

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.285 OF 2013

Gunwant @ Dhudaku Trymbak Patil,
Age-26 years, Occu:Nil,
R/o-Sarve, Tq-Parola,
Dist-Jalgaon.

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.G.V. Wani Advocate for Appellant.
Mr.V.M. Kagne, A.P.P. for Respondent - State.

...

WITH

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

DATE OF RESERVING JUDGMENT : 13TH JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 3RD AUGUST, 2017.

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

1. Criminal Appeal No.285 of 2013 is directed against the common Judgment and order dated 15th July, 2013, passed by the Additional Sessions Judge, Amalner in Sessions Case No.28 of 2011 thereby convicting accused No.1/ Appellant - Gunwant @ Dhudaku Trymbak Patil for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer imprisonment for life and to pay fine of Rs.5000/-, and in default, to suffer further rigorous imprisonment for one year.

2. Criminal Appeal No.286 of 2013 is

directed against the common Judgment and order dated 15th July, 2013, passed by the Additional Sessions Judge, Amalner in Sessions Case No.51 of 2012 thereby convicting accused No.1/ Appellant - Gunwant @ Dhudaku Trymbak Patil for the offence punishable under Section 309 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer simple imprisonment for six months. Both the substantive sentences were directed to be run concurrently.

3. In Sessions Case No.28 of 2011, original accused Nos.1 to 5, including accused No.1 Gunwant @ Dhudaku, have been charge-sheeted for committing offences punishable under Section-302, 304-B, 498-A, 323, 504, 506 read with 34 of the I.P. Code. In Sessions Case No.51 of 2012 the charge against accused Gunwant @ Dhudaku is of attempting to commit suicide, punishable under Section 309 of the I.P. Code. The Additional Sessions Judge, Amalner passed common Judgment in Sessions Case

No.28 of 2011 and Sessions Case No.51 of 2012 and convicted and sentenced the accused Gunwant as afore-stated, and acquitted original accused Nos.2 to 5 from the offences with which they were charged. The accused/ Appellant has filed two separate Appeals against the common Judgment and order passed in Sessions Case No.28 of 2011 and Sessions Case No.51 of 2012.

4. The prosecution case, in Sessions Case No.28 of 2011 in brief, is as under:-

A) On 16th June, 2011 at 9.30 a.m. PW-1 Pandurang Narayan Patil, father of deceased Surekha, resident of Khadake Sim, Taluka Erandol, District Jalgaon lodged complaint in Parola Police Station. He was in service as a Peon in Grampanchayat. The deceased Surekha was his only daughter. Her marriage was performed with accused No.1 - Gunwant @ Dhadaku Trymbak Patil on 30th April, 2011, in which he paid amount of Rupees One

Lakh to the accused and incurred entire expenses of marriage. Surekha went to the house of accused where accused No.1 and his parents, accused Nos. 2 and 3 were residing together at village Sarve. She stayed there for one month. On 16th June, 2011, an informant received phone call from Surekha that the accused were ill-treating her for non-fulfillment of their demand of Rupees One Lakh for purchasing room at Pune and they were abusing, assaulting and threatening her of dire consequences. She informed that the ill-treatment was not tolerable and requested to take her from the house of accused. The informant went to the house of accused. All accused were present there. When the informant asked their explanation for ill-treating Surekha, they put forth their demand of Rupees One Lakh for purchasing room at Pune and further stated that they will continue to ill-treat Surekha till payment of Rupees One Lakh. The informant expressed his inability to pay amount, because of the expenses already incurred

by him. The accused asked him to take Surekha to his house. On the same day the informant took Surekha to his house at Khadake Sim. On that day also accused Nos.1 to 3 had beaten Surekha by fist blows and belt.

B) It is further alleged that accused Nos.1 to 3 came to the house of the informant on 13th June, 2011 at 8.00 a.m. They apologized and stated that Surekha would not be ill-treated in future for any demand. Surekha was reluctant to go with the accused saying that her life was in danger at the house of accused, but the informant convinced her and sent her with the accused. On 16th June, 2011 around 2.00 to 2.30 a.m. the informant received phone call to contact immediately to Yuvraj, the Sarpanch of village Sarve. When he contacted Yuvraj, he was informed that his daughter Surekha died and he was asked to start immediately. The informant along with his family members, relatives, and villagers went to village

Sarve to the house of accused. He saw deceased Surekha lying on the Ota, i.e. veranda of the house having injuries on her neck, abdomen, and leg caused by sharp edged weapon. Nobody from the family of accused was there. They took dead body of Surekha to Parola by ambulance. Based on this complaint, crime was registered.

