

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1480 OF 2011

- 1) Sou.Ranjana @ Changuna Prakash Sonawane
Age-55 years, Occu-Household,
- 2) Prakash Sakharam Sonawane
Age-57 years, Occu-Service,
- 3) Sachin Prakash Sonawane
Age-29 years, Occu-Business

A/R/At: Vadgaon, Near Panchmukhi
Maruti Temple, Tq-Maval,
Dist:Pune
[At present lodged in Yerwada
Central Jail, Pune]

...APPELLANTS

VERSUS

The State of Maharashtra
(At the instance of Vadagaon Maval
Police Station)

...RESPONDENT

...

Mr. Vikas Balasaheb Shivarkar Advocate for
Appellants.

Mrs. M.M.Deshmukh, A.P.P. for Respondent -
State.

...

**CORAM: S.S. SHINDE AND
MRS. MRIDULA BHATKAR, JJ.**

DATE OF RESERVING JUDGMENT : 20TH AUGUST, 2018

DATE OF PRONOUNCING JUDGMENT: 30TH AUGUST, 2018

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

1. This Appeal is directed against the Judgment and order dated 1st October, 2011, passed by the Additional Sessions Judge, Pune in Sessions Case No.238 of 2007, thereby convicting the Appellants/accused - Sou. Ranjana @ Changuna Prakash Sonawane, Prakash Sakharam Sonawane and Sachin Prakash Sonawane for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code [for short 'I.P. Code'] and sentencing each of them to suffer life imprisonment and to pay fine of Rs.5,000/- each. The trial Court also convicted the Appellants/accused - Sou. Ranjana @ Changuna

Prakash Sonawane, Prakash Sakharam Sonawane and Sachin Prakash Sonawane for the offence punishable under Section 201 read with Section 34 of the I.P. Code and sentenced them to suffer rigorous imprisonment for five years each and to pay fine of Rs.1000/- each, in default of payment of fine to suffer rigorous imprisonment for 15 days each. All the sentences were directed to be run concurrently. Hence this Appeal is filed by all the three Appellants challenging the conviction and sentence.

2. The prosecution case, in brief, is as under:

A) Sheetal Sachin Sonawane [for short "the deceased"] got married with accused No.3, namely, Sachin Prakash Sonawane in the Year 2004. Nagesh Balaji Dhale (for short "the informant") is her brother. After the marriage, Sheetal started

residing with the accused at Vadgaon-Maval. Initially, the accused treated her well. Meanwhile, Sheetal became pregnant. The informant fetched her to his house where she delivered a daughter. 10-15 days after the delivery, accused No.3, namely, Sachin took Sheetal to Vadgaon-Maval.

B) When the informant had been to the house of the accused to meet the deceased, she informed him that accused No.1 was taunting, harassing and torturing her on account of petty quarrels. The accused used to subject her to physical cruelty also. While at the house of the informant at Bhivandi, Sheetal told him that the accused had told her not to return to her matrimonial home. She also expressed the fear that in case she returned to the accused, they may finish her. The informant somehow convinced her and dropped at the

shop of accused No.1. Eight days prior to the incident, the deceased had been to the house of the informant to visit her elder sister, namely, Priyanka who had delivered a daughter. At that time also, the deceased complained about the harassment and torture at the instance of the accused.

C) The informant had been to Sahyadri Hospital on 11th February, 2007 to pay visit to ailing mother of his brother in law, namely, Dhondiba Shinde. At about 11.30 a.m., accused No.3 informed Dhondiba that Sheetal had subjected herself to immolation and she died. The informant then went to Primary Health Center, Talegaon-Dabhade. He saw the dead body of Sheetal. The dead body was then sent for post-mortem.

