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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1143 OF 2008**

Baban Bal Pawar	]
Aged about 34 years,	]
Resident of Jambhrun, Vetoshi,	]
Taluka District Ratnagiri	]
(presently in Nasik Jail)	].. Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
(At the instance of Chiplun Police St.	]
Dist. Ratnagiri)	].. Respondent

....

Mr. Pravin L. Singh Advocate for the Appellant
Mrs. S.S. Kaushik A.P.P. for the State

....

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

DATED : JULY 31, 2015

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

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 23.6.2008 passed by the learned Additional Sessions Judge, Khed Dist. Ratnagiri in Sessions Case No. 34 of 2005. By the said

judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs.100/- i/d S.I. for eight days.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Sonal was the daughter of P.W. 1 Kalpana. The appellant was originally resident of Jambhrun Vetoshi in District Ratnagiri. As it was mango season, the appellant and Sonal had come to the house of Sonal's mother Kalpana about 1½ month prior to the incident. Sonal and the appellant used to do work of guarding mango trees. For the said work, both of them used to get total of Rs.300/- per day. Out of the said amount, both Sonal and the appellant used to each give Rs.50/- per day to Kalpana for their lunch and dinner.

(ii) Kalpana was residing at Katkarwadi in Dalvatane in Ratnagiri. Kalpana's mother's house was situated adjoining to her house. The house of P.W.2 Harischandra was also situated adjacent to the house of Kalpana. Harischandra was husband of sister of Kalpana. Kalpana's house was in the middle and the house of her mother and the house of P.W. 2 Harischandra

were on either side of her house. Harischandra's house was about 5 to 6 feet away from the house of Kalpana and Kalpana's mother's house was about 10 to 12 feet away from her house. The court-yards of the houses of Kalpana, her mother and P.W.2 Harischandra were situated adjacent to each other. One day prior to the incident, a quarrel took place between the appellant and Sonal on account of demand for money by the appellant. The appellant was demanding Rs.200/- from Sonal. Sonal did not give the amount to the appellant. Due to this, quarrel took place between Sonal and the appellant.

(iii) On the next day in the evening, the appellant and Sonal had their dinner. Thereafter, the appellant and Sonal went to sleep in the court-yard of Kalpana's house. At about 11.00 p.m. Sonal shouted loudly, hence, Kalpana woke up. P.W. 2 Harischandra switched on electric bulb. Then they saw the appellant inflicting blows with knife on Sonal. Thereafter the appellant ran away. Sonal came near Kalpana and fell down and died on the spot. This incident was witnessed by P.W. 1 Kalpana and P.W. 2 Harischandra. Kalpana then lodged F.I.R. Thereafter investigation commenced. After completion

of investigation, the charge sheet 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 of total denial and false implication. After going through the evidence adduced in the present case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted his wife Sonal with knife and caused her death.

5 To support the conviction, the prosecution is mainly

relying on the evidence of P.W. 1 Kalpana and P.W. 2 Harischandra. Kalpana was the mother of deceased Sonal and Harischandra was the husband of sister of Kalpana i.e. he was maternal uncle of Sonal. Kalpana has stated that the appellant was her son-in-law. Her daughter Sonal was married to the appellant. About 1½ month prior to the incident, the appellant and her daughter Sonal had come to her house. As it was mango season, her daughter Sonal and the appellant used to go for the work of guarding mango trees. For this work, both of them used to get total Rs.300/- per day. Out of the said amount, both of them used to give her Rs.50/- each per day for their lunch and dinner. Kalpana has stated that one day prior to the incident, a quarrel between the appellant and Sonal took place on account of money. The appellant was demanding Rs.200/- from Sonal and Sonal did not give the amount to the appellant. Due to this, a quarrel took place between the appellant and Sonal. On the next day in the evening, the appellant and Sonal had their dinner and they slept in the court-yard of her house. At about 11.00 p.m. Sonal started shouting loudly, hence, they all got up. Harischandra (P.W. 2) switched on the electric bulb. Kalpana then saw the appellant

was inflicting blows with knife on the person of her daughter Sonal. Thereafter, the appellant ran away.