C) PW-7 Madhukar S. Gavit, P.I. attached to Parola Police Station received complaint vide Exhibit-43 which was registered as F.I.R. for the purpose of an investigation. He visited hospital, where dead body by Surekha was brought. He prepared inquest panchnama vide Exhibit-55 in presence of panchas and sent dead body for postmortem to Cottage Hospital, Parola. He visited the spot of incident, which was pointed out to him by the informant where the dead body of Surekha was lying. The spot of incident and entire house was inspected by the investigating officer in presence of panchas. A knife (Article 'A') smeared

with blood, sample of soil mixed with blood and simple soil were collected from the spot. The panchnama vide Exhibit-33 was drawn. Seized property was deposited in Police Station. Statements of witnesses were recorded. Accused No.2 Trymbak and No.3 Kamalabai, the parents of accused No.1 Gunwant were arrested on that day.

D) On 16th June, 2011 i.e. on the same day PI Gavit had received information that accused No.1 Gunwant had inflicted blows of knife on himself and sustained injuries, for which he was admitted in Civil Hospital, Dhule. That information was received early in the morning prior to lodging complaint, by Pandurang Narayan Patil. On receipt of that information he along with constables went to Civil Hospital Dhule. The Medical Officer told that accused No.1 was admitted there, but he had undergone operation on his stomach and was not in a position to speak. Keeping two constables there, after giving

instructions, PI Gunwant returned to Parola. Subsequently he received the statement recorded by constable on 16th June, 2011 around 10.00 a.m. of injured Gunwant when he regained consciousness in Civil Hospital, Dhule. On the basis of that statement, a complaint has been filed by Head Constable Barku Jane under Section 309 of I.P. Code in Parola Police Station around 22.05 hours vide Exhibit-7 in Sessions Case No. 51 of 2012 and C.R. No. 129 of 2011. On the same day as per instructions of PI Gavit on giving requisition by Police Constable Vanjari vide Exhibit-80 blood and nail sample of accused Gunwant were collected. Statements of witnesses were recorded on next day i.e. 17th June, 2011. The clothes of accused which he was wearing at the time of incident were collected and produced by constable Mahajan and those were seized as per panchnama Exhibit-58 and those clothes includes Sando Banyan, a pant and nicker.

E) On 21st June, 2011 the seized articles, clothes of the deceased as well as of the accused were sent to C.A. with letter Exhibit-62. C.A. Reports vide Exhibit-77 and Exhibit-78 received by the Police included in the police papers. On completion of investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Parola. The offences punishable under Section 302 and 304-B of the Indian Penal Code, being exclusively triable by the Court of Sessions, the case came to be committed to the Sessions Court.

5. The prosecution case in Sessions Case No.51 of 2002 is similar to that of Sessions Case No.28 of 2011. In Sessions Case No.51 of 2012 the charge against accused Gunwant @ Dhudaku is of attempting to commit suicide punishable under Section 309 of the I.P. Code and the weapon used by him is same, which has been used for stabbing his wife Surekha. It is the case of the

prosecution that on 16th June, 2011 around 3.00 to 3.15 hours P.I. Gavit attached to Parola police station received information that a lady by name Surekha Patil of village Sarve was killed by her husband and the husband also attempted to commit suicide. P.I. Gavit went to village Sarve, but before his arrival, Surekha Patil and her husband were already shifted to hospital. As injured was shifted to hospital, his statement was recorded by Head Constable Jane. He lodged complaint and Crime under Section 309 of I.P. Code was registered against accused. P.I. Gavit conducted further investigation. Spot panchnama was drawn. The knife was already seized in presence of panchas. Samples of soil mixed with blood and simple soil were also collected in that crime. The clothes of accused were also seized. Statements of witnesses were recorded. After completion of investigation, the charge-sheet was filed.

6. In Sessions Case No.28 of 2011 a charge

for an offence punishable under Sections 302, 304-B, 498-A, 323, 504, 506 read with Section 34 of the I.P. Code was framed against the accused persons and the same was explained to them. The accused pleaded not guilty and claimed to be tried. The defence of accused No.1 Gunwant is that, he himself and his wife Surekha were sleeping together on Otta i.e. veranda of the house. His parents were sleeping inside the house. 4 to 5 persons attacked them, he started shouting. He rushed to the door of the house. His parents opened the door, he went inside. Villagers took him to hospital. His wife was injured and lying on Otta, i.e. veranda of the house.

7. In Sessions Case No.28 of 2011, there were five accused i.e. accused No.1 Gunwant @ Dhudaku Trymbak Patil, i.e. Appellant herein, his father, accused No.2 Trymbak Zhipru Patil, his mother, accused No.3 Kamalbai Trymbak Patil, his brother, accused No.4 Pralhad Trymbak Patil, and

wife of his brother, accused No.5 Ashabai Pralhad Patil. After recording the evidence and conducting full fledged trial, the trial Court acquitted accused Nos.2 to 5 of all the charges levelled against her. The trial Court also acquitted accused No.1 Gunwant @ Dhudaku Trymbak Patil of the offence punishable under Sections 304-B, 498-A, 323, 504 and 506 of the I.P. Code. However, the trial Court convicted accused No.1 Gunwant @ Dhudaku Trymbak Patil for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer rigorous imprisonment for life and to pay fine, as afore-stated. Hence Criminal Appeal No.285 of 2013 is preferred by the original accused No.1 Gunwant @ Dhudaku Trymbak Patil challenging the conviction and sentence.

