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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 484 OF 2005

Sanjay Baburao Bachhav
Aged 31 years, Occ: Service,
R/o Tejale Chowk, Tejale Wada,
District Nashik.

.. Appellant

Vs.

The State of Maharashtra

.. Respondent

Mr. K. P. Shah i/by Mr. P. B. Shah for appellant.
Mrs. U. V. Kejriwal, APP for State.

CORAM: P. V. HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

JANUARY 13, 2015.

ORAL JUDGMENT [Per P. V. Hardas, J.] :

1. The appellant, who stands convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs.1000/-, in default of which to undergo further RI for six months, by the II Adhoc Additional Sessions Judge, Nashik, by judgment dated 20/4/2005, in Sessions Case No. 198 of 2004, by this appeal questions the correctness of his conviction and sentence.

2. Facts, as are necessary for the decision of this appeal may briefly be stated thus :-

PW 13 – API Sanjay Sangle, who, on 1/7/2004, was attached to the Bhadrakali Police Station, recorded the report of PW 1 – Jibhau at Exh. 14. On the basis of the said report, he registered an offence vide Crime No. 177 of 2004 against the unknown person. Upon registration of the offence, he proceeded to the scene of the incident and noticed the dead body of deceased Anita in the house. In the presences of panchas, therefore, he drew the inquest panchanama of the dead body of deceased Anita at Exh. 23. He referred the dead body of deceased Anita for postmortem examination. In the presence of panchas, he drew the scene of the incident panchanama at Exh. 46. From the scene of the incident, he seized blood stained bed-sheet and a vegetable cutter, which were found at the scene of the incident.

PW 14 -PI Ramesh Patil, who was also attached to the Bhadrakali Police Station, took over the investigation from PW 13 – API Sangle. He recorded the statements of relatives of deceased Anita and deputed police party for arresting the appellant. Father of deceased Anita

produced a photograph of the accused and one lady by name Sajan Pathan. The said photograph was seized in the presence of panchas under seizure memo at Exh. 18. The said photograph is at Exh. 16. Statements of Sajan Pathan and her husband were recorded. Said Sajan Pathan i.e. PW 5 produced photographs, which were seized under seizure memo at Exh. 32. The photographs are at Exhs. 27 and 28. The appellant was produced by the Search Party in the police station. The appellant was arrested under arrest panchanama at Exh. 44. The finger print expert Mr. Tambat was called, before whom the vegetable cutter was produced, who examined the vegetable cutter. Photographs of the finger prints on the vegetable cutter were obtained and the vegetable cutter was re-sealed. A panchanama to that effect was drawn at Exh. 37. Seized property was referred to the Chemical Analyzer at Aurangabad under requisition at Exh. 48.

The appellant, on his arrest, was examined by PW 11 – Dr. Sidharth Shelke, who noticed the following external injuries:-

- (i) Contusion over right forearm interiorly placed having size 6 cms x 3 cms, reddish in colour.
- (ii) Contusion over left forearm anteriorly placed having size 5 cms x 3 cms, reddish in colour.

According to him both the injuries were caused by hard and blunt object and had been caused within eight hours. The injury certificate is at Exh. 42. According to PW 11 – Dr. Shelke, the injuries sustained by the appellant were possible by fall on hard and blunt article.

Postmortem on the dead body of deceased Anita was performed by PW 10 – Dr. Arun Satdive, who noticed the following external injuries :-

- (i) Cyanosed and petecial hemorrhage (multiple) present over face and neck above thyroid cartilage.
- (ii) Both hand fingers were cyanosed.
- (iii) Incised wound over neck at the level thyroid cartilage upper end and right to mid-line having size 5 cm x 1 cm skin deep.
- (iv) Incised wound one inch below injury No.3 and left to the head line having size 6 cm x ½ cms by skin deep.
- (v) Abrasions twoin nos., one abrasion was over the left side of neck at the level of injury no.3 having size 6 cms. Other abrasion was at the level of injury no.4 having size 4 cms.
- (vi) Contusion over chin having size 1 cm x 1 cm.
- (vii) Contusion over left side of face over mandible having

size 1 cm x 1 cm.

He opined that all the injuries were antemortem in nature. On internal examination, he noticed the extra vasation of blood around trachea at the level of thyroid cartilage. Fracture of the left horn of thyroid bone was also found. Subcutaneous and muscular extra vasation of blood was noticed on both sides of neck at the thyroid cartilage of size 4 cm x 2 cm.

