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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1270 OF 2013**

Devram Yeshwant Wagh	]
Age about 42 years, R/o Biloshi,	]
Taluka Wada, Dist. Thane	]
(At present lodged in Thane Central	]
Prison, Thane).	]..Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
(Through Police Inspector,	]
Wada Police Station, Thane,)	]..Respondent

....
 Mrs. Nasreen S.K. Ayubi Advocate appointed for the
 Appellant
 Mrs. A.S. Pai A.P.P. for the State

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

DATED : JANUARY 19, 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 10.8.2011
 passed by the learned Sessions Judge, Thane in Sessions Case

No. 208 of 2008. 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 to pay a fine of Rs. 5000/- i/d R.I. for one year.

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

i) Deceased Sulbha was the daughter of P.W. 1 Deu. Sulbha was married to the appellant about 12 to 13 years prior to the incident. The appellant used to beat and illtreat Sulbha because he suspected her fidelity. Deu, his wife, his son and his daughter in law Vandana used to work on the brick kiln of P.W. 8 Mokashi. The appellant and his wife Sulbha also used to work on the brick kiln of Mokashi. Deu, his wife, son and his daughter in law Vandana used to sleep in a hut at the brick kiln of Mokashi. The appellant along with his wife used to live in their house in the village.

ii) The incident took place in the night between 28th and 29th January, 2008. The work on the brick kiln used to start at about 3 a.m. The appellant and his wife Sulbha went to their house in the evening of 28th January, 2008. As Sulbha did not come for work at the brick kiln on the morning of 29th January, 2008, P.W. 1 Deu sent his daughter in law P.W. 4 Vandana to

their house to enquire. When Vandana went to the hut, she saw Sulbha lying in a pool of blood. Vandana went back to the brick kiln and told Deu and others what she had seen. Then Deu, his wife, his son and his daughter in law Vandana went to the house of the appellant. They saw that Sulbha was lying in a pool of blood. She was unconscious. There were injuries on the left side of neck of Sulbha. They noticed that the appellant was not there and he had run away. Sulbha was taken to the hospital. In the meanwhile, Deu lodged F.I.R. Thereafter investigation commenced. In the meanwhile, on 29.1.2008 Sulbha died during treatment. The appellant came to be arrested. After completion of investigation, the charge sheet came to be filed against the appellant.

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 this 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 Advocate 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 Advocates 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 committed the murder of his wife.

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

(1) On the night between 28th and 29th January, 2008 the appellant and deceased Sulbha were the only two persons residing in the house and in the morning Sulbha was found lying in a pool of blood with injuries on her person and the appellant had absconded;

(2) Motive;

(3) Axe was recovered at the instance of the appellant and the axe was found stained with blood of

"B" group;

(4) Blood group of the appellant is "O" and the clothes of the appellant were stained with blood of "B" group which is the group of the deceased;

(5) Medical evidence;

6 The first circumstance is that: on the night between 28th and 29th January, 2008 the appellant and the deceased Sulbha were the only two persons residing in the house and in the morning Sulbha was found lying in a pool of blood with injuries on her person and the appellant was not seen anywhere and the appellant had absconded. The evidence of P.W. 4 Vandana shows that the appellant and the deceased were the only persons who used to live in their house. The evidence of P.W. 1 Deu also shows that on the night of the incident, only the appellant and his wife Sulbha were in the house and there was no other person in the house. The evidence of P.W. 1 Deu shows that he along with his wife, son and daughter in law P.W. 4 Vandana were working on the brick kiln of P.W. 8 Mokashi. The appellant and the deceased were also working on the brick kiln of P.W. 8 Mokashi. Deu along with his wife, son and daughter in law Vandana used to reside

at the brick kiln. However, the appellant and his wife Sulbha used to reside in their house in the village. P.W. 1 Deu has stated that they used to start working at the brick kiln at 3.00 a.m. In the morning when the appellant as well as his wife Sulbha did not come for work at the brick kiln, P.W. 1 Deu sent his daughter in law P.W. 4 Vandana to the house where the appellant and Sulbha were residing. When Vandana went to the house, she saw that Sulbha was lying in a pool of blood. She went back and told Deu and others what she had seen. Thereafter, Deu, his wife, son and daughter in law Vandana went to the house of appellant. They saw Sulbha the wife of the appellant lying in a pool of blood and the appellant was not there as he had run away.

