

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 550 OF 2001

The State of Maharashtra
Through PSO Police Station
Palam, Dist. Parbhani

**....Appellant.
(Ori. Complainant)**

Versus

Manohar Rashmaji Bochra,
Age 28 years, Occu. Private Service,
R/o. Ranisawargaon, Tq. Gangakhed,
Dist. Parbhani

**....Respondent.
(Ori. Accused No. 1)**

Mr. S.J. Salgare, APP for appellant/State.

Mr. N.S. Ghanekar, Advocate for respondent.

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

RESERVED ON : September 07, 2017.
PRONOUNCED ON : September 13, 2017.

JUDGMENT : [PER T.V. NALAWADE,J.]

. The appeal is filed against judgment and order of Sessions Case No.46/2001, which was pending in the Court of 2nd Additional Sessions Judge, Parbhani. The respondent and two other accused were tried for the offences punishable under sections 302, 201 r/w. 34 of Indian Penal Code ('IPC' for short). All the accused are acquitted by the Trial Court. The State has filed appeal only against present respondent/accused No. 1, who is the husband of the deceased. Both the sides are heard.

2) Deceased Sheetal alias Anjana was daughter of first informant Piraji (PW 3). Piraji is resident of Borgaon, Tahsil Fulambri, District Aurangabad. She was given in marriage to present respondent/accused No. 1 on 19.4.2000. Accused is resident of Ranisavargaon, Tahsil Gangakhed, District Parbhani. Accused was working as Supervisor in the Government Project, Human Development Project and he was posted at Ranisavargaon. After the marriage, Sheetal cohabited with respondent at Ranisavargaon in the house of prosecution witness Dashrath Hake (PW 7). The incident took place in this matrimonial house.

3) It is the case of prosecution that accused used to avoid to send Sheetal to parents' house under false pretexts. It is the case of prosecution that accused wanted to see that the deceased does not get an opportunity to have free talk with her parents or brother. It is the contention of the State, prosecution that ultimately on one day, when accused came with deceased on the day of Panchami to the house of parents of the deceased and he was there for about one hour, the deceased disclosed that respondent/accused had illicit relations with a woman who was working with him in aforesaid office. She disclosed that on that count there was illtreatment given to her by the husband and his mother. The mother of the husband

was also living in the same house and the said woman was living in the vicinity of the place of resident of respondent/accused No. 1. She had expressed that there was danger to her life as when she had raised grievance about the relationship, threats of life were given to her and she was warned to keep mum. Piraji made inquiry with respondent/husband after learning about the aforesaid things. The husband gave evasive answers by saying that Sheetal was taking the suspicion unnecessarily and he had no such illicit relations.

4) Few days prior to to the date of incident, when Piraji visited the house of respondent, on that occasion also the deceased made similar disclosure. The incident in question took place on 7.9.2000 and the news about the incident was given by another son in law of Piraji. It was informed that Sheetal had died due to burn injuries.

5) On 7.9.2000 the neighbours of respondent noticed that smoke was coming out through ventilator, door and windows situated on the side of public road. They broke open the door from outside as the door was found to be closed from inside by putting on latch. After entering the kitchen, they noticed that Sheetal was already dead. The mother of husband viz. accused No. 3 was

present when the neighbours gathered and after seeing the dead body, she informed that due to bursting of stove, the clothes caught fired and incident took place. After some time, the husband also arrived to the spot. He used to leave house for work in the morning. He saw the dead body and then he gave A.D. report that Sheetal died due to burn injuries and the incident had taken place probably due to bursting of kerosene wick stove.

6) The A.D. was registered on the basis of report given by the husband and dead body was referred for P.M. examination. On 7.9.2000 itself P.M. was conducted on the dead body. Doctor gave opinion that the death had taken place due to throttling and burn injuries were post-mortem in nature. The parents of deceased reached the matrimonial house subsequent to conducting of P.M. Piraji gave report on 8.9.2000 and the crime came to be registered at about 3.15 hours for the offences punishable under sections 302 and 201 r/w. 34 of IPC. He had taken the names of husband, his mother and aforesaid woman with whom the husband had illicit relations.