PW 10 – Dr. Satdive, therefore, opined that Anita had died due to asphyxia due to mechanical obstruction, due to throttling. The postmortem report is at Exh. 40. Further to the completion of investigation, a charge-sheet against the appellant was filed.

3. On committal of the case to Court of Sessions, trial court vide Exh. 2 framed charge against the appellant for offence punishable under Sections 498-A and 302 of IPC and in the alternative under Section 304-B of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined 14 witnesses. The trial court upon appreciation of the evidence, convicted and sentenced the appellant as afore-stated, while acquitting him of the offence punishable under Sections

498-A and 304-B of the IPC.

4. We have heard learned counsel for the appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

5. Prosecution has examined PW 1 – Jibhau, brother of the appellant and bother-in-law of deceased Anita, who deposes that he was residing with the appellant and deceased Anita in the house, situated at Wadala Naka. The said house was owned by one Prabhakar and PW 1 – Jibhau and others were residing in the house since last 3 to 4 years. The appellant was employed as a Peon in the Savitribai Phule Vidyalaya, Pakhal Road, Nashik. PW 1 – Jibhau was a auto-rickshaw driver and was driving an auto-rickshaw bearing Registration No. 15-Z-1859. On 30/6/2004, PW 1 – Jibhau went from the house at about 3 to 3.30 p.m. And at that time the appellant and deceased Anita were present in the house. After plying his auto-rickshaw, PW 1 – Jibhau returned and went to the house of Madhukar Sonawane at about 6 to 7 p.m. PW 1 – Jibhau stayed in the house of Madhukar for the night and on the next day at about 2 to

2.30 p.m. he went to the house, where Anita and the appellant were residing. He knocked on the door, but no one opened the door and he thought Anita might be sleeping and, therefore, went away in his auto-rickshaw. He again returned home at about 8.30 to 9 p.m. and knocked on the door, but no one opened the door. He noticed that a window of the house on the rear side was opened and, therefore, effected entry in the house from the said window. He noticed the dead body of Anita lying on the floor with froth oozing from her mouth and vegetable cutter was lying under her neck. There was an injury on her neck. PW 1 – Jibhau accordingly informed the neighbours and thereafter went to the police station and lodged his report at Exh. 14. According to him, the vegetable cutter, which was shown to him during his evidence, was not the same vegetable cutter, which was seized from the scene of the incident.

In cross-examination, he has admitted that when he had left the house, the appellant had informed him that the appellant was going to the native place at Bej. The appellant came to the police station on 1/7/2004 at about 11 p.m. He has admitted that the appellant was present when the police had drawn the panchanama of the house. He has also admitted that the relations between the appellant and deceased Anita were

cordial. He has also admitted that Anita used to wear gold necklace weighing 4 tolas and gold bangles weighing 2 tolas. He has also admitted that at the time of her death, the gold ornaments were not found on the dead body.

6. Prosecution has examined PW 2 – Devidas, father of deceased Anita. According to PW 2 – Devidas, Anita had informed him about illicit relations between the appellant and PW 5 – Sajan. He further deposes that on 7/8/2002 Anita had requested for financial assistance for purchasing an auto-rickshaw. In respect of the incident, he deposes that on 1/7/2004 at about 10 p.m., he had received information from one Kisan that Anita was serious. He had accordingly hired a vehicle and along with the relatives, had come to the house of the accused. He was informed that Anita was shifted to the Civil Hospital. On reaching the Civil Hospital, he learnt that Anita was no more. According to him, he had performed the funeral on the dead body of deceased Anita.

7. Prosecution has examined PW 4 – Ibrahim, a panch to the scene of the incident panchanama. However, PW 4 – Ibrahim did not support the prosecution and was declared hostile. The scene of the incident

panchanamais proved by PW 13 – API Sanjay Sangle. PW 13 – API Sanjay Sangle has also proved the seizure of the vegetable cutter on which a chance print of the appellant was found.

