

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

**CRIMINAL APPEAL NO.822 OF 2012**

|                          |                |
|--------------------------|----------------|
| Dattatray Shankar Patil  | ... Appellant  |
| Versus                   |                |
| The State of Maharashtra | ... Respondent |

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Mr. Shailesh Kharat, Appointed Advocate a/w. Manas N. Gawankar, for the Appellant.

Ms. M.M. Deshmukh, APP, for the Respondent-State.

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**CORAM : SMT. SADHANA S. JADHAV &  
SARANG V. KOTWAL, JJ.**

**RESERVED ON : 10<sup>th</sup> MARCH, 2022**

**PRONOUNCED ON : 11<sup>th</sup> MARCH, 2022**

**JUDGMENT : [*PER SARANG V. KOTWAL, J.*]**

**1**        The Appellant has challenged the judgment and order dated 21.6.2012 passed by the Additional Sessions Judge, Vasai in Sessions Case No.64/2010. The Appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code and was sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/-; and in default, to suffer rigorous imprisonment for one year. The Appellant was also convicted for

commission of offence punishable under Section 201 of IPC and was sentenced to suffer R.I. for three years and to pay a fine of Rs.3,000/-; and in default to suffer R.I. for six months. The Appellant was given set off for the period during which he was an under-trial prisoner. The substantive sentences were directed to run concurrently.

2        Heard Shri Shailesh Kharat, learned counsel appointed for the Appellant and Smt.M.M. Deshmukh, learned APP for the State.

3        The prosecution case, in brief, is as follows:

The Appellant was suspecting character of his wife Mangala. They had a son from their marriage. The Appellant and Mangala had got married on 26.5.2003. At the time of incident i.e. on 5.2.2010, Mangala was four month's pregnant. Their son Omkar was about five years of age. It is the prosecution case that the Appellant was suspecting Mangala's character and was even disowning the paternity of their son. In the night between 4.2.2010 to 5.2.2010, he committed murder of Mangala by

strangling her with an *odhani*. He also committed murder of Omkar by throttling Omkar. On some information, the police came to his flat about 8.00 a.m. on 5.2.2010. When the police and the neighbours entered his flat, they found that both the dead bodies were lying on the floor. One of the neighbours gave a complaint, which initially was recorded as accidental death report. In the meantime, Mangala's father was informed. He came there. He expressed suspicion against the Appellant and he lodged his own FIR. The Appellant was arrested on 7.2.2010. The investigation was carried out. Blood was found in the nail clippings of Omkar and the Appellant. The blood group could not be determined. The investigation was carried out by recording statements of witnesses and carrying out various panchnamas. At the conclusion of investigation, the charge-sheet was filed. The case was committed to the Court of Sessions. The Appellant faced the trial as the sole accused and at the conclusion of the trial, he was convicted and sentenced as mentioned earlier.

4           In support of its case, the prosecution examined eighteen witnesses as follows :

- PW-1 Maruti Varekar was Mangala's father. He had lodged the FIR, which is produced on record at Exhibit-18.
- PW-2 Arjun Varekar was brother of the deceased.
- PW-3 Gautam Ahire and PW-4 Anand Tandel were the panchas for inquest panchnamas.
- PW-5 Prithviraj Shinde was a neighbour. He had given his accidental death report.
- PW-6 Chandrakant Gaidhane was a pancha for the arrest panchnama.
- PW-7 Mahendra Jaiswal and PW-9 Laxmi Jaiswal were other neighbours.
- PW-8 Anant Kulkarni had conducted the postmortem examination of both the dead bodies.
- PW-10 Vallukaran Anthory was a pancha for seizure of the Appellant's baniyan and towel.
- PW-11 Mithun Rawat was a pancha for taking specimen handwriting of the Appellant.
- PW-12 Kamalakar Kumawat was a Police Officer who had gone to the Appellant's building at about 5.00 a.m. but he had

not actually gone to his flat.

- PW-13 Manish Thakkar was a pancha for seizure of the clothes of the deceased.
- PW-14 Bhavarlal Chavhan was a photographer, who had taken photographs at the spot and of the dead bodies.
- PW-15 Dr. Janardhan Bansode had examined the Appellant for his injuries.
- PW-16 Deepak Pandit was examined as an handwriting expert in respect of a chit found with the Appellant.
- PW-17 API Bharat Chaudhary had conducted the investigation.
- PW-18 ASI Somnath Malich had recorded the accidental death report given by PW-5.

