

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

CRIMINAL APPEAL NO. 247 OF 2002

The State of Maharashtra .. Appellant

Versus

Sahebrao s/o. Baburao Jogdand .. Respondent
Age. 38 years, Occ. Labour, [original
R/o. Gitta, Tq. Ambajogai, accused]
Dist. Beed.

Mr.P.G. Borade, A.P.P. for the appellant.
Mr.V.P. Raje, Advocate [appointed] for sole respondent.

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

**RESERVED ON : 27.09.2017
PRONOUNCED ON : 19.12.2017**

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

. This appeal is directed against the judgment and order dated 29.01.2002, passed by the Additional Sessions Judge, Ambajogai, in Sessions Case No.15 of 2001, thereby acquitting the respondent/accused of the offences punishable under sections 302 and 201 of the Indian Penal Code [for short the "IPC"].

2. The facts of the prosecution case are as under :-

a] Bhaguji Kasbe [PW-5] and Sojarbai [PW-8], resident of Ambajogai are the parents of deceased Anita. Deceased Anita was married to the accused, resident of Gitta, Tq. Ambajogai, Dist. Beed, ten years prior to the incident. After marriage, the deceased went to the house of the accused for co-habitation. She has four children from the said wed-lock.

b] It is alleged that there was illtreatment to the deceased at the hands of the accused. He was suspecting her character. On 10.10.2000, the deceased, the accused and their children were in the house in the evening. They had taken dinner in the house. Then they went to sleep. In the morning the deceased had left house but she did not return. Therefore, in the morning the accused went to his brother-in-law [PW-3] at Ambajogai and enquired about deceased Anita. Then they both went to

another sister of PW-3 at Amba Sugar Factory and enquired about the deceased. They had searched the deceased at different places. Her dead-body was found in the well of one Sahebrao Shinde [PW-2] at village Gitta.

c] Thereupon, police patil of said village filed Accidental Death Case report. Police visited the spot of incident i.e. the well in the field of Sahebrao Shinde. The dead body was taken out of the well. The inquest panchanama [Exh.11] and spot panchanama [Exh.15] were prepared. Statement of witnesses were recorded in the said Accidental Death case. The dead body was sent for post-mortem examination in Swami Ramanand Teerth Medical College, Ambajogai. Dr.S.K.Goli and Dr.R.V.Kachare conducted post-mortem examination and they issued advance certificate about the cause of death and post-mortem report. Then the complaint was lodged by Police Head Constable - Revoo Rathod [PW-10] against the accused. Treating the said complaint as FIR, crime No.55 of 2000 was registered against the accused for the offence

punishable under sections 302 and 201 of the IPC and investigation was started.

d] During investigation of the said crime, statements of some witnesses were recorded. Chappal of the deceased was discovered at the instance of the accused after recording his statement. Viscera and blood samples were sent to the Chemical Analyzer. After completion of the investigation, charge sheet was filed against the accused for the offence punishable under sections 302 and 201 of the IPC in the Court of the JMFC, Ambajogai, who then committed the case to the Court of Additional Sessions Judge, Ambajogai as the offence punishable under section 302 of the IPC is exclusively triable by the Court of Sessions.

3. The charge was framed against the accused for the offences punishable under sections 302 and 201 of the IPC, to which the accused pleaded not guilty and claimed to be tried. His defence is denial.

4. To prove charge against the accused, prosecution has examined in all 12 witnesses and relied upon panchanamas, post-mortem report and Chemical Analyzer's report, referred to above. Considering the evidence adduced by the prosecution, the Trial Court has held that the prosecution has failed to prove that death of the deceased was homicidal, that the accused caused her death and that he caused disappearance of evidence of murder of the deceased and acquitted the accused of the said offences by judgment and order dated 29.01.2002. Therefore, this appeal against the acquittal by the appellant/State.

5. We have heard learned APP appearing for the appellant/State and learned advocate for the respondent/accused and with their assistance, we have perused the evidence adduced by the prosecution. We have also perused the impugned judgment and order. Learned APP has submitted that the Trial Court has not considered the

evidence adduced by the prosecution properly. The evidence adduced by the prosecution is sufficient to state that the accused had motive to commit murder of the deceased. The circumstances relied upon by the prosecution are sufficient to connect the accused with the crime.

6. On the other hand, learned advocate appearing for the accused submits that the evidence of PWs 1,3,4,5,7 and 8 is not sufficient to state that the accused had motive to commit murder of the deceased. There is no direct evidence to show that the accused committed murder of the deceased and threw her dead body in the well. The circumstances relied upon by the prosecution are not established by the prosecution. The Trial Court has properly considered the evidence and rightly acquitted the accused of the offences with which he was charged. According to the learned advocate, there is no ground to interfere with the impugned judgment and order and as such he claimed to dismiss the appeal.

