

(2010) 06 BOM CK 0083
In the Bombay High Court
Case No : Criminal Appeal No. 446 of 1992

The State of Maharashtra

APPELLANT

Vs

Baban Kisan Kulvade

RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313, 428

Evidence Act, 1872 — Section 106, 113B

Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34, 498A

Citation : (2010) 112 BOMLR 2849

Hon'ble Judges : Mridula Bhatkar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.P. Shinde, app, for the Appellant; Niranjan Mundargi in Cri. Appeal No. 446/92, in Cri. Appeal No. 472/92 and Dilip Bodake, in Cri. Appeal No. 472/92, for the Respondent

Judgement

B.H. Marlapalle, J.—Both these appeals, filed by the State Government, are directed against the judgment and order dated 20/5/1992 rendered by the learned 6th Additional Sessions Judge, Thane in Sessions Case No. 483 of 1991. In the said case, three accused were put on trial for the offences punishable under Sections 302, 498A and 201 read with Section 34 of IPC and all the three accused came to be acquitted for the offences punishable under Sections 302 and 201 read with Section 34 of IPC. Accused No. 1 has been convicted for the offence punishable u/s 498A of IPC and sentenced to suffer RI for one year with a fine of Rs. 1000/- in default RI for three months and accused Nos. 2 and 3 have been acquitted from the said charge. Criminal Appeal No. 442 of 1992 has been filed by the State for enhancement of sentence awarded to accused No. 1 on account of his conviction u/s 498A of IPC. Whereas Criminal Appeal No. 472 of 1992 has been filed challenging the acquittal of accused Nos. 1 and 2 for the offences punishable under Sections 302 and 201 each read with Section 34 of IPC.

2. As per the prosecution case, accused No. 1 is the son of accused No. 3 and he,

while working in a factory near Thane, was residing in the house of accused No. 2 at the relevant time as a paying guest and the son of accused No. 2 was also working with accused No. 1 and thus they were friends. Soluchana, the daughter of Laxman Gangaram Gholap, was married to accused No. 1 on 29/5/1989. After marriage, she stayed for about 25 days with accused No. 1 in the house of accused No. 2 at Boisar and thereafter for about 6-7 months she stayed with her in-laws at village Udaipur, Taluka - Junnar, District - Pune. She wanted to join her husband's company, but the accused No. 1, under the pretext that there was no residential accommodation and cooking utensils etc., retained her with his parents. She got fed up and went to her maternal home at village Rohokadi, Taluka - Junnar, District - Pune and she stayed with her parents for about one year. During the said stay of one year, she had informed her parents that accused No. 1 was demanding Rs. 20,000/- for acquiring a residential accommodation and he expected the said amount to be paid by her father, but his financial position did not permit him to do so. Just one week prior to the date of the incident, PW 2 - Tukaram Gholap, the brother of Sulochana, had taken her to Boisar and he stayed overnight with accused No. 1 in the house of accused No. 2 and returned to his village. On 20/6/1991 between 9.30 a.m. to 11 a.m., when there was no one in the house of accused No. 2, Soluchana was found dead with burn injuries. Accused Nos. 1 and 2, along with the daughter-in-law of accused No. 2, had gone to a doctor and when they returned around 12.15 p.m., the house was locked from inside and could not be opened. Accused No. 1 peeped through the window and saw some smoke smell coming from inside the house. The door was forcibly opened and when the accused Nos. 1 and 2 went inside, they noticed that Sulochana was lying dead in the toilet block and her entire body was burnt. Accused No. 1, therefore, went to the police station at Boisar and lodged a report, which was registered as accidental death (Exh. 23). The police arrived at the scene, drew the inquest panchanama (Exh. 12) and spot panchanama (Exh.13). The dead body was forwarded for post mortem and P.M. report at Exh. 19 was received on 21/6/1991. On 21/6/1991 Otur Police Station informed PW 1 - Laxman Gangaram Gholap that his sister Soluchana was dead as per the information received from the Boisar Police Station and, therefore, PW 1 reached Boisar and subsequently he was taken to Kelwa Mahim and the dead body of Sulochana was handed over to him. On 22/6/1991, PW 1 lodged the FIR (Exh. 9) at Boisar Police Station and C.R. No. I-68 of 1991 came to be registered for the offences punishable under Sections 302, 498A and 201 each read with Section 34 of IPC against the accused.

