conspiracy as defined under sections 405, 415 and 120 A of the IPC. On the contrary, the averments in the complaint reflect that certain differences between the parties have culminated in civil dispute. Consequently, the present case, meets all the parameters laid down by the Apex Court in ***M/s. Indian Oil Corporation Vs. M/s. NEPC India Ltd. & Ors and V.Y. Jose and Anr. (supra) as well as M/s. Pepsi Food Ltd. Vs. Special Jud. Magistrate & Ors. AIR 1998 SC 128.***

21. Under such circumstances, compelling the accused to face criminal prosecution, would be nothing but abuse of process of law. Hence, this is a fit case to invoke the powers under section 482 of the Cr.P.C. to secure the ends of justice. In view of discussion (supra) the applications are allowed. The impugned order dated 8th February, 2012 passed in C.C. No.36/SW/2009 is quashed and set aside.

Result:- Applications allowed.

ABC 2016 (II) 380 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(A.I.S. Cheema, J.)
Criminal Appeal No.602 of 2014
Decided on 12 August, 2016
Aurangabad Bench

SHRI ADHAR RAGHO PATIL - Appellant(s).

Versus

STATE OF MAHARASHTRA - Respondent(s).

Law Covered:- (A) Indian Penal Code, 1860 — Section 307 — Conviction under — Seizure Officer — Admission by — the clothes of the accused were in sealed condition and that they had not been seized in his presence— Independent witnesses — non examination of — Defective investigation — Discrepancies in Medical Certificate— Held, prosecution failed to prove its case beyond reasonable doubt — Acquittal. (Para 16, 17 & 19)

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Medical Certificate — Nature of injury — not mentioned if the injuries were grievous or simple—fatal to prosecution. (Para 16)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Medical examination —Case paper —non production before the Court — fatal to prosecution. (Para 16)

(D) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Medical Certificate — Discrepancies in — Date of operation — not mentioned — Date of admission — not shown — Nature of stitches & age of patient — not mentioned — Held, basic evidence on the basis of which the injury certificate was issued, did not come before the Court. (Para 16)

(E) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Seizure— Officer who seized the articles — non examination of — fatal to prosecution. (Para 17)

(F) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Dispatch of articles to Chemical Analyzer — Carrier — non examination of — fatal to prosecution. (Para 17)

(G) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Blood group — Report of Chemical Analyser — inconclusive regarding the grouping — fatal to prosecution. (Para 17)

(H) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Defective Investigation — Effect of — Held, the investigation does not appear to have been fair and impartial and genesis of the incident has not come clearly on record — fatal to prosecution. (Para 19)

(I) Code of Criminal Procedure, 1973 — Sections 482 — Inherent powers of the High Court — Invoking of — on the basis of compromise in non compoundable offence — Wife entered into compromise subject to the accused-husband who was in jail transfers properties in her name and in the name of her son — Held, It clearly shows that the object of compounding is not to maintain cordial relationship— What appears is that as the accused is in jail, an advantage is being taken — Held, such compromise cannot recorded and acted upon— Indian Penal Code, 1860 — Section 307 — Criminal Application No.2206/2016 —referred. (Para 21)

(J) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Previous dispute — Victim had grievances against the accused due to property — Held, it is risky to rely on uncorroborated evidence of the victim regarding actual assault — Indian Penal Code, 1860 — Section 307. (Para 22)

Facts:- *It was alleged in the F.I.R. that the accused was addicted to liquor and his wife, the victim, had been telling him to leave the addiction,*

but the accused used to abuse and beat her. 8 days before the F.I.R., accused had beaten victim under influence of liquor and she came to her brothers. On the relevant day, the accused came there and told the victim to come home along with him. On her refusal he got angry and hit her with a fabricated dagger on the stomach, chest, and the hand and caused grievous injury.

The trial Court considered the oral and documentary evidence and accepted the case of prosecution to convict the accused. It was observed by the honourable Bombay High Court that the investigation does not appear to have been fair and impartial and genesis of the incident has not come clearly on record. It was also observed that independent witnesses have also not been examined though must have been available. The criminal appeal was allowed and the accused was acquitted.

Law of relief:- Non production of basic evidence, on the basis of which the injury certificate was issued, is fatal to prosecution.

