

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.625 OF 1997

1. Munir Mirasaheb Mulani
2. Lailabi Mirasaheb Mulani ...Appellants
vs.
The State of Maharashtra ...Respondent

Mr. Sachindra Shetye, for the Appellants.
Mrs. M.M. Deshmukh, APP for Respondent-State.

**CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.**

**ORDER RESERVED ON : 13th NOVEMBER, 2019
ORDER PRONOUNCED ON : 19th DECEMBER, 2019**

JUDGMENT (Per N.B. Suryawanshi, J.)

. By this Appeal the Appellants/Original accused Nos. 1 and 2 challenge the Judgment and order of conviction dated 10th October, 1997 passed by the learned Joint District and Additional Sessions Judge, Sangli in Sessions Case No. 210 of 1996 for the offence punishable under sections 302, 201 and 498-A read with 34 of Indian Penal Code, wherein the Appellants are sentenced to suffer imprisonment for life with fine of Rs. 5,000/- each.

2. The prosecution case in short is that, marriage of accused No. 1 Munir with deceased Rutbabi was performed on 4th May, 1992. At that time, Shoukat, the brother of the deceased (PW.4) who is the informant paid Rs. 751/- and also presented a gold chain to accused No.1. Accused No. 2 is the mother of accused No. 1. The financial condition of accused is better than that of the informant. A common marriage ceremony was held wherein marriage of accused No. 1 with the deceased and the sister of accused No. 1 was performed. The deceased came to the matrimonial home at village Dorli. Deceased started residing with accused No. 1 Munir, No. 2 Lailabai, mother in law and father in law. After 5-6 months of marriage, accused persons started physically & mentally illtreating the deceased for the reason that, she was of dark complexion and was not well versed in cooking. The said illtreatment went to the extent of putting burning coal in her mouth. Aforesaid illtreatment was conveyed by deceased to her brother informant when she visited maternal house. First delivery of the deceased took place at maternal house, which defence has denied and on the contrary brought on record the material suggesting that all the deliveries were conducted at her matrimonial house.

3. It is alleged that on instigation of accused No. 2 mother in law, accused No. 1 used to assault the deceased. The informant Shoukat gave understanding to the accused persons, and therefore they behaved properly for few days. The deceased conceived second time, but she suffered miscarriage on account of alleged beating by the accused. At that time, she was reached to the house of informant and for 15 days she took rest and again came back for cohabitation. Thereafter, deceased gave birth to the second daughter. Delivery took place at the house of accused. Deceased was educated upto 9th standard and she used to write letters in Marathi to her brother. One letter (Exhibit 20) is produced on record which depicts the ill-treatment meted out to the deceased.

4. It is the case of the prosecution that on 22nd August, 1996 one Ramja Master from village Dorli came and informed the informant Shoukat that his sister was burnt. Shoukat, his father and his cousin and other relatives went to Dorli. At that time, nobody was at the house and the corpus of deceased Rutbabi lying on the floor and covered with lungi. On removal of lungi, it was found that body was burnt. The informant

suspected foul play and hence he lodged first information report (Exhibit 21) against the accused persons alleging that, on 22nd August, 1996 at about 11.00 am deceased Rutbabi was murdered by both the accused persons in furtherance of their common intention. After completion of investigation police filed charge sheet against the Appellants.

5. Mirasaheb Mulani, the father in law of the deceased had already filed report about the death of Rutbabi which was registered at A.D.R.No. 86 of 1996 (Exhibit 31) at Tasgaon police station. The Appellants were charged for the offence punishable under sections 302, 201 and 498-A read with 34 of Indian Penal Code. The prosecution in support of their case examined 8 witnesses during the trial. The learned APP urged that it was only the Appellants who committed the offence and the Appellants have failed to prove the plea of alibi taken by Accused No. 1 by leading cogent evidence.

