

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 289 OF 2015

Keda Pandit Bachhav,	]	
Age – 32 years, Occ: - Nil,	]	
R/o. Kashti, Taluka Malegaon,	]	
District Nashik.	]	
	]	
At present lodged at Nashik Road Central	]	
Prison District Nashik.	]	Appellant

Vs.

The State of Maharashtra	]	
Through Vedner-Khakurdi Police Station,	]	
Taluka Malegaon, District Nashik.	]	Respondent

Mr. Ganesh Gole a/w Mr. Bhavin Jain for Appellant.
Mr. H. J. Dedhia APP, for Respondent-State.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.**

DATE : 25th JULY 2022.

ORAL JUDGMENT (PER A. S. GADKARI, J) :

Appellant has impugned Judgment and Order dated 30th January 2015, passed by learned Additional Sessions Judge, Malegaon, District Nashik in Sessions Case No. 20 of 2013, convicting Appellant for the offence

punishable under Section 302 of the Indian Penal Code (for short the “IPC”) and sentencing him to rigorous imprisonment for life and to pay fine of Rs. 2,000/-.

2. Heard Mr. Gole, learned Advocate for Appellant and Mr. Dedhia, learned APP for Respondent-State. Perused entire record.

3. It is the prosecution case that, deceased Kedabai @ Lalita was the second wife of Appellant. Appellant had earlier married with Ujwalabai and had divorced her. Appellant subsequently married with deceased Kedabai @ Lalita. There were frequent quarrels between Appellant and deceased Kedabai @ Lalita on the ground that, Appellant was intending to bring back his earlier wife Ujwalabai for cohabitation. It is the precise motive alleged behind commission of the present crime.

That, in the intervening night of 15th October 2012 and 16th October 2012 between 12.30 a.m. to 12.45 a.m., Appellant committed murder of Kedabai @ Lalita by assaulting her on her head with a wooden log and by strangulating her.

At about 10.00 am of 16th October 2012 Baban U. Sonawane (PW.4) heard cries of children of deceased Kedabai @ Lalita from the room which was rented to Appellant and deceased. He therefore looked inside the house and saw that, Kedabai @ Lalita was lying dead on the floor of the house

on the mattress. There was bleeding injury to her head. The household articles were in scattered condition in the house. He accordingly informed the said fact to police. The close relatives of the deceased Kedabai @ Lalita namely Anil N. Nikam (PW.1), cousin brother ; Smt. Shobha T. Khairnar (PW.5), sister and Thakubai Daga Nikam (PW.11) mother of deceased Kedabai @ Lalita were informed. They reached at the spot of incident within 45 minutes. Anil N. Nikam (PW.1) lodged crime with Vadner-Khakurdi Police Station, Taluka Malegaon, District Nashik on the same day. Inquest panchanama (Exh-17) was conducted by investigating officer Shri. Haribhau P. Kolhe (PW.12) in presence of panch witness Arun B. Vichare (PW.2) and the spot/scene of offence panchanama (Exh-19) was drawn in presence of panch witness Ashok R. Khairnar (PW.3). The photographs of scene of offence were taken by photographer Dinesh A. Shinde (PW.8).

4. The dead body of Kedabai @ Lalita was sent for conducting post mortem examination. Dr. Faisal Suleman Sohel Ahmed (PW.9) on 16th October 2022 was on duty as a Medical Officer in General Hospital Malegaon, District Nashik. He performed autopsy on the dead body of Kedabai @ Lalita at about 12.45 p.m. on the same day. He noticed following external injuries :-

- (i) Evidence of avulsion over scalp measuring 10x5x2 c.m. with fracture underlying the bones.

(ii) Neck was crushed with fracture underlying hyoid bone.

After conducting post mortem, he opined the probable cause of death of Kedabai @ Lalita was due to traumatic asphyxia as a result of throatling with head injury. He accordingly prepared post mortem report (Exh-41) and also issued advance Death Certificate (Exh-43). After receipt of necessary reports from the Forensic Science Laboratory, Shri. Haribhau Kolhe (PW.12), investigating officer, submitted charge-sheet in the Court of Judicial Magistrate First Class, Malegaon.

