

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 76 OF 2019.

APPELLANT : Dipak s/o Ramlal Jangade, Aged about 30 years, Occupation – Labourer, resident of Janjigiri, District Durg [Chattisgarh], c/o. Sau. Menka Sahu, Plot No.98, Annapurna Society, Navin Nagar, Nagpur.
At present at Central Jail Nagpur – C-9408 (In Jail).

VERSUS

RESPONDENT : The State of Maharashtra, through the Station Officer, Police Station, Kalamna, Nagpur.

Shri V.P. Mohod, Advocate [Appointed] for the Appellant.
Ms. M. Deshmukh, A.P.P. for the Respondent – State.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

JUDGMENT RESERVED ON : OCTOBER 11, 2022.
JUDGMENT PRONOUNCED ON : OCTOBER 14, 2022.

Rgd

JUDGMENT (Per Vinay Joshi, J) :

The appellant/accused has been convicted in Sessions Trial No.104/2014 by the Additional Sessions Judge, Nagpur vide judgment and order dated 12.08.2016. The conviction of appellant is for the offence punishable under Section 302 of the Indian Penal Code, and he was sentenced to undergo life imprisonment along with fine of Rs.5000/-, with stipulation of default, which is subject matter of this appeal.

2. The accused is husband of deceased lady. A crime was registered at the instance of a report dated 21.10.2013 lodged by the mother of the deceased – Pooja vide Crime No. 268/2013 with Kalamna Police Station, District Nagpur. It is informants' case that her daughter deceased Pooja, aged 21 years, married with the accused and the couple was residing in a rented premises at Nagpur. Few days preceding to the incident, the deceased had been to the house of the informant [mother] for Navratri festival. At that time, the deceased disclosed that the

accused used to quarrel with her by suspecting her character. After 4 days, the deceased returned to her husbands place. On 21.10.2013 in the morning the informant received a telephonic message that the deceased was lying motionless. On receipt of message, the informant rushed to the house of the accused. Informant immediately shifted deceased to the hospital, however, she was declared dead on admission. The informant had seen ligature marks on the neck of the deceased and some abrasion on her cheek. The accused was not present at his house. The informant suspected that the accused under influence of liquor had killed the deceased by strangulation, and therefore, she lodged report.

3. The police had carried investigation. During investigation the accused was arrested on 27.10.2013 from his native place in Chattisgarh State. At the instance of accused, ligature i.e. piece of Lungi was recovered. Seized articles were sent for Chemical Analysis. Panchnama of the scene of offence was drawn. Certain pieces of broken bangle and some other articles were have been seized under panchnama. Inquest

panchnama was drawn on the dead body. Autopsy was conducted. Cause of death was due to “ligature strangulation”. After investigation, accused was charge sheeted for the offence punishable under Sections 302 and 201 of the Indian Penal Code. The accused denied the charges and claimed for trial.

4. In order to establish the guilt of the accused, the prosecution has examined as many as 9 witnesses and relied on certain documents. The defence of accused was of total denial and a faint plea of alibi has been raised. The trial Court held that the prosecution has successfully proved the guilt of the accused with requisite standard of proof, and accordingly passed the order of conviction.

5. It is the prosecution case that while accused and deceased [husband and wife] were living together, the offence was committed. The prosecution case solely rests upon circumstantial evidence. In this regard we may make useful reference to the decision of Supreme Court in case of **Sharad Birdhichand Sarda .vrs. State of Maharashtra – AIR 1984 SC**

1622, wherein following principles have been laid down as a guiding factor for deciding the cases of like nature.

- “(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must and should’ and not ‘may be’ established.*
- (2) the facts to 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.”*

Keeping in mind the above settled position of law, we have considered the submissions advanced by the rival parties.

6. The first circumstance on which the prosecution heavily relied is last seen together. In this regard, the prosecution has led evidence of P.W.2- Shubham Bandhe [Exh.25] and P.W.3- Smt. Menka Shahu [Exh.26]. P.W.2 Shubham is cousin brother of the deceased. It is his evidence that on the fateful day i.e. 20.10.2013 in the evening he went to the house of the deceased. At that time the accused was consuming liquor and abusing deceased Pooja. The accused was insisting Pooja to go to his native place in Chattisgarh State, which Pooja was denying. Thereafter, all of them sat for a while and had dinner. Approximately around 9 p.m. the accused had torn photograph of Pooja and thus, there was quarrel in between them. Within a short while, he left the place as the accused and deceased went inside the house for sleep.

7. P.W.3- Menka Shahu is the landlady. It is her evidence that on 20.10.2013, in the evening there was hot exchange of words in between the accused and the deceased. Thereafter both of them went inside the house, on which she has locked the main door. On the following day in the morning she learnt that Pooja

was lying motionless. Evidence of both the witnesses is tested on the unveil of cross examination, but, besides minor contradictions, nothing has been revealed so as to discard their testimony. Evidence of these two witnesses is quite natural since P.W.2 - Shubham was cousin brother and P.W.3 Menka was landlady. There is nothing to suspect about their presence on the spot. Both of them unequivocally stated that before the fateful night in late hours they met the accused and the deceased together and then the couple went for sleep.

8. The learned Counsel appearing for the appellant would submit that as per evidence of P.W.3 Menka, she had locked outer gate around 9.15 p.m. whilst, as per evidence of Shubham, he took dinner around 9 p.m. and thus, it is inconsistent. In other words, it is the submission that as per the evidence of Shubham, he took dinner after 9 p.m., which would have consumed more than half an hour, and thus, it is not possible to lock the outer gate at 9.15 p.m. The said submission carries no meaning, since it has no impact on the core issue. The witnesses are rustic, therefore, one cannot expect the exact time of the

happenings. Difference of few minutes here and there is inconsequential.

