



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 706/2019

Sudesh Mangru Raut,
Aged 45 yrs., Occ. Labour,
R/o. Paldi, Tah. Paldi,
Dist. Bhandara.

...APPELLANT

VERSUS

The State of Maharashtra, through
Police Station Officer, Kardha,
Dist. Bhandara.

RESPONDENT

Mr. Mir Nagman Ali, Advocate (appointed) for appellant.
Mr. A.B. Badar, APP for respondent/State.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

JUDGMENT RESERVED ON : 12.02.2025
JUDGMENT PRONOUNCED ON : 12.03.2025

JUDGMENT : (PER: NITIN B. SURYAWANSHI ,J.)

Heard.

2. This appeal takes exception to the judgment of conviction of appellant passed by learned Additional Sessions Judge, Bhandara in

Sessions Trial No. 04/2016, thereby convicting appellant under Section 302 of the Indian Penal Code (“IPC”) and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 5,000/-.

3. Prosecution story in short is that, on 02.11.2015 at about 06.30 p.m. Rinku son of accused/appellant came crying to the house of his grandmother and narrated her that his father has set his mother on fire. Immediately PW-1 (informant) Panchfula Chamlate mother of Malu/deceased went to the house of accused. One Ramratan Uikey also informed her that accused burnt Malu. On reaching house of accused, she noticed, her daughter lying dead in ‘Chhapari’ of the house, having burn injuries on her body. PW-1, therefore, went to the Police Station and lodged report against accused which was registered at Crime No. 45/2015 with Kardha Police Station, District Bhandara under Section 302 of the IPC. On completion of investigation, charge-sheet was filed. Accused was charged under Section 302 of the IPC. Prosecution examined 8 witnesses in support of its case. The defence of accused was of total denial and false implication. The Trial Court convicted appellant/accused, hence this appeal.

4. Heard learned counsel for appellant/accused and learned APP for State.

5. Learned counsel for appellant would submit that the prosecution case is based on circumstantial evidence and chain of circumstances is not complete. He submits that there is no explanation of burn injuries on the hands of the accused. PW-4 is tutored by her grandparents and therefore, her evidence should not be believed. After the incident, accused himself went to the Police Station. If accused had committed murder, he would not have gone to the Police Station. The extent of burn injuries received by accused is not brought on record by the prosecution. Son Rinku who has allegedly witnessed the incident of burning his mother is not examined, so also, no neighbour or independent witness is examined, which raises serious doubt about the prosecution case. Informant PW-1 Panchfula Chamlate was not having good relations with the accused and hence, she has falsely implicated the accused in the crime. According to him, the defence as set up in the cross-examination of prosecution witnesses that, someone else has committed murder is probable. By relying on decision in cases of ***Vinayak Rama Pawar Vs.***

State of Maharashtra, 2014 (2) Bom.C.R.(Cri.) 483, Padala Veerareddy Vs State of A.P., 1989 (Supp2) SCC 706 and Sohan:Rajinder Vs. State of Haryana, 2001(3) SCC 620, he submits that appellant is entitled for benefit of doubt and he may be acquitted.

6. Per contra, learned APP supports the impugned judgment of conviction. He submits that PW-4 daughter Nikita Raut was deliberately sent away by accused for bringing groceries, as he intended to commit murder of his wife and after she left house, he has committed murder of his wife by throttling and then burnt her. According to him, evidence brought on record by prosecution is sufficient to sustain the conviction of accused.

7. With the assistance of learned counsel for appellant and learned APP, we have perused the record.

8. PW-4 Nikita Raut is daughter of accused and deceased. She was 11 years old when her testimony was recorded. She has stated in her testimony that, name of her mother was Malu. The incident took place two years before. She was studying in 4th Standard in Zilla Parishad Primary School, Paladi. Accused is her father. He is driver

by profession. Prior to incident, accused has sent her to a shop to purchase groceries. When she returned back to home, she found that her mother was lying in burnt condition and many persons had gathered. When she went to grocery shop, her mother and father were present in the house. Her father used to abuse and assault her mother. When she returned back to home, her father was not present in the house. Her father set her mother ablaze.