3. During the course of investigation, accused Nos. 1 and 2 were arrested on 22/6/1991 and accused No. 3 was arrested on 23/6/1991 and subsequently they were released on bail. On completion of investigation, the charge-sheet came to be filed and the case was committed on 30/8/1991 to the Sessions Court by the learned JMFC. Charge was framed on 31/1/1992. The prosecution examined in all six witnesses. Dr. Dinkar Gavit - PW 3 was the Medical Officer, who had conducted the post mortem and signed P.M. notes at Exh. 19. PW 4 - Jagjitsingh

Rudrasingh and PW 5 - Harischandra Valmiki who were the neighbours, turned hostile. PW 6 - Dinkar Bagal was the PSI attached to the Boisar Police Station and was the Investigating Officer. C.A. reports at Exhs.27 and 28 were also placed on record. Defence admitted the inquest panchanama at Exh.12, spot panchanama at Exh.13 and the panchanama for the recovery of clothes and articles from the dead body, Exh.14. Statement u/s 313 of Cr.P.C. of all the accused was recorded and accused Nos. 1 and 2 claimed that they were falsely implicated, whereas accused No. 3, while denying his involvement, stated that at the relevant time he was in his house at village Udapur, Taluka "Junnar, District" Pune.

4. The learned Additional Sessions Judge held that Sulochana died a homicidal death and accused No. 1 had subjected her to cruelty and the prosecution failed to prove that all the accused or any one of them had committed the murder of Sulochana on 20/6/1991 between 9.30 to 11 a.m. On the charge of causing cruelty to the deceased, the trial Court held that the evidence on record proved the prosecution case against accused No. 1, of causing mental cruelty to the deceased. Though the marriage of the accused No. 1 with the deceased was performed on 29/5/1989 and she died a homicidal death on 20/6/1991, during the said period of more than two years the accused No. 1 had cohabited with the deceased hardly for one month. Immediately after the marriage the deceased stayed with accused No. 1 at Bhoisar for about 25 days and thereafter she was sent by accused No. 1 to stay with his parents at village Udapur for about 7-8 months. Thereafter the deceased stayed with her parents for more than one year and was brought back to Bhoisar to join the accused No. 1 just six days prior to the date of incident. As per the trial Court all these circumstances went to show that accused No. 1 after his marriage with the deceased avoided her company and kept her in the house of his or her parents without any excuse and these circumstances established that the deceased was treated with mental cruelty by accused No. 1 and thus the offence u/s 498A of IPC was proved against him.

5. As per PW 3 - Dr. Dinkar Gavit who had conducted the post mortem on 21/6/1991 at about 12.30 p.m. and signed the PM notes at Exhibit 19, on the dead body of Sulochana the following external injuries were noted:

- (1) Contusion around mouth anteriorly and anterior aspect of neck size was not made out as the injury was diffused.
- (2) Abrasion over the dorsal aspect of both legs and toes.
- (3) Abrasions and contusion over the perineal region. The injury was diffused.
- (4) Body as a whole was burnt and charred at various sides.

He further stated that injury Nos. 1 to 3 were ante mortem and the burn injuries were post mortem for the following reasons:

- (a) There were no lines of redness

- (b) No vesicles.
- (c) No signs of inflammation.
- (d) Soot was absent in trachea.

The doctor further stated that he had noticed the following internal injuries:

1. Diffused hemorrhages in chest muscles and no fracture of bone. Larynx and trachea were congested. Even lungs were congested.

In the opinion of the doctor the cause of death was "cardio-respiratory failure due to asphyxia due to suffocation". He further stated there was a red sarree cotton piece gagged in the mouth of the dead body and the outer portion of the said cotton piece was burnt while the inner part was stained with blood and it was in the mouth when the dead body was brought to the hospital for post mortem. The cloth piece was round like a ball and half portion was inside whereas the remaining half portion was protruding outside. The doctor further clarified that the injuries which were ante mortem were possible by pressing the neck of a person by hand and they were also possible even if the neck was pressed by means of a rope or cloth. The blockage of air was possible by pressing the neck either by hand, rope or piece of cloth. The suffocation was possible by pressing the mouth in such a manner that the person cannot exhale or inhale the air and only a piece of cloth in the mouth will not cause suffocation as the nose is open and if the nose is closed with the piece of cloth in the mouth, suffocation could be caused. In his cross-examination he stated that the entire body was burnt but he could not state as to which parts of the body were charred. He denied the suggestion that the contusion marks will disappear in the case of burnt body and further suggested that such marks could disappear if the body was charred. He also stated that it was not possible to say whether the person was strangled either by hand, rope or cloth due to diffusion and the process of diffusion would start immediately. He also clarified that major portion of the body was not charred and he could not opine regarding the riger mortis due to charring of the dead body. In the post-mortem report at Exhibit 19 the notings made supported the oral depositions of PW 3. It went to show that the stomach of the deceased was empty and her mouth was gagged with cotton sarree pieces but teeth were in tact. This medical evidence which went unchallenged clearly proved that Sulochanabai was first killed by gagging her mouth and suffocation by strangulation or pressing of her neck and subsequently she was set ablaze to show that she committed suicide. The burn injuries were post mortem and, therefore, it would be necessary to examine as to who caused the homicidal death of Sulochanabai, while she was cohabiting with accused No. 1 and in the house of accused No. 2.

