

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

CRIMINAL APPEAL NO. 737 OF 2016

Mahadeo s/o. Nivrutti Dhakne,
Age 47 years, Occ. Agriculture,
R/o Lahuri, Taluka Kaij,
District Beed.

...APPELLANT
(Ori. Accused)

versus

The State of Maharashtra
through Police Inspector,
Police Station, Kaij, Tq. Kaij,
Dist. Beed.

...RESPONDENT

.....
Mr. M.A. Tandale, Advocate for Applicant
Mr. A.P. Basarkar, APP for Respondent-State
.....

CORAM : K.K. SONAWANE, J.

RESERVED ON : 21st June, 2017.

PRONOUNCED ON : 20th July, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Being dissatisfied with the judgment and order of conviction under Section 307 of IPC and resultant sentence to suffer R.I. for 5 years and to pay fine of Rs. 1,000/-, in default, simple imprisonment for 10 days passed by the Additional Sessions Judge, Ambejogai in Sessions Case No. 53

of 2015, dated 29.11.2016, the appellant/convict preferred the present appeal under Section 374 of Cr.P.C. to redress his grievances.

2] Facts giving rise to the prosecution of appellant/accused in nutshell, is as under :-

The appellant/accused is the husband of victim Sangitabai Thakre r/o. Village Lahuri, Taluka Kaij, District Beed. The first informant Ramhari and one Krishna are the sons, whereas, Manisha and Lakshmi are the daughters of spouses. It has been alleged that the appellant Mahadeo developed the habit of drinking liquor. He was not doing any work for livelihood. Prior to one year of the incident, he had assaulted wife victim Sangitabai under the influence of liquor and thereafter, he went away from the house. According to prosecution, the appellant Mahadeo returned to home before 8/10 days of the incident. He behaved with the family members in proper manner. Manisha and Lakshmi, the daughters of the spouses are married and they were cohabiting with their husband at matrimonial home. According to prosecution, the daughter Manisha came to the house of parents for delivery purpose. After delivery, the daughter Manisha with her newly born child, returned to her matrimonial home at Tukuchi Wadi on 14.10.2012, accompanied with first informant Ramhari. The victim Sangitabai was at home with her son Krishna and daughter Lakshmi. The appellant Mahadeo came to home in inebriated state. He was under the influence of liquor. He insisted wife Sangitabai to bring Rs. 2 Lakhs from her parents to carry on the business of bullock. He hurled the abuses to wife

Sangita. The victim Sangitabai made endeavour to give understanding to the husband appellant Mahadeo, but he was not in a condition to listen. In a fit of rage, he picked up the sickle from the corner of the house and attacked on the head and face of wife Sangitabai. There were serious bleeding injuries on the vital part of head of victim Sangitabai. She sprawled on the ground in the pool of blood. The daughter Laxmi raised shots and yelled for help. The nephews, Datta Dhakne, and Babasaheb rushed to the spot and extricated the victim Sangitabai from the clutches of appellant Mahadeo. Thereafter, the denizens of the area arrived at the spot to see victim Sangitabai. Meanwhile, the appellant Mahadeo made his escape good from the spot. Injured Sangitabai was taken to the Government Hospital at Kaij. After first aid treatment, she was taken to the Government Hospital at Ambejogai. Later on, she was shifted to a private hospital at Latur.

3] On the following day, i.e. on 15.10.2012, PW-1 Ramhari approached to the police of Kaij police station and filed the FIR. He blamed father Mahadeo for the serious injuries sustained to mother Sangitabai. Pursuant to FIR, the concerned PSO, registered the Crime No. 199 of 2012 under Section 307 of IPC and set the penal law in motion. I.O. visited to the spot of incident and drawn panchanama of scene of occurrence. I.O. recovered the blood stained weapon sickle from the spot. He recorded statement of injured Sangitabai in the hospital. I.O. also recorded the statement of witnesses acquainted with the facts of the case. He procured the sketch map of scene of occurrence from revenue authority. I.O.

launched massive search to trace out the whereabouts of appellant Mahadeo, but found unavailing. At last, I.O. preferred the charge-sheet against the appellant/accused by showing him absconding under Section 299 of Cr.P.C. Eventually, police of Kaij police station succeeded to apprehend the appellant/accused on 18.8.2015 in this case. After appearance of the accused/appellant, the learned trial court framed the charges under Section 307, 504 of IPC against the appellant Mahadeo. He pleaded not guilty and claimed for trial

