

(2020) 11 BOM CK 0011
In the Bombay High Court
Case No : Criminal Appeal No. 99 Of 2013

Dhanaji Rambhau Satpute

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 498(A)
Evidence Act, 1872 — Section 106
Code Of Criminal Procedure, 1973 — Section 164, 313

Citation : (2020) 11 BOM CK 0011

Hon'ble Judges : Sadhana S. Jadhav, J; N.J. Jamadar, J

Bench : Division Bench

Advocate : Satyavrat Joshi, Nitesh Mohite, P. P. Shinde

Final Decision : Dismissed

Judgement

N.J. Jamadar, J

1. Challenge in this appeal is to the legality, propriety and correctness of the judgment of conviction and order of sentence dated 2nd January, 2012, passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.42 of 2012, whereby the appellant - accused no.1 came to be convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, ("the Penal Code") and sentenced to suffer imprisonment for life and pay fine of Rs.2,000/-, on the first count, and rigorous imprisonment for five years and fine of Rs.1,000/-, on the second count.

2. Shorn of unnecessary details the indictment against the accused runs as under:

(a) Mallikarjun Jadhav ("the first informant") is a resident of Nanaj, Taluka North Solapur, District Solapur. Pratibha ("the deceased") was his daughter. The marriage of the deceased was solemnized with accused no.1 Dhanaji on 11th May, 2011. Accused nos.2 to 6 are the relatives of accused no.1. They were

residing at Jamgaon, Taluka Barshi, District Solapur.

(b) After about 15 days of marriage the deceased had come to her parental home at Nanaj. After few days of stay at the parental home, the deceased was on her way to matrimonial home as a pillion rider on the motorcycle driven by Balasaheb Devkar, her maternal uncle. She met with an accident. The deceased sustained injuries. Despite treatment, the deceased continued to feel giddiness and at times lost consciousness.

(c) On 6th November, 2011, at about 5.00 am. the first informant was informed by one Trimbak Kore that a telephone call was received that the deceased died as she had set herself ablaze. The informant, his wife Chaya and the other relatives rushed to the matrimonial home of the deceased at Jamgaon.

The deceased lay in a naked state in her room. The body was charred. The clothes she wore, were reduced to ashes. She was divested of the ornaments. The household articles and other items in the said room were, however, in an orderly state. The first informant thus entertained suspicion that the deceased was done to death and thereafter her dead body was set on fire with a view to show that the deceased died by suicide. In fact, the accused had committed murder of the deceased as she was not agreeable to put an end to the marital tie, and to screen themselves from legal punishment the accused caused disappearance of the evidence.

(d) The informant thus approached Vairag Police Station and lodged report. Crime was registered at CR No.160 of 2011 for the offences punishable under Sections 498-A, 302, 201 read with 34 of the Penal Code.

(e) In the meanwhile, on 6th November, 2011 itself, Annasaheb Satpute, a cousin of Dhanaji (A1), had reported the death of the deceased to Vairag Police. ADR No.53 of 2011 was registered. Inquest on the body of the deceased was held. The dead body was sent for postmortem examination. The autopsy surgeon provisionally opined that the cause of death was compression around the neck. The Investigating Officer visited the scene of occurrence and drew panchnama. The accused came to be arrested. Dhanaji (A1) made discovery leading to the recovery of the clothes which he wore at the time of occurrence. Investigating Officer interrogated the witnesses and recorded their statements. Postmortem and CA reports were obtained. After finding the complicity of the accused, charge-sheet was lodged against the accused for the offences punishable under Sections 498-A, 302, 201 read with 34 of the Penal Code in the Court of jurisdictional Magistrate.

