

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

LD/VC/CRIMINAL APPEAL NO.983 OF 2015

Raju Dayal Shrimali @ Khimji
Age - 30 years, Occu.-Business,
Residing at - Bhaskar Seth Colony,
Room No.5, Khoni Village,
Bhiwandi, District - Thane,
Native Place at Khetakheda Village,
Tal - Vallabhnagar, District - Udaypur,
State - Rajasthan

.. Appellant

Vs.

State of Maharashtra

.. Respondent

.....
Ms.Glady Pereira, Advocate for the Appellant.
Mr.S.V. Gavand, APP for the Respondent - State.
.....

**CORAM : PRASANNA B. VARALE AND
PRAKASH D. NAIK, JJ.**

DATED : AUGUST 19, 2020.

JUDGMENT (PER : PRAKASH D. NAIK, J.) :

The appellant is convicted for the offence punishable under Section 302 of Indian Penal Code ("IPC", for short) and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, vide judgment and order dated 13th May, 2015, passed by Sessions Judge, Thane in Sessions Case No.231 of 2013.

**RajeP.
Aher**

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2 The brief facts of the prosecution case are as under:

The accused had married with the deceased. It was a love marriage. After the marriage, he started residing with his deceased wife at Bhaskarseth Chawl, Room No.5, Khanigaon, Bhiwandi, District-Thane. The accused was suspecting character of his wife as she used to speak on mobile phone for a long period. The accused killed her wife by throttling in the room and ran away after locking the room from outside to his native place at Rajasthan. He confessed his crime before Circle Inspector of Hathipol Police Station, Udaypur, Rajasthan. On receipt of intimation from the said police station, Nizampura Police Station, Bhiwandi, took custody of the accused. He was arrested. On completion of investigation, charge-sheet was filed.

3 Charge was framed under Section 302 of IPC by the trial Court for the offence under Section 302 of IPC.

4 Prosecution examined 12 witnesses. P.W.1 Arvind Patil is attached to Nizampura Police Station, Bhiwandi, P.W.2 Bhaskar Bapu Bagal is the owner of the chawl in Khonigaon, P.W.3 Vinay Rampukar Singh is the tenant of he chawl where the accused was

residing with his wife, P.W.4 Parvatibai Swami Irvaya is the mother of deceased, P.W.5 Deepak Vikas Vaghdhare is the tenant of the chawl where the accused was residing with his wife, P.W.6 Pradhyman Shrimale is brother-in-law of accused, P.W.7 Arvindkumar Shrimale is the relative of the accused, P.W.8 Jayashree Mhaske is the medical officer who conducted Postmortem on the body of the deceased, P.W.9 Vanita Waghdhare is the neighbour of accused, P.W.10 Dattatrya Thakur is API attached to Nizampura police station, P.W.11 Sandeep Pakhale is ACP, who conducted investigation and P.W.12 Govardhan Khatik was attached to Hathipol Police Station, as incharge SHO.

5 Statement of the accused was recorded under Section 313 of Cr.P.C. The defence of the accused is that he had left Khonigaon and the room on 3rd December, 2012, for his personal work. Hathipol police arrested him for no reason.

6 Most of the documentary evidence on record was admitted by defence by endorsement on Exhibit-6. The admitted documents were inquest panchanama (Exhibit-8), cause of death certificate dated 7th December, 2012 (Exhibit-9), panchanama of scene of offence dated 6th December, 2012 (Exhibit-10),

postmortem notes dated 7th December, 2012 (Exhibit-12), arrest panchanama of accused (Exhibit-13), extract of police station diary dated 8th December, 2012 (Exhibit-14), photographs of scene of offence, deceased and accused dated 6th December, 2012 (Exhibits-15/1 to 15/4).

7 Trial Court on analysing the evidence gave finding that the death of victim was homicidal and the accused has committed murder of his wife Swati by throttling and committed offence under Section 302 of IPC.

