

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.399 OF 2003

Janabai w/o Ramchandra Kondamangale,
Age-49 years, Occu-Household/Agriculturist,
R/o Dhanora, (M), Tq.Loha,
Dist.Nanded

-- APPELLANT

VERUS

The State of Maharashtra

-- RESPONDENT

Mr.A.M.Gaikwad, Advocate for the appellant.
Mr.S.D.Ghayal, APP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
B.U.DEBADWAR, JJ.)

DATE : MARCH 11, 2021

ORAL JUDGMENT : (Per Ravindra V.Ghuge, J.)

1. By this appeal, accused No.1 seeks to challenge the judgment dated 05/03/2003, delivered by the learned Sessions Judge, Nanded in Sessions Case No.14/2000, vide which the appellant has been held guilty of committing the murder of her daughter in law Meerabai and has been sentenced to suffer imprisonment for life.

2. By the order dated 22/07/2003, the appellant Janabai has been granted bail. Accused Nos. 2 and 3 have been acquitted by the Trial Court and the State has not preferred an appeal against such acquittal.

3. The prosecution had set up its case before the Trial Court as under :-

[a] Accused No.1 Janabai lost her husband when she was about 25 years of age. Accused No.2 is the husband of the deceased. Accused No.3 is a barber living in the said village who had developed illicit relations with accused No.1 after she became a widow. P.W.No.1 Datta Maroti Chamkure is the brother of Janabai. Similarly, P.W.No.2 Gangadhar is also her brother. Deceased Meerabai is the daughter of P.W.No.1 Datta, who was given in marriage to accused No.2 Vitthal who is the son of accused No.1 Janabai.

[b] On 03/10/1999, P.W.No.8 Ram Hiranman Kompalwar, Police Patil of the Village had lodged an FIR at around 11.00 a.m. with the Loha Police Station, Dist.Nanded. It was set out in the said complaint that he had heard rumours at around 9.00 a.m. that Meerabai was killed in her farm. Several villagers had gathered at the spot. P.W.No.8 visited the spot and found accused No.1 Janabai sitting next to the body of Meerabai. Upon investigation, accused No.2 Datta was suspected of harassing Meerabai by seeking dowry of Rs.25,000/-. Accused No.3 Haridas was suspected of participating in the crime since he had illicit relations with Janabai and the deceased Meerabai had actually seen both of them together in a compromising position.

[c] In all 9 witnesses were examined who are as under :-

* P.W.No.1 Datta Maroti Chamkure, father of Meerabai, a barber,

- * P.W.No.2 Gangadhar Maroti Chamkure, a barber,
- * P.W.No.3 Ram Bapurao Kadam, panch witness of the spot panchnama and inquest panchnama,
- * P.W.No.4 Dr.Devidas Bapurao Kanwate, Autopsy Surgeon, who performed the post mortem,
- * P.W.No.5 Sunita Yadav Matore, witness who turned hostile,
- * P.W.No.6 Bharat H.Kendre-carried the clothes/muddemal articles to the forensic science laboratory,
- * P.W.No.7 Shobha Kishanrao Wakle, a nurse working in Primary Health Centre, Dhanora,
- * P.W.No.8 Ram Hiranman Kompalwar, Police Patil, first informant,
- * P.W.No.9 Madhukar Nanasaheb Kavathe who was the Investigating Officer.

4. After a complete trial, the testimony of P.W.No.7 was found to be trustworthy by the Trial Court and since the prosecution established the 'last seen alive together' theory, that Janabai was held responsible for the murder of Meerabai. Accused No.2 Vitthal was acquitted from the charge of cruelty and harassment. Accused No.3 Haridas was also acquitted in the absence of evidence indicating his involvement in the murder of Meerabai.

5. We have considered the strenuous submissions of the learned Advocate for the appellant and the learned Prosecutor on behalf of the State. With their assistance, we have gone through the appeal paper book

threadbare and have also perused the record and proceedings.

6. The appellant has relied upon the following judgments :-

- [a] Sharad Biridhichand Sarda Vs. State of Maharashtra [AIR 1984 SC 1622],
- [b] Ganesh Bhavan Patel and another Vs. State of Maharashtra [AIR 1979 SC 135],
- [c] Surajit Sarkar Vs. State of West Bengal [AIR 2013 SC 807]

7. The learned Prosecutor has relied upon the following judgments :-

- [a] Ranbir and others Vs. State of Punjab [AIR 1973 SC 1409],
- [b] State of U.P. Vs. Satish [AIR 2005 SC 1000],
- [c] Anand Roopchand Gajbhiye and another Vs. State of Maharashtra and others [2020 Cri.L.J.4968 = 2020 All MR (Cri.) 4137].

