

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.731 OF 2006

Subhash Barku Bhoir	]Appellant/
Aged:about 27 yrs	] Original
R/o.Embur Khadkipada	] Accused
Taluka-Palghar	]
District-Thane.	]
(Presently in Thane Central	]
Jail)	]

V/s.

The State of Maharashtra	]Respondent
At the instance of Sr. Inspector	]
of Police, Manor Police Station,	]
Palghar,	]
Thane.	]

Ms Rohini M. Dandekar, Advocate appointed for
the Appellant
Mr.A.S.Shitole, APP, for the Respondent/State

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT.I.K.JAIN, JJ.**

DATE : 18TH FEBRUARY, 2015

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

. The appellant/original accused has preferred this Appeal against the Judgment and Order dated 15.07.2006 passed by the learned Additional Sessions Judge, Palghar in Sessions

Case No.17 of 2005. 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 rigorous imprisonment for five months.

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

Deceased Anjana alias Chabi was the daughter of PW-1 Sundari. PW-2 Damayanti was the sister of Anjana and PW-3 Navshi was the aunt of Anjana. The marriage of Anjana and the appellant took place about six years prior to the incident. Thereafter, one daughter was born to Anjana. There used to be constant quarrels between the appellant and his wife Anjana and the appellant used to drive Anjana out of the house, hence, Anjana used to come to the house of her mother Sundari. Sundari used to pacify Anjana and send her back to her matrimonial

house after two days. Two days prior to the incident, a quarrel took place between appellant and Anjana. Due to this, Anjana had come to the house of Sundari. She stayed for two days in the house of Sundari. Then Sundari and Damayanti reached Anjana to the house of the appellant at night time. When Sundari took Anjana to the house of the appellant, the appellant assaulted his wife Anjana with a stick. Sundari got frightened and left her daughter Anjana at the house of the appellant and went back to her house. On the next day, Sundari sent her sister-in-law PW-3 Navshi to the house of the appellant to see the condition of her daughter Anjana. Navshi informed that her daughter was dead. Sundari then went to the house of the appellant and saw the condition of her daughter. She saw marks of assault on the body of her daughter Anjana. Thereafter Sundari went to the police patil. Sundari thereafter

lodged complaint against the appellant. After FIR was registered, investigation commenced. The dead body of Anjana was sent for post mortem. In the opinion of the Doctor, Anjana had died due to cardiorespiratory failure due to asphyxia due to strangulation. After completion of investigation, charge sheet came to be filed.

3. Charge came to be framed against the appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this Appeal.

4. We have heard learned counsel for the appellant and the learned APP for the State. We

have carefully considered their submissions, the facts and circumstances of this case, the Judgment and Order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter for the below mentioned reasons, we are of the opinion that the appellant strangled his wife Anjana and caused her death.

5. There is no eye witness in the present case to the actual strangulation of Anjana by the appellant and as far as strangulation is concerned, the case is totally dependent on circumstantial evidence. However, as far as assault is concerned, there are two eye witnesses i.e. PW-1 Sundari and PW-2 Damayanti. Sundari was the mother of deceased Anjana and Damayanti was the sister of deceased Anjana. Sundari has stated that Anjana was her daughter. The appellant was the husband of Anjana. Their

marriage took place about six years prior to the incident. Anjana gave birth to one daughter. Sundari has further stated that there used to be quarrels between the appellant and her daughter and the appellant used to drive his wife Anjana out of the house. Hence, her daughter Anjana used to come to her house. Sundari used to pacify Anjana and send Anjana back to the house of the appellant after about two days. Just two days prior to the incident, quarrel took place between Anjana and the appellant, hence, Anjana had come to the house of Sundari. Anjana stayed in the house of Sundari for two days. Sundari then left Anjana at the house of the appellant during night hours. As soon as Sundari reached Anjana back to the house of the appellant, the appellant assaulted Anjana with stick. Due to this, Sundari got frightened and left that place. On the next day in the morning, Sundari sent PW-3 Navshi who was her sister-in-law to

the house of the appellant to see the condition of Anjana. Navshi informed Sundari that her daughter Anjana was dead. Sundari then went to the house of the appellant. Sundari saw marks of assault on the body of her daughter. Sundari went to the police patil. Sundari then went to the police station and lodged FIR against the appellant.