Held:- The evidence of P.W.2 is that, after the incident they had taken the victim to hospital. What appears is that, she was taken to hospital at Samarth Cancer Laproscopy and Maternity Hospital, Deopur, Dhule. It was a private hospital. P.W.6 Shriram Lotan was suggested that, the victim was taken to the said hospital as the doctor was well acquainted with him. The witness denied the suggestion. If the evidence of the doctor Tushar Patil is perused, it can be seen that the only medical evidence brought on record is the medical certificate dated 11.3.2013 for medical examination done on 5.3.2013. This doctor did not mention in the certificate if the injuries were grievous or simple. He did not bring the case papers. He claimed that, the same were given to the patient. Substance is that, the case papers did not come before the Court. He accepted that, the certificate did not show as to when the operation was performed. It does not show when the patient was admitted in the hospital. It did not show as to what were stitches given to the patient or even the age of the patient. Thus, the basic evidence on the basis of which the injury certificate Exh.37 was issued, did not come before the Court. (Para 16)

The clothes of the accused and knife were seized by A.P.I. Pawar. A.P.I. Pawar was not examined. Clothes of the victim were seized by P.W.9 Ashok Bagul. He admitted in cross-examination that, the clothes of the accused were in sealed condition and that they had not been seized in his presence. He appears to have sent the clothes of the accused as also the victim as well as the knife to Chemical

Analyser by letter dated 18.3.2013 vide letter Exh.42. The Carrier was not examined. Apart from this, although the C.A. report regarding the clothes shows that the clothes of accused as well as the victim had blood group "O", the C.A. reports regarding the blood group of accused as well as the victim were inconclusive regarding the grouping. Thus, this evidence is not much helpful. (Para 17)

Cumulative effect of above discussion is that, the investigation does not appear to have been fair and impartial and genesis of the incident has not come clearly on record. Independent witnesses have also not been examined though must have been available. (Para 19)

At this stage, reference needs to be made to the order of this Court, dated 4.5.2016. Criminal Application No.2206/2016 was filed for compounding of the offence, but after hearing the compromise application No.2206/2016, which had been filed along with Criminal Application No.2500/2016 for bail, I had observed in para No.3 of the order as under :

> "3. The appellant- accused has been convicted under section 307 of the Indian Penal Code. Section 307 of the Indian Penal Code is not compoundable but in view of the judgment of the Hon'ble Supreme Court in the case of Gian Singh (Supra), in certain contingencies, this Court can invoke inherent powers. In the present matter, however, the compromise, on the face of it, shows that the wife has entered into compromise subject to the husband who is in jail transfers two properties in her name and in the name of her son. There is another condition put that original accused shall not enter the village Nikumbh where the wife resides. It clearly shows that the object of compounding is not to maintain cordial relationship. On the face of record, what appears is that as the accused is in jail, an advantage is being taken. At least, that is the feeling I get seeing the documents and hearing the counsel. I do not think that such compromise can be recorded and acted upon. Consequently, I reject Criminal Application No. 2206/2016." (Para 21)

In the hind-sight, my hunch appears to have been right. Now when I have appreciated facts of the present matter, and when I have come to the conclusion that on the merits of the matter itself the conviction cannot be maintained, I find that, my observations on

4.5.2016 regarding the feeling I got from the documents and on hearing the counsel was not out of place. It does appear that, victim has grievances against her husband accused due to property. In cross-examination, such defence was put up. I find it risky to rely on her uncorroborated evidence regarding actual assault. (Para 22)

Counsel:- ***For Appellant(s):*** *Shri R.S. Shinde, Advocate holding for Shri N.N. Desale, Advocate.*

For Respondent(s): *Shri K.S. Patil, A.P.P.*

JUDGMENT

A.I.S. CHEEMA, J.: - 1. The appellant - original accused has been convicted under Section 307 of the Indian Penal Code, 1860 (I.P.C. in brief) and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5000/- and in default to suffer simple imprisonment for three months.

