

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.861 OF 2014

Pilaji Namdeo Bambale,	]	
Convict No.C-16572	]	 Appellant /
at Yeravade Central Prison, Pune	]	(Org. Accused)

Versus

The State of Maharashtra	]	 Respondent
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Ms. Rohini M. Dandekar, Appointed
Advocate, for the Appellant.

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

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

DATE : 17TH 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 11th January, 2013 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.208 of 2007. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 302 of the

IPC and sentenced him to life imprisonment and fine of Rs.1,000/-, in default R.I. for six months.

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

Deceased Sakhubai was the wife of the Appellant. The marriage of Sakhubai and the Appellant took place about 10 to 12 years prior to the incident. At the relevant time, Sakhubai was residing along with the Appellant and her children at Ramnagar in Warje, Pune. The Appellant was working as a mason and he used to reside at different places depending upon where he got a job. PW-1 Janabai was the wife of paternal uncle of Sakhubai. At the relevant time Janabai was residing with her family adjacent to the house of the Appellant and deceased at Ramnagar. The Appellant used to suspect the character of his wife Sakhubai and used to ill-treat her on that ground. He also used to beat her. Five months prior to the incident, at the time of Raksha Bandhan, Sakhubai went to the house of PW-1 Janabai on account of festival of Raksha Bandhan. Sakhubai went with two saris. Sakhubai told PW-1 Janabai that Appellant used to beat her frequently as he suspected her character. On the next day,

Appellant came and dragged Sakhubai out of the house of PW-1 Janabai and took Sakhubai to Village Fulawade, where father of Sakhubai was residing. The Appellant was annoyed that Sakhubai had gone to the house of PW-1 Janabai. Fifteen days thereafter, Appellant came to the house of PW-1 Janabai and beat her son Mangesh. Appellant was saying that Mangesh should go to the house of parents of Sakhubai and bring Sakhubai back to co-habit with the Appellant. Accordingly, Mangesh went to the house of father of Sakhubai and brought Sakhubai back to the house of PW-1 Janabai. At that time, Appellant was residing in rental premises, just adjacent to the house of PW-1 Janabai.

3. Thereafter, PW-1 Janabai, her son Mangesh, Sakhubai's father Keshav and Sakhubai went to the house of the Appellant and asked him to behave properly with Sakhubai and not to suspect her character. Since this incident, PW-1 Janabai was not on visiting terms to the house of the Appellant, nor was the Appellant allowing Sakhubai to go to the house of PW-1 Janabai. However, PW-1 Janabai used to enquire about Sakhubai with Sakhubai's sons i.e. Rahul, Ramdas and Hanuman. All the sons

used to say that their father used to frequently beat Sakhubai.

. The incident occurred on 25th December, 2006 at about 9 pm. On that day, at 9 pm, Ramdas, the son of Sakhubai, came to the house of PW-1 Janabai and told her that his father had killed his mother. PW-1 Janabai then went to the house of the Appellant. She saw Sakhubai lying in a pool of blood. One iron bar and stone plate were lying near the body of Sakhubai. While PW-1 Janabai was coming out of the room, she saw the Appellant coming with a big stone in his hand. On seeing this, PW-1 Janabai shouted. Thereupon the Appellant ran away. Hanuman, son of the Appellant and deceased Sakhubai called Police. He came back with the Police. Police took the dead body of Sakhubai to Sassoon Hospital. Thereafter, PW-1 Janabai lodged F.I.R. After lodging of F.I.R., the investigation commenced. The Appellant was arrested. The blood stained clothes on his person were seized under Panchanama (Exhibit-42). After completion of investigation, the Charge-Sheet came to be filed. In due course, the case was committed to the Court of Sessions.

4. Charge came to be framed against the Appellant under

Section 302 of the IPC. The Appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the Appellant is that someone had entered his house for committing theft and in the process committed murder of Sakhubai. In the alternate, the defence taken by the Appellant was that Sakhubai fell down from the bed and sustained injuries and died. 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.

5. We have heard the learned Advocate for the Appellant and learned A.P.P. 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.