8. In Sessions Case No.51 of 2012 a charge for an offence punishable under Section 309 of the I.P. Code was framed against the accused Gunwant @ Dhudaku Trymbak Patil and the same was explained

to him. The accused pleaded not guilty and claimed to be tried. The defence of accused Gunwant @ Dhudaku Trymbak Gunwant is similar to the defence taken in Session Case No.28 of 2011. After recording the evidence and conducting full fledged trial, the trial Court convicted accused Gunwant @ Dhudaku Trymbak Patil for the offence punishable under Section 309 of the I.P. Code and sentenced him to suffer simple imprisonment for six months, as afore-stated. The substantive sentences are directed to be run concurrently. Hence Criminal Appeal No.286 of 2013 is preferred by original accused - Gunwant @ Dhudaku Trymbak Patil challenging the conviction and sentence.

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

the evidence brought on record or otherwise.

10. First we will deal with the oral evidence brought on record by the prosecution in Sessions Case No.28 of 2011.

11. The prosecution examined PW-4 Pramod Nimba Chandvade, medical officer, cottage hospital, Parola. He deposed that on 16th June, 2011, he was posted at cottage hospital, Parola. On that day dead body of Surekha Gunwant Patil was brought to the hospital by police constable Lingayat with a request to perform post-mortem and accordingly he has carried out post-mortem over the dead body on the very same day in between 10.45 a.m. to 11.45 a.m. and prepared his report. The post-mortem report is at Exhibit-52. As per his opinion deceased Surekha died due to hemorrhage shock due to multiple stab wounds and cut throat injury. The injuries which he found have been mentioned in Column No.17. All the

injuries were grievous in nature and ante-mortem. In ordinary course of nature, those injuries are sufficient to cause death. He was shown knife. He deposed that injuries mentioned in Column No.17 could be caused by the said knife, Article "A". During his cross-examination, PW-4 Pramod stated that knife Article "A" was not shown to him by police. He further stated that the injuries mentioned in column No.17 could be caused by any sharp incising weapon.

12. The prosecution examined PW-1 Pandurang Narayan Patil. He deposed that deceased Surekha was his daughter. She had married with accused No.1 on 30th April, 2011. In the marriage he had given dowry of Rs.1,00,000/- and had borne all the expenses of marriage. After the marriage, Surekha had gone to cohabit with accused No.1 at village Sarve, Tq-Parola. He further deposed that after the marriage Surekha cohabited with accused No.1 nicely. Thereafter all the accused persons started

harassing deceased Surekha. They used to abuse her, they used to assault her. Even Surekha was assaulted by belt. All this harassment was caused to Surekha because accused No.1 wanted to purchase a plot at Pune. He further deposed that Surekha used to tell him about the said demand and ill-treatment on phone from time to time. Ultimately on 11th June, 2011 he had been to the house of accused persons to bring back Surekha. At that time all the accused persons told him that unless a sum of Rs.1,00,000/- is given, they will continue to harass Surekha. Therefore, he brought back Surekha to his home. He further deposed that on 13th June, 2011, accused No.1 and his parents came to his house. They expressed regret and apologized and requested him to send back Surekha assuring him that, they will treat Surekha nicely and stop making any demand. Deceased Surekha was not willing to go back to her matrimonial home. He convinced Surekha to go with accused Nos.1 to 3, she reluctantly went with them to her matrimonial

home.

. About the incident, PW-1 Pandurang deposed that on 16th June, 2011 at midnight, one Indrasing Santosh Patil of Khadke-Khurd came to him and told him that he has received phone call and witness should speak with the Sarpanch of village Sarve. Accordingly he spoke with the Sarpanch who told him that his daughter Surekha was no more. Therefore, he along with his wife and respected persons of his village, proceeded to village Sarve. They reached village Sarve within 15 to 20 minutes and found that Surekha was lying dead over the Otta i.e. veranda of house of accused persons. Upon seeing deceased Surekha, he noticed that there were injuries all over her body inflicted of knife. Nobody was there in the house of accused persons. Therefore he proceeded to Parola police station and lodged complaint. He further deposed that after the post-mortem was carried out, he carried the dead body of Surekha

to his house at Khadke-sim and performed last rituals.