4] The prosecution examined in all 5 witnesses in this case to prove the charges against the accused. The trial court appreciated the entire oral and circumstantial evidence adduced on record and arrived at the conclusion that appellant/accused is guilty for attempting to commit murder of wife Sangitabai. Therefore, the learned trial court convicted the appellant/accused for the offence for the offence punishable under section 307 of IPC and awarded the resultant sentence as mentioned above. However, the learned trial court acquitted the appellant/accused for the offence under Section 504 of IPC, levelled against him. The impugned findings of learned trial court convicting the appellant/accused under Section 307 of IPC is the subject matter of present appeal.

5] The learned counsel for appellant vehemently submits that the evidence of prosecution witnesses on record is cryptic and slender in nature. The learned trial court failed to appreciate the circumstances in its proper

perspective and committed error for the adverse inference against appellant. According to learned counsel, the prosecution witness PW-1 Ramhari, PW-2 Sangitabai and PW-3 Babasaheb are the interested witnesses in this case. PW-1 Ramhari was not the eye witness of the incident. He was at matrimonial home of sister Manisha in village Tukuchi Wadi. There are no reliable documents produced on record in regard to the medical treatment of victim Sangitabai in Govt. Hospital Kaij or Ambejogai. There are material discrepancies in the evidence of these related and interested witnesses. There was also delay in filing FIR. The prosecution did not examine any independent witnesses in this case. The weapon sickle was not referred to Chemical Analyzer, being a weapon of crime. The learned counsel pointed out the discrepancies in the evidence of the prosecution witnesses in detail and submits that the conviction of the appellant is not sustainable on the basis of such dubious and incredulous evidence of prosecution witnesses. The Medical evidence is not supporting to the version of injured PW-2 Sangitabai. Therefore, he requested to allow the appeal and exonerate appellant/accused for the charge under Section 307 of IPC pitted against him.

6] In refutal, learned APP, raised objection to the contentions put forth on behalf of appellant and contends that the learned trial court has correctly dealt with the facts and circumstances of the case in its proper perspective. The appellant had a habit of drinking liquor. Prior to the alleged incident, he had assaulted wife Sangitabai and attempted to kill her

in the year 2011. He was also prosecuted for the same. But, he was acquitted for the lack of concrete evidence against him. Learned APP fervidly submits that PW-2 Sangitabai is the injured witness and she deposed about the overt act of the husband - accused Mahadeo inflicting fatal injuries on her head. PW-1 Ramhari also deposed about the brutal act of father accused Mahadeo assaulting mother Sangitabai with lethal weapon. Learned APP submits that PW-4 Dr. Kinikar opined that the injuries received to victim Sangitabai was fatal and serious in nature. He performed surgery on victim Sangitabai for her head injury. There was a history of assault by the husband recorded in the certificate produced by PW-4 Dr. Kinikar in this case. According to learned APP, the sole evidence of PW-2 Sangitabai is sufficient to draw adverse inference against the accused. Her evidence was corroborated by the version of her son PW-1 Ramhari and brother PW-4 Babasaheb. The learned APP upheld the finding of conviction recorded by the learned trial court. He therefore prayed not to nod in favour of appellant and dismiss the appeal.

7] I have considered the rival submissions on behalf of both sides. I have also delved into the record and proceedings of the Sessions Case No. 53 of 2015. The intense scrutiny of the evidence of prosecution witnesses on record reflects that the arguments advanced on behalf of learned counsel for the appellant appears sustainable and considerable one. There are material discrepancies in the evidence of the prosecution witnesses. In absence of any cogent, dependable and reliable evidence, to corroborate the version of

injured Sangita, it would be unsafe to fasten guilt on the accused. The edifice of the prosecution case primarily rests on the evidence of PW-1 Ramhari, PW-2 Sangitabai and PW-3 Babasaheb.

