
(1984) 08 BOM CK 0031

In the Bombay High Court

Case No : Criminal Appeal No. 199 of 1983 with Criminal Rev. Application No. 130 of 1984

Prakash Shamsunder Dere and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (1985) 2 BomCR 234

Hon'ble Judges : R.A. Jahagirdar, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : C.R. Dalvi, No. 1 and C.A. Phadkar, No. 2, for the Appellant; N.M. Kachare, Public Prosecutor, for the Respondent

Judgement

R.A. Jahagirdar, J.—We have already passed the final order in this appeal on 31st January, 1984 and we now proceed to give the reasons.

2. In Sessions Case No. 84 of 1982 the two appellants before us, hereinafter referred to as the accused, were prosecuted for an offence punishable u/s 302 read with section 34 of the Indian Penal Code before the learned Sessions Judge of Satara. Accused No. 1 is the son of accused No. 2 who is his mother. They were charged with the murder of Shakuntala, the wife of accused No. 1. The said murder took place at about 8.15 a.m. on 28th July, 1982 in the house of the accused. That house bears Municipal No. 339 and is situated at Somwar Peth, Karad, a place in Satara District.

3. The prosecution case was that on the said day and at the said time accused Nos. 1 and 2 in pursuance of their common intention committed the murder of Shakuntala because they suspected that Shakuntala had pre-marital affairs with other persons before she was married to accused No. 1 on 16th May, 1982. Shakuntala herself belongs to a place called Guhaghar in Ratnagiri District, while the accused belong to Karad and reside in the aforesaid house. One sister of accused No. 1 called Alka is married to Prakash, the brother of Shakuntala, the

deceased. Some days before this incident took place, accused No. 2 had paid a visit to her daughter at Guhaghar and it is the prosecution case that accused No. 2 learnt at that place that Shakuntala had pre-marital relations with other persons. After the return of accused No. 2 to Karad there are strained relationship between the accused and Shakuntala because of the knowledge which accused No. 2 had acquired about Shakuntal" affairs, before the marriage. It is not necessary to dwell at length upon the motive for the murder because on the facts and circumstances of this case the prosecution must stand or fall by the acceptability of some other pieces of evidence which can be considered without being linked with the circumstances of motive.

4. One Gopinath Rajaram Gijare, examined as P.W. 2, is the resident of House No. 330-B of Somwar Peth, Karad. One of the rooms in his house was in possession of the accused on a monthly rent of Rs. 80. In a shed on the western side of this house, both Gopinath and accused No. 1 used to do the work of coppersmith and they used to prepare the pots. One the day on which the incident took place both Gopinath and accused No. 1 had started their work, but after some time accused No. 1 executed himself saying that he had some work to do and returned to his part of the house. According to the prosecution, accused No. 1 dragged Shakuntala in his own room and then both the accused committed the murder of Shakuntala by inflicting severe injuries on her neck with a blade of the scissors used normally by the coppersmiths. After committing the murder, accused No. 1 ran away from the place, but accused No. 2 remained in the house. She, it is alleged, wiped out the blood which had spilt on the floor by means of a gunny cloth.

5. Gopinath had questioned accused No. 1 before the later left the house and at that time accused No. 1 is said to have confessed that he had killed his wife and that he himself go to the Police Station. Accused No. 2 also, on enquiry from Gopinath, told the latter that accused No. 1 assaulted Shakuntala on her shoulder. After being unsuccessful in bringing the police to the scene of offence by giving a message on the telephone, Gopinath went to the police station and filed the complaint, treated in this case as the first information report. It is at Exhibit 10. Accused No. 2 also is said to have informed certain other persons and in particular Parkash (P.W. 3) that accused No. 1 had assaulted Shakuntala on her neck.

