

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 414 OF 2014

Parmeshwar S/o Sukhdeo Khedkar

Age : 25 Years, Occu.: Labourer,

R/o : Karodi, Tq. Pathardi,

District Parbhani

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

Through Police Station Officer,

Police Station Pathardi,

District Ahmednagar

... Respondent

....

Mr. K.D. Bade Patil Advocate for the Appellant

Mr. Rajendra V. Dasalkar, A.P.P. for Respondent / State

....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 08th September, 2021

ORAL JUDGMENT (PER V.K. JADHAV, J.) :-

1. This Appeal is directed against the judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 14.02.2014 in Sessions Case No. 214 of 2012, convicting thereby the appellant-accused for the offence punishable under Section 302 of the Indian Penal Code.

2. Brief facts of the prosecution case, are as follows:

a. The informant Bhaginath (PW-3) is the father of deceased Suvarna. Deceased Suvarna was given in marriage to the appellant-accused Parmeshwar and their marriage was performed on 14.04.2012. On 05.05.2012 at about 9.00 p.m., Eknath Kisan Aghav i.e. the uncle of PW-3 Bhaginath expired and on 06.05.2012 his funeral was performed at village Karodi. Deceased Suvarna did not remain present for the said funeral. On 07.05.2012, there was ash immersion ceremony and deceased Suvarna had attended the same along with her parents-in-law. The said ash immersion ceremony had taken place at Paithan. While returning from Paithan along with the mother and other family members, deceased Suvarna went to her matrimonial home. At that time, the appellant-accused was present in the house. He had questioned Suvarna as to why she had gone to Paithan without his consent. Deceased Suvarna clarified that she had gone to Paithan with permission of her in-laws. However, the appellant-accused was not satisfied and he started abusing and threatening Suvarna and also assaulted her. However, her mother Kausalyabai, Tukaram Tandale and Nandabai Tandale, being relatives of deceased Suvarna, had intervened into the matter, convinced the appellant-accused and returned to Pirewadi.

b. On the very next day i.e. on 08.05.2012 at about 5.00 a.m., PW-6 Bhagwan, who is the brother-in-law of PW-3 Bhaginath, was informed by one Bhimrao that something odd happened in the house of the appellant-accused. Hence, PW-6 Bhagwan went to the house of deceased Suvarna and noticed that she was lying dead in the house having a ligature mark on her neck. PW-6 Bhagwan had informed about the same to PW-3 Bhaginath. PW-3 Bhaginath, his wife and other family members had gone to the house of deceased Suvarna. They also noticed that deceased Suvarna was lying dead in the house having ligature mark around her neck. On inquiry, the appellant-accused had disclosed that Suvarna died due to shock of cooler wire to her neck. However, the parents of the appellant-accused informed them that appellant-accused and deceased Suvarna were slept in the house and in the early morning, the appellant-accused opened the door and they saw Suvarna lying dead in the house having ligature mark on her neck.

c. Thus, PW-3 Bhaginath went to the Patithan Police Station and lodged the complaint on 08.05.2012 Exhibit 28 alleging therein that the appellant-accused has committed murder of his daughter Suvarna as the appellant-accused was annoyed with the fact that Suvarna had

gone to Paithan for immersion of ash ceremony without his consent on 07.05.2012.

d. On the basis of the said complaint dated 08.05.2012 Exhibit 28 lodged by PW-3 Bhaginath, crime no.121 of 2012 came to be registered for the offence punishable under Sections 302, 323, 504, 506 of the Indian Penal Code against the appellant-accused.

e. PW-8 PI Bhagwat Jaibhay has conducted the investigation of the said crime. He has prepared the inquest *panchanama* Exhibit 23, spot *panchanama* Exhibit 25 in presence of *panchas*. He has also recorded statements of the witnesses. On 11.05.2012, the appellant-accused, while in police custody, had given a statement that he is ready to produce the cable wire used in commission of the offence. The said statement bears signature of the Investigating Officer so also signatures of the appellant-accused and the *panchas*, which is at Exhibit 39. The cable wire used in commission of the crime was seized under the *panchanama* Exhibit 40. PW-8 PI Bhagwat Jaibhay has also collected the postmortem report Exhibit 31 and C.A. report Exhibit 42. After completion of the investigation, the Investigating Officer has submitted charge-sheet against the appellant-accused.

