



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

CRIMINAL APPEAL NO.142 OF 2022

1. Mahalappa Babu Bandichode,
Age:39 years, Occ. Agri.,
2. Babu Mahalappa Bandichode,
Age:69 years, Occ.Agri.,
3. Dagdu Babu Bandichode,
Age:41 years, Occ. Agri.,

All r/o. Belamb, Tq. Omerga,
Dist. Osmanabad

..Appellants

Vs.

The State of Maharashtra,
Through Investigating Officer,
Murum Police Station,
Tq. Omerga, Dist. Osmanabad

..Respondents

Mr.Shailendra S. Gangakhedkar, Advocate for appellants
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent
Mr.Sandeep B. Rajebhosale, Advocate assisting the P.P. (absent)

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : AUGUST 27, 2024
PRONOUNCED ON : SEPTEMBER 25, 2024**

JUDGMENT (Per R.G.Avachat, J.) :-

A father and his two sons have preferred this appeal against the judgment and order of conviction dated 04.02.2022, passed against them by learned Addl. Sessions Judge, Omerga in

Sessions Case No.24 of 2013. Vide the impugned judgment and order, the appellants have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.500/- each, with default stipulation.

2. Appellant no.2 (A2) is father of appellant nos.1 and 3 (A1 and A3). The wives of appellant nos.2 and 3 were also prosecuted along with them for the same offence, besides the offence under Section 498-A read with Section 34 of Indian Penal Code. All of them have been acquitted of the charge of offence under Section 498-A read with Section 34 of Indian Penal Code. Those two additional accused have also been acquitted of the charge of murder. Neither the State nor any of the next of kin (victim) of the deceased preferred appeal against acquittal.

3. It was a case of murder of wife of appellant no.1 - Mahalappa by giving her electric shocks, on the intervening night of 27th and 28th March, 2012, at her matrimonial home, at village Belamb, Tq.Omerga, Dist. Osmanabad.

4. The case of prosecution, before the trial court, was as under:-

Sujata (deceased) married Mahalappa (A1) in 2004. On marriage, she started residing at her matrimonial home. All was not well between her on one hand and the appellants and other female in-laws, on the other. She had asked for partition of her husband's share in the ancestral agricultural land. She was even assaulted by her father-in-law – Babu (A2) with service-wire a few days prior to the incident. She had, therefore, started residing separately in one of the rooms of the house comprising five rooms. On the intervening night of 27th and 28th March, 2012, the appellants and the acquitted accused committed her murder with giving her electric shocks and she succumbed thereto.

5. On the other hand, it was the case of A1 that he along with his brother A3 were in their field overnight. On their return home early in the morning, they realised Sujata to have suffered electric shock of table-fan wire. He made an oral report (Exh.65) to the police about unnatural death. Based on his say, an unnatural death case was registered.

6. PW 9 – Anandrao, then A.P.I. attached to Murum Police Station, rushed to the house of the appellants. He drew spot panchnama (Exh.25) and inquest (Exh.66) as well. He sent the mortal remains of Sujata for autopsy. PW 7 – Dr. Amrapali conducted the same. The post mortem examination report (Exh.52) suggests Sujata died of '*cardio-respiratory arrest due to electric shock*'. When the parents and brother of deceased Sujata visited her matrimonial home, they noticed burn marks on her body. Blood was oozing from one of her eyes and mouth. They realised it to be not the case of unnatural death. Suresh (since deceased), father of Sujata, lodged the FIR (Exh.64), alleging that the appellants and the wives of appellant nos.2 and 3 harassed and illtreated and ultimately, committed murder of his daughter Sujata.

