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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.542 OF 2008**

Shyam Shantaram Kadam,	]	
age: 40 years, Occn. Driver	]	
r./o Gavdevi Utkarsha Chawl	]	... <u>Appellant</u>
Bldg No.2, Chawl No.2,	]	Ori.Accused
Kurla (W), Mumbai	]	No.1.
	]	
Presently in Nashik Central Prison	]	

V/s.

The State of Maharashtra	]....	Respondent
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Ms. Rohini M. Dandekar, Advocate, for the Appellant.
Mrs. G. P. Mulekar, A.P.P., for the Respondent-State.

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

DATE : 14TH AUGUST, 2015.

ORAL JUDGMENT:[Per:DR. SHALINI PHANSALKAR-JOSHI, J.]

1. The appellant, who stands convicted by judgment dated 15.2.2008, by Additional Sessions Judge, Greater Bombay,

in Sessions Case No.121 of 1994, for THE offence punishable under Section 302 of IPC and sentenced to suffer rigorous imprisonment for life, has preferred this appeal, challenging his conviction and sentence.

2. Brief facts of the appeal can be stated as follows :-

The marriage of Mohini @ Sulochana, the daughter of P.W.1 Vasanti Shinde, was performed with the appellant on 5.5.1989. It wAs a love marriage and after the marriage she started residing alongwith the appellant in his house at Utkarsha Chawl, Kurla, Mumbai. Initially for 1½ year, the appellant was in service at Saudi Arabia. However, after he returned therefrom, the dispute started between the appellant and his wife. The appellant was taking suspicion about the character of Mohini as he has received one letter informing him about the illicit relations between Mohini and one Krishna, with whom Mohini was doing the business of garmentS. The appellant, therefore, used to assault Mohini. In respect thereof, two N.C. complaints were also lodged by her mother against the appellant at Dharavi

Police Station on 24.6.1993 and 1.8.1993.

3. On 5.9.1993 at about 5.00 a.m. cousin brother of the appellant, original accused No.2 Prakash, came to the house of Mohini's mother and informed her that Mohini was serious. Hence her mother rushed there alongwith her son P.W.2 Prakash. There she found Mohini lying dead with injuries on her lip, neck and cheek. On the information given to the police, P.W.10 API Mutkule came to the spot and recorded complaint of P.W.2 Prakash, Mohini's brother vide Exh.18. On his complaint C.R.No.518 of 1993, came to be registered against the appellant, his mother and cousin brother Prakash, for the offences punishable under Sections 498A and 302 read with Section 34 of the Indian penal Code.

4. During the course of investigation, after inquest panchanama, the dead body was referred to postmortem examination. The appellant and other co-accused were arrested. The appellant was also referred for his medical examination as some abrasions and scratch marks were found on his body. The

postmortem report (Exh.34) was received certifying that the probable cause of Mohini's death was asphyxia due to constriction of neck. As a part of further investigation, the nail clippings of the appellant were sent to Chemical Analyzer alongwith the clothes of the deceased. The Chemical Analyzer's report Exh.30 revealed the presence of blood stains in the nail clippings of the appellant. Hence further to completion of investigation, chargesheet was filed against the appellant and co-accused, for the offences punishable under Sections 302 and 498A read with Section 34 of the IPC.

5. On committal of the case to the Sessions Court, trial Court framed charge vide Exh.2. The appellant and co-accused pleaded not guilty and claimed trial raising defence of denial and false implication.

6. In support of its case, the prosecution examined in all 14 witnesses and on appreciation of their evidence, trial Court acquitted the co-accused and convicted and sentenced the appellant for the offence punishable under Section 302 of IPC as

aforesaid.

7. This judgment of the trial Court is challenged in this appeal, by learned counsel for the appellant whereas supported by the learned APP. In our considered opinion, before adverting to the rival submissions made by them, it would be useful to refer to the evidence on record.

8. In this case, the prosecution has relied on the four circumstances viz i) *motive*, ii) *homicidal death of Mohini as a result of asphyxia due to throttling*. iv) *presence of human blood in the nail clippings of the appellant* and iv) *abrasions and injuries found on the body of the appellant*.