7) On 8.9.2000 the spot panchanama was prepared and the articles like kerosene wick stove etc. were taken over. The respondent/accused came to be arrested. During the course of

investigation, he gave statement about the use of kerosene by him for setting fire to dead body and on the basis of statement given under section 27 of the Evidence Act, can of kerosene which was kept on wall of the kitchen came to be recovered and seized. The clothes of the husband were taken over as there was smell of kerosene to his clothes.

8) During the course of investigation, statements of some neighbours who include the persons who had broke open the door to enter the house came to be recorded. The statement of Dashrath Hake (PW 7), the landlord of respondent came to be recorded. The articles taken over were sent to C.A. Office. Kerosene was detected on the clothes of the husband and also in the can recovered on the basis of statement given under section 27 of the Evidence Act. Chargesheet came to be filed against aforesaid three persons for aforesaid offences. Charge was framed. The accused pleaded not guilty. They took the defence of total denial. The prosecution examined in all ten witnesses to prove the offences. The statements of accused under section 313 of Criminal Procedure Code ('Cr.P.C.' for short) came to be recorded. No defence evidence is given. The Trial Court has acquitted the accused persons by holding that prosecution has failed to prove convincingly that it is homicidal death. It is also held that the chain of circumstances is not complete

for basing the conviction.

9) In view of the nature of case of prosecution and the evidence given before the Trial Court, it is certain that if the prosecution is able to prove that it is homicidal death, then only the other circumstances, if they are established satisfactorily, can be considered. The charge was framed only for the offence of murder and for the offence of destroying the evidence of murder. There was no charge for offence punishable under section 306 of IPC. In view of these circumstances, this Court is considering and appreciating the evidence given on homicidal death first.

10) To prove homicidal death, the prosecution has mainly relied on medical evidence. Dr. Kalidas Niras (PW 1) conducted P.M. examination on the dead body of Sheetal on 7.9.2000 between 2.15 p.m. and 3.15 p.m. He found burn injuries over the dead body which were surface wounds. On opening of neck, he found fracture of hyoid bone and fracture of trachea rings. He found that carnio of hyoid bone were displaced inwards. He found that lungs were congested and pericardium was intact. He found that right cavity of heart was filled with blood and left cavity was empty. He found that there was no soot in trachea. He found that there was no line of redness around the burn injuries and there was no blister formation.

11) On the basis of aforesaid things noticed by him Dr. Kalidas (PW 1) has given opinion in evidence that the burn injuries were post-mortem in nature. He has given specific reasons for his opinion like absence of line of redness, absence of blister formation and absence of soot in trachea. He has given other reason like internal injuries found inside of neck which are quoted above. No probability is created that such internal injuries could have been caused during the incident of fire or after the death. On the basis of aforesaid circumstances, doctor has given specific opinion in evidence that the death took place due to throttling. In the evidence of doctor, P.M. report is proved as Exh. 27 and it is consistent with substantive evidence of doctor.

12) Dr. Kalidas is cross examined by the defence at length. The cross examination is also on the possibility of strangulation. The evidence of doctor shows that there were burn injuries over the neck and he could not notice other surface wounds over the neck due to burn injuries. However, doctor is certain due to aforesaid things noticed by him and particularly internal injuries of the neck that it is the case of throttling and not of strangulation. Not a single circumstance is brought on the record to show that there was possibility of strangulation. It can be said that the defence was

indirectly suggesting the possibility of hanging by showing that there was possibility of existence of ligature mark.

13) In the cross examination of Dr. Kalidas (PW 1), it is put to him that in P.M. report he has not mentioned whether injuries mentioned in column No. 20 of P.M. report, the injuries found inside of the neck were anti-mortem or post-mortem. It is already observed that doctor could not see the corresponding surface wound over the neck. However, the opinion of the doctor is based on the injuries found not only inside of the neck, but other corresponding things found by him which are already quoted. In view of these circumstances, it needs to be presumed that doctor had indirectly mentioned in the P.M. report that the injuries like fracture to hyoid bone were anti-mortem in nature. So many suggestions were given to the doctor which were hypothetical in nature and even answers were recorded on those questions by the Trial Court.

