Supreme Court of India
Ajit Savant Majagavi vs State Of Karnataka on 14 August, 1997
Author: S S Ahmad
Bench: M. K. Mukherjee, S. Saghir Ahmad

PETITIONER:
AJIT SAVANT MAJAGAVI

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 14/08/1997

BENCH:
M. K. MUKHERJEE, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

Present :

Hon'ble Mr. Justice M.K. Mukherjee Hon'ble Mr. Justice S. Saghir Ahmad Mukul Sharma, Adv. for S.R. Bhat, Adv. for the appellant Ms. Manjula Kulkarni, Adv. for M. Veerappa, Adv. for the Respondent J U D G M E N T The following Judgment of the Court was delivered :

J U D G M E N T S. Saghir Ahmad, J.

Padmavathi, a house wife, in this case, has been strangulated to death, of all persons, by her husband, the appellant before us.

2. BATTLE OF SEXES has always been a battle of wits. Today it is denuded of its charms. It has degenerated into a WAR involving physical violence, torture, mental cruelty and murder of the female, including particularly, the WIFE.

3. Social thinkers, philosophers, dramatists, poets and writer have eulogised the female species of the human race and have always used beautiful epithets to describe her temperament and personality and have not deviated from that path even while speaking of her odd behaviour, at

times. Even in sarcasm, they have not crossed the literary limit and have adhered to a particular standard of nobility of language. Even when a member of her own species, Madame De Stael, remarked "I am glad that I am not a man; for then I should have to marry a woman", there was wit in it. When Shakespeare wrote, "Age cannot wither her; nor custom stale; Her infinite variety", there again was wit. Notwithstanding that these writers have cried hoarse for respect for "Woman", notwithstanding that Schiller said "Honour Women! They entwine and weave heavenly rose in our earthly life." and notwithstanding that Mahabharat mentioned her as the source of salvation, the crime against "woman" continues to rise and has, today undoubtedly, risen to alarming proportions.

4. It is unfortunate that in an age where people are described as civilised, crime against "Female" is committed even when the child is in the womb as the "female" foetus is often destroyed to prevent the birth of female child. If that child comes into existence, she starts her life as a daughter, then becomes a wife and in due course, a Mother. She rocks the cradle to rear up her infant, bestows all her love on the child and as the child grows in age, she gives to the child all that she has in her own personality. She shapes the destiny and character of the child. To be cruel to such a creature is unthinkable. To torment a wife can only be described as the most hated and derisive act of a human being.

5. In this appeal, we have to deal with the unfortunate story of torture of a wife and her sudden and untimely death at the hands of a person who had promised to the God, before the altar of fire, to be her protector.

6. The appellant was married to a young woman, by name, Padmavathi @ Janki, in or about April, 1984 in Belgaum Taluk. Her father was P.W. 8, Paris Savant Kaggodi who was, incidentally, also brother of appellant's mother. Padmavathi, after bidding a-dieu to her father and other relations, came to live with the appellant in her new house where her parent-in-laws also lived. She became the victim of mental torture and cruelty for a charge, which, unfortunately, can be levied easily against any virtuous woman, that she was involved in extra marital relationship; in this case with one Gundu Badasad.

7. On becoming pregnant, Padmavathi came back to her father's house of performance of certain ceremonies connected with the pregnancy and continued to stay there till she delivered a mala child. The information of birth of the child was conveyed to the appellant and his parents but nobody, not even the appellant, came to see Padmavathi or the child although, in normal course, the birth of a male child has the effect of bringing smile even on a frowning face. Like a lull before the storm, this cold-shouldering was the precursor of the evils that were to befall Padmavathi.