. During the course of cross-examination, PW-1 Pandurang admitted that financial condition of accused persons was well and therefore he has given his daughter in marriage to accused No.1. He further admitted that the sum of Rs.1,00,000/- which he had given them, which he referred to be dowry, was utilized by the accused persons for the bride and bridegroom's clothes, ornaments etc. He admitted that he had visited matrimonial home of deceased Surekha after her marriage only once i.e. on 11th June, 2011. He further stated that he had told the police that Surekha used to tell him on phone about the harassment and ill-treatment caused to her on account of demand of Rs.1,00,000/- for purchasing plot at Pune, and that Surekha had told him on phone that she was abused and assaulted by belt and that as Surekha was aware about his economical condition, she was

reluctant to make demand from him of Rs.1,00,000/-. He further stated that he had told the police that on 13th June, 2011 the accused Nos.1 to 3 pleaded apology and assured that Surekha will not be harassed and there will not be demand of Rs.1,00,000/- in future. However, he was unable to tell as to why all the same was not appearing in his complaint Exhibit-43. He further stated that on 16th June, 2011 in the midnight when he went to village Sarve, he did not enter the house of accused persons.

13. The prosecutions examined PW-2 Pramilaba Pandurang Patil. She deposed that Surekha was her daughter. Surekha married with accused No.1 on 30th April, 2011 and the incident took place within two months. She further deposed that after the marriage, Surekha cohabited with accused No.1 for 6 to 7 days and thereafter they received phone call of deceased Surekha informing them that accused persons were harassing her for not

complying their demand of Rs.1,00,000/- for having a room at Pune. Thereafter father of Surekha went to village Sarve and brought Surekha back to their house at Khadke-sim. After coming to their house, Surekha told them that if the money is not given, the accused have threatened to finish her. When Surekha was at their house, on 13th June, 2011 accused Nos. 1 to 3 came to their house, and after their assurance that they will properly treat Surekha in future, they sent Surekha with accused Nos.1 to 3. She further deposed that on 16th June, 2011, they received phone call intimating that Surekha was no more. Therefore, they all proceeded to village Sarve. After reaching the house of accused persons, they found that Surekha's dead body was kept over the Ota i.e. veranda of the house. There were no clothes on her person and there were knife injuries all over her body and over her neck. None of the accused persons were present there.

14. The prosecution examined PW-3 Rajendra Trymbak Patil. He deposed that he was ex-Sarpanch of village Khadke-sim. He is president of Tantamukti Samiti. He deposed that at the time of marriage of Surekha, PW-1 Pandurang had no money and therefore he had personally contributed Rs.10,000/- towards dowry and thus he knows that in the marriage of Surekha, an amount of Rs.1,00,000/- was given by way of dowry. He further deposed that on 13th June, 2011 when Surekha was at the house of her father at Khadke-sim, the accused persons came to the house of PW-1 Pandurang to take Surekha back to her matrimonial home. At that time, he being a President of Tantamukti Samiti, was called at the house of Pandurang Patil. He had gone there, other villagers had also gathered there. When he took Surekha in confidence, she told him that the accused, her husband was demanding Rs.1,00,000/- for purchasing room at Pune and he was also threatening to finish her. He further deposed that

after deliberation, Surekha was sent back along with accused persons at village Sarve. He further deposed that on 16th June, 2011, at midnight he learnt from Pandurang that Surekha was no more. Therefore he alongwith Pandurang and other persons, proceeded to village Sarve. After reaching at village Sarve, the village of accused persons, they found Surekha lying dead over the Ota i.e. veranda of her house. There were injuries over her body. The accused persons were not there, nor any villagers were there. Therefore, Pandurang lodged complaint in Parola police station.

. During the course of cross-examination, PW-3 Rajendra stated that he would not be able to tell full names of all the accused persons. He further stated that he did not tell the police while giving his statement that he had contributed Rs.10,000/- for the marriage of Surekha. He further stated that he did not tell the police while giving his statement that the deceased

Surekha had told him that accused was demanding sum of Rs.1,00,000/- and had threatened her of finishing her. He admitted that he is having good relations with the informant.

15. The prosecution examined PW-5 Yuvraj Bhavsing Patil. He is resident of village of accused. He deposed that the incident took place at midnight when he was sleeping in the courtyard of his house. At midnight he heard commotion at the house of accused persons. Upon hearing the commotion, he proceeded towards the house of accused. Near the house of accused persons many villagers had gathered. Amongst them, Himmat Patil, Narsingh Patil and Bhivsan Visave were there. Upon reaching there, they saw that deceased Surekha and her husband Dhudaku, the accused No.1 were lying over the Otta i.e. veranda of their house. Accused No.2 Trymbak and accused No.3 Kamalbai were weeping there. He asked Trymbak, the accused No.2 as to what has happened. Trymbak told

him that somebody has assaulted both of them and ran away.

. Thus, this witness PW-5 Yuvraj has not supported the prosecution, he was declared hostile and cross-examined by the prosecution with the permission of the trial Court. PW-5 Yuvraj was extensively cross-examined by the prosecution but nothing useful to the case of prosecution was elicited. When PW-5 Yuvraj was cross-examined by the defence, he admitted that when he reached near the house of accused, he saw 2-3 persons were running away and some of their villagers were chasing them. He further admitted that the persons who were running, were not nabbed. He further admitted that accused No.1, who was lying over the Ota i.e. veranda of the house, went inside his house after arrival of vehicle and that accused No.1 was scared.