5. As the offence punishable under Section 302 of the IPC is exclusively triable by Court of Sessions, Judicial Magistrate First Class, Malegaon committed the present case to the Court of Sessions as contemplated under Section 209 of the Criminal Procedure Code (for short "CrPC") on 1st February 2013.

Trial Court framed charge below Exh-4 for the offence punishable under Sections 302 and 498-A of the IPC. The said charge was read over and explained to Appellant in vernacular language, to which he denied and claimed to be tried. The defence of Appellant was of total denial.

6. To prove the guilt against Appellant and in support of its case prosecution examined in all 12 witnesses namely, Mr. Anil N. Nikam (PW.1), cousin brother of deceased who lodged FIR (Exh-15); Mr. Arun B. Vichare

(PW.2), panch witness to inquest panchanama (Exh-17); Mr. Ashok R. Khairnar (PW.3), panch witness to spot panchanama (Exh-19), Mr. Baban U. Sonawane (PW.4), Sarpanch of Grampanchayat of village Kashti; Ms. Shobha T. Khairnar (PW.5), sister of deceased Kedabai @ Lalita; Mr. Dinkar D. Khairnar (PW.6), panch witness to memorandum statement (Exh-29) and recovery of wooden log at the instance of Appellant panchanama (Exh-30); Mr. Lotan R. Khairnar (PW.7), another panch witness to recovery of wooden log (Exh-30); Mr. Dinesh A. Shinde (PW.8), photographer to photos (Exh-25/1 to 25/5); Dr. Faisal Suleman Sohail Ahmed (PW.9), Medical Officer, conducted post mortem (Exh-40) of deceased; Mr. Narayan B. Mohite (PW.10), panch witness to arrest panchanama of Appellant (Exh-47); Ms. Thakubai D. Nikam (PW.11), mother of deceased Kedabai @ Lalita; Mr. Haribhau P. Kolhe (PW.12), the Investigating Officer.

After recording the evidence, Trial Court recorded statement of Appellant as contemplated under Section 313 of the Criminal Procedure Code (for short the “CrPC”). The Trial Court by its impugned Judgment and Order has convicted Appellant for the offence punishable under Section 302 of the IPC however was pleased to acquit him from the offence punishable under Section 498-A of the IPC.

7. Minute perusal of entire evidence on record discloses that, the prosecution case is based on circumstantial evidence. The circumstances propounded by the prosecution against the Appellant can be summarized as under :

- (i) Motive,
- (ii) Finding of blood stains on the cloths of Appellant,
- (iii) Recovery of wooden log at the instance of Appellant under Section 27 of the Indian Evidence Act.

8. In the present case, Anil N. Nikam (PW.1), Shobha T. Khairnar (PW.5) and Thakubai D. Nikam (PW.11) are the close relatives of deceased Kedabai @ Lalita. Baban U. Sonawane (PW.4) and Lotan R. Khairnar (PW.7) are independent witnesses.

Anil N. Nikam (PW.1) in his cross-examination has admitted that, when he visited police station, at that time his cousin brother Shankar R. Nikam and mother of deceased Kedabai @ Lalita namely Thakubai D. Nikam (PW.11) were with him. They went in the jeep, discussed and decided to lodge complaint against Appellant and accordingly he lodged the same. He has admitted that, they decided that the Appellant should be convicted and accordingly he lodged the complaint.

There are material discrepancies and contradictions in the

evidence of Anil N. Nikam (PW.1), Shobha T. Khairnar (PW.5) and Lotan R. Khairnar (PW.7) with respect to the fact that, there used to be quarrels between Appellant and deceased on the ground that, Appellant wanted to bring back his first wife Ujwalabai. On the point of motive, material omissions and contradictions have been brought on record by the defence in the cross-examination of said three witnesses from which it can be clearly discerned that, the prosecution has failed to prove and/or establish motive behind the present crime at the behest of Appellant. It is the settled position of law that, in a case based on circumstantial evidence, motive behind commission of crime assumes much importance. As noted earlier in the present case the prosecution has failed to prove motive behind commission of crime.