6. As per the trial Court the prosecution failed to prove its case that either accused No. 1 or accused No. 2 or both of them, in furtherance of their common intention, committed the murder of Sulochanabai on 20/6/1991 and the reasons set out by the trial Court are as under:

41. It is true that accused No. 1 was staying in the house of accused No. 2 as a paying guest for a long time. Even though there must be cogent and convincing evidence that they both were having illicit relations the mere suspicion is not sufficient for that purpose as it does not take the place of proof.

42. It is material inference that she was killed because the deceased was not paying the cash or giving the gold ornaments demanded by him. There is a substance that there was a demand from the side of the accused. However, the mere reason is not sufficient to hold that she was killed for the purpose. Similarly, merely a motive without further evidence is of no much use.

43. The other circumstance is that both the accused No. 1 and 2 were staying in the same house the deceased was found in the burnt condition. The deceased recently went to their place and therefore, there was no reason for anyone else to cause her death. It is also not the case that she was killed for any other reason by the outsiders. Therefore, it is submitted that the only persons that is the accused No. 1 and 2 would be benefited by her death, so they killed her in their house.

44. It is clear from the medical evidence that she was strangled and the cloth was gagged in her mouth and in order to screen the offence her body was burnt. There is also substance of truth that there was no reason for any outsider to cause her death. However, the said suspicion is not supported by any convincing evidence. It is well-settled that suspicion however, it may be strong does not take the place of proof.

46. It is true that reasonable inference therefore, can be drawn that her death might have been caused by the accused but in order to convict the accused the circumstances must be of such nature which leads to irresistible conclusion of the guilt of the accused. There is a long distance to travel between 'may' and 'must'. It is difficult to convict the accused on mere inference and surmises.

48. The death of Sulochana is brutal and the efforts were made to show that it is a suicide however for want of sufficient and cogent evidence, my hands are tied and, therefore, I have no option but to give the benefit of doubt to the accused. The point is, therefore, answered in the negative.

7. Having regard to the law laid down by the Supreme Court in the case of Tota Singh and Another Vs. State of Punjab, ; Ramesh Babulal Doshi Vs. State of Gujarat, ; Hari Ram and Others Vs. State of Rajasthan, and Chandrappa and Others Vs. State of Karnataka, regarding the powers of the appellate court while dealing with an appeal against the order of acquittal passed by the trial Court, the following general principles emerge:

(1) An appellate Court has full power to review, reappraise and reconsider the evidence on which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence

before it may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

(6) While reappreciating the evidence the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge but if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on wrong appreciation of evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal. Mere fact that the appellate court is inclined on reappreciation of evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below, will not constitute a valid and sufficient ground for setting aside the acquittal.

8. In the instant case the culpability of accused Nos. 1 and 2 is required to be considered on the backdrop of the fact that he approached the Bhoisar Police Station on the date of the incident and gave the first information in writing on the basis of which ADR No. 8 of 1991 came to be registered u/s 174 of Cr.P.C. at about 4.30 p.m. (Exhibit 23). He stated in the said written application that at about 11 a.m. he along with accused No. 2 and the daughter-in-law of accused No. 2 had gone to Avanti hospital and when all the three returned home at about 12.15 p.m., the house was noted to be locked from inside, there was no response from his wife, he tore off the plastic paper enclosing the window and noticed that the smell of human body burning was emanating from inside the house. He broke open the door and went inside, saw that his wife was lying dead in the toilet block near the kitchen in burnt conditions. He was not aware as to how she sustained the burn injuries and had no suspicion on any other third person causing burn injuries to his wife. Thus Exhibit 23 takes a plea of alibi contending that between 11 a.m. to 12.15 p.m. on 20/6/1991 while the

deceased was alone in the house, she sustained burn injuries and was found dead in the toilet block and he had no suspicion against anybody. The medical report on the other hand indicated that the burn injuries were post mortem and in fact Sulochana died due to cardio respiratory failure to due asphyxia caused by suffocation and some injuries were noted around her neck, mouth, legs and toes and these injuries were ante mortem.