D) Accordingly, the informant lodged First

Information Report [for short 'FIR'] [Exhibit-37] with the Vadgaon-Maval Police Station. The offences aforesaid came to be registered vide C.R. No.19/2007. Prior to lodging the FIR, Accidental Death No.8/2007 came to be registered with Vadgaon-Maval Police Station. Head Constable Shri Tamboli conducted inquest panchnama [Exhibit-42] of the body of deceased at the house of the accused. He also conducted spot panchnama [Exhibit-41]. These papers along with seized articles were entrusted by him to Police Inspector Nikam [PW-5]. On the same day i.e. 11th February, 2007, Police Inspector Nikam arrested the accused. He also seized the clothes on the person of the accused by conducting panchnamas [Exhibits-56 to 58] in presence of two Panch witnesses.

E) On 12th February, 2007, accused No.1-Sou.Ranjana gave a memorandum statement [Exhibit-

59] to discover the weapon used in the commission of offence, in presence of two panch witnesses. She then guided Police Party and panch witnesses to her residence. She discovered a wooden batten from the slab of the toilet in her house. The said wooden batten was seized by the Police Authorities. A panchnama [Exhibit-60] in respect of discovery was drawn by the Investigating Officer. The Investigating Officer thereafter recorded statements of the witnesses. On 26th February, 2007 he referred the seized material for Chemical Analysis to Regional Forensic Science Laboratory, Pune [Exhibit-61]. Thereafter on 31st October, 2006, a report [Exhibit-47] was submitted by the Chemical Analyzer. The same was included in the investigation papers. After completion of the investigation, Police Inspector Nikam filed charge-sheet in the Court of Judicial Magistrate, First Class, Vadgaon-Maval, District Pune, who

committed the said case to the Court of Sessions, as the offence punishable under Section 302 of the I.P. Code is exclusively triable by the Court of Sessions.

F) A charge for an offence punishable under Sections 302, 201, 498-A r/w. 34 of the I.P. Code was framed against the accused and the same was explained to them. The accused pleaded not guilty and claimed to be tried.

3. After recording the evidence and conducting full-fledged trial, the trial Court convicted the appellants – accused, namely, Sou. Ranjana @ Changuna Prakash Sonawane, Prakash Sakharam Sonawane and Sachin Prakash Sonawane for the offence punishable under Section 302, 201 r/w. Section 34 of the I.P. Code and sentenced them to suffer the imprisonment and to pay fine, as afore-stated. Hence this Appeal is preferred by the

accused – appellants challenging the conviction and sentence.

4. Heard learned counsel appearing for the appellants and learned APP appearing for the respondent-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.

5. The prosecution examined PW-4 Dr. Madhav Adelu Waghmare. He deposed that on 11th February, 2007, he was on duty at Primary Health Center, Talegaon-Dabhade. Head Constable Shri H.K.Tamboli brought dead body of Sheetal Sachin Sonawane on 11th February, 2007. He conducted the autopsy on the same day. It was dead body of a female aged

about 20 years. Her clothes were burnt. Upon examination he noticed the following injuries on her person :

1. Contusion on parietal scalp region. Size 3 "3 x 3".
2. Deep burn injury to the face and head region size 8" x 6", the percentage of burns are 20%.
3. Deep burnt injury to chest and abdomen region 12" x 10", the percentage of burns are 20%.
4. Deep burn injury to upper right and left extremities, size 24" x 2-1/2", the percentage of burns are 20%.
5. Deep burn injury to back size 12" x 10", the percentage of burns are 20%.
6. Deep burn injury to Iliac to knee region 12" x 2", the percentage of burns are

10%.

. PW-4 Dr. Madhav further deposed that there was also fracture of skull involving parietal bone. The above all injuries are ante-mortem.