16. The prosecution examined PW-6 Bhivsan

Lakhan Visave. He is resident of village Sarve, i.e. the village of accused. He deposed that the incident took place on 15th June, 2011. In the midnight he heard commotion at the house of accused persons. He proceeded there. Villagers had gathered there. Amongst them, Yuvraj, Narsingh and Rashid Gani were there. He saw that the dead body of Surekha was lying over the Ota i.e. veranda of her house. Over the body of Surekha there were stab injuries. At that time accused No.2 Trymbak and accused No.3 Kamalbai were weeping there. They asked Trymbak as to what happened. Trymbak told them that his son and daughter-in-law died. At that time accused No.1 Dhudaku was inside the house. The door of the house was closed from inside. They gave call to said Dhudaku. Thereafter Dhudaku opened the door. There were stab injuries over the body of Dhudaku. The defence declined his cross-examination.

17. PW-7 Madhukar Sakharam Gavit, is the

investigating officer. He deposed about the manner in which he has carried out the investigation of the crime.

18. Now we will deal with the oral evidence adduced by the prosecution in the Sessions Case No.51 of 2012.

19. The prosecution examined PW-4 Prashant Ratnakar Deore, who is medical officer, Civil Hospital, Dhule. He deposed that on 16th June, 2011 he was attached to Civil Hospital, Dhule. He medically treated Dhudaku Trymbak Patil in Civil Hospital, Dhule on that day. When Dhudaku was brought at 5.15 a.m. on 16th June, 2011 in the hospital, he was unconscious. He further deposed that accused Dhudaku was brought there by his father. The patient was examined by him. The patient was having multiple stab injuries over his abdomen. There were multiple incised wounds on his both wrists. There was cut injury on the neck 10

cm. X 2 cm. There were in all 13 stab injuries over his abdomen. After referring to the original case papers, he deposed that he has mentioned the injuries found to the patient at the time of his admission in hospital. He further deposed that the patient was referred to General Surgeon and ENT Specialist. The handwriting on page 5 of the case papers is of Dr. Inamdar, ENT Surgeon. Dr. Inamdar has written history of the case. There was injury over the neck 8 cm. X 2 cm. There was multiple stab injury over the abdomen. The patient was operated for his injuries under the General Surgeon. He further deposed that he operated the patient as a general surgeon. He operated the injuries on abdomen. He further deposed that anesthesia was given before performing the operation. He further deposed that the injuries found on the person of the patient could be caused by sharp edged weapon. The injuries found on the person of patient can be self inflicted. He further deposed that a letter was received from

police requesting him to opine whether the patient Dhudaku was in position to give statement on 16th June, 2011. The patient was in a position to give statement. He had formed the said opinion after examining the patient. Police recorded statement of the patient. At the time of recording statement of patient, only patient, he himself and police were there. Patient gave statement which was reduced in writing. The contents were read over to the patient and then patient put his signature thereon. The witness was shown the knife, Article "A". He deposed that the injuries which he found on the person of patient are possible by the knife shown to him.

. During the course of cross-examination, PW-4 Prashant admitted that the injuries which he found on the person of patient can be caused by the assault by another person. He further admitted that in the case papers there is no history of self inflicted injuries.

20. The prosecution examined PW-1 Barku Zinga Jane. He deposed that on 16th June, 2011 he was attached to Parola police station as Head Constable. On that day he had been to Dhule in Civil Hospital along with P.I. Gavit for recording statement of Dhudaku @ Gunwant Patil. He further deposed that Gunwant was admitted there in injured condition. Crime under Section 302 of I.P. Code was to be registered against Gunwant. He reached there around 8.00 to 8.30 hours. Gunwant was unconscious and his operation was being done in hospital. Gunwant regained consciousness around 16.00 hours. He further deposed that he recorded statement of Gunwant in presence of Medical Officer. Statement of injured was recorded as per his say. Statement was read over to injured. He obtained signature of Gunwant on the statement. The statement is marked as X-1 for identification. There is endorsement of the medical officer in whose presence it was recorded. The medical

officer was present throughout recording the statement. Medical officer signed below endorsement before him. Thereafter he lodged complaint. During the course of his cross-examination, PW-1 Barku stated that investigation in the said crime has been conducted by P.I. Gavit. He further stated that as per his complaint, incident of assaulting wife of accused took place out of house of accused.

21. The prosecution examined PW-2 Yuvraj Tarachand More. He deposed that on 16th June, 2011 he was attached to Rural Hospital, Parola as a driver on Ambulance. On that day he was present at his residence at Parola. He received phone call at 4.30 a.m. from Dr. Chandwale, medical officer, Parola to attend the hospital as one patient was there. He went in hospital and saw the patient. The patient was having injuries on his neck, both hands and stomach. Yurvaj Patil, Sarpanch of village Sarve, Tq-Parola was with the patient.