9. In the case of *Swapan Patra v. State of West Bengal*, (1999) 9 SCC 242 the Supreme Court held that in a case of circumstantial evidence when the accused offers an explanation and that explanation is not found to be true, then the same offers an additional link in the chain of circumstances. Similarly in the case of *State of Maharashtra Vs. Suresh*, the Supreme Court reiterated the same principle and held that a false answer offered by the accused when his attention was drawn to a circumstance, render that circumstance capable of inculcating him and in such a situation false answer can also be counted as providing a missing link for completing the chain. In the case of *Anthony D'Souza and Others Vs. State of Karnataka*, a three-Judge Bench of the Supreme Court held that in a case of circumstantial evidence where an accused offers false answer in his examination u/s 313 of Cr.P.C. against the established facts, that can be counted as providing a missing link for completing the chain. In the case of *State of Rajasthan Vs. Kashi Ram*, the Supreme Court stated as under:

...The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon the facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

10. The prosecution had relied upon the evidence of PW 4 - Jagjitsingh and PW 5 - Harishchandra Valmiki who were the neighbours and both of them turned hostile. PW 6 - Dinkar Bagal was the IO and he stated before the trial Court that on 20/6/1991 the accused No. 1 gave information to the police station regarding the death of his wife and it was recorded at Exhibit 23 by Shri Pardeshi, PSI and thereafter he recorded the complaint of PW 1 - Laxman Gangaram Gholap

(Exhibit 9) on 22/6/1991 and based on the same C.R. No. I-68/91 came to be registered for the offences punishable u/s 302 and Section 498A read with Section 34 of IPC. As per the CA report at Exhibit 27 the partly burnt cloth pieces of the deceased had tested positive for kerosene residues and they were stained with blood group "A". The inquest panchanama at Exhibit 12 showed that it was drawn between 2.45 to 3.45 p.m. on 20/6/1991 in the house of accused No. 2. The dead body was found in the toilet block located on the western side of the kitchen in the house of accused No. 2. The deceased was in her menses and had discharged stool. The blood stains were noticed on the walls as well as the floor area and the mouth of the deceased was gagged by cotton pieces (round bundle like a ball). The spot panchanama at Exhibit 13 indicated that the toilet block was of 6 ft x 4 ft. 9 inches (outer side) and 3 ft. 6 inches x 4 ft. from inside. The house of accused No. 2 has four rooms and it has a rear door as well. Obviously the accused No. 1 and the deceased were occupying one of these four rooms. The water pipe was also lying on the floor and it had black spots. The roof of the toilet block had black smoke marks and it did not appear that it had any window. The window near the main door was closed by a plastic paper as has been stated by accused No. 1 in his written information at Exhibit 23.

The combined reading of Exhibits 12, 13 and 23 went to show that there was an additional door from the rear side of the house, there was no scope for the smoke or smell to be seen or felt outside the house and the burn injuries did not appear to be deep and fresh. Though the percentage of burn injuries has not been brought on record through the medical evidence, PW 3 clearly stated that the entire body was not charred. The evidence of PW 4 and PW 5 proved that accused No. 1 was staying in the house of accused No. 2 as the paying guest and he was seen along with accused No. 2 trying to break open the main door of the house which was bolted from inside. If the house was bolted from inside, who was the intruder / a third person who entered the house of accused No. 2 between 11 a.m. to 12.15 p.m. either from the front door or the rear door and killed Sulochana by gagging her mouth and causing the suffocation and then poured kerosene on her body and set her on fire and ran away? None of the two doors was seen open. As per the statement of accused No. 1 in Exhibit 23, he got up at 7.45 a.m., had his bath and was in the house till 11 a.m. He left the house at 11 a.m. along with accused No. 2 and her daughter-in-law, visited Avanti hospital and returned home at 12.15 p.m. None from Avanti hospital has been examined by the defence, nor Sunita, the daughter-in-law of accused No. 2 was examined by the defence. By lodging the written application at Exhibit 23 accused No. 1 had taken a specific stand that the inmates of the house were out from 11 a.m. and when they returned at 12.15 p.m., they found Sulochana dead with burn injuries. Thus the accused wanted to point out that Sulochana had died after 11 a.m. but before 12.15 p.m. Thus the following incriminating circumstances would go against accused No. 1:

