

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 481 OF 2015

Ranjit s/o Yadav Kharat
Age – 30 years, Occu – Labour,
R/o. Brujwadi, Sindkhedraja,
District Buldhana
At present residing at
S.S. Engineers, Shendra MIDC,
Aurangabad.

... Appellant
Orig. Accused

Versus

State of Maharashtra,
Through Karmad Police Station,
District Aurangabad.

... Respondent

.....
Mr. Uttam L. Telgaonkar with Mr. Nitin U. Telgaonkar and Mr. Ajinkya
Reddy, Advocates for the Appellant.
Mr. A. V. Deshmukh, APP for the Respondent-State.
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**CORAM : SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.
DATED : 30th JUNE 2022**

ORAL JUDGMENT (PER SARANG V. KOTWAL, J.):

1. The appellant has preferred this appeal challenging the judgment and order dated 23.03.2015 passed by the Additional Sessions Judge-4, Aurangabad in Sessions Case No. 101 of 2013. By the impugned judgment and order, the appellant was convicted for commission of the offence under Section 302 of I.P.C. and was sentenced to suffer life imprisonment and to pay fine of Rs.5000/- and in default of payment of fine, to suffer R.I. for three months. The appellant was in custody since 14.11.2012 and set off was given to

him.

2. The prosecution case is that, on 13.11.2012, at about 6.30 p.m., in the house of the appellant at Shendra M.I.D.C. Aurangabad, the appellant committed murder of his wife Kanchan by strangulating her on account of matrimonial dispute between them.

3. According to the prosecution case, Deepali, sister of the deceased Kanchan and Deepali's husband went to the house of the appellant. They saw that the appellant was sitting on her chest. He ran away on seeing them. They took Kanchan to Hospital. She was declared dead. Initially, accidental death report was registered and on 14.11.2012, the F.I.R. under section 302 of I.P.C was registered after post mortem was conducted. The appellant was arrested. Investigation was carried out, initially under the accidental death report and then in respect of registration of the offence. After conclusion of the investigation, charge sheet was filed. The case was committed to the court of Sessions. During trial, the prosecution examined 9 witnesses, as follows:-

- i) P.W.1 Anil Sahebrao Bansode was Deepali's (P.W.2) Husband.
- ii) P.W.2 Deepali w/o Anil Bansode was Kanchan's sister
- iii) P.W.3 Surekha w/o Tejrao Koli was another sister

- iv) P.W.4 Sachin Ganpatrao Deshmukh was panch to the spot panchanama
- v) P.W.5 Sham Sakharam Kharale was neighbour of Kanchan, who turned hostile.
- vi) P.W.6 Radha w/o Sham Kharale was another neighbour who also turned hostile.
- vii) P.W.7 Dr. Vijay Govindrao Kamble had conducted the post mortem examination.
- viii) P.W.8 Santosh Bhimrao Gadekar had snapped photographs of the spot.
- ix) P.W.9 Ambadas Bhagappa Dhadve was the investigation officer.

4. Learned counsel for the appellant submitted that the case rests upon circumstantial evidence and there are no incriminating circumstances, which are proved by the prosecution. There was no previous complaint about harassment caused by the appellant to the deceased. F.I.R. was registered belatedly. On the face of it, no explanation is offered. P.W.1 Anil and P.W.2 Deepali are not reliable witnesses. There is reference to one Santosh More by the neighbours. There is no further explanation offered by the prosecution. The 'last seen theory' is also not established because the evidence of P.W.1 Anil and P.W.2 Deepali is not believable.

5. Learned A.P.P. submitted that there is direct evidence against the appellant. There is no reason to disbelieve the evidence of P.W.1 Anil and P.W.2. Deepali. Even the neighbours' evidence has been corroborated by the evidence of P.W.1 Anil and P.W.2 Deepali. Even the neighbours were subjected to cross examination and their police statements were pointed out to them for contradictory part and therefore, their evidence should not be totally ignored. There is no delay in lodging the F.I.R. as the F.I.R. was lodged only after post mortem examination was carried out.

6. We have considered these submissions. P.W.1 Anil has stated that he was running a shop at Cannaught Garden, Cidco. On 13.11.2012 at about 4.00 p.m., he received a phone call from his wife Deepali (P.W.2) that there was quarrel going on between the appellant and deceased. P.W.1 Anil did not immediately go to the house of the appellant as he was busy in some work. He again received a phone call from his sister-in-law Surekha (P.W.3). She also informed that quarrel was going on between deceased and the appellant and she requested P.W.1 Anil to go there. After that, P.W.1 Anil alongwith his wife P.W.2 Deepali went there. He has deposed that when they reached the house of the appellant, they saw that the deceased was lying on the ground and the appellant was sitting on her chest. P.W.2 Deepali pushed him aside. Both of them lifted Kanchan and put her in a jeep. The appellant ran away. Kanchan

was taken to M.G.M. Hospital but she was declared dead. He informed the same to the parents of Kanchan and other relatives. On the next day, the dead body was taken to GHATI Hospital. After post mortem was conducted, the opinion was given that Kanchan died due to throttling. He has deposed that the appellant was in the habit of consuming liquor and used to assault Kanchan under the influence of liquor. On 14.11.2012, he lodged the F.I.R. that is produced on record Exh.14.