8. Four months after the delivery, the appellant suddenly, on a Saturday, came to the house of his father-in-law (P.W.

8) and sought his permission to take his wife and the child to a temple at Stanvanidhi which was a sacred and holy place for the Jains. The next morning, that is, on Sunday, the appellant, his wife and the child were seen off by his sister-in-law at the Bus Station where they boarded a Karnataka State Road Transport Corporation Bus and came to Halaga village where on Monday, at 1.00 A.M., the

appellant, with his wife and child came to the house of a person named Gopal Bhimappa Inchal. The appellant told Gopal Bhimappa Inchal that on their return from the temple, they could not get the "Bus" and, therefore, they had come to this house for the night halt. As promised, the appellant with his wife and the child left the house in the early morning and came to "Ashoka Lodge" in Belgaum where he checked in Room No. 113 at 9.30 A.M. on 09.09.85. That was the most unfortunate, as also, the last day in Padmavathi's life. At about 12.00 Noon, the appellant came to the reception counter of "Ashoka Lodge" and informed the people there that his wife has died of heart-attack and that he was going to bring his relations. he left the "Lodge", with child in his lap, never to come back. Her gave the child to a lady called Gangavva, in village Halaga who, later, sent the child to Padmavathi's father.

9. The police was informed of the matter in due course which visited the "Lodge" and held the inquest. The body of Padmavathi was sent for post mortem examination which revealed that Padmavathi had died not because of cardiac arrest, but on account of asphyxia. Her death was homicidal.

10. The police arrested, challenged and prosecuted the appellant, who was found "not guilty" by the trial court but the High Court, on appeal by the State, reversed the verdict and convicted the appellant u/s 302 IPC and sentenced him to life imprisonment. Now, the matter is before us.

11. Learned counsel for the appellant has contended that the High Court should not have interferred with the judgment passed by the trial Court unless it was of the positive opinion that the judgment was perverse and that it had to be reversed for "substantial and compelling reasons". It is contended that since substantive and compelling reason have not been indicated, the judgment of the High Court is liable to be set aside and that of the trial court is to be restored. It is also contended that even if all circumstance appearing against the appellant are taken into consideration, the cumulative effect of those circumstance does not lead to the irresistible conclusion that the appellant was guilty.

12. Section 378 of the Code of Criminal Procedure 1973 which corresponds to Section 417 of the old Code provides for appeal in case of acquittal.

13. There was quite a controversy among the Court with considerable divergence of judicial opinion as to the scope of appeal against an order of acquittal. This controversy remained unabated till some guideline was indicated by the Privy Council in Sheo Swarup & Ors. v. King Emperor, L.R. 61 Indian Appeals 398 = AIR 1934 P.C. 227(2). This decision was considered in Sanwat Singh vs. State of Rajasthan, (1961) 3 SCR 120, in which the legal position was explained by this Court as under :-

> (1) The evidence upon which the order of acquittal was passed by the trial court can reviewed, reappreciated and reappraised by the Appellate Court.
>
> (2) The principle laid down by the Privy Council in Sheo Swarup & ors.
>
> v. King Emperor, L.R.. 61 Indian Appeals 398 (supra); provide correct guidelines for the Appellate Court while disposing of the appeal against the order of acquittal.

(3) The words "substantial and compelling reasons", "good and sufficiently cogent reasons" or "strong reasons" used by this court in its various judgments do not have the effect of curtailing power of the High Court to reconsider, review or scrutinise the entire evidence on record so as to come to its own conclusions in deciding the appeal against an order of acquittal.

14. As a matter of fact, the power of the High Court are not different from its powers in an ordinary appeal against conviction. The additional burden which is placed on the High Court is that it has to consider each of the grounds which has prompted the trial court to pass the order of acquittal and to record its own reasons for not agreeing with the trial court.

