

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

Criminal Appeal No.65 of 2014

Tukaram s/o Shivaji Kamble
Age 26 years,
Occupation : Labour,
R/o Nandagaul,
Taluka Parali Vajinath,
District Beed.

.. Appellant.

Versus

The State of Maharashtra
Through Police Station Officer,
Parali Vajinath Gramin,
Taluka Parali Vajinath,
District Beed.

.. Respondent.

Shri. Shivprasad G. Jadhavar, Advocate, for appellant.

Shri. R.D. Sanap, Additional Public Prosecutor, for
respondent.

**Coram: T.V. NALAWADE &
R.G. AVACHAT, JJ.**

Date: 3 SEPTEMBER 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) The appeal is filed to challenge the judgment and order of Sessions Case No.41/2012 which was pending in the Court of learned Additional Sessions Judge, Ambajogai, District Beed. The trial court has convicted

and sentenced the appellant for offences punishable under sections 302 and 201 of the Indian Penal Code. The other two accused persons of the same case, who are parents of the appellant, are acquitted in the case. Both the sides are heard.

2) The deceased was a daughter of the informant Sukhdeo. The deceased Manisha was given in marriage to present appellant on 14-5-2009. About three months prior to the date of the incident, the deceased was blessed with a female child. The appellant was not happy as girl child was born and due to that the appellant had not visited the residential place of his in-laws where the delivery had taken place.

3) On 15-5-2011 the deceased was sent back to the matrimonial house by her parents. The accused had taken the deceased back to the matrimonial house only after convincing them by many persons. After 15-5-2011 also the ill-treatment was continued to her and the deceased started disclosing that the husband and his relatives were harassing her as she had given them a

daughter and not a son. The father had promised the deceased to visit her place on 23-5-2011 but on that day a message was received that Manisha had sustained burn injuries.

4) The informant and his relatives rushed to the matrimonial house of the deceased and they noticed that dead body of the deceased was lying in burnt condition in the matrimonial house. As there were circumstances indicating that a show was created that it was accidental fire and as there was blood on the floor where the dead body was lying, report came to be given on 24-5-2011. In the report the informant contended that a show of suicide or accidental burn was created but it was a case of murder and for that there were aforesaid reasons.

5) Crime was registered and the accused persons came to be arrested. Before registration of the crime A.D. was registered on the basis of report given by the Police Patil of the village on 23-5-2011. Spot panchanama was prepared during inquiry of the A.D. report. Post mortem was conducted. Articles which were taken over from the

spot were sent to C.A. office for chemical analysis. Kerosene was detected on partly burnt hair and pieces of clothes. Human blood was detected on the cotton swab collected from the spot of the incident. In view of nature of material collected by police, charge was framed for aforesaid offences against the husband and his parents.

6) The prosecution examined in all 13 witnesses including the close relatives of the deceased from parents side. The trial court has acquitted the parents of the appellant. The trial court has given conviction to the present appellant by holding that provision of section 106 of the Evidence Act can be used against him and as the appellant has not given explanation, inference can be drawn against him under section 114 of the Evidence Act.

7) Sukhdeo (PW 5), father of the deceased who had given the report turned hostile. His evidence does not show that he wanted to blame the husband and his parents for the incident. He has denied that the husband and his parents were not happy as a female child was delivered by the deceased. Though he is cross examined

by the learned APP nothing could be brought on the record to create probability that there was ill-treatment to the deceased. He has denied the contents of the F.I.R. Meenabai (PW 6), mother of the deceased, also turned hostile and she has not given evidence against the husband of Manisha or the parents of the husband. Subhash (PW 7), son-in-law of the informant, is examined but he has also not supported the case of the prosecution. He has given evidence that he learnt that it was accidental death. He has gone to the extent in saying that even after birth of female child, the husband had visited the place of parents of the deceased to see the child. Shashikala (PW 9) mother of the informant is also examined but she has also not supported the case of the prosecution. She has given the account of the accidental fire. Thus all the prosecution witnesses who were expected to give evidence on motive turned hostile. When the case rests on circumstantial evidence motive plays important role.

8) Some witnesses from the village like Police Patil are examined but they had no personal knowledge about the incident or motive. The incident took place

between 10 and 11 a.m. of 23-5-2011. There is no witness with the prosecution who had seen the appellant in the house or near the house at the relevant time. Even the A.D. report does not show that the Police Patil had seen the husband near the house or in the house.