9. The learned Counsel for the appellant would submit that there is no motive for commission of crime. He would submit that when the case is resting on circumstantial evidence, it is incumbent on the prosecution to prove motive. For this purpose he relied on the decisions in case of **Nandu Singh .vrs. State of Madhya Pradesh – 2022 LiveLaw (SC) 229** and **Sandip Baburao Waidande .vrs. The State of Maharashtra – (Criminal Appeal No.974/2019 dated 09.04.2021 (Bombay High Court))**. True, in like cases motive assumes significance, as there is no direct evidence about occurrence. The motive may be considered as a circumstance which is relevant for assessing the evidence, but, if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. In this regard, the prosecution relied on the evidence of P.W.1 informant [Exh.21], who is mother of the deceased. It has come in her evidence that few days preceding to the incident, Pooja had been

to her house for Navratri festival on which she disclosed that accused used to quarrel by suspecting her character. The defence has brought on record an omission to the extent of the reason for suspecting lady. However, the remaining portion about quarrel on suspicion remains unshattered. Moreover, the evidence of P.W.2 Shubham and P.W.3 Menka clearly corroborates on the point that on the earlier night there was quarrel in between the husband and wife. Thus, the motive of quarrel in between the husband and wife has been duly established.

10. The prosecution has examined P.W.9 Dr. Ramesh Gadhari [Exh.71], who has conducted autopsy on the body of the deceased on 21.10.2013 in between 4.40 p.m. to 4.50 p.m. He has noted the following injuries on the person of the deceased.

“[i] Ligature mark completing encircling the neck running horizontally backwards situated 3 cm below thyroid cartilage, 5 cm below left mastoid bone, 10 cm below occipital protuberance, evidence of slippage of ligature present over right lateral aspect of neck. On dissection the haematoma of 4 x 2 cm was present over right sterno muscle.

- [ii] Scratch abrasion present over left maxillary region of size 0.5 cm x 0.2 cm. dark red in colour.*
- [iii] Four scratch abrasions present over left cheek of size varying from 0.3 x 0.1 cm to 0.6 x 0.1cm dark red in colour.*
- [iv] Scratch abrasion present over right anterior aspect of neck situated 2 cm below ligature mark and 3 cm from midline of size 0.8 x 0.5 cm. dark red in colour.*
- [v] Abrasion over dorsum of right foot of size 3x 2 cm dark red in colour.”*

11. It is evident that the ligature mark was complete incircle around the neck. Medical Officer stated that there is evidence of slippage of ligature over right lateral aspect of neck. He further stated that the injuries were of ante mortem nature and the death was due to ligature strangulation. A faint attempt was made to suggest that it may be because of self-strangulation, however, the Doctor has denied the same. He has explained that slippage of ligature mark was not because of hanging, but, it was because of strangulation. Moreover, as per the medical evidence death has occurred within 12 to 24 hours before post mortem, meaning thereby it matches to the time stated by the prosecution witnesses.

12. It is pertinent to note that besides ligature mark, the Doctor has noted scratches and abrasion over neck, cheek and dorsum region which suggested the marks of struggle, which is consistent with the cause of strangulation. Moreover, the finding of pieces of bangles on the spot also suggest the marks of struggle. All these circumstances unerringly points towards homicidal death of Pooja.

13. The prosecution evidence points out that it is a case of custodial death. The prosecution has brought on record various circumstances, like motive for commission of crime, evidence of last seen together and mark of struggle. Thus, it being a case of custodial death, onus shifts on the accused in terms of Section 106 of the Indian Evidence Act, to explain the things which are within his special and personal knowledge. Failure to discharge the burden by the accused is a strong circumstance, which goes against him. Neither it is a defence, nor there is a possibility of any stranger entering into the house during the intervening night. It is to be remembered that the landlady has stated that after 9

p.m. she had locked the outer gate, which excludes the possibility of presence of any stranger during the intervening night.

14. Pertinent to note that the alleged incident took place on 20.10.2013, whilst the accused was arrested on 27.10.2013 from his native place District Durg in Chattisgarh State. Though the circumstance of abscondence may lean on both sides, however, on the canvass of above facts, it goes against the accused. Moreover, the immediate conduct of the accused running to his native place, leaving his wife in dead condition itself speak volumes. Besides that without 2-3 hours from the occurrence, first information report has been registered with specific name of the accused. Though the accused made a faint attempt to raise a plea of alibi, however, he utterly failed to establish the same.

15. The prosecution has duly established that Pooja met a homicidal death. The prosecution has brought on record various circumstances to establish that the accused is the only author of the crime. The circumstances clearly excludes the possibility of

innocence of the accused. Having regard to the facts, the accused failed to discharge his special onus. In short the prosecution has established the guilt of the accused with requisite standard of proof. The learned Sessions Judge has properly appreciated the evidence while recording the finding of guilt. Since it is a case of strangulation with the aid of ligature, it can be safely held that the accused had requisite intention and knowledge to eliminate his wife, which falls within the meaning of Section 300 of the Indian Penal Code. In the circumstances, the impugned judgment and order calls for no interference. Criminal Appeal is therefore, dismissed.

16. Muddemal property be dealt with in accordance with law.

17. Fees for the appointed counsel for the appellant be paid as per rules.

JUDGE

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