15. In State of Uttar Pradesh vs. Samman Das, AIR 1972 SC 677 - (1972) 3 SCR 58, this Court again reiterated the above principles and pointed out that there were certain cardinal rules which had always to kept in view in appeal against acquittal. It was pointed out that there is a presumption of innocence in favour of the accused especially when he has been acquitted by the trial court. It was further to be kept in view that if two views of the matter are possible. the view which favours the accused has to be adopted. The Appellate Court has also to keep in view the fact that the trial judge has the advantage of looking at the demeanour of witnesses and that the accused is still entitled to the benefit of doubt. The doubt should be such as a rational thinking person will reasonably, honestly and conscientiously entertain and not the doubt of an irrational mind. (See also : Sohrab vs. State of Madhya Pradesh, (1973) 1 SCR 472 = (1972) 3 SCC 751 = AIR 1972 SC 2020; Ediga Sanjnna vs. State of Andhra Pradesh, (1976) 2 SCC 210; Satbir Singh & Anr. vs. State of Punjab, (1977) 3 SCR 195 = (1977) 2 SCC 263; Chandrakanta Devnath vs. State of Tripura, (1986) 1 SCC 549 = 1986 Cr.L.J. 809; G.B. Patel & Anr. vs. State of Maharashtra, AIR 1979 SC 135; Awadesh & Anr. vs. State of Madhya Pradesh, (1988) 3 SCR 513 = (1988) 2 SCC 557; Anokh Singh vs. State of Punjab, (1992) 1 (Supp) SCC 426; Gajanan Amrut Gaykwad & Ors. vs. State of Maharashtra, (1995) 3 (Supp) SCC 607; Ram Kumar vs. State of Haryana, AIR 1995 SC 280; Betal Singh vs. State of Madhya Pradesh, (1996) 4 SCC 203).

16. This Court has thus explicitly and clearly laid down the principle which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under :-

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against an order of conviction. (2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and finding in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the findings of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reason for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal. (4) In reversing the finding of acquittal, the

High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness- box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

17. It is in the light of these principle that it has to be seen whether the High Court, in the instant case, was justified in reversing the order of acquittal.

18. Before taking up this task, it may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must in all circumstances, be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principle fact or "factum probandum" may be proved indirectly by means of certain inferences drawn from "factum probans", that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can legally inferred or presumed.

19. It has been consistently laid down by this Court that were a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused of the guilt of any other person. (See : Hukam Singh vs. State of Rajasthan, AIR 1977 SC 1063; Eradu and other vs. State of Hyderabad, AIR 1956 SC 316; Earabhadrappa vs. State of Karnataka, AIR 1983 SC 446; State of U.P. vs. Sukhbasi and others. AIR 1985 SC 1224; Balwinder Singh vs. State of Punjab, AIR 1987 SC 350; Ashok Kumar Chatterjee vs. State of Madhya Pradesh. AIR 1989 SC 1890).

20. The circumstance from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram vs. State of Punjab, AIR 1954 SC 621, it was laid down that where the case depends upon the conclusions drawn from circumstance, the cumulative effect of the circumstance must be such a to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

21. In Padala Veera Reddy vs. State of Andhra Pradesh and others, 1991 SCC (Crl.) 407 = AIR 1990 SC 79, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :-

> (1) the circumstance from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstance, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

22. (See also : State of Uttar Pradesh vs. Ashok Kumar Srivastava, (1992) 2 SCC 86 = 1992 Cr.LJ 1104) in which it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inference, the one in favour of the accused must be accept. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

23. What is important is that the possibility of the conclusions being consistent with the innocence of the accused must be ruled out altogether.

24. Let us now delve into the merits.

25. In order to prove its case, the prosecution has examined many witnesses to establish the link between the appellant and the crime. Paris Savant Kaggodi (P.W. 8) stated that his daughter Padmavathi was married to the appellant who was being ill-treated at the house of her in- laws principally because the appellant entertained a doubt that she was having extra marital relationship with Gundu Badasad. When Padmavathi became pregnant, she came to live with her parents and at the house of her parents, she gave birth to a child.

26. The learned Session Judge and the High Court have both found that this part of the statement of Padmavathi's father has not been challenged and, therefore, it was established that Padmavathi was not treated fairly at the house of her in-law and the appellant carried doubt in his mind that she was involved in post-marital sex with Gundu Badasad. It was also established that she gave birth to a child at the house of her father.

