

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.237 OF 2012

Nazim Rashid Tamboli	]
Age 27 years, Occ: Rikshawdriver	]
Residing at 1059, Raviwar Peth	]
Pune (at present he is in	]
Yeroda Central Prison)	]..Appellant
	Orig. Accused No.1

Versus

The State of Maharashtra	]
Through Inspector of Police	]
Faraskhana Police Station,	]
Pune	]..Respondent

Mr. D. H. Kumthekar, Advocate for the Appellant.
Mr. V. V. Gangurde, APP for the Respondent - State.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 28th JUNE, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Being aggrieved by the judgment and order dated 25th June 2008, thereby convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code ("IPC" for short) and sentencing him to suffer imprisonment for life with a fine of Rs.1000/- and in default to undergo rigorous imprisonment for six months, the Appellant has approached this Court.

2] The prosecution case in brief as could be gathered from the material placed on record is thus :-

The deceased Raisa was married to Appellant/Accused No.1 – Nazim prior to about one and half month of the alleged incident. The parental place of the deceased Raisa is village Kada in Taluka Aasti, District Beed. Her marriage was performed at village Kada on 30th March 2005. On 11th May 2005, the Accused No.1 – Nazim himself came to Raviwar Peth Police Chowky in the early morning at about 6.00 a.m. and informed the police about the death of deceased. The deceased was residing in one of the tenements in CTS No.1059, Raviwar Peth, Pune.

3] On information being received by the PW-10 – PSI Mulla, who was on duty at Raviwar Peth Police Chowky at the relevant time, directed police constable PW-9 – Siddharth Lokhande to go and ascertain the said information. Accordingly, PW-9 - Siddharth Lokhande visited the house and reported to PW-10 – PSI Mulla that a lady in lying dead in the said house. In the meantime, PW-10 – PSI Mulla had taken the report lodged by Accused No.1. The same came to be forwarded to Faraskhana Police Station. On the basis of the same, C.R. No.73 of 2005 came to be registered and investigation was entrusted to PW-10 – PSI Mulla.

4] In the meantime, on receipt of the information about the alleged incident, the parents of the deceased Raisa and the other relatives came to Pune. On the basis of information received from the parents of the deceased that Accused No.1 as well as other relatives i.e. Accused No.2 to 6 were ill-treating the deceased on account of non-fulfillment of the demands, they also came to be added as Accused and offence punishable under Section 498-A of the IPC also came to be added.

5] At the conclusion of the investigation, a charge-sheet came to be filed in the Court of learned JMFC, Pune. Since the case was exclusively triable by the learned Sessions Judge, the same came to be committed to the learned Sessions Judge. The learned Sessions Judge framed the charges for the offence punishable under Section 302 and 498-A r/w 34 of the IPC. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned Trial Judge passed the order of conviction as aforesaid, however, acquitted all the accused for the offence punishable under Section 498-A of the IPC. Being aggrieved by the order of conviction and sentence, the Appellant has approached this Court.

6] Learned counsel for the Appellant submits that the Appellant

has taken a specific defence that when deceased was trying to commit suicide, he has also suffered injuries. He submits that the said defence was plausible defence and as such, the order of conviction punishable under Section 302 is not sustainable.

7] The postmortem was conducted by PW-11 – Dr. Srikant Chandekar. The external injuries that were found on the person of the deceased were as under :-

“Injury No.1 – Incised injuries over-

(a) left index finger distal phalanx – palmar 1.2 cm. Gaping bone deep.

(b) Right hand finger palmar aspect over thumb proximal phalanx medially vertical oblique 2 cm. Gaping bone deep, index middle phalanx oblique 1.5 cm. Gaping muscle deep, index distal phalanx 1.2 cm. And 0.5 cm. Gaping muscle deep, middle mid-phalanx oblique 1.2 cm. Gaping muscle deep, ring finger middle phalanx 1.1 cm. Transverse gaping bone deep, ring-distal phalanx medially vertical 0.5 cm gaping muscle deep and little finger distal phalanx transverse 0.6 cm muscle deep.

