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

CRIMINAL APPEAL NO. 495 of 2003

The State of Maharashtra
(Through Police Inspector,
Ozar Police Station, Tal.: Niphad,
Dist. Nashik)

... Appellant
(Original Complainant)

V/s.

Anada Murlidhar Borade
age:45 years
R/at Ganesh Nagar, Ozar Shivar,
Tal.:Niphad, Dist.: Nashik.

... Respondent
(Original Accused)

Mr. H.J. Dedhia, APP for the Appellant-State.

**CORAM : PRASANNA B. VARALE
& S.M. MODAK, JJ.**

11th January 2021

JUDGMENT (PER S.M.MODAK, J)

This is one more instance of custodial death. Here the victim is the wife and the wrongdoer is the husband. In this case the deceased wife is subjected to ill treatment. Sometime the wife is compelled to put an end to her life. Sometime the cruelty goes to such an extent that

the husband is responsible for murdering his wife.

2. In the present case the husband/accused is charged for committing murder of wife by name Bharati by hitting on her head with the help of wooden pastel. The incident took place in the intervening night of 10th December 2001 and 11th December 2001. On account of occupation, the accused was residing at Thane. He married with deceased Bharati 20 years back. They were having one son by name Nilesh and a daughter by name Sonali. Initially, all were residing at Thane. Deceased Bharati suffered from tuberculosis. They have decided to shift Bharati to native place of the accused at Ozar.

3. She went there alongwith the two children and stayed there alongwith her in-laws. They were residing in one house in Ozar, Dist. Nashik. Her brother-in-law Ramdas alongwith his wife Pushpa, PW No.6 were residing in the same house at Ozar. On every weekend accused used to visit the house.

4. The deceased was having sisters and out of them PW No.4 Alka is one of the sister whereas Prakash, PW No.2 is her brother who happens to be the first informant. The accused came to Ozar prior to the incident. Both the spouses had been to the house of Alka, PW No.4 (sister of the deceased). They returned home. Deceased Bharati

has taken food from her sister-in-law i.e. PW No.6 Pushpa. The accused and the deceased slept in the kitchen whereas other members slept in the front room of the house. There was a quarrel in between both the spouses on the day earlier to the date of incident. When Pushpa PW No.6 woke up early in the morning on 11th December 2001, she has noticed deceased Bharati lying in the kitchen room motionless. The accused was not found there. She contacted Ratnakar Kulkarni, PW No.3. Message was also sent to Prakash brother of the deceased, PW No.2. They arrived at the spot. After seeing the situation on the spot, brother Prakash lodged the complaint with police station, Ozar and offence under Section 302 of IPC were registered.

5. Whereabouts of the accused were not known till 15th December 2001. He was arrested having clothes with blood stains. Police found accused responsible for the murder and hence he was chargesheeted. He faced the trial. Prosecution has examined 8 witnesses. It does not find favour with the 1st Adhoc Additional Sessions Judge, Nashik who has acquitted the accused vide the judgment dt.19.8.2002 and being aggrieved by the said judgment, State has filed the present appeal.

6. We have heard Additional Public Prosecutor Mr.Dedhia. None appears for Respondent-defence.

7. On hearing them and on considering the record, we find that the

trial Court has not committed any fault in acquitting the accused. The law on the point of interference in the appeal is well settled. Generally, the Appellate Court is slow in interfering the said decision. It can be inferred with, if the decision is perverse. When the decision is well reasoned after proper appreciation, there is no room for interference. Hereinafter, we will give the reasons for our opinion.

8. No doubt it is true that when there is custodial death, the person having custody is also burdened. There are various types of custodial deaths; death during police custody, death during jail custody and the death when the accused and wrongdoer are staying together. Merely because there is certain burden on the wrongdoer accused, it does not mean to say that the prosecution is discharged from initial burden to prove basic ingredients for drawing an inference about custodial death. In this case even though it has come on record that the accused used to come to Ozar on weekend and he did come to Ozar, the evidence about joint stay of both the spouses in the intervening night is not sufficiently proved through the prosecution witnesses. The only concerned witness is PW No.6 Pushpa. She happened to be wife of Ramdas. Said Ramdas is brother of the accused. Though she stated about arrival of the accused to Ozar and their joint visit to the house of Alka (sister of the deceased) earlier to the incident, from her evidence it cannot be inferred that in the intervening night both the deceased and

accused have stayed in the house at Ozar. Except her there is no other witness examined on the point of joint residence of the accused and the deceased. We have minutely read her evidence but we find particulars missing.

