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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1442 OF 2011**

Uttreshwar Ramchandra Devkar	]	
age 32 years, Occn. Supervisor,	]	... <u>Appellant</u>
r/o Waghvasti, Kurduwadi	]	Ori. accused
Taluka : Madha, Dist. Solapur	]	

V/s.

The State of Maharashtra	]	... Respondent
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Mr. Swapnil Ovalekar, appointed advocate for Appellant.

Mrs. G. P. Mulekar, A.P.P., for the Respondent-State.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 8th JULY, 2015.

ORAL JUDGMENT : [Per: SMT. V.K. TAHILRAMANI, J.]

1. The appellant original accused has preferred this appeal against the judgment and order dated 30.1.2010, passed by the learned Ad Hoc Additional Sessions Judge, Solapur, in Session Case No.224 of 2009. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code and

sentenced him to imprisonment for life and fine of Rs.5,000/- in default imprisonment for one year.

2. The prosecution case briefly stated is as follows :-

Deceased Vandana was the sister of P.W.1 Raju and P.W.6 Sanjay. Raju was the elder brother and Sanjay was younger brother of Vandana. Vandana was married to the appellant about 12 to 13 years prior to the incident. Vandana and the appellant had two sons and one daughter. The sons were residing with the parents of appellant at the relevant time. Sheetal daughter of the appellant and deceased was 4 ½ years at the time of incident. Sheetal was residing with the appellant and the deceased. The appellant was residing in one room alongwith his wife and daughter in the agricultural land of one Kailas Bhendkar since about 6 years prior to the incident. He was working as Mukadam on the said agricultural land. Vandana used to come and inform her brothers P.W.1 Raju and P.W.6 Sanjay that the appellant had illicit relations with other ladies and she also stated that the appellant used to often assault her. P.W.1 Raju had admonished the appellant and tried to convince him, however, the behaviour of the

appellant did not change. P.W.2 Ashok was residing in the room adjoining the room of the appellant.

On 9.6.2009, i.e. on the day, prior to the day of incident, Vandana came to the house of her brother P.W.6 Sanjay and informed him that her husband (appellant) had assaulted her and Sanjay should accompany her to persuade her husband not to assault and illtreat her. Before Sanjay could proceed to the house of appellant, appellant himself came to Sanjay's house and asked his wife Vandana to excuse him and the appellant stated that he will behave properly. The appellant spoke to Vandana in sweet language, therefore, Vandana accompanied the appellant back to the matrimonial home.

It is the prosecution case that the appellant smothered Vandana with towel at about 4.30 a.m. on 10.6.2009. The appellant then put Vandana in a rickshaw of P.W.3 Vijay and the appellant brought Vandana to the house of P.W.6 Sanjay. The appellant then informed P.W.6 Sanjay that Vandana had fallen from the cot. The appellant told Sanjay that Dr. Kadam had informed him that all the nerves of Vandana have stopped functioning and Doctor had advised the appellant to take Vandana to the Government Hospital. When P. W. 6 Sanjay tried to talk to Vandana, she did not respond. Sanjay enquired

with the appellant about what has happened to Vandana whereupon the appellant told Sanjay that Vandana had fallen from the cot and become unconscious. At that time the appellant was in frightened condition. Sanjay and appellant took Vandana to Government Hospital. Doctor stated that Vandana had expired. The dead body of Vandana was sent for postmortem. The Doctor, who conducted the postmortem opined that the death of Vandana was due to smothering resulting in asphyxia which caused her death.

P.W.1 Raju the brother of Vandana, suspected that the appellant had murdered his sister Vandana, because there were constant quarrels between the appellant and Vandana and as his sister was objecting to the appellant's illicit relations with other ladies. Hence being annoyed with Vandana, the appellant had committed her murder. P.W.1 Raju then lodged F.I.R. Exh.21. Thereafter investigation commenced. After completion of investigation, chargesheet came to be filed. In due course the case was committed to the Court of Sessions.

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. The defence of the appellant is that Vandana fell down from the cot and became unconscious and died. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para No.1 above, hence this appeal.

4. We have heard learned counsel for the appellant and learned APP for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for the below mentioned reasons, we are of the opinion that there is no merit in the appeal.