14) In the cross examination of Dr. Kalidas (PW 1), it is suggested to him that line of redness around the burn injuries may be absent if a person of weak constitution dies immediately due to shock due to burn injuries. Doctor has admitted such possibility. But in the present matter the deceased was aged about 20 years and the P.M. report at Exh. 27 shows that the body was nourished. Doctor

was not cross examined on this point and so, this point is not that relevant in the present matter.

15) In the cross examination of Dr. Kalidas (PW 1), it is suggested to him on the basis of opinion given by Dr. Modi in 21st Edition at Page No. 237 that "it is not possible to establish either by naked eyes or pathological examination whether burn occurred shortly before death or soon after the death". Dr. Kalidas (PW 1) has agreed to this suggestion. Dr. Kalidas has admitted further suggestion that the burn produced by flames may or may not produce blisters. He has also admitted that to distinguish between anti-mortem and post-mortem burn injuries, complete necropsies needs to be performed. Though these admissions are there, on the basis of these circumstances, no further suggestion was given that inference can be drawn that the burn injuries were anti-mortem in nature. Doctor remained firm with the opinion given that the death took place due to throttling. Doctor who conducts P.M. examination is expected to consider all the symptoms and things noticed by him on the dead body and on that basis he is expected to give opinion regarding cause of death. These circumstances need to be considered cumulatively and not in isolation. In view of these circumstances and other circumstances which this Court is discussing hereinafter, there was no reason for the Trial Court to

discard the opinion given by the doctor that the death took place due to throttling and burn injuries were post-mortem in nature. This Court has no hesitation to hold that the Trial Court has committed grave error in not accepting the opinion given by the doctor regarding the cause of death.

16) The P.M. report at Exh. 27 shows that doctor noticed 100 M.L. of liquid in stomach, but no solid food material was found in stomach. In the cross examination, Dr. Kalidas (PW 1) admitted as "I cannot give exact period when the death occurred from last meal". It needs to be mentioned that no substantive evidence was brought on the record by the prosecution on this point even when opinion was written in P.M. report in column No. 21 by doctor on such period. The noting of the doctor regarding contents of the stomach that only liquid was found and no food material was found in the stomach can be considered in the present matter against the accused indicating that on the morning the deceased had not taken solid food. This circumstance is material as according to the accused he used to leave the house for work in the morning and he used to go to other station to discharge his duty. In view of such defence, in ordinary course, the accused would have taken tiffin or would have taken breakfast in his house along with his wife and mother in routine course and even on the day of incident. This did not happen on that

day.

17) The inquest panchanama at Exh. 53 is admitted by defence. It shows that the dead body was facing towards the floor of the kitchen and it was not facing towards the sky, roof of the room. There was no blouse on the dead body. But, there was petticoat which was in burnt condition. There were no burn injuries noticed by panchas on both the feet.

18) In column No. 17 of P.M. report, Exh. 27 areas over which burn injuries were absent are specifically described as "areas spared by burns are around the waist below umbilicus, genitals, medial sides of both thighs and both lower legs below knee". This circumstance is consistent with opinion of doctor (PW 1).

19) The spot panchanama at Exh. 36 is proved in the evidence of panch witness Jadhav (PW 5). The Investigating Officer has also given evidence on spot panchanama. The tenor of oral evidence of these two witness and other oral evidence show that respondent/accused No. 1 was living there as tenant of Dashrath Hake (PW 7). The premises taken on rent basis consisted of one kitchen room and one living room. The incident of fire took place in kitchen portion and kitchen portion was separated by wall having

door between kitchen room and living room. On the western side of the kitchen, there is a public road which is north-south in direction and the western wall of kitchen had door opening towards the road on western side. This door used to remain in closed condition and the latch and lock were put on it from the inside. On that day also, it was in closed condition from inside. The panchas noticed that force was used to open this door and due to that latch was broken and one lock was hanging at the latch. The Trial Court has given much importance to this circumstance for giving the findings in favour of the defence. The Trial Court has almost ignored the other circumstances appearing in the evidence of the witnesses and also the evidence on spot panchanama.