(a) Though he was married for more than two years, he allowed his wife to stay with him intermittently for a total period of only one month. After marriage the

deceased stayed with accused No. 1 in the house of accused No. 2 for about 25 days. She was thereafter sent to stay with the parents of accused No. 1 at his village for about 6 to 7 months and thereafter she went and stayed with her parents. Just six days before the incident she was brought to Bhoisar by her bother.

(b) Admittedly, accused No. 1 was in the house upto 11 a.m.

(c) Accused No. 1, and accused No. 2 along with Sunita allegedly visited Avanti hospital between 11 a.m. to 12.00 noon and returned at 12.15 p.m. to the house. However, there was no evidence adduced by the accused to prove that they were out of the house between 11 a.m. to 12.15 p.m.

(d) The house was locked from inside and accused No. 1 tried to open it by breaking the inner latch. He removed the plastic paper of the window and noticed from outside that smoke of human body being burnt was emanating from inside the house. No efforts were made to enter the house from the rear door. No evidence to show that the rear door was also bolted / locked from inside.

(e) No intimation was given to the parents of the deceased regarding her unnatural death and it was only at 4 p.m. on 21/6/1991 that a message was received by PW 1 from Ottur police station that Sulochana was dead on 20/6/1991.

(f) Even after the post-mortem was performed at about 12.30 p.m. on 21/6/1991, the accused did not take possession of the dead body of his wife.

(g) Sulochana was shown to have died on account of burn injuries but in fact she was killed by gagging her mouth with cotton pieces and by causing suffocation closing her nose and thereafter kerosene was poured on her body and the dead body was set on fire. It was not a suicidal death. Accused No. 1 had filed report with the police (Exhibit 23) on 20/6/1991 and this was done deliberately.

(h) Neither the son nor the daughter-in-law of accused No. 2 was examined by the defence to prove that the deceased was alone in the house and someone else had entered the house and killed her. On the contrary accused No. 1 in his written report at Exhibit 23, had clearly stated that he did not suspect anybody who could have caused the death of his wife. 25

(i) The deceased had come to stay with her husband after about two years of her marriage and just before six days. She could hardly be known to any outsider so as to develop any animosity against her or any motive to kill her in broad day light and subsequently to set her on fire so as to screen the offence punishable u/s 302 of IPC. In these circumstances, the possibility of an outsider causing the murder of Sulochana were ruled out.

(j) The accused had purportedly seen Sulochana dead at about 12.45 p.m. but the accused No. 1 had lodged his report at Exhibit 23 at about 4 p.m. on 20/6/1991. Thus the police were not on the scene for about four hours after the

incident and as per the evidence of PW 6, the investigation was set in motion only after PW 1 lodged his complaint and the FIR was registered at Exhibit 19 on 22/6/1991.

(k) Though the post mortem was conducted by PW 3 between 12.30 to 1.30 p.m. on 21/6/1991, the police did not take any steps to cause investigation in the homicidal death of Sulochana until PW 1 approached the Bhoisar police station on 22/6/1991 and his complaint was recorded.

11. During the course of hearing of this appeal all the above circumstances were put to Shri Mundargi, the learned Counsel for the accused and in reply thereto he submitted that though the house of accused No. 2 had one more door on the rear side, the spot panchanama at Exhibit 13 did not indicate whether the said door was open and, therefore, merely on the basis of the presumptions it cannot be concluded that the accused had made their exit of the house from the rear side door after causing murder of Sulochana. As per Shri Mundargi it was for the prosecution to complete the chain of circumstances which would unerringly point out the guilt of the accused and the burden of proving the circumstances under which Sulochana was murdered could not be shifted on the accused. He urged that the order passed by the trial Court acquitting the accused from the offences punishable under Sections 302 and 201 of IPC was required to be confirmed.

