' in the complaint Exh.18 has to be read with sentence written thereafter. It is also pertinent to note that, PW-4 in her deposition she deposed that her daughter died on the way of Parli and hence they returned. So factually, there is no any omission or contradiction in her deposition to that effect as claimed by defence. However, by taking aid of so called reason stated by one Vishnu Shankarrao Hake, whose company at the time of lodging of the complaint itself has been denied by the informant Sumanbai, it was suggested to Sumanbai [PW-4] that the deceased died due to vomiting and decency. The falsity of defence as suggested in cross examination is also an additional circumstance against the accused — appellant. Taking into consideration over all view of the matter, trustworthy consistent evidence of prosecution witnesses, the

evidence of the Medical Officer who conducted the postmortem, the judgment and order of conviction for the offence punishable under Section 302 of the IPC, may kindly be confirmed by dismissing the appeal of the accused.

15. We have given careful consideration to the submissions of the learned counsel appearing for the appellant, and the learned APP appearing for the respondent—State. With their able assistance, perused the entire evidence brought on record of the prosecution witnesses, medical evidence and also findings recorded by the trial Court. In order to prove whether the death of Ashabai is homicidal or otherwise, the prosecution examined Paras Harakchand Mandlecha as PW-8. In his evidence he stated that, since 1996 he is serving as Medical Officer at Rural Hospital, Parali. On 1st October, 1999, the

dead body of Ashabai Balasaheb Bhale was referred to the Hospital, Parali, for postmortem by Rural Police Station, Parali. He examined the said dead body. The postmortem was done between 5.00 to 6.00 p.m. He found following external injuries on the dead body:

Evidence of electric burn was present on left gluteal region of size 2" x $\frac{1}{2}$ " central area of injury is seen congested and peripheral area of wound burnt and fibrosed.

No other injury was seen all over the body. The injury was ante-mortem. Both lungs were congested. Brain matter was congested. Stomach was empty. Mucosa of stomach was normal. No any abnormal smell found. Immediately after the postmortem, he issued provisional certificate about cause of death. The cause of death was due to cardio respiratory arrest due to electric shock.

The certificate now shown to him is the same. It is in his handwriting. He put his signature on it. The contents of the same are correct. Afterwards, he issued the postmortem report. The postmortem notes now shown to him are the same. It is in his handwriting and it bears his signature. Its contents are correct. There was no evidence of oozing anything from nose. The injury which he found on the dead body is possible by article no.1. If the high voltage passes through the said wire and the contact of the said wire on the body is more than 30 seconds, then it may cause death. But he cannot tell specific duration of contact of electric wire with the body.

During his cross examination, he stated that the injury which he noticed on the dead body is not possible by spark. In case of a cloth on the body, it may burn.

No burn was seen on the clothes of dead body. He has not noted in the postmortem notes about the presence of faeces matter on clothes of the dead body. If he would have seen, he would have noted. While conducting P.M., it cannot be predicted whether the death occurred immediately after electric shock. Fibrose tissue are seen after 2-3 days of injury. Witness added that in case of injury by electric shock, fibrose is seen immediately around the wound. He did not refer the said injury to Pathology Department. Witness added that it was not necessary. The electric wound having peripheral portion is burnt and fibrosed and central part of wound is seen, congested. The age of injury cannot be said. Exit wound was not present over the dead body. It is not necessary that exit wound is necessary in burn injury. The internal appearance of organs in electric burn injury and gastro

entrities is not exactly similar. In poisoning, presentation of stomach is totally different than electric shock injury. In case of heart attack, some organ show changes like injury by electric shock. The injury which was seen by him was of somewhat cylindrical type. He denied suggestion that the injury noted by him on the dead body was not due to electric shock. He further denied suggestion that the death was not occurred because of electric shock and the death was natural death. He further denied suggestion that only because in inquest panchnama it is mentioned as death due to electric shock, he has mentioned that the death is due to electric shock. Viscera was not preserved. He denied suggestion that he has given wrong opinion about cause of death.

16. The prosecution examined Sumanbai Vishwanath Rupnar as PW-4. In her evidence,

she stated that deceased Ashabai was her daughter. The incident took place one year and three months prior. Her daughter married with Balu Bhale i.e. the accused, seven years prior to her death. Her daughter and son-in-law i.e. the accused were residing with her at village Kauthali. The accused is from village Bhale-Pimpalgaon. The accused and her daughter were residing in front room of her house and she was residing in a rear room. The accused was doing tailoring work. Her daughter has one son and two daughters. The accused and her daughter were residing in her said room since three years prior to the incident. The accused was suspecting character of her daughter and also her character. The accused also used to ask them by suspecting their character. The accused was giving threat to her daughter Asha that he will kill her by giving shock.

