

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 165 OF 2015

Chandradeo @ Chandu Parmeshwar Rai,
Age 28 years, Occ. Painting work,
Residing at Tonde Chawl,
Near Vegetable Market,
Uttam Nagar,
Pune.

**(At present accused is in Yeroda
Central Prison, Pune)**

...Appellant.

Vs.

State of Maharashtra.
At the instance of Kothrud
Police Station.

...Respondent.

Mr. D. G. Khamkar for the Appellant.
Mr. Arfan Sait, APP. for the State.

CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.

DATE : Reserved on 17th July, 2019
Pronounced on 13th August, 2019.

JUDGMENT : (Per MRS. SWAPNA S. JOSHI, J.

1. This appeal has been directed against the Judgment and Order dated 25th August, 2010 delivered by District Judge 13 and Additional Sessions Judge, Pune in Sessions Case No. 261 of 2009 whereby the learned Additional Sessions Judge has convicted the accused for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life imprisonment and to pay a fine of Rs.20,000/- in default to suffer rigorous imprisonment for one year. The accused was further convicted for the offence punishable under Section 498-A of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for six months. Both the sentence are directed to run concurrently.

2. The prosecution case in nut shell can be summarized as under.

On 20.10.2007, the accused Chandradeo @ Chandu brought his wife namely Chandadevi (deceased) to Sasoon Hospital,

Pune on the pretext that she was suffering from loose motions and her condition was serious. The doctor from Sasoon Hospital declared Chandadevi as dead. The police constable Waghchaure who was attached to Sasoon Hospital informed about the said death of Chandadevi to Kothrud Police Station. On receipt of the said message, P.W.1, API Devidas Wanjale along with police constable Narale and two panchas visited Sasoon Hospital and conducted inquest panchanama Exh.9 in presence of two panchas. P.W.1 Devidas Wanjale noticed black marks on the neck of the dead body and both the hands of the deceased were bent from elbow. P.W.1 Devidas Wanjale sent the dead body of Chandadevi for autopsy. P.W.1 Devidas Wanjale thereafter along with accused visited the house of accused in presence of two panchas. P.W.1, API Wanjale took search of the house of the accused. He found one bed sheet lying on the floor having blood stains and vomiting residues. So also one yellow colour napkin was also stained with blood. One multi colour odhani was found at the place of incident. They are marked as Article 1 to Article 3 respectively. P.W.1 Wanjale seized the said articles under seizure panchanama Exh.10. From the Medical Officer

who conducted the autopsy, P.W.1 Wanjale learnt that cause of death was due to strangulation. P.W.1 Wanjale realised that accused has committed murder of his wife. Therefore, P.W.1 Wanjale himself lodged complaint against the accused on behalf of the State on the same day at about 8.15p.m. (Exh.11).

3. On the basis of the said complaint offence was registered vide CR No.725 of 2007. Police Inspector Anant Rajeshirke (P.,W.6) conducted the spot panchanama and arrested the Accused on the same day i.e. 20.10.2007. He took charge of the clothes of the deceased under seizure panchanama Exh.19. P.W.6 took charge of clothes of deceased i.e. blood stained gown (Article-4) and blouse (Article-5) under seizure panchanama. The muddemal was deposited in muddemal section. It was then sent to Chemical Analyzer Office. During the course of investigation, C.A. report (Exh.23) was secured. Statements of relevant witnesses were recorded and after completion of investigation, charge sheet was filed by P.W.6. Charge sheet was submitted to the court of J.M.F.C. Pune and the case was committed to the Court of Sessions. The learned Additional Sessions Judge

framed charge and after recording evidence and hearing both the sides convicted the accused.

4. In order to prove the guilt of the accused the prosecution has examined in all eight witnesses namely P.W.1 Investigating Officer API Devidas Wanjale at Exh.8, P.W.2 Panch witness Salim Jahagirdar at Exh.12, P.W.3 Bhagwan Chandere panch witness on seizure panchanama at Exh.14, P.W.4 Dr. Prasad Mane at Exh.15, P.W.5 Rajhpat Rai brother of the deceased at Exh.17, P.W.6 Investigating Officer P.I. Anant Rajeshirke at Exh.18, the Medical Officer who conducted the post mortem Dr. Upendra Mohole at Exh.32 and P.W.8 Rampratap Gupta, panch witness on inquest panchanama at Exh.38. The defence of the accused was of total denial.