2. The case of prosecution in short is as follows :

(a) Complainant Pandit Lotan Patil (P.W.2) filed F.I.R. Exh.24 on 5.3.2013 at about 3.05 p.m. at Songir Police Station, District Dhule. He claimed that, he was residing at Nikumbhe, Taluka and District Dhule along with his family. He has sister Jaywantabai Adhar Patil (P.W.1), the wife of accused, who resides at Karle, Taluka Sindkheda. His sister has 4 daughters and 2 sons. 2 daughters and 3 sons (?) are already married. Mohan, son of accused has been married to Sunanda, the daughter of brother of complainant namely (P.W.6) Shriram Lotan Patil. As per the F.I.R., accused was addicted to liquor and victim Jaywantabai had been telling him to leave the addiction, but the accused was abusing and used to beat her. Getting fed up, the victim was coming to her brothers at Nikumbhe and staying there and used to tell about her trouble. They used to explain to the accused not to trouble the victim in such age. 8 days before the F.I.R., accused had beaten victim under influence of liquor and victim Jaywanta came to Nikumbhe and was staying with Shriram Lotan, the brother of complainant. On 4.3.2013, accused came to Nikumbhe village and stayed at the place of one Karbhari Patil. On 5.3.2013, at about 10.00 a.m., ladies of the family of Shriram Lotan Patil and the victim were rolling Papad. At that time, the accused came to the house of Shriram Patil (P.W.6) from the back side door, into the house and told the victim to come along home with him. He was insisting for the same. At that time, the victim told him that as long as he does not give up

liquor, she will not come with him. Because of this, accused got angry and removed from his pocket "Banawati Sura" (i.e. fabricated dagger) and hit her on the stomach, chest, and the hand of the victim and caused grievous injury. Because of the noise, the brothers and other relatives reached there running and caught the hands of the accused and immediately sent the victim for treatment to Dhule. The complainant and his nephew Chatur Patil, Bhika Vithal Patil, Prakash Shankar Patil, Himmat Dayaram Patil had brought the accused to the Police Station.

(b) The F.I.R. with such contents was registered and P.S.I. Ashok Bagul took up the investigation. He went to the spot and did panchanama Exh.30. Pieces of bangles were seized from the spot. Statements of witnesses were recorded. The injured had been admitted in private hospital. P.W.9 P.S.I. Ashok Bagul moved the doctor with letter Exh.41, but the doctor endorsed that the patient was not in a position to make statement. He seized the clothes of the victim at the hospital vide panchanama Exh.26. The accused was arrested on the same day. Later on, medical certificate of the injured was obtained from Dr. Tushar Patil (P.W.8). The knife and clothes of the accused were also seized vide panchanama Exh.28 on 5.3.2013 itself. After completing the investigation, the charge sheet came to be filed.

3. Charge was framed against the accused. The accused pleaded not guilty. His defence is of denial. Cross-examination and statement under Section 313 of Code of Criminal Procedure, 1973 shows his defence. According to him, his wife, the victim was insisting him to transfer property standing on his name, in the name of the sons. There was dispute regarding the land. One day before incident, he had gone to village Nikumbhe and stayed with relative Karbhari Patil. On next day, when he had gone to the bus stand, P.W.6 Shriram Lotan Patil, his brother-in-law asked him to come to their place. At that place, the 5 brothers raised the subject of landed property. Accused opposed that he will not transfer the property during his life time. P.W.6 Shriram Patil abused the accused and removed Sura and hit him on his stomach. When the victim tried to rescue the accused, and accused started running, the victim may have fallen and sustained injury. P.W.2 Pandit Lotan came behind the accused and told that he will take the accused to the hospital, but took him to the police station. Police was not ready to record his complaint.

4. In the trial Court, prosecution brought on record evidence of 9 witnesses. The trial Court considered the oral and documentary evidence and accepted the case of prosecution to convict the accused.

5. It has been argued by the learned counsel for the appellant - accused that the evidence clearly shows that there was dispute regarding property between the accused and his wife. The brothers P.W.2 Pandit and P.W.6 Shriram had reached the spot only after the incident. The ladies who were there along with the victim for rolling of Papad were independent witnesses, but they were not examined. The witnesses were not clear as to where the incident took place. It was unlikely that the 11 inch long instrument referred at places also as knife could have been carried by the accused in his pocket as alleged by the prosecution. The evidence shows the witnesses deposing that the accused had gone there to ask the victim wife to come along with him to his home. It is clear that the intention of the accused was to take the victim home and it cannot be said that he had intention to murder the victim. Thus, according to the counsel, it is not a case where attempt to commit murder could be concluded. The record showed that, even accused had injuries, but the prosecution did not bring any explanation as to how the accused suffered injuries. According to the counsel, what exactly happened at the time of incident was not clear and according to the counsel, the appellant-accused is at present more than 60 years of age and is in custody for more than 3 years. According to the counsel, at the most offence under Section 326 of IPC could be said to be there and leniency is required to be taken with regard to the accused as regards sentence. The counsel referred to the orders of this Court dated 4.5.2016 where the request for compounding of offence was rejected. According to the counsel, the parties have settled their differences and wish to cohabit together.