7. A crime, vide C.R. No.44 of 2012 was registered at Murum Police Station, for the offences punishable under Sections 302 and 498-A of Indian Penal Code. The appellants and mother-in-law and sisters-in-law of Sujata were arrested. A3 - Dagdu made disclosure statement, pursuant to which two pillows and one electric wire came to be seized. The clothes on the person of the deceased were seized. During spot panchnama, some articles were taken charge of. The blood stains on the floor were collected with cotton

swab. The blood samples of the appellants and deceased Sujata were obtained for ascertaining the blood group. C.A. reports in that regard were received. The statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, charge sheet was filed. The trial court framed Charge (Exh.9). The appellants pleaded not guilty. Their defence was Sujata to have died of electric shock suffered accidentally. On appreciation of the evidence in the case, the trial court convicted the appellants and consequently sentenced, as stated above.

8. Heard learned counsel for the parties. Learned counsel for the appellants made oral submissions and also placed on record written notes of arguments along with a bunch of authorities/citations. According to him, the case was based on circumstantial evidence. He would further submit that the circumstances relied on have not been proved upto the hilt. He would further submit that the prosecution has failed to prove Sujata to have met with homicidal death. He would further submit that in view of acquittal of the appellants of the offence under Section 498-A of Indian Penal Code, the motive for commission of the alleged offence came to be disproved. According to him, there is not a single witness to indicate

A1 and A3 to have been at their home that too, in the company of the deceased on the intervening night of 27th and 28th March, 2012. He would further submit that A1 immediately approached the police station and gave a statement. The Police Head Constable, who made enquiry into the the unnatural death case, has not been examined. He was made to wait for long and thereafter, his statement was recorded. On the question of the disclosure statement made by A3 - Dagdu, learned counsel would submit that the pillows had already been found while the spot panchnama (Exh.25) was drawn. The electric wife seized pursuant to the disclosure statement was not sent to C.A. to find whether there were blood stains on it or human tissues were found thereon. He would further submit that the Medical Officer gave the cause of death as electric shock. She could not locate the entry and exit point of the electric shock. Her report in that regard was adverted to. Relying on the authorities, learned counsel would submit that the burden to prove the charge beyond reasonable doubt is on the prosecution throughout the trial. Unless the appellants are shown to have been in the company of the deceased soon before she met with homicidal death, they could not be called upon to explain the circumstances in which the deceased met with death. According to him, it would nothing but the reverse burden.

9. Learned counsel for the appellants would further submit that the time gap between the post mortem examination and the shouts emanating from the house of the appellants heard by PW 8 - Anuja, was more than 12.00 hours. It creates suspicion about the testimony of PW 8 - Anuja, neighbour of appellants. Admittedly, the table-fan was found lying nearby the dead body of Sujata. One end of wire of the fan and other end thereof at the switch board, both had turned black due to burning. Same indicates that the wire of table fan was burst. There was report of the Electrical Inspector indicating that electric supply was in order and there was no outage on the fateful night. He would further submit that no opinion of the expert namely, Electrical Inspector has been obtained, as to whether the deceased could have suffered such injuries due to electric shock. He would submit that the ornaments of the deceased were intact on her person. No injury thereby she could suffer. According to learned counsel, all in all, the prosecution has failed to bring home the charge beyond reasonable doubt. Not a single circumstance relied on, has been conclusively proved. He would submit that the demand of the deceased for partition of land was not of her benefit because she did not have any right, title and interest in the family property. Whatever would have been given in partition was that of her husband and none else. Learned counsel would, therefore, urge for

allowing the appeal. The authorities relied on by learned counsel for the appellants are as follows :-