f. The learned Additional Sessions Judge, Ahmednagar has framed charge for the offence punishable under Section 302 of the Indian Penal Code against the appellant-accused vide Exhibit 8. The appellant-accused pleaded not guilty and claimed to be tried.

g. According to the defence of the appellant-accused, deceased Suvarna got annoyed since the appellant accused abused and threatened her in presence of the family members from her parents' side for the trifling reason as to how she went to Paithan for attending immersion of ash ceremony and thus, she had committed suicide in the house by hanging herself to the angle of the roof of the house by using nylon rope.

h. The statement of the appellant-accused under Section 313 of the Criminal Procedure Code was also recorded and after hearing both the sides, the learned Additional Sessions Judge, Ahmednagar by judgment and order dated 14.02.2014 in Sessions Case No.214 of 2012 has convicted the appellant-accused Parameshwar for the offence punishable under Section 302 of the Indian Penal Code and sentenced him in terms of the operative part of the order which reads as under :-

“1. The accused Parameshwar Sukhdeo Khedkar, Age 24 yrs., R/o Karodi, Taluka Pathardi, District Ahmednagar is convicted for the offence punishable under section 302 of the Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- (Rs. Five Thousand only) i.d. to suffer R.I. for three months vide section 235(2) of the Code of Criminal Procedure.

2. The accused is in jail since 8-5-2012 till today. He is entitled to set off under section 428 of the Code of Criminal Procedure, for the period of detention in jail so far.

3. The muddemal property – (PR.No.54/2013) cable wire being worthless, be destroyed after appeal period is over.”

3. Being aggrieved by the same, the appellant/accused Parameshwar has preferred this appeal.

4. Learned counsel for the appellant-accused submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that the prosecution has failed to establish the motive on the part of the appellant-accused to commit murder of his wife deceased Suverna. Learned counsel submits that the incident had allegedly taken place

within a period of 24 days after marriage. There are no allegations about ill-treatment on account non-fulfillment of any unlawful demand or dowry. There is only one incident, which the appellant-accused admits, that on 07.05.2012 after attending the immersion of ash ceremony at Paithan, when deceased Suvarna returned to her matrimonial home along with the family members from her parents' side, the appellant-accused had shown his disappointment on the count that she went to attend the said ceremony without his consent. Learned counsel submits that it is very unlikely on the part of the appellant-accused to commit murder of his wife within 24 days of marriage for such a trifling reason. Learned counsel submits that there is no satisfactory evidence about homicidal death and the possibility of suicidal death cannot be ruled out. Learned counsel submits that there is no chain of circumstantial evidence established by the prosecution to point out the guilt of the appellant-accused.

5. Learned counsel for the appellant-accused has vehemently submitted that section 106 of the Indian Evidence Act does not relieve the prosecution's initial burden to prove its case beyond reasonable doubt. Only when the prosecution case has been proved, the burden in regard to such facts which were within the special knowledge of the accused may be shifted on the accused for explaining the same.

Learned counsel submits that it is for the prosecution to prove the involvement of the accused beyond doubt before taking recourse to Section 106 of Indian Evidence Act. Learned counsel submits that so far as recovery of the wire allegedly used in commission of offence at the instance of the appellant-accused is concerned, the *panch* witness PW-9 Jalindar Dahiphale has initially shown his ignorance about disclosure statement made by the appellant-accused. However, during his cross-examination at the hands of learned APP, the said witness PW-9 Jalindar has admitted the contents of the memorandum of recovery *panchanama*. Learned counsel submits that though the wire allegedly used in commission of offence is shown to have been recovered at the instance of the appellant-accused, however, there is no connecting evidence in respect of the recovery of the said wire. Learned counsel submits that the appellant-accused is entitled for the benefit of doubt. Learned counsel in the alternate submits that since there was no motive and probably there was no intention to kill deceased Suvarna, and if the incident had taken place in the heat of passion during the course of quarrel between the husband and wife, then the case does not fall under Section 302 of IPC and it may fall under Section 304 of IPC.