5. The conviction of the appellant is based on circumstantial evidence. It is well settled that in cases where the evidence is circumstantial in nature, the circumstance from which conclusion of guilt is to be drawn should in first instance be fully established and all the facts so established should be consistent with the hypothesis of the guilt of the accused. The circumstance should be of a conclusive nature

and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. This is laid down by the Supreme Court in **Hanumant -vs- State of Madhya Pradesh**¹, This case has been uniformly followed and applied in large number of cases which rest on circumstantial evidence alone. In the present case we have minutely examined the evidence and we are of the opinion that the circumstances are such that they show in all human probability the appellant committed the murder of Vandana and the circumstances taken together exclude all hypothesis except that of guilt of the appellant.

6. The circumstances against the appellant are as under:

1) Motive

2) At the time of incident, no other person was residing in the house except the appellant, his wife and their

¹ AIR 1952 SC 343

minor daughter.

3) unnatural death and false explanation given by the appellant regarding death of his wife.

4) conduct of appellant.

5) recovery of towel at the instance of appellant.

7. As far as first circumstance, *motive*, is concerned, P.W.1 Raju, who was the brother of Vandana and who is also the complainant in the present case has stated that Vandana was his sister. She was married to the appellant about 12 to 13 years ago. His sister used to often come to his house and inform him that the appellant had illicit relations with other ladies and the appellant used to often assault her. P.W. 1 Raju has stated that on several occasions, he tried to persuade the appellant to behave in a proper manner, but the behaviour of the appellant did not change.

8. P.W.6 Sunil was also the brother of Vandana. He has also stated that Vandana used to visit his house and she used to inform that the appellant used to have illicit relations with other ladies. Vandana also used to inform that appellant used to assault her whenever she enquired about his activities.

Sanjay has stated that he tried to convince the appellant to behave properly, but there was no change in the behaviour of the appellant. Sanjay has further stated that on 9.6.2009, i.e. a day prior to the date of incident, his sister had come to his house and informed him that her husband (appellant) had assaulted her and he (Sanjay) should accompany her so that Sanjay could persuade her husband not to assault and illtreat her. In the meanwhile the appellant came to the house of Sanjay. The appellant told his wife Vandana to excuse him and he stated that he will behave properly. The appellant spoke to Vandana in very sweet words and hence Vandana accompanied the appellant back to her matrimonial house. The incident occurred the very next morning at about 4.30 a.m.

There used to be constant quarrels between the appellant and his wife which has also been deposed by P.W.2 Ashok. Ashok was also residing in the same agricultural farm owned by Bhendkar, where the appellant was also residing. The appellant was residing in one room and Ashok was residing in the adjoining room. Ashok has stated that there used to be constant quarrels between the appellant and his wife Vandana. He had heard the quarrels. Ashok has stated that

the reason for quarrel was some extra marital affair of the appellant. Thus, the evidence of P.W.1 Raju, P.W.6 Sanjay and P.W.2 Ashok shows there was motive for the appellant to commit murder of his wife.

9. As far as second circumstance is concerned i.e. *at the time of incident, no other person was residing in the house except the appellant, his wife and their minor daughter*, this has been brought out in the evidence of P.W.2 Ashoka who was residing in the room adjoining the room of the appellant. Ashok has stated that on the day of the incident, the appellant, his wife and his daughter were in the house. P.W.1 Raju has also stated that the appellant was residing alongwith his wife and children in the grape yard of Kailash Bhendkar. The appellant had two sons and one daughter and the parents of appellant were taking care of sons of appellant. Thus, at the relevant time the appellant was residing with his wife and minor daughter in the agricultural field of Bhendkar. No other person was residing in the house except the appellant, the deceased and their minor daughter, who was 4 ½ years old at the time of incident. The evidence on record especially that of P.W.2 Ashok shows that the appellant,

deceased and their minor daughter were in the house on the night of the incident and in the morning, wife of the appellant was found dead with injuries on her person. In such case Section 106 of the Evidence Act would come into play.

10. The evidence on record shows that only the appellant and the deceased and their minor daughter were in the house at the time of the incident. In such case, the appellant 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 principle which underlies Section 106 of the Evidence Act can be applied in such cases. In the case of **State of Rajasthan Vs. Kashi Ram**², 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

² (2006)12 SCC 254 : AIR 2007 SC 144

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. The appellant in the present case has failed to furnish any plausible explanation. On the other hand the appellant has given a totally false explanation in relation to the death of his wife.

