

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.450 OF 2014

Hanmant @ Hanuman Chandrakant Pawar Appellant

Versus

The State of Maharashtra Respondent

Ms. Rohini Dandekar, Appointed Advocate, for
the Appellant.

Mrs. A.S. Pai, A.P.P., for the Respondent-
State.

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

DATE : 3RD FEBRUARY, 2016.

ORAL JUDGMENT : [Per Smt. V.K. Tahilramani, Acting C.J.]

1. The appellant-original accused has preferred this Appeal against the Judgment and Order dated 28th April 2009 passed by the learned Sessions Judge, Raigad-Alibag, in Sessions Case No.146 of 2008. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer further S.I. for six months.

2. The prosecution case briefly stated is as under :

. Deceased Shani @ Shanti was the wife of the appellant. PW-1 Kaluram was the brother of Shani. Shani was married with the appellant about 20 years prior to the incident. The appellant and Shani, along with their children, were residing in a hut near the hut of PW-1 Kaluram. The appellant was addicted to liquor. Under the influence of liquor, the appellant used to beat his wife Shani. Appellant was also suspecting that Shani has some illicit relations with some other person. Two to four days before the death of Shani, Shani met her brother PW-1 Kaluram and told him that her husband has severely beaten her. Shani further told Kaluram to hide her somewhere, where the appellant will not find her. Saguni, the cousin sister of Kaluram and Shani, was residing at Village Khanshi. Kaluram and Shani went to Khalapur Phata. There they met PW-2 Ramdas, who was the cousin brother of Kaluram and Shani. Ramdas told them that he was going to Village Khanshi to bring his wife. Kaluram then told Ramdas that the appellant had assaulted Shani and it was necessary to hide Shani somewhere, otherwise, the appellant would kill Shani. Then Kaluram, Shani and Ramdas went to Village Khanshi. On reaching Village Khanshi, Kaluram requested Saguni to keep Shani with her, as Shani's husband had severely beaten Shani. Kaluram told Saguni that he will come back after 3 – 4 days and take Shani with him. Saguni then kept

Shani with her. Meanwhile, Ramdas picked-up his wife from Village Khanshi. Then Kaluram, Ramdas and wife of Ramdas returned to their village i.e. Village Ghodivali. The house of Ramdas was also situated near the house of the appellant. Somehow the appellant came to know that Shani is at Village Khanshi. Hence, appellant went to Village Khanshi and brought Shani back. The appellant was suspecting that Ramdas had taken Shani. On this count, continuous quarrel was going on between Shani and the appellant.

3. On 10th March 2008, Shani told her mother-in-law PW-9 Rani to cook food and she will clean the hut. The appellant then came there. He had consumed liquor. Appellant gave call to Shani. Then Shani came inside the hut. Appellant asked Shani where she had gone. Shani told the appellant that she was doing the work of cleaning. Appellant then started asking Shani whether Ramdas had called her. Appellant then wanted to verify this fact. Hence, appellant and Shani, both, went to brick kiln, where Ramdas used to reside. Appellant asked PW-2 Ramdas why he had taken his wife Shani. Ramdas told the appellant that he had not taken his wife Shani, but she was taken by her brother Kaluram. Appellant did not accept the explanation given by Ramdas. Appellant had a scuffle with Ramdas. Appellant then slapped Ramdas. Thereafter, Appellant and Shani went away from the brick kiln. On the next day, i.e. 11th March 2008, the

appellant beat Shani as he was suspecting that she had illicit relations with Ramdas. In the evening, at about 6 to 7 pm, the appellant left the hut. While leaving the hut, he told his mother that he will kill Shani. Shani and appellant then came to the hut of Ramdas, which was situated at brick kiln. At that time, appellant had consumed liquor. Ramdas was frightened of the appellant. Hence he and his wife went and stood at some distance. After the appellant and Shani came near the hut of Ramdas, the appellant was abusing Ramdas in filthy language. Thereafter, the appellant and Shani went away. Thereafter Shani was not seen alive and her dead body was found early in the morning on the next day in the area known as 'Dhavada Mal'. Various injuries were seen all over the body of Shani. Thereafter F.I.R. was lodged. Thereafter investigation commenced. After completion of investigation, the Charge-Sheet came to be filed.

4. Charge came to be framed against the appellant under Section 302 of IPC. 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.

5. We have heard the learned Advocate for the appellant and the

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 matter, for the below mentioned reasons, we are of the opinion that the appellant committed the murder of his wife Shani @ Shanti.

6. There is no eye-witness in the present case and the case is totally dependent on circumstantial evidence. The circumstances against the appellant are as under :

- *Motive*
- *Last Seen*
- *Extra Judicial Confession*
- *Recovery of blood stained weapon, i.e. Scythe, at the instance of the appellant and blood stains of the group of the deceased were found on the said Scythe.*
- *Blood stained clothes on the person of the appellant were seized at the time of his arrest. These clothes were having blood stains of the group of the deceased.*
- *Two buttons were found near the dead body. When the appellant was arrested, two buttons on the shirt that he*

was wearing were found missing. The buttons found at the scene of offence and the buttons on the shirt of the appellant were sent to Chemical Analyzer. As per C.A. Report (Exhibit-52), the buttons found at the spot and the buttons on the shirt of the appellant tallied.