9) The prosecution has examined the panch witnesses to prove the spot panchanama which is at Exhibit 67. The panch witnesses have turned hostile. There is evidence of the investigating officer on the spot panchanama. Though the spot panchanama shows that a can of kerosene was present in the room where the incident took place, one new kerosene stove was there and some blood stains were there and the CA report shows that there was use of kerosene and it was detected on the hair of the deceased, that cannot lead to inference that it is a homicide. When death takes place due to burn injuries there are three possibilities in the case like the present matter like accidental fire, suicide or homicide. In the present matter when people came to know about the incident, Manisha was already dead. There is no witness to say that Manisha had disclosed anything to him about

the incident. The spot panchanama (Exhibit 67) shows that somebody had made attempt to extinguish the fire but Manisha died. The cradle of the baby of the deceased was present in other room but the spot panchanama does not show that when it was prepared at 17.15 hours on 23-5-2011, the baby was there. Nothing is on the record to show as to whether the husband and his parents were present when the fire started. It was a day time and at such time persons from village remain busy in the work either in their own field or at other place, of their work. In the spot panchanama there is a mention that on all four sides of the house there were houses of persons like Shrihari Gitte, Shivaji Palwade, Vasant Kamble and Ramkisan Dahiphale. The prosecution has not examined any of those neighbours. If somebody had attempted to murder the deceased after pouring kerosene on her person she would have raised hue and cry. If there was quarrel between the deceased on one hand and the accused on other on that morning, the neighbours would have heard the noise of quarrel. That kind of evidence is not there. When the incident took place in the morning time, when more persons were living there, more persons

could have remained present in the house or no person other than deceased might have been there at the relevant time. It is not possible to presume that only the husband was present there and he has special knowledge as mentioned in section 106 of the Evidence Act about the incident. Due to these circumstances it is not possible to use provision of section 114 of the Evidence Act against the husband and draw inference against him. When many persons of a house are involved in a case like the present, inference cannot be drawn only as against one particular person of that house under section 114 of Evidence Act only due to his residence in that house.

10) Learned counsel for the appellant placed reliance on the observations made by the Apex Court in the cases reported as (1) **Sohan Lal v. The State of U.P. (AIR 1971 SC 2064)**; and, (2) **Sawai Das v. State of Bihar (AIR 1974 SC 778)**. In the second case the Apex Court has laid down that when relatives of the deceased like husband and his parents are tried for offence punishable under sections 302 read with 34 of Indian Penal Code and when parents of the husband are acquitted in similar

circumstances, liability needs to be established individually as against husband and such liability needs to be fixed on him conclusively and not by conjectures or presumptions only. In that case there was disposal of the dead body and so conviction was given for offence punishable under section 201 of the Indian Penal Code. In the present matter it cannot be said that there was disposal of the dead body or any attempt was made to cover up the things. Thus, the observations made by the Apex Court and particularly about the manner of use of section 106 of the Evidence Act can be used in the present matter. The Apex Court has laid down that initial burden is always on the prosecution and the prosecution needs to make out prima facie case and then question would arise as to whether the burden of proof lies on the accused. In the first case when the remaining accused who were tried for offence punishable under section 302 read with 34 and also under section 324 read with 34 of the Indian Penal Code, and all of them had played almost similar role, were acquitted by the trial court of the offence punishable under section 302 IPC, the accused who was convicted for offence punishable under section 302 IPC was held to be

entitled to the benefit of said acquittal. These observations also can be used in the present matter. The acquittal decision given in favour of parents of the husband is not challenged. As the evidence given as against husband and his parents in respect of the main incident is similar in nature, there is no scope to say that only the husband can be held guilty. For all these reasons, this Court holds that the conviction given to the appellant cannot sustain in law. The husband is entitled to the benefit of doubt. In the result, following order.

11) The appeal is allowed. The judgment and order dated 18-1-2014 of the trial court thereby convicting the appellant for offence punishable under sections 302 and 201 of the Indian Penal Code is hereby quashed and set aside. He stands acquitted of these offences. Fine amount, if paid, be refunded to him. He is to be released from jail forthwith after obtaining bail bond of Rs.15,000/- (Rupees Fifteen Thousand) under section 437-A of the Code of Criminal Procedure.

Sd/-
(R.G. AVACHAT, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)