20) The evidence on spot panchanama and other oral evidence shows that the kitchen was of the size of 8 ft. x 11.6 ft. Though the dead body was not there when the spot panchanama was prepared, the inquest panchanama at Exh. 33 which is admitted document shows that the head of the dead body was towards north and legs were towards south. The dead body was lying more towards western side. The evidence shows that on north corner near western wall there was earthen pot containing water. On eastern side of the earthen pot, there was table and on that there were some articles. The distance between the earthen pot and the table

was around 4 ft. At the distance of 4 ft. from this table there was head of the dead body and when spot panchanama was drawn, there was still some blood which had come out from the mouth etc. Kerosene wick stove, not of air pressure was near the eastern wall of the kitchen. There was 50 M.L. kerosene in the wick stove. There was no sign showing that the fire had started due to the flames of stove and there was nothing of that sort on the stove itself. The side cover of the stove and top cover of the stove were found to be kept separately. Here only it needs to be mentioned that no evidence is brought on the record by the defence to show that anybody had seen that the kerosene wick stove was in burning condition.

21) All valuable articles were found on or near southern wall and neither the heat of the fire nor the fire had reached these articles. There were two steel tanks containing water in the kitchen and there was also plastic bucket in the kitchen and all these articles were found filled with water showing that no water from the kitchen was used for extinguishing the fire. These circumstances also need to be kept in mind as the evidence of the witnesses saying that they entered the kitchen to extinguish the fire and they used water from the kitchen needs to be appreciated in the background of these circumstances.

22) The spot panchanama at Exh. 36 further shows that in the eastern wall of kitchen, there was door opening towards living room cum hall cum bed room. This room was having size of 8.6 ft. x 11.6 ft. There was no sign of burning in this room. In this room, there was a door in southern wall, opening towards the courtyard of Wada. After the courtyard of Wada, there were rooms of tin sheets of one Sheetal Bochare and after climbing some steps, there was the first floor, having one room which was occupied by landlord Dashrath Hake (PW 7). These circumstances show that the space occupied by accused had access from inside portion to Wada and the access towards the road on western side used to remain in closed condition and it was done by putting latch and lock from inside to that door. It can be said that the entrance door of the space which was in use was not in closed condition, but the persons gathered on western side, on public road, after seeing the smoke broke open the door from that side which was not in use of the family of accused.

23) The evidence given by the prosecution witnesses shows that the neighbours rushed to the house of accused as smoke was coming through ventilators towards western side, towards road side. The evidence of the witnesses does not show that anybody had heard shouting or crying of the deceased.

24) The circumstances mentioned in the spot panchanama which are already quoted and also the inquest panchanam do not show that any attempt was made by the deceased to save herself, if her clothes had really caught fire due to any reason when and if she was alive. If she was alive when fire started, in ordinary course, she would have raised shouts and she would have run here and there, she would have tried to come out of that room and she would have tried to use the water from the kitchen. But these things did not happen. The description given in the spot panchanama and other circumstances quoted do not show that she had run from place to place even in the kitchen.

25) The aforesaid circumstances show that only the entrance door on eastern side of the space in possession of accused was in use and from there, the family members of accused were having access. From the nature of evidence given by the landlord Dashrath Hake (PW 7), it can be said that it was not possible for strangers to enter this space without getting noticed from the persons of that side. These circumstances show that there was opportunity only to the persons living in that space, two rooms, to set fire and then escape from eastern side by using the door for access available in the hall.

26) The oral evidence of the witnesses needs to be appreciated by keeping in mind the aforesaid circumstances. Witness may lie, but the circumstances never lie. In case like present one, the veracity of the witnesses needs to be tested on the basis of such circumstances. Even if the witnesses are not confronted with such circumstances to test them, such circumstances can be used to ascertain the truth and that job needs to be done by the Court.

27) Piraji (PW 3), father of the deceased has given evidence on motive. The deceased was given in marriage to present respondent/husband on 19.4.2000. The death took place within five months of the date of marriage. Piraji (PW 3) has deposed that on one occasion, the deceased and the accused had visited his house and by using that opportunity, the deceased had disclosed that accused had extra marital affair with a woman who was working in his office. He has deposed that he had made inquiry with the accused about it on that occasion, but the accused had said that the deceased was unnecessarily taking suspicion against him. Piraji (PW 3) has deposed that few days prior to the date of incident when he had visited the house of accused, on that occasion also similar disclosure was made by the deceased and she had further expressed that she was feeling danger to her life due to relationship of the accused with the said woman and that danger was from the

accused.

