

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO.889 OF 2010**

|                                                |   |               |
|------------------------------------------------|---|---------------|
| Rahul Ramesh Khare.                            | ] |               |
| Age : 26 years, Occ : Service,                 | ] |               |
| R/o. Harijan Vasti, Koli Ali,                  | ] |               |
| Presently at Karveala (Birwadi),               | ] |               |
| Mahabaleshwar.                                 | ] |               |
| (Presently detained at Yerawada Central Jail). | ] | ... Appellant |

Versus

|                                           |   |                 |
|-------------------------------------------|---|-----------------|
| The State of Maharashtra                  | ] |                 |
| (At the instance of Mahabaleshwar Police  | ] |                 |
| Station in connection with C.R.No.31/09). | ] | ... Respondents |

- None for Appellant.
- Mr.F.R.Shaikh, APP for Respondent/State.

**CORAM :- B. P. DHARMADHIKARI &**  
**SARANG V. KOTWAL, JJ.**  
**DATE :- 13 DECEMBER, 2018**

**JUDGMENT (PER : SARANG V. KOTWAL, J.) :-**

1. The Appellant has preferred this Appeal challenging the Judgment and Order dated 15/10/2010 passed by the learned Sessions Judge, Satara, in Sessions Case No.78 of 2010. By the impugned Judgment and Order, the learned trial Judge had convicted

the Appellant for commission of an offence punishable under Section 302 of the IPC and he was sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- and in default of fine, to suffer R.I. for two years.

2. The prosecution case, as mentioned in the charge, is that, on 12/12/2009, at about 11.45 p.m., the Appellant assaulted his wife Puja with a wire. The injuries were caused all over her body. As per the prosecution case, the Appellant was suspecting character of his wife and therefore, he assaulted her. Puja succumbed to her injuries caused during the assault. The FIR was lodged by PSI Bhanudas Ghorpade attached to Mahabaleshwar Police Station, District - Satara, vide C.R.No.31 of 2009. He was informed by his colleagues that deceased Puja was admitted by the Appellant in Government Hospital at Mahabaleshwar but she was declared dead before admission. Initially, ADR No.13/2009 was registered but after making inquiries with the neighbours and other witnesses, PSI Ghorpade was convinced that the Appellant had committed Puja's murder and therefore, the FIR was registered.

3. The Appellant was arrested on 13/12/2009 at 6.00 p.m. Investigation was conducted. Various panchanamas, including spot panchanama, were recorded. Statements of witnesses were recorded. The post-mortem examination shows that Puja had died due to intracranial haemorrhage. The clothes of the deceased as well as those of the Appellant were sent for chemical analysis and after conclusion of the investigation, charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined 7 witnesses. PW 1 Maruti Parte was the father of the deceased. PW 2 Vasant Khare was a tenant in the building where the Appellant was residing with his wife. PW 3 Baban Dhebe was the landlord who had given one of his rooms to the Appellant on rent. PW 2 and PW 3 did not support the prosecution case. They were examined to show that there was a quarrel between the Appellant and the deceased during the fateful night. PW 4 Suresh Dhebe was examined as a pancha to prove the spot panchanama but even he did not support the prosecution case. PSI Bhanudas Ghorpade was examined as PW 5. He had lodged the FIR as mentioned earlier. He had conducted major part of the

investigation including conducting spot panchanama, arresting the accused and sending the articles to the CA. After his transfer, further investigation was handed over to Shri Sawant. The FIR lodged by him is exhibited at Exh.16. PW 6 Dr. Dattatraya Patil had conducted the post-mortem examination. PW 7 Archana Kadam was knowing the Appellant and the deceased. She was examined to show that the Appellant was suspecting character of his wife and used to beat her.

5. The defence of the Appellant was of total denial. According to him, he and his friend had carried Puja to the hospital and he did not commit her murder.

6. After recording the evidence led by the prosecution and the statement of the Appellant under Section 313 of the Cr.P.C., the learned trial Judge heard both the sides and passed the impugned Judgment and Order as mentioned earlier.

7. The evidence of PW 6 Dr. Dattatraya Patil shows that the deceased had suffered many injuries all over her body. The injuries were in the nature of CLWs, puncture wounds, bruises, abrasions and contusions. According to him, the cause of death was intracranial

haemorrhage. According to him, the injuries were possible by the cable wire shown to him as Article 1. In the cross-examination, he stated that the intracranial haemorrhage was possible by fall. The post-mortem notes are produced on record at Exh.32. There is no doubt about the fact that Puja had died homicidal death. The nature of injuries are clear indications of the fact that she was brutally assaulted. However, the fatal injury had caused intracranial haemorrhage and the evidence of the doctor is not clear as to whether the intracranial haemorrhage could occur because of assault with the cable wire which was Article 1. There was no fracture of the skull and there was only one contusion on the head. Through his evidence, the prosecution has proved that it was a case of homicidal death.

8. The crucial question is, whether the Appellant can be held responsible for causing homicidal death of his wife Puja. There are no eye witnesses to the incident and the case is based on circumstantial evidence. Therefore, duty is cast upon the prosecution to establish the chain of circumstances, so complete, that it rules out every other hypothesis except that of guilt of the accused.