5        The defence of the Appellant was of total denial. He also took up a specific defence of *alibi*. According to him, he had slept in the house of a friend at N.M. Joshi Marg, Mumbai and he was far away from Virar, where the incident had taken place. When he had gone to his house in the morning he had discovered the dead bodies.

6           After recording the evidence and statements of the accused, the learned Judge had heard both the sides. He then passed the impugned judgment and order.

7           Learned counsel for the Appellant submitted that the case is purely based on circumstantial evidence. The incident is unfortunate but the Appellant was not in the house when the offence had taken place. There are strong indications that Mangala herself had committed Omkar's murder by throttling and then had hanged herself. A blade of fan from where she was hanging is bent and thus her body was on the floor.

8           He submitted that there is no evidence to show as to who had informed the police and as to how they came to the Appellant's flat at about 8 O'Clock in the morning on 5.2.2010. He submitted that the postmortem examination and cross-examination of the medical officer show that, there is a strong possibility that it is a case of suicide by hanging committed by Mangala. The conclusion of the Medical Officer that Mangala's death was because of strangulation is not correct.

9           On the other hand, learned APP submitted that the prosecution has proved its case beyond reasonable doubt. Though the case is based on circumstantial evidence, the circumstances are strong and the chain of circumstances is complete. The evidence of defence witness is too weak to be taken into consideration. His evidence is not corroborated.

10          She submitted that the conduct of the Appellant is highly suspicious. On seeing the dead bodies he had not sought help from any of the neighbours. The defence taken by him is also not acceptable or probable. He has not explained as to how the dead bodies were lying on the floor when he entered the flat. It is not his case that somebody else entered the flat and had committed the murder. The neighbours had heard that Omkar was crying in the night at about 11.30 p.m. and at that time the incident had occurred. The medical evidence is clear enough to show that Mangala died because of strangulation and it was not a case of suicide. The blood from the nails of Omkar and of the Appellant is an important factor because there are signs of struggle on the deceased Mangala as well as there are some injuries on the chest of

the Appellant. Finding of blood on towel recovered from the person of the Appellant is also an incriminating piece of circumstance.

**11** Before considering these submissions, it is necessary to refer to the evidence on record. PW-1 Maruti Varekar is the father and PW-2 Arjun is the brother of the deceased Mangala. Their evidence is on the same point. They have stated that Managala had married the Appellant on 26.5.2003. They had one son, named, Omkar. He was about five years of age at the time of incident. Mangala was pregnant when the incident took place. The Appellant used to suspect her character and also used to deny paternity of Omkar as well as of the fetus in Mangala's womb. PW-1 had advised the Appellant not to harass Mangala. On 5.2.2010, PW-1 got the information about Mangala's and Omkar's death. He came to Virar. He saw the dead bodies. He saw the ligature marks. He then lodged his FIR with the police. The FIR is produced on record at Exhibit-18.

In the cross-examination, PW-1 has stated that he was not aware as to whether Mangala was fed up because of the financial

crunch.

**12** PW-5 Prithviraj Shinde was a neighbour. He has stated that at about 11.00 p.m. on 4.2.2010, he heard Omkar's shouts. He himself, his wife and another neighbour Jaiswal went to the Appellant's house and knocked the door but there was no response and, therefore, they returned. On the next day, at about 8.00 a.m., they came to know about the death of Mangala and Omkar. He went to the house of the Appellant and saw the dead bodies lying in the kitchen. The police were present at the spot. There was *odhani* around Mangala's neck. One blade of the ceiling fan was bent. He gave this information to the police, which was reduced into writing. It was treated as accidental death report, which is produced on record at Exhibit-29.

In the cross-examination, he has stated that when he had seen the Appellant, he was wearing shirt and pant. According to Shri Kharat, this is an important admission. It rules out a possibility that the Appellant was on his baniyan and towel when the police and others came to the house. PW-1 deposed that he had told the police about hearing shouts of Omkar at about 11.00 p.m., but, he

could not explain why this fact was not mentioned in the police statement.

