

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.409 of 2009

Ramesh Raosaheb Gaikwad	]	
Age : 30 yrs., Occu.: Driver,	]	
R/at Hiba Apartment, Room No.106,	]	
Plot No.75, Sector – 12, Kamothe,	]	
Village Pare, Taluka Sangola,	]	
Dist. Solapur.	]	 Appellant

Versus

1. The Senior Inspector of Police	]	
Kalamboli Police Station,	]	
Tal. Panvel, Dist. Raigad.	]	
	]	
2. The State of Maharashtra	]	 Respondent

Mr. Rahul S. Thakur a/w. Ms. Samina Mirza,
for the Appellant.

Mr. H.J. Dedia, A.P.P., for the Respondent-
State.

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

DATE : 8TH JANUARY, 2016.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. The Appellant-Original Accused, who stands convicted for the offence punishable under Sections 302 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer R.I. for one year, by the Additional Sessions Judge, Raigad-Alibag vide Judgment and Order dated 30th January 2009 in Sessions Case No.191 of

2008, by this Appeal challenges his conviction and sentence.

2. Facts, as are necessary, for deciding this Appeal may be stated thus:-

The marriage of Manisha, daughter of PW-2 Sakhubai Mane, was solemnized with the Appellant about five years prior to the incident. However, as Manisha could not conceive, the Appellant used to abuse and ill-treat her. Manisha has informed about this ill-treatment to her mother. Just eight months prior to the incident, the Appellant has assaulted Manisha and threatened to kill her. She was also driven out of the house. Hence, she came to reside in the house of her mother. Thereafter, a meeting was called and an assurance was obtained from the Appellant that he will treat Manisha properly. Manisha hence returned for co-habitation with the Appellant at Hiba Apartment, Kamothe. About twenty days before her death, her cousin PW-3 Krishna Mane went to meet her and at that time Manisha told him that Appellant was demanding amount of Rs.1,00,000/- for purchase of Tractor and on failure to give the said amount, threatening to kill her. She had also expressed apprehension of danger to her life and sent message with PW-3 Krishna to her mother to take her back. However, due to poor financial condition, her mother could not satisfy demand of the Appellant.

3. On 15th March 2008, at about 1 am in the night, Manisha's mother was informed about the death of Manisha and was brought to the Civil Hospital at Panvel, where the dead body of Manisha was kept for postmortem examination. She noticed the ligature mark on the neck of Manisha and also the rear portion of her head found swollen. Due to unexpected and sudden death of Manisha, her mother suffered a mental shock and became ill.

4. Meanwhile, on 15th March 2008 itself, on the basis of the information given by the Appellant to the Police, PW-4 PSI Suresh Nikam has registered A.D. No.37 of 2008 under Section 174 of Cr.P.C.. Immediately thereafter, he had been to the spot of incident along with Panchas and conducted the Inquest Panchanama (Exhibit-11) and the Spot Panchanama (Exhibit-21). Thereafter he has referred her dead body for postmortem examination. On the same day, he has also recorded statements of the witnesses and attempted to make enquiry with PW-2 Sakhubai. However, due to her mental condition, she was not in a position to give the statement.

5. On 21st March 2008, PW-2 Sakhubai came to Hiba Apartment at Kamothe along with her nephew PW-3 Krishna and made enquiry with the residents of that Apartment. From them, she came to know that on 14th

March 2008, at about 10:45 pm, the neighbours in the Apartment had heard the sound of quarrel and shouting of Manisha. Hence, they had knocked the door of her flat. However, for some time, the door was not opened. Thereafter, the Appellant opened the door and at that time, they found Manisha hanging to the ceiling. On receipt of this information, PW-2 Sakhubai went to Kalamboli Police Station and lodged the complaint (Exhibit-9) against the Appellant for the offence punishable under Sections 498-A and 302 of IPC.

6. On this complaint (Exhibit-9), PW-4 PSI Nikam registered C.R. No.154 of 2008 against the Appellant. During the course of investigation, he sent muddemal property like two pieces of nylon rope, pieces of bangles and one chain of yellow metal, seized from the spot of the incident, to Chemical Analyzer. He also collected the Postmortem Report (Exhibit-16). Further to completion of investigation, Charge-Sheet came to be filed in the Court of Judicial Magistrate, First Class, Panvel.

7. On committal of the case to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-2. The Appellant pleaded not guilty and claimed trial, raising the defence of denial and false implication.