17. She further stated that the incident took place on Thursday. On that day at 8.00 p.m., the accused beat her daughter by suspecting her character as having illicit relations with somebody. At midnight accused again beat her daughter. Tukaram and Prakash, who are their neighbourers, came to their house, for intervening their quarrel. The accused asked her daughter that she must be having illicit relations with those persons who had come to intervene. Then those persons went to their house. At about 5.00 a.m., her daughter shouted. On hearing the shouts, she went in the room of her daughter. Her daughter, with the help of left hand, showed that electric shock was given to her on her left buttock. Her daughter did not talk anything. When she went to the room of her daughter, her son-in-law i.e. the accused ran away. While running, the accused was having wire in his hand. The

accused threw the wire in the room itself and ran away. She saw the buttock of her daughter by lifting up her sari and there was injury on her buttock. Faeces matter was also in the sari. Prakash and Tukaram came to the room of her daughter because of shouts of her daughter. She was carrying her daughter in auto rickshaw to Parali, however, on the way her daughter died and hence they returned. Then she lodged the complaint. She put her thumb impression on the said complaint. The contents of the complaint now read over to her, and same are as per her narration. The accused before the court is her son-in-law. Article no.2 before the Court is the wire which was in the hand of the accused and which was thrown by him in the house.

18. The prosecution examined Tukaram Vaijinath Kate as PW-5. In his deposition, he stated that the accused was residing in his

neighbourhood, adjacent to his house on eastern side. The accused, his wife and his mother-in-law Sumanbai were residing in his neighbourhood. The accused was doing work of tailoring. The incident took place on 30.09.1999. On that day at 8.00 p.m., he heard shouts from the house of accused. He went up to the house of accused. The accused was beating to his wife. The accused was telling his wife that he will kill her giving shock. Prakash Yadav also came to the said spot along with him. They tried to go in the room of accused, however, they sustained electric shock as there was wet place and electric wire was laid on it. As they went to intervene, the accused asked them that they must have illicit relations with his wife, that's why they came to intervene. At 12.00 night, he again heard shouts which were coming from the room of the accused. He again came out of his house and saw that accused

was beating his wife. The accused also uttered words that he must have illicit relations with his wife and that's why he came to intervene. Aba Ashruba Hake also came to intervene at 12.00 night. Because of those allegations of accused against them, they went to their house, as they became nervous. At about 5.00 a.m., he again heard shouts from the room of the accused. He heard shouts as "Dhava, Mele". He went out of his house. He went to the room of the accused. The accused came out of the said room when he went to his room. The mother of Ashabai was in the room. Ashabai with the help of her hand showed that she sustained shock. Ashabai also uttered some words and told that some heated substance was touched to her buttock. Ashabai was carried to the Hospital. In the morning, he came to know about death of Ashabai.

19. The prosecution examined Prakash Sopanrao Jadhav as PW-6. In his deposition, he stated that on the west side of Kauthali, he is residing in new area. On western side of his house, there was house of Balasaheb i.e the accused. Since two years prior to him, the accused was residing in the said adjacent house. He was residing alongwith his wife and his children. On 30.09.1999, he returned to his house at 8.00 p.m. from his field. He was sitting in his house after taking dinner. He heard the quarrel between Balasaheb and his wife. When he went outside of his house, he saw that Balasaheb was beating his wife, Ashabai, by means of fist blows. He went to intervene. So many persons were gathered there. Balasaheb lifted a stone for beating and this witness snatched it from his hand. The said stone was lifted by Balasaheb for beating his wife. Balasaheb enquired with this witness whether he has any

relation with his wife, that's why he came to intervene and hence he returned to his house. When he was sleeping in his house at about midnight, he heard the quarrel. He himself and his wife went to intervene the quarrel. When his wife touched wall of the house of Balasaheb, she received electric shock. As electricity wire was kept outside the door and because of that his wife sustained electric shock. The said wire was left outside from the house of accused. Tukaram Kate also sustained electric shock. Balasaheb, the accused, was giving threat to his wife that he will kill her by giving electric shock. They went to their house as his wife had sustained electric shock. At about 5.00 a.m. they heard shout which was coming from the house of accused Balasaheb. Then he alone went to see what has happened. When he was going to the house of Balasaheb, he saw that Balasaheb going out of his house

and he went on bicycle. When he went to the house of Balasaheb, mother of Ashabai was weeping by the side of Ashabai. Ashabai was unconscious and she did not talk anything. Mother of Ashabai told them that Balasaheb, the accused, gave electric shock to his wife. The said Balasaheb is present in the Court as an accused.