8. Both the Advocates have tendered brief written notes of arguments.

9. Exhibit 34 is a communication by the Investigating Officer to the Deputy Director, Regional Forensic Science Laboratory, Aurangabad dated 15/10/1999. Vide the said communication, 12 articles with Exhibit Numbers were forwarded for chemical analysis. These 12 articles are as under :-

Exhibit1 : A) Saree, B] Peticoat and C) Blouse of the deceased Meerabai.

Exhibit 2 : 2 sickles (A and B)

Exhibit 3 : Sample of plain soil gathered from the spot of the crime.

Exhibit 4 : Sample of the soil with stains of the blood

Exhibit 5 : Two leaves which were blood stained.

Exhibit 6 : A cloth with blood stains (*chindhi*)

Exhibit 7 : The saree worn by Janabai with blood stains.

Exhibit 8 : A) Shirt and B) Pant, of the accused Vitthal.

Exhibit 9 : A) Shirt and B) Pant, of the accused Haridas, seized from his house u/s 27 of the Evidence Act.

Exhibit 10 : The Blood sample of accused Janabai

Exhibit 11 : The blood sample of accused Vitthal.

Exhibit 12 : The blood sample of accused Haridas.

10. The above mentioned articles were received by the RFSL on 22/03/2000. Vide EXh.47, the RFSL Aurangabad forwarded it's findings to the Investigating Officer, which revealed the following test results :-

a) All the articles, except the plain soil sample, carried human blood stains.

b) Both the sickles carried human blood stains (which is surprising, for the reason that we would be assigning in this judgment).

c) Barring Exh.6, which is the blood stained cloth and Exhibit 13 (reassigned number by the laboratory), which are the clothes of accused

No.3 that were discovered from the residence of accused Haridas, the blood found on all other exhibits was determined as belonging to blood group "B".

11. We find that the Assistant Chemical Analyser Mr.S.D.Shinde of the RFSL, Aurangabad has messed up with the exhibit numbers and has created a considerable confusion while tendering the result of the chemical analysis of the articles sent by the Investigating Officer. Nevertheless, it is undisputed that neither the blood group of the deceased was determined, nor the blood group of all the 3 accused, was determined. As such, by way of a logical conclusion, the only source of blood to have been spilled on the clothes of the accused, the clothes of the deceased and on the soil, was on account of the bleeding wounds suffered by Meerabai.

WAS THE DEATH OF MEERABAI HOMICIDAL ?

12. The post mortem report Exh.28 has been proved in the testimony of P.W.No.4 who conducted the post mortem. The surface wounds and injuries suffered by Meerabai are stated at Sr.No.17 which read as under :-

- "1. Incised wound at left sterno clavicular joint (3 x 2 x 1) cm. deep, Edges Gaping (opened wide). There was evidence of active bleeding, oblique, Not communicating inferiority.
2. Incised wound in right hypochondrial region, 6 x 2 x deep inferiority. There was evidence of active bleeding."

13. All the above wounds are said to be ante mortem, with certainty. The cause of death is narrated by the doctor as being “perforating injury to the liver with intra abdominal hemorrhage with peripheral circulatory failure.” It is, therefore, obvious and beyond debate that the death of Meerabai was homicidal.

HAS JANABAI KILLED MEERABAI ?

14. The Trial Court has concluded that though P.W.No.5, a witness to the “last seen alive together” theory has turned hostile, P.W.No.7 has clearly proved that she had seen Meerabai going to the agricultural field alongwith Janabai and after between half to one hour, she had received the news that Meerabai had been murdered in the field. The strenuous contention of the appellant is that P.W.No.7 was interrogated by the Police and a statement was recorded under Section 161, on 19/10/1999, after a huge delay of 16 days from the date of the incident. This period of 16 days was utilized by the Investigating Officer to manufacture a witness in the form of P.W.No.7 and fit her into the case. As the Investigating Officer did not trust P.W.No.5, P.W.No.7 was manufactured.