28) In the examination in chief itself Piraji (PW 3) has admitted that when he learnt from others, after conducting P.M. examination on the dead body that it is a case of murder, he gave report. Some contradictions with regard to the time of disclosures made by the deceased about the illtreatment are brought on the record by the defence in the cross examination. But the evidence on aforesaid motive remained unshattered. There is corroboration of F.I.R. to the substantive evidence. Specific allegations are there and the name of woman is also given and so, it does not look probable that the grievance of the deceased was imaginary and Piraji had no knowledge about this circumstance. Police made investigation on the basis of these allegations and case was filed against the said woman also. Due to the absence of convincing material against that accused, she got acquittal. The evidence of the witnesses show that the said woman was working in the office where the accused/ husband was working. It can be said that the witnesses including Dashrath Hake (PW 7) turned hostile and so, the evidence on motive could not be given through such witnesses. In any case, even when the case rests only on circumstantial evidence, the other evidence cannot be thrown away due to absence of evidence on motive. Motive is relevant in such cases, but due to absence of motive,

acquittal cannot be given if there is other admissible evidence which is sufficient to prove that the accused committed the offence.

29) Dashrath Hake (PW 7), the landlord has turned hostile, he has resiled from the version given before the police. He was expected to give evidence on the presence of accused at the spot at the relevant time and also on the presence of accused No. 2, the aforesaid woman on the spot at the relevant time. Only this witness could have given evidence on such presence. The evidence of spot panchanama already discussed shows that Dashrath Hake (PW 7) has avoided to tell the truth. Accused/respondent was occupying the two rooms having R.C.C. construction and the landlord was living in comparatively ordinary room. It can be said that the landlord helped the tenant in the present matter. However, the evidence of Dashrath Hake also does not show that he heard shouting of the deceased. His evidence shows that he heard shouting of his wife, who felt the smoke coming out of the room which was in possession of respondent/accused. He has given evidence that after hearing that shouting he returned from road and he entered the kitchen, but at that time there was no fire in the kitchen and Sheetal was dead.

30) Prakash (PW 8) lives at the distance of 200 ft. from the house of respondent/husband. He has deposed that on that day, he

learnt from his wife that smoke was coming from the rooms of the accused and so, he went to the spot. He has deposed that already many persons of that locality had gathered there, but he was the person who used force and broke open the door of kitchen situated on the road side. He has given evidence that he used water which was present in the barrels from the kitchen and he used some water from outside. The circumstances mentioned in the spot panchanama show that no water from kitchen was used for extinguishing the fire and it can be said that this witness has also to some extent tried to save the accused. In the cross examination, he has admitted that on that day in the morning he had seen the accused leaving for job. On this part of evidence Prakash (PW 8) cannot be believed.

31) The evidence of Prakash (PW 8) shows that when he entered the kitchen, Sheetal was not alive. It can at the most be said that there was fire only on the dead body, but the clothes had burnt to much extent and other articles from kitchen had not caught fire and there was not much work left for the persons who entered the kitchen after seeing the smoke.

32) Kishan Kamble (PW 10) is the Secretary of the office where respondent/husband was working. He has deposed that accused No. 1/present respondent and Dnyanoba Munde (husband

of accused No. 2) had come to his house to report that they had come for reporting on the duty on that day at about 7.30 a.m. to 7.45 p.m. He has given evidence that a motorcycle was supplied by him. He has deposed that accused No. 2 had also come to him and she had informed that on that day she was attending the meeting of ladies of village Balewadi. He has given evidence that when these accused left, he learnt that there was fire in the house of accused and so, he went there. His evidence shows that the distance between his place and the place of accused is hardly half furlong.

33) Kulkarni (PW 9), Investigating Officer has also given evidence on the distance between the place where the accused was expected to go and the place of offence which was five kilometers. The evidence of Kamble (PW 10) shows that accused arrived to spot after some time of his reaching to the spot.

