

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

CRIMINAL APPEAL NO.764 OF 2019

Praful s/o Mahadeo Tagage. (In Jail),
Age 28 years, occupation labourer,
R/o Bodara, tahsil Sakoli,
District Bhandara. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
Through its Police Station Officer,
Police Station : Sakoli, tahsil Sakoli,
District Bhandara. **Respondent.**

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Shri R.V.Khaparde, Counsel for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the Respondent/State.

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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.
DATE : 06/12/2022

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By this appeal, the appellant (accused) challenges judgment and order of conviction dated 28.6.2019 passed by learned Sessions Judge, Bhandara in Sessions Trial No.33/2018 whereby learned judge convicted the accused for offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment and to pay fine Rs.5000/- and in default of payment of the fine amount to suffer rigorous imprisonment for six months. The accused was also convicted for offence punishable under Section 498-A of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years and to pay fine Rs.3000/- and in default of payment of the fine amount to suffer rigorous imprisonment for

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2

three months. Learned Judge below directed that all sentences of the accused shall run concurrently and also set-off under Section 428 of the Code of Criminal Procedure was given to him since he was in jail.

2. The brief facts giving rise to filing of the appeal would run thus :

Jageshwar Vaidya, who is brother-in-law of Manisha, (deceased), lodged report on 4.5.2018 with Sakoli Police Station, district Bhandara alleging that the deceased was his sister-in-law. Her marriage was performed with the accused in the year 2016 and she is having six-year-old girl. At the time of incident, the deceased, along with the accused and six-year-old girl, was living together. It is further alleged that after the marriage, the deceased was ill-treated for some days and, thereafter, the accused started ill-treating her by suspecting her character. The accused used to beat her under the influence of liquor by suspecting her character. Prior to one month of incident, the deceased complained to 'Tanta Mukti Samiti' alleging that the accused is ill-treating her and beating her by suspecting her character. The accused was called by members of the 'Tanta Mukti Samiti' before the said Samiti. The accused agreed in writing that henceforth he would treat her well and would not give ill-treatment to the deceased. However, after giving the undertaking, the deceased

3

was ill-treated by the accused by beating and harassing her. On 3.5.2018, at about 6:30 pm, he received a phone call from his maternal uncle that a quarrel took place between the accused and the deceased and the deceased became unconscious and he was called immediately. The first informant went to Bodara on his motorcycle to the house of the deceased and saw that the deceased was lying on floor near a bed. The household articles were scattered and the accused was present in the house. On enquiry by the first informant, the accused informed him that there was a quarrel between him and the deceased and in that quarrel he throttled her neck by a rope of cradle. The informant immediately called an ambulance. A Medical Officer came in the ambulance and examined the deceased and declared her dead. After arrival, police inspected the spot of incident and, thereafter, the informant approached to police station and lodged the report. The informant as well as police observed various ligature marks around the neck of the deceased as well as injuries on her face.

3. On the basis of the report, police have registered an offence against the accused vide Crime No.153/2018 under Sections 302 and 498-A of the Indian Penal. After registration of the crime, wheels of investigation started rotating. During the investigation, Investigating Officer drawn spot and inquest panchanamas, seized nylon rope stained with blood. During the investigation, clothes of the

4

deceased and clothes of the accused were seized by drawing panchanama. A photographer was called to obtain photographs of the dead body of the deceased as well as spot of the incident. All incriminating articles were forwarded to Chemical Analyzer along with letter. After completion of the investigation, the Investigating Officer filed chargesheet against the accused. As the offence was punishable under Section 302 of the Indian Penal Code, the case was committed to the Court of Sessions. Learned Sessions Judge framed charge vide Exhibit-10. The accused pleaded not guilty and claimed to be tried.

4. To substantiate the charge levelled against the accused, the prosecution examined as many as fifteen witnesses, (PW1) Dr.Bhaksar Kapgate (Exhibit-16), Medical Officer, who visited the spot of the incident and declared the deceased dead; (PW2) Jageshwar Vaidya (Exhibit-17), the informant; (PW3) Pushpa Meshram (Exhibit-20), a neighbour; (PW4) Sapana Selokar (Exhibit-21) who acted as pancha on spot, seizure of clothes of the accused, seizure of blood samples of, seizure of clothes of the deceased, memorandum statement and discovery panchanama; (PW5) Dr.Dipak Aglawe (Exhibit-33), Medical Officer who examined the accused and issued medical certificate; (PW6) Vitthal Kapgate (Exhibit36) Police Patil; (PW7) Bhimrao Tirpude (Exhibit-37), villager; (PW8) Bhejram Fulbandhe (Exhibit-38), villager; (PW9) Mahesh Waghdeve (Exhibit-

5

41), photographer; (PW10) Dr.Sandipkumar Gajbhiye (Exhibit-48), Medical Officer who conducted postmortem; (PW11) Sau.Rasika Madavi (Exhibit-50), neighbour; (PW12) Dr.Girisha Meshram (Exhibit-51), Medical Officer who conducted postmortem; (PW13) Vivek Limje (Exhibit-55), police constable who carried articles to Chemical Analyzer; (PW14) Sudhir Varma (Exhibit-64), Investigating Officer, and (PW15) Mukundrao Ramteke (Exhibit-84), the father of the deceased.

