

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

CRIMINAL APPEAL NO.186 OF 2012

Santosh Laxman Jangam
Age : 35 yrs., Occu: Agriculture
R/at : Mahadeo Wadi,
Post : Dhatav, Tal : Roha,
District Raigad
(At present in Kolhapur Central Jail) ... Appellant

versus

The State of Maharashtra
(At the instance of
Roha Police Station,
Dist-Raigad, vide C.R.NO.89/10) ... Respondent

.....

- Mr.Prashant Patil, Advocate for the Appellant.
- Mrs.M.H. Mhatre, APP for the State/Respondent.

**CORAM : S. S. SHINDE &
 SARANG V. KOTWAL, JJ.**
DATE : 26th SEPTEMBER, 2018

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

1. This Appeal is preferred by the original accused in

Sessions Case No.43/10 on the file of the learned Additional Sessions Judge, Mangaon, District Raigad, challenging the Judgment and Order dated 16/08/2011. By the impugned order, the Appellant was convicted for the offence punishable under section 302 of Indian Penal Code and was sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for six months.

2. The prosecution case is that the Appellant was addicted to liquor. There used to be frequent quarrels between the Appellant and his wife Kavita (the deceased). The prosecution case as described in the charge framed by the learned Additional Sessions Judge, Mangaon, District Raigad, mentions that, on 31/07/2010 the Appellant was driving his Rikshaw after consuming liquor. There was some quarrel with one Sachin Vishnu Bhagat who was riding his two wheeler. Sachin Bhagat informed about the same to the Appellant's parents and wife Kavita. It is further mentioned in the charge that Kavita gave two slaps to the Appellant in front of his

parents. Getting annoyed, the Appellant strangled Kavita with a nylon rope when she was fast asleep during night.

3. Initially the case was registered as ADR No.26/10. But on 01/08/2010 at about 08.50 p.m. the FIR was registered at Roha Police Station vide C.R.No.89/10 u/s 302 of IPC. The FIR was lodged by Kavita's father Dattaram Dhondu Jangam. It was alleged in the FIR that the first informant was told by the police about the death of his daughter Kavita. He came to Mahadeo Wadi, where the Appellant was residing with Kavita. The first informant was residing at Nagaon, Tal-Mahad, District Pune. When the first informant reached Appellant's house at about 09.00 a.m. in the morning, the Appellant told him that Kavita had committed suicide because there was some petty quarrel between the Appellant and Kavita. However, when the first informant saw the dead body of Kavita, he became suspicious and lodged his FIR with the police making allegations against the Appellant that the Appellant had committed murder of deceased Kavita.

4. The Appellant was arrested on 01/08/2010 at about 10.30 p.m. On 04/08/2010 a nylon rope was recovered from below a coconut tree at the instance of the Appellant. During investigation the spot Panchanama was conducted. Three pieces of Odhani from the house of the Appellant were recovered. The clothes of the deceased were sent for chemical analysis.
5. After the accidental death was registered, the post-mortem was conducted on the dead body. The Medical Officer conducting post-mortem examination opined that the death was a result of 'Asphyxia due to strangulation'.
6. After the investigation was completed, the chargesheet was filed. The case was committed to the Court of Sessions.
7. During trial, the prosecution examined six witnesses. The Appellant examined himself as Defence Witness No.1 and examined Kavita's sister Savita as Defence Witness No.2. After recording the evidence, the statement of the Appellant u/s 313

of Cr.P.C. and after hearing the arguments, the learned Trial Judge passed impugned Judgment and order convicting and sentencing the Appellant as mentioned.

8. P.W.1 Dattaram Dhondu Jangam was the father of the deceased. He has deposed that Kavita got married with the Appellant on 24/05/2005. The couple had a son and a daughter from their wedlock. This witness has curiously deposed that he did not recollect the name of his grandson i.e. the son of Appellant and Kavita. In his deposition, he has stated that the Appellant used to beat Kavita under influence of liquor. He has deposed that on 01/08/2010, at about 03.00 a.m. he received a phone call from the police station at Roha informing about Kavita's death. P.W.1 and his relatives reached house of the Appellant at Mahadeo Wadi at about 09.00 a.m. According to P.W.1, the Appellant's father told him that the Appellant's two wheeler brushed with another two wheeler. There was quarrel between the Appellant and that person. Kavita tried to intervene. In the same night, Kavita hanged herself with the help of Odhani. P.W.1 then went to the rural hospital at Roha. On

seeing the dead body, he suspected that it was a case of murder and therefore he registered his FIR. There is hardly any cross-examination by the Appellant of this witness. In any case, this witness is not very material except for his deposition that the Appellant used to beat Kavita under influence of liquor. He has lodged his FIR based on his suspicion and based on the past conduct of the Appellant. The FIR is produced on record at Ex.14.