8. Prosecution has examined PW 5 – Sajan Pathan, who deposes that she was residing along with her husband in a room, in a house, situated near Savitribai Phule Vidyalaya, Nashik. She has admitted that she was acquainted with the appellant, who was residing in the quarter situated in the premises of the Savitribai Phule Vidyalaya. According to her, there was illicit relations between her and the appellant for the last several years. The appellant then married deceased Anita and was residing with Anita in the premises of the school. Even after marriage, the appellant continued the illicit relations with PW 5 – Sajan. After about one year of the marriage, the appellant and his wife shifted their residence to some other place. PW 5 – Sajan also started residing at Bajran Wadi. The appellant continued the illicit relations with Sajan and used to provide Rs.500/- to her. She has produced the photographs at Exhs. 27 and 28. According to PW 5 – Sajan, on 1/7/2004, the appellant came to her house at about 9 a.m. and informed her that he was proceeding to village and had stayed in the house for five minutes and thereafter had gone away. In cross-examination, she has

admitted that she has married and her husband resides with her. She has admitted that she has three children, the eldest being 13 years old and the other children being 12 and 9 years old respectively. She has admitted that her husband was aware about her illicit relations with the appellant. She has denied the suggestion that she was deposing false that she had illicit relations with the appellant.

9. Prosecution has examined PW 6 – Jaywant Tambat, a finger print expert, who deposes that he was asked by the Investigating Office to examine the vegetable cutter for finger prints. According to PW 6 – Tambat, he had noticed one finger print on the board of the vegetable cutter and also noticed one finger print on the blade of the cutter. The police photographer had taken photographs of the finger prints. He had then compared the finger prints of the accused with the finger impression obtained from the vegetable cutter. The photograph on the blade of the cutter was suitable for comparison, while the photograph of finger print on the board of the cutter was unsuitable for comparison. Upon comparing the finger print on the blade of the vegetable cutter, he found it to be identical to the right thumb impression of the appellant. He accordingly gave his report at Exh. 30. He has admitted that when he had received the

vegetable cutter for examination, it was in sealed condition.

10. PW 10 – Dr. Satdive has opined that injuries nos.3, 4 and 5 sustained by the deceased were possible by the vegetable cutter. According to him, deceased Anita might have died within 12 hours of the postmortem examination. The postmortem commenced on 2/7/2004 at 11 a.m. Thus according to the Medical Officer, the injuries could have been caused within 12 hours prior to the commencement of the postmortem examination and thus the injuries could have been caused at 11 p.m. of 1/7/2004. As per the evidence of PW 10 – Dr. Satdive, deceased Anita might have died at 11 p.m. on 1/7/2004. That was the precise time when the dead body of deceased Anita was found by PW 1 – Jibhau.

11. The case against the appellant is principally based on circumstantial evidence. The circumstances proved by the prosecution against the appellant are, (i) that the deceased was last seen alive in the company of the appellant on 30/6/2004 at about 3 to 3.30 p.m., (ii) the appellant was thereafter seen by PW 5 – Sajan Pathan on 1/7/2004 at about 9 a.m. and (iii) a chance finger print of the appellant was found on the vegetable cutter which was used for inflicting the injuries.

12. In so far as the first circumstance is concerned, we find that the Medical Officer has opined that deceased Anita had died on 1/7/2004 at about 11 p.m. The circumstance that Anita and the appellant were seen together on 30/6/2004, in our opinion, is not an incriminating circumstance. There is no evidence to indicate that the appellant was present in the house on 1/7/2004 at about the time when the offence was committed. PW 1 – Jibhau does not speak about the presence of the appellant at about the time when he had noticed the dead body of deceased Anita. We thus find that the first circumstance is an innocuous circumstance and is not an incriminating circumstance. In respect of the second circumstance, i.e. presence of the appellant in the house of PW 5 – Sajan on 1/7/2004 at 9 a.m., in our opinion, the said circumstance favours the appellant more than the circumstance being an incriminating circumstance. According to PW 5 – Sajan the appellant informed her that he was proceeding to his native place. As per the medical evidence, Anita was alive on 1/7/2004 at 9 a.m. In respect of the third circumstance of finding of the thumb impression of the appellant on the vegetable cutter, in our opinion, the said circumstance cannot be considered as an incriminating circumstance. The appellant was residing in the house and, therefore, finding of a finger impression of the

appellant on the vegetable cutter is not an incriminating circumstance. Moreover, since there is no evidence to indicate that the appellant was present at about the time when the offence was committed, finding of the finger impression of the appellant on the vegetable cutter is not an incriminating circumstance.

13. Prosecution has thus not been able to prove the offence against the appellant beyond reasonable doubt. The circumstances so proved by the prosecution do not unerringly establish that it was the appellant and the appellant alone who had committed the crime. The appellant, in our opinion, therefore, would be entitled to be given the benefit of doubt.

14. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the appellant, be refunded to him. Since the appellant is in jail, he released forthwith, if not required in any other case.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)