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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1083 OF 2013
IN
SESSIONS CASE NO. 86 OF 2012**

Ms. Kamla Ramesh Doli	]
Age 21 years, Occ: Nil	]
Residing at Bhimanagar,	]
Chinchwad, Pune-411033	]
Now in Central Jail, Yerawada,	]
Pune.	] ..Appellant [Ori. Accused]

Vs.

The State of Maharashtra	]
Sangvi Police Station, Pune 411027	] ..Respondent

....

Mr. Rohit H. Surawase Advocate for the Appellant
Smt. G.P. Mulekar A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.B.P.COLABAWALLA, JJ.**

DATED : MARCH 18, 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 29.8.2013 passed by the learned District Judge-4, Pune in Sessions Case No. 86 of 2012. By the said judgment and order, the learned

Judge convicted the appellant under Section 302 of IPC and sentenced her to life imprisonment and fine of Rs.500/- i/d R.I. for two months.

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

 The appellant was the wife of deceased Ramesh. Ramesh was working as a watchman on the construction site where P.W. 1 Shashank was working as Site Supervisor. P.W. 19 Deepak was the owner of the plot on which the construction was going on. There was one large tin-shed near the construction site. The appellant and the deceased were residing in one part of the tin-shed. There was a partition in the tin shed and the appellant and the deceased were residing in one part of the shed and in the other part of the shed, construction material was stored. There used to be frequent quarrels between the appellant and the deceased. The appellant suspected that her husband was having illicit relations with some other woman.

 On 25.7.2011 at about 11.00 to 11.15 p.m., the appellant and the deceased had a quarrel. They were loudly shouting at one another. This was heard by P.W. 10 Santosh.

In the morning, the dead body of Ramesh was found lying in the tin-shed where the appellant and the deceased were residing. On 26.7.2011 in the morning, P.W. 1 Shashank went to the shed of his Watchman i.e. deceased Ramesh. He noticed that Ramesh was lying on the floor in injured condition. He was not talking. There was no movement and Ramesh was dead. At that time, the appellant was present at the spot. She was in a frightened condition. Shashank asked the appellant what had happened ? Thereupon, the appellant disclosed that there was quarrel between her and her husband the earlier night and when her husband went to sleep, she assaulted him with a wooden log. P.W.1 Shashank then lodged F.I.R. (Exh. 24). Thereafter, investigation commenced. Dead body of Ramesh was sent for post-mortem. During the course of investigation, blood stained clothes which were on the person of the appellant, came to be seized under panchnama Exh. 42. The said clothes were sent to C.A. After completion of investigation, the charge sheet came to be filed.

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 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 Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that appellant assaulted her husband on the head and caused his death.

5 There is no eye witness in the present case and the prosecution is relying only on circumstantial evidence to prove its case against the appellant. The circumstances are as under:

(1) Motive;

- (2) Extra-judicial confession;
- (3) Recovery of wooden log;
- (4) Seizure of blood stained clothes of the appellant;
- (5) C.A. reports;
- (6) Medical evidence.

6 The first circumstance against the appellant is "motive". P.W. 1 Shashank and P.W. 2 Sandeep have deposed about the motive. P.W.1 Shashank has stated that he was working as a Site Supervisor. Construction was going on on the land of P.W. 19 Deepak Thube. P.W. 2 Sandeep and some other persons were working as labourers on the said construction site. All the labourers used to attend work from 9.30 a.m. upto about 7.00 to 7.30 p.m. On the construction site, there was one shed made of tin. The said shed was divided into two rooms. In one room, deceased Ramesh and his wife (appellant) were residing and in the other room, building material was kept. He has stated that deceased Ramesh and his wife Kamla (appellant) came to reside in the said shed since 21.7.2011. Quarrels used to take place between the appellant and her husband Ramesh. P.W. 2

Sandeep and other labourers used to settle the quarrels. The reason for the quarrels was that the appellant was suspecting that the deceased had some other affair outside the house with another lady.

7 The second witness on the aspect of motive is P.W. 2 Sandeep. Sandeep has stated that P.W.1 Shashank was supervisor on the site where he was working. They used to work on the site from 9.30 a.m. upto 5.00 p.m. Thereafter they used to return to their house. There were three tin sheds near the construction site. In one shed, the watchman along with his wife was living and in the other tin shed, construction material was kept. He has stated that the appellant and the deceased came to reside at the site since about 4 to 5 days prior to the incident. Quarrels used to take place between the appellant and the deceased. They used to ask the appellant and the deceased not to quarrel. Both P.W. 1 Shashank and P.W. 2 Sandeep have identified the appellant as the wife of the deceased. Thus, the evidence of both P.W. 1 Shashank and P.W. 2 Sandeep shows that quarrels used to take place between the appellant and the deceased and the evidence of

P.W.1 Shashank shows that quarrels used to take place because the appellant was suspecting that her husband Ramesh was having an affair with some other lady.