9. P.W.2 Smita Prakash Patankar was a Pancha for Inquest Panchanama. P.W.4 Ravindra Ramchandra Chavan was a Circle Officer who had drawn the map of the location and situation of the Appellant's house. The evidence of both these witnesses is formal in nature.

10. P.W.5 Shiva Narayan Mane was a Pancha for Spot Panchanama. He was present in the house when the police conducted Panchanama. He has deposed that three pieces of purple coloured Odhani were seen in the house. These pieces of Odhani were seized under Panchanama which is produced at Ex.26.

11. P.W.3 Dr.Ganesh Jagannath Dhumal is an important witness. He was the Medical Officer, who had conducted the post-mortem examination. He has deposed that he had found a ligature mark on the left side of the neck measuring 2.4 cms. In his opinion, the death was caused by a nylon rope. The mark was totally horizontal and was absent on the right side of the neck. There was fracture of left hyoid bone. He has deposed that injury was due to forceful jerk of nylon rope and he has given his opinion regarding cause of death as 'Asphyxia due to strangulation'. He has further deposed that the injury found on the neck was possible due to the nylon rope, which was produced before the Court as Article No.6. He has clarified in his cross-examination that the injuries mentioned in the post-mortem notes were not possible with the pieces of Odhani. The Odhani was produced at Article No.5 before the Court. The post-mortem notes are produced on record at Ex.20.

12. P.W.6 PI Suresh Dinkar Jadhav was the Investigating Officer. He has deposed that initially the death of the deceased

was investigated pursuant to the registration of ADR No.26/10. This investigation was conducted by PSI Dindore, who had also recorded FIR of P.W.1. After registration of the FIR vide C.R.No.89/10 at Roha Police Station P.W.6 conducted the investigation. He has deposed that on 04/08/2010 the Appellant showed willingness to point out the place below the coconut tree where he had hidden the rope, with which he had killed his wife. The memorandum statement was recorded. It is produced on record at Ex.31. The Panchas and the police party were led by the accused to the coconut tree and a nylon rope was recovered from under that tree. P.W.6 conducted the investigation and recorded the statements of various witnesses. He sent Muddemal Articles for chemical analysis and at the conclusion of the investigation he had filed charge-sheet.

13. The learned Trial Judge recorded statement of the Appellant u/s 313 of Cr.P.C. where he denied that he had committed the offence. According to him, a false case was registered against him. He examined himself as Defence Witness

No.1. He has deposed that on 31/07/2010 he returned home at about 10.30 p.m. At that time, Kavita and his children had gone to sleep. He took dinner with his father and watched television for some time. At about 11.00 p.m. he went to his room to sleep. At that time he saw that Kavita was hanging with the help of Odhani. The Appellant thereafter cut the Odhani and removed the dead body and kept it on the floor with the help of his father. The Appellant then took her to hospital with the help of his neighbours. Initially, he took Kavita to the hospital of Dr.Jadhav but the Doctor did not respond and therefore they went to the hospital of Dr.Dhruv. The Medical Officer found her dead and therefore he informed the police at Roha Police Station. The dead body of Kavita was shifted to rural hospital at Roha. The Appellant has further deposed that there was some quarrel between P.W.1 and the Appellant's relatives. Subsequently, the Appellant was arrested.

14. On behalf of the Appellant, Kavita's sister Savita was examined as Defence Witness No.2. She has deposed that her

father had left their family long time ago. She has deposed that there was a quarrel between P.W.1 and Kavita earlier and also between the Appellant and the P.W.1. She has further deposed that she had never seen the Appellant and Kavita quarreling with each other. She has further deposed that on 01/08/2013 she had reached Mahadeo Wadi and she was told that Kavita had committed suicide with Odhani. D.W.2 Savita has claimed that it was her i.e. Savita's Odhani and she did not know when Kavita had brought that Odhani from D.W.2 Savita's house.

15. We have heard learned counsel Mr.Prashant Patil, Advocate for the Appellant and Mrs.M.H. Mhatre, APP for the State.

16. Mr.Prashant Patil submitted that the case is based on circumstantial evidence and prosecution has not proved any of the circumstances against the Appellant. He has submitted that the defence of the Appellant was probable and it cannot be discarded. He further submitted that there was no motive for the Appellant to commit the murder. He further submitted that the

prosecution has deliberately not examined the Pancha in whose presence allegedly the nylon rope was recovered from under a Coconut tree. He further submitted the place was open and accessible to all and therefore such recovery cannot be believed.