6. Though PW-2 Ramdas was an eye witness to the incident, he has turned hostile. PW-2 Ramdas, being the son of the Appellant and the deceased, has not supported the Prosecution. PW-2 Ramdas was about 12 years of age at the time of the

incident. As PW-2 Ramdas has not supported the Prosecution, the Prosecution is relying on the evidence of PW-1 Janabai, who was the paternal aunt of deceased Sakhubai. PW-1 Janabai has stated that her native place is at Village Fulawade in Ambegaon Taluka. Keshav, the elder brother of her husband, was residing at Village Fulawade. Deceased Sakhubai was the daughter of Keshav. The marriage of Sakhubai with the Appellant took place about 10 to 12 years prior to the incident. The Appellant was working as a mason. The Appellant and his wife Sakhubai were residing at different places, wherever the Appellant used to get a job as mason. The Appellant used to suspect the character of his wife Sakhubai and used to ill-treat and beat her. PW-1 Janabai has stated that five months prior to the incident, Sakhubai had come to her house on account of festival of Raksha Bandhan. Sakhubai brought two saris with her. Sakhubai told PW-1 Janabai that Appellant used to frequently beat her as he suspected her character. On the next day, the Appellant dragged Sakhubai out of the house of PW-1 Janabai and took her to Fulawade, where Sakhubai's father resided. When the Appellant dragged Sakhubai out of the house of PW-1 Janabai, the Appellant was asking Sakhubai *'why she had gone to the house of PW-1 Janabai?'*.

Fifteen days thereafter, the Appellant came to the house of PW-1 Janabai and beat her son Mangesh. The Appellant was saying that Mangesh should go to the house of parents of Sakhubai and should bring Sakhubai back to stay with the Appellant. Accordingly, Mangesh went to the house of the father of Sakhubai and brought Sakhubai back to the house of PW-1 Janabai. At that time, the Appellant was residing in a rental premises, just adjacent to the house of PW-1 Janabai. Thereafter, PW-1 Janabai, her son Mangesh, Keshav and Sakhubai went to the house of the Appellant. They asked the Appellant to behave properly and not to suspect the character of Sakhubai. Since that incident, PW-1 Janabai was not on visiting terms to the house of the Appellant, as the Appellant was not allowing them to come to his house. However, PW-1 Janabai used to enquire about Sakhubai with the sons of Sakhubai. The sons of Sakhubai were Rahul, Ramdas and Hanuman. All the sons used to tell PW-1 Janabai that their father used to beat their mother Sakhubai frequently.

7. In relation to the incident, PW-1 Janabai has stated that on 25th December, 2006, at about 9 am, Ramdas, the son of

Sakhubai, came to her house and told her that his father has killed his mother. PW-1 Janabai then went to the house of the Appellant. She saw Sakhubai lying in a pool of blood. One iron bar and stone plate were lying near the body of Sakhubai. While PW-1 Janabai was coming out of the room, she saw the Appellant coming with a big stone in his hand from the tin shed. Seeing this, PW-1 Janabai shouted. Thereupon the Appellant ran away. Hanuman, the son of the Appellant and the deceased, called the Police. He came back with the Police. Police then took the dead body of Sakhubai to the Sassoon Hospital. PW-1 Janabai then lodged F.I.R. Thus, the evidence of PW-1 Janabai shows that on the date of the incident, Ramdas, the son of Sakhubai and Appellant, came to her house and told her that his father has killed his mother. When she went to the house of Sakhubai, she saw Sakhubai lying in a pool of blood. When she shouted, the Appellant ran away. This conduct on the part of the Appellant of running away further underlines his *mens rea*.

8. PW-2 Ramdas was the son of the Appellant and the deceased. Though he is an eye witness to the incident, he has not supported the Prosecution. However, his evidence supports

the Prosecution to some extent. PW-2 Ramdas has stated that the Appellant is his father. Ramdas was the eldest son. His mother was living with them during her life time. His mother expired on 25th December, 2006. PW-2 Ramdas has further stated that on that day, quarrel took place between his father and mother. At that time, PW-2 Ramdas was in the house. The time was about 8:30 pm. While the quarrel between his father and mother was going on, PW-2 Ramdas and his two brothers came out of the house. PW-2 Ramdas then rushed to the Police Station and informed the Police that his father was beating his mother. Accordingly, Police came to their house. By that time, his mother was already dead. From the cross-examination of PW-2 Ramdas, it is revealed that his father and mother used to quarrel with each other, as his father suspected the character of his mother. His father used to abuse and beat his mother. Thus, though PW-2 Ramdas, being an eye witness, has not supported the Prosecution, his evidence shows that on 25th December, 2006, at about 8:30 pm, the Appellant and the deceased were quarreling. He went and informed this fact to the Police. When he came back with the Police to the house, his mother was already dead.

9. The evidence of PW-2 Ramdas shows that at 8:30 pm, the Appellant and the deceased Sakhubai were quarreling in the house and soon thereafter Sakhubai was found dead in the house with a large number of injuries on her person. In such case, Section 106 of the Evidence Act would be attracted. 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 cases of 'Last Seen'. 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 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

¹ (2006)12 SCC 254 : AIR 2007 SC 144

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. Though only the Appellant and his wife were in the house, the Appellant has failed to furnish any plausible explanation about how and in what circumstances his wife died.