7. In the cross examination, P.W.1 Anil has stated that approximately 10 to 12 minutes are required to reach to his house from his shop. He received the phone call from Surekha at about 6.00 p.m. He then first went to his house approximately at 6.10 p.m. and took his wife Deepali with him to go to the house of the appellant. Within 15 to 20 minutes they reached there at about 6.30 p.m. There was police Chowki in M.G.M. hospital. He has admitted that he has not given any complaint to the police at MGM Hospital. He also admitted that there was no previous complaint either by Kanchan or any relative against the appellant regarding ill-treatment to the deceased. F.I.R. is produced at Exh.14.

8. The deposition of P.W.2 Deepali is exactly similar to that of P.W.1 Anil.

9. P.W.3 Surekha is another sister of Kanchan. She has deposed

that on 13.11.2012 at about 5.00 p.m., she called Kanchan on her mobile phone but her mobile was switched off. She called Kanchan's neighbour Radhabai Karale. Radhabai told P.W.3 Surekha that there was quarrel between Kanchan and her husband. She asked P.W.3 Surekha to come to Aurangabad. This witness then called Deepali P.W.2 and informed her that there was quarrel between Kanchan and her husband and she should go to the house of Kanchan and see her. At about 7.00 p.m. Deepali told her that the appellant had assaulted Kanchan and she was unconscious and she was taken to M.G.M. Hospital.

10. P.W.4 Sachin Deshmukh was the panch to the spot panchanama. There is hardly any incriminating material at the spot. His evidence is not much important. Even the spot panchanama which is produced at Exh.21 is not very crucial. The only important fact in this panchanama is that it was conducted at 9.00 a.m. on 14.11.2012 pursuant to the enquiry made for accidental death.

11. P.W.5 Sham Kharale is an important witness. He was declared hostile by the prosecution. He has stated that the appellant was residing with his two children and the deceased Kanchan in their house. This witness was residing near their house. The appellant used to drink liquor. On 13.11.2012 this witness returned home at about 5.30 p.m. He received a call from P.W.2 Deepali as she wanted to talk with deceased Kanchan. This witness went to the

house of appellant. At that time one Santosh More was present there and he informed this witness that Kanchan was unconscious. This Santosh More did not allow him to go there. This Santosh More himself told P.W.2 Deepali that Kanchan was unconscious and they should take her to the Hospital. The evidence about Santosh More is very important. This witness was declared hostile and A.P.P. cross examined him. During cross examination, nothing was asked in respect of Santosh More. This aspect is very important in the context of this case because it is also indicative of how P.W.2 Deepali and P.W.1 Anil came at the spot. In the cross examination he was only shown portion marked "A" and "B" from his statement, however, no question was asked as to how the description in those portions was contradictory and no explanation was sought from him except as to why this statement was recorded.

12. P.W.6 Radha Kharale was another neighbour. She has stated that the appellant was working as labourer. She deposed that on 13.11.2012 there was quarrel in the house of the appellant but she has not deposed that she went to the house of the appellant to see who was quarrelling. She has only stated that the appellant and his wife resided in their house. So far as the quarrel is concerned, she has not deposed that between whom the quarrel was going on. She has also deposed that P.W.5 went to the house of the appellant after receiving call from Kanchan's sister. When P.W.5 came back he told this witness that Kanchan was unconscious. In the cross examination

conducted by learned A.P.P. the only portion marked "A" and "B" were shown to her. However, no questions were asked about contradictions in her police statement and her depositions.

13. P.W. 7 Dr. Vijay Kamble had conducted post mortem examination. He had mentioned four injuries on the dead body. Three were in the nature of abrasions on forearm and lower lip. There was one ligature mark, 22 X 2.5 to 1 cm. in size, on the neck and cause of death was given as 'asphyxia due to strangulation'. There is no reason to disbelieve this witness that deceased had died due to strangulation. The post mortem notes are produced on record at Exh.31.

14. P.W.8 Santosh Gadekar was photographer. He had taken photographs of the spot. His evidence is also not of much significance.

