

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.602 OF 2006

Tanaji Sambhu Lande.	]	
Age - 33 years,	]	
R/o. - Bardi, Tal. Panduarpur,	]	
Dist. Solapur.	]	
(At present in judicial custody and	]	... Appellant
lodged at Yerawada Central Prison, Pune)]		(Orig. Accd.No.1)

Versus

The State of Maharashtra	]	... Respondent
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Ms. Rohini M. Dandekar, Advocate appointed for Appellant.
Smt. A. S. Pai, APP for State.

<u>CORAM :-</u>	<u>SMT. V. K. TAHILRAMANI AND</u>
	<u>SMT. I. K. JAIN, JJ.</u>
<u>DATE :-</u>	<u>JANUARY 28, 2015</u>

ORAL JUDGMENT (PER SMT. V. K. TAHILRAMANI, J.) :-

1. The Appellant/original accused has preferred this Appeal against the Judgment and Order dated 11/05/2006 passed by the learned III Ad-hoc Additional Sessions Judge, Solapur, in Sessions Case No.285 of 2005. By the said

Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 302 of Indian Penal Code and sentenced him to R.I. for life and to pay fine of Rs.1,000/-; in default R.I. for 6 months.

2. The prosecution case briefly stated is as under :

Deceased Sunita was married to the Appellant about 12 to 13 years prior to the incident. They had 2 sons. The Appellant had ancestral agricultural land at Bardi, Taluka Pandharpur. The Appellant had two brothers Mahadeo and Pralhad who were cultivating the land of the Appellant. The Appellant was asking for his share in the ancestral land, however, his brothers were not willing to give him his share in the ancestral land. On account of this, the Appellant came to Barshi along with his family to earn his livelihood. He resided at Barshi along with his family for about 4 to 5 years. The appellant instituted a civil suit in the Court at Pandharpur against his brothers seeking his share in the ancestral land. Thereafter the Appellant, along with his family, came to Kari to earn his livelihood. The Appellant, his wife Sunita and their

2 minor children were residing on rent in the house of Manohar Doke at Kari. The Appellant and his wife were doing agricultural work. About one year prior to the incident, the civil suit was decided in favour of the Appellant, due to this, the Appellant was asking his wife Sunita that they should go back to Bardi and reside there. Sunita was not ready to leave Kari and go and reside at Bardi. On account of this, frequent quarrels used to take place between the Appellant and his wife Sunita. 5 to 6 days prior to the incident, Sunita, along with her children, came to the house of her brother PW 1 Kakasaheb. Kakasaheb was residing at Shripat Pimpri. After two days, the Appellant also came to the house of Kakasaheb. Kakasaheb convinced the Appellant and the Appellant stated that he would not quarrel with his wife Sunita in future. Thereafter the Appellant took his wife Sunita and their two children to Kari.

On 12/06/2005 at about 11.00 p.m., Kakasaheb went to sleep. On 13/06/2005 at about 1.30 a.m., Kakasaheb received a telephone call from one Amol from village Kari.

Amol told Kakasaheb on telephone that the Appellant had dealt a blow with stone mortar (grinding stone) on the head of Sunita and committed her murder and ran away. Kakasaheb then, along with his family members, rushed to Kari by tempo. They reached Kari at 4.00 a.m. When Kakasaheb went to the house of Sunita, he saw Sunita lying there in a pool of blood. Sunita had injury on the backside of the ear. Mortar was lying there near the dead body of Sunita. The mat, bed-sheet, pillow and chaddar were covered with bloodstains. Suhas and Ulhas, the sons of the Appellant and deceased Sunita, told Kakasaheb that at night they slept with their father i.e. Appellant and their mother Sunita. Mortar stone touched the roof of the house, hence it made a noise, due to this, the children awoke. At that time, they saw their father i.e. Appellant, opening the latch of the house and running away from the house. PW 2 Gangadhar and PW 3 Ashok were the neighbours of the Appellant and the deceased. On the night between 12/06/2005 and 13/06/2005, PW 3 Ashok slept in front of his house. PW 2 Gangadhar slept near him. Both of them heard noise of a

stone hitting a tin sheet. Hence they got up from sleep. They saw the Appellant coming out of his house. PW 3 Ashok asked the Appellant regarding the sound of a stone hitting the tin sheet which came from the house of the Appellant. The Appellant did not answer. The Appellant walked for a distance of about 5 ft. and thereafter he ran away. Then both PW 2 Gangadhar and PW 3 Ashok went to the house of the Appellant. They saw that Sunita was lying dead. Blood was oozing from her ear, nose and mouth. One mortar stone was lying near the head of Sunita. It was stained with blood. When they saw the dead body of Sunita, the time was 1.00 a.m. PW 1 Kakasaheb, the brother of deceased Sunita, was informed about the incident. He came to Kari at 4.00 a.m. Kakasaheb then lodged F.I.R. Thereafter investigation commenced. The Appellant was arrested on 15/06/2005. After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant under Section 302 of IPC. The Appellant pleaded not guilty to

the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge convicted and sentenced the Appellant as stated in para 1 above, hence this appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence in this case. After carefully considering the same, for the below-mentioned reasons, we are of the opinion that the Appellant committed murder of his wife Sunita by assaulting her on the head with a mortar stone.