(c) Right index finger mid-dorsally vertical 0.5 cm gaping bone deep.

(d) Left thumb mid medially transverse 1 cm gaping muscle deep.

(e) Right supraclavicular oblique skin deep curved 5 cm, gaping, 4 cm.

(f) Right base of neck 3 cm oblique skin deep gaping flap formed.

(g) Mid anterior chin oblique 2 cm gaping continuing over left cheek at obtuse angle going transversely over cheek 5 cm gaping bone deep at places.

(h) Incised injury over anterior upper neck mid portion transverse situated 3.8 cm below chin measuring 2.2 cm to 2.8 cm x 13 cm, underlying neck structures cleanly cut. Two extensions from upper margin of wound measuring 0.5 x 3.5 cm and 2.3 x 2.5 cm. Also a flap of skin adjacent to lower margin of wound 0.5 x 4 joined to lower margin only, bilaterally. Diagrammatic representation of neck injury is shown in column No.17 of the post mortem notes.

8] It will be relevant to refer to following part of the cross-examination of the said witness.

“.....I do not agree that the injuries described in column No.17 of Exhibit 64 may be caused in a scuffle between two persons either of them holding a sharp weapon in the hand.”

“.....I also do not agree that the other injuries noticed on person of deceased Raisa can be self-inflicted.”

9] It could thus clearly be seen that possibility of the suicidal death has been specifically ruled out in so far as medical evidence is concerned. From the postmortem report as well as evidence, the prosecution has proved beyond reasonable doubt that the death is homicidal.

10] From the perusal of evidence of PW-10 – PSI Mulla, it would reveal that at about 5.30 a.m. on 11th May 2005, Accused No.1 came

there and informed about the incident happened in his house. PW-10 – PSI Mulla recorded his statement. On the basis of the said statement at Exh.58, an FIR is lodged below Exh.59. No doubt, that the FIR is not a substantive piece of evidence, it could only be useful for the purpose of corroboration of the substantial evidence. Though incriminating paragraph in the FIR may not be used against the accused, however, the statement of fact which is not incriminating in nature can be used against the accused as evidence under Section 8 of the Indian Evidence Act. The learned Trial Judge has found that from the said FIR a motive of committing the crime can be gathered. The Accused No.1 in the said FIR has narrated that the deceased Raisa was not doing the work as told to her by him. She was not washing his clothes. She used to speak rudely with him. She used to quarrel on petty reasons and therefore, he was having anger in his mind.

11] It could further be seen that the blood on the weapon which was used in the crime as well as on the clothes of the Accused No.1 was of 'O' group. Learned Trial Judge has found that though the blood sample of Raisa in the bottle specially collected for sending it to the Chemical Analyser is inconclusive, however, it is clear from the blood detected on articles, clothes, clothes seized from person of deceased and clothes

seized from person of Accused No.1 of blood group 'O'.

12] In the present case, undisputedly, it is the Appellant and the deceased who were inside the house. The death of deceased has occurred in suspicious circumstance, when they were residing together. In that view of the matter, in view of the law laid down by the Hon'ble Apex Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra reported in 2007 CRI.L.J. 20, the burden of proof would be on the Appellant to explain how the death has occurred. The Appellant has given explanation that deceased has attempted to commit suicide. The explanation is fully falsified by the medical evidence.

13] The Apex Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622 has observed thus :-

“150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by

a Court.”

It could thus be seen that the Hon'ble Apex Court has held that non-explanation or false explanation given by the accused though cannot be used to complete chain of circumstance, however, the same can be used by the Court to fortify the finding of guilt already recorded. We find that the false explanation of the accused would also be an additional circumstance to fortify finding of guilt. In the result, the Appeal is without substance and as such dismissed.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]