

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.192 OF 2011**

Jayavant Dashrath Patil	]
Age 42 years, Occ: Labourer,	]
Residing at village Vindhane,	]
Post Dighode, Tal. Uran,	]
Dist. Raigad (At present lodged in	]
Alibag Central Jail)	]..Appellant [Ori.Accused]

Vs.

The State of Maharashtra	]
(At the instance of Uran Police St.	].. Respondent

....

Mr. Kuldeep Patil Advocate for the Appellant
Mr. H.J.Dedia A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI &
REVATI MOHITE DERE, JJ.**

DATED : JANUARY 12, 2017

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 30.9.2010 passed by the learned Additional Sessions Judge, Raigad at Alibag in Sessions Case No. 142 of 2008. By the said judgment

and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and fine of Rs.1000/- i/d R.I. for two months.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Surekha was the wife of the appellant. The appellant was residing at village Vindhane. After the marriage, Surekha went to reside with the appellant at village Vindhane. Surekha was the daughter of PW 1 Narmada and sister of PW 2 Aruna. Whenever, Surekha used to visit the house of her mother Narmada, Surekha used to tell her mother that her husband was doubting her character and he used to assault her on that count. Surekha also used to tell her mother that her husband was harassing her and he used to keep her inside the house and lock the door of the house from outside.

(ii) The incident occurred on 21.7.2007. At about 5.00 a.m. on 21.7.2007, PW 9 Arun was passing by the house of the appellant. At that time, he saw the appellant putting a lock on the door of the house of the appellant from outside. PW 4 Anant Shelke was the police patil of village Vindhane. On

21.7.2007 in the morning at about 7.30 a.m. he was going to answer the nature call. At that time, some lady brought to his notice that smoke was coming out of the house of the appellant, hence, police patil PW 4 Anant Shelke went to the spot. He saw that the house of the appellant was closed and there was lock on the door. Then he went to Chirner police out-post and gave information to PW 3 Police Head Constable Shinde. He then came back along with PHC Shinde to the house of the appellant. They saw a lock on the door of the house of the appellant. A photographer was called to take photographs. PW 3 PHC Shinde then broke open the the lock of the door of the house of the appellant. Then PW 3 PHC Shinde and police patil PW 4 Anant Shelke went inside the house of the appellant. They saw Surekha the wife of the appellant, was dead and she was completely burnt. Police patil Shelke then went to the police station and lodged F.I.R. (Exh.30). Thereafter investigation commenced. The dead body of Surekha was sent for post-mortem. PW 13 Dr. Bhadre conducted the post-mortem on the dead body of Surekha. He found that she had sustained 100% burn injuries and the cause of death was due to 100% deep burn injuries. After completion

of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant set his wife Surekha on fire and caused her death.

5 There is no eye witness in the present case and the

case is entirely based on circumstantial evidence. The evidence of PW 1 Narmada, PW 2 Aruna and PW 12 Chandrakant shows that Surekha was the wife of the appellant. PW 1 Narmada was the mother of Surekha. She has stated that the marriage of Surekha with the appellant took place on 28.1.2007. The appellant was resident of village Vindhane. After marriage, Surekha started residing with the appellant at village Vindhane. The appellant was residing separately with Surekha. Narmada has stated that whenever Surekha used to come to her house, she used to tell her that her husband was doubting her character and was assaulting her on that count. Surekha also used to tell her that her husband was harassing her and he used to keep her inside the house and put lock on the door from outside.

6 PW 2 Aruna was the sister of Surekha. She has stated that the marriage of the appellant and her sister Surekha had taken place about 6 to 7 months prior to the incident. The appellant was resident of village Vindhane. After the marriage, the appellant and Surekha started residing together in their house at village Vindhane. Aruna has stated that on 21.7.2007

at about 9 a.m. a telephone message was received from Vindhane that there was some problem and therefore, they should come to village Vindhane. Therefore, Aruna along with her parents and other relatives went to village Vindhane to the house of the appellant. They saw that the door of the house was locked from outside, however, window was open. From the window, they saw that Surekha was lying dead and she had sustained burn injuries. The appellant was not seen anywhere. At that time, police were also present. Police then broke open the lock of the door of the house and went into the house. Thereafter the dead body was sent for post-mortem. That Surekha was the wife of the appellant is also seen from the evidence of PW 12 Chandrakant who has stated that he attended the marriage of Surekha and the appellant.

7 The evidence of PW 1 Narmada, PW 2 Aruna and PW 10 Pushpa shows that only the appellant and deceased Surekha were residing together in the house. We have already discussed the evidence of PW 1 Narmada and PW 2 Aruna. PW 10 Pushpa has stated that her house was situated at a distance of 100 to 150 away feet from the house of the appellant. She

has stated that the appellant was residing along with his wife Surekha. Thus, the evidence shows that only the appellant and his wife Surekha were residing in the house. The door of the house was found locked from outside and Surekha was found lying dead in the house with burn injuries and the appellant was nowhere to be seen. The evidence of PW 9 Arun Shinde shows that on 21.7.2007 at about 5.00 a.m. he was going to attend the call of nature. He was passing by the road in front of the house of the appellant. While he was passing by the house of the appellant, he saw smoke coming out from the window of the house of the appellant. He also saw the appellant putting a lock to the door of the house from outside. Thus, the evidence of PW 9 Arun shows that the appellant locked the door of the house from outside and within a short time, witnesses saw the appellant's wife Surekha lying dead in the house with burn injuries.