5. The conviction of the Appellant is entirely based on circumstantial evidence. The circumstances against the Appellant are as under :

- i) On the night between 12/06/2005 and 13/06/2005, the Appellant, his wife and their two minor children

were the only persons residing in the house. In the morning, Sunita was found dead and the Appellant was seen fleeing away.

- ii) The conduct of the Appellant.
- iii) The Appellant absconded soon after the incident.
- iv) Motive.
- v) Medical evidence.

6. The evidence on record shows that the Appellant, his wife and their two minor children were the only persons residing in the room taken on rent by them from Manohar Doke. This room was situated in village Kari which was in Barshi Taluka. PW 3 Ashok who was residing at Kari was the neighbour of the Appellant and the deceased. Ashok has stated that on the night of the incident, the Appellant, his wife Sunita and their two children were in the house. PW 1 Kakasaheb was the brother of deceased Sunita. He has stated that the marriage of his sister and the Appellant took place 12 to 13 years prior to the incident. Kakasaheb has stated that the Appellant and Sunita were earlier residing at

Bardi in Pandharpur Taluka. Thereafter the Appellant and his wife Sunita came to Barshi to earn their livelihood. They resided there for about 4 to 5 years. Thereafter, the Appellant, his wife Sunita and their children started residing on rent in the house of Manohar Doke at Kari. Thus, the evidence of PW 1 Kakasaheb and PW 3 Ashok taken together, shows that on the night when the incident took place, the Appellant, his wife Sunita and their two minor children were the only persons residing in the house at Kari. In the night at about 1.00 a.m., Sunita was found dead in the house with injury to her head and a mortar stone stained with blood was found lying near her head. At that time, the Appellant was noticed by the neighbours running away from his house.

7. The evidence on record shows that the Appellant and the deceased were in the house at the time of the incident. In such case, the accused has to explain how the deceased sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially

within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principles which underlies Section 106 of the Evidence Act can be applied in such cases. In the case of ***State of Rajasthan Vs. Kashi Ram***¹, the Supreme Court has observed that if the accused 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 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. Though the

¹ (2006)12 SCC 254 : AIR 2007 SC 144

Appellant was the only other adult member in the family in the house besides the deceased, he has not furnished any explanation in relation to how his wife sustained injuries and died.

8. The second circumstance against the Appellant is his conduct. This has been brought out in the evidence of PW 2 Gangadhar and PW 3 Ashok. Gangadhar has stated that on 12/06/2005 after having his dinner, he went to sleep in front of his house. At about 12.00 to 12.30 a.m., he heard loud sound of zinc sheet. Hence he woke up from sleep. His neighbour PW 3 Ashok who was sleeping near him also woke up. The evidence of PW 2 Gangadhar shows that the roof of the house of the Appellant was covered with a zinc sheet and height of the zinc sheet from the ground was 6 ft. This shows that when the Appellant lifted the mortar stone to assault his wife Sunita, the stone touched the roof i.e. the zinc sheet, and made a loud noise due to which the neighbours woke up. When they woke up, they saw the Appellant coming out of the house. They inquired with the Appellant about the noise

but the Appellant did not give any reply and he ran away. The conduct of the Appellant in not giving any reply and running away from the spot also shows his *mens-rea*. It is pertinent to note that the Appellant was arrested on 15/06/2005.

9. As stated earlier, the incident took place in the night between 12/06/2005 and 13/06/2005. It took place at about 12.30 a.m. on 13/06/2005. The Appellant assaulted his wife with a mortar stone and caused her injury which led to her death. Immediately after the incident, the neighbours of the Appellant i.e. PW 2 Gangadhar and PW 3 Ashok, heard sound and woke up from sleep. They saw the Appellant leaving the house. This was noticed by them as stated by Gangadhar in the electric light. Though they questioned the Appellant about the noise, the Appellant did not reply and ran away. The Appellant was arrested on 15/06/2005. This act of the Appellant of absconding further shows his guilty mind and provides another link in the chain of circumstances connecting the Appellant to the crime.