34) Respondent/accused gave A.D. report at Exh. 29 on 7.9.2000. The time of recording A.D. report is mentioned as 14.05 hours. The P.M. examination on the dead body was started at 2.15 p.m. on that day and the incident of fire had started at about 9.00 a.m. on the same day. The A.D. report is proved in the evidence of Tukaram (PW 2), Police Head Constable. It is brought on the record in the cross examination of this witness that the report was given by

the accused at 10.00 a.m. The contents of the report show that accused No. 1 had informed that he had left for village Ghatangra at 8.00 a.m. on that day and he had returned after learning about the incident. He gave the name of different person who was in his company and not the name of Munde, husband of accused No. 2. Here only it needs to be mentioned that nobody from village Ghatangra is examined by the prosecution and the accused.

35) Kishan Kamble (PW 10), Superior Officer of the accused has given evidence that accused was expected to start work at village Ghatangra at 10.00 a.m. on that day. In the evidence of Kulkarni, Investigating Officer (PW 9), the defence has brought on record that the distance between Ghatangra and the place of offence is around 5 k.m. Accused had a motorcycle. All these circumstances need to be kept in mind while considering the defence of the accused that he was at Ghatangra at the relevant time, time of starting fire, at about 9.00 a.m. on that day and he was not present at village Ranisavargaon.

36) It is true that initial burden shown in section 101 and 102 of the Evidence Act to prove the case is on the prosecution. These provisions need to be read with the provisions made to take care of peculiar circumstances like one mentioned in section 106 of

the Evidence Act. In cases like present one, the initial burden is on the prosecution to show that it is a case of murder and in view of the circumstances of the case, the accused had the opportunity to commit the offence. As soon as such case is made out by the prosecution, the burden shifts and it becomes necessary for the accused to explain the things as required in section 106 of the Evidence Act. If he fails to explain the circumstances, the inference as available under section 114 of the Evidence Act can be safely drawn against him.

37) In the present matter, the evidence given by the prosecution shows that present respondent/accused No.1, his mother/accused No. 3 and the deceased were living in these rooms. The evidence of prosecution witnesses shows that when persons gathered, they saw accused No. 3 and inquiry was also made with accused No. 3. However, when the persons were breaking open the door, accused No. 3 was not seen there, towards that side. Thus, it can be said that even when accused No. 3 was living in the same rooms with the deceased, she had no reason to leave that place at that time, she did not raise hue and cry. She became available to narrate the incident when people gathered there and broke open the door. In view of these circumstances, mother of accused/accused No. 3 was implicated and the provision of section 201 of IPC was

used against her. Due to all these circumstances, it needs to be presumed that accused Nos. 1 and 3 had opportunity to murder Sheetal and to set fire to dead body.

38) Prosecution has examined Ramkishan Niras (PW 6), panch witness to prove the panchanama of seizure of clothes of accused No. 1/husband. He has not supported the prosecution. He has deposed that police had shown him clothes like pant and shirt and his signature was obtained on that panchanama which is at Exh. 38. He has avoided to say that these were the clothes taken over from the person of the accused. So, he was cross examined by learned APP with the permission of the Court. Kulkarni, Investigating Officer (PW 9) has given evidence on seizure of clothes of accused on 8.9.2000 at about 4.30 a.m. He has given evidence that he had sent these clothes to C.A. Office. C.A. report at Exh. 50 shows that kerosene was detected on the clothes of respondent/accused. Some cross examination is made of the Investigating Officer to create probability that the articles were not properly closed and sealed.

39) Niras (PW 6), panch witness was expected to give evidence on the statement given by accused under section 27 of the Evidence Act. It is the case of prosecution that on the basis of this statement, can of kerosene was recovered from the aforesaid

kitchen and it was seized by police. Niras turned hostile and so, the seizure panchanama is proved in the evidence of Kulkarni (PW 9). C.A. report shows that kerosene was detected in this can.

40) Discovery of can of kerosene is shown to be made on 14.9.2000. The spot panchanama was prepared on 8.9.2000. As the spot panchanama was already prepared of the same room and description of articles was expected to be given in the spot panchanama, it cannot be believed that police had not made an attempt to see and recover the kerosene can on 8.9.2000. Due to these circumstances and as there is evidence of Kulkarni (PW 9), Investigating Officer only on the aforesaid circumstances, this Court holds that these two circumstances cannot be used against the accused. Further, it is always open to the accused to say that the dead body was shifted by him and police from the room on 7.9.2000.

