

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 355 OF 2012

- 1] Krishna s/o Sarjerao Nikalje,
age 35 years, occ. Labour,
R/o Naigaon, Tq. and Dist.
Aurangabad.

...APPELLANT
[Orig. Accused No.1]

VERSUS

- 1] The State of Maharashtra,
through Sudam s/o Radhakishan
Tayade, age 21 years, occ. Agril.,
R/o Chanegaon, Tq. Badnapur,
Dist. Jalna

...RESPONDENT

Mr. Joydeep Chatterjee, advocate for the Appellant
Mr. B.L.Dhas, APP for Respondent

**CORAM : A.B.CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATED : 2nd September, 2015

ORAL JUDGMENT [Per Indira K. Jain, J.]

- 1] This appeal is preferred by the appellant-original Accused
No. 1 against the judgment and order, dated 12.12.2011, passed by

the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 450 of 2010. By the said judgment and order, the learned Additional Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one year.

2] As appears from the record, Sessions Case No. 450 of 2010 was committed against present appellant, his mother and father. The parents of the appellant were acquitted of the offences punishable under Sections 498-A, 302 r/w 34 of the Indian Penal Code. Appellant was also acquitted of the offence punishable under Section 498-A of the Indian Penal Code.

3] For the sake of convenience, we shall refer the appellant in his original status as accused as he was referred before the trial court.

4] In nut shell, prosecution case is as under : -

i) Deceased Shakuntala alias Sakhubai was married to the accused Krishna before 9 to 10 years of the incident. After marriage, she started residing at

her matrimonial house. The couple was blessed with two sons and one daughter.

ii) It is the prosecution case that after marriage, accused started demanding Rs.50,000/- from parents of Shakuntala to purchase a truck. In 2006 she filed a complaint with Women Redressal Forum (Mahila Takrar Niwaran Kendra). In 2007 she lodged first information report with Karmad police station alleging cruelty to her at the hands of husband and his relatives. Later on offences were compounded and Shakuntala started residing with the accused.

iii) Accused did not mend his behaviour and continued with illtreatment to Shakuntala on demand of money. She was abused and beaten by her husband. On 16.9.2010 and 17.9.2010 there was quarrel between husband and wife. During quarrel, as accused beat her, she sustained injuries.

iv) So far as incident is concerned, according to prosecution, on 17.9.2010 in the afternoon at around 3.30 or 4.00 p.m. accused caught hold neck of Shakuntala, pressed her neck and beat her. She sustained injuries. Thereafter she was admitted to

Government Medical College and Hospital, Aurangabad as she became unconscious. It was informed to Medical Officer on duty that Shakuntala consumed poison. Medical Officer examined and declared her dead. Intimation of death was given to Karmad police station. On the basis of information, A.D. No.47/2010 was registered on 18.9.2010.

v) During inquiry of A.D., dead body was sent for postmortem. On conducting postmortem, doctor opined cause of death due to manual strangulation and as homicidal death. Viscera was preserved, which was sent to Chemical Analyser. On receipt of Chemical Analyser's report, it was noticed that no poison was detected in viscera.

vi) On 18.9.2010, accused sent two persons to the house of parents of Shakuntala. They informed father and brother of Shakuntala that she was admitted in the Government Medical College, Aurangabad. When brother Sudam and father Radhakishan rushed to the hospital, they saw dead body of Shakuntala. Several injuries on the person of dead body were also noticed by them on neck, head and lips. Therefore, they

suspected that accused might have committed her murder. PW 1 Sudam Tayade then lodged report with Karmad police station on 18.9.2010. Crime No.I-115/2010 was registered for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code. Initial investigation was made by PW 10 A.P.I. Budhwant and later investigation was taken over by Deputy Superintendent of Police (Rural), Aurangabad PW 11 Pallavi Barge. On completing investigation, charge sheet was filed before the Judicial Magistrate, First Class, Aurangabad, who, in turn, committed the case for trial to the Court of Sessions.

5] Charge came to be framed against the appellant at Exh.10. He pleaded not guilty to the charge and claimed to be tried.

Regarding alleged commission of offence, defence of accused was of total denial and false implication. To explain the injuries found on the person of Shakuntala, accused came with the defence that due to fall on the ground in the house she received the injuries.

6] Prosecution examined in all eleven witnesses. On going

through the evidence adduced in the case, the learned Additional Sessions Judge convicted the present appellant and sentenced him as stated in para 1 above. Being aggrieved by the judgment and order of conviction and sentence, this appeal is preferred by the original accused no.1.

