

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 64 OF 2017

Jakerbeg S/o. Raheman Beg,
Age : 25 years, Occu. : Nil.,
R/o. New Bhokardan,
Tq. Bhokardan, Dist. Jalna.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

...
Mr. N. B. Narwade, Advocate for Appellant.
Mr. S. J. Salgare, APP for Respondent - State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 01st AUGUST, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Appellant Jakerbeg is hereby taking exception to the judgment and order of conviction passed by learned Additional Sessions Judge, Jalna, dated 23.12.2016 in Sessions Case No. 84 of 2014, thereby holding him guilty for commission of offences under sections 302 and 498-A of Indian Penal Code (IPC).

2. Appellant was married to deceased Atiyabi. After initial days, accused started demanding of Rs.11,000/- for dress and on non fulfillment of the same, deceased was subjected to

maltreatment. Deceased reported the behavior and conduct of husband to her family members. Brother PW-2 Badroddin also gave understanding, but appellant insisted for fulfillment of the demand. According to prosecution, on failure to meet the demand, on 12.03.2014, he assaulted her and strangled her to death.

3. PW2 Badroddin, brother set law into motion and on registration of crime, PW11 PSI Sapkal carried out investigation, charge-sheeted appellant and he was made to face trial which was conducted by learned Additional Sessions Judge, Jalna. After conclusion of trial, learned trial Judge appreciated the oral and documentary evidence, heard both sides and finally reached to the conclusion that prosecution has established the charges and so vide its judgment and order dated 23.12.2016, held accused appellant guilty for both the charges and thereby sentenced him to suffer imprisonment for life and to pay fine accordingly.

This judgment is now assailed before us by filing instant appeal by invoking section 374 of the Code of Criminal Procedure (Cr.P.C.).

4. This being first appellate court, is expected to re-appreciate, re-analyze and reevaluate the entire evidence adduced

in the trial court to ascertain whether charges are proved and whether learned trial Judge has committed any illegality in recording guilt of accused.

SUBMISSIONS

5. Learned counsel for appellant would submit that judgment under challenge is patently illegal and against settled law as well as evidence on record. Taking us through the testimonies of witnesses, it is his submission that, there is no eye witness and case is based on circumstantial evidence. However, none of the circumstances including motive is established by prosecution.

6. He submitted that, only near and dear ones are examined, who were already annoyed on account of death of deceased and in that backdrop, report has been lodged. He submitted that there are accusations of causing injury as well as strangulation, but said theory has not been cogently established by prosecution. He pointed out that spot panchanama is also not cogently proved as pancha has admitted about signing panchanama without reading. He further submitted that case of prosecution is about telephonic conversation between deceased and her mother, but CDR to that extent has not been placed on record regarding alleged conversation dated 11.03.2014. He

further emphasized that alleged occurrence is of 11.03.2014 and FIR is also not promptly lodged as it was lodged after two days i.e. on 13.03.2014. Therefore, according to learned counsel possibility of involvement after due deliberation cannot be ruled out. He would strenuously submit that, appellant himself had informed mother about deceased committing suicide and therefore his such conduct ought to have been considered.

7. It is his further submission that, so called recovery and discovery is not free from doubt. That, so called neighbours are also unaware about quarrel, beating and demand and they have admitted in their cross-examination to that extent. It is submitted that, initially AD was registered, however, subsequently at the insistence of relatives, there is false implication.

8. Resultantly, it is his submission that, with such quality of evidence learned trial court ought not to have accepted the case of prosecution as proved beyond reasonable doubt. However, learned trial court, having straightway accepted the case of prosecution, he prays to set aside the judgment by allowing the appeal.

9. In answer to the above, learned APP would submit that barely after few days of marriage, accused had put up demand of

cash for stitching dress. That, as said demand was not met, there was ill-treatment and cruelty. Deceased had reported to her mother and bother. They have deposed to that extent. Homicidal death has been established by examining medical expert. Death has taken place while deceased was in custody of accused. That, as he has no explanation for the unnatural death of his wife while she was in his company, section 106 of Indian Evidence Act comes into play. Therefore, according to learned APP, case is cogently proved and rightly accepted by learned trial Judge. Appreciation is also as required by law, and therefore it is his submission that appeal having no merits, is required to be dismissed.