(f) At the trial, the prosecution examined eight witnesses namely, Madhav Lavate (PW-1); the Autopsy Surgeon, Mallikarjun Jadhav (PW-2); the first informant, Chaya Jadhav (PW-3); the mother of the deceased, Shekhar Surve (PW-4); the public witness to the discovery, Anil Godase (PW-5); who recorded the First Informant Report ("FIR") of the informant, and Sunil Rohkale (PW-6) and Rohidas Pawar (PW-7); the Investigating Officers, and Dr. Vinod Balasaheb Swami

(PW-8), who had examined accused no.1 Dhanaji on 9th November, 2011. The accused did not lead any evidence in their defence which consisted of denial and false implication as the deceased died by suicide.

(g) After evaluation of the evidence and material on record the learned Additional Sessions Judge was persuaded to return a finding of guilt against Dhanaji (A1) for the offences punishable under Sections 302 and 201 of the Penal Code. The learned Additional Sessions Judge was, however, of the view that the complicity of accused nos.2 to 6 for the offences punishable under Sections 302 and 201 was not borne out by the evidence on record nor the offence punishable under Sections 498-A read with 34 of the Penal Code was proved against any of the accused. Thus, Dhanaji (A1) alone came to be convicted for the offences punishable under Sections 302 and 201 of the Penal Code and sentenced, as indicated above.

3. Being aggrieved by and dissatisfied with the impugned judgment of conviction and order of sentence Dhanaji (A1) is in appeal.

4. We have heard Mr. Joshi, the learned Counsel for the appellant and Ms. P. P. Shinde, the learned APP for the State, at length. With the assistance of the learned Counsels we have carefully perused the depositions of the witnesses and the material on record.

5. Before advertng to note and deal with the rival submissions canvassed by the learned Counsels we deem it appropriate to notice few uncontroverted facts. The marital relationship between the appellant Dhanaji (A1) and deceased Pratibha is not in dispute. The time and place of occurrence are also by and large indisputable. Indisputably, the deceased met an unnatural death in her matrimonial home. The cause of death and the complicity of the accused in the circumstances of the transaction leading to the death of the deceased are in contest.

6. In the context of the time and place of the occurrence, the prosecution proposed to establish the guilt of the accused on the strength of circumstantial evidence only. The learned Additional Sessions Judge was of the view that the proved circumstances, namely, the deceased was found to have suffered charred burn injuries in the house of Dhanaji (A1); absence of soot particles in the trachea and bronchus of the deceased; no damage to the household articles in the house of the accused despite the extensive burn injuries on the person of the deceased; presence of nail scratches on the left forearm of the accused: the clothes of the accused, which were recovered pursuant to the discovery made by the accused, smelt of kerosene, and failure of the accused to offer a plausible explanation about the custodial death of the deceased, led to no other inference than that of Dhanaji (A1) having committed murder of the deceased by strangulation and thereafter set the dead body on fire with intent to screen himself from legal punishment.

7. Mr. Joshi, the learned Counsel for the appellant assailed the aforesaid finding of

the learned Additional Sessions Judge as based on surmises and conjunctures and sans legal evidence. Amplifying the submission, Mr. Joshi would urge that the learned Additional Sessions Judge committed a grave error in not adhering to the well established principles of appreciation of circumstantial evidence. The learned Additional Sessions Judge unjustifiably discarded the evidence of the parents of the deceased, Mallikarjun Jadhav (PW-2) and Chaya Jadhav (PW-3), to the effect that the deceased, post traumatic vehicular accident, was unwell and often exhibited suicidal tendencies. Likewise, a material discrepancy as regards the age of injury i.e. scratch mark on the left forearm of the accused was downplayed by the learned Additional Sessions Judge. Since the discovery leading to the recovery of the clothes, which the accused wore at the time of the occurrence, is fraught with infirmities the circumstances arrayed against accused no.1 Dhanaji cannot be said to have been fully and conclusively established. There was no complete chain of circumstances to incriminate Dhanaji (A1). Lastly, Mr. Joshi urged with a degree of vehemence that once the co-accused i.e. accused nos.2 to 6, who were also stated to be the inhabitants of the matrimonial home of the deceased, where the deceased met an unnatural death, were acquitted of the offences punishable under Sections 302 read with 34 of the Penal Code, the same dispensation ought to have been extended to Dhanaji (A1) as well, as there was no evidence on the aspect of individual overt act on the part of Dhanaji (A1).