7] We have heard at length the learned counsel for the appellant and the learned Additional Public Prosecutor for the State. With the able assistance of the learned counsel for parties, we have also gone through the evidence brought on record. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the reasoning recorded by the trial court and the evidence on record, for the below mentioned reasons, we are of the opinion that prosecution has proved the guilt of original accused no.1 beyond reasonable doubt and we have no reason to take a view different than taken by the trial court.

8] There is no eye witness to the incident. Prosecution case rests exclusively on circumstantial evidence. So far as illtreatment to Shakuntala on demand of money is concerned, trial court has negatived the charge under Section 498-A of the Indian Penal Code.

The scope of appeal is thus limited to the offence under Section 302 of the Indian Penal Code.

9] It is not in dispute that at the time of death Shakuntala was residing with the accused. If the evidence of PW 1 complainant Sudam brother of Shakuntala and PW 2 Radhakishan father of Shakuntala is considered, it is apparent that on 18.9.2010 in the morning accused sent two persons to the house of parents of Shakuntala with the information that Shakuntala was admitted to the hospital. In fact, by the time these two persons were sent to the house of parents of Shakuntala she was dead. So there was no reason for the accused to inform the parents of the deceased that she was admitted in the hospital.

10] Another important clinching circumstance against the accused has been established by the prosecution through the evidence of PW 3 Ravindra Barbaile. This witness has carried injured Shakuntala to the hospital in jeep. He was driving jeep. That time accused no.1 Krishna told that Shakuntala consumed poison and became unconscious. While performing postmortem, viscera was preserved. It was sent to the Chemical Analyser for examination. Chemical Analyser's report (Exh.45) shows that no

poison was detected in the viscera. This falsifies the defence of accused that Shakuntala consumed poison and became unconscious.

11] The next circumstance against the accused is brought through the evidence of PW 9 Dr. Girish Dasgaonkar. Dr. Dasgaonkar was attached to Government Medical College, Aurangabad at the relevant time. On 18.9.2010 he was on duty. On requisition received from the concerned police station, he conducted postmortem on the dead body of Shakuntala and found external and internal injuries on examination. The external injuries were : -

“(1) Laceration over central forehead 3 cm. above medial end of right eyebrow of size 2 x 1.5 cm. into scalp deep. Margins irregular and blood infiltrated.

(2) Abrasion above lip on left side of size 1.5 x 1 cm. Irregular in shape reddish in colour.

(3) Abrasion below lip on left side of size 2.5 x 2 cm. irregular in shape, reddish in colour.

(4) Contusion over left cheek near the angle of mandible size 4 x 3 cm. irregular in shape; reddish in colour.

(5) Crescentic abrasion having size of .5 cm. present over left angle of mandible reddish in colour.

(6) Linear abrasion of 2 cm. present over left lateral aspect of neck middle 1/3rd horizontally placed, reddish in colour.

(7) Crescentic abrasion of 0.5 cm. present over left

lateral aspect of neck, lower 1/3rd, reddish in colour.

(8) Contusion of size 3 x 2 cm. present over medial end of left clavical, irregular in shape, reddish in colour.”

On internal examination, following injuries were found : -

“(1) Underscalp contusion over forehead of size 3.5 x 2 cm., reddish in colour.

(2) An underscalp contusion over central parietal of size 4 x 2.5 cm., reddish in colour.

(3) No fracture of skull found. Meninges found intact and congested, brain found congested and oedematous. There was evidence of patechial hemorrhages in white brain matter.

(i) On neck dissection, we found contusion over left platysma muscle of size 5.5 x 4 cm., reddish in colour.

(ii) Contusion of size 2.5 x 1 cm. over left stemocleieomastoid muscle, middle 1/3rd, reddish in colour.

(iii) Contusion of size 1.5 x 1 cm. over left strap muscle. There was evidence of petechial haemorrhages over left sub mandibular salivary gland and lymph nodes.

12] Postmortem report was proved by the Medical Officer at Exh.39. Doctor opined cause of death due to manual strangulation.

13] Accused has not given any plausible explanation regarding injuries caused to Shakuntala resulting to her death. Under Section

106 of the Indian Evidence Act, it was obligatory on the accused to give plausible explanation regarding the death of Shakuntala. In the absence of such explanation needle tilts in favour of prosecution, since prosecution has established the strong circumstances pointing out the guilt of the accused and accused alone.

14] Thus in the light of the above, and on going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that appellant committed murder of his wife Shakuntala. We, therefore, find no merit in the appeal. Appeal is dismissed.

[INDIRA K. JAIN, J.]

[A.B.CHAUDHARI, J.]