6 The second eye witness is P.W. 2 Harischandra. Harischandra has stated that his house was situated adjacent to the house of Kalpana. He knew Sonal as she was the daughter of Kalpana. He also knew the appellant as the appellant was the son-in-law of Kalpana and was husband of Sonal. Harischandra has stated that since 1½ month prior to the date of the incident, the appellant and Sonal were residing at the house of Kalpana. One day prior to the date of the incident, the appellant was demanding Rs. 200/- from Sonal. On that count, quarrel took place between the appellant and Sonal. Harischandra has further stated that the incident took place on 11.5.2005. On the night of 11.5.2005, he was sleeping in the court-yard of his house. The appellant and Sonal were sleeping in the court-yard of Kalpana. The appellant and Sonal had slept at a distance of 20 feet from the place where Harischandra had slept. Harischandra has further stated that at about 11.00 p.m. Sonal started shouting loudly, hence, he got up and switched on the electric bulb in his court-yard.

In the light of electric bulb, he saw the appellant inflicting blows with knife on the person of Sonal. Therefore, Harischandra rushed towards the appellant and Sonal. Thereupon the appellant ran away towards 'jungle' (forest). Sonal rushed towards her mother i.e. towards Kalpana and she fell down and died on the spot. Sonal sustained injuries on her chest. Thus, the evidence of both P.W. 1 Kalpana and P.W. 2 Harischandra shows that the appellant assaulted his wife Sonal with a knife and caused her death.

7 Mr. Singh, the learned counsel for the appellant submitted that the evidence of P.W. 1 Kalpana and P.W. 2 Harischandra cannot be relied upon because there are several serious discrepancies in their evidence. He pointed out that Kalpana has stated that Sonal and the appellant were sleeping in her court-yard. Thereafter, Kalpana has stated that the appellant and Sonal slept in the court-yard of her mother. He further pointed out that in her F.I.R. Kalpana has stated that the appellant and her daughter Sonal were sleeping in the court-yard of her house and Kalpana had slept in her own court-yard. Mr. Singh pointed out that on the other hand, P.W.

2 Harischandra has stated that the appellant and Sonal were sleeping in Kalpana's court-yard and Harischandra and his family were sleeping in his court-yard. In this connection, it is pertinent to note that Kalpana is a rustic villager who was doing labour work, however, on careful scrutiny of her evidence, it is noticed that though she may have stated that Sonal and the appellant were sleeping in her court-yard and thereafter she has stated that they were sleeping in the court-yard of her mother, her evidence further shows that both the court-yards are adjacent to each other. Kalpana's evidence further shows that the house of her mother was adjacent to the court-yard of her house, so also the house of Harischandra was adjacent to her house. Kalpana has stated that her house was in the middle of the house of her mother and the house of Harischandra. In this connection, we would like to advert to the evidence of P.W. 2 Harischandra who has stated that his house was situated 5 to 6 feet away from Kalpana's house and Kalpana's mother's house was situated at 10 to 12 feet away from her house. Harischandra has further stated that the appellant and Sonal were sleeping at a distance of 20 feet from the place where he was sleeping. Harischandra was sleeping in

his own court-yard with his family. It is pertinent to note that Harischandra has categorically denied the suggestion put by the defence that it was not possible for a person to see what was happening in the court-yard of Kalpana's house when a person was sleeping in the court-yard of the house of Harischandra. Thus, the evidence of P.W. 2 Harischandra shows that it was possible to see what was happening in the court-yard of Kalpana's house while a person was sleeping in the court-yard of the house of Harischandra. Even assuming that Sonal and the appellant were sleeping in the court-yard of the mother of Kalpana, the distance between Harischandra's court yard and the court-yard of the mother of Kalpana was about 17 to 18 feet because Harischandra has stated that his house was situated about 5 to 6 feet away from Kalpana's house and Kalpana's mother's house was situated 10 to 12 feet from the house of Kalpana. It may also be noted that Kalpana has stated that the court-yard of her own house and the court yard of her mother were adjacent to each other. Thus, even if the incident took place in the court-yard of mother of Kalpana, it was possible for Kalpana as well as Harischandra to see the incident.