5. The learned Advocate for the appellant vociferously argued that the learned Trial Judge has not considered the evidence led by the prosecution witnesses in its proper perspective and erroneously convicted the accused. It was submitted that there is

absolutely no evidence on record to show that accused has committed the murder of his wife. It was contended that the accused has taken his wife to the hospital as she was suffering from loose motions however, the police machinery has falsely implicated him in the present case.

6. Per contra, learned APP contended that since about three years prior to the incident there used to be frequent quarrels between the accused and the deceased, deceased started residing at her parental place and just one month prior to the incident as per the order passed by the court, in favour of the deceased, the father of the deceased reached her to her matrimonial house. It was submitted that, in the house, apart from the accused and their daughter, no one else was present in the house at the time of incident. In view thereof, the burden lies on the accused to explain as to under what circumstances deceased Chandadevi died. It was contended that under the provisions of Section 106 of the Evidence Act the accused should discharge the burden and since accused has failed to discharge the burden, the learned Trial Court has rightly convicted

him. In order to verify the rival contentions of both the sides, it would be advantageous to peruse the evidence led by the prosecution witnesses.

7. It is the specific case of the prosecution that deceased died due to strangulation by means of odhani or napkin. The Medical Officer P.W.7 Dr. Upendra has opined the cause of death due to constriction of neck, due to strangulation. The testimony of P.W. 1-Wanjale shows that when he reached at the place of incident he noted the dead body lying on the floor and there were black marks on the neck of the dead body and her both hands were bent from elbow. Accordingly, he prepared inquest panchanama Exh.9. P.W.1 Wanjale took charge of the blood stained bed sheet and noticed vomit residues on the bed sheet with blood stains and he also found blood stains on the napkin lying at the place of incident. All these factors indicate that it was nothing but homicidal death. No doubt, the case of the accused that as the deceased was suffering from loose motions since last three days, her health was deteriorated and therefore, she died, is a false case put up by the accused. The Medical

Officer P.W.7 has specifically denied that deceased died due to loose motions. Thus, the prosecution has established that deceased died a homicidal death.

8. The prosecution has heavily placed reliance on the testimony of P.W.1 Devidas Wanjale. As discussed above from the prosecution case, it is clear that on 20.10.2007 P.W.1 API Wanjale, at about 10.35 a.m., received message from Kothrud Police Station that it was informed by police constable Waghchoure from Sasoon Hospital to him that Dr. Kankavale informed him that one Chandradeo Rai brought his wife for medical treatment, however she was dead when she was brought to the hospital. On receipt of such message, P.W.1 Wanjale proceeded to the Sasoon Hospital and conducted Inquest panchanama. He noticed black mark on the neck of the body of the deceased and her both hands were bent from elbow. P.W.1 then conducted Inquest panchanama Exh.9. P.W.1 then visited the place of incident along with accused who was present at Sasoon Hospital. He learnt that accused was residing with his daughter and wife in the said house. While conducting search of the

house he found vomiting residues are on the bed sheet containing blood so also one napkin was also having blood stains. P.W.1 took charge of the bed sheet, napkin and one multi colour odhani lying at the place of incident and accordingly conducted spot panchanama Exh.10. P.W.1 Wanjale came to know from the doctor who conducted the postmortem of the deceased that cause of death of deceased Chandadevi was due to strangulation. P.W.1 Wanjale lodged the complaint Exh.11 against the accused.

9. Exhaustive cross examination of P.W.1 Wanjale explicits that while P.W.1 visited the house of the accused, accused accompanied him from Sasoon Hospital to his house. P.W.1 admitted that till he received Doctor's certificate he was not aware about the cause of death. He also admitted that he has not recorded the statement of Dharmendra Gupta and Seema Gupta who reported him about the quarrel between deceased and the accused. Nothing damaging was elicited from the cross examination of P.W.1 Wanjale. He is found to be a trust worthy witness.

