

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 911 OF 2014
WITH
INTERIM APPLICATION NO. 2166 OF 2021
AND
INTERIM APPLICATION NO. 1831 OF 2021

Bhola Harishchandra Gupta

Age : 26 year, Occupation - Rickshaw Driver,
R/o Seva Nagar Zopadpatti,
Pestam Sagar Road No.4,
Chembur, Mumbai.
(At present lodged in Nashik Central Prison)

Appellant

.. (Orig. Accused)

Versus

The State of Maharashtra

(At the instance of Tilak Nagar Police Station
in C.R. No.34 of 2011)

Respondent

.. (Orig. Complainant)

-
- Mr. Aniket Vagal, Advocate for the Appellant
 - Ms. M.M. Deshmukh, APP for the Respondent - State
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CORAM : SMT SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.

RESERVED ON : APRIL 07, 2022

PRONOUNCED ON : APRIL 11, 2022

JUDGMENT (Per MILIND N. JADHAV, J.) :

1. This Appeal is preferred by the Appellant against the judgment dated 30.04.2014 passed by the learned Additional Sessions Judge, Bombay in Sessions Case No. 430 of 2011. By the said judgment, the learned Additional Sessions Judge convicted the Appellant for the offence punishable under Section 498-A of the

Indian Penal Code, 1860 (for short "**IPC**") and sentenced him to suffer rigorous imprisonment for two years and pay fine of Rs. 1000/- and in default in payment of fine, to undergo simple imprisonment for one month. By the said judgment and order, the Appellant was also convicted for the offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life and pay fine of Rs. 2000/- and in default in payment of fine, to undergo simple imprisonment for three months. The learned Additional Sessions Judge directed that both the substantive sentences of imprisonment imposed on the Appellant shall run concurrently. For the sake of convenience we shall refer to the Appellant as accused.

2. Such facts which are relevant for the purpose of deciding the present Appeal are as follows:-

2.1. On 31.01.2011 at about 06.00 a.m., the accused went to Tilak Nagar Police Station, Mumbai and informed that his wife Rukmini (deceased) had attempted suicide by trying to hang herself and was unconscious.

2.2. Mr. Naik, PSI (PW-7) visited the scene of crime and with the help of Mr. Bavkar, ASI and other staff shifted Rukmini to Rajawadi Hospital, Ghatkopar. On admission the doctor declared her dead.

2.3. PW-7 conducted the inquest panchnama and spot

panchnama on the same day in presence of panchas. The dead body of Rukmini was sent for autopsy which was carried out by Dr. Kachare, Medical Officer (PW-6) along with Dr. Tadv. In his opinion, the cause of death was compression of neck (unnatural).

2.4. On 02.02.2011 Rukmini's brother Rajesh Gupta (PW-1), the first informant lodged report at Tilak Nakar Police Station against the accused for abetting suicide and causing death of Rukmini on the ground of ill-treatment amounting to cruelty. Crime No. 34/2011 came to be registered at Tilak Nagar Police Station under Section 304(B) and 306 IPC. Investigation was conducted by Mr. Mundhe, Police Inspector (PW-14) and after recording statement of witnesses, investigation revealed that death of Rukmini was homicidal due to compression of neck (unnatural) and hence Section 306 IPC came to be substituted by Section 302 IPC.

2.5. The case of the accused was committed to the Sessions Court where charges were framed against him to which he pleaded not guilty and claimed to be tried. To bring home the guilt of the accused, the prosecution has examined fourteen witnesses and proved several documents. Upon appreciation of the evidence, the learned Trial court by the impugned judgment has convicted and sentenced the accused as stated in paragraph 1 above.

3. Some of the undisputed facts which are relevant are as

follows:-

3.1. The marriage between the accused and Rukmini took place in 2003. The accused had shifted to Mumbai to earn his livelihood and used to ply an auto rickshaw. He used to intermittently visit Uttar Pradesh. Rukmini resided along with the parents of the accused at village Pipri in Uttar Pradesh. Four years after marriage, Rukmini gave birth to a daughter. In July 2010 Rukmini came to Mumbai along with her daughter and resided with the accused in a room situated in Sewa Nagar Slum, Tilak Nagar, Chembur, Mumbai. Until 31.01.2011 there were no complaints filed against the accused either by Rukmini or her relatives for ill-treatment or cruelty.

