

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 57 OF 2014

Kiran s/o. Shahuraj Surwase,
Age 27 years, Occu. Agril.,
R/o. Raigavhan, Tq. Kallam,
Dist. Osmanabad.

**....Appellant.
(Ori. Accused No. 1)**

Versus

The State of Maharashtra
Through Police Station Shiradhon,
Tq. Kallam, Dist. Osmanabad (M.S.)

....Respondents.

Mr. V.R. Dhorde, Advocate for appellant.

Mrs. D.S. Jape, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
K.K. SONAWANE, JJ.
DATED : 23/09/2019.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against the judgment and order of Sessions Case No. 124/2013 which was pending in the Court of learned Additional Sessions Judge, Osmanabad. The Trial Court has convicted the appellant of the offence punishable under section 302 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and he is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-. The other accused, parents of the appellants are acquitted of all the offences by the Trial Court. Heard both the sides.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

3) The deceased was the wife of present appellant. Their marriage had taken place on 7.5.2009 and incident in question took place on 27.9.2012. On that day, the deceased was lying injured on the road and spot is situated in the vicinity of the field of appellant. The appellant informed first to his father that the deceased had accidental fall from motorcycle and her condition was serious. This information was passed to Police Patil Shri. Maruti Avahad (PW 1). He went to the spot. She was already dead. Police Patil gave report about the unnatural death on 28.9.2012 and A.D. came to be registered at 00.30 hours. During inquiry of A.D. inquest was prepared. The spot panchanama was prepared and the dead body was referred for post mortem (P.M.) examination. The P.M. examination revealed that it was death due to cardiorespiratory arrest due to asphyxia due to throttling. The P.M. was conducted between 10.00 a.m. and 10.40 a.m. on 28.9.2012.

4) Khandu Musale (PW 4), father of the deceased gave report to police on 28.9.2012 and the crime came to be registered at 12.30 p.m. on the basis of this report for offence of murder and as there was allegation, of illtreatment also, the crime was registered

for offence punishable under section 498-A of IPC against all the accused.

5) As information was given to police on that day that accused/appellant had taken the deceased to medical practitioner practicing homeopathy, police made inquiry with Dr. Dolare (PW 5) and it revealed that they had left her dispensary at about 8.15 to 8.30 p.m. In view of the allegations made in the F.I.R. and aforesaid circumstances, chargesheet came to be filed for aforesaid offences.

6) In the Trial Court, prosecution examined in all nine witnesses. The charge for the offence of murder was framed against all the three accused.

7) The evidence of Dr. Dolare (PW 5) shows that on 27.9.2012 only accused No. 1/appellant and the deceased had visited her dispensary. There was a complaint of pain in ear of deceased. Some medicines were given and they had left the dispensary at about 8.15 to 8.30 p.m. The doctor is having dispensary at village Tandulja and the appellant is resident of village Raigavhan, Tahsil Kallam. The evidence of Maruti Avahad (PW 1), Police Patil shows that the distance between Tandulja and Raigavhan is around 7 k.m. His evidence also shows that the spot is situated at

the distance of around 200 ft. from the house of appellant. The spot panchanama is admitted by the defence and that document, Exh. 22 shows that it was drawn on 28.9.2012 between 6.00 and 7.00 a.m. during inquiry of A.D. This document shows that the spot is situated on Tandulja - Raigavhan road and it is by the side of the field of the appellant.

8) The dead body was lying near side Patti of southern side of road. There was a Sari on the dead body. Some pieces of bangles were lying near the dead body. The inquest panchanama at Exh. 18 is also admitted by the defence and it was prepared between 7.30 and 8.00 a.m. of 28.9.2012. It shows that the bangles of the left hand were found broken and due to that there were injuries to the wrist. The panchas noticed that on the right side of face, there was swelling and on the head, there was injury and the blood had come out. Froth had come from mouth and nose.

9) The evidence of Avahad (PW 1) shows that at about 10.00 p.m. he received phone call of father of the appellant and it was informed to him that the deceased had fall from motorcycle when she was alighting from the motorcycle. His evidence shows that he rushed to the spot and he noticed that Rekha was already dead and father of appellant was present near the dead body. According to him, A.D. report at Exh. 24 was given by him. This

report also shows that on the basis of information given by father of appellant, A.D. was given. In the A.D. report, it is mentioned that it was informed that only the deceased and the appellant had gone on motorcycle and they were returning on motorcycle at the relevant time. In view of the evidence of Avahad (PW 1), the evidence of Dr. Dolare (PW 5) and the record, inference is easy that only the appellant was in the company of deceased at the relevant time. On the basis of the same evidence inference is easy that the aforesaid information was supplied by the appellant and due to that Police Patil gave the report of aforesaid nature. This circumstance is relevant under section 6 of the Evidence Act. In view of the provision of section 6 of the Evidence Act, it is not possible to challenge the aforesaid evidence by contending that it is hearsay in nature and it is the information which all the persons received immediately after the incident. It is also of the nature of admission as provided in section 17 of Evidence Act of the appellant that he was in the company of the deceased.

10) On the basis of aforesaid evidence itself one more piece of circumstance becomes available. It was night time. If the deceased had fall from motorcycle when she was alighting from the motorcycle and the motorcycle was stationary, there was no reason for the appellant to presume that his wife was dead. The conduct of the appellant of not taking steps which ordinarily would have been

taken by any person, not only by the husband, shows that his conduct was not consistent with innocence. Next available inference is that he was very much sure that Rekha was dead. This circumstantial evidence is available against the appellant in view of the provision of section 8 of the Evidence Act.