**13** PW-6 Chandrakant Gaydhani was a pancha for the arrest panchnama. He has produced that panchnama at Exhibit-31. It was carried out between 8.30 p.m. to 9.00 p.m.. According to him, there were abrasions on the Appellant's chest and shoulder. One chit was also recovered from the Appellant. It was marked as Article-A. In that chit, the Appellant had mentioned that if anything happened to him, Managala and other named persons in that chit should be held responsible. The prosecution had examined the handwriting expert in that behalf. The Appellant's specimen handwriting was taken and it is the prosecution case that it was written by him. The chit does show that the relationship between husband and wife was not cordial.

**14** PW-7 Mahendra Jaiswal and PW-9 Laxmi Jaiswal were the neighbours of the Appellant. Both of them have deposed that at about 11.00 p.m. to 11.30 p.m. on 4.2.2010 they heard the shouts of Omkar. They went there. They knocked on the door but there was no response and they returned. PW-9 has further deposed that

she had gone to the flat of the Appellant in the morning and had seen the dead bodies as was narrated by PW-5.

**15** One of the most important witnesses in this case is the Medical Officer Dr. Anant Kulkarni, who was examined as PW-8. Much depends on his opinion in this particular case. As far as the other witnesses are concerned, they are mostly regarding the other investigation part and about the chit. The most important aspect in this case is whether Mangala had died because of suicide or because of strangulation. There is no dispute that Omkar died due to throttling.

**16** Learned counsel for the Appellant submitted that Mangala could have committed Omkar's murder and then could have hanged herself. On the other hand, the prosecution case is that the Appellant murdered both of them. Therefore, everything depends on whether Mangala had committed suicide or whether she was murdered. Before referring to the injuries suffered by Mangala, the injuries suffered by Omkar can be noted. He had suffered two contusions on the throat and neck and the cause of death was mentioned as death due to asphyxia due to throttling.

17 As far as the injuries on Mangala are concerned, they are as follows :

- “1. There were three abrasions on the left side of face. One on left nostril and the two 1 cm from each other in triangular shape. Its colour was reddish brown. All three abrasions were of size 2 mm x 1 mm.
2. There was abrasion 2 x 1 mm sized  $\frac{1}{2}$  cm. Above ligature mark on left side of neck. Its colour was reddish brown.
3. Abrasion on left side of chest 1 cm. above x mid point of left clavicle x sized 2 and  $\frac{1}{2}$  mm. X 1 mm. Its colour was reddish brown.
4. Abrasion on right side of the neck at right end of ligature mark. Size 3 mm x 2 mm. Its colour was reddish brown.
5. Ligature marks size 16 cm x 5 cm x  $\frac{1}{2}$  cm, 1 cm below hyoid bone transverse, upper and lower borders show subcutaneous. Its colour was reddish blue. Injury Nos.1 and 2 were simple in nature while injury No.5 was dangerous injury. Injury Nos.1 to 4 were caused due to semi sharp object while injury No.5 was due to blunt object. All the injuries No.1 to 5 were within 12 to 24 hours of examination. All the injuries were ante-mortem injuries.”

. On internal examination, following injuries were found :

“On internal examination, it was found that Hyoid bone greater cornu was fractured. There were two contusions on right side of neck muscles and while three on left side of neck muscles below ligature marks near thyroid cartilages. Both pulmonary walls show ptechial haemorrhage....”

**18** PW-8 has clearly opined that the cause of death of Mangala was strangulation. He was cross-examined mostly by referring to Parikh’s Medical Jurisprudence. He denied the suggestion that Mangala’s death was due to suicide. Besides this, there was nothing much in the cross-examination. In this context, therefore, there is no reason to discard the opinion of PW-8 that Mangala died because of strangulation. It was not a case of suicide. Modi’s ‘Medical Jurisprudence and Toxicology’, 26<sup>th</sup> Edition, 2019, at Page Nos.526 and 527 gives various indications for strangulation and notes the difference between “strangulation” and “hanging”. The important indications are that strangulation is mostly homicidal. Scratches, abrasions, fingernail marks and bruises on the face, neck and other parts of the body are usually present. This is the case as far as Mangala is concerned. There were abrasions on

the face, neck and chest. There was also fracture of Hyoid bone, which is another indication of strangulation. Thus, the prosecution has sufficiently proved that Mangala had died because of strangulation and that it was a homicidal death. Therefore, the defence theory that Mangala throttled Omkar first and then committed suicide is not correct. Though there is blood found in the nails of the Appellant and Omkar, in the absence of blood grouping, we are not placing much reliance on this circumstance, but, the fact remains that there were signs of struggle as indicated by the abrasions on Mangala as well as some abrasions on the Appellant himself.

