



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

Criminal Appeal No. 515 Of 2003

The State of Maharashtra
Through Chaklamba Police Station
Through Kasturabai Dattatraya Gaikwad,
Age : 40 years, Occu. Household,
R/o. Pavlachiwadi, Tq. Georai,
Dist. Beed.

.. Appellant

Versus

1. Mahadeo s/o Sahebrao Maske
Age : 32 years, Occu. Agri,
R/o. Mategaon, Tq. Georai,
Dist. Beed.

(Appeal abated against Respondent No.1 as per Order dated 02.07.2010)

2. Kamalbai w/o Sahebrao Maske
Age : 50 years, Occu. Household,
R/o. as above.

3. Sahebrao s/o Manikrao Maske,
Age : 58 years, Occu. Agri.,
R/o. as above.

.. Respondents

* **Mr. A.V. Lavte, APP for the Appellant.**

* **Mr. Suhas S. Ghute, Advocate for Respondent Nos. 2 and 3.**

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ..**

Date Of Reserving the Order : 24th September 2025

Date Of Pronouncing the Order : 30th September 2025

FINAL ORDER (Per Mehroz K. Pathan, J.) :

1. The Appellant/State has filed the present appeal, thereby challenging the judgment passed by the learned 2nd Additional Sessions Judge, Beed in Sessions Case No.2/1999 dated 21.03.2003,

whereby the Respondent Nos. 1 to 3 are acquitted for the offences punishable under Sections 302 read with 34 of the Indian Penal Code.

2. The learned APP submits that the prosecution has examined in all eight witnesses in support of their case and has relied upon latest documents to prove the guilt of the accused in committing the crime causing homicidal death of the wife of the Appellant No.1, Changunabai who has died in mysterious circumstances.

3. The prosecution has relied upon the testimony of the PW-1/Nanasaheb Shinde who has acted as a panch for conducting the spot panchnama. The prosecution has further relied upon the prime witness – Yamunabai Kamble who is the real sister of the deceased Chagunabai and had reached the spot of the incident i.e. the matrimonial home of the deceased and the accused no.1 immediately after the incident. The prosecution has relied all these witnesses to prove the cruelty and harassment meted out by all the Respondents on account of demand of dowry amount of Rs.20,000/- for construction of the house.

4. The prosecution has further relied upon the testimony of PW-4/Kasturabai who is the mother of the deceased to prove the guilt of the accused, not only under Section 498A, but also under Section 302 as the deceased has died an unnatural death while in custody of the Respondents/accused persons.

5. The prosecution has also relied upon witness no.5 who is the panch on memorandum given by the accused no.1/Mahadev who had

discovered the weapon-wooden stick, by which he has committed the crime of assaulting the deceased which has led to her death.

6. The prosecution has also examined PW-6/Dr. Kashikar who had deposed about the injury sustained by the deceased, which has led to her death.

7. The prosecution has lastly relied upon the testimony of PW-7/Gawde, who is the Investigating Officer in Crime No.69/1997 from 25.06.1997 to 09.12.1997 and has registered the offence and conducted the investigation. The witness no.8/PW No.8 is relied upon by the prosecution only to prove the seizure of the clothes of the victim and the memorandum under Section 27 of the Evidence Act of the accused wherein he has led to the discovery of the weapon in the crime i.e. wooden stick.

8. The learned trial Court has considered the evidence led by the prosecution and also the defense of the accused and after going through the entire record, was pleased to acquit the Respondents for the offence punishable under Section 498A as well as under Section 302 read with 34 of IPC. The learned APP therefore submits that there is enough evidence established on record by the prosecution so as to convict the Appellants for committing the murder of deceased Chagunabai. It is submitted that the unnatural death of Chagunabai at the matrimonial home, coupled with the injury sustained by the deceased as is reflected in the postmortem report and the evidence of the Dr. Kashekar being established, the findings arrived at by the learned trial Court are perverse and therefore calls for an interference.

9. The Counsel for the Respondents on the other hand, submits that the Respondent No.1 has expired during pendency of the appeal and the Respondent Nos. 2 and 3 have been rightly acquitted for the offences punishable under Sections 498-A and Section 302 read with 34 of IPC, as the prosecution has grossly failed to establish the circumstances which would unerringly point out towards the guilt of the accused, much-less the accused nos. 2 and 3.