8] PW-1 Ramhari was 19 year old at the time of incident and he is the elder son of the spouses. He deposed that his father appellant Mahadeo was addicted to liquor. The incident occurred on 14.10.2012 and on that day, his father appellant Mahadeo had been to Kaij and returned to home at about 9.00 p.m. in inebriated condition. He picked up the quarrel with the mother Sangitabai. According to PW-1 Ramhari, there was heated argument in between his parents on account of filing earlier prosecution case against him by mother Sangitabai. In the quarrel, father assaulted his mother Sangitabai with sickle on head, face etc. His mother sprawled on the ground. PW-1 Ramhari stated that his father gave threats that he would kill her. Meanwhile, Dattu Dhakne, Shivaji, Babasaheb and Kamal Dhakne rushed to the spot. On seeing all these neighbours, the appellant father Mahadeo escaped from the spot. PW-1 Ramhari deposed that Dattu passed on information of the alleged incident to his maternal uncle on telephone. His mother was taken to hospital for medical treatment. On the following day, i.e. 15.10.2002, he went to the police station and filed FIR (Exh.16). In cross-examination, PW-1 Ramhari conceded that on the day of incident at about 4.00 p.m. he had been to village Tukuchi Wadi with his sister Manisha at her matrimonial home. He was not accompanied with the mother Sangitabai while escorting her to the respective hospitals at Kaij and

Ambejogai for medical treatment, He had alone visited to the police station and filed the report. He has admitted in cross-examination that on 9.9.2011, his maternal uncle PW-3 Babasaheb had filed complaint against appellant Mahadeo for murderous attack on wife PW-2 Sangitabai and accordingly, the offence under Section 307 of IPC was registered against the appellant.

9] The prosecution examined injured Sangitabai to bring home the guilt of appellant Mahadeo. She deposed that her husband appellant Mahadeo was addicted to liquor. On the day of the incident, her daughter Manisha after delivery, went for cohabitation at her matrimonial home. At about 8.00 p.m. her husband came to home in inebriated state and started abusing her. He was insisting wife Sangitabai to bring Rs. 2 Lakhs from his parents for business of bullocks. She tried to give understanding to the husband about her inability to bring money from parents. But, accused/appellant Mahadeo became furious and gave threats of life to wife Sangitabai. In a fit of rage he went inside the house and picked up the sickle and dealt blows of weapon sickle on her forehead and back side of the head. She sprawled on the ground. Her daughter Lakshmi was standing near her. She shouted and ran away towards house of one Shivaji. Meanwhile, her nephew Datta, Babasaheb and Kamalbai came there. But, her husband made his escape good from the spot. According to PW-2 Sangitabai, her nephew escorted her to the hospital at Kaij but she was not got admitted in the hospital at Kaij. Thereafter, she was taken to Govt. Hospital at Ambejogai but Doctor refused to give medical treatment to her and lateron,

she was shifted to Sahyadri Hospital at Latur, where, she was hospitalized for about 25 days. In the hospital, after about 9 days, she regained consciousness. The police recorded her statement, she put her thumb impression on it. She identified the weapon sickle by which husband inflicted fatal injuries to her.

10] The prosecution adduced the evidence of PW-3 Babasaheb to strengthen the version of PW-1 Ramhari and PW-2 Sangitabai. PW-3 Babasaheb stated that on 14.10.2012, at about 9.30 p.m., his nephew Ramhari informed him on his cell phone that his father had been to village Kaij and after returning home, he picked up quarrel with the mother Sangitabai for the reason why she lodged complaint to Kaij police station against him earlier and whether she called persons to beat him. In the fight, father Mahadeo dealt a blow of sickle on the head and nose of Sangita in drunken condition. He had also been informed that injured Sangitabai was taken to hospital at Kaij. PW-3 Babasaheb further deposed that after information of the alleged incident, he immediately rushed to Kaij hospital and saw his sister Sangitabai in injured condition. The concerned Doctor of the Government Hospital Kaij disclosed that his sister Sangitabai could not be treated at the hospital and advised them to shift her to Government Hospital at Ambejogai. Accordingly, the injured was taken to the hospital at Ambejogai. CT Scan examination of the injured was carried out. The concerned Doctor disclosed that there was no neurosurgeon available in the hospital. Therefore, the injured Sangitabai was shifted to the hospital of Dr.

Kinikar at Latur. The surgery was performed on her. She was hospitalized for about 25 days. The police recorded his statement.