6. PW-2 Damayanti was the sister of Anjana. Damayanti has stated that the appellant used to assault Anjana since the beginning of their marriage. Anjana used to visit their house and disclose about the ill treatment by the appellant to her. She used to stay for two days in their house and go back to the house of the appellant. Just two days prior to the incident, the appellant assaulted Anjana, hence, she came to their house. Anjana stayed in their house for two days. Then Damayanti and her mother Sundari reached Anjana to the house of the appellant

during night hours. At that time, the appellant started assaulting Anjana with a stick. Though Damayanti requested the appellant not to assault Anjana, he continued the assault, hence, Damayanti and her mother Sundari came back to their house. On the next day, they asked her aunt PW-3 Navshi to see the condition of Anjana. Navshi came back and informed that Anjana was dead. Damayanti then noticed marks of violence on the body of Anjana.

7. PW-3 Navshi has stated that she was the aunt of Anjana. The appellant was the husband of Anjana. After marriage, Anjana was residing with the appellant in the same village. The appellant used to assault Anjana. Just prior to the incident, Anjana had come to the house of her mother Sundari because the appellant had assaulted Anjana. Thereafter, Sundari reached Anjana back to the house of the appellant. On

the next day, Sundari sent Navshi to the house of Anjana. When Navshi went to the house of Anjana, she saw Anjana was lying on the bed and she was dead. Navshi noticed injuries on the neck and hands of Anjana. Navshi informed about these facts to Sundari.

8. The evidence of PW-1 Sundari, PW-2 Damayanti and PW-3 Navashi shows that on 28.10.2004 Anjana was found dead in the house of the appellant with injuries on her person. The earlier night when Sundari and Damayanti reached Anjana to the house of the appellant, the appellant assaulted Anjana with a stick. Being frightened Sundari and Damayanti returned back to their house. In the morning Anjana was found dead. The cause of death as is seen from the evidence of PW-7 Dr.Kalangoda was strangulation. Obviously, Anjana could not have strangled herself and somebody else must have strangled

Anjana. The only person who had a grudge against Anjana and the motive to commit the offence was her husband i.e. appellant. The appellant was seen assaulting Anjana with a stick at night and in the morning Anjana was found dead due to strangulation.

9. The evidence on record shows that the appellant had three brothers and each of the brothers were residing in a separate room in the house. Anjana was seen lying dead on the bed in the morning. Anjana at no point of time made any allegation against any of the other family members. Anjana made complaint only in relation to the appellant and no one else. These complaints were of assault and ill treatment by the appellant. As the appellant and Anjana were the only two persons residing in the room. The appellant has to explain how Anjana sustained injuries and died.

10. 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

¹ (2006)12 SCC 254 : AIR 2007 SC 144

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.

11. Marks of assault were seen on the body of Anjana, PW-1 Sundari and PW-3 Damayanti have clearly stated that on the earlier night i.e. 27.10.2004 at night time they saw the appellant assaulting Anjana and in the morning Anjana was found dead. The evidence of PW-7 Dr. Kalangoda

who conducted the post mortem on the dead body of Anjana shows that injuries were seen on the dead body of Anjana and all the injuries were ante mortem. On external examination, the following injuries were noticed.

- “(i) Contusion over the left side of neck.
- (ii) Contusion over the left side of iliac-region.
- (iii) Abrasion over right wrist joint.”

On internal examination, the following injuries were noticed.

- “(i) Fracture of laryngeal cartilage and tracheal rims.
- (ii) Brain covering was congested and there was rupture of subcutaneous tissue and muscles.
- (iii) Both lungs were congested and blood was oozing.”

Dr.Kalangoda also noticed injury to left carotid artery. In the opinion of Dr. Kalangoda the probable cause of death was due to cardiorespiratory failure due to asphyxia due to

strangulation. According to Dr.Kalangoda, injuries noticed by him were sufficient in the ordinary course of nature to cause the death of person. Dr. Kalangoda stated that injury No.1 is possible by strangulation with any cloth. Doctor has specifically stated that he noticed weal marks on the left side of the neck. Doctor Kalangoda has further stated that it was not a case of suicide. As stated earlier, the cause of death is strangulation. Anjana could not have strangled herself, hence, somebody else must have strangled Anjana. The only person who had an animus against Anjana was her husband i.e. appellant. Anjana had no complaint against any other person. There is a history of assault by the appellant to Anjana. The earlier night also the appellant was seen assaulting Anjana with a stick and in the morning Anjana was found dead due to strangulation. The appellant has not offered any plausible explanation for the death

of Anjana in his house. On going through the evidence, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant first assaulted Anjana and then caused her death by strangulating her. Thus, we find no merit in the Appeal. Appeal is dismissed.

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

13. Office to communicate this order to the appellant who is in prison.

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

(SMT.V.K.TAHILRAMANI, J.)