7 The evidence of P.W. 1 Deu and P.W. 8 Mokashi shows that when Sulbha was found lying in a pool of blood, the appellant was not seen anywhere and he had absconded. P.W. 1 Deu has clearly stated that as his daughter did not report for work at 3 a.m., he sent his daughter in law Vandana to their house to enquire. His daughter in law came back and told him that Sulbha was lying in a pool of blood. Hence, he went to the house where the appellant and Sulbha were residing. On

reaching there, he saw Sulbha was lying in a pool of blood but the appellant was not seen as he had run away. The evidence of P.W. 4 Vandana also does not show that the appellant was seen at the spot. In addition, the prosecution is relying on the evidence of P.W. 8 Mokashi who was the owner of the brick kiln where the deceased and the appellant as well as the parents, brother and sister in law of Sulbha were also working. P.W. 8 Mokashi has stated that he knew the appellant as well as the deceased. He also knew the father of the deceased. He has stated that on 28.1.2008 both the appellant and the deceased worked at his brick kiln till about 6.30 p.m. thereafter they returned back to their house. On the following day, he came to know that Sulbha was assaulted by her husband, hence, he immediately rushed to the hut of the appellant and the deceased. He noticed that Sulbha had an injury on her neck. She was unconscious and her condition was critical. Mokashi stated that he further noticed that the appellant was not present at the spot and he had absconded after the incident.

8 The evidence of P.W. 4 Vandana shows that in the year 2008 her father in law Deu, her mother in law, her husband and she used to work on the brick kiln of P.W.8

Mokashi. The appellant and his wife also used to work on the brick kiln of P.W. 8 Mokashi. Vandana along with her husband, father in law and mother in law used to reside in the hut at the brick kiln and only the appellant and his wife Sulbha used to live in their house. Their house was situated at a distance of about 1 furlong from the brick kiln. Vandana has stated that on 29.1.2008 in the morning, as Sulbha the wife of the appellant, had not come for work, she went to Sulbha's house to enquire why she had not come for work. Sulbha did not respond to her call. On going inside the house, she found Sulbha was lying in the house. There was blood on the floor and injury was seen on the neck of Sulbha. Vandana then went to call her parents in law. They had come to the house of the appellant. They noticed that the appellant had absconded. Sulbha was then taken to the Government hospital at Wada.

9 The evidence on record shows that the appellant and deceased were the only two persons in the house. In the morning, Sulbha was found dead with injuries on her person and the appellant had absconded from the spot. 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**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 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. It is to be noted that the appellant has not furnished any explanation at all.

1 (2006)12 SCC 254 : AIR 2007 SC 144

10 The motive for the appellant to commit the murder of his wife Sulbha has been brought on record by P.W. 1 Deu, P.W. 4 Vandana and P.W. 6 Chandrakant. P.W. 1 Deu was the father of Sulbha. He has stated that Sulbha was married to the appellant 12 to 13 years ago and the appellant beat and illtreated Sulbha as the appellant was suspecting the fidelity of Sulbha. P.W. 4 Vandana was the sister in law of deceased Sulbha. She has stated that the appellant used to illtreat Sulbha as the appellant suspected the character of Sulbha. P.W. 6 Chandrakant has stated that Deu the father in law of the appellant had complained to him that the appellant used to suspect the fidelity of his wife. Deu had also told Chandrakant that on account of this the appellant had rushed towards his wife Sulbha with the sickle in the house. Thus the prosecution has proved the motive for the appellant to commit the murder of his wife Sulbha.