6. Learned counsel for the appellant-accused, in order to substantiate his contentions, placed reliance on the following cases :-

1. *State of U.P Vs. Indrajeet alias Sukhatha* reported in (2000) 7 SCC 249.

2. *Ram Karan and others Vs. State of Uttar Pradesh* reported in (1982) 2 SCC 184.

3. *Harendra Nath Mandal Vs. State of Bihar* reported in (1993) 2 SCC 435.

4. *State of U.P Vs. Virendra Prasad* reported in (2004) 9 SCC 37.

7. Learned APP submits that there is evidence about the homicidal death. Learned APP has pointed out from the postmortem report Exhibit 31 that there was ligature mark horizontal in nature around the neck and though the concerned Medical Officer, who has conducted the postmortem examination, was subjected to cross-examination by the defence counsel at length, however, the prosecution has proved beyond reasonable doubt that deceased Suvarna died a homicidal death in her matrimonial home. Learned APP submits that the prosecution case rests upon circumstantial evidence and the prosecution has established the motive in this case. Learned APP submits that though the span was short, as deceased

Suvarna found in dead condition in her matrimonial home within 24 days after her marriage, however, the appellant-accused, who is a hot tempered person, got annoyed because of the fact that deceased Suvarna had gone to Paithan to attend immersion of ash ceremony without his consent. In the night itself, deceased Suvarna was found in dead condition in her bedroom having ligature mark around her neck horizontal in nature. Learned APP submits that it was a custodial death. The appellant-accused had committed crime in complete secrecy in the house. Thus, the nature and amount of evidence required to establish the charge cannot be of same degree as required in other cases of circumstantial evidence. In view of Section 106 of the Indian Evidence Act, corresponding burden is on the appellant-accused to give a cogent explanation as to how the homicidal death of deceased Suvarna occurred in the matrimonial home.

8. Learned APP submits that in the instant case, the appellant-accused has submitted his statement in writing in reply to his examination under Section 313 of the Code of Criminal Procedure, wherein he has taken a defence that deceased Suvarna had committed suicide by hanging herself to the angle of the roof with the help of a nylon rope. Learned APP submits that the explanation given by the appellant-accused is false to his knowledge. The said ligature mark

over the neck was not vertical in direction but it was horizontal in direction. Thus, the said aspect itself rules out the possibility of suicidal death. Learned APP further submits that nothing was found during the course of drawing spot *panchanama* indicating that deceased Suvarna might have committed suicide by hanging herself to the angle of the roof of the house by using nylon rope. Learned APP on the other hand submits that at the instance of the appellant-accused the wire was recovered and seized and the same had been used for strangulating the neck of deceased Suvarna and thus the ligature mark on her neck appeared horizontal in nature. Learned APP submits that as per the prosecution evidence, the appellant-accused had disclosed to the parents of deceased Suvarna that she died due to shock of cooler wire to her neck.

9. Learned APP, in order to substantiate his contentions, placed reliance on the judgment of ***Trimukh Maroti Kirkan Vs. State of Maharashtra*** reported in ***2007 Cri.L.J. 20***.

10. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statement of the appellant-accused recorded under Section 313 of Criminal Procedure Code, the evidence of the appellant-accused himself and

the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is no substance in this appeal and the same must be dismissed.

11. Though the learned counsel for the appellant-accused has vehemently submitted before us that the prosecution has not satisfactorily proved the homicidal death and brought to our notice as to how the concerned Medical Officer, who has conducted the postmortem examination on the dead body of deceased Suvarna, being an inexperienced Medical Officer, committed a mistake, however, in our considered opinion the prosecution has proved the homicidal death in this case.

12. The prosecution has examined PW-4 Dr. Anita Santosh Nimbekar. On 08.05.2012, PW-4 Dr. Anita had performed postmortem examination on the dead body of deceased Sonali alias Suvarna Parameshwar Khedkar. PW-4 Dr. Anita had noted the following injuries on the dead body of deceased Suvarna :-

“ Ligature mark -

- imprint ligature mark situated at the level of thyroid going horizontally, encircles the neck completely, 7cm. below the right mastoid level and 6.5 cm. below the left mastoid level. This is also sign of strangulation.