41) The learned Additional Sessions Judge has not given clear finding on the cause of death and nature of death. It can be said that indirectly the learned Additional Sessions Judge has tried to observe that there is possibility of accidental death. The learned Additional Sessions Judge has refused to place reliance on the evidence of doctor that the burn injuries were post-mortem in

nature. The circumstance that the spot panchanama was prepared on 8th, next day of incident is also considered by the Trial Court against the prosecution. The evidence on the record shows that the stove taken over on the spot was in working condition and there was no damage caused to the stove. But due to circumstance that panchanama was prepared on 8th, the Trial Court has not believed that part of evidence. Due to some admissions given by the witnesses, but not by the father of deceased, the Trial Court has held that prosecution has failed to prove motive. The Trial Court has further held that accused had no opportunity as aforesaid door was required to be broken for entering the kitchen. It is already observed that the Trial Court has not considered the circumstance that the rooms had access from other side, eastern side and not from western side.

42) The discussion of the evidence made by the Trial Court and the reasoning given show that the evidence as a whole is not considered by the Trial Court. At the time of appreciation of evidence, the aforesaid provisions of the Evidence Act were not kept in mind by the Trial Court. When the provisions of sections 106 and 114 of the Evidence Act are available and the accused wants to make out the case that he was present at other place, the burden was on him, though of different nature, to create such probability as

provided in section 11 read with sections 103 and 106 of the Evidence Act. This position of law was also not in the mind of the Trial Court when the Trial Court considered the case of defence which was of *alibi*. Thus, the Trial Court has committed grave error in not properly appreciating the evidence. The most important circumstance viz. homicidal death is proved by the prosecution and the Trial Court has committed grave error in holding indirectly that homicidal death is not proved. It can be said that much importance is given by the Trial Court to some admissions which are already quoted and which are given in cross examination by Dr. Kalidas (PW 1). In spite of those admissions, the fact remains that the doctor stuck up to the opinion and there are convincing reasons for giving the opinion of homicide. Thus, the medical evidence as a whole is also not considered and appreciated by the Trial Court.

43) This Court has quoted the medical evidence of prosecution and also the other evidence which establishes the circumstances corroborating homicidal death. As homicidal death is proved, that circumstance needs to be kept in mind as a background for appreciating the other evidence and also the probability suggested by the accused.

44) The learned counsel for the accused placed reliance on

some observations made by this Court in the decision given in **Criminal Appeal No. 437/2011 [Ramdeo Pannalal Kodel Vs. The State of Maharashtra]** decided with connected appeals on 14.8.2015 and also the observations made by the Apex Court in the case reported as **2009 ALL MR (Cri) 2118 (S.C.) [Subramaniam Vs. State of Tamil Nadu and Anr.]**. On the other hand, the learned APP placed reliance on some observations made in the case reported as **AIR 2002 SC 1961 [Mandhari Vs. State of Chattisgarh]**. The facts and circumstances of each and every criminal case are always different. The relevant facts and provisions of law are already quoted and discussed by this Court. The observations made in the aforesaid cases cannot be squarely applied in the present matter though there cannot be dispute over the propositions of law mentioned in these cases.

45) In the present matter, following important circumstances are established by the prosecution. They are relevant in view of provisions of sections 7, 8 and 106 of Evidence Act.

(i) The accused/husband of deceased and deceased were living together in the rooms where the incident took place.

(ii) Sheetal, wife of respondent/accused died homicidal death and the incident took place in these rooms.

(iii) By setting fire to the dead body, attempt was made to destroy the evidence of murder in these rooms. If outsider had committed the murder, there was no reason for outsider to create show that the death had taken place due to fire.

(iv) The outsider could not have entered or left the kitchen where the incident took place without getting noticed by the inmates of house like by accused Nos. 1 and 3 and also to some extent by the landlord Hake (PW 7). Thus, involvement of the outsider is ruled out.