5. Besides the oral evidence, the prosecution relied on Chemical Analyzer's Reports Exhibits-5 to 8, First Information report Exhibit-18, First Information Report Exhibit-19, spot panchanama Exhibit-23, seizure memo Exhibit-24, seizure memo of clothes of the accused Exhibit-25, seizure memo of blood samples of the accused Exhibit-26, seizure memo of clothes of the deceased Exhibit-27, memorandum statement of the accused Exhibit-28, seizure memo Exhibit-29, discovery panchanama Exhibit-30, medical certificate of the accused Exhibit-35, application filed by the deceased before village 'Tanta Mukti Samiti' Exhibit-40, postmortem report Exhibit-49, query requisition Exhibit-53, opinion of the Medical Officer Exhibit-54, requisitions to Chemical Analyzer Exhibits-56 and 59, inquest panchnama Exhibit-65, arrest panchanama Exhibit-66.

6

6. After recording the evidence and after hearing both sides, learned Sessions Judge convicted and sentenced the accused, as stated above.

7. Being aggrieved and dissatisfied with the judgment and order of conviction and sentence by learned Judge below, the present appeal is preferred by the accused on the ground that the entire case is based on circumstantial evidence. The prosecution has not proved all circumstances proving the guilt of the accused. Learned Judge below failed to appreciate that chain of circumstances is not proved by the prosecution. There is no convincing evidence which unerringly points out the guilt of the accused. For all the above grounds, the judgment and order of conviction and sentence is liable to be set aside.

8. Heard learned counsel Shri R.V.Khaparde for the accused and learned Additional Public Prosecutor for the State.

9. Learned counsel Shri R.V.Khaparde for the accused submitted that as per story of the prosecution, the accused has committed murder of his wife Manisha by strangulating her neck by a nylon rope. To prove the guilt of the accused, the prosecution examined as many as fifteen witnesses. The entire prosecution case is rested on circumstantial evidence. However, the prosecution failed

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7

to substantiate the chain of circumstances to prove the guilt of the accused. From evidence of pancha and the Investigating Officer, it came on record that there was a hook to slab wherein a nylon rope was attached. The rope was seized from the hook which clearly points out that the deceased has committed suicide by hanging herself. The defence of the accused is that the deceased has committed suicide as she was fed up with sickness as she was suffering from 'Elephantiasis' and, therefore, she had committed suicide. However, learned Judge below ignored the same and wrongly convicted the accused. For all the above reasons, the judgment and order of conviction and sentence deserves to be set aside.

10. On the other hand, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that the entire case of the prosecution is based on circumstantial evidence to prove the guilt of the accused. The prosecution relied upon various circumstance including death of the deceased occurred in her matrimonial house. At the time of the incident, the deceased was residing along with her husband and her six-year-old daughter. There were previous complaints against the accused made by the deceased to her father, relatives as well as to the 'Tanta Mukti Samiti'. The oral evidence of informant PW2 Jageshwar Vaidya; villager PW7 Bhimrao Tirpude; PW8 Bhejram Fulbandhe, and PW15 father of the deceased Mukundrao

8

Ramteke shows that the deceased was ill-treated by the accused by suspecting her character. As she was beaten, she made complaints to 'Tanta Mukti Samiti'. The evidence of Police Patil PW6 Vitthal Kapgate also shows that the deceased had made complaints about ill-treatment. It is a matter of documentary evidence that the accused settled the dispute before 'Tanta Mukti Samiti' and assured that he would treat the deceased well. Though PW3 Pushpa Meshram has not supported the prosecution case that the deceased was assaulted by the accused on the day of the incident, her evidence and also evidence of PW11 Rasika Madavi show that on the day of the incident there was a quarrel between the accused and the deceased and subsequently she found dead. Though the deceased was found dead in her matrimonial house, cause of death exclusively within the knowledge of the accused and facts which are exclusively within the knowledge of the accused are not explained by the accused. Moreover, human blood was found on his clothes which is not explained. Thus, the prosecution has proved all circumstances which unerringly points out the guilt of the accused. He submitted that thus judgment and order of conviction and sentence calls no interference and hence the appeal has no merits and the same is liable to be dismissed.

11. To prove the homicidal death of the deceased, the prosecution placed reliance on evidences of PW1 Medical Officer Dr.Bhaksar Kapgate; PW10 Medical Officer Dr.Sandipkumar Gajbhiye, and PW12 Medical Officer Dr.Girisha Meshram, who declared the deceased dead after the incident. It is not in dispute that the deceased died on 3.5.2018 when she was present in her house.