Sr. No.	Citation	Relevant para	Page No.
1.	AIR 1991 SC 1388 Jaharlal Das Vs. State of Orissa	8, 9 and 12	1-8
2.	2006 AIR SCW 1053 P. Mani Vs. State of T.N.	10, 12 and 14	9-12
3.	(2009) 12 SCC 588 (Sohel Mehaboob Shaikh Vs. State of Maharashtra)	5 to 7	13-14
4.	2015(3)Bom.C.R. (Cri.) 609 (Suresh Vithal Parkar Vs. State of Maharashtra)	12 to 16	15-19
5.	2016 DGLS (Bom.) 40 Sunil Latari Khuje Vs. State of Maharashtra	6 to 12	20-23
6.	Criminal Appeal No.512 of 2017 Mr.Ulhas Sudam Gorhe Vs. State of Maharashtra	6 to 9	24-31
7.	2021 DGLS (SC) 120 Banabihari Mohapatra and ors. Vs. State of Odisha	21, 26, 32, 35 to 39	32-38
8.	AIR Online 2021 SC 97 Shivaji Chintappa Patil Vs. State of Maharashtra	17, 18, 22, 23, 27, 30, 34	39-45
9.	AIROnline 2021 SK 40 Santosh Kumar Pandey Vs. State of Sikkim	9, 11, 16	46-62
10.	(2023)1 SCC 83 Rahul VS. State of Delhi and ors.	17 and 30, 39 to 43, 45	63-90

10. Learned APP would, on the other hand, submit that the spot panchnama (Exh.25) and the inquest panchnama (Exh.66)

indicate the deceased to have suffered ten electric burn injuries. Had she really suffered electric shock, she would have suffered not more than one injury. Her body would have turned blacken. The blood was seen oozing from her eye and mouth as well. There were blood stains on the floor of the room. According to learned APP, the offence took place in the matrimonial home of the deceased. There, therefore, could not be independent witness. Relying on the judgment in the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006)10 SCC 681**, he would submit that it was for the appellants to come clean. PW 8 – Anuja was an independent witness. Her evidence and the evidence of the deceased's mother and brother would indicate that all was not well between Sujata on one hand and the appellants on the other.

11. Learned APP would further submit that a day before the incident, Sujata had been to the residence of her sister. Sujata had made phone call to her brother (PW 5 – Satish), informing the appellants to have been threatening to commit her murder. It is only on his (PW 5 – Satish) request, she had returned to her matrimonial home. On the following day, the threat proved true. Learned APP would further submit that when the appellants were in the know of the deceased to have suffered electric shock, there is nothing to

indicate any efforts to have been made by them to rush Sujata to hospital or nearest medical clinic nor was there any evidence to indicate a Doctor was summoned to examine her. Same speaks in volumes. According to him, the prosecution could produce in evidence, which it could gather; rest of the things were within the knowledge of the appellants. When the daughter-in-law met with homicidal death at her matrimonial home, it is for the husband and the in-laws to come clean, else face the consequences. According to learned APP, the trial court, relying on Section 106 of the Evidence Act and the evidence on record, has rightly convicted the appellants. He, therefore, urged for dismissal of the appeal.

12. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein.

13. The prosecution case stated above in paragraph 4 is almost not in dispute. We, therefore, propose not to reiterate the same. Let us, now, turn to the evidence on record and appreciate the same. A bit repetition is, however, bound to occur. Admittedly, Sujata married A1 – Mahalappa in the year 2004. After one and half years of marriage, they both shifted to Pune. He took a premises on rent in the nearby of the house of Amol, at Bhosari. After 4-5

months, Sujata joined him in Pune and started residing with him. Dagdu (A3) visited Pune after first month's service was completed by A1. A1 brought a cellphone for his brother A3. Sujata did not like the same. It was her case that A1's salary was meager to make both ends meet. She, therefore, started running a mess. It appears that her in-laws did not like the same. Both A2 - Babu and A3 - Dagdu visited their house in Pune and asked them to come back to the village. In the meanwhile, Sujata had conceived and delivered a baby boy (Sanket).