6. On information which has been received, Inspector Khanvilkar, who died before the trial started, arrived at the scene of offence. Dy. S.P. Nipankar (P.W. 15) also arrived on the scene of offence and took up the investigation of the case. Several steps which are normally taken in the investigation of a murder case were taken by the police. These steps included the seizure of the weapon of offence, attachment of the bloodstained clothes of the deceased and preparation of the panchanama of the scene of offence. Accused No. 1 had made himself scarce from his place of residence. Therefore, Dy. S.P. Nipankar issued a public notice which was published in a paper called "Sakal" on 30th of July, 1982. A

person working in the Gangapur Sugar Factory noticed the said advertisement. He also noticed that accused No. 1 had come to the house of his elder brother Suryakant who was residing in the factory area. P.S.I. Deshmukh of Gangapur Police Station, who had gone to the above factory for investigation in some other case, arrested accused No. 1 and seized his bloodstained clothes. Blood sample of accused No. 1 was taken and was sent to the chemical analyser. The blood group of accused No. 1 is "B". Evidence discloses that the shirt which accused No. 1 was wearing at the time of his arrest had been stained with human blood of "A" group which was the also the blood group of the deceased Shakuntala. It is on these facts that both the accused were put up for trial in the sessions case mentioned above.

7. In support of its case the prosecution examined, among others, Gopinath Rajaram Gijare as P.W. 2 and two other witnesses called Raman Anant Dandekar (P.W. 4) and Ramesh Mahadeo Tambat (P.W. 12). Officers connected with the investigation were also naturally examined. Also examined necessarily were the panchas to the different panchanamas. The post-mortem report prepared by one Dr. Mohanty, who had conducted the post-mortem examination of the body of Shakuntala, was by consent taken on record u/s 294 of the Code of Criminal Procedure, 1973. As a result, Dr. Mohanty himself was not examined as a prosecution witness.

8. The learned trial Judge was sufficiently impressed by the evidence led by the prosecution despite the fact that P.W. 2 Gopinath, the leading witness for the prosecution, was declared hostile. In paragraph 17 of his judgment the learned Sessions Judge has enumerated eight circumstances which, according to him, had been proved by the prosecution and which constituted a chain of circumstantial evidence establishing beyond reasonable doubt the guilt of the accused. Consistent with the view which he took of the prosecution evidence, the learned Sessions Judge convicted both the accused of the offence with which they were charged and sentenced each of them to imprisonment for life. This he did by his judgment and order dated 25th of March, 1983, which is challenged by the accused in this appeal.

9. When this appeal was placed for hearing earlier before another Division Bench (Masodkar & Tated, JJ.) that Division Bench felt that whoever had perpetrated the crime did so with all cruelty and determination. That Division Bench was also of the opinion that prima facie the case called for higher punishment. Accordingly, that Division Bench issued a suo motu notices as to why the death penalty should not be imposed for the offence, if it is proved.

10. Subsequently, the appeal again came up before the same Division Bench which directed the learned Additional Session Judge of Satara to record the evidence of Dr. R.G. Mohanty and Uday son of Gopinath. It was also directed that after evidence was recorded the accused should be examined u/s 313 of the Code of Criminal Procedure.

11. Pursuant to this direction the learned Trial Judge recorded the testimonies of Uday and of Dr. R.G. Mohanty. To our surprise, the learned Public Prosecutor who was in charge of this case did not take the trouble of showing the alleged weapon of offence to the doctor in order to find out as to whether the injuries which the doctor found on the body of Shakuntala could have been caused by the said alleged weapon of offence, which is Article 1 before the Court. On the other hand, he resorted to a somewhat extra-ordinary procedure, which procedure was again unfortunately allowed to be followed by the learned trial Judge, of showing a photograph (Exhibit 47) in which the blade of the scissors (Article 1) is allegedly to be found. Dr. Mohanty was careful enough to tell the Court that if the blade shown in the photograph (Ex. 47) was sharp then the injuries noted by him on the dead body of Shakuntala could be possible. He admitted, in reply to a question asked on behalf of the accused, that he had not seen the weapon (Article 1) and also that if the weapon of assault was before the Court he would have been in a position to give a better opinion. This evidence was certified to this Court by the learned Sessions Judge.