12. As per the prosecution evidence, PW1 Dr.Bhaskar Kapgate reached to the spot of the incident in ambulance No.108 and PW2 Jageshwar Vaidya, who lodged the First Information Report, has called the ambulance by dialing No.108. PW1 Dr.Bhaskar Kapgate testified that on 3.5.2018 a phone call was received informing that a woman has been beaten by her husband and whether she is unconscious or dead is uncertain. An ambulance was called at village Bodara. He was on duty on the said ambulance. He had also carried a monitor in the ambulance. He reached to the village at about 6:45 p.m. and found that a woman was lying in supine condition. He examined the woman with the help of monitor and found the woman dead observing ligature marks around her neck and some injuries on her face. During cross-examination of this witness, nothing incriminating was brought on record. Thereafter, the prosecution placed reliance on evidence of PW10 Medical Officer Dr.Sandipkumar Gajbhiye and PW12 Medical Officer Dr.Girisha Meshram, who conducted postmortem examination

10

of the deceased. As per evidence of PW10 Dr.Sandipkumar Gajbhiye, dead body of the deceased was forwarded to the Sakoli Rural Hospital and postmortem examination was conducted. He carried out the postmortem examination along with Dr.Nagorao Bamane and Dr.Girisha Meshram. On external examination, he found injuries on the person of the deceased, which are as follows:

"i) contusion on right side of forehead of size 5cms x 2cms red,

ii) contused abrasion over lateral side of left lower eyelid of size 2.5 cms x 0.2 cms,

iii) contused abrasion over left zygoma region of size 0.5 cms x 0.2 cms red,

iv) contused abrasion over left ala of nose of size 0.5 cms x 0.3 cms red,

v) contused abrasion over left side of upper lip of size 0.5. cms x 0.2 cms red,

vi) contused abrasion over dorsal of right hand of size 0.8 cms x 0.4 cms

vii) contused abrasion over sub-mandibular regions of size 13 cms x 0.5 cms,

11

viii) contusion over inner aspect of right side of lower lip of size 3 cms x 1 cm,

ix) ligature mark over anterior aspect of neck situated at thyroid cartilage level of length 18 cms having maximum breadth 3 cms of left side of neck. Ligature mark situated 5 cms below tip of chin, 5 cms above suprasternal notch, 6 cms below tip of left mastoid, 3.5 cms below tip of right mastoid, absent over nape of neck. Ligature mark is read parchment like hard on further dissection hematoma present over upper end of left sternocleidomastoid muscle of size 3 cms x 1 cm red and hematoma present over left sternothyroid muscle of size 2 cms x 2 cms red. All the injuries are ante mortem in nature."

The Medical Officer had also observed that eyes of the deceased were close with subconjunctival hemorrhage present in both eyes and blood was oozing from both nostrils. On internal examination, he found following injuries:

"i) underscalp hematoma present over anterior aspect of left parietal region of size 6 cms x 4 cms red,

ii) underscalp hematoma present over left parietotemporal region of size 6 cms x 3 cms red,

iii) underscalp hematoma over right side of parietotemporal region of size 5 cms x 3 cms red,

12

iv) intact congested oedematous petechial hemorrhage over white matter of cerebrum.”

The Medical Officer opined that the death was due to ligature, strangulation around neck. However, to clarify doubts he preserved viscera which was sent for analysis. Accordingly, postmortem notes were prepared which is at Exhibit-49. He, however, opined that injury Nos.1 to 8 are possible if any person is forcefully assaulted by hitting of the fan and scissor as well as internal head injury. Whereas, injury No.9 is possible if any person strangulates by nylon rope. Injuries mentioned in column Nos.13 and 19 are corresponding injuries and possible if any person is strangled. During cross-examination of the said doctor, it is attempted to elicit that if any person himself strangulates, injury Nos.1 to 8 mentioned in column Nos.17 are possible, Dr.Sandipkumar Gajbhiye denied the same. The Medical Officer admitted that external changes are possible, but internal changes are not possible in case of injury Nos.1 to 8 of column No.17. The doctor further admitted that injury No.9 is possible by any other substance except the nylon rope. He further admitted that there was no fracture in the voice box as well as no blood was oozing from the neck of the deceased.

Thus, from the cross-examination, an attempt was made to bring on record that the deceased sustained injuries not

13

due to strangulation by rope but due to any other substance.

13. As per the evidence of PW12 Dr.Girisha Meshram, who was also present at the time of postmortem examination, she conducted postmortem examination along with Doctors Gajbhye and Bamane. They have also collected samples while conducting postmortem examination and handed over to the police. The cause of death is ligature and strangulation around neck. Dr.Girisha Meshram further testified that on 10.5.2018 two nylon ropes, scissor and table fan were referred to her for opinion and she opined that injury NO.9 is possible by such kind of rope. All injuries mentioned in column No.17 except injury No.9 are possible by scissor and table fan. Accordingly, she issued her opinion. The said opinion is at Exhibit-54. During cross-examination, she denied the possibility that injury No.9 mentioned in column No.17 is possible by piece of saree. She admitted that injury Nos.1 to 8 in column No.17 are possible by forceful hitting. The blood may ooze from such injuries. She further admitted that if any person falls while running on the rough surface only external injuries are possible. She testified that if any person trying to throttle himself, death is not possible.

14

Thus, the possibility of death by self strangulation or self throttling is denied by Dr.Girisha Meshram.

14. The defence of the accused is that the deceased died as she has committed suicide by hanging herself. The defence has also come with a case that it is the case of the self strangulation or self throttling. Whether the deceased died due to manual strangulation or self strangulation or self throttling or by hanging is to be ascertained from material evidence on record.