8 In addition, the prosecution is relying on the evidence of P.W. 10 Santosh and P.W. 19 Deepak. P.W. 19 Deepak was the owner of the construction site on which the deceased Ramesh was working as Watchman. Deepak has stated that the appellant and the deceased were residing in one tin-shed admeasuring 15 feet x 10 feet near his construction site. The evidence of P.W. 10 Santosh shows that all the labourers used to work at the site till evening and thereafter they used to return to their house. The evidence on record shows that only the appellant and the deceased were residing at the construction site and on the night of 25th July only the appellant and the deceased were residing in the tin-shed on the construction site. P.W. 10 Santosh has stated that on 25.7.2011 at about 11.00 to 11.15 p.m. he heard quarrel going on between the husband and wife in the tin-shed. They were shouting loudly at each other. The door was closed from inside. He heard noise of only one man and one woman

quarreling. It is to be noted that the dead body of Ramesh was found in the shed on the morning of 26.7.2011.

9 The learned counsel for the appellant submitted that when P.W. 10 Santosh heard the quarrel, he could not make out what that man and woman were saying to each other, because they were talking in a different language i.e. Nepali language. He submitted that in such case, it was not possible for P.W. 10 Santosh to know that they were quarreling. However, it is a matter of common knowledge that it is easy to make out when people are having an ordinary conversation and when they are quarreling. When people are quarreling, tone of the voice is entirely different. Even if a person does not make out or understand the language or words uttered but from the tone of the voice, it can certainly be made out that persons are quarreling. Similar submission was made in relation to the evidence of P.W. 1 Shashank who has stated that he heard the appellant and the deceased quarreling on 24.7.2011 i.e. as Shashank did not understand the language, he would not know whether the appellant and the deceased were quarreling. We have already dealt with this submission

and we find no merit in the same.

10 Shri. Surawase submitted that the entire prosecution case cannot be believed on account of serious discrepancy in relation to the number of sheds on the construction site. P.W. 1, 10 and 19 say there was one shed, whereas P.W. 2 says there were three sheds. As far as this aspect is concerned, the evidence of P.W. 1 clearly shows that there was one tin shed but it was divided into two parts. One part was used for storing material and in the other part the appellant and deceased were residing. Thus, it would appear that there were not one but two sheds. In view of the fact that P.W. 2 was deposing after a couple of years after the incident he may have stated three sheds instead of two due to oversight. In our view this is not such a serious discrepancy so as to cast a shadow of doubt regarding the prosecution case.

11 Shri. Surawase, the learned counsel for the appellant thereafter submitted that the evidence of P.W. 1 Shashank and P.W. 2 Sandeep cannot be relied upon because both these witnesses have stated that the appellant and the deceased

came to stay at the construction site just 4 to 5 days prior to the incident, whereas, P.W. 10 Santosh has stated that the appellant and the deceased were residing at the site since about 1½ month prior to the incident. In addition, the learned counsel for the appellant pointed out that P.W. 1 Shashank has stated that construction site consisted of three floors at the relevant time, whereas, P.W. 19 Deepak has stated that the construction at that time was only up to the first floor. He further pointed out that the cross-examination of P.W. 1 Shashank shows that he had heard the appellant and the deceased quarreling only once i.e. on 24.7.2011. On going through the entire evidence of P.W. 1 Shashank and P.W. 2 Sandeep, except for these discrepancies, which in no way shake the basic substratum of the prosecution case, we find their evidence to be cogent, consistent and reliable, hence, we have no hesitation in relying on the same.

12 The second circumstance against the appellant is "extra-judicial confession". P.W. 1 Shashank has stated about the same. P.W. 1 Shashank was site supervisor at the construction site where the appellant and the deceased were

residing in a tin-shed. Shashank has stated that on 26.7.2011 in the morning, he went to the shed of Watchman Ramesh. He found that he was lying on the floor in injured condition. He was not talking. There was no movement and he was dead. At that time, the appellant was present at the spot and she was in a frightened condition. Shashank asked the appellant what had happened ?, whereupon, the appellant disclosed that there was quarrel between her and her husband Ramesh the earlier night and when Ramesh was sleeping, she assaulted him with a wooden log. As far as this witness is concerned, he had no enmity or grudge against the appellant. No reason has been brought on record to show that this witness had any motive to falsely implicate the appellant. Thus, we find his evidence to be credible and trustworthy on the point of extra-judicial confession.