6. Against this, the learned A.P.P. submitted that, the evidence of various witnesses clearly proved the offence. The accused had gone to the spot with the knife and there was no grave and sudden provocation and thus, according to the A.P.P., offence under Section 307 was proved. The knife was hit on vital part of body. P.Ws.2 and 6 were in the vicinity of the spot and reached almost immediately. According to the A.P.P., the accused had gone to the doctor only at about 4.30 p.m. after inflicting injury on himself and thus, according to the A.P.P., the medical certificate in favour of the accused should be ignored.

7. I have gone through the evidence and the impugned judgment and reasons recorded by the trial Court for convicting the accused. In this regard, it would be appropriate to first refer to the evidence of P.W.1 Jaywanta herself, who is the victim. Her evidence is that, the accused used to ill-treat her under influence of liquor and at the relevant time, she had come to the place of her brother Shriram Lotan (P.W.6). Her evidence is that, as accused used to give illtreatment under influence of liquor and so she had come to the place of her brother. She deposed that, her other brother Pandit Lotan (P.W.2) is adjacent resident of Shriram Lotan. According to her, the incident took place in the house of Shriram Lotan and at that time, one Dagabai, Sunitabai were there who were rolling Papad with her and Sunandabai, her daughter-in-law was also there. The F.I.R. shows that, this Sunanda is daughter of P.W.6 Shriram, who is the brother of this victim. Thus, her son was married to daughter of her brother. Now the cross-examination of the victim shows that, there has been no earlier complaint filed regarding the alleged conduct of accused of consuming liquor. The victim admitted that she had land dispute which is pending in the Court. She deposed that, the said land is in the name of accused, which they are cultivating although name of accused has been entered in the cultivation column. She admitted that, her both sons were residing separately and that the sons do not have agricultural land and house property in their possession. She accepted that, the house property is in possession of the accused as well as the agricultural land. She admitted that, her both sons were asking for shares from the property and were demanding the same. No doubt the victim volunteered in the cross-examination that the demand had been raised by the sons "at present". She may be wanting to say that when she had come up for evidence, at that time, such demand had come up. Her cross-examination shows that, one of the son is married to the daughter of her brother and she had good relations with her brothers. She admitted in further cross-examination that, the accused had come to take her and was forcing her to come along with him.

8. Thus, although the victim tried to say that, the dispute regarding the property was arisen when she had come up for evidence, the fact remains that, the record does show that one of her son is married to the daughter of P.W.6 Shriram. Although admittedly the dispute regarding landed property had arisen in her family and although the complainant P.W.2 Pandit Lotan claimed that

the sister used keep coming back making grievances regarding her married life, in evidence the complainant P.W.2 Pandit was not ready to accept that there was quarrel in the family of his sister and her sons with regard to land with the accused. Suggestions put to him that due to such dispute the accused was falsely involved, were denied by this complainant. Even P.W.6 Shriram denied the suggestions that there was dispute between the victim and her children vis-a-vis accused about landed property. Thus, although the victim admitted that there was dispute, her brothers P.Ws.2 and 6, who are the only witnesses examined to prove the incident to corroborate the victim have avoided these questions.

9. Coming back to the incident and the evidence of P.W.1 Jaywantabai, she claimed that, the accused came in the house from back side door and asked her to come along with him, but she said that she will come only if he stops consuming liquor. Her evidence is that, the accused got annoyed and with the help of Sura, hit on her stomach and left hand near elbow and on palm and she suffered injury. According to her, she became unconscious and gained consciousness only in the hospital at Dhule. She did not identify the Suri (Article 1) in the Court claiming that it was suddenly drawn. To corroborate her, prosecution examined P.W.2 Pandit. He claims that, at the relevant time, he was in his house and his brother Shriram Lotan resides in the adjoining house, where, according to him, the ladies were rolling Papad. He deposed that, the accused came to the house from back side door and was saying that his sister should come along with him at the village and when his sister said that she will not come till he leaves consuming liquor, there was a quarrel and accused took out Sura and gave its blow on stomach, chest and hand of the victim. This part of the evidence of this witness is clearly hear-say as this witness further deposed that his sister shouted because of which he went there and according to him, he snatched the Suri from the hands of the accused. Even his F.I.R. shows that, the brothers and other relatives ran to the spot only after hearing shouts.