7. Since this is an appeal against acquittal, it is necessary to refer to the ratio laid down by the Apex Court regarding dealing with the appeal against acquittal, in the case of Murlidhar alias Gidda and another Vs State of Karnataka reported in (2014) 5 SCC 730, wherein in para No.12 the Apex Court has held thus:-

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K, (1997) 7 SCC 677, Sambasivan Vs State of Kerala, (1998) 5 SCC 412, Bhagwan Singh Vs State of

M.P., (2002) 4 SCC 85, Harijana Thirupala Vs Public Prosecutor, High Court of A.P., (2002) 6 SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka Vs K. Gopalkrishna, (2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, Chandrappa Vs State of Karnataka, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view,

interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

8. There is no dispute that deceased Anita was married to accused 10 years prior to the incident. They have two sons and two daughters from the said wed-lock. On 11.10.2000, the deceased was found dead in the well of Sahebrao Shinde [PW-2] in land Gat No.161, which is at a distance of 50-60 ft. towards West from village Gitta of the accused. There is no direct evidence to show that the accused caused death of the deceased and threw her dead body in the well and the case is based on the circumstantial evidence.

9. Before considering the circumstantial evidence, it is necessary to refer to the settled legal position as regards appreciation of circumstantial evidence laid down by the Apex Court in the case of **Sharad Birdhichand Sarda Vs. Sate of Maharashtra – AIR 1984 SC 1622**, wherein it

has been held that following conditions must be fulfilled before a case against accused based on circumstantial evidence can be said to be fully established :-

"(1) the circumstance from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except that one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

10. The prosecution has relied upon following circumstances to connect the accused with the crime.

(i) Medical evidence of PW-2 and post-mortem report Exh.43 regarding homicidal death of the deceased.

(ii) On 11.10.2000 when the accused had come to the house of PWs 1,3,4,5 & 8 – relatives

of deceased, he was frightened.

(iii) Ill-treatment to the deceased at the hands of the accused.

(iv) Memorandum statement of the accused Exh.35.

(v) Panchanama of spot of incident Exh.15.

(vi) The deceased was having illicit relation with Dhondiram and therefore accused had motive to commit murder of the deceased.

11. Now let us consider whether the prosecution has proved the aforesaid circumstances. As regards circumstance No.(i) regarding homicidal death of the deceased, PW-12 – Satyanarayan Goli, Professor in Forensic Medicine, SRTR College, Ambajogai has deposed that on 12.10.2000, he conducted post-mortem examination between 10.00 a.m. to 11.00 a.m. on the dead body. He found fracture of tracheal rings three in number above the suprasternal notch. There were also blood clots over larynx and lumen of trachea. He stated that in their opinion probable cause of death was asphyxia due to neck compression and viscera was preserved for chemical

analysis. Post-mortem report [Exh.43] was issued, which bears his signature and signature of Dr.Kachare. In the cross-examination, he stated that there was no external injury on the dead body including neck and death might have caused within 36 hours [+/- 6 hours] prior to post mortem. There was no fracture of hyoid bone and thyroid cartilage. He stated that asphyxia can be neck compression or drowning. The post mortem report [Exh.43] also shows the the cause of death as deposed by PW-12 and about finding of fracture of tracheal rings three in number. However, considering the evidence that there was no external injury on the dead body including neck and that there was no fracture of hyoid bone and thyroid cartilage and that asphyxia can be neck compression and drowning, the above evidence is not sufficient to infer that death of the deceased was homicidal. Another reason to arrive at this conclusion is that the dead body was found in the well in sinked condition and it was taken out with the help of rope and hooks. If after committing murder dead body would have been thrown in the well, dead

body would have been found floating and it would not have sunk. Therefore, other circumstances relied upon by the prosecution are to be considered to arrive at the conclusion about homicidal death or otherwise.

12. As regards circumstance Nos. (ii) and (iii) that accused was found frightened and that the deceased was illtreated by the accused, the prosecution has broadly relied upon the evidence of PWs 1,3,4,5 and 8 to prove the said circumstances. PW-1 – Sudamati – sister of the deceased has deposed that the accused had come to her house at 7.30 a.m. with her brother – Ashruba [PW-3] and enquired about the deceased and she told that the deceased had not come to her house. Accused told her that the deceased had left the house at 05.00 a.m. Further, she deposed that when the accused had come to her house, he was in frightened condition and his feet were dirty with mud and accused had told that he had been to the well at his village in search of the deceased and hence his feet became dirty by mud. Then she and her

brother went to Gitta. The dead body of the deceased was taken out of the well at Gitta. She deposed that the accused always used to demand money from them and they used to give money to him.