8. In opposition to this, Ms. Shinde, the learned APP would urge that the very fact that the deceased was found to have suffered death due to asphyxia and a pretence of suicide was sought to be made singularly incriminates Dhanaji (A1). The learned Additional Sessions Judge, according to learned APP, was wholly justified in returning the finding of guilt against accused no.1 as there was no plausible explanation of the circumstances of the transaction resulting in death of the deceased. Both the explanations that the deceased died by suicide and at the time of occurrence accused no.1 was not at home were demonstrably false and thus provided an additional link in the chain of circumstances. Resultantly, no interference is warranted in the impugned judgment urged Ms. Shinde, the learned APP.

9. To start with, the nature of death which the deceased met. In the backdrop of the indictment and the circumstances of the case, the cause of death assumes critical significance and in itself constitutes a vital link in the chain of circumstances, arrayed against the accused, and severs as a definite pointer to the guilt or otherwise of accused no.1. It also bears upon the explanation that the deceased died by suicide, assiduously pursued on behalf of accused no.1.

10. For this purpose, recourse to the testimony of Dr. Madhav Lavate (PW-1), the autopsy surgeon, is imperative. Dr. Lavate (PW-1) claimed to have found following injuries on the dead body, on external examination:

(i) Skin all over the body is charred involving both front and back side. At some sites, burns are extending upto subcutaneous tissues and at some sites upto

deep tissues. 4 blisters over lumbar area with no signs of inflammation such as redness and ulcerate.

(ii) Deep burn wound exposing fat, soft tissue of size 25 X 7 X 3 cms. directed obliquely present on right upper limb on inner side of forearm, probable age within 24 hours.

(iii) Deep burn wound exposing fat, soft tissue of size 40 X 7 X 4 cms. directed obliquely present on right inner thigh on anterior aspect extending upto mid thigh.

11. Dr. Lavate (PW-1) further asserted that, on palpation, he found that trachea rings nos.3 to 6 were broken. He was forthright in asserting that the said injury was ante-mortem. Dr. Lavate (PW-1) further informed the Court that he did not find soot particles in the trachea and bronchus. He affirmed that as the dead body could not respire there were no particles in the trachea. He claimed to have thus issued advance cause of Death Certificate (Exhibit-44) opining that the provisional cause of death was compression around neck with evidence of burn injuries. Post receipt of CA Report (Exhibit-42), which ruled out possibility of poisoning, Dr. Lavate (PW-1) finally opined that the cause of death was asphyxia due to strangulation (Exhibit-43). In the postmortem report (Exhibit-41) Dr. Lavate specifically mentioned that burn injuries (described in column 17) were postmortem and the fracture of trachea rings (described in column 18) was ante-mortem. The petechial haemorrhage was present on both lungs surface. Both lungs edematous congested.

12. Mr. Joshi submitted that the aforesaid opinion of the autopsy surgeon does not conclusively establish that the deceased died due to asphyxia. It was urged that the learned Additional Sessions Judge attached undue importance to the absence of soot particles. Since the attendant circumstances indicated that the deceased died on account of burn injuries, the cause of death is in the corridor of uncertainty, urged Mr. Joshi.

13. We are afraid to accede to the aforesaid submissions. The evidence of Dr. Lavate (PW-1) went virtually unchallenged. No endeavour was made to demonstrate that the opinion formed by Dr. Lavate (PW-1) was not borne out by the external and internal injuries objectively found on the person of the deceased. It is imperative to note that the deceased allegedly suffered burn injuries in an enclosed room. Since the body of the deceased was found charred, such extensive injuries could not have been suffered unless there was a conflagration of a sort. It is well recognized that if a person suffers extensive burn injuries, in a conflagration, the soot particles are found in the trachea and bronchus. The absence of soot particles thus cannot be brushed aside lightly. This cause and effect phenomenon is judicially recognized.