10. P.W.6 Shriram Lotan has wavered regarding the incident. Initially he deposed that the incident took place in the house of P.W.2 Pandit Lotan. The evidence happened to be deferred and after it was resumed, he corrected himself to depose that the incident took place in his own house. He then deposed as if the incident took place in his presence and he claimed that the accused took out dagger from his Kopri and hit the victim on her chest, stomach and hand. Then he

deposed that, his sister shouted, because of which they rushed there and snatched the dagger from the hands of the accused. This witness, in the cross-examination, claimed that there is Ota to the house of his brother Pandit. He deposed that, he was in his own house and at the relevant time he was on the Ota of his own house. He deposed that, the Ota was admeasuring 6-7 ft. in length and also width. He deposed that, he could not say how many ladies were rolling Papad there. Although he claimed that, he rushed to the spot only after hearing the shouts, he still wanted to insist that he saw accused causing injury to his sister by means of dagger.

11. Reading the F.I.R. along with the evidence of P.W.2 Pandit and his brother P.W.6 Shriram, it does not appear that, they were present at the time of actual assault. Their evidence at the most is that they reached the spot after shouting by the victim. There is no reason why the State did not examine any of the other ladies who were there rolling Papad along with the victim like Dagubai and Sunitabai. This was necessary looking to the fact that the relations between the accused and victim had strained. According to victim, they were strained because the accused was addicted to liquor while as per the accused, they were strained because of the property dispute, which fact the victim is also accepting.

12. The victim claimed that, by knife she was hit on her stomach, left hand near elbow and on the palm. The F.I.R. claims that, she was also hit on the chest by knife and caused injury. P.W.2 Pandit and P.W.6 Shriram both claimed that the victim was also hit on the chest. The evidence of P.Ws.2 and 6 as well as the F.I.R. does not match with the evidence of the victim herself, who did not depose about the being hit on the chest. The evidence of P.W.8 Dr. Tushar Patil also does not show that the victim had injury to the chest.

13. The evidence of P.W.2 Pandit, the complainant read with the F.I.R. is that, they caught hold of the accused on the spot itself at the time of incident and took him along to the police station. P.W.2 has deposed that, he had carried the Suri or knife with him when taking the accused to the police Station. Although the evidence is that, the accused was taken along to the police station along with the said knife, ,the police did not arrest the accused when offence was registered at 3.05 p.m. vide Crime No.14/2013. The evidence of P.W.7 Panch Chandrakant shows that, the accused was arrested only at about 7.55 p.m. of 5.3.2013. The witness claimed that, at that time, the

accused had an injury to his right side of stomach, which had been bandaged. The prosecution did not bring on record, but the accused obtained document under Right to Information Act, which related to his own medical examination. The accused produced the said document at the time of his statement under Section 313 of the Code of Criminal Procedure and the medical case paper Exh.58 shows that the accused was examined at 4.30 p.m. of 5.3.2013 by Doctor. The history of alleged assault was recorded as at 10.00 a.m. of 5.3.2013. The injury is stated to be C.L.W. on epigastric region of the middle. Of course, in the photo copy, which the accused got under the Right to Information Act, in front of C.L.W. word "himself" was added putting it in bracket. The evidence of P.W.7 is that, the accused had an injury to the right side of his stomach. The arrest panchanama Exh.35-A refers to this injury to the stomach and also adds that there was another injury to the right hand little finger. The arrest panchanama records that it was self inflicted injury but no basis for the statement is given. If the accused had been caught hold of by P.Ws.2 and 6 and others on the spot itself and had been taken along to the police station, there is no evidence coming from any witness as to how, when and where the accused suffered the injury. It is neither the evidence that in the course of the incident, the accused got injured accidentally or otherwise, nor it is the evidence that at the time of incident or when the accused was taken to the police station, he tried to hurt himself.

14. From the evidence of P.W.4 Hiraman, the nephew of P.W.1, prosecution proved Exh.28, panchanama of seizure of knife and clothes of the accused between 3.30 p.m. to 4.00 p.m., on 5.3.2013. However, his arrest has been shown only at 7.50 p.m. vide Exh.35-A and the medical evidence Exh.58 is that, the accused was examined at 4.30 p.m. The investigating officer did not investigate nor bring on record how, when and where the accused suffered the said injury to his own stomach and his finger. The seizure of knife and clothes vide panchanama Exh.28 were clearly before the arrest of accused. If the accused was already in the grip of witnesses and was handed over to the police at the time of filing of F.I.R., such delays are not explained and how accused got injured is not explained.