11. The third circumstance is *unnatural death of Vandana and false explanation given by appellant regarding death of his wife Vandana*. The defence of the appellant is that his wife fell down from the cot, sustained injuries and became unconscious and died. However, this defence is proved to be false from the evidence of P.W.9 Dr. Chopde, who conducted postmortem on the dead body of Vandana.

During postmortem, P.W.9 Dr. Chopde found following external injuries :-

1. Imprint mark on left maxillary prominence of size 3 x 2 cm.
2. Abrasion at left angle of mouth of size 2 x 1 cm.
3. Contusion over right cheek irregular measuring 6 cm from right maxillary prominence to chin and skin over it is lost.
4. Abrasion on right forehead size : 1 x 1 cm.
5. Contusion with multiple small abrasions over both upper and lower lips.
6. Contusion over both palms.

According to Dr. Chopde, the cause of death was due to cardio respiratory arrest secondary to asphyxia. No poison detected in the viscera. Dr. Chopde noticed oozing of blood from mouth and contusions with small abrasions on both upper and lower lips which according to him indicated high pressure on the mouth and nose. According to Dr. Chopde, smothering resulting in asphyxia can be possible by applying pressure with a towel. He further opined that all injuries are antemortem injuries and instant death is caused due to such

act of smothering and smothering may be possible by towel. Dr. Chopde clearly stated that such injuries cannot be caused due to fall on a hard and pricking substance. Dr. Chopde has further stated that it is not possible that due to fall of a person on a hard substance, there would be sudden stoppage of breathing resulting in asphyxia. The evidence of P.W.9 Dr. Chopde clearly shows that Vandana died due to asphyxia due to smothering and Vandana did not die on account of fall from bed (cot) or otherwise. The evidence of Dr. Chopde, further shows that Vandana's death is a homicidal death.

The incident has taken place in a room where only the appellant, his wife and their minor daughter were residing. The appellant has not taken any defence that some unknown person/s entered his house to commit robbery or dacoity and in the said process committed murder of his wife, but the defence taken by the appellant is that his wife fell from cot and sustained injuries and died. This stand is falsified by the evidence of P.W.9 Dr. Chopde. Thus giving of false explanation by the appellant, furnishes one more link in the chain of circumstance against the appellant.

12. The fourth circumstance against the appellant is,

the conduct of appellant. P. W. 2 Ashok, P.W.3 Vijay and P.W.6 Sanjay have stated that the appellant was in a frightened condition. P.W.2 Ashok has stated that at about 4.30 a.m. the appellant called him. The appellant told him that his wife fell down from the cot and he should help him. The appellant told Ashok that his wife developed giddiness due to fall. Ashok noticed that at that time appellant was in a scared condition. The appellant asked him to call rickshaw and hence Ashok called rickshaw. He noticed that wife of appellant was not making any movement and she was not talking.

13. P.W.3 Vijay is the auto-rickshaw driver, who took the appellant and his wife to the house of P.W.6 Sanjay. P.W.3 Vijay stated that on 10.6.2009 at about 4.30 to 5.00 a.m. the appellant and P.W.2 Ashok, woke him up. The appellant told him that his wife fell from the cot and she was unconscious and he should bring his rickshaw to take her to the hospital. The appellant and P.W. 2 Ashok brought Vandana and kept her in the auto rickshaw. Vijay further stated that as it was dark, he could not see the wife of the appellant properly. He then took the appellant and his wife Vandana to the hospital of Dr. Kadam. The appellant was holding his wife. When Doctor put

on battery light, Vijay noticed that wife of the appellant was not making any movement nor was she talking. Dr. Kadam sent them to the Government Hospital. P.W.6 Sanjay, the brother of Vandana, was residing in the same locality, hence they first went to the house of Sanjay. They took Sanjay alongwith them and proceeded to Government Hospital. Vijay further stated that Doctor examined Vandana and declared her as dead. Then Sanjay the brother of deceased Vandana stated that he wanted to send the dead body of Vandana for postmortem, at that time the appellant appeared scared. Sanjay has also stated that the appellant was in frightened condition.