7. The first circumstance against the appellant is Motive. PW-1 Kaluram, PW-2 Ramdas and PW-9 Rani have deposed about motive. PW-1 Kaluram was the brother of deceased Shani; PW-2 Ramdas was the cousin brother of deceased Shani and PW-9 Rani was the mother of the appellant. Kaluram has stated that the appellant was addicted to liquor. Under the influence of liquor, appellant used to beat his wife Shani. Appellant was also suspecting that Shani has some illicit relations with some other person. Two to four days before the death of Shani, Shani met her brother PW-1 Kaluram and told him that her husband has severely beaten her. Shani further told Kaluram to hide her somewhere, where the appellant will not find her. Saguni, the cousin sister of Kaluram and Shani, was residing at Village Khanshi. Kaluram and Shani went to Khalapur Phata. There they met PW-2 Ramdas, who was the cousin brother of Kaluram and Shani. Ramdas told them that he was going to Village Khanshi to bring his wife. Kaluram then told Ramdas that the appellant

had assaulted Shani and it was necessary to hide Shani somewhere, otherwise appellant would kill Shani. Then Kaluram, Shani and Ramdas went to Village Khanshi. On reaching Village Khanshi, Kaluram requested Saguni to keep Shani with her, as Shani's husband had severely beaten Shani. Kaluram told Saguni that he will come back after 3 – 4 days and take Shani with him. Saguni then kept Shani with her. Meanwhile, Ramdas picked-up his wife from Village Khanshi. Then Kaluram, Ramdas and wife of Ramdas returned to their village i.e. Village Ghodivali. The house of Ramdas was also situated near the house of the appellant. Somehow the appellant came to know that Shani is at Village Khanshi. Hence, appellant went to Village Khanshi and brought Shani back. Kaluram has stated that, after the appellant has brought Shani to his residence, the appellant beat Shani as he was suspecting that PW-2 Ramdas taken Shani. On this count, continuous quarrel was going on between the appellant and Shani. The appellant brought Shani back to his house about two days prior to the death of Shani. Kaluram has stated that, to verify whether the appellant and Shani were having an affair, the appellant and Shani went to the house of Ramdas, which was situated at brick kiln. Thereafter Shani was not seen alive.

8. PW-2 Ramdas is the second witness on the aspect of motive. He

has stated that the appellant was jobless. Every night, the appellant used to consume liquor and then used to quarrel with his wife Shani. The appellant used to beat his wife Shani. The appellant used to suspect his wife Shani. Ramdas has stated that his wife had gone to meet her brother, who was ill. His wife's brother was residing in Village Khanshi. On the next day, Ramdas went to bring his wife back. He was waiting for vehicle at Khalapur Phata. At that time, Shani and her brother Kaluram came to Khalapur Phata. Kaluram asked him (Ramdas) where he was going. Ramdas told Kaluram that he was going to bring his wife. Kaluram then told Ramdas that the appellant has severely beaten Shani and Kaluram asked Ramdas whether he and Shani can accompany him. Kaluram told Ramdas that Shani is not safe at Village Ghodivali. Hence, he will keep Shani at the residence of his sister Saguni, who was residing in Village Khanshi. Then Ramdas, Kaluram and Shani went to Village Khanshi. Shani was kept with Saguni. Then Ramdas and Kaluram went to the residence of his brother-in-law and Ramdas collected his wife. Thereafter Ramdas, his wife and Kaluram returned back to Village Ghodivali.

. Ramdas has further stated that, about two days thereafter, appellant brought Shani to Village Ghodivali. Shani and the appellant came to him at the brick kiln. Appellant asked Ramdas why he had taken his wife

Shani. Ramdas told the appellant that he had not taken his wife Shani, but Shani was taken by her brother Kaluram. The appellant did not accept the explanation given by Ramdas. The appellant had a scuffle with Ramdas. The appellant then slapped Ramdas. Thereafter, appellant and Shani went away from the brick kiln. On the next day, the appellant beat Shani as he was suspecting that Shani was having an affair with PW-2 Ramdas. At about 6 to 7 pm, the appellant went away from his hut. While leaving, he told his mother that he will kill Shani. The appellant thereafter consumed liquor. Thereafter the appellant and Shani came to the hut of Ramdas. Due to fear of the appellant, Ramdas and his wife went and stood at some distance. After the appellant came to the hut of Ramdas, the appellant was abusing Ramdas in filthy language. Thereafter, appellant and Shani went away. Thereafter Shani was not seen alive. On the next day, in the early morning, the dead body of Shani was found lying at 'Dhavada Mal'.