12. When the matter was placed before us we formed the opinion that the purpose of examining Dr. Mohanty pursuant to the direction issued by this Court had not been fulfilled by the failure of the public prosecutor to show the weapon of offence to the doctor. The failure of the Public Prosecutor in this regard is unpardonable despite the fact that the weapon of offence was already with the muddemal articles in this Court. It was the duty of the public prosecutor to see that Article 1 would be made available in Satara Court by making appropriate motion to this Court. An opinion obtained on the basis of a photograph or a picture of an alleged weapon of offence is absolutely worthless. We, therefore, directed that Dr. Mohanty should be examined again, but by us. Accordingly Dr. Mohanty was present, on instructions given by the learned Public Prosecutor, before us on 21st August, 1984. We recorded his evidence, which is at Exhibit "H-C-1". The learned Public Prosecutor asked the doctor questions with reference to Article 1 before the Court and Mr. Dalvi and Mr. Phadkar appearing respectively for accused Nos. 1 and 2 cross-examined Dr. Mohanty. Accused No. 1 was further asked, u/s 313 of the Code of Criminal Procedure, as to what he has to say in relation to the evidence of Dr. Mohanty recorded by us in his presence. Besides saying that what the doctor has stated was false, accused No. 1 did not have anything to say.

13. By an order, the Division Bench before which this appeal had come up for hearing earlier, Mr. C.R. Dalvi and Mr. C.A. Phadkar were appointed as amicus curiae for accused Nos. 1 and 2 respectively. Mr. Y.H. Memon was appointed as Advocate for both accused Nos. 1 and 2 by an order made by us. We have, with the assistance of the learned Advocates, gone through the entire evidence on record. The learned Advocates have challenged the findings of the learned Sessions Judge on various grounds which we will examine as we proceed to assess the evidence on record and given our own reasons for accepting or rejecting the evidence which has come on record.

14. As already mentioned earlier the relief prosecution witness in the instant case is Gopinath examined as P.W. 2. It is with him that accused No. 1 was working. Both this witness and accused No. 1 used to do the work of coppersmith and used to prepare the pots. In his examination-in-chief P.W. 2 Gopinath has described the location of the different compartments of the house in which he and the accused resided. He has mentioned that besides the room on the western side, which was in the possession of the accused as a tenant on monthly rent of Rs. 80, there was a shed which was also given on lease to the accused. It was in that shed that this witness and accused No. 1 were doing the work of coppersmithy. He has mentioned about Shakuntala coming to reside in the house of the accused after her marriage with accused No. 1. According to him, Shakuntala was residing with the accused happily for about 11/2 months. He has proceeded to mention that accused No. 2, after her return from Guhagar where her daughter was married to the brother of Shakuntala, started quarrelling with Shakuntala. This quarrel was the result of the suspicion which accused Nos. 1 and 2 entertained about the pre-marital affairs of Shakuntala. At one stage he has stated that the relations between accused No. 1 and Shakuntala were very much cordial right up to the last moment.

15. Referring to the incident that took place on 28th of July, 1982 P.W. 2 Gopinath has stated that he woke up at about 6.30 a.m. on that day. According to the witness, both the accused and Shakuntala have also woken up at 5 a.m. as usual. There was one Ramesh, a distant cousin of accused No. 2 who was also staying with accused Nos. 1 and 2 at the relevant time. After the said Ramesh had gone to his factory at about 7.15 a.m. this witness and accused No. 1 started their work at the furnace in the shed. The witness has stated that accused No. 2 was sitting in her room while Shakuntala was sitting in his room. After some time accused No. 1 told this witness that he has to go out of station and, therefore, he put on his clothes. The witness himself went to the public lavatory. Gopinath has stated that he left the house at 8.15 a.m. for going to the lavatory. When he came back from the lavatory he did not notice accused No. 1 in the house. However, accused No. 2 came out when this witness asked her as to what the commotion was. According to him, accused No. 2 told him that Shakuntala had fallen down. Accused No. 2 thereafter went to call somebody for treatment of Shakuntala and then he peeped into the room of the accused and noticed the dead body of Shakuntala in the room of the accused. He tried to get the police to the scene of offence by sending a message on the telephone but he was told by the police that he must go to the police station to lodge the report, which he did. He identifies Exhibit 10 before the Court as the statement which he lodged in the Police Station. Exhibit 10 was read over to him. He admitted the entire contents of Exhibit 10, except the presence and dialogue of Prakesh Dhere, who is none other than accused No. 1. It was at this stage that the learned Public Prosecutor sought permission of the Court to declare this witness as hostile, which permission was granted.