14. A profitable reference, in this context, can be made to the observations of the Supreme Court in the case of State of UP vs. Dr. Ravindra Prakash Mittal¹, wherein the absence of the particles was considered to be a factor in proof of

death due to asphyxia, which read thus:

"31. In Taylor's 'Principles and Practice of Medical Jurisprudence', a detailed opinion is recorded by giving the symptoms for determining whether the burns were sustained before or after the death of a victim which are of considerable medical legal importance in cases of death by fire. After examining the evidence on record in the light of the opinion of the authors of the two textbooks on Medical Jurisprudence, we are unable to agree with the submissions of the defence counsel that all the symptoms found in the dead body could have been due to the intensity of heat of the fire. In fact, the opinion in the Taylor's Medical Jurisprudence is rather in support of the prosecution case than that of the defence, which opinion reads thus:

"Not uncommonly the victim who inhales smoke also vomits and inhales some vomit, presumably due to bouts of coughing, and plugs of regurgitated stomach contents mixed with soot may be found in the smaller bronchi, in the depths of the lungs." (emphasis supplied)

15. A converse scenario was considered by the Supreme Court in the case of Vijay Kumar Arora vs. State² and the following observations were made:

"33. The medical evidence on record makes it evident that soot particles were present in the stomach of the deceased. According to Dr. Bernard Knight who has authored 'Medical Jurisprudence and Toxicology' if soot particles are found in Larynx Trachea or into stomach, it is commonly a case of conflagration. The presence of soot particles in the stomach indicates that the injuries could have been sustained by the deceased only in a conflagration and that too in a closed area."

16. The aforesaid factor is required to be considered in conjunction with the fracture of the rings of the trachea, noted by the autopsy surgeon. If the fracture of the rings of the trachea is considered in juxtaposition with the damage noted to the internal organs especially in the lungs, then the opinion of the autopsy surgeon Dr. Lavate commends itself.

17. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of State of Karnataka vs. K. Gopalakrishna³, wherein the twin factors found were fracture of the cornu of the hyoid bone and the absence of carbon particles and fumes in the trachea and bronchus. In the said factual backdrop the Supreme Court observed as under:

"14. If the evidence of the doctor (PW6) is fairly read, it will appear that in his opinion the death was on account of asphyxia caused by throttling. This conclusion was supported by the fact that there was fracture of the cornu of the hyoid bone. It is well accepted in medical jurisprudence that hyoid bone can be fractured only if it is pressed with great force or hit by hard substance with great force. Otherwise the hyoid bone is not a bone which can be easily fractured. Moreover, the absence of carbon particles and fumes in the trachea and bronchus

lead to the irresistible conclusion that the deceased must have died before she was set on fire. Some amount of carbon particles and fumes would have certainly been found in the trachea and bronchus if she were alive when set on fire." (emphasis supplied)

18. Mr. Joshi attempted to wriggle out of the situation by canvassing a submission that the deceased initially attempted to commit suicide by hanging and later on set herself on fire and thus the injury to the trachea is explainable. This gratuitous submission, without any foundation in the cross-examination of the autopsy surgeon, deserves to be repelled.

19. Another factor which is of immense significance is the total absence of circumstances to show that the deceased involuntarily moved from one place to another in the said room and beyond, after she allegedly caught fire. Had the deceased set herself ablaze, due to the excruciating pain and agony the deceased would have involuntarily moved within and beyond the said room. In that eventuality, the deceased would have inhaled fumes and even vomited.

