

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 256 OF 1998**

Allwyn Liguero Furtado } Appellant

Versus

The State of Maharashtra } Respondent

Mr. Ganesh Nadar I.by Mr. S.V. Marwadi for the appellant.

Ms. P.P. Shinde – APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : FEBRUARY 9, 2021.

PRONOUNCED ON : MARCH 19, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The appellant herein impugns the judgment and order dated 9th December 1997 passed by the Additional Sessions Judge, Greater Bombay in Sessions Case No. 465 of 1995, wherein the accused stands convicted for the offences punishable under section 302 and 201 of Indian Penal Code and sentenced to suffer imprisonment for life.

2. Such of the facts necessary for the decision of this appeal are as follows:-

a) That the accused is the only son of the deceased Leena. The deceased Leena along with the accused was initially residing at Bahrain. Her husband had expired 10 to 12 years prior to the date of incident. She had then returned to India. That she was residing in room no. B/6 at U.P. Nagar Building, Khar, Mumbai. Her son Alwynn i.e. the present appellant returned from Bahrain, he was initially residing along with his grandmother and thereafter he started residing with his mother at the given address. There was perpetual friction between the accused and the deceased. That on 16th December 1994 at about 9.30 a.m. to 10.00 a.m. Leena was found dead in her house. One of the resident of the said building namely PW.2-Lalit Navratan MalBed had noticed that there was a crowd in front of the room occupied by Leena and her son. He further saw Leena was lying in a prone position on the bed. She was facing downwards. That, PW-2 had accompanied the accused to the house of Dr. Somani who had refused to attend the deceased on the ground that it was a medico legal case. PW.2 had therefore informed the police telephonically about the death of Leena. The police had reached the spot within 15 minutes and the investigation was set in motion.

b) PW.7- Madhukar Choudhari-PI. of Khar Police Station lodged a report at the police station. That, he had received a telephonic information from PW-2 that Leena Furtado has committed suicide in her residential house. He had also

informed the A.P.I. that his information was based upon the disclosure made by the son of the deceased namely Allwyn Furtado (the present appellant).

c) On the basis of the said information and verification of the information, A.D. No. 101 of 1994 was registered under section 174 of Cr.PC. The F.I.R. further reads that the body was sent for autopsy and the postmortem findings revealed that the cause of death was asphyxia due to violent strangulation (unnatural). Crime No. 551 of 1994 was registered at Bandra Police Station for the offence punishable under section 302 of Indian Penal Code against unknown person.

3. At the trial the prosecution has examined as many as 10 witnesses to bring home the guilt of the accused.

4. PW.1-Father Valerian D'souza, brother of the deceased Leena has been declared hostile. According to him, while in Bahrain the accused was residing with Leena. They have returned to India in the year 1994. In the initial period the accused was residing with his grandmother at Mangalore for a couple of months and thereafter had started residing with his mother at Mumbai.

5. According to him, on enquiry the accused had disclosed to PW-1 that on the previous night of the incident, Leena had returned home late in the night with one person namely Pinto (PW-3). That a

quarrel had ensued between the accused and the deceased. That, PW.3 had allegedly assaulted the accused. Mr. Pinto had left the house and therefore, the accused had gone in search of PW.3 but when he returned home he saw the dead body of Leena lying on the ground. The last rites were performed on the dead body of Leena on 19th December 1994.

6. PW.2-Lalit MalBed is the person who had given telephonic information to the police on the basis of the disclosure made by the accused. He has deposed before the Court that he had no personal knowledge about the death of Leena but the accused had informed him about the suicidal death of Leena.

7. PW.3- Manual Pinto was closely associated with Leena. He has deposed before the Court that he was acquainted with Leena even before she got married. Their marriages were performed on the same day, same time and by the same priest and therefore, he always treated Leena as an elder sister. The deceased had complained to PW.3 about the behaviour of the accused, more particularly, to the extent that the accused was addicted to alcohol. He was harassing her by demanding money. That, he used to raise quarrel with her. PW.3 categorically admits that he visited the house of Leena on few occasions. According to PW.3, he was informed about the death of Leena at about 10.30 a.m. on 16th December 1994. He had been to the scene of offence i.e. Room No. B/6. PW.3 had questioned the accused about his whereabouts at the time of incident. He had further learnt from the accused as well as the neighbours that the accused was not at home at night, he returned

home in the morning and opened the door of the house with his keys. He has denied that the accused was complaining regarding the relationship of PW.3 with the deceased. He has denied to have stated the portion marked 'A' in his previous statement which indicated that the accused suspected some relationship between PW.3 and his deceased mother. However, the evidence of PW.1 would show that the relations between the accused and PW.3 were strained. He has denied to have surrendered Room no. B/6 in favour of landlord after the demise of Leena. The suggestion indicates that Leena was residing in the house of PW.3 which was surrendered after her death. The contention that the deceased was complaining to PW.3 about the behaviour of the accused is erroneously recorded as omission.