16. In the examination thus conducted by the Public Prosecutor, treating the

witnesses as hostile, he was confronted with certain statements which he had made in Exhibit 10, but ignoring the statements which he had made in Exhibit 10 with which he was confronted, we notice that he has otherwise also in the examination-in-chief conducted by the public prosecutor made statements which fully support the prosecution case. The following to be found in his evidence need to be noted carefully :---

"It is true that on 28-7-1982 in the morning, a quarrel between accused No. 2 and Shakuntala was going on. It is true that accused No. 2 and Shakuntala were inside their room and then accused No. 1 also went in that room and joined hands with accused No. 2 in the quarrel with Shakuntala. I then went in my own room to chew the tobacco by stopping my work in hand. It is true that accused No. 1 said that he would see as to how many abortions have been committed by Shakuntala prior to the marriage and then accused No. 2 asked accused No. 1 to go to Guhaghar and make an enquiry about it. It is true that both the accused remained in their own room and Shakuntala came in our room. I told Shakuntala not to go in her room. By the time I chewed the tobacco, accused No. 1 put on his clothes including pant and manila. I am now shown articles Nos. 23 and 24 which were worn by accused No. 1 at that time. It is true that accused No. 1 came where Shakuntala was sitting and then he dragged her in his own room."

In reply to a further question he stated as follows :---

"He (accused No. 1) told me that he has assaulted his wife but he did not say that he murdered his wife."

17. It has also been successfully brought out in the examination conducted by the learned Public Prosecutor that this witness did see accused No. 1 sitting on the cot of this witness with white pant and while manila and that he had told him that he had killed Shakuntala and had also pointed out the blood stain on the right sleeve of his pant. It has also been successfully brought out that this witness had received a confession from accused No. 1 that he had assaulted Shakuntala and that he was going to the Police Station. The testimony of this witness also shows that accused No. 2 told him that there was nothing serious as accused No. 1 had accused Shakuntala only on her shoulder.

18. In the cross-examination, he has, to some extent, deposed in a manner which should help the accused, but reading his entire testimony not only in the examination-in-chief but also in reply to the questions asked by the learned Public Prosecutor treating him as hostile and the answers given by him in reply to the questions of the defence Counsel and the questions of the Court we are of the opinion that this witness had seen accused No. 1 going into the house after he dressed himself on the pretext of going out of town on that day. That accused No. 1 dragged Shakuntala inside the house is also, in our opinion, established beyond reasonable doubt. We are also of the opinion that accused No. 1 did make a statement, which is tantamount to a confession, that he had assaulted his wife Shakuntala and he was going to the Police Station to report the same.

We are satisfied that this is proved despite some of the admission which he has given in reply to questions asked in the cross-examination.

19. Mr. Dalvi naturally invited our attention to the various admissions made by this witness. He also canvassed for our acceptance a proposition that a witness who has thus turned hostile and who has in reply given answers which are so naturally destructive of each other should not be relied upon by the Court. According to him, when the learned Public Prosecutor asked for permission to treat the witness as hostile, he practically made a declaration that the prosecution itself did not intend to rely upon the testimony of this witness. If the testimony of this witness is excluded then there is nothing else in the prosecution evidence which would unerringly connect the accused with the murder of Shakuntala. The proposition that the testimony of a hostile witness should be totally rejected by the Court is one that is not acceptable to us in the light of the law laid down by the Supreme Court, to which we will make a reference later in this judgment.

20. Prakash, examined as P.W. 3, is not of much use to the prosecution because in the examination-in-chief he does not say anything more than that accused No. 2 came to his house and told him that her son, accused No. 1, had assaulted his wife Shakuntala. Secondly, his statement was recorded on 4th of August, 1982. His evidence discloses that he had sufficient ground for suspecting that accused No. 1 had done something more than merely beating his wife. He did not go to the Police Station to report about what accused No. 2 had told him. He also did not go to the police after he read in the next day's newspaper that murder of Shakuntala had been committed.

21. P.W. 4 Raman Anant Dandekar, whose statement was recorded on the same day, that is on 28th July, 1982, has corroborated P.W. 2 Gopinath to a great extent. According to him, at 8.30 a.m. on 28th of July, 1982 Gopinath returned from the latrine and told him that accused No. 1 had committed the murder of Shakuntala and had run away. In our opinion, this is valuable corroboration to the testimony of P.W. 2 Gopinath u/s 157 of the Indian Evidence Act.