20. It would be contextually relevant to note that the circumstance of most of the articles in the said room having been found in an orderly state and intact condition also bears upon the aspect of cause of death. The scene of occurrence panchnama (Exhibit-34), admitted in evidence on behalf of the accused, revealed that there was a bed at a distance of one foot from the head of the deceased. The bed-sheet and mattresses thereon were in order. Likewise, the household articles in the open cupboard and iron rack were intact and did not suffer any damage on account of fire. In as much as a plastic chair and the table fan kept thereon were completely insulated of the fire. The damage was caused only to the mirror of the cupboard in front of which the deceased lay and the tin roof immediately above the body of the deceased. Had the deceased suffered burn injuries while she was alive, that too in a conflagration, the rest of the articles in the said room would not have been so perfectly insulated from fire. The deceased must have moved at least within the said room after she got herself engulfed in the fire.

21. In the totality of the circumstances, the evidence of Dr. Lavate (PW-1) that the deceased died on account of asphyxia due to strangulation and the burn injuries were postmortem allures confidence. The defence version that the deceased died by suicide is not borne out by the medical and the circumstantial evidence.

22. Mr. Joshi laid emphasis on the evidence of Mallikarjun Jadhav (PW-2); the first informant, and Chaya Jadhav (PW-3); the mother of the deceased, to draw home the point that the deceased died by suicide. Mallikarjun Jadhav (PW-2) and Chaya Jadhav (PW-3); the parents of the deceased, chose not to subscribe to the prosecution version. They were declared hostile. During the course of cross-examination on behalf of the accused, expectedly Mallikarjun Jadhav (PW-2) and Chaya Jadhav (PW-3), professed to toe the defence line. They went on to

concede that post vehicular accident the deceased developed suicidal tendencies on account of the injuries sustained therein and the resultant health issues. These overtures are of no assistance to the accused as Mallikarjun (PW-2) and Chaya (PW-3) candidly conceded that they had compounded the matter with the accused. Since the parents of the deceased were thoroughly discredited, no mileage can be drawn from their testimony.

23. The attendant circumstances also militate against the suicidal death. The incident occurred prior to 5.00 am. At least, accused nos. 2 to 4 were very much present in the house, albeit in the adjacent room. It does not appeal to human credulity that had the deceased been alive when she got engulfed in fire she would not have wailed and screamed due to pain and agony, especially when the deceased was found in charred state, and, in that event, accused nos. 2 to 4 would not have rushed to the room where the deceased lay. There is no material on record to show that anybody tried to extinguish the fire and rescue the deceased. In the totality of the circumstances, in our view, the learned Additional Sessions Judge committed no error in recording the finding that the deceased met homicidal death.

24. The scratch mark found on the left forearm of the accused, according to Mr. Joshi, could not have been considered as an incriminating circumstance as a substantial doubt over the age of the said injury arose. Dr. Vinod Swami (PW-8) affirmed that he had examined accused no. 1 on 9th November, 2001 and found nail scratches over left forearm near wrist. He opined that the said injury might have been suffered three days before examination. However, in the injury certificate (Exhibit-65), against the column of age of injury, it appeared that the age in figure, was '8' days. Dr. Swami (PW-8) conceded that the figure '8' appeared against the column of age of injury. As accused no. 1 Dhanaji was examined on 9th November, 2001, an injury which appeared to have been sustained 8 days prior to examination, according to the learned Counsel for the appellant, could not have been relied upon to establish the presence of the accused at the scene of occurrence and/or show signs of struggle.

25. The learned Additional Sessions Judge was not persuaded to accord much weight to the entry against the column of injury in the injury certificate (Exhibit-65), as the Dr. Swami (PW-8) had also placed on record the MLC paper (Exhibit-67) which indicated that the age of injury was stated to be within 3 days before examination. This approach of the learned Additional Sessions Judge does not appear unjustifiable. The injury certificate came to be issued on the strength of the MLC paper (Exhibit-67). As the Medical Officer who examined the accused positively deposed that the injury might have been sustained within 3 days of the examination, and the said claim found requisite support in the MLC paper (Exhibit-67), a contemporaneous record, the medical evidence cannot be discarded for a perceived discrepancy in the figure.