27. The appellant, however, denied the prosecution story that he came to the house of his father-in-law and took away his wife and child. The trial court, namely, the IInd Addl. Sessions

Judge, Belgaum has found that the prosecution had failed to establish that the appellant had come to the house of his father-in-law and requested him to take his wife and child to a temple or that, thereafter, he took his wife to the "Ashoka Lodge" at Belgaum where she was throttled to death by the appellant. The High Court, however, has reversed this finding and come to the conclusion that the death of Padmavathi, in Room No. 113 of "Ashoka Lodge", at the hands of the appellant, was established by the fact that her dead body, which was identified by Mallasarja (P.W. 1) of Gandigawad village who was working at Belgaum, was found in that room. She had not died a natural death but was strangulated to death which was established by the post- mortem examination conducted by the Doctor (P.W. 12). Ajit (P.W. 2) who was the room-boy of "Ashoka Lodge" categorically stated that the appellant with his wife and the child had come to the "Lodge" and occupied Room No. 113. He also stated that the appellant later left the "Lodge" with his child on the pretext that his wife had died and that he was going to call his relations.

28. It is contended by the learned counsel for the appellant that since P.Ws. 9, 14, 17 and 18 as also P.W. 3 had turned hostile and had not supported the prosecution case, their statements are liable to be excluded and if this is done, the result will be that the link in the prosecution story would stand broken and the appellant could not be held guilty on the basis of broken circumstantial evidence. The Addl. Sessions Judge had fallen into the web of this, apparently, forceful argument but the High Court, and in our opinion, rightly, accepted the remaining evidence and held that in spite of hostility of the aforesaid witnesses, the prosecution story was fully established.

29. We would like to add a few words of our own on the effect of exclusion of statements of those witnesses who had turned hostile.

30. Gangavva (P.W. 3), with whom the child was left by the appellant on his return from "Lodge", was the witnesss who was treated as hostile. Even if her statement is excluded, the main part of the prosecution story that the appellant had come with Padmavathi to "Ashoka Lodge" where they had occupied Room No. 113 is not affected. Their presence in "Ashoka Lodge" is testified by Ajit (P.W. 2), the room-boy of "Ashoka Lodge". Padmavathi was, therefore, last seen in the company of the appellant. The appellant left the "Lodge" on the pretext that his wife had died and he was going to call his relations. But he did no return. His conduct of not returning back to Room No. 113 eloquently indicates that he, in order to avoid arrest, did not return to "Lodge". He left the dead body of Padmavathi lying in Room No. 113 to be found out there by the hotel and police people. An innocent person would not have behaved in that fashion. His innocence would have been reflected in his conduct of coming back to the "Lodge".

31. Apart from the appellant's conduct in not returning to "Ashoka Lodge", aft having left the "Lodge" at 12.00 Noon, another conduct of the appellant is significantly eloquent. When he reported at "Ashoka Lodge", he was sporting a beard and had also unkempt hairs on his head. In the evening of the day of incident, he got his head and the beard shaved which is proved by the barber (P.W. 5), examined in the case. This was done obviously to the conceal his identity but police was vigilant and the appellant was apprehended without difficulty.

32. The appellant's further conduct in taking away the child with him at 12.00 Noon is also significant. The child was hardly four months old and was a breast-suckling infant. Had Padmavathi been alive, the appellant; would have left the child with her. His taking away the child with him coupled with his statement made to the room-boy that his wife had died of heart-attack, establishes that Padmavathi was already dead. Since she was strangulated to death, there was non else except the appellant to have done it. It was positively that act of the appellant. He took the extreme step on account of suspected infidelity of his wife which he had been harbouring since his marriage.

33. The other hostile witnesses are Jaipal (P.W. 14) who had seen the appellant and his wife Padmavathi with their child in a Karnataka State Road Transport Corporation Bus, P.W. 9 before whom extra judicial confession was alleged made the appellant, P.Ws. 17 and 18 who were the witnesses for the Panchanamas apart from P.W. 15 who was also the witness of Panchanama but he did not turn hostile. If the statements of these witnesses are excluded, the prosecution case is still not affected on merits inasmuch as the story that the appellant had gone to the house of his father-in- law and taken away his wife and child and that the ultimately stayed in "Ashoka Lodge" at Belgaum where Padmavathi was found dead is not affected. Whether the appellant with his wife and the child had gone to the temple or had stayed with a friend in the night, cannot be said to be essential links in the chain of events leading to the conclusion that the appellant had committed the crime. The appellant was last seen with Padmavathi in Room No. 113 of "Ashoka Lodge" where he had stayed on the fateful day and had left the "Lodge with his child on the pretext that he was going to call his relations as Padmavathi had died of heart-attack. As pointed out earlier, Padmavathi had died of strangulation. The appellant's presence in the Room immediately before the death of Padmavathi and his conduct in not coming back to the "Lodge" are circumstances strong enough to establish his guilt.