15. P.W.9 P.S.I. Ambadas Dhadve is another important witness. He has deposed that on 13.11.2012 at about 9.15 p.m., one M.L.C. came to Karmad police station and A.D. No. 57 of 2012 was registered by P.C. Shaikh. Enquiry of said A.D. Exh. 49 was handed over to him. It is mentioned in the A.D. that Kanchan was taken to M.G.M. Hospital by P.W.1 Anil Bansode and at about 7.00 p.m. she was declared dead. There was suspicion expressed by P.W.9 P.S.I. Ambadas Dhadve regarding cause of death when this A.D. was

registered. P.W.9 carried out investigation. First, he caused to prepare inquest panchanama and then the body was sent for post mortem examination. On the next day morning he visited the spot of incident and carried out spot panchanama. He has deposed that PHC Chaure recorded the complaint at M.G.M. Hospital and produced it before him. C.R. No. 161 of 2012 was registered under Section 302 of I.P.C. at Karmad police station. The F.I.R. produced on record vide Exh. 14 shows that it was registered at 1.00 p.m. on 14.11.2012. After that, the appellant was arrested. Statement of P.W.2 Deepali was recorded under Section 164 of Cr.P.C. He has proved portion marked "A" and "B" from the statements of P.W.5 and 6. In his cross examination, he has admitted that P.W.1 Anil did not lodge any complaint when he accompanied this witness at the time of conducting spot panchanama. P.W.9 also carried out search for rope or any material which had caused ligature mark on the dead body but no material or rope was found in the investigation neither was it recovered at the instance of the appellant.

16. The learned Judge of the trial court has considered this evidence and believed P.W.1 Anil and 2 Deepali. On the appreciation of evidence of P.W.6 Radha Kharale, the learned Judge observed that when quarrel was going on in the house of the appellant, at that time, the appellant and his wife were in the house. This portion is not supported by the evidence. He has also observed that P.W.1, 2 and 5 had stated that they had seen deceased in the company of

accused and therefore this amounts to last seen theory. This again is not correct on facts as P.W.5 has not stated so in his deposition. Therefore, based on some erroneous facts, the learned Judge has convicted the appellant. We are in disagreement with this finding. We are also unable to hold that P.W.1 and 2 are telling the truth. They went there when they were informed by Surekha, the sister P.W.2 Deepali that quarrel was going on between the appellant and deceased Kanchan. It took them some time to reach to the house of the appellant. P.W.1 has admitted that it took 15 minutes for him to reach to his house from his shop. Finally, he reached at the spot at 6.30 p.m.. Therefore, it is very difficult to believe that when they reached to the spot the appellant was sitting on the chest of deceased. They have not stated anything further as to what he was actually doing. Their deposition does not inspire confidence. They had immediately taken Kanchan in unconscious state to M.G.M. Hospital. They had sought help of the neighbours. The accused was not found. As is reflected clearly from the evidence that P.W.1, he did not make grievance either in the police Chowki of the hospital or even to the investigating officer when the spot panchanama was carried out. On the next day he raised suspicion and made grievance against the appellant. The F.I.R. was lodged at 1.00 p.m. on the next day. In the context of this case, delay assumes importance particularly when P.W.1 had accompanied the police officer in the morning when the spot panchnama was conducted at 9.00 to 9.40 a.m. This also shows that F.I.R. was lodged at 1.00 p.m. on the next

day of the incident as an afterthought. There was no reason as to why P.W.1 could not have raised any grievance or expressed suspicion against the appellant all this while. Therefore, the evidence of P.W.1 and 2 is not free from doubt. The benefit of doubt in respect of their evidence must go to the appellant. Once the evidence of P.W.1 and 2 is disbelieved, there is no evidence to show that the appellant was lastly seen in the company of deceased while she was alive. The other two witnesses do not say that the appellant was seen lastly in the company of deceased when she was alive. The prosecution has not brought out the contradictions from their police statements. They were not confronted with events mentioned by them in the contradictory version deposed by them in the police statements.

17. The another important aspect that has come in the evidence of P.W.5. He has referred to one Santosh More's presence in the house of the appellant. The prosecution cross examined this witness. No questions were asked about Santosh More. Therefore, the evidence of this witness speaks about the presence of a third person of which no explanation whatsoever is offered by the prosecution in the entire case. Apart from that, there is no other evince against the appellant in the form of recovery of any incriminating material. The time of incident is around 6.00 p.m. in the evening, which is not odd hours. Burden to prove his innocence did not shift on the appellant because the prosecution has not proved that deceased was in the

custody or in the company of the appellant at that point of time.

18. In the background of this discussion, it will not be safe to convict the appellant. He deserves benefit of doubt. Hence, the following order:-

O R D E R

- I. Criminal appeal is allowed.
- II. The judgment and order dated 23.03.2015 passed by the Additional Sessions Judge-4, Aurangabad in Sessions Case No. 101 of 2013 is quashed and set aside.
- III. The appellant is acquitted from the charge framed against him. The appellant shall be released forthwith if not required in any other case.
- IV. The appellant shall execute bail bond to the satisfaction of the trial court in accordance with Section 437-A of the Code of Criminal Procedure, 1973 within one month from his release from jail.

(BHARAT P. DESHPANDE, J.)

(SARANG V. KOTWAL, J.)

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