15. The investigation gets further clouded when spot panchanama Exh.30 is perused. The spot panchanama Exh.30 claims that, it was prepared on 5.3.2013 between 3.45 p.m. - 4.30 p.m. at village Nikumbhe and that the spot was shown by the complainant

Pandit Lotan Patil. But then, the evidence of P.W.4 Hiraman shows that the police prepared seizure panchanama Exh.28 between 3.30 p.m. - 4.00 p.m. of 5.3.2013 at Songir Police Station. In cross-examination, P.W.4 admitted that, when such panchanama was being prepared, P.W.2 Pandit Lotan was there at the police station. Thus, within 3.30 p.m. to 4.00 p.m., as per P.W.4 Hiraman, P.W.2 Pandit Lotan was at the Police Station, Songir, but as per the spot panchanama done at Nikumbhe between 3.45 p.m. - 4.30 p.m., the same P.W.2 Pandit Lotan was shown at the village.

16. The evidence of P.W.2 is that, after the incident they had taken the victim to hospital. What appears is that, she was taken to hospital at Samarth Cancer Laproscopy and Maternity Hospital, Deopur, Dhule. It was a private hospital. P.W.6 Shriram Lotan was suggested that, the victim was taken to the said hospital as the doctor was well acquainted with him. The witness denied the suggestion. If the evidence of the doctor Tushar Patil is perused, it can be seen that the only medical evidence brought on record is the medical certificate dated 11.3.2013 for medical examination done on 5.3.2013. This doctor did not mention in the certificate if the injuries were grievous or simple. He did not bring the case papers. He claimed that, the same were given to the patient. Substance is that, the case papers did not come before the Court. He accepted that, the certificate did not show as to when the operation was performed. It does not show when the patient was admitted in the hospital. It did not show as to what were stitches given to the patient or even the age of the patient. Thus, the basic evidence on the basis of which the injury certificate Exh.37 was issued, did not come before the Court. If Exh.37 is perused, it claimed that, the patient was admitted on 5.3.2013 and time given is as 10.30 a.m. If one was to go by this time, it needs to be kept in view that the case of the prosecution itself is that the incident started at about 10.00 a.m. at the village Nikumbhe when it is claimed that the accused had entered the house of P.W.6 from the back side. For the incident to take place, some time would have been required at Nikumbhe itself and then it would take some time to reach the hospital at Dhule. In the record, including concerned column in the F.I.R. in format, the distance from the spot of incident to the Police Station, Songir is not recorded. However, looking to the fact that Nikumbhe is separate village and Songir Police Station and the hospital are at difference spots, at least some time factor would be consumed. At this stage, even if it was to be stated that, time may have been stated on the basis

of surmises, still there is further material to show that the genesis of the incident has not come on record. In the cross-examination of P.W.8 Dr. Tushar, he was confronted with an order which had been issued by P.S.O., Deopur Police Station, in whose jurisdiction the hospital was situated. The order was to Police Head Constable Thakur mentioning that, this Dr. Tushar Patil had on phone informed that patient Gayabai Adhar Patil had on that day of 5.3.2013, in the morning at about 8.30 a.m., at residential house, been hit by knife by husband on stomach and hand and had been admitted by her brother in the hospital at 11.35 a.m. and statement of the patient should be recorded. In this document Exh.38, there is overwriting with reference to the name of the patient by applying white ink. The name corrected is seen as Gayabai. The injury certificate Exh.37 mentions name as Jagabai. P.W.8 Dr. Tushar was confronted with this document as he had endorsed on this document on 5.3.2013 at 7.14 p.m. to the effect that, patient is in post anesthesia phase and so not able to communicate properly. He advised to take statement on next day. Thus, the brother of victim who brought her to Dr. Tushar appears to have given history about incident taking place at 8.30 a.m. in the morning. This is against the case of prosecution which has all along been that the incident started at Nikumbhe at about 10.00 a.m. This Exh.38 mentioned that, the patient had been brought and admitted at 11.35 a.m. Now this doctor has subsequently issued injury certificate Exh.37 showing time of admission as 10.30 a.m. P.W.8 Dr. Tushar was asked but he stated that, while endorsing, he did not take objection to Exh.38 when it was put up to him regarding timing mentioned in Exh.38.

