

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

CRIMINAL APPEAL NO.409 OF 2001

The State of Maharashtra	.. Appellant
Through Police Station Officer,	(ori. complainant)
Police Station Ashti, Tq. Ashti,	
Dist.Beed	

Versus

Lilabai W/o. Kerba Holkar,	.. Respondent
Age-40 years, Occu-Household,	(Ori. accused)
R/o. Kada, Tq. Ashti,	
Dist.Beed	

Mr.P.G.Borade, APP for appellant/State
Mr.S.S.Thombre, Advocate for respondent sole

**CORAM : T.V.NALAWADE &
S.M. GAVHANE, JJ.**

DATED : 07.09.2017

J U D G M E N T [PER: S.M. GAVHANE, J.]

. This appeal is directed against the impugned judgment and order dated 06.07.2001 passed by the Additional Sessions Judge, Beed in Sessions Case No.43/1998 thereby acquitting respondent/accused of the offences punishable under Section 302 and 201 of the Indian Penal Code (for short the IPC).

2. The prosecution case as it appears from the

police papers, is thus;

A. Deceased Kerba was husband of the accused. They were residing at Kada, Tq. Ashti, Dist. Beed with one son and daughter.

B. On 05.03.1997 PSI Kailas Oval (PW-6) received one anonymous letter by post stating that the accused Lilabai, her sister Mandabai (PW-3), and her brother Kondiba committed murder of the deceased and buried dead body in the house of accused. On receiving the said letter (Article-A) PSI Oval enquired with accused and her sister Mandabai (PW-3) and it was transpired that deceased was addicted to liquor and he was not coming to the house for weeks together. He was suspecting character of accused.

C. Further it was transpired that before 15 days of 08.03.1997 the deceased returned to house on consuming liquor and went away after beating the accused. Therefore, accused took search of Kerba at the house of relatives but he was not found. On 07.03.1997 PSI Oval went to the place disclosed in the letter (Article-A) and interrogated the accused. Accused disclosed that before 15 days she gave four tablets of sleeping to her husband the deceased through tea and when her husband returned to

house on consuming liquor he went to sleep. On that night accused and her husband were only present in the house and accused assaulted the deceased with Pata (stone used for preparing spices) and thereby committed murder. Thereafter, accused closed the house and lock it from outside and made a show that the deceased had gone somewhere. On the next day accused dug a pit in room of the house and in the night and buried the dead body of her husband in that pit. Accused had shown the said place and it was excavated on 08.03.1997 in presence of Executive Magistrate and Panchs and dead body of the deceased was taken out. PSI Oval (PW-6) prepared spot panchnama (Exh.23.) and seized pick axe, spade and pata (stone) from spot, panchnama about excavation (Exh.24) and inquest panchnama (Exh.25). Dr. Chavan (PW-7) conducted the postmortem examination on the dead body on 08.03.1997 on the spot and issued postmortem report (Exh.32). He opined that injuries on the person of the deceased were ante-mortem. According to him cause of death was cardio respiratory failure due to injury to vital structures in neck.

D. Thereupon, PSI Oval lodged the complaint (Exh.26) on behalf of the State with Police Station Ashti on 08.03.1997. Treating the said complaint as FIR crime No.28/1997 was registered against the accused for the

offences under Sections 302 and 201 of the IPC and started the investigation. During the investigation he recorded the statements of witnesses including the statement of daughter and sister of the accused. Accused was also arrested.

E. After completion of the investigation PSI Oval submitted the charge-sheet in the Court of JMFC, Ashti for the aforesaid offences against the accused who then committed the case to the Sessions Court, at Beed as offence under Section 302 of the IPC was triable by Sessions Court which was then allotted to Additional Sessions Judge, Beed.

3. The charge was framed against the accused for the offences under Sections 302 and 201 of the IPC to which the accused pleaded not guilty and claimed to be tried. Her defence is denial. She examined no witness in defence.