8 Learned advocate for the appellant submitted that the case is based on circumstantial evidence. There is no direct evidence. There was no motive for the accused to commit crime. Accused have left the room premises and Khonigaon before the alleged incident and he had been to his native place at Rajasthan. The medical evidence shows that the death of deceased was 48 hours prior to 7th December, 2012. Thus, the appellant cannot be held responsible for commission of murder. There is every likelihood that some other person must have committed crime. The appellant was not in the house at the time of incident and Section 106 of the Evidence Act cannot be invoked against him.

Deceased had married for the second time with the accused. Victim married the accused after obtaining divorce from the first husband. There is every likelihood that her first husband is involved in the crime. The evidence of witnesses is not trustworthy. It suffers from contradictions. There is no eye witnesses to the incident. There is no incriminating evidence to establish that the appellant has committed the crime.

9 Learned APP submitted that although the case is based on circumstantial evidence, there are strong circumstances to establish charge against the accused. The deceased was the wife of the accused. Both were residing in the premises where she was found dead. The accused was arrested at Hathipol, Rajasthan. He had confessed the crime. His custody was handed over to Nizampura police station. There are documents to establish that the accused was apprehended at Hathipol. There is clinching evidence of P.W.2, P.W.3, P.W.5 and P.W.9, who were neighbours of the accused. They had referred to the quarrels between the accused and the deceased. Their evidence discloses that the accused had left the room after locking it from outside. P.W.6 and P.W.7 are relatives of the accused. Their evidence supports the prosecution case. Extra judicial confession is made

by the accused to P.W.6 and P.W.7. The medical officer has given opinion about cause of death, which shows that the death was homicidal. P.W.1, P.W.10, P.W.11 and P.W.12 are the police personnel whose evidence supports prosecution case.

10 With the assistance of both the sides, we have perused the evidence of witnesses and the documentary evidence on record. We are conscious of the fact that the case is based on circumstantial evidence. There is no eye witnesses to the crime. While appreciating circumstantial evidence, the Court has to be cautious. The chain of circumstances should be such that the circumstances should start with the accused and end with him in commission of crime. In the event, the circumstances are doubtful, the benefit of doubt has to be given to the accused.

11 The accused was withheld at Hathipol police station, Udaypur. Intimation was given to Nizampura Police Station. Accused was married to deceased. It was a second marriage for the deceased. It was love marriage. There were quarrels between the deceased and the accused on the ground that she was in habit of talking on mobile phone for long time.

12 P.W.1 Arvind Patil is API attached to Nizampura police station, Bhiwandi. On 6th December, 2012, he received a call from circle inspector Shri Govardhan attached to Hathipol police station, Udaypur, Rajasthan. He informed that Mr.Raju Dayal Khimji is in their custody and he has committed murder of his wife by throttling and kept the dead body in the room at Khonigaon, Bhiwandi and locked the room from outside. He was asked to ascertain the truth. On receipt of this information, entry was made in the station diary at serial no.24/2012. The certified copy of the station diary entry was produced which was marked at Exhibit-17. Police attached to Nizampura police station proceeded to Bhaskar Shet chawl at Khonigaon. Inquiry was made with Bhaskar Bapu Bagal (P.W.2) who is the owner of the chawl. He discloses that the accused and his wife Swati were residing in room no.5 since last six months. It was noticed that room was locked from outside and there was foul smell. Police opened one side window and found dead body lying on bed. Panchas and photographer were called. They broke open the lock of the room and entered inside. Inquest panchanama was prepared. The dead body was in decomposed condition. It was identified as dead body of Swati. P.W.1 contacted Shri Govardhan, Hathipol police station and also spoke to accused. He informed

him that four days ago he noticed that his wife was chitchatting with stranger in room after closing the door and when he saw that, the stranger ran away, he doubted the character of his wife and killed her by throttling and ran away by locking the room. The dead body was sent for postmortem. First Information Report ("FIR", for short) was registered vide C.R.No.199 of 2012 vide Section 302 of IPC. Investigation was conducted. In the cross-examination, it was stated that he did not make inquiry with Hathipol police station as to under which crime the accused was in their custody.

