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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.358 OF 2014
IN
SESSIONS CASE NO.154 OF 2008

Rahul Ramchandra Bhabad
Age : 30 years, Occ. Nil,
residing at Shivaji Nagar,
Room No.3, Plot No.7,
Manmad, Taluka Nandgaon,
District Nasik.
Presently Convict No.9192 at
Nasik Road Central Prison at Nasik

...Appellant
(Org. Accused)

vs.

The State of Maharashtra
at the instance of Manmad Police
Station, Taluka Nandgaon,
District Nasik.

...Respondent
(Org. Complainant)

.....

Ms. Rohini M. Dandekar, Advocate appointed for the appellant.

Mr. Arfan Sait, A.P.P. for respondent – State.

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**CORAM : SMT. V.K. TAHILRAMANI &
M.S.KARNIK, J.J.**

DATE : 22nd/23rd NOVEMBER, 2017.

ORAL JUDGMENT (PER SMT. V.K. TAHILRAMANI, J.):

The appellant/original accused Rahul has preferred this appeal against the judgment and order dated 26/9/2013 passed by the learned Additional Sessions Judge, Malegaon, District Nashik in Sessions Case No.154 of 2008. By the said judgment and order the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code for committing murder of his mother Ashabai. Learned Sessions Judge again convicted the appellant under Section 302 of Indian Penal Code for committing murder of his minor cousin brother Rishikesh @ Sonu. In addition, learned Sessions Judge also convicted the appellant under Section 363, 364, 342 of the Indian Penal Code. For the offence punishable under Section 302 of the Indian Penal Code on each count the appellant was sentenced to suffer R.I. for life and to pay fine of Rs.500, in default to suffer R.I. for one month. For the offence punishable under Section 364 of the Indian Penal Code the appellant was sentenced to suffer R.I. for five years and to pay fine of Rs.500/-, in default to suffer RI for one month. For the offence punishable

under Section 363 of the Indian Penal Code the appellant was sentenced to suffer R.I. for five years and to pay fine of Rs.500/-, in default to suffer RI for one month. For the offence punishable under Section 342 of the Indian Penal Code the appellant was sentenced to suffer R.I. for six months and to pay fine of Rs.200/-, in default to suffer R.I. for fifteen days. Learned Sessions Judge directed that all the above substantive sentences of imprisonment shall run concurrently.

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

The appellant Rahul committed murder of his mother Ashabai by strangulating her. In addition, he kidnapped his minor cousin brother Rishikesh @ Sonu with intention to commit his murder. After kidnapping Sonu, the appellant wrongfully confined him and thereafter, murdered him. PW-6 API Amle lodged FIR (Exh.50). Thereafter, investigation commenced. After completion of investigation the charge-sheet came to be filed.

3. Charge came to be framed against the appellant under Section 363, 364, 342 and 302 of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried. His defence is of total denial and of false implication. After going through the evidence adduced in this case, learned Sessions 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 learned APP for State. We have carefully considered their submissions, the judgment and order passed by the learned Additional 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 mother Ashabai and his minor cousin brother Rishikesh @ Sonu. In addition the appellant committed an offence punishable under Section 363, 364 and 342 of the Indian Penal Code.

5. There is no eye witness in the present case and the case is totally dependent upon circumstantial evidence. PW-1 Ramchandra Bhabad is the father of the appellant Rahul. Ramchandra has stated that Ashabai was his wife and the appellant was his son. They were residing at Shivaji Nagar No.3, Plot No.7, Manmad, Taluka Nandgaon, District Nashik. PW-2 Yeshwant Bhabad was the brother of PW-1 Ramchandra. Thus, Yashwant was paternal uncle of the appellant. Deceased Rishikesh @ Sonu was the son of the Yashwant. Sonu was 9 years of age at the time of the incident. Yashwant was residing at the distance of about two minutes from the house of his brother Ramchandra. The appellant Rahul was the second son of his parents. His father PW-1 Ramchandra used to sell newspapers. Ramchandra had employed some boys to distribute the newspapers. The appellant was also helping his father in relation to the business of newspapers. The appellant used to collect the amount from the sale of newspapers. The appellant was about 29 years of age at the time of the incident hence his parents and close relatives were insisting that he should get