**19** In that context, PW-15 Dr. Janardan Bansode had examined the Appellant after his arrest. He had found abrasions over chest and back of the shoulder of the Appellant caused by nails. There were two nail marks found on the right hand surface. There was swelling over his right thumb. Thus, there are clear signs of struggle found on both Mangala and the Appellant.

**20** There was blood found in the nail clippings of Omkar as well. These all are seriously incriminating circumstances against

the Appellant.

21 In this context, the evidence of defence witness needs to be considered. He was DW-1 Abaji Patil . He was residing at N.M. Joshi Marg, Mumbai. He knew the Appellant as both of them came from the same village Rile, District Sangli. According to him, on 4.2.2010 the Appellant came to his house at about 1.00 p.m.. He told this witness that he was not feeling well. He took some medicine and went to sleep. The Appellant stayed with this witness for the night and left at around 5.15 a.m. to 5.30 a.m. on the next morning. The Appellant was a resident of Virar.

In the cross-examination, he admitted that he came to the Court with the Appellant and that the Appellant had told him that he had to depose before the Court. He could not tell which medicine the Appellant took. He did not inform Managala about the Appellant's stay with him. According to him, one Police Officer Pawar told him to give his version only before the Court. DW-2 did not take any steps to approach superior police officer making complaint about not recording of his statement.

**22** The Appellant in his written statement had stated that he had taken half-day leave on 4.2.2010, but, nobody from his office was examined. He has also stated that he had informed Mangala on phone regarding his stay with DW-1, but, no call record was produced.

**23** We find that the evidence of DW-1 is very weak. There is nothing to show that the Appellant usually used to stay with him. The Appellant has not examined anybody from his office to show that he had taken half-day leave. He has also not produced on record anything to show that he did actually call Mangala about his not returning home for the night. DW-1 was admittedly his friend and had deposed at the Appellant's instance.

**24** We do not find any truth in the Appellant's defence. Even otherwise, his defence does not explain his conduct. He has stated in his statement under Section 313 of Cr.P.C. that he reached his house at 7.30 a.m. He opened the door with his keys. He saw the dead bodies lying in the kitchen floor. He then contacted his relatives at Battis Shirala, District Sangli, who in turn, informed Mangala's parents. At about 7.45 a.m. he informed about the incident to Virar police station. His conduct does not appear to be natural. When he discovered that his wife and son were lying on

the floor, he did not seek immediate help from the neighbours and did not try to make efforts firstly to see whether they were alive and then to try to give them some treatment. He did not tell any of the neighbours. It is not his case that he was on inimical terms with any of his neighbours. He made a few phone calls instead. This conduct, we find to be strange and unusual. Though the Appellant has blamed the police officers for the injuries caused to him, his version is not acceptable. There were signs of struggle as mentioned earlier. It is not his case that some third person could have entered the house and could have committed the murder or that somebody else had a key to their house. Both the dead bodies were lying inside the house and only the Appellant could access the flat. Nobody had seen him returning home in the early morning. Nobody is examined, either by the prosecution or by the defence, in that behalf. Therefore, the prosecution has proved that the Appellant was in his house and had committed this offence in the night itself.

**25**        Thus, taking overall view of the matter, it is clear that the prosecution has proved its case beyond reasonable doubt. The Appellant is rightly convicted and sentenced. The Appellant caused

murder of his pregnant wife and innocent son. The prosecution has sufficiently established this fact. Therefore, we are not inclined to interfere with the judgment and order passed by the trial Court. The Appeal is dismissed.

**26** We place on record our appreciation for the efforts taken by learned counsel who is appointed for the Appellant as well as the learned APP. The appointed Advocate shall be paid his fees as per the Rules.

**(SARANG V. KOTWAL, J.)**

**(SMT. SADHANA S. JADHAV, J.)**

PRADIPKUMAR  
PRAKASHRAO  
DESHMANE

Deshmane (PS)

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