13 P.W.2 Bhaskar Bagal is the owner of chawl. He stated that the accused was occupying room no.5. He was residing with his wife Swati. There were quarrels between the accused and his wife as she used to speak on mobile phone for long time. On 4th December, 2012, at about 12:30 to 01:00 a.m., he returned home from brick-kiln. He saw that accused had locked the room and was going on his motorcycle. He did not make any inquiry with him. On the next day, he received call from mother of Swati. She made grievance that Swati was not picking her phone and he should go and make inquiry. He went towards room and found that he was locked. On 5th December, 2012, he again received call

from mother of Swati. He found that the room was locked from outside. On 6th December, 2012, police made inquiry with him and he pointed out room no.5. police called panchas and broke open the lock and opened the room. The dead body was found lying on bed. His statement was recorded by police on 8th December, 2012. In the cross-examination, he stated that on 5th December, 2012, he went to premises of accused, but, did not notice doubtful circumstances, but, flies were going inside the room. The cross-examination of this witness was a futile exercise and the defence was not in a position to discard the evidence of this witness. His version is truthful and beyond doubt.

14 P.W.3 Vinay Singh is neighbour of the accused. He deposed that accused was residing with his wife in room no.5 of Bhaskar Seth Chawl. There were quarrels between accused and his wife Swati as she was talking for long time on mobile phone. On 5th December, 2012, residents had gathered in front of chawl. There was foul smell. On 6th December, 2012, police came to the chawl. They broke open the lock of the room. Dead body was found inside the room in decomposed condition. His statement was recorded on 8th December, 2012. In the cross-examination, he stated that three days prior to visit of police to room no.5, he had

seen the accused. He had not heard any cry or shouts of deceased Swati. He had no occasion to hear dialog in between accused and Swati. P.W.5 Deepak Waghdhare is the neighbour of the accused. He has stated that the accused was occupying room no.5 with his wife. He used to hear quarrels between them. Deceased Swati used to speak for long time on mobile phone. On that count there used to be quarrels between them. On 5th December, 2012, there was foul smell coming from room no.5. On 6th December, 2012, he saw police officers and others gathered at room no.5. He saw dead body of Swati inside the room on bed. His statement was recorded on 8th December, 2012. In the cross-examination, he stated that he used to go for duty at 08:00 a.m. and return at 08:00 p.m. Accused came to stay in room no.5. 4 to 5 days prior to the incident he had seen the accused and the deceased. He did not see any guests in room no.5. Thus, the evidence of P.W.5 is also in consonance with the evidence of P.W.2 and P.W.3.

15 P.W.9 is another witness who was neighbour of the accused and the deceased. She has stated that she was residing in Bhaskar Sheth Chawl in Room No.4. She knows accused and his wife Swati. She has noticed that there were quarrels between accused and Swati as she used to receive call on her mobile. On

3rd December, 2012, at about 10:30 p.m. she heard quarrels between the accused and Swati. On 4th December, 2012, she saw lock on the door of room no.5 and the motor cycle of the accused was not there. She thought that the accused and his wife might have gone out. On 5th December, 2012, there was foul smell from the room no.5. On 6th December, 2012, police visited chawl and broke open the lock of room no.5 and found dead body of Swati in the room. In the cross-examination, she stated that she used to go for work at 10:30 a.m. and return in the afternoon. Sometimes the accused and his wife used to go outside together. Some times the room was closed inside. She do not know at what time the room no.5 was locked by whom and when Raju went outside the room.

16 There is nothing to doubt the veracity of her evidence. Thus, the evidence of P.W.2, P.W.3, P.W.5 and P.W.9, refer to quarrels between the accused and the deceased. They have also stated about the fact that the room was locked from outside and that the police broke open the lock and entered inside the room where dead body of Swati was found. They have also established that prior to incident, the accused and the deceased were occupying the said room. It is also proved that the

accused had locked the room from outside and left the premises. It is thereafter dead body of Swati was found. Thus, there are strong circumstances against the accused.