10. We have considered the submissions made by the learned APP and also submissions of the learned Counsel Mr. Ghute appearing for Respondent Nos. 2 and 3. The appeal as against the Respondent No.1, stands abated in view of death of Respondent No.1/Mahadev Maske.

11. After going through the evidence led by the prosecution and also the documents relied upon by the prosecution, we are of the view that testimony of PW-2 who was the prime witness being the real sister of the deceased, creates serious doubt about the prosecution theory that the Respondents are guilty of committing murder of deceased Chagunabai. The incident has occurred on 03.08.1997 and the accidental death report was registered on 03.08.1997 under Section 174 Cr.P.C. which is Exhibit-43. The same day the inquest panchnama was also conducted on 03.08.1997 which is at Exhibit-41. The postmortem was also conducted on the next day i.e. 04.08.1997 which is Exhibit-37. The Investigating Officer had recorded the statement of PW-2/Yamunabai who was the real sister of the deceased on 04.08.1997. However the real sister Yamunabai has not raised any suspicion of the death of the deceased, caused by the Respondents herein. The portion marks A, B, C and D was put to the

PW-2/Yamunabai which she has denied to have stated to the Investigating Officer. The Investigating Officer in his deposition has clearly stated that the portion marks A, B, C and D was recorded as per the say of the witness/Yamunabai. The portion marks A to E is perused by us from the statement dated 04.08.1997 recorded by the Investigating Officer, which shows that the deceased had fallen down and fell unconscious and thereafter died. Thus the testimony of PW-2/Yamunabai demolishes the entire prosecution case that the deceased/Chagunabai suffered a homicidal death.

12. The said portions A to F are proved from the evidence of PW-7/Gawde wherein he has admitted that the said portion marks were written as per the say of PW-2/Yamunabai. The reading of the portion marks A to F would show that deceased Chagunabai had no trouble in the married life and was treated well by her in-laws. Moreover the cross-examination of the said witness reveals that she did not inform her parents about the homicidal death of the deceased or that the death had occurred due to cruelty committed upon the deceased by the accused persons. She also admitted that she did not report the incident to the police about homicidal death of Chagunabai. Thus the testimony of PW-4 is rightly disbelieved by the trial Court.

13. The next witness relied upon by the prosecution is PW-4/ Kasturabai mother of deceased. We have perused the deposition of PW-4 who have admitted that after four days of death of Chagunabai, she was informed that Chagunabai is killed. She thereafter met Yamunabai at Shekta and the son-in-law and after making complaint to the S.P. Office, the offence was registered at Chaklamba police

station. PW-4/Kasturabai had stated in her complaint that the demand was made only one month back to the incident and that her daughter was treated well for two years and thereafter the ill-treatments were started. Whereas in complaint Exhibit-30, it reveals that accused/persons had treated the deceased Chagunabai well for four years and only two years back, the ill-treatments started. The oral version of the witness/Kasturabai therefore did not inspire confidence and is an improvement before the Court, which is considered by the learned trial Court. The demand as appeared from the complaint is only made in the last month prior to the death of deceased Chagunabai and that too for the construction of the house, however there is nothing on record there was any occasion for them to meet the deceased Chagunabai. The oral testimony of PW-2/Yamunabai in which she stated that she visited the house of accused no.1 fifteen days prior to the incident, whereas PW-4/Kasturabai deposed that accused no.1 had come to her house fifteen days prior to the incident. Therefore there was apparent inconsistency in the visit of accused no.1 to the house of mother of the deceased Chagunabai, which is contrary to the deposition of PW-2/Yamunabai who states that she visited the house of accused no.1 fifteen prior to the incident. The learned trial Court had therefore considered that there is not enough evidence to prove cruelty exercised upon the deceased by the accused persons. There is no complaint also on record about the cruelty committed by the accused persons against deceased Chagunabai. The learned trial Court has therefore disbelieved witnesses on the point of cruelty and had acquitted the Respondents of the offence under Section 498A. The view taken by the learned trial Court is a possible view which does not call for interference by this Court in the appeal against acquittal for the charge under Section 498A.

