

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 363 OF 2014

Siddappa Vishwanath Aawle
Age 31 years, Occ. Nil, R/at C/o Bhagwan
Sarode, Suyog Colony, Rahtni, Pune
at present Yerwada Central Prison, Pune .. Appellant

Vs.
State of Maharashtra
through the Govt. Pleader,
having his office at PWD Building
High Court, Bombay 400 032
(Sanghvi Police Station, Pune) .. Respondent

Ms.Rohini M. Dandekar, for the Appellant.
Mrs.G.P. Mulekar, APP for State.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.
30th OCTOBER, 2017**

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

1. The appellant - original accused has preferred this Appeal against the judgment and order dated 19/12/2012 passed by the learned Additional Sessions Judge, Pune in Session Case No. 628 of 2010. By the said judgment and order, the learned Session Judge convicted the appellant under section 302 of IPC and sentenced him to suffer rigorous imprisonment

for life and fine of Rs.50,000/- , in default of payment of fine, further simple imprisonment for 6 months.

The prosecution's case briefly stated is as under :

2. The appellant was married to Archana about 6 years prior to the incident. The appellant and Archana had one son and one daughter. The name of the daughter was Siddhi and she was 2 years old at the time of incident. Archana informed her father i.e. PW.2 – Ashok Trimbak Zurale that her husband was beating her and was also demanding money from her. Ashok gave Rs.10,000/- to Archana. Thereafter the appellant went to jail. In order to engage an Advocate, Ashok gave Rs.50,000/- to Archana. Thereafter the appellant was released from jail one or two months prior to the incident. After the appellant was released from jail, Archana informed her father Ashok on telephone that the appellant was harassing her. It is the prosecution case that on 18/05/2010, the appellant committed murder of his wife Archana as well as his daughter Siddhi by throttling them. The brother of the appellant informed the police about the incident and based on his statement, FIR came

to be lodged. Thereafter investigation commenced. The dead bodies of Archana and Siddhi were sent for postmortem. P.W. 4 - Dr.Milind Madhukar Kulkarni conducted the postmortem on dead bodies of Archana and Siddhi. According to him, cause of death in both the cases was asphyxia and both persons died due to throttling. After completion of investigation, charge-sheet came to be filed.

3. The charge came to be framed against the appellant under section 302 of IPC for causing death of his wife Archana and minor daughter Siddhi. The appellant pleaded not guilty to said charge came to be tried. His defence is total denial and false implication.

4. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence, this Appeal.

5. We have heard learned Counsel for the appellant as

well as learned APP for the State. We have carefully considered their submissions, the judgment and order passed by learned Sessions Judge and the evidence in this case. After carefully considering the same, for the below mentioned reasons, we are of the opinion that the appellant caused death of his wife and daughter by throttling them.

6. There is no eye witness in the present case and the case is totally based on circumstantial evidence. The first circumstance is that only the appellant, his wife – Archana and their two minor children were residing in the house at Rahatni, Pune. Archana and Siddhi were found dead in house. The evidence of P.W.5 – Rukumini Bhagwan Sarode shows that the appellant, his wife and their two minor children were residing in the premises taken on rent by the appellant from P.W.5 – Rukumini.

7. The evidence on record shows that the appellant and the deceased were in the house at the time of the incident. In

such case, the accused 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 similar cases. 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.

8. It is not the case of the appellant that some robbers had entered into the house of the appellant and while committing robbery, they committed murder of his wife and child. It has also not come on record that any other person had motive to kill the wife of the appellant and child of the appellant. As stated earlier, the appellant, his wife and 2 minor children were the only persons residing in the house. His wife and minor daughter were found throttled to death and the appellant has not furnished any explanation as to how his wife and daughter died. Thus, under Section 106, the burden lies on the appellant to prove his innocence but he has not been able to discharge this burden.

9. The second circumstance against the appellant is

that he had left a chit in his house in which he has confessed that he committed murder of his wife and daughter on account of financial problems. PW. 13 – Shri Shantaram Tukaram Tayade has deposed about the fact that one chit was found in the house of the appellant. The said chit (Exhibit 28) was seized in the presence of panchas and panchanama (Exhibit 25) was drawn. In this chit which is signed by the appellant, it is stated that he had committed the murder of his wife and daughter. He had given details in the chit about who owed him money and how much and to whom he owed money and how much.

10. The panch to the seizure of this chit Shri Balaji Shankare has turned hostile, hence, the prosecution has placed reliance on the deposition of P.W.13 - Shri Tayade who deposed about the seizer of this chit - Exhibit 28. The Supreme Court in various decisions has held that presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a proper judicial approach to distrust or suspect him without good grounds therefor. Such an attitude

could do neither credit to the Magistracy nor good to the public. It can only run down the prestige of the police administration. These observations were made by the Supreme Court in the case of **Aher Raja Khima Vs. State of Saurashtra** reported in **AIR 1956 SC 217**. In a latter decision reported in **AIR 1978 Supreme Court 1571** in case of **State of Kerala Vs. M.M. Mathew and anr.**, the Supreme Court observed that there is no force in the contention of learned Counsel for the accused that the evidence of the police officer cannot be relied upon. It was further observed that it is by now well settled that public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely because they being public servants are interested in the success of their case. So also in the case of **Rameshbhai Mohanbhai Koli and others Vs. State of Gujarat** reported in **2011 AIR SCW 378**, the Supreme Court observed that even if the panch-witnesses have turned hostile, seizure/recovery/discovery can be proved through the investigating officer. Nothing has been elicited in the cross

examination of P.W.13 - Senior Police Inspector Shri Tayade to cause us to discard or disbelieve his evidence.

11. The evidence of P.W.3 – Shri Rajesh Shinde shows that the appellant produced chit from his house which was in his natural handwriting. This chit was seized vide panchanama (Exhibit 16) in the presence of panch-witness shri Rajesh Shinde. This chit was admittedly in the natural handwriting of the appellant. This chit and the chit in which he had confessed that he has murdered his wife and daughter and specimen handwriting of the appellant was sent to the handwriting expert for analysis. P.W.10 panch-witness Shri Ravindra Kashinath Yadav has stated that the appellant has written 21 chits in his presence at the police station. These 21 chits are at Exhibits 38/1 to 38/21. As stated earlier, the chit in natural handwriting, the chit containing confession that he has murdered his wife and daughter and specimen handwriting was sent to handwriting expert. P.W.9 – Shri Jaysingrao Landge who was Additional Chief State Examiner of Document at Mumbai examined

disputed handwriting i.e. chit in which confession was made by the appellant, the specimen handwriting and natural handwriting and he gave his opinion that it was all written by one and the same person. This chit Exhibit 28 which is in the handwriting of appellant clearly shows that he has murdered his wife and minor daughter.

12. The evidence of P.W.4 - Dr. Kulkarni shows that Archana as well as Siddhi were murdered by throttling them. Dr.Kulkarni has stated that cause of death was due to asphyxia. As far as Archana is concerned, Dr.Kulkarni noticed bruise over thyroid cartilage and subcutaneous tissue haemorrhage. As far as Siddhi is concerned, Dr.Kulkarni noticed horizontal ligature marks on the neck just above thyroid cartilage.

13. The chit Exhibit 28 in which the appellant has confessed that he committed murder of his wife and minor daughter and the other facts and circumstances of this case clearly rule out possibility of any other person committing

murder of Archana and Siddhi. The circumstances on record point out to only one conclusion that is the appellant is the person who committed the murder of Archana and Siddhi. In this view of the matter, we find no merit in the Appeal. Appeal is dismissed.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)