3.2. Information was received at about 6.30 a.m. on 31.01.2011 on the police wireless set that in Seva Nagar Area, one Bhola Gupta had hanged himself. Mr. Bavkar, ASI (PW-10) was on patrolling duty when he received the message and proceeded to the incident spot. He reached the scene of crime and found Rukmini lying on the floor in the room. He was informed by the neighbours present that Rukmini was the wife of Bhola Gupta (accused). Though the doctor was called to the spot, on his advise Rukmini was shifted to Rajawadi Hospital by PW-10 where she was declared dead on admission.

3.3. Mr. Mundhe, PI (PW-14) inquired with the neighbours of the accused whether anybody had seen Rukmini hanging by the angle

attached to the ceiling or whether anybody had assisted the accused in bringing the body down. However all those who had seen Rukmini at the incident spot stated that she was lying on the floor when they first saw her.

3.4. The spot panchnama in the present case is important because it has been admitted by the defence. The room in which Rukmini was found unconscious has a height of 7 feet. Rukmini was 5 feet 4 inches in height whereas the height of the ceiling of the room which was of tin shed was of 5 feet 5 inches from the iron cot where Rukmini was sleeping. A fan was attached to one iron angle which was attached to the ceiling of the said room. The defence has pleaded that Rukmini hung herself with a nylon scarf (odhani). The nylon scarf was seized from the incident spot. The accused has pleaded that at about 4.30 a.m. in the morning he saw Rukmini having committed suicide by hanging herself with the help of the nylon scarf tied to the ceiling fan which was attached to one of the iron angle. He thereafter removed Rukmini from the said position and made her lie on the ground and thereafter informed PW-9 Ranjitskumar and one Dayashankar, his nephews who were sleeping in the adjacent room.

4. The prosecution has examined 14 witnesses. PW-1, Rajesh M. Gupta, the complainant in the present case is the elder brother of deceased Rukmini. He has deposed in his evidence that Rukmini was

ill-treated by the accused and he used to demand money from her family members. He has stated that on the night of the incident i.e. on 30.01.2011, Rukmini made a phone call to him and informed him about the ill-treatment meted out by the accused and was crying, however the phone call got disconnected after sometime and there was no further contact with Rukmini, but on the next morning PW-1 learnt from his brother that Rukmini was dead. PW-1 therefore rushed to Mumbai, visited Rajawadi Hospital and thereafter lodged the report. The evidence given by this witness is important in view of the fact that PW-1 was the last person who had spoken to Rukmini on the night before she died.

4.1. PW-2 Shobnath Gupta, PW-3 Lallan Rai and PW-4 Shamlal Yadav are the villagers hailing from the same village as Rukmini and the accused. All three witnesses have deposed that when Rukmini visited her native village in Uttar Pradesh, she had complained about the ill-treatment meted out to her, his repeated demand for dowry and money and assault by the accused. Save and except this statement, there is no other evidence given by these 3 prosecution's witnesses.

4.2. PW-5 Raju Harishchandra Gupta is the neighbour of the accused and has deposed that the accused used his sim card for making phone calls as he did not have the necessary documents to

obtain a sim card in his name and since his wife had come from his native place to Mumbai, he had requested PW-5 to lend his sim card so that his wife could use it. When PW-5 demanded back the sim card from the accused, the accused informed him that it was damaged and he had thrown it away. However the accused continued to use the same sim card even thereafter.

4.3. PW-6 Dr. Shivaji Vishnu Kachare, Medical Officer is the autopsy surgeon who carried out the autopsy on the dead body of Rukmini. PW-6 has noted the following injuries on the dead body of Rukmini in the postmortem report:-

"(i) Ligature mark over anterior lateral and posterior of neck, extending front right post auricular region to downwards at right lateral of neck, 3 cm. below from right ear lobule. It ran downwards / obliquely at anterior of neck, above thyroid cartilage, 5 cm. below from chin. It ran at left lateral of neck 7 cm. below from left ear lobule. It ran upwards behind left ear and posterior at hairline upto left occipit and upto right occipit.