6. PW-4 Dr. Madhav further deposed that upon examination, he noticed following internal corresponding injury on the person of dead body:

1. Contusion partial scalp region.
2. Fracture skull involving partial bone
3. Congested menengia, laceration to brain

7. PW-4 Dr. Madhav further deposed that the injuries referred above collectively were the cause of the death. The death was caused on account of shock and hemorrhage, grievous injury to vital organs, fracture of skull involving

partial bone with laceration to brain and suffocation due to 90% burn injuries. He further deposed that pursuant to post-mortem he prepared a report [Exhibit-46], dated 11th February, 2007 and the same is in his handwriting and bears his signature. He further deposed that the fracture to the skull of the deceased can be on account of assault by a cricket bat.

8. During the course of cross-examination, PW-4 Dr. Madhav stated that on account of sustaining 90% burns, the patient must have been in pain. Such a person can become wild and run for help. PW-4 Dr. Madhav further stated that injury No.1 contusion on parital region and scalp may be caused by hitting on edged surface of cupboard, cot or any edgy surface. The injury No.1 corresponds with injury mentioned in clause No.18 and 19. He further stated that he was not shown

any weapon. When the head is hit with a cricket bat, the hair bulbs may be crushed along with skull fracture. He further stated that he has not mentioned about crushing of the hair bulbs in his report. He denied the suggestion put to him that there is no possibility of causing injury No.1 by hitting a cricket bat on the head. He further stated that the burn injuries at serial Nos.2 to 6 in clause No.17 can either be suicidal or homicidal.

9. Upon careful perusal of the entire evidence of PW-4 Dr. Madhav, it is clear that the cause of death as opined by PW-4 Dr.Madhav is "shock and hemorrhage, grievous injury to vital organs, fracture of skull involving partial bone with laceration to brain and suffocation due to 90% burn injuries". PW-4 Dr.Madhav has not conclusively opined that Sheetal died homicidal

death. On the contrary, during the course of cross examination, PW-4 Dr. Madhav has stated that the burn injuries at serial Nos.2 to 6 in clause No.17 of the post-mortem report can either be suicidal or homicidal. During the course of cross examination by the defence, a question was put and PW-4 Dr. Madhav has specifically admitted that on account of sustaining 90% burns, the patient must have been in pain and such a person can become wild and run for help.

10. The prosecution has examined PW-1 Nagesh Balaji Dhale, who is informant. He deposed that at the time of occurrence of the incident they were residing at Bhivandi. Dhondiba Rangnath Shinde is his brother in law who was also residing at Bhivandi at the relevant time. PW-1 further deposed that he was working as a salesman in Jai Mataji Agency, Bhivandi. He further deposed that

their native is Kopara, Taluka Ahmedpur, District Latur. His parents and uncle were residing at Kopara. His mother Laxmibai expired in 1997. Priyanka and Sheetal [deceased] are his sisters. He further deposed that two years prior to the incident, Sheetal married with Sachin Prakash Sonawane, accused No.3. Sheetal was residing with accused Nos.1 to 3 at Vadgaon-Maval. He further deposed that initially, Sheetal was treated well by the accused. After the marriage, Sheetal was pregnant and he fetched her to Kopara, where Sheetal delivered a girl child. Accused Nos.1 and 3 came to visit and see the child. Thereafter, the accused took the deceased with them.

11. PW-1 Nagesh further deposed that he then went to the house of the deceased after 3-4 months. At that time Sheetal told her that accused

No.1 used to taunt her. The girl child was named as Sakshi, at the house of the accused. PW-1 Nagesh further deposed that they were not invited for the said ceremony. On the occasion of Diwali, they had been to the house of the accused and they had taken with them a gold ring for Sakshi. He further deposed that the deceased visited them twice after her delivery at Bhivandi. On one occasion, she had been to see child of Priyanka. Sheetal was dropped by accused No.3 and she stayed for about 10 days. At that time, Sheetal told that accused No.1 used to taunt her and harass her, on account of domestic work. They convinced Sheetal and sent her back to matrimonial house. He dropped Sheetal at the shop of accused No.3 at Vadgaon-Maval.