20. The prosecution examined Rukhmini Bhagwan Shelke as PW-1. In her deposition, she stated that she was called by the Police at the house of Ashabai at Kauthali. There was one injury on the left hip of deceased Ashabai Bhale. They have also seen that the deceased has done latrine in the saree. The nose and mouth were dry. The police has drawn the panchnama. The panchnama was read over to them. Ashabai was another panch. She put her thumb impression on the said panchnama. Ashabai also put her thumb impression on the panchnama.

21. The prosecution examined Balasaheb Shankarrao Hake as PW-2. In his deposition, he stated that on 01.10.1999, he was called by the Police at the house of Balasaheb Bhale at Kauthali. Rukhminibai and Ashabai were also panch with him. They saw the dead body of Ashabai. Nose of dead body was dry. They saw one injury on the left hip. The skin from the said part of injury was removed. There was faeces matter in the saree. The inquest panchnama was recorded. He signed on the said panchnama and Ashabai and Rukhminibai put their thumb impressions. The panchnama now shown to him is the same. The contents of the panchnama are correct. It bears his signature. The contents of the panchnama were read over to them.

22. The prosecution examined Laxman Kisanrao Gaikwad as PW-3. In his deposition, he stated that on 01.10.1999, he was called

by the Police in front of the house of Balasaheb Bhale, the accused, at Kauthali. Khandu was another panch. There was one board having holders and buttons and electricity in the house of Balasaheb, the accused. There was one tube and wire. The said wire was connected to the said board. There was no electric meter in the said room. The electric connection was taken with the help of hook from hanging power-line on the road. The police recorded panchnama accordingly. The panchnama now shown to him is the same. He identified his signature and signature of Khandu. He stated that the contents of the panchnama were read over to them. On 03.10.1999, he was called by the Police of Parali Rural Police Station. Bhaskar Zinzurde was another panch. Accused Balaji Bhale was present in the police station. The accused made statement that he is ready to produce the wire with the help of which he has taken

electric connection in his house. Memorandum of the statement of accused was recorded by the police. That was read over to them. The contents were as per statement of the accused. Then they both panch, accused and police signed on the said memorandum. The memorandum shown to him, bears his signature, signature of another panch, police and of accused. Then they both panch, police and accused went to Kauthali in police jeep. The accused led them to his house. The accused showed the wire with a hook in the powerlines on the road, in the backside of the house of the accused. The accused showed another wire which was fixed in the board in his house. The police recorded panchnama. The contents of the panchnama were read over to them. Then he signed on the said panch and another panch also signed on the said panchnama. By the said panchnama, the police seized those wires. The panchnama now shown to him is the

same. It bears his signature, signature of another panch, PSI and also of the accused. The contents of the panchnama are correct. Article Nos.1 and 2 before the Court are the articles which were seized by the Police under panchnama. The labels on article nos.1 and 2 bear his signatures. The photographs of the wire with hook were taken by the police. The photographs were also taken inside the house of the accused. The accused before the Court is the same.

23. We have made extensive reference to the evidence of all the witnesses in the foregoing paragraphs. PW-8, Medical Officer, namely Paras Mandlecha, stated the cause of death was due to cardio respiratory arrest due to electric shock. He further stated that if the high voltage passes through the wire by which shock was given, and the contact of the said wire on the body is more than 30

seconds, then it may cause death. The prosecution has not brought on record any specific evidence to suggest that the high voltage was passing through the said wire. PW-8 further stated that he cannot tell specific duration of contact of electric wire with the body. PW-8, Medical Officer, admitted that while conducting postmortem, it cannot be predicted whether the death occurred immediately after electric shock. He further stated that he cannot state the age of injury. The exit wound was not present over the dead body. He also stated that in case of heart attack, some organ shows changes like injury by electric shock. However, upon perusal of the postmortem report, it is mentioned in column 20 [g] i.e. Thorax - [g] Heart with wight. The remark is given that N.A.D. i.e. nothing abnormal detected.