married. Whenever the issue of marriage of the appellant was raised, the appellant used to get irritated. Ramchandra had purchased a motorcycle. The appellant used to use the said motorcycle. The daily routine was that at about 5.00 a.m., Ramchandra and his son i.e. appellant used to sort out the papers near Ambedkar statue near Railway Station. Thereafter, they used to give the newspapers to the boys for distribution. Some newspapers used to be kept in the stall for sale and some newspapers used to be given to the appellant. The appellant used to sell newspapers in front of 'Pakija Corner' till 10 to 10.30 a.m.. Thereafter, he used to collect credit amount and return home. Ramchandra used to return home at about 3.30 to 4 p.m.. Thereafter, he used to have his lunch. There were three keys to the entrance door of the house of the appellant. One was with his father Ramchandra, the second key was with his mother Ashabai and third key was with the appellant. On 20/6/2008, at about 5 a.m., Ramchandra went to the paper stall on his bicycle. He sorted out the newspapers and gave them to the boys for distribution. At about 6.30 a.m., he also gave newspapers to his

son i.e. the appellant. Rahul took the newspapers and went to 'Pakija Corner'. The appellant, thereafter, did not come back to the stall. One Jejure wanted old newspapers (Raddi), hence he came along with Ramchandra at about 11.30 to 11.45 a.m. to the house of Ramchandra. Ramchandra found the entrance door closed from inside. Ramchandra knocked on the door. After about 4 to 5 minutes the appellant opened the door of the house. Ramchandra asked Rahul where was his mother Ashabai. Rahul informed his father Ramchandra that his mother Ashabai had gone to the hospital. The appellant asked his father Ramchandra why he had come home. Ramchandra told him that he wanted to collect old newspapers (Raddi). Ramchandra then gave old newspapers to Jejure and returned back to his stall. At about 3.30 p.m., Ramchandra returned home. There was lock on the entrance door. He opened the lock. He thereafter sat down for having lunch. In a short time police from Manmad police station came to his house. They told him that his son Rahul had surrendered before the police saying that he had murdered his mother Ashabai and his paternal cousin brother Rishikesh @

Sonu, aged 9 years. Ramchandra then called Yashwant who was father of the Rishikesh @ Sonu and asked him the whereabouts of Rishikesh @ Sonu. Yashwant replied that his son had gone to the school. Yashwant then came to the house of Ramchandra. Ramchandra then informed Yashwant what police had told him. Yashwant and Ramchandra then searched inside the house and under the bed the dead body of the wife of Ramchandra was found. It was concealed under newspapers. The dead body was found on removing the newspapers. Nylon rope was found tied across her neck. Her tongue had protruded out. Police then asked Ramchandra whether they were having some other house whereupon Ramchandra informed them that they had a house at Kumbharwada. Then they went to Kumbharwada. Police broke the lock and opened the door. On going inside the house at Kumbharwada they found the dead body of Rishikesh @ Sonu. Rishikesh had been strangled with the wire of a table fan and iron rod was kept on his neck. Thus the evidence of Ramchandra shows that the appellant had free access to both the places where the dead bodies were found.

6. The evidence of Ramchandra also shows that normally he used to return home at 3.30 p.m. to 4.00 p.m., however, on the date of the incident i.e. on 20/6/2008, Ramchandra came home with one Jejure at about 11.30 a.m. to 11.45 a.m. to supply raddi newspapers to Jejure. Ramchandra found that the door of the house was closed. When he knocked on the door, the appellant took sometime to open the door. The appellant also questioned his father Ramchandra why he had come home. Thus, normally Ramchandra never went home at 11.30 a.m. to 11.45 a.m. but he used to return home only at about 3.30 p.m. to 4.00 p.m., hence, the appellant would not be expecting his father Ramchandra to come home at 11.30 – 11.45 a.m. There was no reason for the appellant to lock the door of the house from inside because there were three keys to the house. One was with the appellant and other two keys were with the mother and father of the appellant. Thus, when the appellant was in the house, there was no reason for him to lock the door. It is further seen from the evidence of Ramchandra that the appellant did not immediately open the door and he

took sometime to open the door. Thereafter, when Ramchandra returned home at 3.30 p.m. to 4.00 p.m., the appellant was not in the house and the dead body of the wife of Ramchandra was found under the bed.

7. PW-2 Yashwant Bhabad was the paternal uncle of the appellant. He has stated that he had only one son i.e. Rishikesh @ Sonu. Rishikesh @ Sonu who was of 9 years of age at the time of the incident. Rishikesh was studying in 3rd standard in “Chhatre High School”. Yashwant has stated that he had two brothers. His elder brother is Ramchandra and his younger brother is Subhash. All the three brothers were residing at Manmad at a distance of two minutes from each other. His brother Ramchandra (PW-1) had two sons Atul and Rahul (appellant). Only Rahul was residing along with his parents at Manmad. Yashwant has stated that Rahul was about 29 years of age at the time of the incident. He was not married. When they insisted that he should marry he used to refuse. Two to three years prior to the incident he had pawned the ornaments of his