Ligature reddish brown incomplete faint and shallow at posterior and left lateral neck grooved at right lateral of neck below right angle of mandible and to anterior of neck and anterior of left neck. Size of ligature was 30 cm. x 1 cm. anterior and 3 cm. right lateral and 2 cm. left lateral. Neck circumference was 33 cm.

(ii) Abrasions over anterior of left neck below mandible 3 in

numbers, size of 1 cm. x 0.5 cm., 1 cm. x 1 cm., 0.5 cm x 0.1 cm. - reddish in colour;

- (iii) Abrasion over left nostril inner side 1 cm. x 1 cm. - reddish in colour.

All these injuries were antemortem."

4.4. PW-6 has opined that the death of Rukmini was due to compression of her neck. PW-6 has relied on the postmortem report at Exh. '31' which in column nos. 17 and 18 refer to the aforestated injuries. As seen, it is clear that apart from the ligature mark over the anterior, lateral and posterior of the neck, in addition thereto, there are two additional injuries namely abrasions over anterior of left neck below mandible at three places which are reddish in colour and abrasion over left nostril on the inner side which is reddish in colour. The description of the ligature mark as appearing on the neck of Rukmini and explained by PW-6 is also required to be noted.

4.5. The evidence of PW-10 Rajesh Krishna Bavkar and PW-14 Sampat Rukhmaji Munde, the Investigating Officer is also relevant in the present case. PW-10 in his evidence has stated that when he reached the scene of crime, he saw Rukmini lying on the ground. PW-14 in his evidence has stated that at the time of inquest panchnama he noticed nail injury marks on the left side of the throat of Rukmini below the ligature mark. He has taken photographs of the same and produced them on record which are marked as exhibits. He has stated

that the accused was immediately sent for medical examination and PW-11 Dr. Yusuf Machiswala attached to Nagpada Police Hospital as honorary visiting psychiatrist examined the accused to ascertain the soundness of his mind and mental status on 04.02.2011. PW-11 Dr. Machiswala after interviewing the accused opined that he was normal and of sound mind and has endorsed the statement of the accused in writing that in a fit of anger, the accused had a fight with his wife and fatally assaulted her. Thus, it appears that the accused had a fight with Rukmini on the night of the incident and fatally assaulted her.

4.6. The evidence of PW-13 Vinod Y. Mendon working in Union Bank of India, Vile Parle Branch was led by the prosecution to prove that an amount of Rs. 20,000/- was deposited in the savings bank account of the accused by PW-1. The accused has not denied receiving this amount. Further the evidence of PW-12 Milind Digamber Kolwatmar, Nodal Office with Bharati Airtel Ltd was led to exhibit and prove the CDR records of the mobile phone which was used by the accused and which belonged to PW-5.

4.7. PW-9 Ranjitkumar Virendrakumar Gupta is the nephew of the accused. He has deposed that on the night of the incident after dinner he and another nephew Dayashankar went to sleep in another room next to the room of the accused. At about 4.30 a.m. in the morning the accused informed PW-9 and Dayashankar that the

deceased was dead as she had hanged herself.

5. Mr. Aniket Vagal, learned Advocate appearing on behalf of the accused has submitted that the impugned judgment has not appreciated the evidence brought on record in its proper perspective. He submitted that PW-6 the medical officer who conducted the postmortem has admitted in his cross-examination that the ligature mark as stated in column No. 17 of the postmortem report is possible in cases of suicide and if a piece of cloth is used for hanging, there would be compression of the neck. He submitted that this was an important piece of evidence which has been completely overlooked by the learned Trial court and deserves re-appreciation. He submitted that the allegation of cruelty and ill-treatment of Rukmni is also hearsay stated by more than one witness, however during the subsistence of her marriage with the accused there was not a single incident reported to the police or the panchayat either by the deceased or her family members. He, therefore, submitted that the alleged motive pertaining to ill-treatment of the accused and the allegation of cruelty is without any basis. He submitted that the incident occurred on 31.01.2011 whereas the FIR came to be lodged on 02.02.2011 i.e. after a delay of more than 48 hours; that the medical evidence produced on record supports the probable theory of defence regarding the incident as stated by PW-6, the autopsy surgeon

that if a piece of cloth is used for hanging, there would be compression of neck. He submitted that the learned Trial court ought to have considered the nature of injury, the gravity of assault, absence of any weapon with the accused, conduct of the parties during the subsistence of their marriage, motive and the medical evidence in its proper perspective before passing the impugned judgment convicting the accused. He therefore submitted that the impugned judgment be quashed and set aside.