8 Mr. Kuldeep Patil learned counsel appearing for the appellant attacked the evidence of PW 9 Arun Shinde stating that he is a chance witness. Mr. Patil submitted that Arun Shinde was not a resident of

village Vindhane but he was resident of village Chirner which was situated at a distance of 3 to 4 kms. from village Vindhane. He submitted that there was no reason for Arun Shinde to be present there in village Vindhane at about 5.00 a.m. in the morning. He further submitted that if Arun Shinde was a resident of village Chirner, there was no reason for him to be attending the call of nature in village Vindhane. As far as this submission is concerned, the evidence of Arun Shinde shows that he knew the appellant. Arun Shinde had relatives residing in village Vindhane and the appellant was a resident of village Vindhane. In the night of 20.7.2007, Arun Shinde had come to village Vindhane. He stayed there in the night. On 21.7.2007 at about 5.00 a.m. he was going to attend the call of nature, when he saw the appellant locking the door of his house from outside. In relation to the submission that Arun Shinde is a chance witness and his evidence cannot be relied upon, Mr. Patil placed reliance on the decision of the Supreme Court in the case of **Jarnail**

Singh Vs. State of Punjab¹. He placed reliance on paragraphs 20 to 23 of the said decision. In the case of ***Jarnail Singh***, the chance witness i.e. PW 18 Gurucharan was not relied upon because he could not explain under what circumstances, he was present at the spot of the incident. In the case of ***Jarnail Singh***, the Supreme Court observed that the evidence of a chance witness requires a very cautious and close scrutiny and chance witness must adequately explain his presence at the place of occurrence of the incident. The conduct of the chance witness specially subsequent to the incident, has to be taken into consideration, particularly, as to whether he had informed in the village about the incident.

9 In the present case, the chance witness PW 9 Arun has explained under what circumstances, he was passing by the house of the appellant. Moreover, this witness has stated that after answering the call of nature when he was coming back to the house of his

1 (2009) 9 SCC 719

nephew Krishna Rasal, he heard that the appellant set his wife on fire, hence, there was no question of PW 9 Arun informing anyone else in the village about the incident because after answering the call of nature when he was coming back, he himself heard that the appellant had set his wife on fire. Thus, there was no opportunity in between for PW 9 Arun to inform anyone else in the village about the incident.

10 The evidence of PW 1 Narmada, PW 2 Aruna, PW 3 Constable Shinde, PW 4 Anant Shelke, PW 5 Meena, PW 6 Pankaj, PW 8 Ramkrishna and PW 14 Damugade shows that there was a lock on the door of the house of the appellant and his wife Surekha was lying dead in the house with burn injuries and the evidence of PW 9 Arun shows that the appellant had put the lock on the door from outside. In relation to the fact that the door of the house of the appellant was locked from outside, PW 1 Narmada has stated that deceased Surekha was her daughter. Surekha was married

to the appellant. The appellant was residing at village Vindhane. Narmada has further stated that on 21.7.2007 she received a telephone message that they should immediately go to village Vindhane, therefore, they went to the house of the appellant at village Vindhane. They saw that the door of the house of the appellant was locked from outside. The appellant was not present there. From the window, they saw that her daughter Surekha was lying dead and she had sustained burn injuries.

11 PW 2 Aruna has stated that on 21.7.2007 at about 9 a.m. a telephone message was received from Vindhane that there was some problem and therefore, they should come to village Vindhane. Therefore, Aruna along with her parents and other relatives went to village Vindhane to the house of the appellant. They saw that the door of the house was locked from outside, however, window was open. From the window, they saw that Surekha was lying dead and she had received burn injuries.

12 PW 3 Rajesh Shinde was the Police Head Constable of Uran Police Station. He has stated that on 21.7.2007 at about 7.45 a.m. police patil Anant Shelke (PW 4) of village Vindhane came to the police out-post and gave information that smoke was coming out from the house of the appellant and lady inside the house is found dead due to burn injuries, hence, he along with police patil went to the house of the appellant. He saw that the door of the house of the appellant was found closed and locked from outside. The window was open. From the window, they saw that the lady was lying dead due to burn injuries.

13 PW 4 Police Patil Anant Shelke has stated that on 21.7.2007 at 7.30 a.m. he was going to answer the call of nature. Some ladies brought to his notice that smoke was coming out from the house of the appellant. He then went to the house of the appellant. He saw that the door of the house of the appellant was locked from outside. The photographer (PW 6) Pankaj Patil

was called to take photographs. Pankaj took photographs. Then lock on the door of the house of the appellant was broken. Thereafter, they went inside the house. They saw the dead body of a female which was completely burnt.