mother with one goldsmith. Ramchandra (PW-1) had called Yashwant and told him about it. Yashwant then give understanding to Rahul and told him not to indulge in such activities. Yashwant has stated that on 20/6/2008, he returned home at about 3 p.m.. At about 4 p.m., he received a call from his brother Ramchandra asking Yashwant the whereabouts of his son Rishikesh @ Sonu. Yashwant told Ramchandra that Sonu had gone to school. Ramchandra told Yashwant to search for Sonu. Hence, Yashwant searched for Sonu. Then he along with a relative went to the house of Ramchandra. They saw people standing near his house. Yashwant made inquiry with his brother Ramchandra. Thereupon Ramchandra replied that his wife had been murdered. Then they went to Kumbharwada. When Yashwant went inside the house of his brother Ramchandra he saw dead body of his son Rishikesh @ Sonu inside the house. He saw Rishikesh @ Sonu had been strangulated with electric wire of a table fan and iron rod was kept across his neck. Yashwant has stated that he saw the dead body of his sister-in-law. Her dead body was under the bed.

Yashwant has stated that because they were telling the appellant to get married he was angry with them and hence, the appellant committed the murder of his mother and Yashwant's son Rishikesh @ Sonu.

8. Rishikesh @ Sonu was studying in “Chhatre High School” at Manmad. His school timing was 12.30 noon to 5.30 p.m.. PW-12 Ranjana Choudhary was a teacher in the said school. She was teaching the 3rd standard. On 20/6/2008, the class teacher of standard 3-B was on leave, hence Ranjana Choudhary was asked to attend the said class at 3 p.m.. Accordingly she went to the class and started teaching. PW-12 Ranjana had stated that at about 3.05 p.m., one person came to the class. He was wearing spectacle and had covered his head. He told that he wanted to take Rishikesh @ Sonu along with him to bring notebooks. Therefore, Ranjana Choudhary called out the name of Rishikesh @ Sonu in the class room. Thereupon, Rishikesh @ Sonu stood up. Ranjana Choudhary asked Rishikesh who was the person who had come to take him.

Rishikesh replied that he was his 'Motha Dada' i.e. big brother. Ranjana Choudhary told that person that he can bring the notebooks on Monday. However, he replied that he will bring back Rishikesh @ Sonu within 10 minutes at the most and his school bag may be kept in the class. Ranjana then allowed Rishikesh @ Sonu to go along with that person. Ranjana then started teaching in the class. At about 4.30 p.m., the peon of their school came to their class and asked about Rishikesh Bhabad. Ranjana told the peon that his big brother came to take him for 10 minutes however he had not returned till then. After the school was over Ranjana Choudhary came to know that Rishikesh was killed by his elder brother by strangulating him. Ranjana has identified the appellant as the person who took away Rishikesh. Thus, the evidence of PW-12 Ranjana Choudhary shows that Rishikesh was taken away from the school by the appellant at about 3.05 p.m. and the dead body of Rishikesh was found a couple of hours later in the house of the appellant. Thus, the evidence of PW-12 establishes that Rishikesh was last seen with the appellant at about 3.05 p.m..

9. Just shortly, after 3.30 p.m. the police of Manmad police station came to the house of Ramchandra and informed him that his son Rahul had surrendered before the police saying that he murdered his mother and his cousin brother Rishikesh @ Sonu, aged 9 years. The evidence of PW-2 Yashwant shows that at about 4.00 p.m., he received a phone call from his brother Ramchandra asking him the whereabouts of Rishikesh @ Sonu. Yashwant informed Ramchandra that Rishikesh @ Sonu had gone to the school. Thereupon Ramchandra told Yashwant to search for Sonu. When Yashwant went to the house of Ramchandra he saw people standing there and on inquiry Ramchandra told him that his son had murdered his wife. Thereafter, they went to the house of Ramchandra at Kumbharwada and Yashwant saw the dead body of his son Rishikesh @ Sonu lying in the room and he had been strangulated to death.

10. PW-15 Dr. Gosavi conducted the postmortem on the dead body of Ashabai as well as Rishikesh @ Sonu. The external

injuries seen on Ashabai are as under :-

1. Abrasion present over dorsal side of right forearm at lower 1/3rd.
2. 3-imprint abrasion present around the neck. The first imprint abrasion caused around the neck on anterior aspect above thyroid cartilage which is from right postauricular area to left postauricular area up to mastoid bone.
3. Two-imprint abrasions below the thyroid cartilage from right postauricular area to left postauricular area.
4. Regarding internal injuries on palpation, fracture of thyroid cartilage was noticed by Dr. Gosavi.