6. Heard learned counsel for the Appellant and the learned APP for the State. With the able assistance of both the counsel, we have perused the original record of the matter.

7. The learned counsel for the Appellant assailed the conviction mainly on the ground that this is a case of circumstantial evidence and the chain of circumstances is not complete. The learned trial Court has wrongly appreciated the evidence on record while awarding conviction. There is no material on record to sustain the impugned conviction and hence, he pressed for acquittal.

8. The learned APP vehemently opposed the Appeal. She urges that the prosecution has established by cogent and reliable evidence and completed the chain of circumstances to sustain the conviction. She argued that the learned trial Judge was perfectly justified in awarding the conviction. She thus supports the impugned judgment and order of conviction.

9. The defence which can be gathered from the cross examination as well as the statement of the accused persons under section 313 of Cr.P.C. appears to be that, the Appellant/Accused No. 1 had gone for duty to Tasgaon at 8.00 am in the morning. His mother had gone to drop her granddaughter at her daughter's place in other village. Father went

for work in the field and Rutbabi was to follow the father in law in the agricultural land after preparing tea. The father in law was informed in the evening that the daughter in law has suffered burn injuries. He rushed to home and saw her in burning condition. He immediately went to lodge A.D.R (Exhibit 31) requesting to make proper investigation into the death of Rutbabi.

10. Admittedly, this is a case of circumstantial evidence and there is no direct evidence on record. The circumstances relied upon by the learned trial Court while convicting the Appellants are as follows:

(i) Motive.

(ii) False vardi report of accidental death lodged by father in law of the deceased by name Meerasaheb Mulani.

(iii) Presence of the accused Nos. 1 and 2 on the particular day and opportunity to commit murder of the deceased at the relevant time and the non explanation as to how the deceased met with her death while she was living in their house.

(iv) Conduct of the accused

(v) Conduct of Shoukat Mulla (PW.4) in immediately lodging protest about the death.

11. We have carefully gone through the evidence brought on record by the prosecution and we are of the considered view that the prosecution has failed to prove the guilt of the accused to the extent of charge under section 302 of Indian Penal Code beyond reasonable doubt.

12. As per the prosecution, since the Appellants were ill-treated the deceased, they had strong motive to kill her. For that Shoukat(PW.2) was examined and letter of 21st July, 1995 (Exhibit 20) allegedly written by the deceased to Shoukat was brought on record. However, taking into consideration the time gap between the letter and the date of incident in August, 1996, there does not appear to be any proximity about the illtreatment meted out to the deceased. There is no material on record to come to the conclusion that soon before her death the deceased was subjected to cruelty at the hands of the accused persons.

13. The second circumstance held against the Appellant is about false vardi report of A.D alleged by father of Appellant/accused No. 1. The report is at Exhibit 31 wherein it was stated that on the day of incident i.e. 22nd August, 1996 the Appellant went to Tasgaon for his service after taking meal at about 8.00 am. Thereafter, the father in law went to work in the field at about 9.00 am. The Appellant/accused No. 2 went for reaching grand-daughter (daughter's daughter) at other village. The deceased told father in law that she will come towards field after preparing tea. Then at about 1.00 pm nephew Vajid came in the field and told to father in law that Rutbabi, wife of accused No. 1 expired due to burns of explosion of stove while preparing tea. Father in law went to house and saw deceased lying on the floor in completely burnt condition, near the stove in the kitchen. Therefore, father in law immediately went to call police patil. Police patil saw the situation and accompanied him to lodge A.D.R. No. 86 of 1996. The father in law has stated in the A.D.R that deceased Rutbabi has been burnt while preparing tea and he does not have any kind of doubt or complaint about the said death. He requested that proper investigation into the death may be made.