12. PW-1 Nagesh further deposed that on 11th February, 2007, he had been to Sahyadri Hospital

to meet ailing mother of Dhondiba Shinde and at that time he received call on mobile of Dhondiba from accused that Sheetal sustained burn injuries. He therefore went to Talegaon-Dabhade along with Dhondiba. He saw dead body of Sheetal at Primary Health Center, Talegaon. She was burnt. He saw injury to the head of deceased Sheetal. Blood was oozing from the said injury. She was partly burnt. The accused were not present at the Hospital. He was at the Hospital for half an hour. On the same day he approached Vadgaon-Maval Police Station and lodged FIR [Exhibit-37] dated 11th February, 2007, which bears his signature.

13. During the course of cross-examination, PW-1 Nagesh admitted that accused No.3 owns a Footwear Shop at Vadgaon-Maval. Accused No.3 alone looks after the shop. The timings of the shop are from 9.00 a.m. to 9.00 p.m. He further admits that

accused No.2 is employed at Bajaj Tempo and he works in shifts. He further admits that the last rites of Sheetal were performed by the accused. He further admitted that Sakshi [daughter of deceased] stays with the accused. He further admits that there used to be quarrels amongst the deceased and accused No.1 on account of household matters. He was unable to tell exact amount which was spent in the marriage. He was not read over the contents of the FIR. He is not aware about the contents of the same.

14. The prosecution examined PW-2 Ganesh Abaji Gavhane. This witness was examined to prove the memorandum given by the accused No.1 and also discovery panchnama of the alleged weapon, at the instance of accused No.1, which was used in the commission of crime. However, this witness turned hostile and did not support the prosecution case.

With the permission of the trial Court this witness was cross-examined by the prosecution, however nothing useful to the prosecution has been elicited from this witness. It is the case of the prosecution that during the scuffle between accused No.1 and Sheetal, accused No.1 got annoyed and she hit a wooden batten on the head of Sheetal. However, the discovery of the said wooden batten at the instance of accused No.1 is not at all proved by the prosecution.

15. The prosecution has examined PW-3 Sanjay Atmaram Panzade. He deposed that informant is his nephew and deceased Sheetal was his niece. He was the mediator in the marriage of Sheetal. The marriage was arranged with accused No.3. It was agreed to pay a dowry of Rs.25,000/- to the accused. The expenses of the marriage were to be borne by them. After the marriage, the deceased

went with the accused at Vadgaon-Maval. After some days, the deceased conceived and therefore the informant fetched her to village Kopara for delivery. Sheetal delivered a female child. After a month, accused No.2 fetched the deceased to her matrimonial home. Accused No.1 started ill-treating and subjecting the deceased to cruelty on account of delivering a female child. Accused No.1 used to beat the deceased. Accused No.3 dropped the deceased at the residence of the informant at Bhivandi as he was not willing to cohabit with her. After about eight days, informant Nagesh again brought her at the house of the accused. By somehow convincing her, he dropped Sheetal at the shop of accused No.3, as accused No.1 used to ill-treat her. He further deposed that he never visited the house of the accused as accused No.1 used to ill-treat the deceased upon visit of the relatives. Sheetal used to meet him

in his shop. After about eight days when Sheetal was dropped by the informant, she committed suicide. The maternal uncle of accused No.3 Umesh Lavangare informed that the deceased sustained burn injuries at about 12.00 noon on 11th February, 2007. When he reached the home of the accused, the corpse was sent for autopsy. When he reached to Primary Health Center, Talegaon, he saw the dead body. The blood was oozing from her head.