11 After the appellant was arrested, the clothes on his person came to be seized under panchanam (Exh.24). There were blood stains on the clothes of the appellant. During investigation, an axe also came to be recovered at the instance

of the appellant under Memorandum and Panchanma (Exhs. 25 and 26). The clothes on the person of deceased Sulbha were also sent to C.A. C.A. Report Exh. 49 shows that the clothes of deceased Sulbha were stained with blood of "B" group. This shows that the blood group of Sulbha was "B". The pant and shirt of the appellant were also stained with blood of "B" group. C.A. report Exh. 50 shows that blood group of the appellant was "O" group. This shows that the blood of the group of the deceased was found on the clothes of the appellant. The appellant has not furnished any explanation for the finding of blood of "B" group on his clothes.

12 As stated earlier, an axe came to be recovered at the instance of the appellant. The axe was found stained with blood of "B" group. Some hair was also found on the axe which was sent to C.A. This hair was also stained with blood of "B" group. We have already discussed above how the blood group of the deceased appears to be "B" group. Thus, finding of blood of "B" group on the axe which was recovered at the instance of the appellant, is a strong incriminating circumstance against him.

13 It is the prosecution case that the appellant assaulted his wife Sulbha with an axe and caused her death. This is supported by the medical evidence. P.W. 5 Dr. Gosavi conducted post-mortem on the dead body of Sulbha. Dr. Gosavi has stated that on external examination, he found the following injuries:

- "(i) Incised lacerated wound of size 8 cm. x 7 cm. x 3 cm. oblique in direction from 5 cm. below left ear lobe on lateral aspect of left side of neck upto middle of neck just below the hair line with fracture of occipital bone on left side. Vessel injury, muscle injury and blood clots were seen in the wound;
- (ii) Incised lacerated wound 5 cm. x 0.5 cm. x 1 cm., 0.5 cm. below wound no.1 extending from lateral aspect of left side of neck 5 cm. below horizontal in direction;
- (iii) Incised lacerated wound 8 cm. x 1 cm. x 1 cm. on posterior aspect of neck, horizontal in direction extending from lateral aspect of left side of neck upto 2 cm. lateral to midline of neck;
- (iv) Incised lacerated wound 3 cm. x 1 cm. x 0.5 cm., 0.5 cm. below wound no.3 on posterior aspect of neck in the middle, horizontal in direction;
- (v) Incised lacerated wound 6 cm. x 2 cm. bone deep, 1 inch below wound no.4 at the level of C-6 - C-7 vertebrae extending from lateral aspect of left side

of neck upto midline of neck with fracture of C-6 - C-7 vertebrae horizontal in direction";

According to Dr. Gosavi, wound nos. 1 to 5 were caused by hard and sharp object and all those injuries were fatal injuries.

On internal examination of dead body, Dr. Gosavi noticed following injuries:

- "(i) haematoma measuring 6 cm. x 3 cm. present in occipital region on left side;
- (ii) Fracture of occipital bone on left side, fracture of posterior cranial fossa;
- (iii) fracture of subdural haematoma measuring 7 cm. x 4 cm. present in the occipital region on left side;
- (iv) Large vessels were completely cut, empty vessels on left side;
- (v) Spinal cord was lacerated at the level of C-6 - C-7 in the middle with fracture of C-6 - C-7 cervical vertebrae. Blood clots were seen in the wound".

In the opinion of Dr. Gosavi, cause of death was cardio respiratory failure due to haemorrhagic shock, due to injury to vital organs like spinal cord at the level of C-6 - C-7 with fracture of vertebrae C-6 - C-7 and injury to great vessels like external and internal carotid arteries and external Jugular

vein on left side with fracture of occipital bone on left side due to injury by sharp and hard object. Dr. Gosavi stated that injuries were possible by axe (Article 2) and all the injuries mentioned in column 17 corresponding to internal injuries, were sufficient to cause death in the ordinary course and fracture of occipital bone in the present case individually was sufficient to cause death in the ordinary course of nature and events.

14 On going through the record, we find that there is sufficient evidence to show that the prosecution has proved its case beyond reasonable doubt against the appellant. Thus, we find no merit in the appeal. Appeal is dismissed.

15 Office to communicate this order to the appellant who is in Jail.

16 We quantify legal fees to be paid to Advocate Mrs. Nasreen S.K. Ayubi by the High Court Legal Services Committee at Rs. 5000/-.

[SMT. I.K. JAIN, J.]

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