. In the cross-examination, she [PW-1] stated that the deceased never told her about her husband and accused used to demand hand-loan of Rs.50/- or Rs.100/- and he used to repay their money. She stated that she stated before police that accused and her brother came to her house at 7.30 a.m. and accused told her that the deceased left house at 05.00 a.m., but she could not assign reason of absence of the same in her statement before police. Therefore, the evidence of PW-1 in this respect is an omission in her statement before police and improvement while deposing before the Court. Therefore, the same is not believable.

13. The evidence of PW-3 – Ashruba – brother of the deceased is that on one Wednesday in the morning at 07.00

a.m. accused had been to his house and he was in frightened condition. His feet were dirty with mud. The accused enquired with him as to whether his sister [deceased] had been to his house as she was not at the house since 04.00 a.m. He has not stated about illtreatment to the deceased at the hands of the accused. On the contrary, in the cross-examination, he admitted that he had no complaint about death of his sister [deceased] and therefore he did not lodge complaint to police and the complaint was lodged by the Head Constable Rathod. So also, he stated that he stated to police that on 11.10.2000 when accused came to his house, he was in frightened condition and his feet were dirty with mud and he could not assign reason as to why that is not appearing in his statement before Police. Therefore, his evidence in this respect amounts to an omission in his statement before police and an improvement while deposing before the Court and hence the same is not believable. Moreover, he admitted that till death the deceased was cohabiting with her husband [accused]. Therefore, above

referred evidence of PW-3 is not sufficient to infer that accused caused cruelty to the deceased or illtreated her. So also it cannot be said that the accused was frightened when he had come to the house of PW-3.

14. The evidence of PW-4 – Omprakash Kamble – brother-in-law of the deceased is that accused and PW-3 had come to his house in the morning. The accused enquired with him as to whether the deceased had come to his house and he told that she had not come to his house. In the cross-examination he stated that the accused demanded money to him for getting service in hospital. PWs 1 and 3 have not stated anything in this respect. He has not stated as to when and what amount was demanded by the accused for getting service in the hospital. Thus, the evidence of PW-4 is not sufficient either to infer that accused was frightened when came to the house of this witness or that the accused illtreated the deceased.

15. The evidence of PW-5 – father of the deceased is

that one month prior to death of the deceased, the deceased visited his house. Her husband had accompanied her. He deposed that he had called them to his house. He stated that at that time his wife told him that the deceased was telling her that she has trouble at her husband's house and the deceased had told not to come to take her at the time of Diwali. In the cross-examination, he stated that he lastly visited the house of the deceased two months prior to her death and at that time the deceased was cohabiting happily with her husband. The evidence of PW-5 as regards illtreatment to the deceased is vague. Thus, no inference can be drawn on the basis of evidence of PW-5 that the accused illtreated the deceased.

16. PW-8 — Sojarbai — mother of the deceased has deposed that prior to death, the deceased had come to her house at the time of *Pitru Pandharwada* along with her husband/accused. While giving send-off to the deceased, she [witness] said that she would send her father [father

of the deceased] to call her at the time of Diwali and the deceased told that she should not expect her at the time of Diwali, as there was severe illtreatment to her at the house of her husband and that she was given in marriage to a very cruel person. In the cross-examination, she stated that she did not tell before the police that the deceased had been to her house in *Pitru Pandharwada* before her death. Therefore, above evidence of PW-8 in respect of visit of the deceased to the house of this witness amounts to an omission in the statement before police and improvement while deposing before the Court. So also, no details of illtreatment to deceased are given by this witness. Therefore, no inference can be drawn on the basis of evidence of this witness that really there was any illtreatment to the deceased at the hands of the accused.

17. For the reasons discussed above, the evidence of PWs 1,3,4,5 & 8 is not sufficient to infer that the accused caused illtreatment to the deceased. So also the

evidence of PWs 1,3 and 4 is not sufficient to infer that the accused was frightened in the morning when he had come to the house of these witnesses to search the deceased. Thus, the prosecution has failed to prove circumstance Nos.(ii) and (iii). Even if it is said that the prosecution has proved circumstance No.(ii) that accused was frightened when he had come to the house of PWs 1,3 and 4, said circumstance is not sufficient to connect the accused with death of the deceased, because it was natural for accused to frighten when deceased was not in the house.

18. Now coming to the circumstance No.(iv), as per prosecution case accused made statement in presence of panch [PW-9], panch Sanjay Jogdand and the IO PSI Thakur [PW-11] that he would show the way to the well in which a dead body of the deceased was thrown and that he would produce one Chappal of the deceased, which was kept in the house and memorandum statement was recorded and said Chappal was seized under panchanama [Exh.36]. PW-9 Panch

has not supported the prosecution case. The prosecution has not examined another panch - Sanjay Jogdand. PSI Thakur [PW-11] has deposed that on 14.10.2000 accused made statement in presence of panchs that he is ready to produce Chappal of the deceased, kept in baby's bed in his house and said Chappal was seized under panchanama Exh.36. He also stated that memorandum statement of accused was recorded as per Exh.35. As PW-9 panch has not supported the prosecution, the uncorroborated evidence of PW-11 - the Investigating Officer is not sufficient to infer that really accused made statement Exh.35 and at his instance Chappal of deceased was seized as per panchanama Exh.36. Therefore, we hold that the prosecution has not proved circumstance (iv) in this respect.