14. It is necessary to mention here that the father in law was not arrayed as accused by the investigating agency. If we peruse the evidence of Vilas Patil (PW. 1) who is sarpanch of the village, the panch to the inquest panchanama, and the injuries on the body of the deceased. He has stated that the house of accused situated in the secluded area compared to other houses at a distance of 200-300 fts. There are other houses to the North side. There is a hillock towards the North side and one temple and some houses of fasepardhi community are there. He stated that these people used to indulge in committing crime. There is one tap in front of the house of the Chand Patil whose house is to the North side of the house of accused. He states that at no point of time any quarrel or dispute occurred between accused and the deceased and their relations were cordial. Office of grampanchayat is placed at the hillock. On the date of incident, he had been to the spot in the morning at around 8.00 am and saw the accused Munir proceeding towards bus stand for going to Tasgaon. He saw deceased was washing clothes at the public tap. Thus, as per the version of Vilas (PW. 1), accused Munir left for Tasgaon at 8.00 am.

15. There is evidence of Sukumar Khot (PW. 6) who is colleague of accused No. 1 at Tasgaon Shetkari Kharedi Vikri Sangh. He has stated in his evidence that their duty starts at 8.30 am in the morning and over by 7.30 pm. The lunch break is between 12.00 noon to 1.00 pm. Accused Munir works in Adat section. Munir was present on duty on 22nd August, 1996 in the morning at 8.30 am. He saw accused/Appellant Munir was engaged in reading news paper after signing the muster. He went to his section. This witness was declared hostile by the prosecution and was cross examined by the learned APP. In the cross examination, he has stated that Adat section where the accused was working was situated within a distance of 500 fts. from his building and it is not visible from office. He states that distance between Tasgaon and Dorli is about 13 km and one can reach Dorli within 15 minutes by bus. If one goes on motor cycle, it takes short time to reach Dorli. This witness was declared hostile by prosecution and cross examined at length. Contradictions as portion marks A and B were marked in his evidence. In his cross examination, he has stated that their manager is very strict and disciplined. He does not allow anyone to move out of the office, unless he has convinced for

reason for going out. On every Tuesday, contract of purchasing and selling of Bedana takes place. Their manager personally remain present at the time of transactions of selling. On the date of incident, after 9.15 am, manager, accused Munir and one Shahaji Patil went towards Adat section for settlement of contract of sale of Bedana. Accused Munir and manager returned office at about 12.30 pm and the manager informed him that wife of Munir died and henceforth he would look after the work at Adat section.

16. Sukhdev More (PW.7) is the manager of the said Sangh where accused Munir was working and he has also deposed that accused No. 1 was present in the Sangh office at 8.30-8.45 am and till 9.00 am he was sitting in the head office. He has stated that he went to Adat section on 22nd August, 1996 at about 10.00 am. He was declared hostile and learned APP cross examined him at length. Portion mark A, B and C were marked as contradictions from his previous statement. In the cross examination by learned APP, he stated that on the date of incident, in the morning, he took round of all the sections and he saw accused Munir and one Shahaji were doing their work

in their section. Due to Bazar Day, volume of work was more. He saw customers were present in the section and after searching there for 15 minutes, he went to other section. Again at about 10.00 am to 10.15 am he took another round and even at that time, customers were present and transactions were going on. He waited there fore 15-20 minutes. Thereafter, he took third round at about 12.30 pm, at that time he learnt about incident of Munir's home and therefore he brought him to the house as Munir was crying. He categorically stated that Munir was working at Adat section from 8.30 am to 1.00 pm (emphasis supplied).

17. On appreciation of evidence of these 3 witnesses, it is clear that accused/Appellant Munir was present in his office at Tasgaon since 8.30 am upto 1.00 pm. There is no material brought on record by the prosecution that, Appellant/accused No. 1 Munir Mulani went to house from his office, committed murder and came back in the office and continued his work. The learned trial Court was not justified in raising a presumption that since both Khot (PW.6) and More (PW.7) are working along with accused Munir, they are trying to support

him and hence their version is not reliable. Though Khot (PW.6) and More (PW.7) are declared hostile, however, part of their evidence which seems to be credible can be relied upon and the said evidence supports the defence. We see no reason to disbelieve the evidence of Patil (PW.1), the surpanch.