9. In cross-examination, she deposed that it takes about 45 minutes to go and come back from groceries shop. There are two doors to her house, one is on front side and other is on rear side. At the time of incident, there was no electricity in her house. Her mother used to cook food on hearth. She denied that when she went to the shop, her father also went away. She further deposed that she was not aware whether her father was present in the house, when she had gone to purchase groceries. She had come to the Court along with her grandfather. When she returned back to the house from grocery shop, her grand parents were present there and they informed her that her father set fire to the person of her mother.

10. PW-1-Panchafula Chamlate is mother of deceased Malu and grand mother of PW-4. She has lodged information of the incident by reporting and accordingly FIR is registered at Crime No. 95/2015. Her report and FIR are collectively marked as (Exh.11). On 02.11.2015, accused set her daughter ablaze. Her grandson Rinku came to her and informed that his father set his mother on fire. He came around 06.00 to 06.30 pm. While she was proceeding towards the house of the accused, she met Ramrathan Uikey. He called her son Bansilal and informed him that accused set fire to his wife. After reaching house of accused, she saw her daughter Malu lying in burnt condition. She lodged report against accused. She deposed that accused used to pick up quarrel with Malu under influence of liquor. Accused and her deceased daughter used to reside after four houses from her house.

11. In cross-examination, she stated that there are houses of Ramratan Uikey, Shila Chamlate, Devdas Khobragade, Ranjit etc. near the house of accused. There is no electricity in the house of accused. She admitted that Malu had suspicion that accused is having affair with Shila Chamlate and there used to be quarrels and altercations

between deceased Malu and Shila Chamlate. Shila had also lodged a Police report. She admitted that due to dispute with Shila, relationship of Malu with neighbours was not cordial. She was not on good terms with accused. After the incident, accused went to the Police Station. There were burn injuries on the hands of accused. She went to the Police Station along with her husband and sister-in-law. Her report was not read over to her by the Police. Omissions to the effect that, *“while she was proceeding towards house of accused, she met Ramratan Uikey,” “Ramratan Uikey called her son and informed him the incident.”* are brought on record in her cross. She admitted that these statements are not mentioned in her Police statement. She denied the suggestion of the defence that her grandson did not inform her about the incident and as she was not on good terms with the accused, she has falsely implicated him, Malu was killed by somebody from neighborhood, as she was not on good terms with them.

12 The defence has not disputed the spot and the homicidal death of Malu. Prosecution has proved homicidal death of Malu by leading evidence of Dr. Dipti Niwane (PW-5). She has conducted postmortem and proved its report (Exh.20). During postmortem, she

noticed fracture of hyoid bone (Neck bone) on palpation transverse fracture is found. Besides that, there was 100% burning of the body. Since there were no deposit of soot particles or carbon particles in trachea or brochi, she gave cause of death as “asphyxia due to throttling”. According to her the burns were postmortem (Exh.20).

The appellant has not disputed spot of incident. Spot panchanama Exh.26 is proved in the evidence of PW-6 Devendrakumar Sapate, spot was shown by PW-1 Panchafula Chamlate. There was smell of kerosene on the spot of incident. A plastic can used for storing kerosene was found lying at the backside of the house. At the time of recording spot panchanama, earth, half burnt pieces of clothes, kerosene lamps, kerosene can, a match box, match sticks and one rope were seized by Police, in his presence. He identified these articles. Nothing favourable to the defence is elicited in the cross-examination of this witness. PW-2 Manoj Goswami has proved inquest panchanma Exh.13. PW-3 Dipak Hajare has proved the panchanama Exh.16 of drawing of blood samples of deceased. PW-7 Rajendra Shende, Circle Officer has proved sketch of the seen of offence (Exh. 31).

PW-8 Vinod Rahangdale, has conducted investigation of the crime and has proved arrest panchanama of accused (Exh.36). At the time of arrest, clothes of accused were seized under seizure panchanama (Exh.27). Articles were seized from the spot vide seizure panchanama (Exh.28). He forwarded seized articles to Chemical Analyzer ('CA') with covering letter (Exh. 39). As per CA report (Exh.24) kerosene residues are found on the clothes of the accused.