6. *PER CONTRA*, Ms. M.M. Deshmukh, learned APP appearing on behalf of the State has submitted that the death of Rukmini was not natural as there is material evidence placed on record to show that before her demise, she was subjected to cruelty and ill-treatment by the accused by making dowry related demands which is borne out by the evidence of PW-1 Rajesh Gupta, PW-2 Shobhnath Gupta, PW-3 Lallan Rai, PW-4 Shamlal Yadav and PW-8 Ranjit Gupta; that on the night of the incident the accused and Rukmini admittedly went to sleep in the said room and at about 4.30 a.m. the accused woke up PW-8 Ranjit Gupta and Dayashankar, his nephews who were sleeping in another room and informed them that Rukmini had committed suicide by hanging; therefore it was for the accused to prove that Rukmini had indeed hung herself from the iron angle / fan attached to the ceiling of the room where she had gone to sleep along with him,

because PW-8 and the police witnesses have deposed that when they first saw her, Rukmini was lying on the floor which leads to inevitable conclusion that the accused had committed murder of Rukmini as there was no eye witness to testify that Rukmini had hung herself and any person had seen Rukmini being untied, released and brought to the ground by the accused and kept in the sleeping position on the ground. She submitted that Rukmini's height was 5 feet 4 inches and height of the ceiling from the surface of the cot (bed) was 5 feet 5 inches, therefore it was impossible for Rukmini to have hung herself from that height and believe the case of the accused; that the endorsement at Exh. '40' given by PW-11 Dr. Yusuf Machiswala stating that after examining the accused and stating that the accused had in a fit of anger indulged in a fight with his wife and assaulted her fatally read with the description of the injuries in the postmortem report, it is concluded that the accused committed murder of Rukmini and does not deserve to be pardoned. She has therefore supported the impugned judgment and prayed for dismissal of the Appeal.

7. We have heard the learned Advocates for the parties exhaustively and with their assistance scrutinized the entire material on record. Submissions made by the learned Advocates are on the pleaded lines.

8. As seen above the prosecution case is solely dependent upon

circumstantial evidence which requires to answer the sole question as to whether the death of Rukmini was accidental, suicidal or homicidal. The prosecution has argued that death of Rukmini was homicidal whereas according to the defence Rukmini committed suicide. Admittedly, there is no eye witness to the actual happening of the incident. The learned Trial Court has after considering the oral as well as documentary evidence held that the prosecution was successful in establishing the following circumstances:

- (i) During the brief period of her cohabitation with the accused the accused had subjected Rukmini to ill-treatment amounting to cruelty as defined under Section 498-A IPC;
- (ii) On 30.01.2011 Ranjitekumar Gupta (PW-9) and Dayashankar alias Guddu - nephews of the accused had come to house of the accused where they took their dinner and slept in the room adjoining the room where the accused and Rukmini went to sleep;
- (iii) At about 4.30 a.m., the accused came to the room where Ranjit Kumar and Dayashankar were sleeping, woke them up and told them that Rukmini had hanged herself and she was dead; they then went to room of the accused and found Rukmini lying unconscious on the floor;
- (iv) Around 6.00 a.m. the accused went to Tilak Nagar Police Station and informed the police that his wife had hung herself; when the police reached his house they saw Rukmini lying on the floor;

- (v) Admittedly, nobody saw Rukmini in the hanging position; nor saw the accused removing / releasing Rukmini and keeping her on the ground;
- (vi) The accused, by informing the police that Rukmini had committed suicide by hanging herself tried to suggest to them that she used her scarf (Odhani) for hanging as ligature mark was present and had used the iron angle attached to ceiling of the room where she had gone to sleep. In the spot panchanama (Exh. 29) there is recital that from the surface of the cot, the ceiling of the room was at a height of 5 feet 5 inches. In inquest panchanama (Exh.19) approximate height of Rukmini was stated to be 5 feet 4 inches. These circumstances show that Rukmini could not have committed suicide by hanging herself in the manner tried to be suggested by the accused / defence;
- (vii) If it is assumed that Rukmini committed suicide by hanging herself, the conduct of the accused would have been different. His two nephews were sleeping in the adjoining room. He would have woken them up first and taken their assistance to release or bring down Rukmini or he would have immediately raised a hue and cry. He did none of these acts. What actually happened in the room was within the knowledge of the accused only. From what he did and what he did not do, the inevitable conclusion would be that of his guilt;
- (viii) Though in the inquest panchanama (Exh.19) it is mentioned that there were no fresh injuries on the body of Rukmini, in the arrest panchanama (Exh.50) of the