8. PW.4, Ms. Rodrix, the cousin of the deceased has been declared hostile.

PW.1, brother of the deceased and PW.4 have not supported the case of the prosecution and have been declared hostile.

9. PW.5-Sarojani Shetty happens to be the resident of the same building. She was acquainted with the deceased Leena. She has testified before the Court that on 16th December 1994 at about 9.00 a.m. to 9.30 a.m. she had heard cries of the accused. She, along with the other neighbours had rushed to the room of Leena. According to her, she had seen the deceased Leena lying on the bed with a rope on her neck and a similar rope on the ceiling fan above the bed. She has testified before the Court that on the previous day i.e. on 15th

December 1994 the accused had divulged to her that the deceased was quarreling with him and he had requested PW.5 to convince the deceased. Her evidence has not been shattered in the cross-examination.

10. PW.7, Madhukar Choudhari-PI. was attached to Khar Police Station on 16th December 1994. He has proved the contents of the First Information Report. According to him, the body was lying on the bed in a supine position. There was a rope on her neck. The rope was about 3 feet and 4 inches in length. A similar rope was seen on the ceiling fan above the bed on which the deceased was lying. PW.7 has further testified that there was an injury on the right hand of the deceased.

11. As far as the scene of offence is concerned, the house had a latch-lock. According to PW.7 there was no indication that the lock of the house of the deceased was broke open. He had interrogated the accused and had recorded his statement. In the course of interrogation, it had transpired that the accused had come to the house at about 8.00 p.m. on 15th December 1994. His mother was not at home. She returned at about 11.00 p.m. There was a quarrel between the mother and son. The mother (the deceased) seemed to be annoyed that her son was not working gainfully and, therefore, she had driven him out of the house. He returned home at about 9.00 a.m. on the next day, he opened the door of the house with his own keys. He found the dead body of his mother lying on the ground. He lifted the dead body and placed it on the bed and after that he had become unconscious.

12. The Doctor who had performed autopsy has divulged to PW.7 that the cause of death was asphyxia due to violent strangulation therefore he had lodged the F.I.R. on behalf of the State. It is clear from the evidence of PW.7 that the demeanor of the accused seemed to be suspicious and the answers he had given in the course of investigation had further reassured him that the deceased had died a homicidal death at the hands of the accused.

13. PW.7 has been cross-examined at length. He has been cross-examined about certain omissions in the F.I.R. at Exhibit-17. However, it needs to be appreciated that the F.I.R. is lodged only for the purpose of setting the law in motion. In the present case the spot panchnama, inquest panchnama and postmortem was conducted in A.D. enquiry. The statement of the accused was also recorded in A.D. enquiry and it was suspected that the accused / appellant herein is the perpetrator of the crime. It is true that a suspicion cannot take the place of proof. In any case, initially the offence was registered against unknown person. The recovery of the string and knife at the behest of the accused on 19th December 1994 is not a material aspect.

14. PW.10-Netaji Tambvekar was attached to the Khar Police Station. He had received the papers of A.D. enquiry in A.D.R. No. 101 of 1994 from PW.7. He had opined that the accused seems to be the perpetrator of the crime. He had recorded the statement of the witnesses and has proved the omissions and contradictions in their substantive evidence.

15. The defence of the accused is as follows:-

“After I came to India from Behrin I stayed with my mother Leena for about 2 to 4 days. My mother had purchased a flat at Naigaon. Where I started residing separately. After that I went to Manglore. I lived with my grandmother. After about 2 and half months I came to Mumbai and went to my flat at Naigaon. I was told by a neighbour that there was a telephone call from my mother Leena and that I was called at her place.

I went to U.P. Nagar Bldg. The front door was merely closed. It was not locked. I opened the same and went inside the room . I saw the dead body of Leena. I started crying. The neighbours came inside the room. I became unconscious. I was removed to other room. I have no personal knowledge who had contacted to the police and who came to the spot.