15. We find that P.W.No.1 has contended that Vitthal, husband of Meerabai was demanding dowry post marriage for setting up a salon. He is the real brother of Janabai and father of Meerabai. P.W.No.2 has turned hostile. He is the second biological brother of Janabai. He has not supported the case of the prosecution and as such, has neither supported

the charge of Vitthal demanding dowry, nor the charge of Janabai murdering Meerabai. As the State has not challenged the acquittal of Vitthal and Haridas, the testimony of P.W.No.1 and 2 is rendered insignificant.

16. P.W.No.3 has supported the spot panchnama and the inquest panchnama. There has been no cross examination on his statement. The presence of Janabai at the spot of the crime when the villagers gathered on hearing the news of the assault on Meerabai, is proved.

17. P.W.No.4 is the Autopsy Surgeon, who has narrated the injuries suffered by Meerabai in details. He has also opined that her fatal injuries can be caused by a sharp aged weapon like a sickle. He has also not been cross examined by the defence. As such, the wounds, the cause of the wounds and the death of Meerabai on account of the wounds, has been established.

18. P.W.No.5 was produced as a witness by the Prosecution considering that she had stated under Section 161 that she had seen Janabai and Meerabai walking towards the agricultural fields. However, in her examination-in-chief, though she admitted that she was acquainted with both these ladies, she denied that she had met Meerabai before her death or that she had seen her alongwith Janabai on the fateful day or that they

had told her that they were proceeding to harvest sesame crop. She has completely denied that she had made any statement as is set out in her statement u/s 161 of Cr.P.C. In cross examination of P.W.No.9 Investigating Officer, he has stated that Sunita had mentioned to him that she had seen the two ladies travelling towards the field for harvesting sesame crop. Therefore, in view of the position of Law, such testimony of P.W.No.5 Sunita will have to be discarded and as such, though the Law is crystallized that the testimony of the hostile witness, to the extent of its support to the case of the prosecution, can be accepted, we find that the testimony of P.W.No.5 Sunita does not support the prosecution.

19. As noted above, the entire case, therefore, rests upon the testimony of P.W.No.7 and P.W.No.8 Police Patil. P.W.No.8 has stated that he visited the crime spot at about 9.30 a.m. Large number of villagers from village Dhanora had gathered. Janabai and her brother P.W.No.2, were sitting by the side of the dead body. P.W.No.2 has not supported the case of the prosecution before the Trial Court. His statement u/s 161 was confronted to the Investigating Officer P.W.No.9 and considering the contradiction, the testimony of P.W.No.2 had to be ignored. Nevertheless, it is conclusively proved that Janabai was seen sitting near the body of Meerabai.

20. Though P.W.No.1 is the father of Meerabai and P.W.No.2 is her biological uncle (brother of P.W.No.1 and Janabai), both have not led

evidence in support of the case of the prosecution that Janabai had killed Meerabai. Since P.W.No.2 was declared hostile, his statement u/s 161 of the Cr.P.C. clearly stating that Janabai had killed Meerabai in the backdrop of he being the earliest person to reach the crime spot, was confronted to the Investigating Officer P.W.No.9. The Investigating Officer has specifically stated in the last portion of paragraph No.4 that he confirms that P.W.No.2 Gangadhar had stated before him that Janabai had killed Meerabai and was pretending to be weeping and grieving on the death of Meerabai. However, P.W.No.2 has turned hostile. This brings about a serious contradiction in so far as his statement u/s 161 of the Cr.P.C. of implicating Janabai (which is not a substantive evidence), and his statement before the Court in which he completely denies the involvement of Janabai. In these circumstances, we are afraid that such testimony of P.W.No. 2 cannot be utilized as substantive evidence. By his turning hostile, the case of the prosecution is seriously damaged.

21. In the above premises, the entire case now rests upon the testimony of P.W.No.7. She is an employee of the Primary Health Center at Dhanora. She was residing in the said village and had met Meerabai about 7 to 8 days prior to her death. She categorically stated that she did not meet Meerabai on Sunday, 03/10/1999, which is the date of the incident. However, she clearly states that she was in her courtyard when she saw

Janabai and the deceased going towards their land. On enquiry, she was told that they were moving towards their agricultural land, though she does not state as to whom did she talk to. P.W.No.7 has not stated the time at which she had seen both of them together. Being an employee of the Primary Health Center, it is our perception that though she is a woman hailing from a village, she must be accustomed to using a wrist watch. Nevertheless, she has stated that she got the news of Meerabai's death after about half an hour. She then rushed to the agricultural field of Janabai. She personally saw the dead body and has viewed the stabbing injuries on her stomach, below the chest. In cross examination, she has stated that she was in village \Dhanora in between 03/10/1999 to 19/10/1999.