accused there is mention of fresh injuries, one on the left shoulder and the other near left the wrist. If these two circumstances are taken into account, it can be gathered that the accused overpowered Rukmini, strangulated her, but could not in the process avoid sustaining the aforesaid two injuries;

- (ix) The accused was medically examined by the Psychiatrist Dr. Yusuf Abdulla (PW-11) on 04.02.2011. He was found to be of sound mind;
- (x) The C.D.R. (Exh.45) showed that on 30.01.2011, at around 9.00 p.m. Rukmini made two calls to her brother Rajesh Gupta (PW-1) and lamented about the ill-treatment meted to her by the accused, however the call received by him from Rukmini was abruptly cut and therefore, he got worried, and on the following morning he came to know that Rukmini was dead;
- (xi) The evidence on record shows that the accused made a telephone call to his brother Satyanarayan regarding death of Rukmini, however the accused did not contact or tried to contact any of the brothers of Rukmini. Such conduct cannot be reconciled with the defence of the accused that he had no nexus with the death of Rukmini as it was suicidal;
- (xii) Testimony of Rajesh Gupta (P.W.1) and Shobnath Gupta (P.W.2) show that they reached Mumbai early in the morning on 2.2.2011, that initially they went to Rajawadi Hospital. But immediately thereafter PW-1 approached the Tilak Nagar Police Station and lodged the report, hence in these facts there was no inordinate/unexplained

delay in lodging the report;

- (xiii) Though statement of Ranjit Gupta (P.W.8) was recorded belatedly, there is nothing to show that this was done on purpose and with a view to give a particular shape to the case of the prosecution so as to falsely implicate the accused.

8.1. On the basis of the aforesaid factual circumstances read with the documentary evidence proved by the prosecution, the Trial court has held that the prosecution has successfully proved all the aforesaid circumstances which are consistent with the hypothesis of the guilt of the accused; that the chain of circumstances is complete and is of such a conclusive nature that it excludes the possibility of innocence of the accused and therefore the order of conviction.

9. The law on circumstantial evidence is well crystallized by the Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**¹. Paragraph Nos. 152 and 153 of the decision lay down the conditions to be fulfilled in a case based on circumstantial evidence before the case against the accused can be said to be fully established. Paragraph Nos. 152 and 153 of the judgment read as under:-

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this

¹ AIR 1984 SC 1622

Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabao Bobade & Anr. v. State of Maharashtra (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

"153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence." It could thus be seen that Their Lordships have held that before convicting an accused in a case based on circumstantial evidence, it will have to be established that the circumstances from which the conclusion of guilt is to be drawn are fully established. It is further necessary that the facts so established should be consistent, only with the hypothesis of the guilt of the accused. It should be established that the facts established should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of conclusive nature and tendency. It is necessary that the facts established should exclude every possible hypothesis, except the one to be proved, i.e. the guilt of the accused. It has further been held that there must be a chain of evidence so complete as not to leave any reasonable doubt for the conclusion consistent with the innocence of the accused and must show that in all human probability the acts must have been done by the accused."

9.1. As seen above, for conviction to be based on circumstantial evidence, each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances

so proved must form a chain of events from which the only irresistible conclusion that can be safely drawn is the guilt of the accused and that no other hypothesis against the guilt is possible. We may add that various judgments have sounded a note of caution that in such cases there is always a danger that conjectures or suspicion may take the place of legal proof and hence it is the duty of the court to satisfy itself that the circumstances in the chain of events have been established clearly so as to rule out a reasonable likelihood of the innocence of the accused.