22. P.W. 12 Ramesh is also not of much use to the prosecution. Like P.W. 3 Prakesh, P.W. 12, Ramesh also mentions only about the presence of accused No. 2 in the house of Prakash (accused No. 1). Though he mentions that P.W. 2 Gopinath came to his shop at about 9. a.m. he does not say that Gopinath told him anything about the incident. His statement was recorded belatedly, namely on 3rd of August, 1982. He was allowed, to be cross-examined on the request made by the learned Public Prosecutor, but in replies to the questions asked by the learned Public Prosecutor, no material has been brought out which could be called legal evidence. Undoubtedly he was asked questions about certain statements to be found in his statement to the police. He has disowned those statements. Unlike in the case of Gopinath, who admitted not only that he had made the statements to the police but as positive evidence he admitted certain facts, this witness Ramesh has disowned the statements made by him to the

police and has also refused to acknowledge certain facts which would have helped the prosecution.

23. We have with the assistance of the learned Advocates appearing before us gone through the evidence relating to the finding of the blood stains on the different article before the Court and their significance. After doing so we notice that the blood group of deceased Shakuntala was "A" while the blood group of accused No.1 was "B". This we are holding on the basis of the Chemical Analyser's reported at Exhibit 19 which shows that the articles which were connected with Shakuntala at the time of her death were stained with human blood of "A" group. For example, the gunny bag which was used by accused No. 2 for wiping the floor, the scrapping taken from the floor where Shakuntala was found dead, the clothes, of Shakuntala namely saree, blouse and brassiere disclosed the presence of human blood of "A" group. The bush shirt which was worn by accused No. 1 at the time of his arrest when sent to the Chemical Analyser showed the presence of human blood of "A" group. This bush shirt, which is Article 24 before the Court, is Exhibit No. 10 in the Chemical Analyser's report at Exhibit 19.

24. Mr. Dalvi, however, has quarrelled with this part of the prosecution evidence by contending that Article 24 before the Court could not have been the bush-shirt worn by accused No. 1 at the time of the offence, if one was committed by him. According to Mr. Dalvi, on the other hand, the prosecution evidence shows that accused No. 1 was wearing an altogether different shirt on the morning of 28th July, 1982 when the incident took place. He has invited our attention to a statement to be found in the testimony of P.W. 2 Gopinath wherein the said witness has said that accused No. 1 was wearing a white pant and white manila, which is also the statement to be found in Exhibit 10 made by this witness. The witness was shown Article 24, which he admitted was not of white colour. Even if Article 24, therefore, shows the presence of human blood of "A" group, it could not properly connect accused No. 1 with the offence in question. If anything, the prosecution has planted this bush shirt on accused No. 1. After going through the entire evidence carefully and bearing in mind the submission of Mr. Dalvi, we are inclined to reject his criticism in this regard. We are of the opinion that the statement of Gopinath both in Exhibit 10 and before the Court that accused No. 1 was wearing, at the time of the offence, a bush shirt of white colour is a mistake. He could not have been sure of the colour of the shirt worn by accused No. 1 at the time of the offence. We refuse to accept the suggestion that the police could have planted bloodstains on the bush shirt belonging to accused No. 1. The presence of the blood of the same group to which the blood of the deceased Shakuntala belonged on at least one of the clothes of the accused is, in our opinion, a circumstances which implicates accused No. 1 in the offence of murder of his wife.

25. We cannot also be oblivious to the circumstance of the accused making himself scarce from the scene of offence. Abscission by itself may not be a

damning circumstance against an accused person, but when the body of his wife is lying in his own house with multiple injuries on such a vital part as the neck and the accused was aware of the same, which is clear from all evidence found acceptable by us, the fact that accused No. 1 ran away from the place sufficiently indicate his guilty mind. It is in these circumstances that the running away of the accused from the scene of offence can be pressed into service by the prosecution against him.