The meaning of words '*cardiac arrest*' as stated in Mosby's Medical Dictionary, is as under:

cardiac arrest, a sudden cessation of cardiac output and effective circulation, usually precipitated by ventricular fibrillation and, in some instances, by ventricular asystole. When cardiac arrest occurs, delivery of oxygen and removal of carbon dioxide stop, tissue cell metabolism becomes anaerobic, and metabolic and respiratory acidosis ensue. Immediate initiation of cardiopulmonary resuscitation is required to prevent heart, lung, kidney, and brain damage. Also called *cardiopulmonary arrest*. See also *cardiac standstill*, *cardiopulmonary resuscitation*.

The meaning of word '*arrest*' as stated in Mosby's Medical Dictionary is as under:

arrest, to inhibit, restrain, or stop, as to arrest the course of a disease. See also **cardiac arrest**.

The meaning of word 'arrest' as stated in Dorland's Pocket Medical Dictionary, 24th Edition, is as under:

arrest (ah-rest) cessation or stoppage, as of a function or a disease process. **cardiac a.**, sudden cessation of cardiac function. **developmental a.**, a temporary or permanent cessation of development. **epiphyseal a.**, premature interruption of longitudinal growth of bone by fusion of the epiphysis and diaphysis. **maturation a.**, interruption of the process of development, as of blood cells, before the final stage is reached. **sinus a.**, a pause in cardiac rhythm due to a momentary failure of the sinus node to initiate an impulse.

24. It is mentioned in the FIR/complaint by the informant, namely Sumanbai [PW-4], that Ashabai died at 9.00 a.m. She stated in her evidence that her daughter was not in a position to talk but by gesture with the help of left hand she showed that electric shock was given to her on her left buttock. If really the cause of death was due to cardio respiratory arrest due to electric shock, and in absence of any immediate medical treatment, in that case in all probabilities the deceased Ashabai would have immediately died, because of failure of heart functioning, and therefore, there would not have been possibilities of telling by gesture by Ashabai [deceased] to Sumanbai [PW-4], that the electric shock was given to her on her left buttock by the accused. The prosecution has not brought on record the evidence showing what happened to Ashabai [deceased] from 5.00 a.m. to 9.00 a.m., and

about the condition of her health and whether any treatment was given to her in the said period.

During her cross examination, Sumanbai [PW-4] admitted that the business of tailoring of her daughter and son-in-law was going well. She further stated that since inquest till cremation, her brothers and police were at her village with her. She further admitted that her brother was knowing the details of the incident. She further stated in the cross examination that though she stated in the complaint that Prakash and Tukaram arrived at the spot at 5.00 a.m., she cannot tell any reason why the said fact is not appearing in the complaint/FIR. She further stated that children of accused are with his father, who is aged 70 years. It has come on record that the FIR/complaint given by Sumanbai [PW-4] was registered at 7.00 p.m.; in fact brother of Sumanbai [PW-4]

filed A.D. at 9.00 a.m. In case brother of Sumanbai [PW-4] was knowing about the incident, there was no question of filing the A.D. We find considerable force in the argument of the learned counsel appearing for the appellant that there was no explanation brought on record by the prosecution in respect of delay in lodging the FIR/complaint.

25. It has also come in the evidence of Sumanbai [PW-4] that Ashabai died at 9.00 a.m., therefore, there is complete mismatch in the medical evidence, and the evidence of Sumanbai [PW-4]. If the cause of death is correct, in that case the deceased Ashabai would have died immediately. Therefore, the prosecution case is surrounded by the suspicious circumstance.

26. It has also come in the evidence of

Tukaram [PW-5] that when they tried to go in the room of accused, they sustained electric shocks as there was wet place and electric wire was laid on it. It has also come in his evidence that Ashabai also uttered some words and told that some heated substance was touched to her buttock. He also stated in his cross examination that the accused and his wife were happily cohabiting. He further stated that he had no knowledge whether Ashabai had illicit relations with anybody. He further stated that it is not true that at 5.00 a.m. he did not hear any shouts and he did not go to the room of the accused and did not see any burn injury on the person of Ashabai. Therefore, this vital admissions given by Tukaram [PW-5] creates dent to the prosecution case inasmuch as there is no cogent and convincing evidence brought on record to conclude that it is the accused, who gave electric shock to the deceased

Ashabai, and possibility of accidental death is completely ruled out.

27. The fact that the appellant absconded from the spot itself cannot be incriminating circumstance inasmuch as he has offered explanation that out of fear he ran away from the spot. The Supreme Court in the case of *Sk.Yusuf v. State of W.B.*¹ held that it is well settled that absconding by itself does not prove the guilt of a person. A person may run away due to fear of false implication or arrest.