9. There are three witnesses examined who are relatives of the deceased; one is the brother Prakash, PW No.2 who is the first Complainant. Second is Swati, PW No.5(wife of the Complainant Prakash) and 3rd one is Alka, PW No.4 (sister of the deceased). PW No.4 Alka was examined on the point of joint visit of accused and deceased to her house in the evening of 10th December 2001 any objectionable incident has not taken place in her presence. So she is not aware about any quarrel and the reason therefor. She happened to be part of the incident after getting knowledge. She has deposed about the situation at the spot noticed by her. It does not show any involvement of the accused whereas PW No.5 Swati has mainly deposed what she had seen at the spot and what was disclosed to her by Pushpa, PW No.6. Witness Pushpa disclosed her about the quarrel in between both the spouses, a day earlier. However, this fact is not stated by PW No.6 Pushpa in her evidence. So her evidence does not throw any light about involvement of the accused.

10. Lastly, the Complainant Prakash who had given some particulars about the relationship in between both the spouses. It is not disputed

that deceased was suffering from Tuberculosis. It is not disputed that due to that ailment, deceased was residing separately from the accused. It has also come in his evidence that the deceased had taken treatment at Nashik. It has come in his evidence that the accused was having some abnormal behaviour. Accused disliked behaviour of his wife/deceased. But it has not come in his evidence that any objectionable incident has taken place in his presence. He has deposed about what he has seen at the spot i.e. blood pool, deceased lying there having head injury and wooden pastel lying there. He has also seen two quilts at the spot. So he has connected two incidents. One is about strained relationship between both the spouses on one hand and whatever noticed at the spot. He held accused responsible and lodged a complaint for the offence punishable under Section 302 IPC.

11. He was not aware about joint stay of both the spouses at the spot in the intervening night. No doubt the prosecution has relied upon various circumstances including absence of the accused at the spot after arrival of the relatives, his arrest on 15th Deceased 2001, joint residence of both the spouses in the house. No doubt from the prosecution evidence, one fact is established that the accused was not present at the spot when the relatives have arrived there. He was arrested on 15th December, 2001. PW-7 Dattatray Kshirsagar is a witness examined on that point. The accused was brought to Ozar Police Station from the house of sister of the accused. He does not know which clothes were

wore by the accused and that too having blood stains. There is inconsistency about the vehicle/jeep used for bringing the accused to police station. Whether it is a jeep of this witness or police jeep? The learned Sessions Judge has emphasized on this inconsistency. The evidence of this witness is not of any material help to the prosecution.

12. Lastly, Ratnakar Kukarni PW No.3 is the witness who visited the spot when he got the message about lying of the deceased Bharati in the house motionless. Except noticing few things on the spot, his evidence is not of any help to the prosecution. A Medical Officer PW No.1 has done his job of carrying out post mortem and deposing before the Court Cardio-respiratory failure due to multiple injuries is a cause of death. This is not disputed by the defence.

13. In fact the defence has taken the opportunity by putting up their theory of schizophrenia. From the answers given by the witness it cannot be inferred that schizophrenia patient is not having any control over his acts. The defence had given suggestions to other witnesses also about the accused being suffering from schizophrenia. Defence did not find any support.

14. The investigating officer has carried out the investigation. The weapon was found at the spot only. He has sent the articles including clothes of the deceased, articles found at the spot, clothes of the accused

for the examination as Chemical analyzer. Blood of 'A' group was found on the clothes of the accused. Even the blood group of the deceased is of 'A' group. This could have been helpful to the prosecution if they could have successfully proved the presence of the accused in the house in the intervening night of 10th December 2001 and 11th Deceased 2001. Unfortunately, it has not happened here.

15. The prosecution cannot gain any momentum from the evidence of the first informant. What happens when there are no eye witnesses and case rests purely on circumstantial evidence. The prosecution can succeed only when the chain is established facts without any interpretation. We find missing links and unsatisfactory evidence in the prosecution case. We do not find any wrong committed by the trial Court in acquitting the accused. Hence, no interference is warranted. Criminal Appeal is dismissed.

S.M.MODAK, J

PRASANNA B. VARALE, J