(v) The deceased was aged about 20 years and she was healthy, well nourished. The death took place due to throttling which requires use of physical power. Accused No. 3, mother of present respondent was aged about 65 years at the relevant time and for throttling, only one person is expected and sufficient to use force at neck. Thus, it was an act of a male. Respondent/accused was aged about 28 years at the relevant time and so, out of accused Nos. 1 and 3, only accused No.1/present respondent could have done the said act. Thus, the manner in which the offence was committed points finger to accused No. 1 and not to accused No. 3. Accused No. 2 was not living there and so, these circumstances cannot be

used against accused No. 2.

(vi) The absence of solid food in stomach is also a circumstance leading to inference that the deceased had no opportunity to take food on that day. This again strengthens the circumstance of opportunity against respondent/accused.

(vii) Except injuries mentioned above of use of force, no other injuries were found on the dead body and it shows that there was no opportunity to the deceased to resist and could not shout for help. This again creates a circumstance against respondent/accused by creating probability that the act was started when the deceased was sleeping.

(viii) The accused gave false information by giving report to police that fire started probably due to bursting of kerosene stove and it is accidental death.

46) As the aforesaid circumstances are established, the burden had shifted to the accused as provided in section 106 of Evidence Act. The accused tried to use few admissions given by his neighbours in his favour which are already discussed. But, these admissions are not explaining the aforesaid circumstances. In view of the aforesaid circumstances, it was necessary for accused to

create a clear probability that it was not possible for him to remain present in the house at the relevant time, means at the time of offence of murder and not at the time of setting fire to the dead body. Such burden is not discharged. On the other hand, he gave A.D. report to supply false information that there was bursting of stove and it was accidental fire. It can be said that police did not act efficiently or competently and did not prepare the spot panchanama on 7th itself. Benefit of that circumstance cannot be given to the accused. Father of the deceased gave report after reaching Ranisavargaon and when the P.M. was already conducted. Some evidence is brought on the record about the financial condition of the accused and it shows that it was good. These circumstances need to be kept in mind while considering the circumstance that the spot panchanama was prepared on 8th and not on 7th. In any case, father of the deceased had no opportunity to manipulate the things and there is nothing on the record to show that he had influence of any kind. This Court has already discussed the contents of spot panchanama and from that also, it is not possible to interfere that the fire had started due to bursting of the stove. In any case, when it is homicidal death caused by throttling, not much can be made out due to circumstances of preparing spot panchanama late.

47) The discussion made above shows that for the offence of

murder and for the offence of destroying the evidence of murder, the circumstances point finger only to accused No. 1 as culprit. Thus, the Trial Court has committed grave error in acquitting the accused/respondent, husband of the deceased. This Court holds that respondent/accused needs to be convicted and sentenced for offences punishable under sections 302 and 201 of IPC. As there are aforesaid circumstances, this Court holds that life imprisonment is just and proper sentence in the present matter and due to that there is no need to give hearing to the accused on the point of sentence. This Court is giving minimum penalty. In the result, following order :-

ORDER

- (I) The appeal is allowed.
- (II) The judgment and order of the Trial Court giving acquittal to respondent/accused - Manohar Rashmaji Bochra for the offences punishable under sections 302 and 201 of IPC is hereby set aside.
- (III) Respondent/accused- Manohar Rashmaji Bochra stands convicted for the offence of murder of Sheetal Manohar Bochra punishable under section 302 of IPC and he is sentenced to suffer life imprisonment and to pay fine of Rs.1,000/- (Rupees one thousand). In default of payment of fine, he is to further undergo rigorous

imprisonment for one month.

(IV) Respondent/accused- Manohar Rashmaji Bochra stands convicted for destroying the evidence of murder of Sheetal Manohar Bochra punishable under section 201 of IPC and he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- (Rupees five hundred). In default of payment of fine, he is to further undergo rigorous imprisonment for fifteen days.

(V) Both the substantive sentences are to run concurrently.

(VI) Respondent/accused is entitled to set off in respect of the period for which he was behind bars in this crime. This period is to be mentioned by the office in the warrant which is to be sent to the Jail authority.

(VII) Respondent/accused is to surrender to his bail bonds for undergoing the sentence.

(VIII) Copy of this judgment is to be given to the accused free of cost.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]