14. Insofar as the homicidal death of the deceased is concerned, the testimony of PW-2 and the portion marks A to F, clearly point out towards the inconsistency in the prosecution case. The PW-2/Yamunabai had an occasion to immediately report the incident of committing murder of deceased Chagunabai raising suspicion against the accused persons. However the statement recorded by the Investigating Officer on 04.08.1997 of PW-2/Yamunabai, particularly portion marks A to F, clearly states that the deceased was treated well by the accused persons and that Chagunabai had fell unconscious after falling down due to giddiness, as she was pregnant. The next witness examined by the prosecution is Dr. Kashikar to prove the homicidal death. However in the cross-examination of the said witness PW-6/Dr. Kashikar, Doctor admitted that abrasion could appear if the body comes in contact with rough and hard surface. Insofar as the injury over right thigh and anterior region of thigh, swelling on forehead, bruise on occipital area and haemorrhage under surface of scalp is concerned, the Doctor has admitted in the cross-examination that injury no.2 on left fore-head was not a bleeding injury whereas corresponding injury nos. 3 and 4, there is no fracture of skull and the injury nos. 3 and 4 are possible if a person falls on the ground of stone. The said witness PW-6/Dr. Kashikar has further admitted that injury nos. 3 and 4 are not cerebral injuries but are an outcome of concussion which can be caused due to great jerk. Moreover, Dr. Kashikar had also admitted that if alive man is beaten by stick than swelling is caused and mark appears on the body. Thus the testimony of PW-6/Dr. Kashikar does not conclusively prove that the death of deceased was homicidal and creates a suspicion. The learned trial Court has therefore rightly considered the said fact that the deceased was having a pregnancy of five months and fetus of 24 cm., is found dead

in the womb. The giddiness in a pregnant woman is normal phenomena and hence the injuries could have been caused due to falling of the deceased on the stone ground. The accidental fall and death of deceased Chagunabai therefore, cannot be ruled out. Thus in the backdrop of the above evidence led by the prosecution and the cross-examination of the witnesses, the evidence does not inspire confidence about the homicidal death of the deceased. The learned trial Court has therefore rightly considered the above fact which calls for no interference of this Court.

15. Insofar as the recovery of the wooden stick is concerned, PW-5/Dadarao is examined by the prosecution. The learned trial Court has specifically observed the demeanor of the witness PW-5/Dadarao, who has failed to identify the accused no.1 present in the Court. He was unable to point out the person who gave statement i.e. memorandum before him, despite repeated questions were asked to him. He had further admitted in his cross-examination that four to five persons were talking with the police and that he did not hear as to what they told to the police who was writing the memorandum. The said witness had further shown his disability to show the location of Kotha from where the stick (danda), Article No.4 was seized.

16. The another witness PW-8/Shaiikh Gani was examined to prove the memorandum under Section 27 of accused no.1/Mahadev. The said witness PW-8/Shaiikh Gani in his cross-examination had admitted that when he reached police station, everything was written by the police and the police had come to his hotel and took him to Mategaon and after returning from Mategaon, his thumb impressions were

obtained in police station at Chaklamba. The said witness PW-8/Shaiikh Gani have not specifically stated that present accused no.1 disclosed about the incriminating article stick. Thus both the panchas PW-5 and PW-8 on the memorandum under Section 27, was found to be doubtful and as such disbelieved by the learned trial Court. In addition to the same, the learned trial Court has also taken into consideration the fact that the injuries sustained by the deceased, could not be connected to the weapon i.e. stick discovered at the instance of the accused. The postmortem report did not show other injuries on the body of the deceased. The injuries under surface to the skull is not cerebral and thus no conclusion can be drawn that the death is result of beating by stick.

17. The scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles :

- “(a) That the judgment of acquittal suffers from patent perversity;
- (b) That the same is based on a misreading/omission to consider material evidence on record;
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

18. The learned trial Court has therefore, come to the conclusion that the prosecution has grossly failed to establish the homicidal death of the deceased and also failed to establish that accused persons were responsible for causing the homicidal death of the deceased with common intention. The view taken by the learned trial Court is therefore a possible view which does not call for any

interference in the appeal against acquittal. The Criminal Appeal against acquittal is therefore dismissed.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

NAJEEB..