8. In support of its case, prosecution examined only five witnesses and

on appreciation of their evidence, the Trial Court was pleased to convict and sentence the Appellant as aforesaid.

9. This Judgment of the Trial Court is challenged in the Appeal by learned counsel for the Appellant by submitting that there is absolutely no iota of incriminating evidence on record against the Appellant, as PW-2 Sakhubai, the mother of the Deceased, and PW-3 Krishna, cousin brother of the Deceased, have turned hostile and not supported the prosecution case. The only circumstances relied upon by the prosecution are, (i) presence of the Appellant in the house and at the time of the incident and (ii) homicidal death of Manisha. According to learned counsel for the Appellant, these circumstances, if held to be proved, are not sufficient to complete the chain of circumstances and they do not lead to the only hypothesis of the guilt of the Appellant. Hence, according to learned counsel for the Appellant, the Judgment of the Trial Court convicting and sentencing the Appellant for the offence punishable under Section 302 of IPC is required to be quashed and set aside.

10. Per contra, learned A.P.P. has supported the impugned Judgment of the Trial Court by submitting that both these circumstances, as relied upon by the prosecution, are of a clinching nature. Once the presence of the Appellant is proved in the house at the time of incident, the burden was

shifted upon him to explain the circumstances under which the homicidal death of Manisha had taken place. The non-explanation or the false explanation offered by the Appellant by creating a show of Manisha hanging herself to death, is an added incriminating circumstance against him and if all these three circumstances are taken together, they leave no scope but to hold the guilt of the Appellant as proved beyond reasonable doubt.

11. In the light of these rival submissions advanced by learned counsel for the Appellant and learned A.P.P., if the evidence on record is scanned and assessed, it can be stated that, undisputably, the case of the prosecution is based on the circumstantial evidence. The circumstances, which are relied upon by prosecution, are ;

- (i) the homicidal death of Manisha in the house of the Appellant;
- (ii) the presence of the Appellant in the house at the time when the offence was committed;
- (iii) the door of the house being locked from inside and Appellant not opening the door immediately.

- (iv) False explanation of her death offered by the Appellant.

12 As regards the first circumstance about the homicidal death of Manisha, there is evidence of PW-5 Dr. Swati Naik, who was attached to Rural Hospital, Panvel and has conducted the postmortem examination on the dead body of Manisha on 15th March 2008. According to her, on external examination of the dead body, she found following injuries :-

- (i) Ligature mark seen around neck in incomplete.
Circumference of mule circle with a gap of 3 cm.
posteriorly = 28 cm.
5 cm below right ear.
5 cm below left ear.
5.5 cm at centre
No other injuries noted on dissection of the ligature mark, the underlying tissues did not reveal any echymosis or any infiltration of blood in deeper tissues.
- (ii) Abrasion over the chin 1 cm x 1 cm, reddish in colour (interior aspect).

13. She has opined that Injury No.2 was antemortem, whereas, Injury No.1, i.e. the ligature mark, appeared to be postmortem in nature.

14. On internal examination of the scalp and brain, she found following injuries :-

- (i) Large hematoma 4 cm x 4 cm over the left parietal bone of skull.
- (ii) Left subdural hematoma 6 cm x 5 cm, extending over to the occipital lobe of brain, marked with cerebral oedema.

15. She has noted these injuries in the Postmortem Report filed on record at Exhibit-16 and which document is admitted in evidence by Defence. She has given her opinion about the cause of death as, “*due to left side subdural hematoma with associated hanging*”. In her evidence before the Court, she has confirmed that the death of Manisha was not suicidal, but it was on account of subdural hematoma and large hematoma over left parietal bone of the scalp. She has further deposed that these injuries on the scalp and brain could have been caused by hard and blunt object. In her cross-examination, she has denied suggestion that such injuries are possible due to fall. She has also denied that death of Manisha was on account of hanging and it was the case of suicide.

16. Thus, the medical evidence in the instant case categorically goes to prove that the death of Manisha was homicidal on account of the injury in the nature of hematoma caused to scalp and brain. The injury of ligature mark being postmortem in nature, it is clear that her death was on account of homicide alone.