22. The learned Advocate for the appellant has strenuously canvassed that P.W.No.7 is a manufactured witness. If she had actually seen Meerabai walking towards the agricultural field alongwith Janabai and after hearing the news that Meerabai was murdered and upon seeing the dead body of Meerabai with Janabai sitting next to her, there was no reason for P.W.No.7 Shobha to remain silent for 16 days.

23. Considering the law laid down by the Hon'ble Apex Court in the matters of a) Kanan and others Vs. State of Kerala, AIR 1979 SC 1127, b) Lakhwinder Singh and others Vs. State of Punjab, AIR 2003 SC 2577, c)

State (Delhi Administration) Vs. V.C.Shukla and another, AIR 1980 SC 1382, and d) Sadashiv Bajrang Sutar Vs. The State of Maharashtra 1982 Cri.L.J.2056 (Bombay Division Bench), though delay in recording the statement of a witness u/s 161 of the Cr.P.C. is not always fatal to each and every case of the prosecution, the Court has to scrutinize the deposition of such witness with greater amount of caution and circumspection. If the Court forms a view that the delay period was crucial for enabling the prosecution to manufacture a witness and if, considering the other pieces of evidence, such witness appears to be a manufactured witness, the Court has to give the benefit of doubt to the accused.

24. We have, therefore, scrutinized the testimony of P.W.No.7 from the angle as has been canvassed by the appellant. We find from the testimony of P.W.No.7 and P.W.No.9 Investigating Officer that there is no explanation as to why the statement of P.W.No.7 was recorded on the 16th day. The Investigating Officer does not explain as to why such a star witness was not available to the investigation for interrogation and as to what were the circumstances in which the witness was discovered as being a crucial piece of evidence to unravel the mystery of the murder of Meerabai.

25. We, however, hasten to add that we are not outrightly disbelieving P.W.No.7. We are considering the following circumstances in order to

better assess the testimony of P.W.No.7 since her testimony is going to be the solitary piece of evidence to establish, the last seen alive together theory against Janabai :-

[a] Two sickles were found at the scene of the crime.

We may assume that as both, Janabai and Meerabai had planned sesame seed harvesting, both must be carrying a sickle and it is not uncommon in villages that those villagers who actually indulge in physical working in the fields, carry a sickle or any other agricultural implement.

[b] What is intriguing is that blood stains have been found on the blades of both the sickles.

[c] This gives rise to a suspicion as to whether two sickles were used to murder Meerabai.

[d] We have perused Exh.26, which is the spot panchnama. On Form 2-B, the sickle with blood stains is mentioned. In the additional sheet, which is the page appended to Form 2-C, we find one metal *Topali* (a small implement used for collecting grains or any such material which is also called in Marathi as "*Ghamele*"). Two iron sickles with a wooden grip were also seized. Between the two sentences mentioning the two sickles, we find an interpolation in a different handwriting which reads as '*Tyas rakt lagalele ki*' (*smearred with blood*).

[e] The articles sent to the RFSL, Aurangabad indicate at Exh.34 that there were two sickles, marked as Exhibit 2 (A and B) and the analysis of the laboratory indicates that both the sickles were stained with blood.

[f] In this backdrop, it becomes glaring that there were 3 accused and all 3 were charged of having murdered Meerabai. Accused No.2, husband of Meerabai is a young physically abled 22 year old man and accused No.3 is a 27 year able bodied person who is said to be the paramour of Janabai.

[g] The prosecution, therefore, had to establish the actual murder by bringing forth evidence which would prove the guilt of the accused beyond any doubt. The clothes of all these 3 accused had blood stains of the blood group "B". None of them had any injuries and therefore neither of them can be said to be the source of the bleeding. The only source from which the blood could have spilled and could have stained the clothes of the 3 accused, the two sickle and the soil, was from the wounds of Meerabai. Circumstantially, we find it believable that blood group "B" therefore must be the blood group of Meerabai.