9.2. In the above background we may also usefully refer to the following two decisions:-

- (i) **State of Punjab Vs. Jagbir Singh, Baljit Singh & Karam Singh²**;
- (ii) **G. Parashwanath Vs. State of Karnatak³**

9.3. In State of Punjab (supra), the Supreme Court has stated that in arriving at the conclusion about the guilt of the accused charged with the commission of crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of the witnesses and every case in the final analysis would have to depend upon its own facts. In the case of G. Parashwanath (supra), the Supreme Court in paragraph No. 24 of the said judgment has stated as under:

² 1974(3) SCC 277

³ (2010) 8 SCC 593

"24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But, this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court".

9.4. In view of the aforestated legal position, the evidence adduced in the present case therefore needs to be scrutinized.

10. We shall now refer to the chain of circumstances based upon the evidence adduced in the present case. As seen, during the brief period of cohabitation of Rukmini with the accused there is evidence which has come on record to prove that Rukmini was ill-treated by the accused. The evidence is in the nature of oral evidence given by PW-1, PW-2, PW-3 and PW-4. All these witnesses are closely related to Rukmini and had met Rukmini during the brief period of cohabitation with the accused between July 2010 and January 2011. All four witnesses have deposed that Rukmini had informed them that she was being ill-treated by the accused. This fact is further proven on the examination of PW-8, the brother of Rukmini who in his deposition

has stated that the accused ill-treated Rukmini and demanded money from her. PW-8 has further stated that he and his brothers collected an amount of Rs. 20,000/- and transferred the said amount into the bank account of the accused. This fact of transfer of money and the accused receiving the said amount has been proven by examining PW-13, the Bank Manager who has produced in evidence the bank statement of the bank account of the accused reflecting the credit entry of Rs. 20,000/- on 18.10.2010. It is pertinent to note that the accused has also not disputed receipt of this amount from the brothers of Rukmini, however he has stated that the said amount was offered to him by way of financial assistance which he was in need of. After considering the evidence of PW-1 to PW-4 read with the evidence of PW-8 and PW-13, we are convinced that on the pleading of Rukmini, her brother transferred Rs. 20,000/- to the account of the accused on 18.11.2010. Immediately in the following month Rukmini along with the accused attended the marriage of her younger brother Sujit on 22.11.2010 at Kalyanpur in Uttar Pradesh during which time she disclosed to PW-1, her elder brother that the accused used to demand money, consume liquor and beat her. Even on the night of the incident at about 09.00 p.m., Rukmini made a phone call to her brother Rajesh Gupta (PW-8) and informed him that she was being ill-treated by the accused. In addition to this evidence the deposition of Dr. Yusuf Machiswala PW-11 is also important. Dr. Machiswala has

examined the accused to consider and assess his mental status immediately after the incident on the recommendation of the police authorities. Dr. Machiswala interviewed the accused in detail and opined that the accused was having a sound mind but has given an endorsement in his report at Exh. '40' stating that the accused used to consume alcohol every night (one-two quarters of country liquor) and in a fit of anger had a fight with his wife and fatally assaulted her. The C.A. report at Exh. '53' dated 26.07.2011 in clause No. 6 gives the description of articles which are seized by the IO. As seen against Item No. 4, the petticoat is cut which may also lead to the inevitable conclusion that the cotton string used to tie the petticoat could have been used by the accused to strangle the deceased as the ligature marks on the neck of the deceased are spread all throughout the next region. That apart if one considers injury No. (ii) and injury No. (iii) as stated in the postmortem report which pertains to abrasions over the neck below mandible which are three in number and the abrasion over the nostrils on the inner side then it is apparent that apart from the injury No. (i) which relates to strangulation the other two injuries could not have been caused merely by hanging. If the case of the defence of suicidal death is to be believed then injury No. (i) would have clearly mentioned death cause due to asphyxia, however, injury No. (i) is not a mere strangulation injury but clearly refers to the ligature marks which are inconsistent and irregularly spread out and

appearing on the right lateral as well as the left lateral neck of the deceased in downwards / oblique and at right angle of the mandible on the neck. It is further seen that the neck circumference of the deceased as stated in the report is 33 cms. whereas the ligature marks are appearing on 30 cms. which is probably the entire circumference of the neck of the deceased. The evidence of PW-7 has also shown that there were nail marks on the neck of the deceased which may probably be some sign of strangle and related to injury No. (ii) as stated in the postmortem report.