10. The evidence of PW-1 Janabai and PW-2 Ramdas shows the motive for the Appellant to commit the murder of his wife Sakhubai. The motive was that he suspected the character of his wife. The evidence of PW-5 Sulochana also shows the motive for the Appellant to commit the murder of his wife. Since about one year PW-5 Sulochana was residing in the house adjoining the house of the Appellant. She has stated that the Appellant used to reside along with his wife Sakhubai and three sons. The Appellant used to suspect the character of his wife and on that count quarrel used to take place between the Appellant and Sakhubai. The Appellant used to abuse Sakhubai and he also used to beat her. PW-5 Sulochana has further stated that on the

day of the incident, PW-1 Janabai came to her house crying, saying that her niece Sakhubai was killed by the Appellant. Thereupon, she went to the house of the Appellant. She saw one stone plate and iron bar lying near the dead body of Sakhubai. The son of the Appellant came back with the Police. Meanwhile, the Appellant ran away from the spot.

11. The defence raised by the Appellant, as seen from the cross-examination of PW-5 Sulochana, is that some goondas in the locality used to commit grievous body offences with intent to commit the offence against the property such as theft. As far as this defence is concerned, it has to be borne in mind that the Appellant was a mason. He used to reside in the place wherever he used to get work. The evidence of PW-1 Janabai shows that the Appellant and she were neighbours at the time of the incident and the area in which they were residing was a zopadpatti i.e. slum area. Looking to the fact that the Appellant was working as a mason and he was residing in any place wherever he used to get work and the fact that only the Appellant was working and maintaining his wife and three children from his earnings as a mason, it is not expected that

there would be much money or valuables in the house of the Appellant due to which it would be worthwhile to commit robbery in the house of the Appellant. Moreover, there is no evidence to show that deceased Sakhubai had any enmity with any person due to which that person would have murdered Sakhubai. On the other hand, the evidence, especially of PW-2 Ramdas, shows that at about 8:30 pm, quarrel was going on between the Appellant and his wife Sakhubai. Due to this, PW-2 Ramdas went to the Police Station and informed the Police that his father was beating his mother and when he returned back with the Police, they found that Sakhubai was already dead. The sequence of events, as seen from the evidence of PW-2 Ramdas, excludes the possibility of any third person entering the house of Sakhubai and causing her death.

12. It is the Prosecution case that the Appellant assaulted his wife Sakhubai with a stone plate and iron bar, due to which Sakhubai sustained extensive injuries and died. PW-4 Dr. Ajay Taware has deposed about the postmortem of Sakhubai. He has stated that during postmortem, on external examination, the following injuries were noticed :-

- (1) *Lacerated injury of head, covering whole of transverse dimensions, 12 x 3 cms. Underlying bones fractured. Brain matter oozing out.*
- (2) *Contusion right axilla, 3 cm. below axillary pit, measuring 2.5 x 1 cm.*
- (3) *Two linear parallel abrasions, 2 cm above right nipple, measuring 1.25 cm, long each. With surrounding area of 2 cm contused.*
- (4) *Abrasions, three in number, 1.5 cm below Injury No.3, measuring 1.25 x 1 cm, 1.25 x 0.75 cm and 1.5 cm in diameter, from medial to lateral, separated by a distance of 0.5 cm from each other. Distributed in an area of 5 x 3 cm. Surrounding area of 1.5 cm contused.*
- (5) *Lacerated wound, 3 cm below left nipple, measuring 6 x 4 cm bone deep.*
- (6) *Abrasion on right shoulder, 5 x 1.5 cm. Surrounding area of 0.5 cm contused.*
- (7) *Lacerated wound right elbow, measuring 1 cm in diameter, muscle deep.*

- (8) *Lacerated wound, anterior aspect of right wrist, measuring 3 x 2 cm muscle deep.*
- (9) *Lacerated wound, 1.75 cm lateral to Injury No.8, measuring 2 cm x 0.5 cm muscle deep.*
- (10) *Abrasion 2 cm lateral to above mentioned injury, measuring 4 x 1.5 cm. Surrounding area of 2 cm contused.*
- (11) *Abrasion, left arm, in the middle, 8 x 3 cm.*
- (12) *Contusion of whole of left arm.*
- (13) *Lacerated wound, extensor aspect of left forearm, middle third, measuring 2.5 x 2 cm. muscle deep.*
- (14) *Abrasion posterior aspect of left wrist, 3 x 2 cm.*
- (15) *Contusion of right shin in the middle, 2 cm diameter with fracture of right tibia and fibula.*
- (16) *Contused abrasion, right ankle joint, laterally,*

abrasion 2 x 1 cm. Surrounding area of 1.5 cm contused.