17 P.W.4 Parwatibai Irvaiya is the mother of the deceased. She stated that her daughter Swati was married to accused. It was a love marriage. They had opposed the marriage. However, marriage was performed by the accused and her daughter against her wish. Swati had told her that she is residing at Bhiwandi in rented premises. She had told her that accused used to assault and ill-treat her. He used to stalk whenever she was going for natural call. She further stated that she visited Bhiwandi along with her son to meet her daughter. She tried to convince accused not to ill treat Swati. On 4th December, 2012, her phone was found switched off. On 5th December, 2012, she called the landlord whose mobile number was given to her by Swati. The landlord told her that the room was locked. On 6th December, 2012, she received a phone call from Nizampura police station that her daughter was killed by husband. She came to Bhiwandi. In the cross-examination, she stated that her daughter was already married earlier. Her earlier husband was from Latur. She stayed with accused for 7 to 8 months at

Bhiwandi. There was divorce decree in respect to the previous marriage. Initially Swati was happy. Police recorded her statement. She was shown portion marked-"A". she stated that she has disclosed the said fact to police. The evidence of P.W.4 corroborates the version of P.W.2 Bhaskar Bagal.

19 P.W.6 P.K. Shrimali is the resident of Rajasthan. Accused is the brother of his wife. He stated that about 5 to 6 months prior to the incident, the accused had told him that he had love marriage with Swati alias Surekha. On 3rd December, 2012, at about 11:00 p.m. he received call from accused. He told him that he saw his wife Swati with a stranger in his house when the stranger saw him, he ran away. There was quarrel between him and his wife. Due to anger, he throttled Swati and killed her. P.W.2 advised him to report the fact to the police. However, he ran away to Rajasthan. He was then advised to report the incident to Rajasthan police. He also visited his maternal uncle's village and surrendered to Udaypur police. Police had come to his native place, but, he was out of station. There was no occasion for recording his statement by police. He was cross-examined by the prosecutor. In the cross-examination, he stated that on 20th February, 2013, police had come to his house, but, it is not

correct that his statement was recorded. He was cross-examined by the defence. He stated that except information on phone, he had no personal knowledge as to whether accused were working or doing business. P.W.7 Arvindkumar Shrimali is also relative of the accused. He is brother of P.W.6. He stated that on 5th December, 2012, his brother reported him the incident, which was reported to him by accused. Thereafter, accused met him. He told him that he had quarrel with his wife since stranger was found with her in the room. Thereafter, there was quarrel with his wife and he locked her in the room and ran away to Rajasthan. He was asked to surrender to police in Maharashtra. He was advised to go to Rajasthan police. Accused went to Udaypur and reported the incident to police. In cross-examination, he stated that the person who had illicit relationship with deceased may assault accused, and, therefore, accused was apprehending for coming to Maharashtra. Accused was advised to go to police to protect himself from those persons who had illicit relation with deceased. The distance between his village and Arned village is 80 kilometers.

19 In addition to the evidence of P.W.2, P.W.3, P.W.5 and P.W.9, evidence of P.W.6 and P.W.7 corroborates the fact that the

accused made extra judicial confession to P.W.6. and he surrendered to Udaypur police. The fact that the accused was in custody of Hathipol police station when he surrendered before them is also corroborated by the evidence of the other witnesses. The prosecution case emanates from the fact that the accused had approached Hathipol police station and the circle inspector attached to the said police station informed it to Nizampura police station. The information was recorded in the station diary. The evidence establish that the custody of accused was handed over to Nizampura police station. On receipt of information, from Hatipol police station, the residential premises were broke open and dead body of Swati was found in the room. Thus, investigation commenced through the source of accused who presented himself to Hathipol Police Station.

20 P.W.8 Dr.Jayshri Mhaske conducted postmortem on the body of deceased. She stated that the cause of death was cardio respiratory failure due to asphyxia due to throttling. Injuries mentioned at serial nos.1 and 2 in column no.18 are grievous in nature. Cause of injuries was due to throttling. Age of injury was within 48 hours. All injuries were ante-mortem. There was fracture of tracheal ring nos. 2 and 3. She was cross-

examined. She stated that rigor mortis was completed. The dead body was in a decomposed condition. In case of throttling, there is fracture to hyoid bone. She did not notice bone fracture. She did not find any struggle injury on the body. No injury was found on the body.