11] It is to be borne in mind that prima facie, an injured witness is supposed to be present in the occurrence. But, in order to test veracity or otherwise of injured witness, the evidence must be consistent with the prosecution case and other circumstances. At this juncture, I find substance in the contentions propounded on behalf of appellant that there are material discrepancies and contradictions in the evidence of these interested and related witnesses. These discrepancies play a decisive role to test the credibility and reliability of the evidence of these star witnesses of prosecution. PW-2 Sangitabai deposed about the cause of quarrel that her husband was insisting to bring Rs. 2 Lakhs from her parents for business of bullocks. But she shown inability and on that count, appellant Mahadeo attacked her with lethal weapon sickle and inflicted fatal injuries. However, PW-1 Ramhari did not state about demand of Rs. 2 Lakhs, but he divulged that his father appellant Mahadeo attacked the mother Sangitabai for the reason why on earlier occasion she had lodged criminal case against him. The accused Mahadeo taking umbrage of the earlier prosecution case, raised the quarrel with wife Sangitabai and in the fight, he attacked with weapon sickle. It is essential to take into consideration that, on the day of incident i.e. 14.10.2012 at about 4.00 p.m. PW-1 Ramhari had been to village Tokuchi Wadi accompanied with sister Manisha at her matrimonial home, which was at a distance of near about 10 Kms. from village Lahuri. The sister Manisha

returned to her matrimonial home for cohabitation after delivery with her newly born baby. According to PW-2 Sangitabai the alleged incident occurred at about 8.00 p.m. at her dwelling house located in village Lahuri, Taluka Kaij. In view of the dichotomy in the version of mother and son, about the cause of quarrel between the spouses, it seems that PW-1 Ramhari was not present in the house at the relevant time of incident. But, he was at matrimonial home of sister Manisha. Therefore, he was not aware about exact cause of fight between the parents as stated by PW-2 Sangita. In the cross-examination, he denied that he halted during night at the matrimonial home of sister Manisha. However, he has not stated at what point of time he returned to home after leaving the sister Manisha at her matrimonial home.

12] The PW-2 Sangita stated about presence of daughter Laxmi, but she did not disclose that, PW-1 Ramhari was also present in the house at the time of incident. The discrepancies in the evidence of mother and son in regard to exact cause of quarrel between the spouse creates clouds of doubt about presence of PW-1 Ramhari at the spot. The conduct and demeanour of PW-1 Ramhari appears suspicious and doubtful. He was not accompanied with injured mother Sangitabai since beginning when she was escorted to the hospital at Kaij and Ambajogai and later on shifted to hospital at Latur. These circumstances created doubt about his presence at the scene of occurrence on the day of incidence. The possibility of his presence in village Tukuchiwadi at the matrimonial house of sister Manisha cannot be ruled out.

13] It has been brought on record in the evidence of PW-2 Sangitabai that her daughter Laxmi was standing near her at the time of alleged incident of assault. She raised shouts and yelled for help. PW-2 Sangitabai also stated that the daughter Laxmi ran towards the house of Shivaji. Thereafter her nephew Datta, Babasaheb and wife of nephew Kamal arrived at the spot. Surprisingly, the eye-witness - daughter Laxmi was not examined by the prosecution to unfurl the details of alleged incident of assault, to corroborate the version of injured Sangitabai. Moreover, the relatives Dattu, Babasaheb, Kamal etc. who rushed to the spot and escorted the victim Sangitabai to the Government Hospital for medical treatment, all did not come forward to depose in favour of the prosecution. There were houses of Rajabhau Jadhav, Baliram etc. in the neighbourhood of spot of incident. But, no one else stepped into the witness box, to support the prosecution case. I am at a loss to understand for what reason prosecution did not examine the so called witness Lakshmi daughter of victim Sangitabai in this case. Her nephew Dattu, Babasaheb, relative Kamal and other neighbours also did not come forward to support the prosecution case. The absence of evidence of independent witnesses created serious dent in the prosecution case.

14] According to prosecution, injured victim Sangitabai was initially escorted to the Govt. Hospital at Kaij but Doctor shown his inability to give medical treatment to her. Thereafter, she was taken to government hospital at Ambajogai. The concerned Doctor conducted C.T. Scan

examination and advised to take injured Sangitabai to the hospital at Latur for treatment by neurologist. Accordingly, the injured Sangitabai was taken to hospital at Latur. PW-4 Dr. Kinikar was examined by the prosecution. He produced medical certificate about the head injury received to victim Sangitabai. There were no efforts on the part of prosecution to produce document of medical treatment of injured Sangitabai from government hospital at Kaij or from government hospital at Ambajogai.