15. As per medical jurisprudence, there is difference in injuries in case of hanging and strangulation, thus:

Hanging	Strangulation
1 Suicidal usually	Homicidal usually
2 No signs of struggle	Signs of struggle
3 Ligature found in position, above thyroid cartilage, mark incomplete, directed obliquely upward with a gap indicating position of the knot with no damage to the skin in the gap	Ligature may not be with the body but when found, usually completely encircles the neck horizontally below thyroid cartilage. There may be more than one turn of ligature and there is always some damage to skin underneath.
4 Abrasions and bruises around ligature mark rare	Abrasions and bruises around ligature mark common
5 Dissection of ligature mark reveals a dry and glistening white band of subcutaneous tissue	Dissection of ligature mark reveals ecchymosed subcutaneous tissue

15

6 Neck usually stretched	Neck not stretched
7 Fracture of hyoid rare	Fracture of hyoid not rare in throttling cases (in the aged)
8 Fracture of laryngeal cartilages and tracheal rings rare	Fracture of laryngeal cartilages and tracheal rings common
9 Injury to carotid arteries in cases with a long drop	Injury to carotid arteries common
10 Injury to muscles of neck rare	Injury to muscles of neck common
11 Fracture dislocation of cervical vertebrae common in judicial hanging	Fracture dislocation of cervical vertebrae rare
12 Saliva running out of the angle of the mouth vertically down along the neck and front of chest and abdomen	Saliva may not have escaped from mouth but if so, usually blood tinged and may not be vertically down
13 External signs of asphyxia may not be well marked when death is due to any cause other than asphyxia	External signs of asphyxia usually well marked because of considerable violence that is commonly employed
14 Face usually pale	Face congested and with pronounced petechiae.
15 Bleeding from nose and mouth very rare	Bleeding from nose and mouth common.

16. The throttling is defined as a form of strangulation effected by hand, and is therefore often referred to as manual strangulation. In case of strangulation, autopsy appearances may be divided into external appearances, injuries on the neck and, internal appearances. The extent and character of these signs will depend in

16

large measure upon the pace and course of the asphyxial process. Signs of asphyxia may be very slight if death has supervened quickly from cardiac inhibition due to pressure on carotid sinus or vagus nerve. When the constricting force has been considerable, the signs are well marked. In addition, tongue may be bruised, bitten by teeth, and protruding. There may be injuries on the face, chest, etc, indicating a struggle. The face and eyes may show multiple petechial haemorrhages. The situation and extent of bruised area on neck will depend upon the relative position of the assailant and victim, manner of grasping the neck, and amount of pressure exercised on the throat. The bruises (ecchymoses) are often found on the front or sides of the neck, chiefly about the larynx, and above it. The confirmation of neck injuries indicate the way in which the hands have been applied to the neck. When only one hand is used to throttle, there may be a single bruise on one side due to pressure of the thumb and obliquely directed multiple bruises, one below the other, on the opposite side, due to pressure of finger pads or finger tips. Their shape may be oval or round depending upon the size of the finger tips but continued bleeding into the contused area usually increases the size, merging the bruises together. When both hands are used, the bruising pattern depends upon the relative position of thumbs and fingers, and the degree of pressure applied to the throat. Strangulation is defined as a

17

form of violent asphyxia caused by constricting the neck by some means other than body weight. The means used may be a ligature, the hand (throttling), the elbow (mugging or choke-hold), or some hard object, such as a stick. In ligature strangulation, injuries to deeper tissues of neck are more common than in hanging, as a result of considerable force which is used. Homicidal strangulation is a common form of murder. In fact, strangling should be assumed to be homicidal until the contrary is proven to be more likely under circumstances. A suspicion of homicide should arise when knot is tied on the back of neck, mouth is gagged, limbs are tied, other injuries are found on the body, and signs of struggle are present. Homicidal strangulation may be committed with such silence that even persons in close vicinity may not be aware of the act since sudden and violent compression of windpipe renders a person powerless to raise an alarm or call for assistance.

17. In the light of above circumstances, it is to be ascertained whether the death of the deceased is caused by strangulation or hanging.

18. In case of hanging, usually ligature is found in position, above thyroid cartilage, mark incomplete, directed obliquely upward with a gap indicating position of the knot with no damage to the skin

18

in the gap. Whereas, in case of strangulation, ligature may not be with the body but when found, usually completely encircles the neck horizontally below thyroid cartilage. There may be more than one turn of ligature and there is always some damage to skin underneath.

19. Here, in the present case, PW10 Dr.Sandipkumar Gajbhiye and PW12 Dr.Girisha Meshram, while conducting postmortem, noted ligature mark present over anterior aspect of neck situated at thyroid cartilage level of length 18 cms having maximum breadth 3 cms of left side of neck. Ligature mark situated 5 cms below tip of chin, 5 cms above suprasternal notch, 6 cms below tip of left mastoid, 3.5 cms below tip of right mastoid, absent over nape of neck. Ligature mark is read parchment like hard on further dissection hematoma present over upper end of left sternocleido mastoid muscle of size 3 cms x 1 cm red and hematoma present over left sternothyroid muscle of size 2 cms x 2 cms red. There is no evidence to support the theory that the deceased had committed suicide by hanging herself. The evidence of medical witnesses, who performed postmortem examination, are witnesses of fact though they gave opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of Smt.Nagindra Bala Mitraand vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1 wherein the Honourable Apex Court

19

observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

20. The fact that ligature mark which is situated at thyroid cartilage which would clinch issue of death being the result of strangulation and would prove that death is homicidal one. The medical evidence, therefore, establishes that the death of the deceased is homicidal one.