12. The trial Court noted that Sulochana was strangled and her mouth was gagged and in order to screen the offence her body was set on fire. It also found substance of truth that there was no outside element to cause Sulochana's death. Reasonable inference could be drawn that her death might have been caused by accused but in order to convict them, the circumstances must be of such a nature which would lead to an irresistible conclusion of the guilt of the accused. The trial Court also held that Sulochana was murdered brutally and subsequent efforts were made to show that it was a suicide. As per the trial Court, mere suspicion pointing towards the guilt of the accused was not sufficient to hold that either of them or both of them had caused the murder of Sulochana. In our considered opinion, the trial Court failed to take into consideration the above mentioned incriminating circumstances against the accused and more particularly accused No. 1 in causing the murder of his wife. The trial Court, having held the accused No. 1 guilty of the offence punishable u/s 498A of IPC, did not scrutinise the prosecution for an offence punishable u/s 304B of IPC, against accused No. 1, though such a charge was not framed by it. The investigation was very tardy and so was the trial conducted by the prosecution but these deficiencies cannot be allowed to make the criminal justice a casualty. In the case of State of Karnataka Vs. K. Yarappa Reddy, the Supreme Court held, ...even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officer's ruling the roost. ... Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that

the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

13. The medical evidence as came before the trial Court through PW 3 and the post mortem notes at Exhibit 19 falsified the report at Exhibit 23 submitted by accused No. 1. His intention was clear and that is to screen the offence of causing murder of Sulochana and to show that she committed suicide by pouring kerosene on her body and setting herself on fire. If she wanted to commit suicide, she would not have gone to the toilet block and poured kerosene on herself. The inquest panchanama at Exhibit 12 as noted earlier, went to show that she was set on fire while she was in the toilet block and in fact she had discharged stool. Inquest panchanama (Exhibit 12) and the spot panchanama (Exhibit 13) would also indicate that Sulochana was done to death by gagging her mouth and by suffocation and after some time kerosene was poured on her body and was set on fire by lighting a matchstick so as to show that she committed suicide while she was alone in the house between 11 a.m. to 12.15 p.m. Even in such an eventuality, the intruder would not look for a kerosene can, spray the kerosene on her dead body and set her on fire and then make his exit from the road behind the house. At the same time, there has to be some motive or plan behind such a crime by a third person and the deceased was hardly known to any outsider. Accused No. 1 had clearly stated in Exhibit 23 that he did not suspect anyone. It is nobody's case that the door behind the house was open. All these circumstances undoubtedly point out and prove the culpability of accused No. 1 in causing the homicidal death of Sulochana and to screen the offence he subsequently poured kerosene on her person and set the body ablaze by lighting a matchstick. Accused No. 2 helped him in screening the offence and it has come in the evidence of PW 4 - Jagjitsing that accused Nos. 1 and 2 were seen by him at about 12.15 p.m. while trying to break open the main door. The trial Court did not consider these aspects and merely on the ground that there was no evidence beyond doubt that death of Sulochana was caused by the accused, it acquitted accused No. 1 from the charge u/s 302 of IPC. When the murder had taken place within the four-walls and deliberate attempt was made to screen the offence, it was necessary for the trial Court to take the aid of Section 106 of the Evidence Act and examine whether the accused had discharged their burden to explain the facts which were within their special knowledge. The burden of proving the circumstances leading to the murder of Sulochana by suffocation was upon accused No. 1 and he did not discharge the same. The accused No. 2, by remaining quiet, has assisted accused No. 1 in screening the offence, though there is no evidence to point a finger against her that she had joined accused No. 1 in causing his wife's homicidal death. The trial Court has rightly rejected the prosecution case that there was illicit relationship between the two accused. The evidence indicated that accused No. 1 and the son of accused No. 2 were working in the same factory. By filing a written report at Exhibit 23, the accused No. 1 was required to discharge his burden to prove that someone else had caused the murder of his wife while she was alone in the

house and he failed to discharge the said burden. This is an additional link in the chain of circumstances placed before the trial Court by the prosecution. While we are hearing these appeals filed by the State Government, the order of conviction and sentence passed against accused No. 1 u/s 498A of IPC has reached finality.