(17) Contusion lower third of left thigh, laterally, measuring 6 x 4 cm with fracture of lower end of femur.

(18) Contused abrasion, left knee, 2 x 1 cm. Surrounding area of 1.5 cm contused.

(19) Lacerated wound, left shin, upper third, measuring 2.5 x 1 cm bone deep.

(20) Abrasion medial aspect of left ankle, measuring 1.5 cm in diameter.

(21) Abrasion on the back in the middle, at the level of T-6, measuring 3 x 1.5 cm.

(22) Abrasion left side of back, at the level of T-12 level, measuring 1.5 x 1 cm.

The medical evidence shows that all contusions mentioned above were reddish purple in colour and

abrasions and lacerations were red in colour.

According to Dr. Taware, internal injuries corresponding to External Injury No.1 are as under :-

- *Hematoma all over under scalp.*
- *Fracture of all bones of cranial vault and base.
Fractured fragments loose.*
- *Multiple lacerations of meninges.*
- *Brain lacerated and crushed. Brain matter oozing out through injury.*
- *Right eye ball crushed totally.*
- *Fracture of right maxilla.*
- *Fracture of right ramus of mandible.*

According to Dr. Taware, internal injuries corresponding to External Injury No.3 are as under :-

- *Fracture of medial end of right clavicle with antemortem blood clots adherent to fractured ends.*

- *Fracture of all ribs of right side, anterolaterally.*
- *Contusion of whole right lung anteriorly.*

Internal injuries corresponding to External Injury No.5, according to Dr. Taware, are as under :-

- *Hematoma over sternum, 4 m in diameter.*
- *Contusion of 5th intercostal space, 3 x 2 cm.*
- *Fracture of 5th rib left side anteriorly.*
- *Laceration of lower lobe of left lung 3 x 0.5 x 1 cm.*
- *Laceration of base of aorta. Heart hanging by a fragment of aorta attached to it.*

Internal injuries corresponding to External Injury No.22, according to Dr. Taware, are as under :-

- *Laceration of right lobe of liver, 4 x 2.5 x 1.5 cm.*
- *Also observed 1500 ml blood in thoracic cavity and 2500 ml blood in abdominal cavity.*

13. The cause of the death, according to the Postmortem

Notes, was *“due to traumatic and hemorrhagic shock as a result of multiple blunt injuries”*. The Doctors have opined that all the injuries were antemortem in nature and recent. External Injuries No.1, 3, 5, 22 and corresponding internal injuries were sufficient to cause death in ordinary course of nature individually and collectively and associated with other injuries. The medical evidence shows that all external as well as corresponding internal injuries are possible by hard and blunt object and external Injury No.1 and corresponding internal injuries thereto are possible by means of stone plate article at Sr. No.2 and rest of the injuries are possible by iron rod article [Exhibit 10/1). PW-4 Dr. Taware has further stated that external Injury No.1 and corresponding internal injuries are possible by means of article (Exhibit 10/2) stone plate and rest of the external injuries and corresponding internal injuries are possible by means of article Exhibit 10/1 i.e. iron bar.

14. The Prosecution is relying on one more circumstance against the Appellant i.e. seizure of blood stained clothes, which were on the person of the Appellant at the time of his arrest. The Appellant was arrested on 26th December, 2006 at 3:50 am.

When he was arrested, the pant and shirt worn by him were found stained with blood. These clothes were seized under panchanama. These clothes were sent to the Chemical Analyzer. Blood of Sakhubai was also sent to the C.A. for analysis. As per the C.A. Report Exhibit 12(A), the blood group of Sakhubai was "B". The sample of the blood of the Appellant was also sent to the Chemical Analyzer for analysis. As per C.A. Report Exhibit-12(A), the blood group of the Appellant was found to be "AB". The clothes of the deceased were sent to Chemical Analyzer. As per C.A. Report Exhibit-12(B), the clothes of the deceased were stained with blood of "B" group. As stated earlier, the clothes of the Appellant, which were seized at the time of his arrest, were sent to Chemical Analyzer. As per C.A. Report Exhibit-12(B), blood of "B" group was found on the clothes of the Appellant. This is a strong incriminating factor against the Appellant.

15. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the Appellant has committed the murder of his wife Sakhubai by assaulting her with an iron bar and stone plate. Thus, we find no merit in the Appeal. Appeal is dismissed.

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

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