After giving the primary treatment, the patient was shifted to civil hospital, Dhule by the Ambulance bearing No.MH-12-9233. He was not able to recollect the name of said patient. This witness PW-2 Yuvraj was not cross-examined by the defence.

22. The prosecution examined PW-3 Sanjay Bhimsing Patil. He deposed that on 16th June, 2011 around 3.00 a.m. to 3.30 a.m. Himmat Harsing Patil came to his house and as per request of said Himmant, he went to village Sarve for carrying injured to hospital. He carried one injured person from village Sarve to Rural Hospital, Parola. The injured was having injuries on his neck, both hands and stomach. Sarpanch and other 2-3 persons of village Sarve were with them in vehicle. After leaving the injured in hospital, he returned to his house. The witness PW-3 Sanjay was not cross-examined by the defence.

23. The prosecution examined PW-5 Madhukar Sakharam Gavit, Police Inspector, Shanipeth police station, Jalgaon. He was investigating officer in the crime. He deposed about the manner in which he carried out the investigation of the crime.

24. We have discussed in detail, the entire evidence brought on record by the prosecution. In order to find out whether there was any motive for the commission of offence by the accused, we have minutely examined evidence of PW-1 Pandurang Narayan Patil, father of the deceased Surekha. In his deposition he stated that all the accused caused harassment to deceased Surekha because accused No.1 Gunwant @ Dhudaku wanted to purchase plot at Pune and for that purpose all the accused wanted a sum of Rs.1,00,000/- from him. However, during his cross-examination, he stated that before marriage of Surekha with accused No.1 Gunwant @ Dhudaku, he had taken into consideration the economical condition of the accused persons.

He admitted in his cross-examination that the accused persons were financially well-off and therefore he has given his daughter in marriage to accused No.1 Gunwant @ Dhudaku. He further stated that a sum of Rs.1,00,000/- which he had given to the accused persons, was utilized by them for the bride and bridegroom's clothes, ornaments etc. Therefore, it follows from admissions given in the cross-examination that the accused persons were financially well-off and taking into consideration the said aspect, PW-1 Pandurang agreed to perform marriage of his daughter with accused No.1 Gunwant @ Dhudaku. We have also considered the evidence of PW-2 Pramilabai Pandurang Patil, mother of deceased Surekha, and we are of the opinion that the view taken by the trial Court of acquitting the accused for the offence punishable under Section 498-A of the I.P. Code is in consonance with the evidence on record. Therefore, there does not appear to be any motive brought on record by the prosecution for the commission of offence by

the accused.

25. The evidence of PW-3 Rajendra Trymbak Patil is also on the point of ill-treatment and harassment given to deceased Surekha by the accused. In his evidence, he stated that when they reached to the village of accused, they found Surekha lying dead over the veranda of her house and accused were not there. In his cross-examination, he stated that he did not tell to police while giving his statement that he contributed Rs.10,000/- for the marriage of Surekha. He further stated that he did not tell the police while giving statement that deceased Surekha told him that accused was demanding the sum of Rs.1,00,000/- and had threatened her that in case such amount is not paid, they will finish her. Therefore, the trial Court has rightly discarded his evidence on the point of ill-treatment and harassment.

26. It is true that death of Surekha was homicidal and cause of death, as stated by PW-4 Dr. Pramod Chandvade, was "due to hemorrhagic shock due to multiple stab wounds and cut throat injury". However, real question is, who is author of injuries of Surekha and her ultimate death. So far other accused are concerned, they are already acquitted by the trial Court, therefore, we need not consider the defence of the other accused. The Appellant/ accused No.1 Gunwant @ Dhudaku, in his defence stated that, he himself and his wife Surekha were sleeping together on Otta i.e. veranda of the house. His parents were sleeping inside the house. 4 to 5 persons attacked them. He started shouting. He rushed to the door of the house. His parents opened the door, he went inside. His wife was injured and lying on Otta, i.e. veranda of the house.

. Admittedly, the prosecution case rests upon the circumstantial evidence. It is also true

that there are witnesses who have stated that they saw the dead body of Surekha lying on the veranda of her house, and there were stab injuries on her person, and accused persons were not present when the prosecution witnesses went there.

. It would be appropriate to make reference to the evidence of PW-6 Bhivsan Visave, so as to appreciate the defence taken by the Appellant. It is clear from reading his evidence already discussed in Para-16 herein above that he heard commotion at the house of accused persons and he proceeded there. Villagers were also gathered there. He has also named Yuvraj, Narsingh and Rashid Gani, who were present there. He saw that dead body of Surekha was lying over the Otta (veranda) of the house. Over the body of Surekha, there were stab injuries. At that time, he saw that accused No.2 and accused No.3 were weeping there. He asked Trymbak i.e. accused No.2, as to what happened and Trymbak told that his son and

daughter-in-law died. At that time accused No.1/Appellant Gunwant @ Dhudaku was inside the house and door was closed from the inside and then they called Dhudaku and he opened the door. They saw that there were injuries over the body of Dhudaku and Trymbak did not tell anything more to them. Therefore, it is clear from the evidence of PW-6 Bhivsan that he immediately went to the spot of the incident in the midnight after hearing commotion at the house of the accused persons and saw that dead body of Surekha was lying on the Otta. There were stab injuries on the person of Surekha and accused No.2 and accused No.3 were weeping. It is true that accused No.2 and accused No.3 have not specifically stated how Surekha died. Nevertheless, the fact that they were weeping and Surekha was lying on the Otta in injured condition, has been seen by PW-6. He also stated that Yuvraj (PW-5) was present there even before he went to the spot of incident.