13 Accepting the admissibility of the extra-judicial confession, the Supreme Court in **Sansar Chand Vs State of Rajasthan** reported in **(2010) 10 SCC 604** held that :

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should

be corroborated by some other material. [Vide Thimma and Thimma Raju Vs. State of Mysore - (1970) 2 SCC 105, Mulk Raj Vs. State of U.P. - AIR 1959 SC 902, Sivakumar Vs State - (2006) 1 SCC 714 (SCC paras 40 and 41), Shiva Karan Payaswami Tewari Vs. State of Maharashtra (2009) 11 SCC 262 and Mohd. Azad Vs State of W.B. - (2008) 15 SCC 449."

14 In the present case, extra-judicial confession is corroborated by the fact that the dead body of Ramesh was found lying in the shed with injuries on his person. Moreover, medical evidence shows that the injuries sustained by Ramesh were possible by heavy wooden log. P.W.13 Dr. Chabukswar has stated that if a person is hit when he is lying in a flat position facing sky and if blows are given with wooden log on the front portion of the head and scalp, injuries noted in the post-mortem notes are possible. Further corroboration to the extra-judicial confession is received by the fact that the clothes on the person of the appellant were found blood stained which we will discuss in the next paragraph.

15 As stated earlier, one of the circumstances against the appellant is that at the time of the arrest, clothes on her person were found blood stained. P.W. 8 panch witness Jeevan was the witness to the panchnama under which the clothes of the appellant came to be seized. Jeevan has stated that on 26.7.2011 he was called to Sangavi Police Station. The appellant was present in the police station. The clothes on her person i.e. Panjabi dress came to be seized. The said clothes came to be sealed and panchnama Exh.42 came to be drawn. He has identified Arts. 10 and 11 before the Court as the same clothes which were seized from the person of the appellant. These clothes were sent to C.A. As per the C.A. report Exh.74, Kurta and Salwar were stained with human blood of "B" group. The blood of the deceased was also sent to the C.A. As per C.A. report (Exh.75) the blood group of the deceased was "B" group. Sample of blood of the appellant was also sent to the C.A. As per the C.A. report (Exh.76) her blood group was different from that of the deceased. Thus, finding of blood of "B" group which is the same as that of the deceased on the clothes of the appellant, is a strong incriminating circumstance. It is pertinent to note that the appellant has not furnished any

explanation for the finding of blood of "B" group on her clothes.

16 It has not been brought on record that any other person had the motive to murder Ramesh. As stated earlier, the evidence of P.W. 2 Sandeep and the other witnesses shows that only the appellant and the deceased were residing at the site. Nobody else was residing at the construction site. Moreover, only the appellant and the deceased were residing in the tin-shed. The evidence of P.W. 10 Santosh shows that the appellant and the deceased were heard quarreling at 11 to 11.15 p.m. on 25.7.2011 and on the next day morning, Ramesh was found dead in the tin-shed. The evidence on record shows that only the appellant and the deceased were in the tin-shed at the time of the incident, in such case, the appellant 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 principle which underlies Section 106 of the Evidence Act can be applied in cases where

certain facts are especially within the knowledge of a person. In the case of **State of Rajasthan Vs. Kashi Ram**, reported in **(2006) 12 SCC 254 : AIR 2007 SC 144** 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 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.

17 In addition to the above evidence, the prosecution is relying on the circumstance of recovery of wooden log at the instance of the appellant. P.W. 5 panch witness Anil and P.W. 12 Purushottam have deposed about recovery of wooden log

(Art. 12) at the instance of the appellant. In this connection, Shri. Surawase, the learned counsel for the appellant pointed out that the evidence of P.W. 1 Shashank shows that in the morning of 26.7.2011 when he went to the shed where the appellant and the deceased were residing, at that time, he saw wooden log (Art. 12) lying at the spot. In such case recovery of the same wooden log on 27.7.2011 at the instance of the appellant is doubtful. In answer, the learned A.P.P. submitted that when Shashank went to the shed in the morning and saw the wooden log, at that time the appellant was also present at the spot, however, the police arrived at the spot much later, hence, by then, the appellant could have thrown the wooden log in the construction material which was lying near the shed from where it was recovered later on. We find much merit in this submission. This wooden log was sent to C.A. As per the C.A. report (Exh. 74) it was found stained with blood of "B" group. The blood group of the deceased was also "B". The DNA of the blood on the wooden log tallied with the blood group of the deceased whereas DNA of the appellant was entirely different from the one found on the wooden log. The appellant has not furnished any explanation for the presence of

blood of the group of the deceased on the log of wood.