In addition, Dr. Gosavi also found that brain-meninges was congested, petechial hemorrhage was present. Larynx, tracheal ring, thyroid cartilage, bronchi and carotid artery – injured. According to Dr. Gosavi, the tongue had protruded outside the mouth and the cause of death was 'strangulation'. According to Dr. Gosavi, the injuries sustained by Ashabai on the neck are possible by the nylon rope like muddemal Article 'H'. In the opinion of Dr. Gosavi all the injuries are sufficient to cause death of a person.

11. Dr. Gosavi also conducted the postmortem on the dead body of Rishikesh @ Sonu. On external examination, he found the following injuries :-

1. 4-Imprint abrasion present around neck on anterior side.
2. 2-Imprint abrasion present above the cricoid cartilage which is blackish from medial side of right upper 1/3rd of sternocleidoid muscle.
3. 2-Imprint abrasion present below the cricoid cartilage from right lower 1/3rd of sternocleidoid muscle lateral side to left sternocleidoid muscle lateral lower 1/3rd.

On internal examination, Dr. Gosavi noticed injuries as under :-

- II. Fracture of lower 1/3rd of left radius and ulna.
Fracture of hyoid bone and thyroid cartilage.
Larynx, trachea, bronchi was injured.

According to Dr. Gosavi, all the injuries were sufficient to cause death and the cause of death was 'strangulation'. Dr. Gosavi further opined that such injuries are possible by electric wire of table fan and iron rod.

12. The evidence PW-6 API Amle shows that at the time the Appellant was arrested injuries were seen on his right cheek. PW-15 Dr. Gosavi also examined the appellant and he found 3 to 4 abrasions on right side of the face. According to Dr. Gosavi abrasions found on the face of the appellant were probably due to nails. Dr. Gosavi further opined that such abrasions are possible while strangulating a victim if the victim puts up resistance due to which the perpetrator of the crime would sustain such injuries. Looking to the Postmortem Notes and situation in which the dead bodies were found, there is no manner of doubt that both the deaths were homicidal in nature.

13. As stated above the evidence of PW-12 Ranjana Choudhary, who was a teacher in the school in which Rishikesh @ Sonu was studying, establishes that the appellant took away Rishikesh @ Sonu with him at about 3.05 p.m. from school. Soon, thereafter the dead body of Rishikesh @ Sonu was found in the house of the appellant about 1½ hour later and the door was found locked from outside. In such case, the appellant has

to explain when he parted company with the deceased. Otherwise, the appellant has to explain in what circumstances Sonu met his death.

14. The evidence on record shows that the appellant took away Sonu from the school at 3.05 p.m. and shortly thereafter Sonu was found dead. In such case, the appellant/accused has to explain when and where he parted company from deceased Sonu and how the deceased Sonu 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 of 'Last Seen'. In the case of **State of Rajasthan Vs. Kashi Ram, (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.

15. In addition to the above evidence and the evidence of PW-12, the prosecution is relying on the evidence of PW-08 Sharad Kadam, who was the Sub-Editor of Daily 'Punnyanagari', Nashik. He has stated that his Executive Editor Shri Kawle gave three copies of letters to the police. They are at Exh.59 to Exh.61. These letters came to be seized under panchanama

(Exh.62). According to the prosecution, these letters were sent by the appellant to the said Newspaper office of Daily newspaper 'Punnyanagari' in Nashik. Learned A.PP. Submitted that in Exh.59 the appellant has stated that he has murdered his mother as well as his paternal cousin brother. In order to substantiate the fact that the letters were written by the appellant, the prosecution is relying on the evidence of PW-7 Pravin Chouhan, who has stated that six pages of specimen writing of the appellant as well as six signatures were taken under panchanama. The said panchanama is at Exh.55. PW-7 Pravin Chouhan further stated that the father of the appellant produced one bill in the handwriting of his son i.e. appellant. However it is to be noted that the report of the Handwriting Expert is not on record nor the specimen handwriting taken in the presence of the panch witness PW-7 nor chit produced by the father of the appellant showing natural handwriting of the appellant are on record. In such case it is not possible for us to compare the handwriting in the letters to the Editor, specimen handwriting and the natural handwriting of the appellant to

come to the conclusion that the three letters were written by the appellant. In such case we are not inclined to rely on the letter Exh.59, Exh.60 and Exh.61.

16. On going through the evidence on record we are of the opinion that the circumstances brought on record by the prosecution form a chain of circumstances which proves the guilt of the appellant beyond reasonable doubt. Thus, we do not find any merit in the appeal, hence the appeal is dismissed.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI J.)