34. Some dispute appears to have been raised before the High Court as also before us that the hotel records should not be relied upon to indicate that the appellant had stayed in "Ashoka Lodge".

35. Ajit (P.W. 2), room-boy of the "Lodge", in his statement on oath, has given out that the appellant had come with his wife and child to the "Ashoka Lodge" and had taken one Room on the ground-floor for his stay. The necessary entry (Ex.P1(a)) was made by the Manager of the "Lodge" in the "Register of Lodgers". The appellant had put his signature on the Register which is Ex.P1(b). The appellant, his wife and the child had been taken by the room-boy to Room No. 113 where he also supplied an extra bed. The hotel Manager, though mentioned as a witness in the charge-sheet, was not examined as he had already left the service of the "Lodge". These facts stand proved by the statement of the room-boy and the High Court has already recorded a finding that the appellant had stayed in Room No. 113 of the "Ashoka Lodge".

36. The original records were also placed before us and we have perused those records. Since learned counsel for the appellant contended that the appellant had not stayed in the "Ashoka Lodge", we looked into the "Register of Lodgers". It contains the relevant entry against which signature of the appellant also appears. His signature also appears on the "Vakalatnama" filed by him in this appeal. In the presence of the learned counsel for the parties, we compared the signature of the appellant on the "Vakalatnama" with the signature in the "Register of Lodgers". A mere look

at the signatures was enough to indicate the similarity which was so apparent that it required no expert evidence. This comparison was done by us having regard to the provisions of Section 73 of the Evidence Act which provides as under:-

> S.73. Comparison of signature, writing or seal with others admitted or proved.- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written of made, any signature, writing or seal admitted or proved to t satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

37. This Section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court, to give his specimen writing or finger prints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The Section does not specify by whom the comparison shall made. However, looking to the other provision of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature of handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not power to compare the disputed signature with admitted signature as this power is clearly available under Section 73 of the Act. (See : State (Delhi Administration) vs. Pali Ram, AIR 1979 SC 14 = (1979) 2 SCC 158)

39. We have already recorded above that on the comparison of the signature in the "Register of Lodgers" with the appellant's signature on the "Vakalatnama", we have not found any dissimilarity and are convinced that the appellant himself had signed the "Register of Lodgers" in token of having taken Room No. 113 in "Ashoka Lodge" on rent wherein he had stayed with his wife and the child.

40. On an overall consideration of the matter, we are of the opinion that the High Court, in reversing the judgment of the trial court, had fully adhered to the principles laid down by this Court in various decisions and there is no infirmity in its judgment.

41. The circumstance, the conduct and behaviour of the appellant conclusively establish his guilt on no amount of innovative steps by him including sporting a beard and later shaving off the beard and the head could conceal the offence or his identity. It was rightly remarked by the famous Urdu poet, Amir Meenai in a couplet :-

> "Qareeb hai yaro jo Roz-i-Mahshar Chhupey ga kuston ka khoon keonkar Jo chup Rehegi Zaban-i-Khanjar Lahoo Pukarega Aastin Ka"

42. Translated into English, it will mean :-

> "On the day of Judgment, you will not be able to conceal the killing of innocents. If the sword will keep silent, the blood stains on your sleeves will reveal your guilt."

43. For the reasons stated above, we find no merit in the appeal which is dismissed. The appellant is no bail. His bail bonds are cancelled. He shall be take into custody forthwith to serve out the life sentence.