9. Coming to the first circumstance of “*motive*”, there is more than sufficient evidence on record adduced by P.W. 1 Vasanti - the mother of deceased, P.W.2- Prakash & P.W.4 Deepak the brothers of deceased, P.W.3 Sandhya- the sister of deceased and P.W.5- Sandya's husband. Their evidence clearly goes to prove that the marital life of Mohini was not at all happy one

though it was a love marriage. Initially appellant was working in Saudi Arabia for about 1½ year. During his stay there, he received one letter making allegations of illicit relations between Mohini and one Krishna with whom she was doing business of garments. As a result of thereof, on his return from Saudi Arabia, he was always quarrelling, harassing and subjecting Mohini to mental and physical torture. As per evidence of her mother, she tried to convince the appellant, but it was of no use. Hence she has lodged even N.C. complaint against him on 24.6.1993. Just before this incident, in her presence the appellant had slapped her daughter Mohini, therefore, she has lodged another N.C. complaint on 1.8.1993. On that complaint appellant was detained in police lock-up for a midnight.

10. Further there is evidence of P.W.2 Prakash the brother of Mohini, who has also deposed about Mohini informing him in respect of harassment and ill-treatment at the hands of appellant.

11. The material evidence is of P.W.3 Sandhya, Mohini's sister, who has deposed that appellant had come to her house

and showed her one letter in which it was written that Mohini was having relations with another man. She told about the letter to her mother and also asked Mohini about it. Mohini told her that appellant was unnecessarily suspecting her character. Frequent quarrels on that count continued between the appellant and Mohini. Her mother was trying to settle the dispute, but it was of no use. In her cross-examination, it is brought on record that the appellant was suspecting relations between Mohini and Krishna, who was running S.K. Industries Company alongwith Mohini when the appellant was in Saudi Arabia.

12. P.W.4 Deepak has also deposed about appellant's suspecting the character of his sister Mohini and beating her on that count. Lastly there is evidence of P.W.5 Sanjay, the husband of P.W.3 Sandhya, who has also deposed about said fact.

13. Thus, there is sufficient evidence on record proving motive on the part of the appellant which was suspicion entertained by him about relations between his wife Mohini and Krishna, which was not only the cause of their quarrel and

dispute but which also ultimately resulted into his killing Mohini.

14. To prove homicidal death of Mohini, prosecution has relied upon inquest panchnama Exh.26 proving presence of subconjunctive injuries on the body of Mohini and also the postmortem report Exh.34 proved through evidence of P.W.9 Dr. Hankare. The evidence of Mohini's mother goes to reveal that on receipt of information about Mohini being serious, when she rushed to the hospital, she found that there were blood stains and injuries on Mohini's cheek. Her face was swollen and she was already dead. There is corroborating evidence of P.W.2 Prakash her brother, who had found nail marks on her neck and cheek. P.W.3 Sandhya has also deposed about witnessing injuries on the neck, lip and cheek of deceased.

15. The inquest panchnama Exh.26 goes to prove that there were abrasions on her neck at six places on upper lip, right cheek and front portion of the neck was also found swollen.

16. The evidence of P.W.9 Dr. Hankare, who has conducted postmortem examination proves that on external

examination, he found following injuries:-

1. Abrasion over middle of the upper lip 0.5cm x 0.5 cm superficial.
2. Abrasion on left side the lower lip 0.5 cm x 0.2 cm semicircular superficial.
3. Abrasion over right cheek above the mandible 3 cm x 1 cm.
4. Contusion below the right angle of mouth 2 x 1 cm.
5. Abrasion over the upper neck curved facing downward and laterally five in number superficial 0.8 x 0.2 cm.
6. Abrasion over the neck below injury No.5 more on right side curved facing upward and to the left side 0.5 cm x 0.2 cm four in number.
7. Bruising over the both nostril.

On internal examination, he found following injuries.

1. Brain edematous haemorrhage in the brain substances.
2. Larynx trachea and bronchi fine froth.
3. Right lung and left lung congested.
4. Pericardium congested.
5. Heart with weight empty -normal size.
6. Large vessels normal.

