

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 37 OF 2015

Vitthal Basappa Daddi Aged about 27 years, at present undergoing a sentence of life imprisonment at Kolhapur Central Prison, Kalamba as Convict – Prisoner No. C/6250	..	Appellant
Vs.		
The State of Maharashtra	..	Respondent

....
Ms. Rohini Dandekar Advocate appointed for the Appellant
Mr. Arfan Sait A.P.P. for the State
....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND P.N.DESHMUKH, J.**

DATED : MAY 09, 2018

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, ACJ.]

1 This appeal is preferred by the appellant - original
accused against the judgment and order dated 7.8.2014
passed by the learned Additional Sessions Judge, Ichalkaranji

in Sessions Case No. 43 of 2011. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and fine of Rs. 1000/- in default R.I. for three months.

2 The prosecution case, briefly stated, is as under:

(1) Appellant - Vitthal Daddi was married to Sunita (deceased) about six months prior to the incident. At the time of the incident, they were residing in Room No. 83, E-Building, Workers Chawl, Panchganga Co-Operative Sugar Factory, Ganganagar, Ichalkaranji. The said house consisted of two rooms. The appellant committed the murder of his wife by strangulating her in the said house.

(2) On 10.8.2011 at about 12 noon, one person who was working in the said sugar factory went to Shivajinagar Police Station and gave information that "the appellant and his wife Sunita are in the house and inspite of giving calls, they are not opening the door of the house", hence, PW 14 PHC Kamble

along with police staff went to the room where the appellant and his wife were residing. They knocked on the door but there was no response, hence, they informed the police station that there is a possibility of an untoward incident. Therefore, API Garde and PI Powar went to the house of the appellant. They knocked on the door but they received no response, hence, one person by name Nigonda Hansi was requested to climb on the roof of the house. Accordingly, the person climbed on the roof of the house. He removed the roof tiles and entered into the first room of the house. He then opened the door of the house from inside. Police entered into the first room of the house. They found that the door of the inner room was locked from inside. In spite of knocking on the door, there was no response, hence, again on the say of the police, Nigonda Hansi climbed on the roof of the house and by removing tiles, entered into the inner room of the house and he opened the door from inside. When police entered in the room, they found one woman was lying on the bed and one man was lying next to her with his leg on her person. The workers who gathered there, informed them that the man was the appellant

and the woman lying on the bed was his wife Sunita. There was red scarf around the neck of the woman and there were black marks around the neck of the woman and it was noticed that she was dead. However, it was noticed that the appellant was in an unconscious state, hence, he was sent to the hospital. PW 4 Basavraj the father of Sunita lodged F.I.R. Thereafter, investigation commenced. The dead body of Sunita was sent for post-mortem. It was found that she had died on account of asphyxia due to strangulation. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant under Sections 302 and 309 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal. It may be stated here that the appellant was acquitted of the offence under Section 309 of IPC.

4 We have heard the learned counsel for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant committed the murder of his wife Sunita by strangulating her.

5 A large number of witnesses have turned hostile, however, the evidence of PW 14 PHC Kamble and PW 15 API Garde in our opinion is sufficient to show the involvement of the appellant in this crime. The evidence of PHC Kamble shows that on 10.8.2011, one Abhijit Patil came to the police station and stated that the appellant and his wife Sunita were in their house and inspite of repeated calls, they were not opening the door, hence, PHC Kamble went to the house of the appellant. He knocked on the door of the room of the appellant but there was no response from inside, hence, they informed the police station that there is a possibility of an untoward incident. Therefore, API Garde and PI Powar came to the house of the

appellant. They knocked on the door and they received no response, hence, one person by name Nigonda Hansi was requested to climb on the roof of the house. Accordingly, the person climbed on the roof of the house. He removed the tiles on the roof and entered into the first room of the house. He then opened the door of the house from inside. Police entered into the first room of the house. They found that the door of the inner room was locked from inside. In spite of knocking on the door, there was no response, hence, again on the say of the police, Nigonda Hansi climbed on the roof of the house and by removing tiles on the roof, entered into the inner room of the house and he opened the door from inside. When police entered in the room, they found one woman was lying on the bed and one man was lying next to her with his leg on her person. The workers gathered there, informed them that the man was the appellant and the woman lying on the bed was his wife Sunita. There was red scarf found around the neck of the woman and there were black marks around the neck of the woman and it was noticed that she was dead. However, it was noticed that the appellant was in an unconscious state, hence,

he was shifted to the hospital where he was admitted.

6 PW 15 API Garde has stated that on 10.8.2011 one person came to the police station and informed that the appellant and his wife were in their room and inspite of giving calls, he was not opening the door. API Garde has stated that he has gone to the room of the appellant and on knocking on the door, there was no response, hence, one person by name Nigonda Hansi was requested to climb on the roof of the house. Accordingly, the person climbed on the roof of the house. He removed the roof tiles and entered into the first room of the house. He then opened the door of the house from inside. Police entered into the first room of the house. They found that the door of the inner room was latched from inside. Inspite of knocking on the door, there was no response, hence, again on the say of the police, Nigonda Hansi climbed on the roof of the house and by removing tiles, entered into the inner room of the house and he opened the door from inside. When police entered in the room, they found one woman was lying on the bed and one man was lying next to her with his leg on her

person. The workers gathered there, informed them that the man was the appellant and the woman lying on the bed was his wife Sunita. There was red scarf found around the neck of the woman and there were black marks around the neck and it was noticed that she was dead. The appellant was in an unconscious state, hence, he was sent to the hospital.

7 The evidence of PW 14 PHC Kamble and PW 15 API Garde shows that Sunita was lying dead on the bed and the appellant was lying down next to her. The medical evidence clearly shows that it is a case of death by strangulation. Looking to the circumstances in which body of Sunita was lying, it cannot be said to be a case of suicidal death. Thus, the evidence on record shows that the appellant and his wife were the only persons in the room. The doors of the house were latched from inside. Thus, it is clear that there was no one else in the house at the time of the incident except the appellant and his wife. The circumstances brought on record show that there was no possibility of any third person entering the house and committing the murder of Sunita. In fact, it is

not even the case of the appellant that some third person entered the house and murdered his wife.

8 The evidence on record shows that only 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 cases where certain facts are especially within the knowledge of a person. In the case of **State of Rajasthan Vs. Kashi Ram**¹ 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

1 (2006)12 SCC 254 : AIR 2007 SC 144

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.

9 As stated earlier, it is the case of the prosecution that the appellant strangled his wife and caused her death. This is corroborated by the medical evidence. PW 11 Dr. Smita Mahadik conducted the post mortem on the dead body of Sunita. Dr. Smita Mahadik has stated that she noticed ligature mark around the neck. The mark was horizontal, grooved and it encircled the neck completely. In addition, Dr. Smita noticed multiple abrasion marks crescentic in shape which was above the ligature mark. According to Dr. Smita, the cause of death of Sunita was asphyxia due to strangulation.

10 On going through the evidence on record, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant committed the murder of his wife Sunita by strangulating her. Thus, we find no merit in this appeal and the appeal is dismissed.

P.N.DESHMUKH, J.

ACTING CHIEF JUSTICE