9. The prosecution has examined a few witnesses to show the relationship between the couple. PW 1 Maruti Parte was the father of the deceased. He has deposed that while taking education in 9<sup>th</sup> standard, Puja fell in love with the Appellant. She left the house, married the Appellant and started residing at Mahabaleshwar. He has deposed that on 13/12/2009 at about 6.00 a.m., he was informed that Puja was admitted in Government Hospital at Mahabaleshwar. He went there and found that she had already died. There were weal marks all over her body. According to him, the Appellant was present there and told this witness that because of quarrel, he had assaulted the deceased. He has admitted in his cross-examination that after her marriage, Puja never came to his house. He has deposed that he belonged to Maratha caste and the Appellant was belonging to Scheduled Caste. He has further admitted that the police had informed him that Puja was assaulted. He has further deposed that the Appellant was standing with his family members in one corner and was grieving. From his evidence, it is clear that Puja had married the Appellant against the wishes of this witness. Puja had never visited his house after her marriage. When he reached the hospital, the Appellant was standing with his family members. Police had already

informed this witness that Puja was assaulted. Therefore, there was no reason for the Appellant to confess before this witness that he had assaulted Puja after quarreling with her. Thus, his evidence does not prove any circumstance in favour of the prosecution.

10. PW 2 Vasant Khare was a tenant and PW 3 Baban Dhebe was the landlord of the building where the Appellant was residing with the deceased. Both of them were declared hostile. They did not support the prosecution case. PW 2 has deposed that he did not know about the differences between the couple. PW 3 had deposed that on one occasion, there was a quarrel between the Appellant and Puja. In so far as the incident is concerned, PW 3 has deposed that in that night, the Appellant had come to his house and had inquired about the deceased. Thereafter, the Appellant and his friend had searched for Puja and after about an hour, they had come back telling him that Puja was unconscious and needed to be taken to the hospital. Thereafter, this witness and one Sagar took Puja to the hospital. He specifically denied that he had heard any quarrel between the couple on that night.

11. PW 4 was a pancha for spot panchanama but did not support the prosecution case. The spot panchanama was produced on record through the evidence of PW 5 PSI Ghorpade and it is at Exh.17. The spot panchanama shows that the police had seized a black coloured wire and broken pieces of bangles from the room of the Appellant. The bangle pieces were lying on the bed and the wire was lying on the floor. Though the spot panchanama also mentions that there were stains of blood on the floor, however, the sample of earth from the floor indicating blood was not seized. PW 5 PSI Ghorpade has deposed about lodging of the FIR and the subsequent investigation carried out by him. The CA report Exh.37 shows that the blood on the clothes of the deceased was of 'O' group and the blood found on the shirt of the Appellant was also of 'O' group. Incidentally, the blood-group of the Appellant was also 'O' as mentioned in Ex.38. Therefore, even this circumstance does not unerringly point to the guilt of the Appellant. In any case, the Appellant had carried the deceased to the hospital and therefore, her blood staining the clothes of the Appellant cannot be ruled out.

12. PW 7 Archana Kadam was residing at Pachgani and the couple used to occasionally visit her. Her evidence is vague and she has not deposed about any specific instances where she had the knowledge that the Appellant was suspecting Puja's character or that he used to beat her. She has not deposed that the deceased Puja had told her anything of that nature.

13. The learned Judge has based his conviction on the premises that it was the duty of the Appellant to explain the circumstances in which Puja had died and on his failure to explain that, was a strong incriminating circumstance. In paragraph 26 of the impugned Judgment, the learned Judge has observed that when Puja was found wearing a maxi, it meant that she was in the house when the incident had occurred. We are unable to agree with the observations of the learned trial Judge. Wearing a maxi, by itself, cannot mean that Puja had not left her house. Even as per the prosecution case, Puja was found at a distance of 50 to 100 ft. from their house. Therefore, it was not conclusively established that the Appellant was alone with Puja in the house or that Puja was assaulted in the house. It cannot be said that at the time of assault, Puja was in

exclusive custody of the Appellant. The learned Judge has also relied on the evidence of PW 7 Archana. We have already considered her evidence and we have found her evidence to be insufficient to bring home the guilt of the Appellant.

14. The learned trial Judge, in paragraph 14 of the impugned Judgment, has mentioned that the spot panchanama reveals that there were bloodstains or pool of blood inside the room. Even in this connection, the investigating agency has not seized any sample of earth from the said room to establish through chemical analysis that there was blood on the floor of the room. Hence, even such observation of the learned Judge is not correct.

15. Thus, considering the discussion above, we are of the opinion that the prosecution has not proved a single incriminating circumstance against the Appellant. The chain of circumstantial evidence is not complete and therefore, it will not be safe to base conviction on the evidence produced by the prosecution in this case. Hence, the following order.

**ORDER**

- (i) The Judgment dated 15/10/2010 in Sessions Case No.78/2010 convicting the accused Rahul Ramesh Khare for offence punishable u/s 302 of the Indian Penal Code is quashed and set aside.
- (ii) He is reported to be absconding. He shall be dealt with as per law after he is apprehended, as proceedings u/s 224 of the Indian Penal Code are registered vide C.R.No.28/17 as per the report of Police Inspector, Mahabaleshwar Police Station, Satara, against him.
- (iii) Muddemal property be dealt with as directed by trial Court after Appeal period.

**(SARANG V. KOTWAL, J.)****(B. P. DHARMADHIKARI, J.)**