21. The present case is one more example of a victim who lost her life due to the ill-treatment at the hands of the husband. The deceased is the wife of the accused. As per the allegations, the

20

marriage of the deceased with the accused was performed in the year 2016. The deceased and the accused had six-year-old girl out of the said wedlock. It is alleged that the deceased was treated well for some days and, thereafter, the accused started ill-treating her by suspecting her character. The accused used to beat her under the influence of liquor by suspecting her character. Prior to one month of incident, the deceased complained to 'Tanta Mukti Samiti' alleging that the accused is ill-treating her and beating her by suspecting her character. The accused was called by members of the 'Tanta Mukti Samiti' before the said Samiti. The accused agreed in writing that henceforth he would treat her well and would not give ill-treatment to the deceased. The deceased resumed cohabitation at the house of the accused. On the date of the incident also, there was dispute between them and a quarrel between them was witnessed by neighbors. The injuries on the person of the deceased show that she was also assaulted by the accused on the date of the incident. After the quarrel, the deceased was found dead in the house.

22. It is not in dispute that the prosecution case is entirely based on the circumstantial evidence . In such cases, the prosecution is under obligation to establish chain of circumstances so complete, that it unerringly establishes the guilt of the accused and does not leave any scope for an interference consistent with the innocence of

21

the accused. The circumstances relied upon by the prosecution must be incompatible with the hypothesis consistent with the innocence of the accused and should negate all possibilities of the innocence of the accused. The law regarding circumstantial evidence is well settled that :

- "1. the circumstances from which an inference of the guilt is sought to be drawn must cogently and firmly establish;
2. though circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
3. the circumstances taken cumulatively, should form a chain so complete that there is no escape that within all probabilities the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of a guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

23. Sir Alfred Wills in his admirable book "Wills Circumstantial Evidence" (Chapter VI) lays down following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the

22

burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

24. In the light of the above settled legal position, we have to see whether the prosecution succeeded in proving the chain of circumstances to prove the guilt of the accused. The circumstances on which the prosecution relied upon can be summed up as follows:

"(1) the deceased was residing along with the accused and her six-year-old daughter at the time of incident and no other third person was residing along with them;

(2) the death of the deceased is at her matrimonial house;

(3) the deceased was ill-treated, abused and assaulted prior to the incident as well as on the date of the incident;

23

(4) on the date of the incident there was a quarrel between the deceased and the accused and immediately she found dead;

(5) prior to the incident, the deceased filed application before the 'Tanta Mukti Samiti' alleging ill-treatment at the hands of the accused by suspecting her character and the accused gave an undertaking that he would treat the deceased well in future and, therefore, the deceased joined the company of the accused;

(6) in what circumstances, the death of the deceased was caused, is exclusively within knowledge of the accused and the accused has not given any explanation to that effect;

(7) injuries were on the person of the accused, human blood was found on the clothes of the accused which is not explained, spot panchanama, seizure of clothes of the deceased and the accused are incriminating circumstances, memorandum statement of the accused and discovery at the instance of the accused."

25. To prove the alleged circumstances, implicit reliance is placed by the prosecution on the evidence of PW2 Jageshwar Vaidya, who is brother-in-law of the deceased and who has lodged the report against the accused. He testified that the marriage of the deceased was performed with the accused in the year 2016. At the time of the incident, the deceased and the accused were residing along with their six-year-old daughter. His evidence further reveals that the accused

24

used to beat the deceased under the influence of liquor by suspecting her character. Prior to one month of the incident, the deceased made a complaint with to the 'Tanta Mukti Samiti' alleging ill-treatment at the hand of the accused wherein the accused gave an undertaking that he would not ill-treat her in future. Regarding the incident, his evidence is only to the extent that on the day i.e. 3.5.2018 at about 6:00 pm to 6:30 pm he received a phone call of his maternal uncle who disclosed to him that a quarrel took place between the accused and the deceased and the deceased is lying in house in an unconscious condition. He immediately rushed to the house of the deceased and found that the deceased is lying on the floor near the bed. All household articles were scattered and the accused was found in the house. He further testified that on enquiry the accused disclosed that a quarrel took place between them and he throttled her with a nylon rope of cradle and, therefore, he called an ambulance by dialing 108. The Medical Officer present in the ambulance examined the deceased and declared her dead. The death of the deceased was declared as due to strangulation and, therefore, he lodged the report which is at Exhibit-18 and printed First Information Report is at Exhibit-19. During his cross examination, an attempt was made to bring on record that as the deceased was suffering from Elephantiasis, she was fed up and committed suicide. Obviously, PW2 Jageshwar

25

Vaidya had denied the suggestion. It further came on record in the cross-examination that the meeting of the relatives was called regarding ill-treatment at the hands of the accused. Thus, during cross-examination also it came on record that the matrimonial relations between the deceased and the accused were not cordial. As observed earlier, PW2 Jageshwar Vaidya had denied the suggestion that the deceased had committed suicide by hanging herself.

26. To corroborate the version of PW2 informant Jageshwar Vaidya, regarding the ill-treatment to the deceased at the hands of the accused, the prosecution adduced the evidence of PW6 Vitthal Kapgate who was Police Patil at the relevant time, PW3 Pushpa Meshram, PW7 Bhimrao Tirpude, PW8 Bhejram Fulbandhe, PW15 Mukundrao Ramteke, the father of the deceased, and PW11 Sau.Rasika Madavi. The evidence of PW6 Vitthal Maniram is to the extent that in the year 2018 he was serving as a Police Patil. The father of the deceased moved an application to 'Tanta Mukti Samiti' on 29.3.2018. In view of that application, along with Members of the said Samiti he went to the house of the accused. The meeting was held in the house of the accused and in the said meeting the accused assured in writing that he would not harass the deceased in future. The application dated 29.3.2018 is brought on record as well as the compromise deed signed by the accused is also brought on record.

26

His further evidence is to the extent that on 3.5.2018 PW7 Bhimrao Tirpude informed him that a quarrel took place between the deceased and the accused and the deceased is in unconscious state. Though PW6 Vitthal Kapgate is cross-examined at length, nothing incriminating came on record. He has admitted that in the year 2019 he was suspended from the post of Police Patil on complaint of his relative. Except this cross examination, nothing is brought on record to shatter the evidence of PW6 Vitthal Kapgate. PW7 Bhimrao Tirpude is also on the point of ill-treatment to the deceased. He testified that on 3.5.2018 he came to know that a quarrel took place between the accused and the deceased and, therefore, he visited the house of the accused and saw that all articles in the house were scattered. The deceased was lying in a room and the accused was also present in the house near her. Accordingly, he called PW2 informant Jageshwar Vaidya and also informed the Police Patil. His evidence further revealed that quarrel used to take place between the accused and the deceased. The accused used to beat the deceased by suspecting her character, and, therefore, her father made a complaint to the 'Tanta Mukti Samiti'. During cross-examination, it has specifically come on record that when PW7 Bhimrao Tirpude visited the house of the accused, except the accused and the deceased, none was present in the house. The fact that he called PW2 informant Jageshwar Vaidya

27

has also specially come on record by bringing the cell number of PW2 Jageshwar Vaidya on record. Thus, the evidence of PW7 Bhimrao Tirpude is also not shattered during the cross-examination.

27. PW8 Bhejram Fulbandhe is another villager as well as the President of the 'Tanta Mukti Samiti' of village Bodara. As per his evidence, the father of the deceased lodged the complaint to the 'Tanta Mukti Samiti' on 29.3.2018 alleging the harassment to his daughter at the hands of the accused by suspecting her character. He further testified that after receipt of the complaint, he called Police Patil and Members of the 'Tanta Mukti Samiti'. An emergency meeting was called and at that time the accused, the deceased, and their relatives were present. The accused gave an undertaking that he will treat the deceased properly. The deceased also shown her willingness to resume the cohabitation if the accused treats her well. He recorded the said facts in the register of proceeding. He produced on record the extract of the register which is at Exhibit-40. During his cross-examination, he admitted that he had not handed over original complaint to the police during the investigation. Except this cross-examination, nothing incriminating is brought on record.

28. The prosecution has also examined two neighbours, PW11 Sau.Rasika Madavi and PW3 Pushpa Meshram, to prove ill-

28

treatment at the hands of the accused. PW3 Pushpa Meshram is also witness to the fact that on the day of the incident there was a quarrel between the accused and the deceased and in the said quarrel the deceased was assaulted by the accused. But, PW3 Pushpa Meshram has only supported to the extent that there was a quarrel between the deceased and the accused and not supported that the accused had assaulted the deceased on that day. Her evidence further shows that she tried to convince the deceased and the accused, but they did not listen to her. This evidence regarding the quarrel remained unchallenged as PW3 Pushpa Meshram was not cross-examined on this aspect by the learned defence counsel. The evidence of PW11 Sau.Rasika Madavi is also to the extent that there was a quarrel between the deceased and the accused and she tried to convince them not to quarrel. This witness admitted in her cross-examination that the accused has maintained his wife properly. The deceased was hot tempered and she attempted to commit suicide for 2-3 times. It reveals that being neighbour of the accused she left loyalty towards the prosecution during the cross-examination.

29. Lastly, evidence of PW15 Mukundrao Ramteke, the father of the deceased, was adduced. His evidence shows that after the marriage with the accused, initially both were happy. However, subsequently the accused started ill-treating her by suspecting her

29

character. On 28.3.2018, the deceased came to his house. She informed him that she was beaten by suspecting her character. She had also sustained injuries on head and back. Thereafter, he filed an application to 'Tanta Mukti Samiti' of village Bodara. The meeting was held at the house of the accused and the accused assured that he would treat the deceased well and, therefore, he sent his daughter for cohabitation. The alleged incident of the assault and the complaint to the 'Tanta Mukti Samiti' had taken place prior to one month of the incident. PW15 Mukundrao Ramteke is also cross-examined at length. He admitted that regarding the incident dated 28.3.2018 he did not lodge the report with the police against the accused. Except this cross-examination, his evidence is not shattered.

30. Learned counsel Shri R.V.Khaparde for the accused vehemently submitted that if there would have been any ill-treatment to the deceased at the hands of the accused, PW15 Mukundrao Ramteke, the father of the deceased, would have filed complaint against the accused. However, no such complaint was filed which is sufficient to show that there was no such ill-treatment, but taking advantage of death of the deceased this false report is filed.

31. Besides the oral evidence of these witnesses, the prosecution also relied upon the medical evidence which is discussed

30

earlier. The medical evidence on record shows that the deceased not only sustained ligature marks around her neck but also she sustained eight injuries on her person which sufficiently fortify that prior to the incident there was a quarrel between the accused and the deceased and the deceased was assaulted by the accused. Admittedly, only the accused was residing along with the deceased. The evidence of PW3 neighbour Pushpa Meshram; PW6 Police Patil Vitthal Kapgate; PW7 villager Bhimrao Tirpude; PW8 villager Bhejram Fulbandhe, and neighbour PW11 Sau.Rasika Madavi establishes the presence of the accused in the house and subsequently the deceased was found dead. The accused has not assigned any explanation regarding the injuries on the person of the deceased.

32. The prosecution further placed reliance on the evidence of circumstances that blood stained clothes of the accused, scissor, one table fan were recovered at the instance of the accused. The table fan and scissor, as per the prosecution, were used to assault the deceased. PW4 Sapna Selokar was acted as a pancha on the spot panchanama as well as various panchnamas. As per her evidence, Police called her on 3.5.2018. In her presence and in the presence of another panchas, sample of blood of the accused was seized by drawing panchanama Exhibit-26. On the same day, the clothes of the deceased were seized by drawing panchanama Exhibit-27. On

31

5.5.2018, she was called in the police station. In her presence the accused made a statement that he is ready to produce the table fan and seizure. Accordingly, his statement was recorded. In view of the said statement, the accused led them at his house and produced the table fan and the scissor which was seized by the police while drawing the panchanama Exhibit-29. She identified the nylon rope seized from the spot of the incident, the clothes of the deceased and the accused and scissor and the table fan. She further testified that the dead body of the deceased was having ligature marks.

33. It is undisputed fact that the rope was seized during spot panchanama. It was not seized on the basis of the memorandum statement of the accused. To prove the discovery and the memorandum statement, the prosecution placed reliance on evidence of PW14 Investigating Officer Sudhir Varma who has also deposed that the accused disclosed that he is ready to hand over the articles. Accordingly, his statement was recorded and the accused led them towards his house and produced the articles. It is well settled that mere recovery cannot be interpreted as sufficient to infer the authorship of concealment by the person who discovered the weapon. The evidence of PW4 Sapna Selokar and PW14 Sudhir Varma nowhere shows that the accused made a statement that he concealed the articles at such a place and he will show the place.

32

34. The requirement of Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered, after search is carried out, on the search of any information obtained from the prisoner, such discovery is guaranteed that the information supplied by the prisoner is true. It goes without saying and, therefore, that recovery of articles at the instance of the accused has to be proved by independent witness.

35. Section 27 of the Indian Evidence Act is recently interpreted by the Honourable Apex Court in the case of **Subramanya vs. State of Karnataka**, reported at **2022 LiveLaw (SC) 887** and held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(i) discovery of fact in consequence of an information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must be in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

It is further held by the Honourable Apex Court that what is admissible is the information the same has to be proved and not

33

the opinion formed on it by the Police Officer. In other words, the information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary that the benefit of both i.e. accused and the prosecution that information given should be recorded and proved and if not so recorded the exact information must be adduced through the evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner such a discovery is a made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is true. It is further held by the Hon'ble Apex Court that mere statement that the accused led the Police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

36. In the light of the above well settled legal position, it has to be seen whether the evidence adduced by the prosecution witnesses PW4 pancha Sapana Selokar (Exhibit-21) and PW14 Investigating Officer Sudhir Varma is sufficient to prove the discovery at the instance of the accused. After perusal of the evidence of PW4 Sapana Selokar, who acted as pancha on the memorandum statement

34

and discovery panchanama, it nowhere reveals that the accused made a voluntary statement and also stated that the scissor and table fan are concealed by him. The evidence of PW14 Investigating Officer Sudhir Varma is also silent about the voluntary statement of the accused and disclosure by the accused that he had concealed articles.

37. Thus, in view of the decision of the Honourable Apex Court in the case of Subramanya vs. State of Karnataka cited *supra*, the discovery panchanama was not drawn as contemplated under Section 27 of the Indian Evidence Act and, therefore, mere recovery is not sufficient to infer authorship of concealment by the person who discovered the articles. Thus, the evidence of PW4 pancha Sapan Selokar and PW14 Investigating Officer Sudhir Varma is not sufficient to prove the discovery and recovery of articles at the instance of the accused.

38. The prosecution also placed reliance on the evidence of Chemical Analyzer's Reports and the said Reports are marked at Exhibits-5, 6, and 7. As per the Chemical Analyzer's Report at Exhibit-6, blood of the deceased is of Group "B". Whereas, as per Chemical Analyzer's Report at Exhibit-8, blood of the accused is of Group "O". Exhibit-6 shows that Exhibit-4, nicker of the deceased, is stained with blood and Exhibit-5, full pant of the accused, has one

35

blood stain of about 1 cm on front left lower portion. Blood detected on Exhibits-4 and 5 is human one. The incriminating evidence, regarding appearance of blood stains on the pant of the accused, is not put to him during his statement under Section 313 of the Code of Criminal Procedure and, therefore, the said evidence is to be ignored.