19. Coming to circumstance No.(v), regarding panchanama of spot of incident Exh.15, which was prepared in presence of PW-2 panch - Shinde and another panch by Police Head Constable Rathod [PW-10], both these

witnesses have stated regarding preparing this panchanama. This panchanama shows that dead body of the deceased was taken out of the well in land Gat No.101 of village Gitta. On the basis of this panchanama, it can be said that the dead body of the deceased was found in the well of PW-2 Panch - Sahebrao Shinde. On the basis of evidence of PWs 2 and 10, it can be said that the prosecution has proved circumstance No.(v) i.e. panchanama of spot of incident Exh.15. The finding of dead body in the well mentioned in this panchanama is not sufficient to infer that the accused caused death of the deceased and threw dead body in the well.

20. Now coming to circumstance No. (vi) that the deceased was having illicit relations with Dhondiram, and therefore the accused had motive to commit murder of the deceased is concerned, to prove the same, the prosecution has relied upon evidence of PW-1,3,4 5 and 7. Evidence of PW-1 is that two months prior to the incident, the accused had come to her house and accused told her that

there is illicit relations between the deceased and Dhondiram of Gitta. In the cross-examination, she stated that she did not tell to deceased or to her parents that the accused was telling about the illicit relation of the deceased with Dhondiram. In-fact, PW-1 being sister of the deceased should have definitely disclosed about the alleged illicit relations between deceased and Dhondiram to the deceased as well as to her parents. But silence on her part to disclose the same creates doubt as to whether she was told about the alleged illicit relation of the deceased with Dhondiram by the accused. PW-3 has also deposed about the accused telling him that the deceased has relation with one Dhondiram. In the cross-examination, he stated that he did not talk with his sister or with his parents about the above said suspicion expressed by the accused. When this witness has not disclosed anything to his parents and the deceased about the said relations of the deceased, his evidence is also not believable. The evidence of PW-4 Omprakash is that deceased had told him that the accused is giving trouble

to her and suspecting about her character. He has not stated that accused was giving trouble to the deceased as deceased was having illicit relation with Dhondiram, as alleged by the prosecution. Therefore, his evidence is not sufficient to infer that the deceased was having illicit relation with Dhondiram. The evidence of PW-5 - father of the deceased is that the deceased had come to his house at the time of Diwali and the deceased had told his wife about the trouble to her at her husband's house. But he has not stated about the alleged illicit relation of the deceased with Dhondiram. PW-7 - mother of the deceased has also not stated anything in respect of alleged illicit relation of the deceased with Dhondiram. For the reasons discussed above, evidence of PWs 1,3,4,5 and 7 is not sufficient to infer that the deceased was having illicit relation with Dhondiram and therefore the accused had motive to commit murder of the deceased. Thus, the prosecution has failed to prove circumstance No.(vi) in this respect.

21. For all the reasons discussed above, we hold that the prosecution has failed to prove the above referred circumstances except circumstance No.(v) regarding panchanama of spot of incident Exh.15. Thus, the prosecution has not established the chain of circumstances relied upon by it to connect the accused with death of deceased – his wife. The evidence brought on record as discussed above by the prosecution is not sufficient to infer that the death of the deceased was homicidal and that the accused is responsible for her death and that the accused threw dead body of the deceased in the well to cause disappearance of evidence of murder against him as alleged. The Trial Court has rightly held so. We, therefore, hold that the prosecution has failed to prove offences under section 302 and 201 of the IPC. The Trial Court has rightly held so and rightly acquitted the accused of the said offences. The view taken by the Trial Court is a reasonable and possible view. There is no error in appreciating evidence by the Trial Court. Therefore, there is no

justifiable ground to interfere with the impugned judgment and order acquitting the accused of the offence with which he was charged. Therefore, the appeal being devoid of merits, same is liable to be dismissed. Accordingly, we dismiss the same. The bail bond of the accused/respondent stands cancelled.

22. Mr.V.P. Raje, advocate was appointed to represent the accused/respondent. We appreciate his sincere efforts in rendering able assistance during the course of hearing the appeal, so as to arrive at proper conclusion. We quantify his fees at Rs.7500/- [Rupees Seven Thousand Five Hundred only].

[S.M.GAVHANE, J.]

[T.V. NALAWADE, J.]