4. The prosecution has examined in all seven witnesses and relied upon panchanamas and postmortem report referred to above. Considering the evidence of the prosecution the trial Court held that the prosecution has failed to prove offence against accused with which she was charged and accordingly acquitted the accused of the

said offences by the impugned judgment and order dated 06.07.2002. Therefore this appeal against the acquittal.

5. We have heard learned APP appearing for the appellant/State and learned counsel appearing for the respondent/accused and with their assistance we have perused the evidence. So also, we have gone through the impugned judgment and order.

6. Case of the prosecution is that death of the deceased is homicidal. To prove the same, it has mainly relied upon the evidence of Dr. Chavan (PW-7), postmortem report (Exh.32). The evidence of Dr. Chavan shows that on 08.03.1997 he conducted postmortem examination on the dead body of Kerba between 04.15 pm to 05.15 pm and on examination he found CLW in front of neck encircling 4" x 2" vertebral deep vital structure of neck i.e. wind pipe trachea esophagus an important vital vessel they are cut sipping out of the wound. According to him above injuries were ante-mortem. In his opinion cause of death was cardio respiratory failure due to injury to vital structures in neck and he issued postmortem report (Exh.32) which bears signature and signature of Dr. Rathod. In the cross-examination of Doctor nothing is found in favour of the accused except the fact that the body was in advance stage of decomposition and some of

the parts of the body were found missing. It has come on record in the evidence of Investigating Officer PSI Oval (PW-6) as well as in the evidence of PW-1 Panch Laxman that dead body of the deceased was excumed. This itself shows that death was caused and dead body was buried. Thus, it is obvious that death of the deceased was unnatural. Considering the above evidence, we hold that the prosecution has proved that death of the deceased was homicidal. The trial Court has rightly held so. No fault can be found with the said findings of the trial Court.

7. Now it is to be seen whether the accused is responsible for death of the deceased. To prove the same, the prosecution has relied upon the evidence of Pws.2 to 4, panchnamas of spot of incident (Exh.23) and excavation (Exh.24). There is no direct evidence to show that the accused caused death of the deceased and case is based on circumstantial evidence.

8. Mangal Holkar (PW-2) daughter of accused and the deceased who was studying in 8th Std. at the time of incident has deposed that the incident occurred before 4-5 years. She came to know about the incident from the persons from their locality that her mother gave a blow of varvanta (stone) on the head of her father due to which her father died. She has deposed that dead body of

her father was found in their house. In the cross-examination on behalf of APP she stated that there were always quarrel between her father and mother as her father was addicted to liquor and he was suspecting character of her mother the accused. She deposed that her maternal aunt Mandabai (PW-3) and people from their locality told her that her mother assaulted her father the deceased with Pata (stone). She has denied portion marked-A her statement before police that the accused assaulted her father with Pata (stone) and killed him. Said portion marked is of course proved by the Investigating Officer PSI Oval. But as PW-2 has denied truth of the said portion marked Exh.27, it is of no help to the prosecution to state that the accused killed her husband the deceased on assaulting him with Pata (stone). Thus, the evidence of PW-2 is of no help to the prosecution to state that the accused caused death of the deceased. On the basis of her evidence at the most it can be said that there used to be quarrel between accused and the deceased as the deceased was consuming liquor and suspecting character of the accused.

9. Mandabai (PW-3) who is sister of the accused has also not supported the prosecution case as she has denied portion marked Exh.28 & 29 respectively that the deceased was suspecting character of the accused and on that count

he was beating the accused, and that the accused had come to her house and told her that the deceased her husband had gone somewhere and locked the house. Of course this portion marked are proved by the Investigating Officer. But, as PW-3 has denied truth of both these portion marked they are of no help to the prosecution to state that the deceased was suspecting character of the accused and on that count he was beating her and that the accused had come to house of this witness and told her that her husband had gone somewhere and locked the house. Therefore, the evidence of PW-3 is of no assistance to the prosecution.