The witness Pinto was after my mother’s property. He told me that he had already given about 60,000/- to Leena. I made inquiries with my mother Leena. She denied to have receive any amount from Pinto. That time Pinto had threatened me that he would recover the amount by other means. After the incident it was transpired that it was witness Pinto who had manipulated a false case against me. He was often seen in the company of the police. During the pendency of the case Pinto had disposed off the moveable and immoveable property belonging to me and my mother Leena.

It is not true that I was residing with Leena for about 2 and half years next before the incident in U.P. Nagar building.

I did not see the string on the neck and on the fan at the spot.

I do not wish to add anything more”.

16. The learned counsel for the appellant vehemently submits that there is no cogent and convincing evidence against the accused/appellant. PW.1 the brother of the deceased and PW.4 Mrs. Mary Rodrix have turned hostile and therefore, their evidence cannot be relied upon. Moreover, the recovery of the string and knife is also not reliable evidence. The learned counsel submits that in the present case the accused has been convicted only because he was suspected to have been the author of the injuries caused to the deceased. It is emphasised that suspicion cannot take the place of proof.

17. Per contra, the learned APP submits that the case rests on circumstantial evidence and that the prosecution has established the chain of circumstances. That the accused was the first person to have seen his mother 'dead' and the last person to have left the house. In the interregnum the deceased had not come in contact with anyone. The accused has been unable to demonstrate his absence from the house on the previous night or soon before he had seen the dead body of his mother. That he was at loggerhead with his mother. There was no other person who had any motive to eliminate the deceased and therefore the judgment of the Sessions Court, according to her deserves to be upheld.

18. Upon meticulous examination of evidence on record the incriminating circumstances against the accused apparently are as follows:-

- a) The accused was residing with his mother till she breathed her last which is proved through PW.2 -Lalit

MalBed and PW.5- Sarojani Shetty.

b) That the accused was the first person to see his mother lying dead. According to him, she had committed suicide by hanging but when he saw her she was lying on the ground and he had placed her body on the bed. It is not known as to who had lowered the dead body from the rope to the ground. The rope had not got cut due to weight. It appears to have been cut. There were ligature marks on both the wrists of deceased which would show that her hands were tied before she was killed and therefore the opinion of the doctor that it was a case of violent strangulation.

c) The accused had withdrawn himself from the scene at the time of arrival of the police. He had reportedly gone to the house of the cousin of the deceased for giving the information.

d) The lock of the house was not broke open. According to the accused he had a spare key and therefore it is clear that he was the only person who could have peaceful ingress and egress to the house.

e) PW.1. maternal uncle of the accused has been declared hostile but he has admitted that he had learnt from the accused that on the previous day deceased Leena had

returned home late at night along with Mr. Pinto i.e. PW.3. There was a quarrel between Pinto and the accused. The accused had searched for Mr.Pinto after he had left the house and soon thereafter he had returned home. He had informed PW.1 that when he returned he saw the dead body of his mother lying on the ground.

19. This evidence needs to be taken into consideration as the said disclosure was made to PW.1, who happens to be the maternal uncle of the accused. The accused had reposed faith in PW.1 and it appears that it was out of love for the nephew that PW.1 has resiled from his previous statement.

20. No doubt PW.4 has resiled from her earlier statement and has denied to have stated portion marked 'C' in her statement. The said contradiction is proved by the Investigating Officer. The contradiction, in fact, pertained to the extra judicial confession of the accused.

21. The Apex Court in the case of *Ramesh Harijan v/s. State of U.P*¹ has held as follows :-

“It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof”.

1 AIR 2012 SC 1979

22. The Apex Court in the case of *Deonandan Misra Vs. State of Bihar*² has held as follows :-

“It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”

23. The circumstances on record proved that the deceased had not come in contact with anyone besides the accused in the intervening night of 15/16-12-1994. The fact that there are injuries on both her wrists needs to be read, in consonance with the opinion of the doctor, that the cause of death was asphyxia due to violent strangulation (unnatural) would be sufficient to hold the accused guilty of matricide. The false explanation offered by the accused proves to be an additional link in the chain of circumstances. The material adduced by the prosecution at the trial establishes the chain of circumstances which is inconsistent with the innocence of the accused.

² 1955 AIR 801

24. In view of the above discussions, no leniency can be shown to the accused. The prosecution has proved its case beyond reasonable doubt. Hence, the following order:-

ORDER

- a) The appeal is dismissed.
- b) The conviction and sentence awarded to the appellant for the offence punishable under section 302 and 201 of Indian Penal Code passed by the Additional Sessions Judge, Greater Bombay in Sessions Case No. 465 of 1995 is upheld.
- c) The appeal is accordingly disposed of.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)