26. Taking into account the above factors, which of the 3 accused or whether more than one accused have killed Meerabai by using two sickles. ? There is no evidence to indicate this aspect. Even the Trial Court has not taken the pains of considering the case from this angle and there is no discussion of these factors in the impugned judgment. Our suspicion is aroused as all 3 accused have blood stains on their clothes and both the sickles are stained with blood. Logically, more than one person have used the two sickles as it is improbable that only one person has used two sickles to assault Meerabai. In between an aged person like Janabai who

was 45 years old and being a woman, and the two male accused Vitthal, aged 22 years and Haridas, aged 27 years, we have reason to suspect as to whether these two males have attacked Meerabai and killed her instantly. Even if it is assumed that Janabai used one sickle, the prosecution had to prove as to which amongst the two male accused, have used the sickle.

27. In the above circumstances, we have to consider as to whether P.W.No.7 was a witness manufactured in a period of 16 days by the investigation authorities. Being in employment with the Primary Health Centee, it is obvious that P.W.No.7 is an educated person and deals with the health issues of patients. If she had actually seen Meerabai with Janabai and had immediately reached the crime spot when she noticed Janabai sitting next to the body of the Meerbai, her natural conduct would have been to immediately divulge that half an hour ago, she had seen both of them walking together towards the field. She has remained silent for 15 days and her statement was recorded on the sixteenth day.

28. It is equally a mystery as to what made her speak after sixteen days or how did her name surface as a witness in the process of investigation ? Neither does P.W.No.7 put forth a plausible explanation, nor has the Investigating Officer P.W.No.9 explained the delay. P.W.No.7 has made a feeble attempt to explain the delay by stating that as nobody met her and nobody asked her, she had no reason to be interested to say that she had

seen both of them together. This seems to be a weird explanation which is not palatable. In the concluding portion of her cross examination, she again offers an unreasonable answer that as “many persons had passed by that road, she was not sure as to who had gone by that road in that morning and hence, I did not disclose it to the police”.

29. There is one more factor which casts a doubt on P.W.No.7 being a natural witness. If she had seen Janabai with Meerabai travelling towards the field, did she not notice Vitthal and accused No.3 Datta reach the same spot keeping in view that in 30 minutes, P.W.No.7 got the news that Meerabai has been killed. Then, was it that she had seen accused Nos. 2 and 3 precede Janabai and Meerabai to the field or whether they followed the two ladies immediately thereafter. If Janabai and Meerabai had travelled from their house to the field, logically, the husband of Meerabai, Vitthal would not have had any other route to go to the field unless, they had take a different route. Be that as it may, the presence of the two male accused at the crime spot has not been proved, though two sickles were used to kill Meerabai.

30. Taking into consideration the above factors, it is obvious for us to develop a suspicion as to whether P.W.No.7 was a manufactured witness and whether Janabai killed Meerabai with the aid of another male by using two sickles or whether the two male accused Nos. 2 and 3 have killed

Meerabai. The State, to repeat, has not preferred an appeal to challenge the acquittal of the two male accused.

31. In Shivaji Sahabrao Bobade and another Vs. State of Maharashtra (1973) 2 SCC 793, the Hon'ble Apex court has dealt with the issue of considering an appeal against acquittal and has laid down certain parameters applicable to the Appellate Court while deciding such an appeal. It would be apposite to reproduce paragraph Nos.5, 6, 7, 8 and 9 hereunder :-

"5. Before dealing with the merits of the contentions, we may perhaps make a few preliminary remarks provoked by the situation presented by this case. An appellant aggrieved by the overturning of his acquittal deserves the final court's deeper concern on fundamental principles of criminal justice. The present accused, who have suffered such a fate, have hopefully appealed to us for a loaded approach against guilt in consonance with the initial innocence presumed in their favour fortified by the acquittal that followed. We are clearly in agreement with this noble proposition, stated in American Jurisprudence at, one time (not now, though) as implied in the rule against double jeopardy, in the British system as a branch of the benefit of reasonable doubt doctrine and in our own on the more logical, socially relevant and modern basis, that an acquitted accused should not be put in peril of conviction on appeal save where substantial and compelling grounds exist for such a course. In India it is not a jurisdictional limitation on the appellate court but a judge-made guideline of circumspection. But we hasten to add even here that, although the learned judges of the High Court have not expressly stated so, they have been at pains to dwell at length on all the pointed relied on by the trial court as favourable to the prisoners for the good reason that they wanted to be satisfied in their conscience whether there was credible testimony warranting, on a fair

consideration, a reversal of the acquittal registered by the court below. In law there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinize the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence, attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration, In our view the High Court's judgment survives this exacting standard.