14. After some days, again, both A2 and A3 visited Pune and started packing the household articles, so as to get A1 - Mahalappa and and Sujata back to the village. As it would have been midway of the academic year of Sanket (son of deceased and A1), both A2 and A3 brought Mahalappa (A1) back to the village. As such, Sujata and her son remained at Pune. For Mahalaxmi festival, Satish (PW 5) took them to his parental house at village AshtaKasar. Again, A2 and A3 along with some of the villagers visited the parental house of Sujata to get her back to her matrimonial home. She asked them to pay for the rent of the room at Pune and the school fees of her child. Since no money was paid to her, she sold some furniture and T.V. set. Her in-laws disliked the same. For few days, she stayed at the house

of her brother Amol and then came back to her parental house at village Ashta-Kasar. Again, a meeting took place between the parents of Sujata, her in-laws and some of the villagers. Sujata's father agreed to send her back to the matrimonial home as her in-laws promised to treat her well. It was also case of Sujata that a plot was purchased at Pune by A2 in the name of A3. She wanted to have it purchased in the name of her husband. She was, therefore, annoyed. At her matrimonial home, quarrel was the everyday feature between her one hand and her in laws and husband, on the other.

15. A2 (Sujata's father-in-law), once, assaulted her with service-wire. It was about a month before the fateful day. She, therefore, started residing separately in one of the rooms at her matrimonial home. She would cook separately as well. The reason behind the quarrel was Sujata's demand for separation of her husband's share in the agricultural land. On the fateful night, the appellants gave her electric shocks. She succumbed thereto. On the early morning of 28.03.2012, A2 informed Sujata's mother (PW 4 - Mangalbai) Sujata to have been serious due to electric shock suffered accidentally. The father of Sujata was in Pune. He too was informed. All of them came to the house of the appellants at Belamb.

16. It is true that before resumption of cohabitation, a meeting was held at the house of Varnale-Savkar, at village Belamb. Varnale-Savkar has not been examined. Resumption of cohabitation at the request of the appellants, is a fact not in dispute. It is also true, one Mashak Shaikh was not examined, who claimed to have learnt Sujata died of electric shock. His non-examination also would not be fatal for the prosecution, if the evidence on record was found to be sufficient to make out the charge. The prosecution case, as stated herein above, also has been reiterated by PW 4 – Mangalbai and PW 5 – Satish (mother and brother of Sujata). The questions put to both of them in cross-examination go a long way to indicate that Sujata along with A1 had shifted to Pune after one and half years of marriage. She delivered a baby boy there. He was admitted in an English medium school. To make both ends meet, she had started running a mess. It appears that A2 and A3 disliked the same. They had come to Pune to get both A1 and Sujata back to the village along with their child. Sujata refused, as it would have been mid-academic return. She had asked the in-laws (A2 and A3) to pay for the rent of the room and the school fees of her child. She was annoyed with her husband as he (A1) had purchased a cellphone for his brother (A3). She was also annoyed as a plot was purchased by A2 in the name of A3 – Dagdu, at Pune, and not in the name of her husband (A1). The

evidence also indicates that A2 and A3 brought A1 back to the village, leaving Sujata and her child at Pune. She, therefore, went to her father's house at village Ashta-Kasar. She resumed the marital tie after a meeting was held, wherein, the appellants promised to treat her well. It appears that Sujata was quarrelsome. She was asking for partition of share of her husband in the family property. There, therefore, used to be frequent quarrels between her on one hand and the appellants, on the other.

17. PW 5 – Satish testified that Sujata had related him that her father-in-law, once, had assaulted her with service-wire. Since then, she had started residing separately in one of the rooms of the house. She would cook separately as well. True, this fact has not been stated by Sujata's mother. We have to see the quality of evidence and not the quantity. Whatever was stated by the deceased about her illtreatment, leading to the incident to be very much admissible in the evidence in view of Section 32(1) of the Evidence Act, as circumstances of the transaction which resulted in her death. We do not dwell at length, on the evidence of the mother and brother of the deceased, since the case is based on the circumstantial evidence. Their evidence further indicates that all was not well and Sujata was not dealt with properly by the appellants at her

matrimonial home. The FIR was lodged by her father Suresh. He died before the trial commenced. The FIR (Exh.64), therefore, came to be admitted in evidence based on the evidence of PW 9 - Anandrao, who had recorded the same on the say of the deceased Suresh.