17. On the other hand, Mrs.Mhatre, the learned APP submitted that the prosecution has proved its case beyond reasonable doubt. The circumstance pointed to the guilt of the accused/Appellant.

18. As discussed hereinabove, the instant case is based purely on circumstantial evidence. The incriminating circumstances against the Appellant are that -

- (1) The deceased had died in their matrimonial house during night time.
- (2) The deceased had met her death in suspicious circumstances.
- (3) The death was unnatural.
- (4) Recovery of the nylon rope at the instance of the Appellant.
- (5) Falsity of the defence of the Appellant.

19. This is a case in which the prosecution has proved that the deceased had died in suspicious circumstances. According to the Appellant, the deceased committed suicide by hanging herself to the ceiling fan with the help of Odhani. The medical evidence does not support this theory propounded by the Appellant. P.W.3 Dr.Ganesh Dhumal in his evidence has categorically deposed that it was a case of strangulation and was not the case of hanging. Moreover, the mark on the neck of the dead body was possible because of the nylon rope and was not possible because of the Odhani. This evidence assumes more importance. When P.W.3 opines that the death was due to strangulation, it clearly points to the murder of the deceased by ruling out theory of suicide due to hanging. P.W.3 Dr.Dhumal has given sufficient reasons for his opinion. The most important reason given by him is that the ligature mark on the neck corresponded to the possible injury by nylon rope. Another important aspect in his evidence is that the said mark was horizontal in nature, which is another pointer towards the

theory of strangulation. There was one conspicuous mark on the left side of the neck because of the nylon rope and it was not seen on the right side.

20. The nature of injuries and the opinion of the Medical Officer show that the deceased had not died due to hanging, but had died due to strangulation with the help of a nylon rope. The defence has not been able to wipe out the evidence of this witness. In our opinion, this is a very strong circumstance against the Appellant particularly in the light of the defence taken by him.

21. The Appellant has taken a specific defence that when he entered the room ,he saw that Kavita was hanging with the help of Odhani. This theory as mentioned earlier is totally ruled out because of the medical evidence. The subsequent conduct of the Appellant also does not help his case. He has examined himself and has deposed that he brought down the body by cutting the Odhani. He deposed that he took help of his father. The Appellant himself had not informed about the same to Police.

According to him he took Kavita to a nearby hospital with the help of neighbours.

22. According to him he had seen Kavita hanging in the room at about 11.00 p.m. The defence through the cross-examination of the Investigating Officer has brought on record, the intimation given by the Doctor to the police. The said intimation is produced on record at Ex.37 at the instance of the defence. The said intimation shows that Kavita was brought to the hospital by the Appellant at 01.15 a.m. Thus, there is a gap of more than two hours which the Appellant has not explained at all.

23. The incident had taken place in the night. Admittedly the Appellant was in the house during night. Therefore facts of the incident were within exclusive knowledge of the Appellant. In this context, section 106 of the Evidence Act assumes importance, which reads thus;

*106. Burden of proving fact especially within knowledge —
When any fact is especially within the knowledge of*

any person, the burden of proving that fact is upon him.

24. Therefore, though the Appellant has tried to discharge his burden by examining himself, his evidence is unacceptable in the light of the evidence led by the prosecution. Thus, not only there is no proper explanation about facts regarding Kavita's death, which were in the Appellant's exclusive knowledge, but his defence is false. Therefore this is one more circumstance against the Appellant.

25. Though the prosecution has also alleged that the nylon rope was recovered at the instance of the Appellant, we are not inclined to accept such evidence. The prosecution has not examined the Panchas who were present at the time of such recovery at the instance of the Appellant. The prosecution has offered no explanation as to why any of these Panchas could not be examined. Moreover, the nylon rope was recovered from below a Coconut tree hidden below some dry leaves. In our opinion this place is open and accessible to all, therefore,

Odhani kept below dry leaves, can hardly be said hidden or concealed by the Appellant.

26. Thus, taking overall view of the matter, we find that the prosecution has proved that Kavita had met with homicidal death in the house of the Appellant during night hours when the Appellant was present. The Appellant has not offered any acceptable explanation about the incident. The Appellant has taken a false defence. The Appellant has not given explanation regarding as to what steps he took between 11.00 p.m. to 01.15 a.m. in the night. Thus, we find that all these circumstances taken together form a complete chain. All these circumstances unerringly point to the guilt of the Appellant/Accused and therefore we do not see any reason to extend the benefit of doubt to the Appellant.

27. With the result, the Appeal fails and is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)