13. On careful scrutiny of the evidence, we are of the considered view that evidence of PW-4 Nikita Raut inspires confidence. She had no reason to falsely implicate her father. From her evidence, it is clear that at the time of incident, appellant was present at the house and since he wanted to commit murder of Malu, he deliberately sent her out of the house to bring groceries. PW-4 has categorically stated that her father and mother were present at home at the time of incident and he asked her to go and bring groceries. When she returned to home, her father was not present. She found her mother lying in burn condition. She has also deposed that there used to be frequent quarrels between her parents.

14. We find no merit in the submissions of the accused that in view of admission of PW-4 that she was not aware whether her father was present in the house, when she had gone to purchase groceries, the last seen theory is washed away. It is to be noted here that in the earlier sentence, she has denied a suggestion that when she went to the shop, her father also went away. Presence of her grandparents at her house immediately after incident is natural, as on receipt of information about the incident, they rushed to the spot of incident. Therefore, the admission of PW-4 that when she returned back from grocery shop to the house, her grandparents were present there and they informed her that her father set her mother on fire, is of no help to the case of accused.

15. The presence of the accused is further confirmed by the fact that he has received burn injuries on his hands and kerosene residues are found on his clothes. These aspects further corroborate the prosecution case that it was the accused only, who has committed murder of his wife Malu.

16. Accused has taken up a defence that Malu had no good relations with the neighbours and therefor, somebody from neighbour

might have committed her murder. This defence is also unacceptable for the reasons that, even if hypothetically it is assumed that somebody else may have committed Malu's murder, in that case, there was no reason for the murderer to set the dead body on fire. The prosecution by leading evidence, has established that accused has committed Malu's murder and set the dead body on fire with a view to cause disappearance of the evidence.

17. In the light of last seen evidence, adduced by prosecution, the accused was under obligation to give plausible explanation in terms of Section 106 of the Evidence Act. He has failed to give any explanation and it can be taken as an additional circumstance against accused.

18. There is sufficient evidence on record to show that there used to be frequent quarrels between accused and deceased Malu. The prosecution, therefore has brought on record cogent and reliable evidence proving the circumstances which have definite tendency of unerringly pointing towards the guilt of the accused. These circumstances, if taken cumulatively, 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. The chain of circumstances in the present case is complete and the circumstantial evidence is incapable of explanation of any other hypothesis than that of the guilt of the accused and it is inconsistent with the innocence of the accused.

19. In Vinayak Pawar (*supra*), there were burn injuries on both the hands and face of the accused therein. It was held that it was the primary duty of the Investigating Officer to refer him to medical officer and to obtain the opinion about the extent of the injuries suffered by the accused. The Investigating Officer had admitted presence of the neighbour on the spot. However, no independent witness was examined. Therefore, it was held that prosecution has failed to bring its case out of dark doubt of suspicion and hence, benefit of doubt was given to the accused.

Facts in the case in hand are different and hence, this citation is of no assistance to the case of the appellants.

20. In Padala Veerareddy (*supra*), the golden rules of appreciation of circumstantial evidence are stated. There cannot be

any dispute about the golden rules set out in the celebrated case of *Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116*, till date, all the Courts are following the said rules while appreciating the circumstantial evidence. We have also applied these rules while appreciating the evidence in this matter.

21. The decision in Sohan : Rajinder (supra), was rendered in totally different set of facts, wherein the parties had civil litigation going on between them and the Apex Court found that it was unsafe to act on the evidence of PW-7 therein, without any corroboration.

In the present case evidence of PW-4 Nikita is cogent and reliable. At the time of incident, appellant deliberately sent PW-4 to grocery shop. The appellant has sustained burn injuries during incident. Kerosene residues are found on his clothes and the death of Malu is due to “asphyxia due to throttling”. Considering all these aspects, it is clear that the appellant is author of the crime. Therefore, this ruling is also of no help to the appellant’s case.

22. The Trial Court has properly appreciated the evidence and has, by a well reasoned judgment convicted the appellant. There is no merit in the appeal, hence it is dismissed.

23. Learned counsel appointed to represent the appellant be paid fees as per Rules within four weeks from the date of uploading of this judgment.

(PRAVIN S. PATIL, J.)

(NITIN B. SURYAWANSHI, J.)

Gohane