18. Now, let us turn to the circumstances the prosecution relied on to bring home the charge. The circumstances are: (i) illtreatment of the deceased and motive; (ii) homicidal death; and (iii) conduct of the appellants inconsistent with their innocence.

Illtreatment of deceased and motive:

19. Both these points have been addressed herein above itself. It is not known as to why, the appellants and female members (acquitted) were charged with offence under Section 498-A of Indian Penal Code when the ingredients thereof could not be attracted. The prosecution case was that when A1 had joined service at Pune and started earning salary and Sujata would earn by running a mess, the in-laws (A2 and A3) had asked them to pay them some money. Same could not have been termed to be unlawful demand. Be that as it may. The fact remains that the appellants have already been

acquitted of the offence under Section 498-A of Indian Penal Code. By such acquittal, the motive behind the offence did not vanish. The Evidence of PW 5 – Satish has already been referred to, to indicate that a month before the incident, A2, father-in-law had assaulted Sujata with service-wire and therefore, she had started residing separately in one of the rooms of the very house. The fact that she had stayed at her parental house for long and on assurance of the in-laws to treat her well, she resumed cohabitation, goes a long way to infer that she was not dealt with properly at her matrimonial home. On the previous day of the incident, she had visited the house of her sister. True, she has not been examined; but we have evidence of PW 5 – Satish to indicate that Sujata had telephoned from her sister's residence, informing him the appellants to have been extending her threats of dire consequences. It is only on her request, she returned to her matrimonial house and met with death on the following night.

Homicidal Death:-

20. Based on the oral report made by A1, an unnatural death case was registered. It was PW 9 (Investigating Officer), who immediately paid visit to the house of the appellants. The spot panchnama (Exh.25) was drawn in the presence of PW 1 –

Nandkumar. The evidence of this witness and reference to the spot panchnama by learned counsel for the appellants indicate that the dead body of Sujata was lying on the floor in one of the rooms in the house comprising of five rooms. It was necessarily a room exclusively occupied by her husband and their child. Pillows and bed-sheet on the bed were not in order. The table fan was lying by the side of the dead body. One end of the electric wire of the table fan had turned blacken due to burning/bursting, while the other end of the table fan wire connected in the switch board, had also turned blacken due to burning/bursting. Learned counsel for the appellants meant to say that this piece of evidence would go a long way to indicate Sujata to have suffered shock, accidentally. In our view, it might be a creation of evidence to deflect the attention. PW 1 – Nandkumar noticed the switch board with buttons in the very room. He had noticed that blood had oozed from her eye and mouth. There were blood spots on the floor. PW 9 – Anandrao collected the same with cotton swabs. C.A. reports on record (Exhs.26 to 28) indicate that the blood on the cotton swabs was human blood. The blood grouping thereof could not be made.

21. Learned counsel for the appellants would submit that the spot panchnama was drawn during 9:25 am. and 10:30 am. In our

view, no doubt about the timing could be raised since there is statement given by A1 (Exh.65), based on which the station diary entry no.88/2012 was registered of a case under Section 174 of the Code of Criminal Procedure at little past 9:00 in the morning. True, the police head constable, who recorded and made enquiry into unnatural death has not been examined. We will turn to the said aspect little later.

22. The fact remains that no sooner the station entry no.88 of 2012 was registered, the spot panchnama was drawn. It is reiterated that the spot panchnama and the evidence of PW 1 - Nandkumar indicate that there were blood stains on the floor of the room. The blood was oozing from the eye and mouth of the deceased. It is true that the mother of the deceased (PW 4) testified to have noticed mud to have been applied to the throat of the deceased. Same is not reflected in the spot panchnama or on the person of the deceased. The said statement was also missing in her (PW 4 - Mangalbai) police statement.