10. Budha Saundane (PW-4) has not supported the prosecution case as he has denied portion marked Exh.30 in his statement before police that there was always quarrel between accused and the deceased. Said portion marked is proved by the Investigating Officer. But, as PW-4 has denied truth of the said portion marked, it is of no help to the prosecution to state that there was always quarrel between the accused and the deceased. Thus, on the basis of evidence of PW-2 an inference can be drawn that there were always quarrel between deceased and his wife the accused as he was consuming liquor and suspecting character of the accused and it can be inferred that the accused had motive to commit the

offence.

11. Now coming to the circumstantial evidence i.e. Exh.23 panchanama of spot of incident and Exh.24 Panchanama of excavation which were prepared by PSI Oval (PW-6) in presence of Panchas Navnath Kardile (PW-5) and Dilip Sangale, PW-5 has stated that he was called by police in Sutar Lane at Kada and one dead body was kept and police asked him to sign on one panchanama. According to him the dead body was of the deceased Kerba. He has denied that accused had shown the said place in presence of panchas. So also, he has denied that police seized articles i.e. one pick axe (Tikav), one spade and one stone (pata) from the said place in his presence under said panchanama. Thus, his evidence is of no help to the prosecution. To prove that place where the dead body was buried was showed by the accused in presence of this witness, prosecution has not examined another Panch Dilip Sangale. Investigating Officer (PW-6) has stated that on 08.03.1997 he visited the place alongwith Tahasildar Rathod. He called two panchas and excavated that place and took out a dead body. He drew panchanama. So also, he prepared panchanama of spot of incident (Exh.23). Similarly, panchanama of excavation (Exh.24) was also prepared. He stated that he seized one pick axe, one spade and pata under panchanama (Exh.23). Prosecution has

not examined Dilip Sangale another panch of Panchnama of excavation. Therefore, uncorroborated evidence of Investigating Officer is not sufficient to infer that accused had shown place of incident i.e. place where the dead body was buried and then police seized the articles. Therefore, circumstances in respect of seizure of above said articles and finding of place of incident at the instance of accused are not proved by the prosecution. Thus, panchanama of spot of incident (Exh.23) and panchanama of excavation (Exh.24) are of no help to the prosecution case to connect the accused with the death of the deceased.

12. The prosecution alleged that dead body was found buried in dilapidated house of accused and therefore accused is responsible for death of the deceased. It has come in the evidence of PW-4 that the police have come in the dilapidated house. The wall of two sides of the said house were dilapidated and it was open space. He stated that he does not know if besides accused and the deceased other persons were residing in that wada. So also, he has stated that he does not know where accused and her husband were residing in that Wada. Thus, it is seen from the evidence of this witness that dead body was buried in dilapidated house/wada and it appears that it was not suitable place to reside. Therefore, it cannot be said

that in the said dilapidated house the accused was residing with her husband at the time of incident, so as to say that the deceased was in her custody in said house. Moreover, there is no material to show that the said entire dilapidated house/Wada or its portion is belonging to the deceased and accused.

13. For all the reasons discussed above, oral evidence of Pws.2 to 4 and the circumstantial evidence i.e. the panchanama of spot of incident and panchanama of excavation are not sufficient to infer that the accused is responsible for death of the deceased. Therefore, we hold that the prosecution has failed to prove that the accused caused death of the deceased. The trial Court has rightly held so. As the prosecution has failed to prove offence of murder against accused it can not be said that she had buried dead body to cause disappearance of evidence to screen herself from the legal punishment of offence of murder. Needless to state that there is no evidence to show that accused buried the dead body. Thus, prosecution has failed to prove offence under Section 201 of the IPC. Therefore, we hold that the trial Court has rightly acquitted the accused of the offence under Sections 302 and 201 of the IPC. The said view taken by the trial Court is a reasonably possible view. It is not the case that there is an error in appreciating the

evidence by the trial Court. Therefore, we do not find any reason to interfere with the impugned judgment and order acquitting accused of the above said offences. As such, we hold that the appeal being devoid of merits, the same is liable to be dismissed. Accordingly we dismiss the appeal. The bail bond of the accused, if any, shall stands cancelled.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]