18. So far as the circumstance of non explanation as to how deceased met her death while she was living in their house is concerned, the accused No. 1 has in his statement under section 313 of Cr.P.C given explanation that he was attending duty at Tasgaon and since it was bazar day, there was rush and at about 1.00 pm his brother came and informed about the burning of his wife. Admittedly, the incident of burning of the deceased has taken place after 11.00 am and this is not a case that during night time, murder is taken. So also taking into consideration, the injuries abrasion on the body of the deceased, there was resistance by the deceased when she was murdered. Unfortunately, the nail clipping of the deceased or of accused No. 1 were not collected and forwarded to the forensic expert by the investigating officer. Though the death in the present case is by strangulation and the burn injuries were

postmortem, however, the fact remain as to who was the author of the crime.

19. There is no material brought on record by the prosecution to show that Appellant/accused at any point of time was seen going towards Dorli, entering the house or exiting house and he was seen at the relevant time coming back to Tasgaon from Dorli. Therefore, according to us vital link is missing from the prosecution case and on that count also the impugned conviction is unsustainable. The prosecution evidence does not lead to irresistible conclusion that accused Nos. 1 and 2 alone are the responsible for the murder of the deceased. For the reason best known, the prosecution has not added father in law of Appellant as accused. The A.D.R lodged by the father of the accused in clear terms states that deceased was alone at the house. The said version is also supported by Patil (PW.1) who had seen deceased washing clothes on the tap.

20. It is pertinent to note here that Mr. Lokhande (PW.8), the investigating officer has categorically admitted in his cross

examination that it was revealed during the investigation that deceased was seen driving sheep at about 11 am in the morning. This is according to us create serious doubt about the prosecution version that the deceased was murdered by the Appellants/accused between 10.00 am to 12.00 noon. He has further admitted to have recorded 7-8 statements of the neighbors of the deceased. For the reasons best known, the prosecution has not examined any of the neighbors. Hence, adverse inference under section 114 of the Evidence Act needs to be drawn against the prosecution. Thus according to us, it create serious doubt about the prosecution version that deceased was murdered by the accused persons between 10 am to 12 noon.

21. The next circumstance held against accused persons is conduct of the accused and conduct of Shoukat (PW.4) in lodging protest at the time of preparation of inquest panchanama by police. We do not see any unnatural conduct on the part of accused which can be inferred from the evidence on record. May be first informant has registered protest. Much importance can be given to it in the facts of the present case.

22. The learned trial Judge has referred the land mark decision in **Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622** wherein the golden principles to be followed in the cases based on circumstantial evidence are laid down. However, while recording the conviction, the learned trial Court has failed to apply the principles in the proper perspective.

23. Learned trial Court has erroneously appreciated the evidence on record and grossly erred in recording the conviction in spite of absence of proof of complete chain of circumstances. The learned trial Court has ignored that the prosecution has failed to prove the circumstances of conclusive nature and tendency. The prosecution evidence is not sufficient to prove that only the accused persons are the author of the crime and none else. There is no cogent material which warrant conviction of the accused. The learned trial Court failed to apply the principle laid down in **Sharad Sarda** (supra) case that the prosecution has to stand on its own leg and it cannot derive strength from the weakness of the defence witness. So also the principle that if there are two views

possible, one favourable to the accused must be followed.

24. The explanation given by the accused under section 313 of Cr.P.C is plausible. Though the contradiction portion mark A and B from the evidence of Khot (PW. 6) and portion marks A, B and C from the evidence of More (PW. 7) cannot be treated as evidence, the learned trial Court failed to put them to the accused while recording statement under section 313 of Cr.P.C.