23. PW 2 - Dattu was witness to the seizure of clothes of the deceased and the disclosure statement made by A3 - Dagdu, pursuant to which one electric wire and two pillows came to be

seized from behind the food grain bag and on the bed, respectively. This witness did not stand by the prosecution. Although this fact has been reiterated by the Investigating Officer (PW 9), we find the same to have no relevance, since the pillows were there when the spot panchnama (Exh.25) was drawn and the wire seized pursuant to the alleged disclosure statement, was not sent to the Chemical Analyst, to find whether there were blood stains or human tissues thereon. It, therefore, cannot be said that the very wire was used for giving Sujata electric shocks.

24. Learned counsel for the appellants referred to the disclosure statement made by A3 – Dagdu. According to him, if the same is accepted as it is, it will improbabilise the prosecution case. He would further submit that no blood was noticed on the pillows. The person giving electric shock would have suffered the same. The kit-kat switch from which electric current was obtained for giving shock to the deceased, was not seized nor the same was found at the crime scene.

25. According to us, the incident took place at dead of the night. No third person was present in the house. It would, therefore, be anybody's guess, in what way the deceased was given electric

shocks. The disclosure statement given by A3 – Dagdu, which is in inculpatory form, would be inadmissible in evidence. Same too has been discarded as not relevant under Section 27 of the Evidence for the reasons given immediately herein before.

26. PW 7 – Dr. Amrapali was Medical Officer at Primary Health Centre, at Aloor, Tq. Omerga, Dist. Osmanabad. She went to the Rural Hospital, Murum, for conducting autopsy on the mortal remains of Sujata. Her evidence indicates that autopsy was conducted between 3:30 p.m. and 5:16 p.m. on 28.08.2012. She noticed following injuries on the person of Sujata:-

1. Red black coloured patch around 7x4 cm. on left cheek of face (superficial burn)
2. Red black coloured patch around 6x5 cm. with smaller 3-4 patches on right side of cheek of size 1x1.5 cm.
3. Multiple patches around 1x0.5 cm. on left side of face near angle of mouth.
4. Brown coloured patch of 2x1 cm. over anterior chest exactly in the middle between the breast.
5. Multiple red black coloured patches present on right arm, elbow, and dorsum of wrist of variable dimension.
6. Red black coloured patches present on right side of buttock of variable dimensions.

7. Red black coloured patch around 6x0.5 cm. on right groin.
8. Diffuse red black coloured patch on mucosal surface of upper and lower lip.
9. Diffuse multiple red black colour patches on dorsum of left hand.
10. Small red black patch on anterolelateral lateral aspect of left upper thigh and on dorsal aspect of left great toe of 2x2 mm.

Those injuries are mentioned in paragraph 17 of the postmortem report are superficial electric burn.

In her opinion, the cause of death was cardio-respiratory arrest due to electric shock. She further testified that the aforesaid injuries might be caused if electric shock is given. According to her, these injuries were sufficient to cause death in the ordinary course of nature.

27. The cross-examination of PW 7 – Dr.Amrapali is general in nature. Same is like a literature in respect of suffering electric shock and consequences thereof. She was confronted with letter (Exh.53), wherein it has been recorded that the death had occurred approximately within 10-12 hours immediately before beginning of the post mortem examination. Such period takes us back to the time

between 01.00 am. and 3.00 am on 28.03.2012. She had further opined that the exact sight of electric shock could not be differentiated/located. The very document indicates that multiple injuries observed on the body were suggestive of electric burns; but the exact location of entry of shock could not be differentiated. The Investigating Officer was right in testifying that he did not find it necessary to have opinion of the Electrical Inspector or any other expert from the electricity department, to find whether such injuries were caused by single shock. According to him, the post mortem examination report was quite sufficient to indicate the deceased to have been done to death. In our view too, ten independent burn injuries on the person of the deceased indicate each to have been caused with separate electric shock. Had it been a case of the accidental shock, the voltage of electric supply plays an important role. In case of mild electric shock, the deceased would have fallen or in case of incessant electric shock, her entire body would have turned blacken with the electric current to have passed through the entire body. Although the Medical Officer did not state in so many words it to be a case of homicidal death, ten burn injuries, the blood found on the floor of the room so also oozing from the eye and mouth go a long way to suggest Sujata to have met with homicidal death. The question is, whether the appellants are authors thereof.