15] In the evidence of PW-4 Dr. Kinikar, there was an attempt to produce the document pertains to discharge card of PW-2 Sangitabai issued by the government hospital at Ambajogai. The alleged discharge card reflects that the injured Sangitabai was admitted in the hospital on 9.9.2011 and after medical treatment she was discharged from the hospital on 11.9.2011 for her head injury with CLW to right parieto occipital region. This document indicates that the PW-2 Sangitabai had received the similar nature of head injury on earlier occasion and she was hospitalize for medical treatment till 11.9.2011. It is strange to appreciate that the concerned medical officer of government hospital at Kaij as well as Ambajogai would refuse to provide medical treatment to PW-2 Sangitabai for her serious head injury. PW-3 Babasaheb deposed about C.T. Scan examination in the government hospital Ambajogai. Albeit, there are no documents produced on record to show that she was hospitalized in government hospital, at Ambajogai.

16] There is also delay in lodging the FIR about incident to Police at Kaij. The FIR came to be lodged on the following day at about 11.20 a.m., The alleged incident occurred on the earlier day i.e. on 14.10.2012 at about 8.00 p.m. There was no explanation of delay in lodging F.I.R. It is worth to mention that, initially after the alleged incident, injured Sangita was taken to Government Hospital at Kaij. But, Doctor did not allow her for medical treatment and thereafter, she was taken to Ambejogai. It remains a conundrum that for what reason the injured Sangita or her nephew, brother etc. did not visit to police station, Kaij, when they all were at Government Hospital Kaij, for medical treatment of Sangita. These circumstances found detrimental to prosecution case for not visiting to police station, Kaij to lodge F.I.R.

17] In view of the aforesaid discussion, I am of the opinion that the evidence of the prosecution witness do not inspire confidence. The variance in the evidence of PW-2 Sangitabai and PW-1 Ramhari in regard to cause of quarrel between the spouses created doubt about the trustworthiness of the allegations nurtured against appellant Mahadeo. The weapons sickle recovered from the spot was not referred to the forensic laboratory for chemical analysis to prove the nexus and proximity of the weapon with the alleged injuries sustained to PW-2 Sangitabai. It is preposterous to appreciate that concerned medical officers of the government hospital did not allow injured Sangiaabai for medical treatment . It is unsafe to rely upon the medical certificate issued by Dr. Kinikar, medical expert of private

hospital for adverse inference against the appellant. The overall assessment of the entire evidence of prosecution witnesses demonstrate that the prosecution failed to prove the involvement and participation of the appellant Mahadeo in the alleged crime beyond all reasonable doubt. There is no cogent, dependable and verifiable evidence to prove that the appellant Mahadeo was the author of injuries sustained to victim Sangita.

18] It is true that the appellant accused was absconding since FIR registered against him in the month of October 2012. He was arrested in this crime on 18.8.2015. The absconding of accused by itself is not conclusive either of guilt or of a guilty conscience. The person may abscond due to fear of being involved in the alleged offence. In the instant case, the accused was prosecuted for the similar charges on earlier occasion in the year 2011. However, he was acquitted for the offence of attempt to commit murder of wife Sangita. Therefore, on this back ground, the absconding conduct and demeanour of the appellant during the relevant period, would not itself sufficient to attribute guilt for attempt to commit murder of wife Sangitabai.

19] In such circumstances, I am not inclined to draw adverse inference against the appellant for the charges pitted against him. The learned trial court did not appreciate the evidence of prosecution witnesses in its proper perspective. The learned trial judge overlooked the material discrepancies and contradictions in the evidence of related and interested

witnesses in this case nor any independent witness or denizens came forward to support to prosecution case. In such circumstances, I am not prepared to uphold the findings of conviction of the appellant expressed by the trial court.

20] In the result, the appeal stands allowed. The conviction of the appellant under Section 307 of IPC recorded by the learned Trial Court in Sessions Case No. 53 of 2015 is quashed and set-aside. The appellant Mahadeo is acquitted of the offence under section 307 of the Indian Penal Code. It is informed that appellant Mahadeo is in jail being a convict in the crime. He be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid be refunded to appellant- Mahadeo. Registrar (Judicial) to transmit copy of this judgment and order to the concerned Jail Authority and to the appellant Mahadeo, immediately, for further process. The appellant- Mahadeo shall furnish the bail bonds of Rs. 15,000/- and surety of like amount under Section 437-A of Cr.P.C. before the concerned trial court at Ambajogai.

[K.K.SONAWANE]
JUDGE

grt/-