16. During the course of cross-examination, PW-3 Sanjay admitted that he knew the accused prior to the marriage of the deceased. He further admits that the shop of the accused and his shop are adjacent to each other. He carries on his business by the side of the road. He attends weekly bazar of different villages. He further stated that pursuant to death of his first wife, he got remarried, but his wife does not stay with

him. He further admits that his wife left him for the reason that he consumes liquor. He further stated that he does not possess any documentary evidence in respect of giving dowry of Rs.25,000/- to the accused. He further admitted that it was decided to pay Rs.25,000/- to the accused and that they would perform the marriage. He did not know the expenses incurred by the accused in the marriage. There were no complaints in respect of performing marriage. Initially, the deceased was treated well by the accused. He further stated that Nagesh [informant] informed about delivery of the daughter to the accused. Accordingly, accused Nos.1 and 3 visited her. He did not visit. He got the information about the deceased from Nagesh. He told Police while recording the statement that dowry was demanded and paid. He was unable to assign any reason as to why there is no mention of "dowry" in his statement. He

further stated that he told the police while recording statement that the expenses of the marriage were incurred by them. He was unable to assign any reason as to why the same does not appear in his statement. He stated while giving statement that accused No.1 used to beat the deceased. He was unable to assign any reason as to why the same does not appear in his statement. He did not tell police that Nagesh dropped Sheetal at the shop of accused No.3 as accused No.1 used to ill-treat her. He did not tell police that he had never been to the house of the accused as accused No.1 used to ill-treat the deceased upon visit of the relatives. He did not tell police that Sheetal used to meet him in his shop. He did not tell police that blood was oozing from the head injury of the deceased when he saw her dead body at Primary Health Center, Talegaon-Dabhade. Deceased Sheetal never informed him in respect of

ill-treatment, hence, he did not arrange for any meeting of the relatives. He further stated that deceased and accused No.3 had a daughter namely Sakshi, who resides with the accused. Naming ceremony of Sakshi was performed at the house of the accused. Sakshi studies in English Medium School. PW-3 Sanjay denied various suggestions put to him by the defence.

17. Though it is the case of the prosecution that Sheetal died homicidal death, PW-3 Sanjay, the witness examined on behalf of the prosecution, has stated in unequivocal terms in his examination-in-chief itself that Sheetal committed suicide. Several contradictions, omissions and improvements are brought on record in the cross-examination of this witness. Further, it is significant to note that this witness has deposed about the alleged ill-treatment given to Sheetal

by the accused persons. However, the trial Court has acquitted all the accused persons from the offence punishable under Section 498-A of the I.P. Code.

18. PW-5 Sanjay Wamanrao Nikam, Police Inspector attached to Talegaon-Dabhade Police Station at the relevant time, was the Investigating Officer. He deposed about the manner in which he has carried out the investigation in the crime.

19. Upon careful perusal of the additional written statement [Exhibit-63] given by the accused under Section 313 of the Code of Criminal Procedure, it is the defence of all the accused that at the time of incident they were not present in the house. The accused stated that accused No.3 had left to his shop in the morning on 11th

February, 2007, accused No.2 had been out of the house to attend the marriage of the relative and, in the afternoon accused No.1 had been to the shop of accused No.3 with a tiffin containing lunch. Admittedly, the entire prosecution case is based upon the circumstantial evidence and there is no eye witness to the incident. The prosecution has not established that at the time of incident the accused were present in the house.

20. According to the prosecution, the spot of the incident is the house of the accused. Even if prosecution case is taken as it is, that death of Sheetal occurred in the house of the accused, in order to invoke the provisions of section 106 of the Evidence Act, the prosecution has to discharge burden under section 101 of the Evidence Act. In the present case, there are three accused. The prosecution has not brought on record any

circumstantial evidence or direct evidence to show that all the three accused or anyone of them was present in the house at the relevant time. In order to invoke the provisions of section 106 of the Evidence Act, the prosecution ought to have brought on record the evidence in the nature of last seen together or any other evidence which would suggest that the accused persons were present at the relevant time in the house.