14. P.W.2 Ashok, P.W.3 Vijay and P.W.6 Sanjay have clearly stated that they found that the appellant was in a frightened condition. There was no reason for the appellant to be in frightened condition as stated by P.W.2 Ashok, P.W. 3 Vijay and P.W.6 Sanjay. There was guilt in the mind of the appellant hence, he was afraid that he would be caught and sent to prison, hence he was scared. This conduct on the part of appellant also speaks volumes about his guilt.

15. The last circumstance against the appellant is, *recovery of towel at the instance of appellant*. P.W.4 panch witness Amol and memorandum and panchanama regarding recovery of towel shows that the appellant led the police and panchas to his house and removed towel kept below mattress, which mattress was kept on the cot and produced the towel before police. The towel was seized and it was sent to Chemical Analyzer. The Chemical Analyzer's report Exh.44 shows that towel was stained with human blood. It was submitted by learned counsel for the appellant that this recovery of towel cannot be relied upon because prior to that the investigating agency had conducted spot panchanama of the house of the appellant. He submitted that had the towel really been in the house, it would have been found by the police and seized. He submitted that the fact that towel was recovered later on from the house of appellant shows that it was planted. We do not find merit in this submission because the towel was not found in open condition in the house of the appellant, but the towel was found concealed under the mattress which was kept on the cot. The police had drawn panchanama of the spot according to situation of articles seen by them. The police had not gone searching for any

incriminating material in the house. As stated earlier towel was concealed by the appellant below the mattress which was kept on the cot. The police would not have thought of looking under the mattress for any incriminating articles. Thus, we find no reason to disbelieve this recovery.

16. As stated earlier the towel was stained with human blood. In this connection, we may usefully refer to the decision of the Supreme Court in the case **Gura Singh Vs. State of Rajasthan**³, wherein it has been observed as under:

" In view of the authoritative pronouncement of this Court in Teja Ram Case (1999) 3 SCC 507) we do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the 'origin of the blood, the trial Court could not have convicted the accused. The Serologist & Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength

³ (2001) 2 SCC 205

of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant.”

Similar view has been taken by the Supreme Court in the cases of **R. Shaji Vs. State of Kerala**⁴ and **Molai & Anr. Vs State of Madhya Pradesh**.⁵ It is pertinent to note that the appellant has not given any explanation for the presence of human blood on the towel.

17. The defence taken by appellant is that his wife fell from the cot and sustained injuries and died. To support his defence, the appellant has examined two defence witnesses viz D.W. 1 Sheetal, who is his daughter, aged about five years at the time of giving evidence and second witness, is son of the appellant, who was 12 years of age at the time of giving evidence. On careful scrutiny of the evidence of both these defence witnesses, we find that their testimony does not help the appellant in any manner. D.W.1 Shital has stated that when her mother fell unconscious, she was fast asleep at that

⁴ (2013) 14 SCC 266

⁵ 1999(9) SCC 581

time. She had not noticed when her mother fell unconscious as she was asleep. Sheetal stated that at that time her brothers were not there at home. Her father took her mother in an auto rickshaw. Sheetal has stated that she did not get up after her mother fell down or on hearing sounds of her mother falling. Sheetal has further stated that her father told her that her mother had giddiness and fell unconscious. She has further stated that she was not aware whether there were quarrels between her mother and father. The evidence of D.W.2 Shivam is also of no use to the appellant. Shivam has stated that he was at Pimpalkhute when his mother expired. Thus, Shivam was not aware what actually transpired on the day of the incident.

18. The learned counsel for the appellant has placed reliance on the decision of the Supreme Court in **State (Delhi Administration) -vs- Shri Gulzari Lal Tandon, (1979), 3 SCC 316** and submitted that in this case also the wife of the appellant was found dead in the house, yet the Supreme Court acquitted the appellant. On going through the said decision we find that it cannot be made applicable to the present case because in the said decision, the motive was not

proved and moreover the three Doctors who were examined in the said case stated that there was strong possibility of the deceased having died due to sudden attack of epilepsy. Such are not the facts in the present case. In the present case, the prosecution has proved the motive. Moreover, there is no such medical evidence in the present case that deceased Vandana could have died due to natural causes.

19. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed murder of his wife Vandana. Hence we find no merit in the appeal. Appeal is dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K.TAHILRAMANI, J.]