25. The learned counsel for the Appellant was justified in placing reliance on the principle laid down in **Hanumant Govind Nargundkar and Anr. vs. State of Madhya Pradesh, AIR 1952, Supreme Court 343** as well as **Sharad Sarda** (supra), particularly paragraph 150 and 151 and placing reliance on the 5 golden principles stated therein.

26. The learned APP placed reliance in **Shaikh Sattar vs. State of Maharashtra, (2010) 8 Supreme Court Cases 430**. However, the said authority is distinguishable on the facts. In that case, the dead body of wife having severe bleeding injuries on head was found in the house of accused, in a room which

was having a roof made of clay and wood. The stones lying by the side of the dead body which falsified the defence version of accidental death. A plea of alibi was raised in that case which was disbelieved by the Court and the injuries on the dead body were only on the left side of the face which was consistent with the prosecution case that stone has been picked up by the human being and used as weapon of assault either standing or sleeping on her side. In those circumstances, the Hon'ble Apex Court dismissed the Appeal of the Appellant. In the present case, the facts are totally different. There is no plea of alibi taken and on the contrary it is the case of the prosecution that accused had been to Tasgaon to attend his duty. However, he came back to his house, committed murder, burnt the dead body and again went back to Tasgaon.

27. So far as the charge under section 498-A of Indian Penal Code is concerned, there is sufficient evidence brought on record by the prosecution. The evidence of Shoukat Mulla (PW.4) bring on record the physical and mental ill-treatment meted out to the deceased by the accused. The ill-treatment revealed in the letter (Exhibit 20) about the physical torture

and mental cruelty is there on record. In the letter the incidence of accused putting burning coal in the mouth of the deceased is also disclosed by the deceased. Due to unbearable ill-treatment, the deceased also expressed her feeling that she should not live and nobody was giving her support. Shoukat Mulla (PW.4) was requested to meet the deceased after receipt of the letter (Exhibit 20). In our considered view, therefore there is sufficient material to sustain the conviction recorded by the learned trial Court for the offence punishable under section 498-A of Indian Penal Code against accused No. 1 Munir Mulani.

28. For the forgoing reasons, we find that the conviction of the accused Nos. 1 and 2 under section 302 and 201 read with 34 of Indian Penal Code and conviction of accused No. 2 under section 498-A of Indian Penal Code cannot be sustained and the same is liable to be set aside. However, the conviction of husband accused No. 1 Munir Mulani under section 498-A of Indian Penal Code is liable to be upheld. Hence, the following order.

- (i) The Appeal is partly allowed.
- (ii) The conviction of the Appellants/Accused Nos. 1 and 2 recorded on 10th October, 1997 passed by the learned Joint District Additional Sessions Judge, Sangli in Sessions Case No. 210 of 1996 is hereby quashed and set aside and the Appellants/accused Nos. 1 and 2 are acquitted from the offence punishable under sections 302 and 201 read with 34 of Indian Penal Code.
- (iii) The Appellant/Accused No. 2 Lailabi Mirasaheb Mulani is also acquitted from the offence punishable under section 498-A read with 34 of Indian Penal Code.
- (iii) The conviction of Appellant/Accused No. 1 Munir Mirasaheb Mulani under section 498-A of Indian Penal Code recorded by the Joint District Additional Sessions Judge, Sangli in Sessions Case No. 210 of 1996 is upheld including the sentence awarded by the learned trial Court.
- (iv) Set off is given to the Appellant/Accused No. 1 Munir Mirasaheb Mulani for the period already undergone by him in jail. He has to surrender

for undergoing the remaining sentence.

(iv) The fine amount, if any, deposited by the Appellant/Accused No. 2 shall be refunded to him.

(v) The Appellant/Accused No. 2 is already on bail. Her bail bonds shall stand cancelled.

(vii) The Appellant/Accused No. 2 shall furnish bail of Rs. 15,000/- with one surety in the like amount in terms of section 437(A) of Code of Criminal Procedure.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)