8 Mr. Singh the learned counsel for the appellant has contended that Harischandra has stated that he switched on the electric bulb and in the light of electric bulb, it is the prosecution case that Harischandra and Kalpana witnessed the incident. Mr. Singh submitted that if the incident occurred in the court-yard of the house of mother of Kalpana, it would not have been possible for Harischandra to witness the incident. As far as this contention is concerned, it is noticed that Harischandra has stated that Sonal and the appellant were sleeping just 20 feet away from the place where he was sleeping. If the electric bulb is switched on, it is easily possible for a person to see what is happening at least upto 30 feet. Moreover, it has to be kept in mind that the appellant as well as the deceased were well known to Harischandra as well as Kalpana because they were closely related to the appellant and the deceased which is seen from the evidence of Kalpana wherein she has stated that Harischandra is the husband of her sister. In such case neither Kalpana nor Harischandra would make any mistake in identifying the appellant.

9 Mr. Singh, the learned counsel for the appellant submitted that Harischandra has stated that one has to cross 'bandh' (boundary) to go from his court-yard to the court-yard of Kalpana. Mr. Singh urged that in such case, it would not have been possible for Harischandra to have seen what was happening in the court-yard of Kalpana or Kalpana's mother. As far as this contention is concerned, it is noticed that Harischandra has stated that the appellant and Sonal had slept at a distance of 20 feet from where he had slept. Moreover, Harischandra has categorically denied the suggestion that it was not possible to see what was happening in the court-yard of Kalpana's house while a person was sleeping in the court yard of Harischandra's house. Thus, this shows that it was very much possible for Harischandra to see what was happening in the court-yard of Kalpana or even for that matter, the court-yard of Kalpana's mother.

10 Thereafter Mr. Singh, the learned counsel for the appellant submitted that the witnesses were residing in a hamlet i.e. Katkarwadi and it used to be dark after 7.00

p.m. In such case, when the incident occurred at 11.00 p.m. it would not have been possible for either Kalpana or Harischandra to have witnessed the incident and correctly identified the assailant. To support this contention, Mr. Singh placed reliance on the evidence of P.W. 1 Kalpana wherein she has admitted that it is true that in their Katkwardi there used to be darkness after 7.00 p.m. She has further admitted that at night time, there used to be complete darkness after the electric bulb was switched-off. In this connection, we would like to advert to the evidence of P.W.2 Harischandra. Harischandra has specifically stated that at 11.00 p.m. he heard Sonal shouting loudly, therefore, he got up and switched on electric bulb in his court-yard. In the light of the electric bulb, he saw the appellant inflicting blows with knife on the person of Sonal. P.W.1 Kalpana has also stated that at 11 p.m. she heard her daughter Sonal shouting loudly, hence, they all got up. Harischandra (P.W. 2) switched on the electric bulb and she saw the appellant inflicting blows with knife on the person of her daughter. Thus, the evidence on record shows that it was very much possible for the witnesses to have witnessed the incident and correctly identified the assailant.

11 The evidence of P.W. 1 Kalpana and P.W. 2 Harischandra also shows the motive for the appellant to commit the crime. Both these witnesses have stated that one day prior to the date of the incident, the appellant demanded Rs.200/- from his wife Sonal. Sonal did not give him the money, hence, quarrel took place between Sonal and the appellant. The learned counsel for the appellant submitted that the appellant was also earning money. Every day, he was earning Rs.150/- per day, hence, there was no reason for the appellant to demand Rs.200/- from Sonal. To support this contention, he placed reliance on the evidence of P.W. 1 Kalpana who has stated that the appellant as well as her daughter Sonal used to go for work for guarding the mango trees. Both of them used to get total of Rs.300/- per day. Out of the said amount, each of them used to give Rs.50/- per day for their lunch and dinner to Kalpana. Mr. Singh reiterated that the evidence of Kalpana shows that the appellant was earning, hence, there was no reason for the appellant to demand Rs. 200/- from Sonal. As far as this contention is concerned, even if the appellant was earning, he may have wanted some more

money and just because the appellant was earning Rs. 150/- per day, there was no reason to disbelieve the evidence of P.W. 1 Kalpana and P.W. 2 Harischandra who have stated that the appellant demanded Rs.200/- from Sonal and as Sonal did not give the appellant the amount, quarrel took place between the appellant and Sonal.