26. On a review of the evidence which we have thus made, the following circumstances, in our opinion, have been clearly established; At about 8 a.m. on 28th of July, 1982 accused No. 1 abruptly left the work which he was doing with P.W. 2 Gopinath and went to his room. While he did so, he dragged deceased Shakuntala, who was sitting outside the house, into the house. Sometime thereafter he made a statement to P.W. 2 Gopinath that he had assaulted his wife and that he was going to the police station to report the same. Instead of going to the Police Station he went to Gangapur despite the fact that he had noticed earlier that his wife was lying with multiple injuries on her body. When he was arrested accused No. 1 was wearing a bush shirt which had human blood of the same group to which the blood of deceased Shakuntala belonged. The blood of the accused himself is of a different group. There was in the room of accused No. 1 a blood stained blade of a scissors used by accused No. 1. When examined by the Chemical Analyser, this blade disclosed human blood, though it has not been determined as to which group the said blood belonged. These circumstances cumulatively inevitably lead us to the conclusion that it was accused No. 1 who had caused the injuries which were found on the body of Shakuntala. If, therefore, those injuries are found to be responsible for the death of Shakuntala, one must necessarily come to the conclusion that accused No. 1 was guilty of the offence punishable u/s 302 of the Indian Penal Code.

27. As already indicated earlier in this judgment, the doctor who performed the post-mortem examination on the body of Shakuntala was not examined by the public prosecutor. On the other hand, the post-mortem notes prepared by the doctor who conducted the post-mortem examination were taken on record u/s 294 of the Code of Criminal Procedure. Since this has been done with the consent of the accused themselves, the contents of the post-mortem notes could naturally be read into evidence. Against Item No. 17 of the post-mortem report, the doctor has mentioned the various injuries which he found on the body of Shakuntala. There were four incised wounds on the neck. Besides that there were two minor abrasions on the left wrist joint. Against Item No. 20 of the post-mortem notes the doctor has mentioned that larynx has been cut through from the right side. He also noticed that the heart was empty. So also, large blood vessels such as right jugular vein and carotids vessels had been cut through. As to the opinion on the probable cause of death, the doctor has mentioned as follows:---

"Death is due to circulatory collapse following injury to larynx and cartoids

vessels of Rt. side of neck. Mode of death-Syncope."

28. An argument should have been advanced, which was really not advanced, in the Court below as to whether Article 1 before the Court, namely the blade of the scissors, could be responsible for the injuries which were found on the body of Shakuntala. Even in the absence of that finding we would have been justified in answering this question in the affirmative because it was the only weapon which was found in the room where the dead body of Shakuntala was lying and where only a few moments earlier the accused was also seen. It has not been suggested by the defence that a diligent search of the room in which the dead body of Shakuntala was found was made and another weapon of offence could have been found. However, the doctor has been ultimately examined by us in this Court and has been subjected to detailed cross-examination by the learned Advocates appearing for accused Nos. 1 and 2.

29. Dr. Mohanty while being examined by this Court was shown Article 1. He noticed that one edge of this article was sharp. From his previous experience he has in a position to say that this blade is a part of the scissors used for cutting metals. He has proceeded to mention that injuries Nos. 1 to 4 mentioned against Item No. 17 of his post-mortem notes could be caused by the sharp side of Article 1. He has also stated that because the weapon of offence at Article 1 has been shown to him and not merely its photograph, he was in a position to give definite opinion as to whether the aforesaid injuries could have been caused by that weapon. In the cross-examination by Mr. Dalvi the doctor agreed that Article 1 was not a very sharp edged weapon. Despite this he insisted that that weapon was capable of causing the injuries found on the body of Shakuntala.

30. In reply to questions asked Mr. Phadkar for accused No. 2, Dr. Mohanty stated that from the nature of the injuries he could say that the victim must have been either sitting or must have been in a lying position. The doctor also suggested that the fact that there was no slanting injury may also indicate that the assailant was also sitting while he was using the weapon. Summarising, the doctor has stated as follows :---

"From the nature of the injuries noted by me, it is possible to say that if the victim were standing the assault must have taken place horizontally, if the victim was in a sleeping position the weapon might have been used vertically."