27. PW-5 Yuvraj Bhavsing Patil, in his evidence stated that at midnight he heard commotion at the house of accused persons. He proceeded towards their house. He saw many villagers gathered there. He also named Himmat Patil, Narsingh Patil and Bhivsan Visave (PW-6) who were present there. He also saw that deceased Surekha and her husband Dhudaku were lying over the Otta of their house and accused No.2 Trymbak told that somebody has assaulted both of them and ran away. It appears that he was declared hostile and the A.P.P. sought permission to cross-examine him. During his cross-examination by the A.P.P., he stated that the distance between house of accused persons is 100 to 120 feet from his house. He also stated about the injuries over the body of Surekha. He denied that Trymbak told him that accused No.1 threw Surekha, the deceased, in injured condition over the Otta of the house. He also denied that Trymbak told him that after throwing Surekha over the Otta Dhudaku went inside

the room and bolted the door from inside. He stated that there were injuries over the person of Dhudaku. Surekha and Dhudaku were carried to the hospital. He denied that he knew that accused No.1 Dhudaku has stabbed his wife Surekha. He did not see anything else at the spot of incident. He denied any relationship with the accused. He stated that statement given before the police was not read over to him and he did not read the said statement. He stated that he told the police that accused Dhudaku was lying in injured condition over the otta, however he was unable to state any reason why the said version is not appearing in his police statement. He further stated that he did not tell the police that Surekha alone was lying over the Otta in injured condition. He further stated that he cannot assign any reason as to why police have stated in his statement that he gave call to Dhudaku and Dhudaku opened the door and came out. He denied that he was giving false evidence to save the accused persons.

. It is important to note the evidence of PW-5 Yuvraj, in cross-examination by the Advocate for the accused. He admitted that when he reached near the house of accused, he saw 2-3 persons were running away and some of the villagers were chasing them. He further admitted that the persons who were running, were not nabbed. He further admitted that accused No.1, who was lying over the Otta i.e. veranda of the house, went inside his house after arrival of vehicle and that accused No.1 was scared. Therefore, the defence taken by the Appellant is completely probabilized by the admissions given by PW-5 Yuvraj in his cross-examination. Therefore the Appellant Gunwant @ Dhudaku has discharged his onus under Section 106 of the Indian Evidence Act by offering explanation/probabilizing his defence, which gets complete support from the cross-examination of PW-5 Yuvraj by the defence counsel.

28. It is trite law that the accused is not expected to discharge onus upon him under Section 106 of the Evidence by bringing on record strict proof, and it is sufficient if the defence taken by him is probabilized by the preponderance of probabilities. The Supreme Court in the case of Ranbir Singh and others vs. State of Haryana¹ in Para-28 of the Judgment held that:-

"28. The burden of proving self-defence is always on the accused but it is not as onerous as the one which lies with the prosecution. Such burden can be discharged by probabilising the defence. The accused may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witness or by adducing defence evidence."

29. The Supreme Court in the case of Ranjithan vs. Basavaraj and others², in Para-18 of the Judgment observed thus:

1 (2009) 16 S.C.C. 193

2 (2012) 1 S.C.C. 414

"18. In V. Subramani v. State of T.N.³ this Court examined the nature of this right. This Court held that whether a person legitimately acted in exercise of his right of private defence is a question of fact to be determined on the facts and circumstances of each case. In a given case it is open to the court to consider such a plea even if the accused has not taken it, but the surrounding circumstances establish that it was available to him. The burden is on the accused to establish his plea. The burden is discharged by showing preponderance of probabilities in favour of that plea. The injuries received by accused and whether the accused had time to have recourse to public authorities are all relevant factors to be considered."

30. The Supreme Court in the case of V.D. Jhingan vs. State of Uttar Pradesh⁴, in Para-4 of the Judgment held thus:

"We are accordingly of the opinion that the

3 (2005) 10 S.C.C. 358

4 A.I.R. 1966 S.C. 1762 (V 53 C 354)

burden of proof lying upon the accused under S.4(1) of the Prevention of Corruption Act will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings, the Court trying an issue makes its decision by adopting the test of probabilities, so must a criminal Court hold that the plea made by the accused is proved if a preponderance of probability is established by the evidence led by him."