12 It is the prosecution case that the appellant assaulted his wife Sonal with a knife which caused her death. This is supported by the medical evidence. P.W. 6 Dr. Ali conducted the post-mortem on the dead body of Sonal. On external examination, he found the following injuries:

- "(1) Stab wound at anterior axillary line 1 inch wide, 2 inches deep;
- (2) Another stab wound at midclavicular region 1 cm. wide and 2 and half inches deep;
- (3) Stab wound at left lateral border of sternum, 1 cm. wide and 2 inches deep;
- (4) Contused wound over left humerus lower border 3 inches long and one inch deep."

Dr. Ali also noticed fracture of rib No. 6 on right side and fracture to rib No. 3 on left side. Dr. Ali noticed that the heart of that lady was ruptured and large vessels of the heart were clotted with blood. According to Dr. Ali injury No.1 mentioned in Column No. 17 of the post-mortem report i.e. stab wound at left lateral border of sternum, corresponded with the internal injury noticed by Dr. Ali to the heart. Dr. Ali opined that because of the said injury the heart of that lady was ruptured. According to Dr. Ali, the said lady died due to "cardio respiratory failure due to hemorrhagic shock due to injury to heart" and due to such injury to heart, person can die immediately on the spot. In the opinion of Dr. Ali, the injuries were stab injuries and those injuries can be possible with the help of sharp edged weapon. Thus, the medical evidence also supports the prosecution case.

13 Lastly, Mr. Singh submitted that the appellant had serious injuries on his person and these injuries were unexplained by the prosecution and in such case, the entire prosecution case is suspect and the conviction of the appellant cannot be sustained. To support his contention, Mr. Singh

placed reliance on the decision of the Supreme Court in the case of ***Dhananjay Shankar Shetty Vs. State of Maharashtra (S.C.)***¹. He placed reliance on paragraph 10 of the said decision wherein it is observed as under:

"Learned counsel appearing on behalf of the appellant pointed out that when the appellant was arrested, the police found several injuries on his person and accordingly forwarded him to Dr. Dilip Ram Chandra Waze (P.W. 13) who found four incised injuries on non-vital parts of his body caused by sharp edged weapon and the prosecution has completely failed to explain the same. It cannot be laid down as a matter of law or invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain it and on its failure to do so the prosecution case should be disbelieved. But non-explanation of injuries assumes significance when there are material circumstances which make the prosecution case doubtful.....

In the present case, non-explanation of injuries on the appellant by the prosecution assumes

¹ 2002 Cri.L.J. 3729

significance as there are circumstances which make the prosecution case, showing complicity of appellant with the crime, highly doubtful."

14 However, in the case at hand, the prosecution has explained the injuries on the person of the appellant. P.W. 2 Harischandra has stated that after assaulting Sonal, the appellant ran away towards "jungle". Thereafter, after sometime, the persons caught the appellant and brought him to the house. When the appellant was brought to the house, the appellant said that as he has assaulted his wife, he was repenting, therefore, he himself gave blow with knife in his own stomach. Thus, the explanation of injury on the stomach of the appellant, has been given by the prosecution. In such case, no benefit could be given to the appellant and the reliance placed by the learned counsel on the aforesaid decision in the case of Dhananjay Shankar Shetty (*supra*), is misplaced in the present case.

15 On going through the evidence on record, we are of the opinion that there is sufficient evidence to prove beyond

reasonable doubt that the appellant committed the murder of his wife Sonal by assaulting her with the knife. Thus, we find no merit in the appeal. Appeal is dismissed.

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

Kandarkar