10. The next circumstance against the Appellant is motive. PW 1 Kakasaheb, PW 2 Gangadhar and PW 3 Ashok have deposed on this aspect. PW 1 Kakasaheb was the brother of deceased Sunita. Kakasaheb has stated that his sister Sunita was married to the Appellant about 15 to 16 years prior to the incident. PW 1 Kakasaheb further stated that the Appellant had ancestral agricultural land at Bardi, Taluka Pandharpur. The Appellant had two brothers Mahadeo and Pralhad who were cultivating the land of the Appellant. The Appellant was demanding his share in the ancestral land, however, his brothers were not willing to give him his share in the ancestral land. Due to this, the Appellant came to Barshi along with his family to earn his livelihood. He resided at Barshi along with his family for about 4 to 5 years. The appellant instituted a civil suit in the Court at Pandharpur against his brothers seeking his share in the ancestral land. Thereafter the Appellant, along with his family, came to Kari to earn his livelihood. The Appellant, his wife Sunita and their 2 minor children were residing on rent in the house of Manohar Doke at Kari. The Appellant and his wife were doing

agricultural work. About one year prior to the incident, the civil suit was decided in favour of the Appellant. Due to this, the Appellant was asking his wife Sunita that they should go back to Bardi and reside there. Sunita was not ready to leave Kari and reside at Bardi. On account of this, frequent quarrels used to take place between the Appellant and his wife Sunita. 5 to 6 days prior to the incident, Sunita, along with her children, came to the house of her brother PW 1 Kakasaheb. Kakasaheb was residing at Shripat Pimpri. After two days, the Appellant also came to the house of Kakasaheb. Kakasaheb convinced the Appellant and the Appellant stated that he would not quarrel with his wife Sunita in future. Thereafter the Appellant took his wife Sunita and their two children to Kari. Thus, the evidence of Kakasaheb shows that frequent quarrels used to take place between the Appellant and his wife Sunita because the Appellant wanted to go back to Bardi to reside whereas his wife Sunita did not want to go back to Bardi but she wanted to continue to reside at Kari. This was the bone of contention between the Appellant and the deceased Sunita and the reason for the Appellant to have

a grudge against his wife Sunita.

11. PW 2 Gangadhar was the neighbour of the Appellant and the deceased. He has stated that his house was situated next to the house of Manohar Doke and the Appellant was residing along with his wife and children in the house of Manohar Doke. It has come on record that Manohar Doke was residing in his home which was situated in his agricultural land. Gangadhar has stated that quarrels used to take place between the Appellant and his wife Sunita. The civil suit relating to the land of the Appellant was decided in Appellant's favour, therefore the Appellant was insisting to his wife Sunita that they should go to Bardi to reside. However, Sunita was not ready to go to Bardi and she wanted to continue to reside at Kari. The evidence of PW 3 Ashok shows that he was residing at Kari along with his family. Manohar Doke was his uncle. The house of Manohar Doke was situated in front of the house of Ashok. Manohar Doke was residing at his house in the field and the Appellant, along with his family, was residing in the house of Manohar Doke in the

village. Ashok has stated that the Appellant Tanaji was originally from Bardi, Taluka Pandharpur. Tanaji was asking his wife Sunita that they should go back to Bardi and reside there. However, Sunita refused to go to Bardi. Ashok has stated that frequent quarrels used to take place between the Appellant and his wife Sunita. Thus, the evidence of PW 1, PW 2 and PW 3 bring out the motive for the Appellant to commit the crime.

12. It is the prosecution case that the Appellant assaulted his wife Sunita with a mortar stone on the head and caused her death. This is borne out by the medical evidence. PW 5 Dr. Dhage conducted the post-mortem on the dead body of Sunita. On external examination, he found CLW of 8 cm x 3 cm x 2 cm over right parietal and temporal region of head. He also noticed compound fracture of skull. Due to compound fracture of skull, there was extensive injury to brain tissue. According to Dr. Dhage, the above injuries were ante-mortem. On internal examination, Dr. Dhage found CLW of 8 x 3 x 2 cm under the scalp over head right parito

temporal region. There was compound fracture of skull. Bleeding from both the nostrils and right ear was seen and clotted blood was also seen. According to Dr. Dhage, brain covering was torn and brain tissue was in pieces. In the opinion of Dr. Dhage, the cause of death was due to extensive damage to the brain tissue and intracranial haemorrhage due to compound fracture of skull. According to Dr. Dhage, the injuries were possible by Art.6 mortar before the Court. Dr. Dhage stated that all the injuries sustained by Sunita were sufficient in ordinary course of nature to cause death.

13. The forensic evidence also supports the prosecution case. The mortar stone i.e. grinding stone, with which, according to the prosecution, the Appellant assaulted his wife Sunita was sent for chemical analysis. The CA report (Ex.51) shows that the stone was stained with blood of 'B' group. The clothes of deceased Sunita i.e. her saree, blouse, petticoat etc. were sent for chemical analysis. They were found stained with blood of 'B' group. This shows that the blood group of the deceased was 'B' and the same group of

blood was found on the grinding stone. This shows that the grinding stone was used to assault the deceased, which is consistent with the prosecution case.

14. On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the Appellant committed murder of his wife Sunita by assaulting her on her head with a grinding stone. Thus, we find no merit in the Appeal. The Appeal is dismissed.

15. Office to communicate this order to the Appellant who is in jail.

16. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Rohini M. Dandekar at Rs.5,000/-.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)