- ligature mark prominent anteriorly (dark brown colour groove) at the level of thyroid runs both lateral aspects, 18 cm. in length, 1 cm in width and 3 mm in depth with dark brown in colour with ecchymosed edges of ligature mark and on posterior aspect ligature mark slightly faint than anterior mark.
- Total length of ligature mark was 30 cm. and width 1 cm.
- Abrasion over neck on left side approximately 1.5 cm.”

13. In her opinion the said injuries were *ante-mortem* in nature. She has also noted that superior horn of thyroid cartilage was splitted. On cut section, laryngeal space, trachea filled with blood tinged fine froth. According to her, in strangulation case, such signs are noted. She has further noted that right and left lungs were oedematus and on cut section, fine whitish froth seen with blood tinged spots. Further, the neck vessels were engorged with blood. On cut section on neck, rupture of right sided carotid artery seen. The prosecution has proved the postmortem report Exhibit 31. PW-4 Dr. Anita has further opined that there were signs of struggles as indicated in column no.16 of the postmortem report. In her opinion such type of strangulation can be

caused by cable wire shown to her before the Court, which is Muddemal article no.1.

14. PW-4 Dr. Anita was subjected to cross-examination at length by the defence counsel. Though she has admitted that this was her first case of homicidal strangulation for conducting postmortem, however, she has positively answered the questions during her cross-examination. She has explained that except abrasion over neck on left side, there was no external injury showing sign of violence. According to her, such abrasion can be possible due to knot of the rope used for ligature or it can be caused in struggle also. She has also explained in her cross-examination that the ligature mark was prominent at front side and it was faint at the back side. She agreed that in case of suicidal death only, ligature mark will be prominent at front side and it becomes faint at the back side. She has also explained that in forceful homicidal strangulation, thyroid cartilage can be splitted and thyroid bone need not be fractured. According to her, in homicidal strangulation, fracture of laryngeal cartilage and tracheal ring are common. PW-4 Dr. Anita has further explained that she found superior horn of thyroid cartilage splitted and the word 'splitted' is used for fracture. She has further substantiated her contention that the superior horn is not a bone and the thyroid cartilage is also not a

bone. Thus, she has justified using of the word 'splitting'. There is nothing in the cross-examination to discard the expert's evidence and to draw any other inference about death of deceased Suvarna.

15. It appears that the prosecution case entirely rests upon circumstantial evidence. Learned counsel for the appellant-accused has vehemently submitted that motive in this case is very weak. The marriage of deceased Suvarna was performed with appellant-accused on 14.04.2012 and deceased Suvarna died in her matrimonial home on 08.05.2012 i.e. within 24 days from the date of her marriage. Learned counsel pointed out that there are no allegations of ill-treatment on account of any demand of dowry or any unlawful demand. It is true that the prosecution has come with only one incident occurred on 07.05.2012. However, we find from the evidence of the prosecution witnesses that the appellant-accused got disappointed to such an extent that he has not only questioned deceased Suvarna as to how she had gone to Paithan without his permission and even though deceased Suvarna explained about the same, the appellant-accused threatened deceased Suvarna in presence of the family members from her parents' side, but also abused and assaulted her. Thus, the family members from her parents' side i.e. her mother, cousin and uncles have rescued her and convinced the

appellant-accused. It appears that the appellant-accused is a hot tampered person. In our considered opinion that the prosecution has established the motive in this case.

16. It is not disputed that the appellant-accused was very well present in his house during the night of 07.05.2012 to 08.05.2012. The appellant accused has also admitted the said fact in his cross-examination under Section 313 of the Code of Criminal Procedure and he has also submitted his written statement Exhibit 45 in which he has admitted that he was present in his house during the entire night and in the morning. He has noticed that deceased Suvarna had committed suicide by hanging herself to the angle of roof of the house with the help of nylon rope. He immediately called his parents and removed the body of deceased Suvarna from the hanging rope and also removed the nylon rope. The said nylon rope was lying in his house itself. We already discussed in the forgoing paras that nothing was found during the course of drawing spot *panchanama* indicating the other possibility of death. On the other hand, the prosecution has proved homicidal death of deceased Suvarna beyond reasonable doubt. Further, the wire used in the commission of crime came to be seized at the instance of the appellant accused. PW-4 Dr. Anita has also opined that such ligature mark around the neck is possible by

using the wire produced before the Court. Further, the appellant-accused has given false explanation about the death of deceased Suvarna in her matrimonial home.