28. Prakash [PW-6] also stated in his evidence that when his wife touched wall of the house of the accused-Balasaheb, she received electric shock. He further stated that out of two rooms, one room is for tailoring work, and another room is for residence. He stated in his cross examination

1 [2011] 11 SCC 754

that he did not state before the Police that he went to the house of Balasaheb as he heard the quarrel. Therefore, the evidence of Prakash [PW-6] also clearly shows that when his wife touched wall of the house of Balasaheb, she received electric shock.

29. The Investigating Officer, namely Shankar Kharale [PW-7], stated in his deposition that A.D.No.37/1999 was registered and investigation was given to him. It has come on record that the information of A.D. was given by the brother of Sumanbai [PW-4]. The brother of Sumanbai went to the Police Station, and A.D.bearing No.37/1999 under Section 174 of the Criminal Procedure Code was registered by the Police on his information. Upon perusal of the evidence of the Investigating Officer, there is no explanation given why there was delay in lodging the FIR. PW-7, Investigation Officer,

also stated in his cross examination that the investigation of A.D. was made over to him at 1.00 p.m. He further stated that it was transpired during the investigation that when Ashabai was being taken to the Private Hospital, she died. Therefore, it is clear that the death of Ashabai was not spontaneous or immediately when she received electric shock. During his cross examination, he stated that A.D. was given by the brother of Sumanbai [PW-4]. In his cross examination, he stated that, portion marked 'A' in the complaint at Exh.18 was written as per the narration of Sumanbai [PW-4]. At this juncture, it would be relevant to reproduce portion marked 'A' from the complaint/FIR is as under:

*त्यानंतर सदरची घटना मी माझे भावांना कळविली त्यांनी
व मी परळीला खाजगी व सरकारी दवाखाण्यात नेले.*

True translation of the afore-mentioned portion is as under:

Thereafter, I informed the said incident to my brothers. They and myself took to the Private and Government Hospital at Parali.

28. Therefore, it clearly appears that Sumanbai [PW-4] immediately informed her brothers about the incident, and she herself and her brothers took Ashabai to the Hospitals. As already observed, A.D. was registered after receiving the information from the brother of Sumanbai [PW-4]. Therefore, it was possible to the brother of Sumanbai or Sumanbai herself [PW-4] to lodge the FIR immediately, and not the A.D. Therefore, the delay in lodging the FIR belatedly at 7.00 p.m. about the incident which had taken place at 5.00 a.m. creates serious doubt in the mind about truthfulness of prosecution story, and particularly when the A.D. was registered after receiving the

information about the incident from the brother of Sumanbai PW-4.

29. Therefore, in the light of the discussion in the foregoing paragraphs, it will have to be held that the prosecution has not proved beyond reasonable doubt that, the appellant gave electric shock to Ashabai and he was responsible for the death of Ashabai. Therefore, taking over all view of the matter, it clearly reveals that there is no chain of circumstance proved by the prosecution so as to sustain the conviction of the appellant. The Hon'ble Supreme Court in the case of **Toran Singh Vs. State of M.P.**² held that the case of the prosecution should rest on its own strength and not on the basis of absence of explanation or plausible defence by the accused. In the case of **State of Punjab V/s Bhajan Singh and others**³, the

2 AIR 2002 SC 2807

3 AIR 1975 SC 258

Supreme Court held that, suspicion, by itself, however strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused. The Supreme Court, in case of **Kali Ram V/s. State of Himachal Pradesh**⁴ observed as under :

"Another golden thread which runs through the web of the 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. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

30. The Supreme Court in the case of

4 AIR 1973 SC 2773

Sharad Birdhichand Sarda Vs. State of Maharashtra⁵ has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength 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 his innocence, the accused is entitled to have the benefit of one which is favourable to him.

31. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that the appellant is entitled

5 (1984) 4 SCC 166

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 15th February, 2001, passed by the Additional Sessions Judge, Ambajogai in Sessions Case No.118 of 1999, convicting and sentencing the accused – Balasaheb Namdeo Bhale for the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.

(III) The Appellant - Balasaheb Namdeo Bhale is acquitted of the offence punishable under Section 302 of the Indian Penal Code. Fine amount if deposited as per impugned Judgment and order, be refunded to the Appellant.

(IV) The bail bonds, if any, shall stand cancelled.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC