

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

CRIMINAL APPEAL NO. 216 OF 2022.

Kaliram Chunilal Kusram,
Aged : 38 yrs.,
Tq. Darwaha, Dist. Yavatmal,
R/o. Satgods, Tah. Junnardeo,
Dist. Chhindwada (M.P.),
At/ Present Sane Guruji Coloney, Warud,
Tq. Warud, Dist. Amravati,
Maharashtra State.

.... **APPELLANT**
(Original Accused)

----- **VERSUS** -----

State of Maharashtra,
Through Warud Police Station Officer,
At/Post Warud, Tah. Warud,
Dist. Amravati (M.S.)

.... **RESPONDENT**

Shri S. S. Das, Advocate for the Appellant.
Shri H. D. Dubey, A.P.P for the Respondent /State.

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

DATE : 10.11.2022.

ORAL JUDGMENT : [PER : VINAY JOSHI, J.]

1. Heard.
2. This is an appeal in terms of Section 374 of the Code of Criminal Procedure raising a challenge to the order of conviction dated 06.10.2021 by which the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code. The learned Trial Court has imposed a

sentence of life imprisonment along with fine of Rs. 10,000/- with stipulation of default.

3. The facts of the case can be briefly stated that the informant Basanti (PW-1) was a real elder sister of the deceased Shevanti. The accused is the husband of deceased Shevanti. Ill-fated couple was having three issues out of which, two were staying at Boarding House whilst a younger daughter namely Vishika was residing with the couple. It is the informant's case that on 21.02.2018 around 9.00 p.m. while the informant was at her house, a neighbouring person namely Raju (PW- 4) came to her informing that her sister Shevanti is lying motionless. Immediately the informant rushed to the house of her sister -Shevanti (deceased) and saw that accused was sitting by taking head of Shevanti at his lap. She noticed that Shevanti's body was cool and, therefore, she raised alarm. Minor Vishika was at house, who disclosed that her father has killed Shevanti by way of hanging. In the late midnight, informant went to concern Police Station and lodged report (Exh.33).

4. On the basis of said report, regarding commission of the cognizable offence, Head Constable Kadu (PW-5) has registered crime vide Crime No.110/2018 for the offence punishable under Section 302 of the Indian Penal Code and

entrusted the investigation to A.P.I. Shri Shingade (PW-7). The police immediately rushed to the place of occurrence. The Panchanama of the scene of offence was drawn. The Inquest Panchanama was carried out and dead body was sent for autopsy. Articles lying at the place of occurrence have been seized under Seizure Panchanama. Dr. Potdar, Medical Officer (PW-6) has carried autopsy on 22.02.2018. He has noted internal as well as external injuries which he has mentioned in the Postmortem Notes (Exh.63). The cause of death was ascertained as “the death is caused due to asphyxia due to strangulation”. The seized articles were sent for chemical analysis. The statement of relevant witnesses were recorded. After completion of investigation as there was sufficient evidence against the accused, final report has been filed in the Court of concerned Magistrate.

5. On denial of Charge, the prosecution has examined in all seven witnesses to bring home the guilt of accused. The prosecution also banks upon certain documents. The defence is of total denial. However, a faint attempt has been made to say that the deceased Shevanti committed suicide by hanging. On evaluation of entire material, the Trial Court has held that Shevanti met with homicidal death and the

accused was the author and, therefore, passed the judgment and order of conviction which is impugned herein.

6. Concededly, the prosecution case is mainly based on the circumstantial evidence. There are witnesses, who have seen the accused in the proximity with dead body. The alleged motive was a domestic quarrel between husband and wife. Besides that, the prosecution has heavily relied on the evidence of Vishika (PW-2), who is a child witness. Since Vishika (PW-2) is the only eye witness to the occurrence, it is profitable to go through her evidence. Undisputedly, witness Vishika (PW-2) was living with her mother Shevanti (deceased) and father Kaliram (accused). It is her evidence that on the night of occurrence, there was quarrel in between her parents. At that time, her father has hanged to her mother by saree. Precisely, she states that her father has strangulated to her mother.