14. The view taken by the trial Court in acquitting the accused under Sections 302 and 201 of IPC cannot be termed as a possible view. On the other hand, it is based on wrong appreciation of the circumstances brought on record by the prosecution. When the young bride met with homicidal death at her matrimonial home and while in the company of her husband, it was not permissible for the trial Court to jump to the hypothesis of giving benefit of doubt to the accused. 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 would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence 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. 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 of the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Where an offence like murder is committed in secrecy inside a house, 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. Where an accused is alleged to have committed 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 *Trimukh Maroti Kirkan Vs. State of Maharashtra*, . In *Ganeshlal Vs. State of Maharashtra*, 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 u/s 313 of 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.

15. In the instant case, we have no doubt in our mind that the culpability of

accused No. 1 in causing the homicidal death of his wife has been duly established by the incriminating circumstances stated hereinabove.

16. The trial Court had not charged the accused for an offence punishable u/s 304B of IPC and, therefore, it was contended by the learned APP that the accused No. 1 ought to be held guilty for an offence punishable u/s 302 of IPC. The ingredients of Section 304B of IPC are as under:

(1) The death of the woman is caused by any burns or bodily injury or in some circumstances which is not normal.

(2) Such death occurs within 7 years from the date of her marriage.

(3) The victim was subjected to cruelty or harassment by her husband or any relation of her husband.

(4) Such cruelty or harassment should be for or in connection with demand of dowry, and

(5) It is established that such cruelty and harassment was made soon before her death.

In the instant case the trial Court accepted the evidence of PW 1 - Laxman Gholap, the brother of the deceased and concluded that a demand of Rs. 20,000/- was made by the accused from the father of the deceased so as to make provision for separate residential premises and on that count the deceased stayed with her in-laws or with her parents for almost two years. It was PW 1 who had brought the deceased to the house of accused No. 2 and so as to cohabit with accused No. 1 just six days prior to the date of the incident and the father of the deceased had no capacity to pay the amount of Rs. 20,000/-. The trial Court has held accused No. 1 guilty for the offence punishable u/s 498A of IPC by observing that he had caused mental cruelty to the deceased. Though the trial Court did not frame the charge for the offence punishable u/s 304B of IPC, we do not find any impediment in holding accused guilty for the offence punishable u/s 304B of IPC. His unnatural conduct in not sending the news of his wife's death to her parents who were in the neighbouring district and the fact that his wife met with an unnatural death just within six days of her stay in the company of accused No. 1 and within a period of seven years of marriage would lead to the presumption u/s 113B of the Evidence Act. In our opinion, it would be safe to convict the accused No. 1 u/s 304B instead of Section 302 of IPC.

He has been on bail during the last about 19 years and the minimum sentence for the offence punishable u/s 304B of IPC is seven years and the maximum sentence is for life. Accused No. 1 filed his report at Exhibit 23 and tried to screen the offence and, therefore, this will be an additional circumstance which is required to be taken into consideration.

17. In the premises, Criminal Appeal No. 472 of 1992 is hereby allowed partly. Accused No. 1-Baban Kisan Kulvade is hereby convicted for the offences

punishable u/s 304B of IPC and u/s 201 read with Section 34 of IPC. He is sentenced to suffer RI for a period of ten years for the offence punishable u/s 304B of IPC and to pay a fine of Rs. 1000/- in default thereof to suffer RI for three months. He is also sentenced to suffer RI for two years for the offence punishable u/s 201 read with Section 34 of IPC. Both the sentences to run concurrently and accused No. 1 shall be entitled for set off, if any, u/s 428 of Cr.P.C. Accused No. 2-Smt. Shantibai Shrichand Kshyatriya is hereby held guilty for the offence punishable u/s 201 read with Section 34 of IPC. She is sentenced to suffer SI for two years. She will be entitled to set off, if any, u/s 428 of Cr.P.C.

The bail granted to the accused is hereby cancelled and they shall surrender to the concerned police station forthwith to suffer the sentence. We direct the District Superintendent of Police, Thane (Rural) to take appropriate steps to take the accused in custody and admit them to the concerned jail to undergo the sentence. A compliance report shall be submitted by the District Superintendent of Police, Thane (Rural) to the Sessions Court at Thane along with a copy to the Registrar (Judicial) of this Court within four weeks from today. A copy of this order shall be forwarded to the District Superintendent of Police, Thane (Rural) forthwith by the Registry.

18. As Criminal Appeal No. 472 of 1992 has been allowed by us, we do not see any reason, at this point of time, to enhance the sentence awarded to accused No. 1 by the trial Court for the offence punishable u/s 498A of IPC. Hence Criminal Appeal No. 446 of 1992 must fail and the same is hereby dismissed.