9. The last witness on the aspect of motive is PW-9 Rani. She was the mother of the appellant. Rani has stated that there used to be disputes between appellant and his wife Shani. The appellant used to beat Shani. The appellant was suspecting that Shani was having an affair with PW-2 Ramdas. The hut of Ramdas was situated near their hut. The neighbours

used to request the appellant not to quarrel with his wife Shani. However, the appellant used to told them not to interfere in the quarrel with his wife. Rani has stated that she and Shani had gone for labour work. They returned back to the hut at about 5 pm. Shani told Rani to cook food and Shani told Rani that she (Shani) will clean the hut. Thereafter, the appellant came home. The appellant had consumed liquor. The appellant called out to Shani. Shani came inside the hut. The appellant asked Shani where she had gone. Shani told him that she was doing the work of cleaning. The appellant started asking Shani whether Ramdas had called her. The appellant asked Shani to accompany him to verify the fact. Thereafter both of them went to the house of Ramdas. PW-9 Rani has specifically stated that, while going out, the appellant had carried a scythe with him. Thereafter the appellant and Shani did not return home.

10. The next circumstance against the appellant is that of Last Seen. The evidence of PW-1 Kaluram, PW-2 Ramdas and PW-9 Rani, which we have discussed in the earlier paragraphs, shows that appellant, along with his wife Shani, left his hut in the evening of 11th March 2008. The appellant took Shani with him to the hut of Ramdas to question Ramdas about the illicit affair, which the appellant thought that Ramdas was having with Shani. After the appellant and Shani left the hut of Ramdas, Shani

was not seen alive. The appellant also did not return back to his house and he was absconding.

11. The third circumstance against the appellant is Extra Judicial Confession. PW-10 Dattatraya has stated about the extra judicial confession. Dattatraya has stated that he knew the appellant as well as his wife Shani. He has stated that the appellant met him two days after the death of Shani. The appellant met him at about 10 pm. The appellant knocked on the door of Dattatraya. Dattatraya opened the door. He saw the appellant standing outside. The appellant told him that he was suspecting that his wife had illicit relations with somebody. Hence, under the influence of liquor, the appellant had killed his wife Shani. Dattatraya then advised the appellant to contact Police Patil or to surrender before the Police. The appellant then went away.

12. The next circumstance against the appellant is Recovery of blood stained weapon i.e. Scythe at the instance of the appellant. The blood stains of the group of the deceased were found on the Scythe. PW-7 Panch Witness Shankar has stated about this recovery. Shankar has stated that the appellant made a statement that he would produce the weapon used in commission of the offence. Thereafter, appellant led the

Police and Panchas and produced the weapon of assault, i.e. Scythe, which was hidden by the appellant in the bushes. PW-7 Shankar has stated that blood stains were noticed on the blade of the Scythe. He has identified the Scythe (Article No.6) as the same one which was produced by the appellant. Here it is pertinent to note that PW-9 Rani has stated that, when the appellant and Shani were last seen i.e. when the appellant left the hut with Shani, at that time, the appellant took a Scythe with him. Thereafter the appellant and Shani did not return. PW-9 Rani has identified the Scythe (Article No.6) as the same Scythe, which was taken by the appellant when the appellant left his house with Shani. The said Scythe was sent to the Chemical Analyzer. As per C.A. Report, the Scythe was stained with blood of "A" group.

13. The blood stained clothes of the deceased were also sent to the Chemical Analyzer. These clothes were also found to have blood stains of "A" group, which shows that the blood group of the deceased was "A". Thus, finding of blood of "A" group on the Scythe recovered at the instance of the appellant is a circumstance which strongly goes against the appellant.

14. The next circumstance against the appellant is the blood stained

clothes on the person of the appellant were seized at the time of his arrest. When the appellant was arrested, the clothes on his person were found having blood stains. These clothes were seized in the presence of PW-11 Panch Witness Shivaji. Shivaji has stated that, on 14th March 2008, he was called by Khalapur Police to act as a Panch. In his presence, personal search of the appellant was taken. The appellant was wearing a blue shirt and black pant. There were blood stains on the shirt and pant worn by the appellant. Police seized the shirt and pant. Two buttons of the shirt worn by the appellant were found missing. The C.A. Report (Exhibit-52) shows that the shirt and pant of the appellant had blood stains of blood group "A", which is the same group which was found on the saree and blouse worn by the Deceased. The fact that blood of "A" group was found on the saree and blouse of the deceased shows that her blood group was "A". Thus, finding of blood of the group of the deceased on the clothes of the appellant is a strong incriminating circumstance.

15. The last circumstance against the appellant is two buttons were found near the dead body. When the appellant was arrested, two buttons on the shirt that he was wearing were found missing. The buttons found at the scene of offence and the buttons on the shirt of the appellant were sent to Chemical Analyzer. As per C.A. Report (Exhibit-52), the buttons

found at the spot and the buttons on the shirt of the appellant tallied. Finding of buttons of the appellant at the scene of offence establishes his presence at the scene of offence. This circumstance, along with other circumstances, conclusively proves the guilt of the appellant.

16. After going through the record, we are of the opinion that there is sufficient evidence to prove the guilt of the appellant beyond reasonable doubt. Thus, we find no merit in the Appeal. Appeal is dismissed.

17. Fees quantified @ Rs.5,000/- be paid to Ms. Rohini Dandekar, Advocate appointed from the High Court Legal Service Committee to represent the appellant in this Appeal.

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