7. The defence has criticized her evidence by pointing towards certain admissions. It is argued that Vishika (PW-2) admitted that when there was quarrel in between her parents, she was out of the house as well as she admits that she deposed in the Court the things what was told by her Aunt. Pertinent to note that the defence has not specifically put the suggestion that on the date of occurrence, the witness was not

at her house. It appears that it was usual affair in between couple of fighting with each other. Therefore, casual reply of child witness that at the time of quarrel she was away from the house makes no difference. Though, the witness admits that her Aunt told her what to depose in the Court, however, that by itself would not diminish the value of her evidence unless her testimony raises a reasonable doubts. The witness was barely five years of age, therefore, naturally, her evidence shall be evaluated cautiously with great circumspection. However, if the evidence of child witness found to be trustworthy and supported by other material, it can be safely relied. Pertinent to note that there was no reason for the child witness to depose against her own father. Naturally, when she was living with her Aunt after the demise of her mother, she must have been coming to the Court at the instance of her Aunt. Therefore, her testimony cannot be brushed aside on mere vague suggestions.

8. The prosecution has examined Basanti (PW-1), who has lodged report. It is her evidence that on the night of occurrence, neighbouring person Raju (PW-4) came to her informing that her sister is lying motionless. She immediately rushed to the house of her sister – Shevanti and found that Shevanti was lying on the floor whilst the accused was sitting

nearby. She deposed that on enquiry, minor Vishika disclosed that her father has killed her mother by hanging.

9. The learned Counsel appearing for the accused argued that the witness has not seen the occurrence as well as she being close relative her testimony cannot be relied. Moreover, it is contended that she has not specifically stated in her statement that Vishika disclosed to her as “पप्पा ने मम्मी को मारा, फासी लगा दिया”. However, in her statement she has stated that “पप्पाने मम्मीच्या गळ्यात बांधल होत”. Meaning thereby she stated the same thing in different style. Besides that the defence has not proved said inconsistency through the evidence of Investigating Officer. It is her evidence that the accused was liquor addict and, therefore, always used to quarrel with her sister i.e. deceased Shevanti. During cross-examination, it has come on record that the accused used to drink liquor, and thus, it accentuates the prosecution case that the accused was a liquor addict and was quarrelling with his wife.

10. The prosecution has also examined Raju (PW-4), who is a neighbouring resident. It is his evidence that on the night of occurrence, he heard the voice of a child crying. He immediately went to the house of accused and saw that Vishika was crying whilst the accused was sitting by taking the head of the deceased at his lap. He immediately went to the house of

the informant to convey the happenings. His evidence is tested on the anvil of the cross-examination, but nothing adverse has come on record. The defence neither suggested nor brought on record as to what was the reason for Raju (PW-4) to depose falsely, nor a single suggestion has been given in that direction. His evidence is consistent with the testimony of Basanti (PW-1) as well as minor child witness Vishika (PW-2). Therefore, it is evident that at the relevant time, the accused was very much present in the house and was sitting with a dead body. Moreover, the evidence of the child witness about her disclosure regarding the complicity of the accused has been reaffirmed by the evidence of the informant, which remained unshattered.

11. The prosecution has examined Dr. Potdar (PW-6), who has conducted autopsy on the following day. He has noted following injuries on the person of the deceased, as mentioned in Column No.17, which reads as below :

- 1] Ligature mark of 3. x 1 cm over right side below the angle of mandible over the neck.
- 2] Ligature mark of 2 x 1 cm left side below the angle of mandible over the neck.
- 3] Contusion over neck just below the root above the thyroid cartilage.

- 4] Abrasion over the scalp just above right eye lid.
- 5] Abrasion over the left cheek.
- 6] Bluish discoloration of face.
- 7] Abrasion below the nose above the upper lip.

12. Besides that Medical Officer has also noted internal injuries. He has opined that the death was caused due to strangulation. At the instance of Investigating Officer he gave Query Report (Exh.65) stating that injuries over the neck are due to strangulation and caused within 12 to 24 hours before the postmortem. It is evident that there were two ligature marks on the neck and on that basis Medical Officer has opined that it is a case of strangulation with the aid of ligature. The Medical Officer has stated that the strangulation mark was possible by using saree with force.