28. Admittedly, it is a house comprising of not less than five rooms. There were three separate rooms occupied by each couple, besides hall and kitchen room. There is evidence to indicate that due to assault by A2 (father-in-law) on 08.02.2012, Sujata had started residing separately in one of the rooms. Necessarily, it was occupied by her along with her husband and their child.

29. PW 8 – Anuja was neighbour of the appellants. It is in her evidence that there used to be frequent quarrels between Sujata on one hand and her in-laws, on the other. According to her, the incident took place in the month of March, 2012. By 10.00 p.m., there was water supply to public water tap. She was filling water. She heard quarrel in the house of the appellants between Sujata and accused (appellants). She did not visit their house as the quarrel was the usual feature. It is further in her evidence that by 12.15 in the midnight, she heard shouts emanating from the house of the appellants. The shouts stopped by 01.10 a.m. At about 05.00 in the morning, she heard noise from outside of her house. She came out and saw persons to have gathered in front of the house of the appellants.

30. During the cross-examination of PW 8 - Anuja, she testified that police did not record her statement. Her husband's statement was recorded. The fact is that the incident dates back to March, 2012. Her evidence was recorded seven years after the incident. The Investigating Officer testified to have recorded statements of the persons acquainted with the facts and circumstances of the case. After finding on record PW 8's police statement, learned counsel for the appellants gave up his objection that she was examined as a witness without there being her statement under Section 161 of the Code of Criminal Procedure.

31. The evidence referred to herein above lead us to conclude Sujata to have met with homicidal death at her matrimonial home and particularly, in the room exclusively occupied by her, A1 and their child. We have perused the authorities relied on by learned counsel for the appellants and particularly, the paragraphs highlighted by learned counsel. It needs no mention that a criminal case is decided on the basis of the facts and circumstances thereof. We are conscious of the legal position that the burden of proof in the criminal trial is static and it is for the prosecution to prove the charge beyond reasonable doubt. Relying on the authorities, learned counsel meant to say that there was no single witness examined by the

prosecution to indicate that the appellants were at their residence at the relevant time. According to him, the Medical Officer has given time of death as 10-12 hours before commencement of the autopsy. Said period takes back to 03.00 am., while, according to PW 8 – Anuja, shouts in the house of the appellants stopped little past 01.00 a.m. Her evidence, thus, becomes unreliable.

32. The judgment of the Apex Court in the case of **Jaharlal Das** (supra) relied on by learned counsel for the appellants, speaks about a case based on circumstantial evidence. It has further been observed therein that it is well settled that the circumstantial evidence, in order to sustain the conviction, must satisfy three conditions: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused. It has further been observed in paragraph 9 that :-

“9. It may not be necessary to refer to other decisions of this Court except to bear in mind a caution that in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof.....

33. In the case of **P. Mani** (supra), it has been observed that in criminal case, it is for the prosecution to prove involvement of the accused beyond all reasonable doubt. It was not a case where both, husband and wife, were last seen together inside a room. The facts of the said case recorded in paragraphs 2 and 3 thereof, would indicate some distinguishable facts with the facts of the case on hand.

In the case of **Sohel Mehaboob Shaikh** (supra), again, the principle as regards burden to prove in the case based on circumstantial evidence is same. Paragraph 6 of the said judgment would suggest the Apex Court, after having gone through the evidence on record, found that the High Court had arrived at some conclusions, which were based on surmises and conjectures, without there being any evidence to support the conclusions.

In the case of **Suresh Vithal Parkar** (supra), the prosecution could not establish the exact time of death and the presence of the appellant therein, at his residence, by the time the offence might have been committed.

In the case of **Sunil Latari Khuje** (supra), it was observed that the prosecution had failed to prove presence of the appellant at the house on some time proximate to occurrence of the crime, which was important chain of circumstances leading to the guilt of the accused.