17. The clothes of the accused and knife were seized by A.P.I. Pawar. A.P.I. Pawar was not examined. Clothes of the victim were seized by P.W.9 Ashok Bagul. He admitted in cross-examination that, the clothes of the accused were in sealed condition and that they had not been seized in his presence. He appears to have sent the clothes of the accused as also the victim as well as the knife to Chemical Analyser by letter dated 18.3.2013 vide letter Exh.42. The Carrier was not examined. Apart from this, although the C.A. report regarding the clothes shows that the clothes of accused as well as the victim had blood group "O", the C.A. reports regarding the blood group of accused as well as the victim were inconclusive regarding the grouping. Thus, this evidence is not much helpful.

18. It is interesting to see that accused had been caught by P.Ws.2 and 6 and taken to Police Station. P.W.4, the nephew of victim then says that he went to Police Station, Songir at 3.30- 3.45 p.m. He says, then clothes of accused were seized from his person. He added that, he gave other clothes to the accused. In cross-examination, he stated, he had given the clothes to accused by bringing the same from Nikumbhe. This is as if, he knew before hand why he is going to Police Station.

19. Cumulative effect of above discussion is that, the investigation does not appear to have been fair and impartial and genesis of the incident has not come clearly on record. Independent witnesses have also not been examined though must have been available.

20. For above reasons, I am unable to concur with the trial Court that the offence was established beyond reasonable doubts.

21. At this stage, reference needs to be made to the order of this Court, dated 4.5.2016. Criminal Application No.2206/2016 was filed for compounding of the offence, but after hearing the compromise application No.2206/2016, which had been filed along with Criminal Application No.2500/2016 for bail, I had observed in para No.3 of the order as under :

> "3. The appellant- accused has been convicted under section 307 of the Indian Penal Code. Section 307 of the Indian Penal Code is not compoundable but in view of the judgment of the Hon'ble Supreme Court in the case of Gian Singh (Supra), in certain contingencies, this Court can invoke inherent powers. In the present matter, however, the compromise, on the face of it, shows that the wife has entered into compromise subject to the husband who is in jail transfers two properties in her name and in the name of her son. There is another condition put that original accused shall not enter the village Nikumbh where the wife resides. It clearly shows that the object of compounding is not to maintain cordial relationship. On the face of record, what appears is that as the accused is in jail, an advantage is being taken. At least, that is the feeling I get seeing the documents and hearing the counsel. I do not think that such compromise can be recorded and acted upon. Consequently, I reject Criminal Application No. 2206/2016."

22. In the hind-sight, my hunch appears to have been right. Now when I have appreciated facts of the present matter, and when I have come to the conclusion that on the merits of the matter itself the conviction cannot be maintained, I find that, my observations on 4.5.2016 regarding the feeling I got from the documents and on hearing the counsel was not out of place. It does appear that, victim has grievances against her husband accused due to property. In cross-examination, such defence was put up. I find it risky to rely on her uncorroborated evidence regarding actual assault.

23. For these reasons, the Criminal Appeal is allowed. The conviction and sentence of the accused under Section 307 of the Indian Penal Code, 1860 is quashed and set aside. The appellant - accused is acquitted of the offence punishable underSection 307 of the Indian Penal Code, 1860. As per record, accused could not pay fine and on his behalf his sister Banubai Dhudku Deore deposited the same. The fine paid, be refunded to the appellant - accused in the presence of his sister Banubai Dhudku Deore. The appellant - accused shall be released forthwith unless his presence is required in any other offence.

***Result*:-** Appeal allowed.

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ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(A.V. Nirgude & V.K. Jadhav, JJ.)

Criminal Appeal No. 422 of 2014 with Criminal Application No. 6431 of 2014 with Criminal Revision Application St. No. 267 of 2014 with Criminal Appeal No. 422 of 2014

Decided on 23 August, 2016

Aurangabad Bench

RANGNATH BAJIRAO KHADKE & ANR. ***- Appellant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Section 302 & 498-A — Indian Evidence Act, 1872 — Section 3 — Relevant fact — Murder by setting deceased on fire by striking match-stick — Possibility of tutoring deceased & child witnesses — unreliable