18 It is the prosecution case that the appellant assaulted her husband Ramesh with a wooden log in the house and caused his death. This is borne out by the medical evidence. P.W. 13 Dr. Chabukswar conducted the post-mortem on the dead body of Ramesh. On external examination, he found following injuries :

- (1) CLW over right frontal region. On medial end of eye brow 6 cm x 3 cm x deep to cranial cavity. Compound fracture of frontal bone seen. There were blood clots.
- (2) LSW over left frontal region left eye brow 9 cm x 3 cm x deep to cranial cavity, compound depressed fracture left frontal bone, blood clots.
- (3) Contusion over right maxillary and mandible region 12 cm x 10 cm swelling, bluish, discoloration with abrasion over right mandible $\frac{1}{2}$ cm $\frac{1}{2}$ cm superficial reddish brown, abrasion over right maxilla region 1 cm x $\frac{1}{2}$ cm superficial reddish.
- (4) CLW over upper lip 2 x 1 x 1 cm reddish.
- (5) CLW over lower lip 2 cm x 1 cm x 1 cm reddish.
- (6) Contusion over left maxillary region, 5 cm x 6 cm swelling, reddish brown.

- (7) Contusion over dorsum of nose 3 x 4 cm swelling deformity crepitus plus. Fracture nasal bone palpable.
- (8) CLW over chin 4 x 1 cm x 1 cm reddish blood clot present.
- (9) Abrasion over lower 3rd of left thigh 1 cm x 1 cm x 1 cm superficial reddish brown.
- (10) Abrasion over left leg upper third, middle third of leg 1 cm x 1 cm superficial reddish ½ cm x ½ superficial reddish.
- (11) Abrasion over right elbow joint posterior 1 x 1 cm superficial reddish."

According to Dr. Chabukswar, all the above injuries are antemortem injuries.

19 On internal examination, Dr. Chabukswar noticed the following injuries :

- (1) Compound depressed fracture left frontal bone.
- (2) Compound depressed fracture right frontal bone.
- (3) Liner fracture seen right frontal bone.
- (4) Blood collection seen in cranial cavity.

Brain:

- (1) Meninges torn over frontal region.
- (2) Haemorrhage contusion over left parietal temporal region 10 x 5 cm reddish blood clots present;
- (3) Haemorrhage contusion over left frontal region 12 x 7 cm reddish.
- (4) Laceration over left frontal lobe. Anterior and inferior region. 10 x 7 cm. Reddish, blood clots present.
- (5) Laceration of temporal lobe left 3 x 2 cm.
- (6) Hemorrhagic contusion over right frontal region with laceration of frontal lobe anterior and interior 4 x 3 cm blood clots present."

According to Dr. Chabukswar, probable cause of death is "due to shock due to head injury." After examining the dead body internally and externally, his opinion in respect of death is homicidal death. In the opinion of Dr. Chabukswar the injuries were possible by log of wood Art. 12.

20 Mr. Surawase, the learned counsel for the appellant submitted that the prosecution case is entirely based on circumstantial evidence and the circumstances in the present case do not form a chain which leads to the irresistible conclusion that the appellant alone committed the crime. In support of this contention, he has placed reliance on the decision of the Supreme Court dated 1st July, 2013 in Criminal Appeal No. 1300 of 2009 in the case of **Majendran Langeswaran Vs. State (NCT of Delhi) and Anr.** He relied on paragraph 11 of the said decision wherein it is observed as under:

"11. Now, we have to consider whether the judgment of conviction passed by the trial court and affirmed by the High Court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused,

which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court. "

21 We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused.

22 In the decision of the Supreme Court in the case of **G. Parshwanath Vs. State of Karnataka**, reported in **(2010) 8 SCC 593**, it is observed as under:

23. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the

particular case. The court thereafter has to consider the effect of proved facts.

24 In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the Court."

23 On going through the record in the present case, we find that there is chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. In fact, chain of circumstances established by the prosecution is consistent only with the hypothesis of the guilt of the appellant. Thus, we find no merit in the appeal. Appeal is dismissed.

[SHRI.B.P.COLABAWALLA,J.]

[SMT. V.K.TAHILRAMANI, J.]

Kandarkar