10. The evidence of P.W.4 Dr. Prasad Mane shows that he is BHMS General Practitioner and was resident doctor attached to Sanhjivani Hospital, at Uttamnagar, Taluka Haveli, District Pune. According to him, on 20.10.2007 at about 6.30 a.m. one Dharmendra Gupta visited his hospital and informed that patient is very serious and requested him to visit the house which was near to his house. Accordingly, P.W.4 Dr. Mane visited the house and he saw patient. Accordingly P.W.4 examined the patient. She was lying on the floor. Her blood pressure was not recordable and her pulses were not recordable. Therefore, P.W.4 advised to take patient to Sasoon Hospital. P.W.4 noticed black marks on the neck of the dead body. He also found that it was case of assault.

11. The evidence of P.W.4 does not throw any light on the aspect of the incident. He has not thoroughly examined the deceased. He was an Ayurvedic doctor. According to him the body of the deceased was stiffed and rigor mortis was present. On the next breath, this witness stated that there was bleeding from nose of the dead body when he examined.

12. The testimony of P.W.4 is not found to be reliable one, as when rigor mortis is developed in the body there is no question of bleeding from nose. No weightage can be given to the evidence of P.W.4.

13. P.W.7 Dr. Upendra Mohole conducted the post mortem on the dead body of Chandradevi between 2.30 p.m. to 3.30 p.m. P.W.7 also examined the dead body of Chandadevi and he found following injuries on the dead body.

1. Dry parchment like abrasion over right anterior aspect of neck 6x1.5 c.,. Red brown;
2. contusion over left angle of mandible 0.5 x1.00 c.m. reddish in colour;
3. Paratracheal haematoma in thyrohysoiel muscle on both sides 2 x 2 cm; each;
4. Haematoma in right strap muscles 2 x2 cm;
5. Haematoma over anterior aspect of trachea

2x2cm.

All the injuries were ante-mortem injuries.

On internal examination he found following injuries.

1. Brain was congested.
2. Lungs were congested.
3. Uterus measured 27x20x15 cm. On cut section foetus was present. Fetus measurements were head circumference 26cms. Chest circumference 21 cms. Length 35cm. Umbilical cord 33 cm.

14. According to P.W.7 Dr. Upendra the cause of death was due to constriction of neck due to strangulation. P.W.7 Dr. Upendra issued the post mortem report. P.W.7 opined that injury Nos.17,19 and 20 are sufficient to cause of death in ordinary course. P.W.7 Dr. Upendra stated that the injuries are possible by strangulation by means of Odhani Article 3 and Article 2 Napkin respectively. He further stated that there is possibility of blood vomiting if the strangulation is due to soft cloth. He further categorically stated that

due to dysentery there is no possibility of spasm of muscles. The testimony of P.W.7 Dr. Upendra is not shattered in the cross examination and it shows that strangulation is possible by Odhani or napkin. P.W.7 Dr.Upendra specifically denied that due to dysentery there is possibility of spasm of muscles. Thus, the case of the accused that as deceased was suffering from loose motions, he brought her to the hospital and cause of death was due to dysentery has no substance.

15. It is worthwhile to note that, the accused in his statement recorded under Section 313 of Cr.P.C. has fairly admitted that he brought his wife to the hospital and informed the doctor that his wife was suffering from loose motions since last 3 days and her health was deteriorated in the morning, from 20.10.2007. Thus, it is an admitted fact that accused brought the deceased to the hospital on the pretext that her health was deteriorated due to loose motions for which his wife was suffering from last three days. In these circumstances, it is incumbent on the part of the accused to explain under what circumstances his wife died. In fact the accused has

given a false explanation which goes to the root of the case put up by him and proves his guilt. As per the provisions u/s.106 of Evidence Act the burden lies on the accused. He has to explain as to why the deceased vomited and blood was found on the napkin, odhani and bed sheet.

In this respect it is useful to refer the Judgment of the Hon'ble Apex Court in the case *State of Himachal Pradesh vs. Raj Kumar* reported in (2018) SCC 69 wherein it is held that ...

Evidence Act, 1872- S.106- Failure of accused to explain incriminating circumstances against him- Effect of..

Held, if accused does not throw light on fact which is within his knowledge, his failure to offer any explanation would be a strong militating circumstance against him.