31. In Sessions Case No.51 of 2012 the Appellant was charged for the offence punishable under Section 309 of the I.P. Code, and challenging the conviction and sentence for the offence punishable under Section 309 of the I.P. Code, the Appellant has preferred Criminal Appeal No.286 of 2013. PW-1 Barku Jane, Head Constable at the relevant time, attached to Parola police

station, stated in his evidence that Appellant was admitted in the hospital in injured condition. He reached in the hospital at about 8.00 to 8.30 hours. Appellant Gunwant @ Dhudaku was unconscious and his operation was being carried out in the hospital. Gunwant regained consciousness at about 16.00 hours. He recorded statement of Gunwant in presence of medical officer. Statement was recorded as per the say of accused and his signature was obtained, after recording the statement. Yuvraj More (PW-2), stated that when he went to the hospital along with medical officer, Parola, he saw accused having injuries on his neck, both hands and stomach, and after giving primary treatment, the patient was shifted to civil hospital, Dhule.

32. Sanjay Patil (PW-3) also stated in his evidence that he carried over one injured person in the vehicle in between 3.00 to 3.30 a.m. on 16th June, 2011 and an injured was having injuries

on his neck, both hands and stomach. Sarpanch and other 2-3 persons of village Sarve were with them in the vehicle.

33. The evidence of the afore mentioned three prosecution witnesses makes it clear that, they saw this accused Dhudaku in injured condition. He was unconscious and having injuries on neck, both hands and stomach. The evidence of PW-4 Prashant Deore, medical officer, is discussed in detail in Para-19. He has categorically stated about the injuries on the person of accused Gunwant @ Dhudaku, the manner in which he was treated and operation was carried out. The real question to be answered is, whether the injuries found on the person of accused Gunwant were self inflicted or inflicted by some other persons. While discussing the defence taken by the accused and the evidence of PW-5 Yuvraj Patil, we have already concluded that the Appellant/accused No.1 Gunwant @ Dhudaku has probabilized his defence as it is evident from

the cross-examination of PW-5 Yuvraj Patil by the defence counsel that when Yuvraj reached near the house of accused, he saw 2-3 persons were running away and some of the villagers were chasing them.

34. The medical officer Prashant Deore, in his examination-in-chief deposed that injuries found on the person of patient can be caused by sharp edged weapon. He further deposed that the injuries found on the person of patient can be self inflicted. However, during his cross-examination, he stated that the injuries which he found on the person of the patient i.e. Appellant, can be caused by the assault by another person. He admitted that in the case papers, there is no history of self inflicted injuries. In view of the evidence of the medical officer in his cross-examination, the benefit of doubt deserves to be extended in favour of the accused-Appellant. While appreciating the prosecution case based upon the circumstantial evidence, law is well settled. The

Supreme Court in the case of 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.

35. As already observed, all the accused persons including the Appellant were acquitted for the offence punishable under Section 498-A of I.P. Code. Therefore, the motive brought on record

5 (1984) 4 SCC 166

by the prosecution that on account of demand of Rs.1,00,000/- for purchasing plot at Pune, the accused ill-treated and harassed Surekha, gets disappear. It is true that motive is always locked in the mind of the accused and it is difficult to unlock the same. However in the facts of the present case, the accused/Appellant has probabilized his defence.

36. In the light of discussion in foregoing paragraphs, we are of the considered view that the entire prosecution case rests upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient, convincing and do not inspire confidence so as to prove the offence against the Appellant beyond reasonable doubt. Therefore, an inevitable conclusion is that the Appellant is entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) Both the Criminal Appeals i.e. Criminal Appeal No.285 of 2013 and Criminal Appeal No.286 of 2013 are allowed.

(II) The impugned Judgment and order dated 15th July, 2013, passed by the Additional Sessions Judge, Amalner in Sessions Case No.28 of 2011 convicting and sentencing Appellant - Gunwant @ Dhudaku Trymbak Patil for the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.

(III) The impugned Judgment and order dated 15th July, 2013, passed by the Additional Sessions Judge, Amalner in Sessions Case No.51 of 2012 convicting

and sentencing Appellant - Gunwant @ Dhudaku Trymbak Patil for the offence punishable under Section 309 of the Indian Penal Code, is quashed and set aside.

(IV) The Appellant - Gunwant @ Dhudaku Trymbak Patil is acquitted of the offence punishable under Section 302 and 309 of the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellant.

(V) The Appellant - Gunwant @ Dhudaku Trymbak Patil is in jail, he be set at liberty forthwith, if not required in any other case.

(VI) The Appellant - Gunwant @ Dhudaku Trymbak Patil shall furnish personal

bond of Rs.15,000/- and surety of like amount under Section 437-A of the Code of Criminal Procedure, separately in both the Session Cases, before the concerned trial Court at Amalner.

[S.M. GAVHANE, J.]

asb/JUL17

[S.S. SHINDE, J.]