11. It is pertinent to note that there is no eye witness to the incident that Rukmini was seen hanging by the white scarf attached to the iron angle in the ceiling of the room. At 4.30 a.m. PW-8 Ranjit and Dayashankar, the nephews of the accused were the first persons to have seen Rukmini when they were informed by the accused that she had hung herself, however, PW-8 has deposed that when they went into the room where Rukmini and the accused had slept in the night, they found Rukmini lying on the floor. Also considering that Rukmini was 5 feet 4 inches in height and the height of the ceiling from the surface of the iron cot was itself 5 feet 5 inches, it would be improbable and incomprehensible for any prudent mind to believe that Rukmini had indeed hung herself from the iron angle attached to the ceiling which was on the tin roof ceiling. It is clear that there is no

eye witness who has seen Rukmini hanging from the ceiling in the present case and the defence has failed to prove its case. The accused on the other hand having found Rukmini hanging on the ceiling ought to have informed his nephews who were sleeping in the adjacent room and taken their assistance to untie Rukmini and release her from her hanging position which was not done by the accused. All these circumstances lead to the inevitable conclusion that what actually happened in the said room was known only to the accused and happened only with his knowledge. The guilt of the accused is therefore writ large and reinforces the conclusion of guilt on the combined effect of all the aforestated facts taken together. The two vital pieces of evidence namely the spot panchnama and inquest panchnama clearly do not come to the aid of the accused. The spot panchnama Exh. '29' states that the height of the ceiling of the room from the cot was 5 feet 5 inches and the inquest panchnama Exh. '19' states that the height of Rukmini was 5 feet 4 inches.

12. Lastly we come to injury No. (i) as stated in the column No. 17 of the postmortem report. The said injury as described clearly leads to the inevitable conclusion that the accused had overpowered Rukmini and strangulated her and in the process of doing so, had also injured her by injury No. (ii) and injury No. (iii). We have gone through the entire evidence and the documents which are held to be

proved in the present case. The evidence as alluded to herein above clearly prove the chain of circumferences which have been culled out by the learned Trial court and the defence has failed to prove to the contrary. The evidence of the autopsy surgeon PW-6 and the injury marks explained in detailed as appearing on the neck of the deceased Rukmini leave no doubt in mind and strengthens the conclusion against the accused. The theory of motive which emanates from the conduct of the accused and alluded to herein above provides a strong reason to satisfy our judicial mind about the culpability of the accused in such a case based on circumstantial evidence. In the present case the motive appears to have been clearly established. It is the first circumstance in the chain of circumstances which is the precursor to the incident in question. We are also disturbed with the fact that deceased Rukmini at the time of her death was pregnant with a male foetus of five months. The death of Rukmini has also resulted in the death of the unborn child.

13. Each and every circumstance as theorised by the learned Trial court has been proved to the hilt by the prosecution beginning with the ill-treatment and cruelty committed by the accused with the deceased until committing her murder by strangulation.

14. From the above, it clearly emerges that the prosecution has firmly established the chain of circumstances as stated herein above

and on consideration of the entire evidence, we can safely come to the conclusion that though the entire case of the prosecution is based on circumstantial evidence, however, the prosecution has succeeded in establishing various facts and circumstances as stated herein above and if taken cumulatively would directly point the finger towards the accused for committing the murder of Rukmini. On careful assessment of the entire material on record, we can safely conclude that the prosecution has proved that the accused strangled Rukmini meaning thereby it was case of homicidal death. The evidence given by the prosecution witnesses firmly establish the guilt of the accused and is consistent with the only hypothesis of the guilt of the accused on the basis of the proved facts.

15. In view of the above discussion and findings, we hold that the findings and conclusions recorded by the Trial Court are based on sound and proper reasoning and the order and sentence of conviction deserves to be upheld by dismissing the present Appeal.

16. Criminal Appeal No. 911 of 2014 stands dismissed.

17. Consequently in view of the dismissal of the Appeal, Interim Application Nos. 2166 of 2021 and 1831 of 2021 also stand dismissed.

[MILIND N. JADHAV, J.]

[SMT. SADHANA S. JADHAV, J.]

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