6. *Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are. always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly as a learned author (1) has saliently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say', with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of*

the ,guilty no less than from the conviction of the innocent....." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free arid chopping the logic of preponderant probability to, punish marginal innocents. We have adopted these cautious in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago.

7. *This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full power to review at large I the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. The, Privy, Council in [Sheo Swarup v. King Emperor](#) (2) negated the legal basis for the limitation which the several decisions of the High Courts had placed on the right of the State to appeal under [s. 417](#) of the Code. Lord Russel delivering the judgment of the Board pointed out that there was "no indication in [the Code](#) of any limitation or restriction on the High Court in the exercise of its powers as an appellate tribunal", that no distinction was drawn "between an appeal from an order of acquittal and an appeal from a conviction", and that "no limitation should be placed upon that power unless it be found expressly stated in [the Code](#)". He further pointed out at p. 404 that, "the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been, acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses". In [Sanwat Singh & Others v. State of Rajasthan](#) , after an exhaustive review of cases decided by the Privy Council as well as by this Court, this Court considered the*

principles laid down in Sheo Swarup's case (*supra*) and held that they afforded a correct guide for the appellate court's approach to a case against an order of acquittal. It was again pointed out by Das Gupta, J. delivering the judgment of five Judges in *Harbans Singh and Another v. State of Punjab* :

"In many cases, especially the earlier ones the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on 'compelling and substantial reasons' and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal (vide *Suraj Pal Singh v. The State* (1952) S.C.R. 194; *Ajmer Singh v. State of Punjab* (1953) S.C.R.418; *Puran v. State of Punjab* A.I.R. 1953 S.C. 459). The use of the, words 'compelling reasons' embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words 'compelling reasons'. In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the' view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine .not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused "and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide *Chinta v. The State of Madhya Pradesh-Criminal Appeal No. 178 of 1959* decided on 18-11-1960; *Asharakha Haibatkha Pathan v. The State of Bombay-Criminal Appeal No. 38 of 1960* decided on 14-12-1960).

..... On close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care, must examine also the reason on which the order of acquittal was based and should interfere with, the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that

the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

8. *Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge as at some length, dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the postmortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious untruthfulness, of persons who swear to the facts before him. Nevertheless, where a judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can we make a fetish of the trial judge's psychic insight.*

9. *Let us now sift the evidence from the proper perspective outlined above avoiding both the exploitation of every plausible suspicion as militating against the certitude of guilt and the unjust loading of the dice against the accused merely*

because of a conviction rendered by the High Court."

32. Keeping in view the law crystallized by the Hon'ble Apex Court, while dealing with this case based purely on circumstantial evidence and the testimony of P.W.No.7 to establish the "last seen alive together" theory, we find from the evidence before us that the same does not establish that Janabai alone and no one else had used two sickles to kill Meerabai. While developing such suspicion, we must add that we have a strong suspicion that Janabai may be one of the two assailants who may have used one of the two sickles to kill Meerabai. At the same time, the presence of two able bodied male accused, one of them being the husband of Meerabai and the blood of Meerabai having splattered over the clothes of all the 3 accused and the 2 sickles, engulfs this case with mystery. Recently, the Hon'ble Apex Court has held on 12/02/2021 in the matter of The State of Odisha Vs. Banabihari Mohapatra and another, that suspicion, however strong may be, it cannot take the place of substantive evidence. In view thereof, on the basis of the evidence recorded in the case, we grant the benefit of doubt to the appellant Janabai.

33. This appeal is allowed. The impugned judgment dated 05/03/2003 delivered by the learned Sessions Judge, Nanded in Sessions Case No.14/2000, is quashed and set aside. Consequentially, by extending the benefit of doubt, the accused Janabai is acquitted of the charge of having

committed the murder of Meerabai punishable u/s 302 of the IPC. The record and proceedings be returned to the Trial Court and the muddemal property, be destroyed, after the appeal period is over.

34. The learned Prosecutor submits that the State may prefer an appeal to the Hon'ble Apex Court and he, therefore, prays for compliance of Section 437-A of the Cr.P.C. We accordingly direct the compliance of Section 437-A. Since the appellant had furnished bail bonds in view of the directions of this Court dated 22/07/2003, the said bail bond shall be renewed before the Trial Court on the same terms by tendering fresh bail bonds.

(B.U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)