11) The learned counsel for appellant submitted that Khandu Musale (PW 4), father of deceased and Kewal Bhosekar (PW 6), uncle of deceased have turned hostile and due to that there is no evidence even on motive in the present case. It is true that both these close relatives of the deceased turned hostile. They have not given evidence on illegal demand and illtreatment which the deceased was facing and which was mentioned in the F.I.R. and police statement. It is true that the report was given only after receipt of opinion of doctor who conducted P.M. examination. However, it is not necessary that in all cases in which there is only circumstantial evidence, motive must be proved. Motive may be relevant, but absence of motive which can be used under section 8 of the Evidence Act is not sufficient to discard the other circumstantial evidence if the other circumstances are fully established by the prosecution and if they complete the chain of circumstances.

12) In the present matter, the learned counsel for appellant submitted that the possibility of death in accident is not ruled out.

He drew the attention of this Court to the evidence of Dr. Kalme (PW 7), who conducted P.M. examination on the dead body. In the cross examination, first he denied the suggestion that the injuries found on the dead body can be caused if material like portion of Sari is tied around the neck and then the lady falls from motorcycle. In his evidence then he admitted that in rare cases there may be accidental throttling.

13) The medical evidence in the form of substantive evidence of Dr. Kewal (PW 7) and the P.M. report at Exh. 36 shows that following injuries were found on the dead body.

(a) Bruise on neck, anteriorly reddish in colour admeasuring 5x7 cm, extending from hyoid bone.

(b-1) Impression print 1x7 cm anteriorly over neck, just above hyoid bone, horizontal,

(b-2) Impression print 1x4 cm anteriorly over neck, 3 cm below above print.

(c) Contused lacerated wound 2x2x1/2 cm over scalp, 2 cm above and backward on right side occipital bone,

(d) Abrasion over left wrist laterally, 1x1 cm.

There was fracture of superior horn of hyoid bone.

All the above injuries were antemortem.

He found internal injuries like injury to scalp, there was bruising of

larynx and trachea and surrounding muscles. On the basis of these injuries found by doctor, he has given evidence that death took place due to cardiorespiratory arrest due to asphyxia due to throttling. The P.M. report is consistent with the oral evidence of doctor. He has given evidence that aforesaid injuries are sufficient to cause death in ordinary course and the injuries mentioned in column No. 17 corresponds to the internal injuries mentioned in column No. 19 of P.M. report. His evidence shows that the injuries found on the neck can be caused if the neck is pressed even by palm. According to him, the injuries which were found on left wrist can be caused when the person offers resistance. It is already mentioned that in spot panchanama and inquest panchanama there is mention that bangles of left hand were found broken and due to breaking of bangles, there were injuries to the left hand.

14) Thus, the information given to Police Patil by the appellant was false. The aforesaid evidence does not create a probability that when the motorcycle was in stationary condition and when the deceased was trying to alight from the motorcycle, she accidentally fell on the road and she sustained such injuries. The submissions made by the learned counsel for appellant in the appeal that accidentally Pallu of Sari got fixed in the spokes of wheel and due to that there was strangulation, is not acceptable. The aforesaid

record does not show that when the spot panchanama and inquest panchanama were prepared, Pallu was around the neck. In any case, Pallu would have acted as ligature material and the ligature marks of Pallu would have been noted on the neck. Further, if the motorcycle was stationary, it does not look probable that so much of force could have been there which could have strangulated the neck. The circumstance that Pallu was not found entangled with the spoke of wheel is sufficient to infer that there was no such possibility. Thus, it is homicide and not accidental death.

15) The evidence of Dr. Dolare (PW 5), Avahad (PW 1), the report given by Avahad and also the statement given by appellant under section 313 of Cr.P.C. show that the appellant admitted that on that night he was in the company of deceased and information was given to Police Patil that the deceased had a fall from motorcycle. In the statement given under section 313 of Cr.P.C. accused No. 1 has contended that only he was present near the dead body when Police Patil went to the spot. His other answers given under section 313 of Cr.P.C. show that the deceased was in his company right from the dispensary of PW 5 up to the spot and only he was present when the incident took place. The evidence on the record shows that he supplied false information that the deceased had fall from his motorcycle. This giving of false information can be

used against the appellant as incriminating circumstance and that falls under section 8 of the Evidence Act.

16) The prosecution evidence is sufficient for allowing the use of provision of section 106 of Evidence Act against the present appellant and as there are aforesaid circumstances only inference available under section 114 of Evidence Act is that it is the accused/appellant who has committed the murder of Rekha. No other probability is created by the evidence on the record and all the necessary circumstances are fully established by the State. Even if there is no evidence on record on motive, as already observed that circumstance is not coming in the way of prosecution to prove that circumstances are pointing the finger only to the accused.

17) The appellant had placed reliance on many reported cases like **2011 (4) Scale 790 [Ranjit Singh Vs. State of Punjab]**, **2003 Cr.L.J. 1274 (SC) [Subimal Sarkar Vs. Sachindra Nath Mondal and Ors.]**. The facts and circumstances of each and every case are always different. In the present matter, the relevant facts and circumstances are already quoted. In the appeal, the learned counsel for appellant placed reliance on the observations made by the Apex Court in the case reported as **AIR 1983 (SC) 66 [Mayur Panabhat Shah Vs. State of Gujarat]**. In the case the point of

appreciation of medical evidence, evidence of doctor by the Court is discussed. There cannot be dispute over the proposition. It is true that the Court is not expected to go with the presumption that doctor is always a witness of truth. His evidence is of opinion and opinion evidence can be appreciated on the basis of other circumstances of the case. That is done by the Court in the present matter. In view of the aforesaid circumstances, this Court holds that it is not possible to interfere in the decision of the Trial Court. In the result, the appeal stands dismissed.

[K.K. SONAWANE, J.]

[T.V. NALAWADE, J.]

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