39. In the case in hand, admittedly, there is no eyewitness of the occurrence of the incident and the case of the prosecution rests on circumstantial evidence. The principle based on circumstantial evidence is that the circumstances from which inference of guilt is sought to be drawn must cogently and firmly establish that those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused that the circumstances taken cumulatively should form chain of circumstances so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

40. In the present case, the accused is also facing the charge that he ill-treated the deceased by abusing and beating her and she was constrained to file complaint with the 'Tanta Mukti Samiti'. The evidence of PW2 informant Jageshwar Vaidya; PW6 Police Patil Vitthal

36

Kapgate; PW7 villager Bhimrao Tirpude, and PW8 villager Bhejram Fulbandhe sufficiently shows that the accused used to beat the deceased by suspecting her character and, therefore, PW15 Mukundrao Ramteke, the father of the deceased, prior to one month of the incident, as the deceased was assaulted by the accused, approached to the 'Tanta Mukti Samiti' and filed application. Therefore, a meeting was held at the house of the accused and the accused assured in presence of members of the 'Tanta Mukti Samiti' that in future he will not beat the deceased and also he will not ill-treat her. The extract of register maintained by the 'Tanta Mukti Samiti' is produced on record by PW8 Bhejram Fulbandhe who is the President of the 'Tanta Mukti Samiti' of village Bodara.

41. Thus, the oral evidence of these witnesses supported by the extract of register maintained by the 'Tanta Mukti Samiti' shows that the accused assured that he will not beat or ill-treat the deceased. The fact of ill-treatment and there was a quarrel between the accused and the deceased on the day of the incident are also established by PW3 neighbour Pushpa Meshram and and PW11 neighbour Sau.Rasika Madavi. Thus, though the said witnesses left loyalty towards the prosecution on the aspect of the assault by the accused on the day of the incident, their evidence shows that there was a quarrel between the deceased and the accused on the day of

37

the incident. The fact of assault by the accused on the day of the incident is also corroborated by the medical evidence which shows that eight injuries are seen on the person of the deceased while conducting the panchanama. The accused had not explained how the said injuries are appearing on the person of the deceased. Admittedly, the alleged incident occurred in the matrimonial house of the deceased wherein only the deceased and the accused along with their six-year-daughter were residing. The death of the deceased occurred when the deceased was in the company of the accused. It is well settled that if an offence takes place inside the privacy of the house, in view of Section 106 of the Indian Evidence Act, burden is on the accused to give an explanation regarding the fact which is especially within the knowledge of the accused.

42. It is observed by the Honourable Apex Court in the case of Trimnukh Maroti Kirkan vs. State of Maharashtra, reported at **2006 ALL MR (Cri) 3510 (SC)**, if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. The Honourable Apex held that a Judge does not

38

preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The Honourable Apex Court has also referred decisions in the cases of Stirland v. Director of Public Prosecution, reported at (1944)2 ALL ER 13 (HL) and observed that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise

39

that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

43. Here, in the present case, though the death has occurred in the house, wherein the deceased and the accused were residing together and no other third person was residing along with them, presence of the accused prior to the incident established in the house. It is the accused who has to explain in what circumstances the death of the deceased occurred. Where the question of burden of proof, where the facts are within the personal knowledge of the accused, the provision of Section 106 of the Indian Evidence Act comes into play. It is true that the guilt of the accused must be proved beyond all reasonable doubts. However, where the incident occurred inside the house in a secrecy, then after proving material facts, burden shifts on the accused to give an explanation regarding the nature and circumstances in which the death of the deceased has occurred. In a case based on circumstantial evidence, when no eyewitness account is available, the another principle of law which must be kept in mind that when incriminating circumstances are put to the accused and the accused either offers an explanation which is found to be untrue or offers no explanation, the same becomes an additional link in the chain of circumstances to make it complete. By applying these principles, if evidence of the prosecution in the present case adduced

40

is considered, the prosecution has proved that (1) the death of the deceased has occurred at her matrimonial house wherein the deceased was residing along with the accused and her six-year-daughter; (2) there was previous ill-treatment by the accused by abusing and assaulting her; (3) the deceased and her father made a complaint to the 'Tanta Mukti Samiti' and evidence of Member of the 'Tanta Mukti Samiti' supports the contention that the accused assured that he will not ill-treat the deceased in future; (4) the medical evidence shows that the death of the deceased is by strangulation and also external injuries are found on her person for which the accused has not assigned any explanation, and (5) the facts which are exclusively within the knowledge of the accused that how the death of the deceased occurred not explained.

44. In the earlier part of the judgment, the evidence is discussed in detail. It is fully established that the deceased was being ill-treated by the accused by suspecting her character and she was often beaten and, therefore, she made the complaint to her father and father made complaint to the 'Tanta Mukti Samiti'. The accused assured in writing that he will not ill-treat the deceased and, thereafter, incident occurred within one month. Though the accused claimed that the deceased had committed suicide, as she was fed up with the sickness, as she was suffering from Elephantiasis, there is no

41

evidence to show that the deceased was suffering from Elephantiasis as she was fed up with the same. The medical evidence shows that she died on account of asphyxial due to strangulation. The accused in his statement did not offer any explanation as to how she received the injuries which were found on her body.

45. As circumstances enumerated above unerringly point out to the guilt of the accused and are inconsistent with his innocence, the appeal has no merits.

46. In view of above observations, the appeal fails and stands **dismissed**.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

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