21. The Supreme Court in the case of Sohel Mehaboob Shaikh Vs. State of Maharashtra¹, while explaining scope and ambit of section 106 of the Evidence Act, held that in case of circumstantial evidence, if there is no evidence to show that accused was present in the room when occurrence took place, chain of circumstances is not complete and accused is entitled to be acquitted. The fact

¹ AIR 2009 S.C. 2702

that accused has not given any explanation about unnatural death of wife is not material.

22. In the case of Vikramjit Singh @ Vicky Vs. State of Punjab², the Supreme Court held that suspicion, however, grave may be, cannot be a substitute for proof. The same would lead to only conclusion that the prosecution has not been able to prove its case beyond all reasonable doubt.

23. The Supreme Court in the case of Joydeb Patra & ors V/s State of West Bengal³, in the facts of that case in paras 7 to 9 held thus :-

"7. Learned counsel for the State, Mr. Bijan Ghosh, vehemently submitted that since the death took place in the house of the appellants, burden was on the appellants to prove as to how the death of the deceased actually took place. He submitted that the death of the deceased obviously took place under very mysterious

² 2007 All. S.C.R. 2094

³ 2013 Cri.L.J. 2729

circumstances and when the medical facilities were very near to the place of occurrence, the appellants should have availed the medical facilities but have not done so and this conduct of the appellants has given scope to the prosecution to believe that they were guilty of the offence under Section 302/34, I.P.C.

8. We are afraid, we cannot accept this submission of Mr. Ghosh. This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty. In *Sucha Singh v. State of Punjab*, (2001) 4 SCC 375 : (AIR 2001 SC 1436 : 2001 AIR SCW 1292), this Court held:

"We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn

regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."

Similarly, in Vikramjit Singh v. State of Punjab, (2006) 12 SCC 306 : (2006 AIR SCW 6197), this Court reiterated:

"Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute."

9. *As the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the deceased died due to poisoning, in our view, the trial court and the High Court could not have held the appellants*

guilty just because the appellants have not been able to explain under what circumstances the deceased died."

24. As already observed the prosecution has not discharged its burden of proving that at the time of incident the accused were present in the house. In the present case, the investigating officer has not carried out the investigation in proper manner. The statements of the neighbours of the accused were not recorded by the investigating officer. It is the case of the prosecution that the investigating officer has seized the articles from the spot of incident on 11th February, 2007, so also the clothes on the person of the accused at the time of alleged incident were also seized on the same day i.e. 11th February, 2007, by the investigating officer. Panchas to the seizure panchnama have not been examined by the prosecution to prove the seizure

panchnama. It is pertinent to note that the investigating officer has specifically stated in his examination in chief itself that the seized articles were sent to the office of the Chemical Analyzer on 26th February, 2007 for Chemical Analysis. The investigating officer has admitted during the cross examination that till the time of dispatching muddemal for C.A., it was in his custody. Thus, it is clear that from 11th February, 2007 till 26th February, 2007 the seized material was in the custody of the investigating officer. The prosecution has not brought on record whether the said articles were properly sealed or otherwise. Further, the prosecution has not examined the carrier who carried out the muddemal articles to the Chemical Analyzer. Therefore, we find considerable force in the argument advanced by learned counsel for the Appellants that muddemal articles were in the custody of the

investigating officer for about 15 days and during the said period possibility of tampering with the muddemal articles cannot be ruled out. Considering the over all evidence and the circumstances brought on record, explicit reliance cannot be placed upon the chemical analysis report.

. As already observed, the Investigating Officer has carried out the investigation in a perfunctory manner. The Hon'ble Supreme Court in recent Judgment in the case of Suresh and Anr. Versus State of Haryana in Criminal Appeal No.(s). 1445-1446 of 2012 along with Criminal Appeal No.1458 of 2012, decided on 21st August, 2018, has seriously viewed the conduct of the prosecuting authorities for not showing seriousness during the investigation. Para 52 of the said Judgment reads thus:

"52. We may note that every acquittal

in a criminal case has to be taken with some seriousness by the investigating and prosecuting authorities, when a case of this nature is concerned. We are aware of the fact that there has been a death of a person in this incident and there is no finality to the aforesaid episode as it ends with various unanswered questions, which point fingers at the lack of disciplined investigation and prosecution. Although Courts cannot give benefit of doubt to the accused for small errors committed during the investigation, we cannot however, turn a blind eye towards the investigative deficiencies which goes to the root of the matter."