26. This leads us to the pivotal issue of the explanation as to the circumstances of the transaction in which the deceased met death. Indubitably, the accused and

the deceased resided under one roof. The deceased met a homicidal death. The time of occurrence is of material significance. She was found in charred state at about 5.00 am. on 6th November, 2011. At such wee hours apart from the accused no other person would have had ingress to the room wherein the deceased and the accused no.1 were staying. In such a situation, the husband is expected to divulge the circumstances which led to the death of the deceased. The reason is not far to seek. The wife is shown to have suffered an unnatural death, within the four walls of room, which was occupied by the deceased and her husband. This circumstance warrants an explanation of the husband as regards the circumstances of the transaction which resulted in the death of the deceased.

27. In the case of *Swamy Shraddhananda vs. State of Karnataka*⁴ it was enunciated by the Supreme Court that if it is proved that the deceased died in an unnatural circumstance in her bedroom which was occupied only by deceased and her husband, law requires the husband to offer an explanation in this behalf. Indeed, the Supreme Court went on to qualify the generality of the aforesaid principle by observing that, "We, however, do not intend to lay down a general rule in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused."

28. In the case of *State of U.P. vs. Dr. Ravindra Prakash Mittal* (supra), the Supreme Court laid stress on the nature of explanation, which may be offered by the husband in a case where the wife meets homicidal death in the matrimonial home. It was observed that;

"Even though we are not guilty solely on his false explanation, yet, that explanation assumes much significance because it is for the respondent to come forward with an acceptable and plausible explanation explaining the circumstances under which the deceased had met with her end, since, in our considered opinion, the respondent was in the company of his wife on the previous night and was found in the bedroom in the early morning."

29. A profitable reference can also be made to the judgment of the Supreme Court in the case of *State of Tamil Nadu vs. Rajendran*⁵, wherein the accused was alleged to have committed the murder of his wife and thereafter set the dead body on fire resulting in death of one of his daughters as well. In the aforesaid factual background, the Supreme Court expounded the proposition which emerges from either no explanation or false explanation of the husband, in the following words:

"6. The opinion of the doctor indicating that the wife of the accused died of asphyxia due to strangulation and not on account of burn injuries and several findings indicated in the post-mortem report undoubtedly supports the conclusion about the death on account of asphyxia. If the accused and his wife were seen together in the house at 9 p.m. and the accused come out in the morning

through the roof, leaving the wife and two children and the death of the wife was found to be not on account of burn injuries but on account of strangulation and on being asked, the accused offers an explanation about the accidental fire which is found to be untrue, then in such a case, there cannot be any hesitation to come to the conclusion that it is the accused who is the perpetrator of the crime. In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete." (emphasis supplied)

30. The aforesaid pronouncements were followed by the Supreme Court in the case of Trimukh Maroti Kirkan vs. State of Maharashtra⁶, wherein the nature of onus which rests on the accused in such a case and the propositions which emanate once the primary fact of homicidal death within the four walls of a house is proved, were instructively postulated. The relevant observations read 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 Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). 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 traveling 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.

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of T. N. v. Rajendran* (1999) 8 SCC 679 (para 6); *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 (para 40); *State of Maharashtra v. Suresh* (2000) 1 SCC 471 (para 27); *Ganesh Lal v. State of Rajasthan* (2002) 1 SCC 731 (para 15) and *Gulab Chand v. State of M.P.* (1995) 3 SCC 574 (para 4)].