According to him, all these injuries were antemortem. He further noticed that the eyes were swollen with sub-conjunctive haemorrhage, tongue was inside, discharge was present in the mouth and nose. On internal examination, he noticed that it was edematous peteching haemorrhage in the brain substance. According to him, the cause of death was asphyxia due to neck constriction, in view of multiple injuries over the neck. He has opined that it was a clear case of constriction of the neck. The possibility put up to him in cross-examination that it was a case of epileptic attack, has been rightly denied by him. Having regard to the multiple injuries found on the neck, cheek and lips, in our opinion, there can hardly be any doubt about the cause of death as asphyxia due to constriction of neck, as given P.W.9 Dr. Hankare.

17. The third and important circumstance relied upon by the prosecution is that of presence of human blood in the nail clippings of appellant. The evidence of P.W.8 Dr.Daund, who has examined the appellant on his arrest on the same day goes to prove that he has collected nail clippings of the appellant and

handed over them to the Investigating Officer for sending them to Chemical Analysis. As per evidence of P.W. 12 Police Inspector-Sharma, he has sent nail clippings alongwith blood sample of the appellant and deceased to Chemical Analyzer. The Chemical Analyzer's report (Exh.30) proves presence of human blood in the nail clippings of the appellant. Though the results of blood grouping were inconclusive, the presence of the human blood in the nail clippings of the appellant is itself, in our opinion, an incriminating circumstance in the light of medical evidence proving multiple injuries on the neck, cheek and lip of the deceased Mohini.

18. Last incriminating circumstance which is clinching in nature is presence of scratch marks, abrasions and other injuries on the body of the appellant, as found by P.W.8 Dr. Daund, when he examined the appellant on that day itself at Nagpada Police Hospital. As per his evidence, on examination of the appellant, he found following injuries.

- i. Scratch mark on right side of chin 0.5 cm red in colour.

- ii. Linear abrasion on left eye lateral aspect 2 cm in length vertical, red in colour.
- iii. Scratch mark on left zygomatic region 1.5 cm in size / red colour.
- iv. Scratch mark on left side chin 0.2 cm in length.
- v. Scratch mark anterior to left mandibular angle 0.1 cm red in colour.
- vi. Linear abrasion on left side neck 3.5 cm red in colour.
- vii. Linear abrasion on right side neck 0.6 cm long horizontally placed at the level of thyroid cartilage.
- viii. 3 linear abrasions on right side of neck one below the other and size 2 cm, 0.5 cm and 2.5 cm from above downwards respectively. At the distance of 1 cm to 0.5 cm apart.
- ix. 5 Linear abrasions on left shoulder ranging from 1 cm to 5 cm size red in colour.
- x. Multiple scratches on left axilla 8 in nos. ranging from 0.5 cm to 1 cm/sane/insane.
- xi. 7 scratch wounds on left side chest between anterior axillary line and posterior axillary line ranging from 1 cm to 2 cm.
- xii. Multiple scratches total 11 in nos. on right side of chest ranging from 0.5 cm to 2 cm. Red in colour.
- Xiii. Linear abrasion on right clavicle 5 cms

horizontally placed red in colour.

19. According to P.W. 8 Dr. Daund, all these injuries were caused with nails due to the resistance applied by the victim during the incident. He has also deposed that the appellant has given before him the history of midnight quarrel in which he has killed his wife by throttling her. His evidence further reveals that the age of injuries as found by him coincides with history of the incident as given by the appellant. The suggestion put to him in the cross-examination that these injuries are possible during work of welding is denied by him. Apart from it, there is nothing in his cross-examination to disbelieve his evidence.

20. No reasonable or plausible explanation is offered by the appellant about the presence of these abrasions and scratch marks on his body. In our opinion, they perfectly corroborate the case of the prosecution that these injuries were caused in the incident due to resistance offered by the deceased when appellant was throttling her with hands.

21. In our considered opinion, therefore, as admittedly at the time of incident, deceased Mohini was in the house of the appellant and except two of them presence of none other is proved on record, the onus, was therefore, shifted on the appellant in view of Section 106 of the Evidence Act, to explain the circumstances leading to her death and also to cause of his injuries. As no explanation is offered by the appellant, this is a fit case where no other inference except that of the appellant being responsible for her death can be drawn.

22. Thus, the incriminating circumstances proved on record by prosecution, being of clinching nature, we have no hesitation in upholding the conviction of the appellant, for the offence punishable under Section 302 of the Indian penal Code. Hence the appeal being devoid of any merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. .V. K. TAHILARAMANI, J.]