10. On examining the record, we have noticed that in support of its case prosecution has examined in all 11 witnesses. We wish to categorize the witnesses as under :-

PW-1 Shubham, pancha to spot panchanama.

PW-2 Badroddin Beg is the brother of deceased.

PW-3 Sunita, panchs to inquest panchanama.

PW-4 Sk. Shaker, pancha to inquest panchanama and memorandum of disclosure of scarf (Dupatta) and one pipe.

PW5 Shamimbi is the mother of deceased Atiyabi;

PW6 Laxman and **PW7** Dagdu are the independent witnesses;

PW8 Ankush, **PW9** Jyoti and **PW11** Kailash are police officials;

PW10 Dr. Wankhede, Medical Officer, who examined the Atiyabi and declared her dead. He has also conducted autopsy on the dead body of Atiyabi.

ANALYSIS

11. Taking into account above submissions and on carefully re-appreciating, re-examining and re-analyzing the oral evidence. It is to be first seen whether death of Atiyabi is established to be homicidal one.

Testimony of PW10 Dr. Wankhede is significant and on visiting the same, we find him, on externally examining, coming across following injuries :-

1. Imprinted contusion over neck anteriorly, size : 12 X 3 cms; irregular shape;
2. Contusion over posterior head, of size : 6 x 5 cms;
3. Contusion Rt. upper arm, size : 7 x 3 cms;
4. Abrasion over nose, size : 0.5 x 0.5 cms;
5. Contusion over left cubital fossa, size : 6 x 3 cms;
6. Contusion Rt. calf size : 5 x 2 cms;
7. Contusion over left thigh, size : 6 x 3 cms; and
left calf size : 5 x 2 cms;

Probable cause of death is cardio respiratory arrest due to asphyxia due to strangulation. He is very specific about injury nos.2, 3, 5, 6 and 7 in column no.17 to be possible by article no.8-pipe, whereas injury no.1 in column no. 17 is possible because of constricting neck by article no.7 scarf (odhani). Even injuries at column no.18 are possible by same article. Doctor has identified the provisional cause of death certificate and post mortem report.

12. Doctor is extensively cross-examined. He has admitted that, in case of strangulation, length, width and depth of ligature marks are required to be mentioned, but he is unable to state why depth of injury no.1 is not noted. He denied that, in cases of strangulation, depth of injury can be noted and in case of hanging no such depth can be assessed. He admitted that, in case of strangulation, round mark of injury appear on the neck, but he is unable to state why it is not so reflected in his postmortem report. However, he denied the suggestion that it is not the case of strangulation and that abrasion marks are not as a result of strangulation. He admitted that in column no. 17 as regards to injury no.1, there was no injury to the muscles at neck. He admitted that, injury no.1 of column no.17 is one of the probable cause of death and not specific cause of death. He admitted that

injury no.4 of column no.17, if is due to use of article 8, then there is no chance of death. He admitted that, if injury no.2 inflicted because of muddemal article 8, death can take place within 6 hours. Rest is all denial.

13. On appreciating the substantive evidence of doctor, there seems to be cross-examination only regarding medical jurisprudence. However, opinion of doctor about probable cause of death has not been rendered doubtful. Death is shown to be due to strangulation and doctor has categorically denied all questions and suggestion put by defence about injuries to be insufficient to cause death and opinion to be false.

Resultantly, taking into account above evidence, here, prosecution has demonstrated that death of Atiyabi to be not only unnatural, but homicidal one.