25. We have perused the Judgment and order passed by the trial Court. The trial Court has not appreciated entire evidence brought on record in its proper perspective. The trial Court has acquitted all the accused from the offence

punishable under Section 498-A of the I.P. Code. However, on the same set of evidence, the trial court has convicted the accused for the offence punishable under Section 302, 201 of the I.P. Code. Since the Appellants are acquitted from the offence punishable under Section 498-A of the I.P. Code, the motive as per the prosecution case, for the commission of alleged offence by the Appellants, punishable under Section 302, 201 of the I.P. Code, is not at all established, and the motive assumes much importance in the case based upon the circumstantial evidence.

26. Admittedly, in the present case there is no eye witness and the prosecution case is entirely based upon the circumstantial evidence. The Supreme Court in the case of Shankarala Gyarasilal Dixit Vs. State of Maharashtra⁴ in para 13 held thus :

⁴ AIR 1981 SC 765

"13. Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him."

. After discussing the circumstances brought on record and the evidence available therein, in the case of Shankarala Gyarasilal Dixit (supra), the Supreme Court observed that though 12 circumstances have been relied upon by the prosecution, the important circumstance is that the appellant therein was present in the house, was not proved by the prosecution.

Therefore, in the facts of that case, Supreme Court held in Para-26 of the Judgment that the crucial link in the chain of circumstances is the presence of the appellant in his house at the time when the dead body of Sunita was discovered. Once that link snaps, the entire case would have to rest on slender tit-bits here and there. This discussion disposes of the second part of the 4th circumstance, part of 5th circumstance and circumstances (6) and (7). The Supreme Court acquitted the appellant therein.

27. In the present case also the crucial link in the chain of circumstances is the presence of the Appellants in the house at the time when the incident took place. However, in the present case the prosecution has utterly failed to prove that at the time of incident all the accused or anyone of them was present in the house. Thus, crucial

link in the chain of circumstances that at the time of incident the accused were present in the house is not proved by the prosecution. Therefore, benefit of doubt in favour of the Appellants deserves to be extended.

28. 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 and convincing so as to prove the offence against the Appellants beyond reasonable doubt. Therefore, an inevitable conclusion is that the Appellants are entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The Judgment and order dated 1st October, 2011, passed by the Additional Sessions Judge, Pune in Sessions Case No.238 of 2007, thereby convicting and sentencing the accused/Appellants - Sou. Ranjana @ Changuna Prakash Sonawane, Prakash Sakharam Sonawane and Sachin Prakash Sonawane for the offence punishable under Section 302 read with Section 34, Section 201 read with Section 34 of the Indian Penal Code, is quashed and set aside.

(III) All the Appellants are acquitted of the offence punishable under Section

302 read with Section 34, Section 201 read with 34 of the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellants.

(IV) The order passed by the trial Court to the extent of acquitting the accused-Appellants of the offence punishable under Section 498-A of the Indian Penal Code is hereby confirmed.

(V) The Appellants are in jail, they be set at liberty forthwith, if not required in any other case.

(VI) All the Appellants shall furnish Personal Bond of Rs.15,000/- each and surety in the like amount each, under Section 437-A of the Code of Criminal

Procedure, before the concerned trial
Court at Pune.

[MRS. MRIDULA BHATKAR, J.]

[S.S. SHINDE, J.]

Maria Luiza
Nicholas
Sequeira

Digitally signed by
Maria Luiza Nicholas
Sequeira
Date: 2018.08.30
15:56:54 +0530