13. The learned Counsel appearing for the accused would submit that the prosecution is coming with inconsistent theory. He submitted that the Medical Officer has stated the possibility of death by way of strangulation. He has pointed towards the evidence of Investigating Officer (P.W.-7), who deposed that, during investigation it was transpired that the accused has killed the deceased by pressing her neck. As a matter of fact, it was a conclusion drawn by the Investigating Officer, which would not affect the credibility of the evidence

of the Medical Officer and other witnesses. On the same line, the learned Counsel for the defence has argued that as per the evidence of the child witness Vishik (PW-2), her father has hanged her mother and, therefore, according to him, it is inconsistent to the medical opinion. We are not ready to accede the submission because it was the evidence of a child barely aged five years. As per her own perception, she has described the incident as a hanging which shall not be taken literally, but to be understood in the light of surrounding circumstances. The fact remains that there were ligature marks on the neck of deceased and Medical Officer opined that it is a case of death by strangulation. Moreover, there are abrasions on the person of the deceased, which shows marks of struggle. The Inquest Panchanama also supports the injuries noted by the Medical Officer. Having regards to these facts, it is evident that Shevanti met with homicidal death.

14. It is argued that the prosecution has not established that the accused was very much present in the house at the time of occurrence. It is a matter of appreciation that admittedly deceased and accused were residing together in house. Therefore, naturally, the accused was supposed to be present in the house in the late evening. Moreover, soon after the occurrence, within few minutes, he was seen in the house

sitting besides the dead body. Therefore, the presence of the accused even few minutes prior to that can be well presumed.

15. The learned Counsel appearing for the defence would submit that as per evidence, the couple was staying in a small hut, which does not have a fixed door meaning thereby, anybody can have easy access. Therefore, according to him, there is possibility of a stranger entering into the house for committing the crime. The said submission carries no merit because it is mere possibility without any foundation. Neither there is material to infer that the deceased had enmity with the stranger nor anybody has seen some stranger at least loitering near the house of deceased. Moreover, the evidence of three consistent witnesses speak that the accused was present and more particularly, child has disclosed that he had killed her mother. Therefore, the submission in this regard requires no consideration.

16. It is a case of homicidal death. The prosecution has duly established the basic facts regarding presence of the accused and pointed towards the only possibility of the accused eliminating his wife. In such a background, it is for the accused to explain the things which are within his special knowledge. However, the accused has not offered any explanation till the end of the trial which also goes against

him. The alleged occurrence took place on 21.02.2018 around 9.00 p.m. and within a short time, the informant came to the place and made known through the child that the accused killed deceased Shevanti. Pertinent to note that, the informant has lodged a report with the Police on the late midnight i.e. around 1.55 a.m. of 22.02.2018. Thus, within three hours from the occurrence, First Information Report was lodged with the specific name of accused as a culprit. Always quick lodging of report eliminates the chances of concoction. The prosecution has duly established that the accused is the only author of the crime. The Trial Court has duly considered the entire material and reached to the conclusion, which is based on sound reasons. In view of the above, interference is not called in the appeal.

17. The last objection raised by the appellant is about defect in framing charge vide Exh.4. It is argued that the Trial Court while framing the charge has stated that the accused throttled the deceased, however, the prosecution case throughout is about strangulation. He would submit that since the charge is materially defective, it vitiates the trial. Close perusal of the charge at Exh.4 indicates that it contains the law and Section of the law against which the offence is said to have been committed along with the legal condition required by the

law to constitute an offence. Moreover, particulars as to time, place and person has been stated in the charge. It has been specifically stated that the accused has intentionally and knowingly caused death of his wife Shevanti by means of pressing her throat and thereby committed an offence punishable under Section 302 of the Indian Penal Code.

18. The object of framing charge is to warn the accused of the case, which he is required to meet during the trial. The charge contains the requirement as set out under Sections 211, 212 and 213 of the Code of Criminal Procedure. The Trial Court though stated that the manner of committing offence was pressing of throat, however, it does not makes any difference since, it has been clearly informed that he has caused death of Shevanti by using pressure on the throat thereby committing an offence punishable under Section 302 of the Indian Penal Code. The mere use of substitute words does not mislead the accused nor causes failure of justice. The defence of the accused is of total denial and thus, there is no effect of minor error in framing of the charge.

19. In view of above, the impugned judgment and order of the conviction dated 06.10.2020 passed by the Additional Sessions Judge, Amravati is well maintainable in the

eyes of law. The appeal carries no merits, therefore, stands dismissed.

20. All pending applications also stands disposed of.

21. The Fees of Mr. S. S. Das an appointed Counsel be paid as per Rule.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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