17. The evidence of PW-1 Baban Bangar, who was residing in Room No.403 of Hiba Apartment, where the Deceased and Appellant were residing, goes to prove that on the date of incident, at about 9 to 10 pm, when he returned to his house from the duty, while entering in Hiba Apartment, he heard the cry of quarrel from Room No.106 on first floor, where Appellant and deceased Manisha were residing. As per his evidence, many persons from Hiba Apartment had gathered near the said room. They knocked the door from outside of the room, as it was closed from inside. The door was not opened for about 10 to 15 minutes. They were searching for some alternate way to go inside the said room. However, by that time, Appellant opened the door of the room from inside. They went in and found the dead body of Manisha hanging with nylon rope on the hook of the ceiling and Appellant very much present there. As per the evidence of this witness, along with Appellant, they went to the Police Station and gave information of the incident to the Police.

18. This evidence of PW-1 Baban Bangar has remained totally unshattered, even after cross-examination. The very suggestion put up to him in cross-examination that the Appellant was present there and saying that his wife has committed suicide, necessarily goes to prove that the Appellant is not disputing his presence in the said room at the time of the incident. Further his evidence that they had heard the commotion,

shouting and crying of Manisha and they had gathered there and that they were making efforts to open the door, but the door was not opened for 10 to 15 minutes, further proves that the delay was on account of the Appellant, after killing Manisha, trying to create a show of Manisha committing suicide, by hanging her body with nylon rope to the hook of the ceiling. The Scene of Offence Panchanama (Exhibit-21), which was drawn immediately on the same night and proved through the evidence of PW-4 PSI Suresh Nikam, goes to show that the pieces of nylon rope along with the pieces of bangles were found at the spot of incident. The evidence of PW-4 PSI Nikam also goes to prove that the information of the incident was given to him by the Appellant. Thus, the presence of the Appellant at the time of incident in the very room, where the dead body of deceased Manisha was found, is abundantly proved on record.

19. In such situation, naturally, the burden was shifted on the Appellant to explain the circumstances which resulted into death of Manisha. The explanation, which is offered by the Appellant, that she has committed suicide by hanging herself, is found to be utterly false from the medical evidence, which categorically establishes that it was a case of homicidal death, as the ligature marks were postmortem in nature and the cause of the death was hematoma on the scalp and brain, which was antemortem.

20. The law in this respect is fairly well settled in the case of ***Nika Ram Vs. The State of Himachal Pradesh, AIR 1972 SC 2077, Ganeshlal Vs. State of Maharashtra, 1992 (3) SCC 106*** and several such similar cases, wherein it is held that when accused was found to be alone with his spouse in the house at the time of her homicidal death, in the absence of any cogent explanation offered by the accused, it would point to his guilt as he is under an obligation to give plausible explanation for the cause of her death.

21. Here in the case, as the explanation offered by the Appellant is found to be false one, it constitutes an additional incriminating circumstance against him. This circumstance is totally inconsistent with his innocence and consistent with the hypothesis that he is the culprit in commission of the murder of his wife.

22. According to learned counsel for the Appellant, as both, PW-2 Sakhubai and PW-3 Krishna, have not supported the prosecution case, the motive or the cause for the offence is not proved by the prosecution. He has also urged that there is delay of about 7 to 8 days in lodging the complaint and this delay becomes fatal to the prosecution case. Thirdly, according to him, the alleged weapon of assault is also not recovered and

hence the benefit of doubt is required to be extended to the Appellant. However, in our considered opinion, none of these grounds on which the benefit of doubt is sought are sufficient to extend the same, especially, in the light of the strong and unimpeachable evidence brought on record of the clinching incriminating circumstances referred above, namely, the homicidal death of Manisha, the wife of the Appellant, in her house in the presence of the Appellant; the door of the room being locked from inside and not opened for 10 to 15 minutes; and the false show created by the Appellant of her committing suicide by hanging. In our considered opinion, each one of these circumstances are sufficient independently to prove the guilt of the Appellant and if the chain is to be formed of these circumstances, then it leaves no scope but to hold that the prosecution has succeeded in proving the guilt of the Appellant beyond any shadow of reasonable doubt.

23. The last attempt made by learned counsel for the Appellant is that, as it was a case of single injury to the head, the case of the Appellant stands covered under Exception 4 to Section 300 of IPC. Needless to state, that this submission is referred to, just for the sake of rejection. The facts of the case are so eloquent that to advance such submission is fallacious.

24. Hence, the net result is that the Appeal deserves to be dismissed and stands dismissed accordingly, confirming the conviction and sentence of the Appellant for the offence under Section 302 of IPC, as recorded by the Trial Court.

25. As the Appellant is in Jail, no further order is necessary.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]