17. In the case of **Trimukh Maroti Kirkan** (supra) relied upon by the learned APP, the Supreme Court in paragraph no.12 of the judgment has made following observations :-

“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances

of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads : 2003 AIR SCW 4065

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

18. In the case of **State of West Bengal Vs. Mir Mohammad Omar and Ors.** reported in (2000) 8 SCC 382 the Supreme Court has dealt with the provisions of Section 106 of the Evidence Act and laid down the following principles in paragraph nos. 31 to 34 of the reports : 2000 AIR SCW 3230.

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from

other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody."

Applying the aforesaid principle, this Court while maintaining the conviction under Section 364 read with Section 34 IPC reversed the order of acquittal under Section 302 read with Section 34 IPC and convicted the accused under the said provision and sentenced them to imprisonment for life."

19. In the case of **State of Rajasthan V. Thakur Singh** reported in **2014 AIR (SCW) 4479**, in paragraph nos.22 and 26, the Supreme Court has made the following observations :-

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

26. In our opinion, the High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the Trial Court in a situation where Thakur Singh failed to give any explanation whatsoever for the death of his wife by asphyxia in his room. Moreover, the very fact that all the relatives of Thakur Singh turned hostile clearly gives room for suspicion and an impression that there is much more to the case than meets the eye. Even the complainant, Himmat Singh who squarely blamed Thakur Singh (in the FIR) for the murder of his wife, turned hostile to the extent of denying his relationship with Thakur Singh.

20. In the case of **Jayantilal Verma Vs. State of M.P (Now Chattisgarh)** reported in **2020 (13) Scale 143** while referring the observations made in the case of **Trimukh Maroti Kirkan** (supra), the Supreme Court has observed that when the incident had taken place inside, the onus is on the person residing in the house to give such

explanation. In such a situation, it is difficult for the prosecution to lead any direct evidence to establish the guilt of the accused.

21. In our considered opinion, the ratio laid down by the Supreme Court in **Trimukh Maroti Kirkan's** case (supra) squarely applies to the facts and circumstances of the present case. In the facts of the present case, it is extremely difficult for the prosecution case to lead the evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence is insisted upon. In the facts of the present case, initial burden to establish the case has been discharged by the prosecution. Said initial burden is comparatively lighter in character as per the observations made by the Supreme Court in **Trimukh Kirkan's** case. In view of the provisions of section 106 of the Indian Evidence Act, there is a corresponding burden on the appellant-accused to give cogent explanation as to how the homicidal death of deceased Suvarna occurred in the matrimonial home.

22. We find no substance in the submission made by the learned counsel for the appellant-accused that in the alternate his case falls under Section 304 of the IPC and not under Section 302 of the IPC. There is nothing in the evidence to substantiate the contention that the incident had taken place without any premeditation, in the heat of

passion during the course of quarrel. On the contrary, it appears that the appellant-accused had questioned deceased Suvarna for attending the immersion of ash ceremony at Paithan without his consent and abused and assaulted her on that count and though at that time she was rescued by the relatives from her parents' side, on the very next day, the appellant-accused had committed murder of deceased Suvarna in his bedroom. This could not have been done without premeditation. Appellant-accused in his written statement vide Exhibit 45 has not stated that a quarrel had taken place between him and deceased Suvarna on the count of the said incident and during the said quarrel, in the heat of passion the incident had taken place.

23. Thus, we are of the opinion that the approach of the Trial Court is the correct approach. We uphold the conviction and sentence passed by the trial Court. Hence, we proceed to pass the following order.

ORDER

- (i) Criminal Appeal is hereby dismissed.
- (ii) Criminal appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

S.P Rane

(V. K. JADHAV)
JUDGE