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. In *Nika Ram v. State of H.P.*, AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife." (emphasis supplied)

31. Reverting to the facts of the case, it becomes evident that accused no.1 initially offered an explanation that the deceased died by suicide, which is belied by the evidence and material on record. This explanation which is found to be untrue points to the complicity of the accused. Further, a half-baked effort was made to take the plea of alibi. We have carefully perused the examination of the accused under Section 313 of the Criminal Procedure Code. We do not find any specific explanation contesting the presence of the accused no.1 in the house at the time of the occurrence. Mr. Joshi, made a feeble attempt to canvass a

submission that at the time of occurrence the accused was in his field. The deceased was found in a burnt state in the house at about 5.00 am. In the absence of a positive material to show that at such an early hour the accused was at his field, it would be rather naive to accept the said version.

32. We are mindful of the fact that in a case based on circumstantial evidence, proof of motive for the offence is an important consideration. In the case at hand, the prosecution alleged that accused no.1 desired to get rid of the deceased as she had sustained injuries in the accident leading to continual health issues and thus sought disruption of the marital bond; which the deceased resisted. Thus, the deceased was done away with. As the parents of the deceased resiled from their version, there is no proof of motive for the crime. However, in the backdrop of the incriminating circumstances, adverted to above, which squarely establish the complicity of Dhanaji (A1), the absence of proof of motive does not impair the prosecution.

33. Lastly, Mr. Joshi urged that since the learned Additional Sessions Judge acquitted the rest of the accused, who were also shown to be present in the house in which the deceased met the homicidal death, accused no.1 Dhanaji alone cannot be fastened with the authorship of the homicidal death in the absence of cogent evidence. A strong reliance was placed on a judgment of the Supreme Court in the case of Saval Das vs. State of Bihar⁷.

34. In the aforesaid case, following a quarrel between the deceased and her step mother-in-law, the appellant-husband took the deceased into a room, in which his father and mother followed and immediately thereafter cries of the murdered woman were heard, to save her from being killed, and a little while later the appellant - husband and his father conveyed the dead body of the deceased and disposed it of by burning. The trial Court had convicted the appellant - husband, his father and stepmother, under Section 302 read with Section 34 of the Penal Code. On appeal, the High Court acquitted the appellant, his father and stepmother of the offence punishable under Sections 302 read with 34 of the Penal Code but found the appellant alone guilty of the offence punishable under Section 302 simplicitor, and the appellant and his father guilty under Section 201 of the Penal Code. The Supreme Court held that in the facts of the said case, with the acquittal of father and stepmother of the appellant, it was necessary to establish the individual liability of the appellant and in the absence of the evidence on the said score, the appellant could not have been convicted under Section 302 of the Penal Code.

35. We have carefully perused the aforesaid judgment. In our view, the case turned on its peculiar facts. The following observations of the Supreme Court make this position abundantly clear:

"Nevertheless, we may have agreed with its conclusion, on the evidence on record, that the appellant alone was liable for the murder of his wife Smt. Chanda Devi and we may not have disturbed its finding of fact but for another

feature of the case which stares one in the face."

The said feature was that the maid servant who was present at the time of the occurrence and whose statement was recorded under Section 164 of the Criminal Procedure Code, was not examined by the prosecution.

36. In the case at hand, on the contrary, there is material to show that the deceased met the homicidal death in the room which the deceased and the accused shared. A subterfuge of the deceased having died by suicide was made. In the face of positive evidence which demonstrated that the deceased died due to asphyxia and her dead body was subsequently set on fire, the explanations which were found to be untrue provide additional link in the chain of circumstance. The defence of alibi is not found preponderately probable. Moreover, accused no.1 Dhanaji sustained an injury, which was indicative of struggle, and thereby established his presence at the scene of occurrence. In this setting of the matter, the acquittal of the rest of the accused, does not inure for the benefit of accused no.1.

37. The upshot of the aforesaid consideration is that the learned Additional Sessions Judge properly appreciated the circumstantial evidence and arrived at a justifiable finding. We are thus not inclined to interfere with the impugned judgment and order. The appeal thus deserves to be dismissed.

38. Hence, the following order:

: O r d e r :

The appeal stands dismissed.