14 The evidence of PW 5 Meena shows that the appellant was residing with his wife at a distance of about 100-150 feet away from her house. Meena has stated that she was residing in village Vindhane. At about 7 a.m. people had gathered near the house of the appellant. Hence, she went there. She saw that the door of the house of the appellant was locked. She came to know that the wife of the appellant was set on fire.

15 PW 6 Pankaj Patil is a photographer by profession. He has stated that on 21.7.2007 at about 9 a.m. he was called by the police at village Vindhane to take photographs. He reached the spot within 10 to 15 minutes. When he reached the spot, he saw that

the door of the house was locked from outside. From the window, one dead body of a lady which was completely burnt was seen inside the house. He then took the photographs of the door of the house. Thereafter police broke open the lock of the door. Thereafter they entered the house. He took photographs of the dead body and spot of the incident.

16 PW 8 Ramkrishna is the pancha to the spot of the incident. He has stated that on 21.7.2007 at about 10 a.m. he was called by the police to act as a pancha at the house of the appellant. He knew the appellant. The door of the house of the appellant was locked from outside. The window was open. Police broke open the lock. After breaking open the lock, they went inside. They saw a dead body of a lady lying there which was completely burnt. The room was smelling of kerosene.

17 PW 14 Police Inspector Damugade is the Investigating Officer. He has stated that on 21.7.2007 at about 8.45 a.m. he was on duty at Uran. He learnt

about the incident, hence, he went to the spot along with Dr. Parmar. Police Patil Anant Shelke (PW 4) was present outside the house of the appellant. Police patil pointed out the house. The house was locked from outside. Window of the house was open. When they looked inside, they saw a dead body was lying on the ground in the house with burn injuries. He then called panchas and photographer. The photographer took photographs. Thereafter they broke open the lock and entered in the house. Dr. Parmar who was accompanying Police Inspector Damugade, examined the dead body and declared that the lady was dead.

18 Thus, the evidence of PW 1, 2, 3, 4, 5, 6, 8 and 14 shows that there was a lock on the door of the house of the appellant and deceased. The evidence of these witnesses further shows that a dead body of a lady was seen in the house. The evidence of PW 9 Arun shows that appellant had put a lock on the door of his house. From the evidence on record, it is clear that only the appellant and his wife were residing together.

The dead body of the wife of the appellant was found inside his house. Hence, Section 106 of the Evidence Act would come into play. The appellant has to explain how the deceased sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principle which underlies Section 106 of the Evidence Act can be applied in cases where certain facts are especially within the knowledge of a person. In the case of ***State of Rajasthan Vs. Kashi Ram***² the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him,

² (2006)12 SCC 254 : AIR 2007 SC 144

that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

19 Another circumstance which goes against the appellant is that he had motive to commit the crime. The motive was that the appellant had doubt about the character of his wife Surekha. This is seen from the evidence of PW 1 Narmada who is the mother of deceased Surekha. Narmada has stated that whenever her daughter Surekha used to come to her house, she used to tell her that her husband was having doubt about her character and on account of this, he used to assault her. Surekha also stated that her husband was

harassing her and he used to keep her inside the house and lock the door from outside.

20 PW 5 Meena has stated that the appellant and deceased were residing at a distance of 100 feet away from her house. She has further stated that the appellant was having doubt regarding character of his wife Surekha. The appellant did not allow Surekha to go to anybody's house.

21 The learned counsel for the appellant submitted that the appellant was not in the village on the date of the incident and Surekha was set on fire by somebody else. As far as this plea of *alibi* is concerned, no witness has been examined to substantiate the same. The accused has also not examined himself to substantiate his claim. There is nothing on record to support this theory. In any event, the evidence of PW 9 Arun shows that on the date of the incident at about 5 a.m. he saw the appellant locking the door of his house from outside. At that

time, he saw smoke coming out from the window of the house of the appellant. This shows that at the time of the incident, the appellant was very much present inside the house and thereafter he disappeared. Moreover, it is nobody's case that any incident of robbery had taken place in the house of the appellant and in the robbery, the robbers committed the murder of Surekha. There is no evidence on record that Surekha had any enemy who wanted to do away with her, whereas, on the other hand, the appellant had motive to commit the murder of his wife Surekha as he had a doubt regarding her chastity. Thus, we find no merit in the defence of plea of *alibi* taken by the appellant.

22 The conduct of the appellant is another circumstance which goes against him. The evidence on record shows that after locking the house, the appellant disappeared. If at all, it was a case of suicide or accident the appellant would have rushed to get medical aid for his wife immediately, however, the

evidence of witnesses specially of PW 6 Pankaj shows that the appellant had not come back to his house even till 9.15 a.m. The evidence of PW 8 Ramkrishna who is the panch to the spot, shows that the spot panchnama was conducted from 10 a.m. till 12.30 noon, however, till then, the appellant did not come back to his house. This conduct of the appellant of running away from the spot, further underlines his *mens rea*.

23 On going through the evidence on record, we are of the opinion that the prosecution has proved its case against the appellant beyond reasonable doubt. Thus, we find no merit in the appeal and the appeal is dismissed.

[REVATI MOHITE DERE, J.]

[SMT.V.K.TAHILRAMANI, J.]