31. We are satisfied, not only on the evidence of Dr. Mohanty but also from the circumstance that Article 1 was found in the room where the dead body of Shakuntala was found, that it was that article, which belonged to accused No.1, that was responsible for the injuries found on the body of Shakuntala. We have thus no difficulty in holding that accused No. 1 was responsible for causing the injuries to Shakuntala and those injuries were responsible for the death of Shakuntala. The injuries were such that they were necessarily fatal. The offence is fully covered by the definition of murder contained in section 300 of the Indian Penal Code. The nature of the injuries is such that accused must be necessarily

attributed with the intention of causing the death of Shakuntala. In this case, therefore, clause firstly of section 300 of the Indian Penal Code itself is applicable. In any case, the injuries which were caused by accused No. 1 were such that he knew that they were likely to cause death. The second clause is also thus attracted on the facts and circumstances of this case.

32. As far as accused No. 2 is concerned, we do not see how she could be connected with the offence in question either directly or vicariously u/s 34 of the Indian Penal Code. If we go through the circumstances which have been put to her by the learned Sessions Judge u/s 313 of the Code of Criminal Procedure, it is easily seen that there is not a single circumstance which could connect accused No. 2 with the offence in question. The maximum that has been established by the prosecution is that after Shakuntala was injured and was lying in a pool of blood, accused No. 2 tried to wipe the floor with a gunny bag. This itself is not sufficient to indicate that accused No. 2 had anything to do with the actual commission of the offence. On the other hand, her conduct, as disclosed by the prosecution witness themselves, shows that she was innocent. She made a statement at the earliest that accused No. 1 had caused an injury on the neck of Shakuntala. Secondly, she herself went out of the house at least ostensibly for the purpose of informing someone that Shakuntala, had been injured and she should be taken to hospital. She has not made any statement, confessional or otherwise, which would indicate that she had participated in the act of accused No. 1 in causing the injuries by means of Article 1 on the body of Shakuntala. The prosecution of accused No. 2 was hopelessly ill advised and the conviction of accused No. 2 recorded by the learned Sessions Judge is equally hopelessly wrong. She deserves to be acquitted.

33. Before concluding the judgement, we must refer to the law relating to the evidentiary value of the testimony of hostile witnesses . This had become necessary in view of the arguments advanced by Mr. Dalvi while we were examining the testimony of P.W. 2 Gopinath in Bhagwan Singh Vs. The State of Haryana, , it has been held that where the Court gives permission to the prosecutor to cross-examine his own witness, thus characterising him as a hostile witness, that fact does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. In different context the Supreme Court held in Karuppanna Thevar and Others Vs. The State of Tamil Nadu, , that a hostile witness may not be rejected outright but the Court has at least to be aware that prima facie a witness who makes different statement at different times has no regard for truth. In Sat Paul Vs. Delhi Administration, , which can be regarded, with great respect, as a somewhat leading case on the subject of hostile witnesses, the Supreme Court pointed out that the use of the word "hostile witnesses", is misleading in the light of the provisions contained in the Evidence Act of India. Granting permission to the prosecutor to ask leading questions does not amount to an adjudication by the Court as to the veracity of the witness concerned. If this is so, then naturally the entire testimony of a

witness who has been allowed to be cross-examined by the party calling that witness cannot be thrown out. In the words of the Supreme Court in the said case :

"From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto."

34. This judgement of the Supreme Court in Sat Paul's case has been subsequently affirmed in Syad Akbar Vs. State of Karnataka, . We may also mention, respectfully, that the observations to the contrary to be found in the judgement of a Division Bench of this Court in Babu Nathu Gond v. State of Maharashtra 1975 M.L.J. 779. were made, as indeed they were bound to be made, without the benefit of the judgments of the Supreme Court to which we have made reference earlier. All these judgments of the Supreme Court were subsequent to the judgment of the Division Bench referred to above.

35. In the result, this appeal is partly allowed. The conviction and sentence of accused No. 2 for the offence punishable u/s 302 read with section 34 of the Indian Penal Code recorded by the learned Additional Sessions Judge of Satara in Sessions Case No. 84 of 1982 are set aside. Accused No.2 is acquitted of the offence with which she had been charged in the said Sessions Case. Her bail bond is cancelled.

36. The conviction of accused No.1 is altered from one u/s 302 read with section 34 of the Indian Penal Code to one u/s 302 of the Indian Penal Code. The sentence of life imprisonment awarded to him by the learned Additional Sessions Judge is confirmed.

37. Notice of enhancement issued against both the accused is discharged.