14. Now, it is to be seen whether accused husband is responsible for the same.

In our opinion, here, evidence of PW2 Badroddin Beg, PW5 Shamimbi, PW6 Laxman and PW7 Dagdu is relevant. PW2 Badroddin and PW5 Shamimbi are brother and mother of deceased. In their evidence, they have stated about marriage and deceased

cohabiting with her husband accused. They both are consistent about demand for dress. Brother PW2 Badroddin, who set law into motion has stated that 15 days prior to the incident, he had been to his sister and at that time she had informed him about demand of money for dress by appellant and on non fulfillment, she being beaten. According to this witness, when he requested appellant husband to send her, appellant refused, saying that, they have failed to pay the money for dress and therefore this witness returned without his sister. On 11.03.2014 around 9:00 a.m. to 9:30 a.m, deceased called her mother regarding beating and on very next day, i.e. on 12.03.2014 information has been passed by appellant himself. Deceased seems to have suffered injuries on the nose and throat. In spite of being cross-examined, defence could not dislodge the aspect of demand and ill-treatment to be doubtful.

15. Mother PW5 Shamimbi also is found to be lending support to testimony of informant-son about demand of money for dress, deceased promptly informing about it, she receiving phone call from deceased on 11.03.2014 between 9:00 a.m. to 9:30 a.m., regarding beating and on 12.03.2014 accused informing about deceased to be not responding and speaking. Mother also speaks about coming across the injury marks on the nose, hands, and throat.

In cross-examination also this witness has stuck up to the aspect of quarrel on money. Omissions are brought about not stating about harassment and she admitted that no report was lodged immediately on 11.03.2014 about beating.

Therefore, testimonies of mother and brother has not been rendered doubtful.

16. PW6 Laxman and PW7 Dagdu seem to be independent witnesses. They both are found to be speaking about hearing quarrel on 11.03.2014. According to PW6 Laxman, deceased had borrowed phone of this witness to make call to mother, and on next day, i.e. on 12.03.2014, he had heard noise about quarrel in the house of deceased. Likewise, even PW7 Dagdu has stated that adjacent to their office, accused and deceased resided. There were quarrels between husband and wife and they used to hear it. He also claims that, on 11.03.2014, PW6 Laxman came and informed him that wife of accused had informed him about beating to her in the backdrop of money and that he wanted to call her mother. He also stated that they have heard quarrels between accused and deceased.

Though above witnesses are cross-examined, there versions are not rendered doubtful. Both these two witnesses are independent witnesses. They had no axe to grind so as to depose

falsely. There is no suggestion in the cross-examination that there is false implication.

17. Therefore, taking into consideration the testimonies of brother, mother and these two independent witnesses, prosecution has brought on record that there was demand of money for dress and deceased being beaten. Independent witnesses speak about hearing quarrels on 11.03.2014 as well as 12.03.2014. They also speak about deceased using phone of PW6 Laxman for making phone call to her mother. Mother and brother both confirmed about receiving call from deceased on 11.03.2014 and alleged incident has taken place on the very next day. By examining PW1 Shubham, pancha to spot panchanama, prosecution has established that the occurrence took place in the house. He has narrated the articles seized vide panchanama at Exh.17. By examining PW4 Sk. Shaker, recovery and discovery at the instance of accused on 16.03.2014 is also brought on record i.e. regarding producing scarf and one pipe. His testimony has not been shaken in cross-examination.

18. Admittedly, it is not the case of appellant that he was not present in the house and nor any plea of alibi has been put-forth except merely stating that he was out of the house for buying

vegetable. However, such plea has not been substantiated and burden was on him to show that, while deceased was in his company and they both were residing as husband and wife under one roof, how deceased suffered injuries to neck, throat and other parts of the body and met unnatural death. No plausible explanation is coming forward from his side.

19. Therefore, taking into account such evidence on record, in our opinion also, prosecution has established the charges. Mere delay of a day in lodging FIR itself is not sufficient to disbelieve the case of prosecution. Apart from brother and mother, independent witnesses are unequivocal about hearing quarrels on 11.03.2014 and 12.03.2014. Therefore, such evidence is sufficient to implicate and record guilt.

20. We have gone through the judgment under challenge. No perversity or illegality is brought to our notice in the manner of appreciation. Available evidence has been correctly appreciated and guilt has been rightly recorded. We find no merits in the appeal and hence, the same is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)