16. It is pertinent to note that, C.A. report Exhibits 24 to 27

show the blood stains on the bed sheet, napkin as well as odhani. The blood group on the said clothes has not been detected whereas the blood group of the accused was of B group. However, the fact remains that blood stains were found on the bed sheet, odhani and napkin articles which were lying at the place of incident which were taken charge by P.W.1 Wanjale on the date of incident itself.

17. The C.A. report corroborates the testimony of P.W.1 on material aspect for which accused has failed to give any plausible explanation. Admittedly the accused himself has taken his wife in the morning to the Sasoon Hospital. The accused has falsely informed to the Medical Officer that her wife was suffering loose motions for last three days and her health was deteriorated. In fact, the evidence of P.W.1 Wanjale shows that, deceased Chandadevi was brought to the hospital, in dead condition, which indicates that accused had tried to hide his misdeeds. However, the postmortem report and the testimony of P.W.7 Dr.Upendra makes clear that cause of death was by strangulation by odhani and napkin. It appears that Chandadevi was strangled by odhani or napkin and she vomited due to

strangulation and she vomited blood also. Thus, there are signs of vomiting as well as blood stains lying on it, otherwise there was no reason for appearance of blood on the articles lying at the place of incident as well as on odhani and napkin. The clothes of deceased were taken charge under panchanama Exh.19 such as gown and blouse. Gown also shows blood stains on it. Thus, all these facts lead to the conclusion that, it was the accused who had committed murder of his wife.

18. So far as the allegations that the accused treated his wife with cruelty are concerned, the prosecution has relied upon the testimony of P.W.5 brother of the deceased who has deposed that deceased got married with his sister before 13 years back. Out of the said wedlock, they were having two daughters. One daughter was residing with him where as elder daughter was residing at native place. P.W.5 Rajpat deposed that accused used to beat his sister and quarrelled with her. His sister used to told him about the beating, on telephone. His sister used to inform him that her husband wanted Rs.40,000/- for motor cycle. He specified that he told her sister that

he will arrange for the said amount. After six months again his sister complained about the harassment for demand by the accused. In the year 2001 accused left his sister at his native place at Budhirampur after demanding money and vehicle.

According to P.W.5, his sister used to complain that accused used to beat her for money and he would not keep her in his house. Thereafter his sister stayed with him for three years. She filed the case against the accused. The court passed order in favor of deceased. 15 to 20 days prior to the incident, his father took his sister to her matrimonial house. He stayed with his sister for about 2-3 days and thereafter returned back to his village. About 15 days thereafter, he received a phone call from the accused about the death of his sister. The accused informed him that Chandadevi died due to electric shock while charging mobile. On receipt of the said information P.W.5 proceeded to Pune and when he reached there cremation was over.

19. During the cross examination improvements were pointed out that he gave Rs.14,000/- and buffalo to his sister at the

time of marriage. P.W.5 admitted that he had not complained to anybody about the demand of accused of Rs.40,000/- and motor cycle. P.W.5 failed to state when the accused demanded the amount and the motor cycle. He further admitted that neither he or his father or his sister lodged complaint against the accused for the said demand of vehicle and the money. Similarly the fact that accused informed him that Chandadevi died due to electric shock while charging mobile also an improvement in the version of P.W.5. Thus, the testimony of P.W.5 is not convincing so far as the allegations of cruelty are concerned. In view thereof, it cannot be said that, there was continuous cruelty at the hands of the accused to the deceased. The fact however remains that after deceased succeeded in court proceedings, she started residing with the accused. It appears that the accused did not like it and therefore he decided to eliminate Chandadevi and accordingly, he committed her murder. This appears to be the hidden motive in the mind of the accused to kill his wife.

20. Thus, the prosecution has failed to prove that accused has caused cruelty to the deceased. Although the cruelty is not

established by the prosecution, however, the prosecution has proved that accused has committed murder of his wife for the reasons best known to him. Hence, the following order.

ORDER

- a) The conviction of the accused under Section 498A of the IPC is set aside and instead, the conviction under Section 302 of the IPC is upheld. For the said offence, the accused is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.20,000/- in default to suffer rigorous imprisonment for one year. The said sentence imposed by the learned District Judge-13 and Additional Sessions Judge, Pune is maintained.
- b) Appeal is accordingly partly allowed.

(MRS. SWAPNA S. JOSHI, J.) (B.P DHARMADHIKARI, J.)