21 P.W.10 Dattatray Vishnu Thakur was API attached to Nizampura Police Station, Bhiwandi. He stated that on 6th December, 2012, P.W.1 received a phone call from Hathipol police station that accused from Khoni village has presented himself at police station and stated that he had committed murder of his wife at room no.5, Bhaskar Sheth chawl. Thereafter, police visited the chawl and found dead body in room no.5. Police went to Hathipol police station on 7th December, 2012. They met inspector Goverdhan. Custody of the accused was handed over to them. The accused confessed crime. He was arrested. He was presented before the Magistrate for transit remand, which was granted for three days. They came to Bhiwandi with accused. Statements of the relatives of the accused were recorded by visiting Udaypur. In the cross-examination, it was stated that on 6th December, 2012, he did not record any statement of persons from Bhaskar Sheth chawl. Statement of the accused was not recorded under Section

164 of Cr.P.C. He did not make any inquiry as to whether any relatives of the accused was residing within jurisdiction of Hathipol police station. Statement of sister of the accused, her husband and brother-in-law were recorded. It did not reveal that accused was in Rajasthan on 3rd December, 2012.

22 P.W.11 Sandeep Pakhale was ACP Bhiwandi. He conducted further investigation. He recorded statements of witnesses. In cross-examination, he deposed that accused was arrested at Rajasthan and brought to Bhiwandi. He did not record the statement of police from Hathipol police station. Accused has disclosed names and addresses of his relatives at Rajasthan. As per information, deceased was killed on 3rd December, 2012 or 4th December, 2012. It was not revealed from the statements of any witnesses that deceased had illicit relations with third person, and, therefore, accused killed his wife. P.W.12 Govardhanlal Khatik was attached to Hathipol police station as Incharge SHO. According to him, on 6th December, 2012, accused came to his office and disclosed his name. He disclosed that he was residing at Khonegaon with his wife. He confessed that he has killed his wife by throttling. He communicated this fact to superior officer. He conducted Nizampura police station. The officers from

Nizampura police station visited Rajasthan. Custody of the accused was handed over. In cross-examination, it was stated that he had not recorded the above fact in the station diary, but, recorded it on 7th December, 2012. On 6th December, 2012, in the night Nizampura police station informed about FIR lodged against the accused. There is no entry in the station diary dated 6th December, 2012 about detention of the accused. When the accused was handed over to Nizampura police, entry was taken in the station diary on 7th December, 2012. Distance between Kanod police station and Hathipol police station is about 40 kilometers.

23 Thus, we find that there is ample evidence to show involvement of the appellant. The chain of circumstances put forth by the prosecution through evidence of witnesses and documentary evidence show that the guilt of the accused is proved beyond doubt. The deceased was in custody of the appellant. The circumstances indicate that she was throttled and the accused left the premises and went to Rajasthan. He surrendered before the police at Hathipol. The evidence of witnesses and the documents establishes that custody of the accused was handed over to Nizampura police station by Hathipol police station. Transit remand was obtained on disclosure of

crime by the accused to police attached to Hathipol police station. On receipt of information from Hathipol police station, police attached to Nizampura police station visited room no.5 and found that dead body of the wife of the accused was lying in the room. The evidence of witnesses show that the room was closed from outside. Lock was broke open. The evidence shows that the accused had locked the room and left the premises. There is evidence of extra judicial confession. There is no plausible explanation coming from accused in the light of Section 106 of the Evidence Act. The reasoning given by the trial Court are based on evidence on record. The chain of circumstances is established through evidence. We do not find any ground to deviate from the reasoning given by the trial Court while convicting the accused.

24 Taking into consideration the evidence on record, it cannot be said that the accused is entitled for benefit of doubt. Prosecution has been able to prove the case beyond all reasonable doubt. Conviction of the appellant is required to be confirmed. The contention of the advocate for the appellant are devoid of merit. There are strong circumstances established by strong evidence against the appellant. Hence, the conviction is required to be confirmed.

25 Hence, we pass the following order:

:: ORDER ::

- (i) Criminal Appeal is dismissed;
- (ii) This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or E-mail of a digitally signed copy of this order;
- (ii) Criminal Appeal 983 of 2015, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

(PRASANNA B. VARALE, J.)