9. As far as recovery of wooden log at the instance of Appellant is concerned, it was recovered from a sugarcane field, stored beneath the heap of sugarcane. It is an uneven wooden rafter/log. That, on the said wooden log, investigating officer found mud and blood stains. The Chemical Analyzer in its report (Exh-35) has stated that, human blood was noticed on wooden log however, the blood group could not be analyzed as it was inconclusive. The trouser of Appellant, which was also sent to Chemical Analyzer, has resulted in the same manner i.e. the chemical analyzer has stated that, some blood stains of human origin were found on it however the same were

inconclusive.

Finding of blood stains on the clothes of Appellant without there being any conclusive proof that, the said blood stains were of deceased is of no avail to the prosecution. Finding of blood stains on the cloths of Appellant is one of the links in the chain of circumstances. However the same is not a final conclusion of the guilt of the Appellant, particularly when the other links in the chain of circumstances are missing. This circumstance therefore is not conclusive to hold that, the Appellant is guilty of the crime alleged against him.

10. This leads us to deal with the most crucial circumstance in the entire chain of circumstances in the present case. As per the evidence of Dr. Faisal Suleman Soheli Ahmed (PW.9), the death of Kedabai @ Lalita occurred 12 hours prior to conducting post mortem on her body. He has stated that, he commenced post mortem at 12.45 p.m. of 16th October 2012. It means that, death of Kedabai @ Lalita occurred prior to 12.45 a.m. of 16th October 2012. There are material discrepancies in the timings mentioned in the inquest panchanama i.e. it started at 12.35 p.m. and completed at 1.30 p.m.. However Dr. Faisal Suleman Soheli Ahmed (PW.9) has stated that, he started conducting post mortem examination at 12.45 p.m. of 16th October 2012 and concluded it at 1.45 p.m. of 16th October 2012.

11. It is to be noted here that, Baban U. Sonawane (PW.4) in his cross-examination has admitted that, the door of house of deceased was facing East. That, it had no latch from inside as well as outside. That, when he reached the spot, the door was open. Haribhau P. Kolhe (PW.12), investigating officer in his cross-examination has admitted that, there is no latch outside and inside to the said door. A minute perusal of evidence available on record clearly indicates that, the prosecution has failed to prove the basic fact that, either late in the night of 15th October 2012 or in the wee hours of 16th October 2012 or in the early morning of 16th October 2012, any witness saw Appellant lastly in the company of the deceased or leaving the scene of offence. The evidence on record in that behalf is absolutely silent. Evidence of Dinesh A. Shinde (PW.8) who took photographs of scene of offence reveals that, the dead body of deceased was partially nude above the waist. It is to be noted here that, Arun B. Vichare (PW.2) who is panch witness to inquest panchanama (Exh-17), Ashok R. Khairnar (PW.3) who is a panch witness to spot panchnama (Exh-19), Baban U. Sonawane (PW.4) who is an independent panch witness and Lotan R. Khairnar (PW.7) who is another panch witness have not supported prosecution case and were declared hostile by the prosecution. It therefore appears to us that, prosecution has failed to establish the complete chain of circumstances. We find substance in the

contention of learned Advocate for Appellant that, there may be some other intruder who might have committed the present offence. According to us, the prosecution has failed to prove that, Appellant alone is the perpetrator and author of the present crime.

12. It is settled position of law that in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In a case resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime.

The Supreme Court in the case of Laxman Naik Vs. State of Orissa, reported in (1994) 3 SCC 381 has held that, the standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions of this Court. According to that standard the circumstances relied upon in support of the conviction must be fully

established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime.

13. The aforesaid deliberation leads us to draw a safe inference that, the Appellant is entitled for benefit of doubt and is accordingly given to him. The Judgment and Order dated 30th January 2015 passed by learned Additional Sessions Judge, Malegaon, District Nashik in Sessions Case No. 20 of 2013, is set aside.

Appeal is accordingly allowed.

14. Appellant be released from jail forthwith, if not required in any other crime, on production of authenticated copy of this Order.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]