Rest of the authorities relied on by learned counsel for the appellants, more or less, are about the submissions made by him in defence of the appellants.

34. At the cost of repetition, it is to be stated that PW 8 – Anuja gave her evidence seven years after the incident. Same cannot be taken with the precision or tick of the clock. She being neighbour of the appellants, was categoric to state to have heard quarrels between Sujata on one hand and the accused persons, on the other, by 01.00 am. True, she had not seen who were in the house of the appellants. PW 8 – Anuja testified that there were quarrels between the appellants on one hand and deceased Sujata, on the other, by 01.00 a.m. Admittedly, it was their residential house. It would be a matter of common knowledge that a person after doing all his work during the day time, returns to his house in the evening. In the case of **Trimukh** (supra), it has been observed as under:-

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

XXX XXX XXX

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also **normally** resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. ...

(Emphasis supplied)

35. Close reading of the aforesaid observations would indicate that the last limb of paragraph 22 starts with “*or the offence takes place in the dwelling house where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime*”.

36. In the case in hand, A1 relies on his statement (Exh.65), which was a statement on the basis of which a station-diary entry no.88 of 2012 was made, registering it to be a case of unnatural death. According to A1’s statement, he and A3 were in their field. They took dinner and slept overnight there. Both of them came

home by little past 05.00 in the morning. His brother, A3 received phone call from their neighbour - Viru Bandichode, informing Sujata to have suffered electric shock and asked them to return home early. Therefore, they returned to home by 06.00 in the morning to find Sujata was lying dead in the room. Then, he informed his parents and sister-in-law. In our view, this statement is nothing but creation of defence. A1 did not examine himself nor any other witness in defence. True, it is not necessary. Nor we can make observation this way. We meant to say A1 need to have offered explanation the way he could have. If he had already returned home by 06.00 in the morning, why it took three hours for him to lodge the report as regards the alleged unnatural death. Had he really been to his field and returned home on hearing his wife to have suffered electric shock, the natural conduct on his part would have been, first to rush Sujata to a nearby private hospital or call local Doctor to examine her. Nothing of that sort had been done. On the contrary, the evidence of PW 4 - Mangalbai indicates that she received phone call of A2 at 05.00 in the morning, informing Sujata to have suffered shock. This falsifies the case of A1 that he informed his parents on return to the home at 06.00 in the morning. It is just difficult to assume that they did not notice the shock injuries on the person of the deceased Sujata. A3 - Dagdu does not claim in his examination

under Section 313 of Cr.P.C., to have been in the field on the fateful night with A1 – Mahalappa.

37. In our considered view, A1 has come with a false defence, which is inconsistent with the evidence on record. As per the evidence of PW 8 – Anuja, A1 was at his residence by late in the night. Since the incident took place in the room exclusively occupied by him along with the deceased, we find the trial court to have rightly convicted him for the reason he failed to offer explanation as to under which circumstances, his wife (Sujata) met with homicidal death. So far as regards other appellants, namely, Babu (A2) and Dagdu (A3) are concerned, though the evidence indicates that they were more brutal than A1, they need to be given benefit of doubt assuming them to have been in their respective exclusively occupied rooms.

38. For all the above reasons, the appeal partly succeeds. In the result, the following order:-

- (i) The appeal is partly allowed.
- (ii) The impugned order dated 04.02.2022, passed by learned Addl. Sessions Judge, Omerga, Dist. Osmanabad, in Sessions

Case No.24 of 2013, convicting and sentencing appellant no.2 - Babu Mahalappa Bandichode and appellant no.3 - Dagdu Babu Bandichode, for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, is set aside. They stand acquitted of the said offence. They be released forthwith, if not required in any other case. Fine amount paid by them, if any, be refunded to them.

(iii) The impugned order of conviction and consequential sentence for the offence punishable under Section 302 of Indian Penal Code, as against appellant no.1 - Mahalappa Babu Bandichode, is maintained.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP