

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.692 OF 2016

Mukesh s/o Vishwanath Chaudhari
Age: 23 years, Occu.: Private Service,
R/o. Shingait, Tq.Jamner,
Dist.Jalgaon.

..Appellant

VERSUS

The State of Maharashtra

..Respondent

...
Advocate for Appellant : Mr.Abhishek G. Kulkarni
APP for Respondent : Mr.S.D.Ghayal

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

DATE : 21 JULY, 2023

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

1. Feeling aggrieved by judgment and order of conviction recorded by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.194 of 2010, thereby recording guilt and conviction of appellant for offence under Section 302 of the Indian Penal Code (IPC), convict has preferred instant appeal.

PROSECUTION CASE IN TRIAL COURT IN BRIEF

2. Informant's daughter Madhuri was married to appellant on 20-01-2010.

On the strength of FIR lodged by **PW1** Bhagwan Govinda Patil, father of deceased and informant, crime was registered for offence under Sections 302, 498-A, 323, 504 read with 34 of the IPC against husband and parents-in-laws. Informant alleged that after marriage of his deceased daughter with Mukesh (appellant), she was treated properly for barely 15 days. Thereafter, ill-treatment began. She was beaten and kept starved for failing to bring articles like fridge, gas-stove and cooler. Such ill-treatment meted out to her by accused persons was promptly informed by her to informant. Informant alleged that parents-in-law used to instigate husband, who in turn used to abuse and beat her. There were taunting and comments about not cooking properly.

On 15-03-2010 informant received information from one Ushabai Ishwar Patil that clothes of accused appellant are blood stained and his wife Madhuri is not with him and therefore, informant with his relatives rushed to Kanchanwadi. From a villagers, he learnt about Madhuri being shifted to the hospital. From landlord, he learnt that appellant and Madhuri had left the house in the evening for a walk, but appellant alone returned. His clothes were blood stained and therefore, Police were informed. Accused husband took Police and he pointed the spot where Madhuri was lying with injuries in a pool of blood. Thereafter, informant set law into motion by lodging report Exh.41.

PW12 Rajendrasing carried out and completed investigation and

chargesheeted accused for above offence.

Case was tried by learned Additional Sessions Judge, Aurangabad, who permitted prosecution to lead evidence both oral and documentary and after receiving evidence and closure pursis, incriminating material was brought to the notice of accused persons.

Both sides were heard by learned trial Judge and on appreciating the evidence, he reached to a conclusion that prosecution failed to bring home the charges against husband and in-laws for offence under Sections 498-A, 323, 504 read with 34 of IPC and thereby acquitted them of such charge, however, learned trial Judge accepted the case of prosecution about appellant intentionally and knowingly committing murder of Madhuri and thereby hold him guilty for charge under Section 302 of the IPC and he was convicted and sentenced for imprisonment for life.

RIVAL CONTENTIONS

On behalf of Appellant :

3. The sum and substance of the arguments made by learned Counsel for appellant is that apparently it is a false implication. There is no cogent, trustworthy and reliable evidence. Taking us through the prosecution evidence, it is submitted that there is no direct eye witness account and case of prosecution is based entirely on circumstantial evidence. According to him, only circumstance relied by prosecution is last seen together but said

circumstance is also not cogently and firmly proved. Taking us through the evidence of **PW4** Eknath and **PW5** Jaywantabai, it is submitted that these witnesses are examined for proving circumstance of last seen together, however, according to him, the answers given by these witnesses in cross-examination clearly suggest that their evidence is not sufficient to hold circumstance of last seen together as proved. That their testimonies are full of omissions and contradictions. He would submit that infact **PW4** Eknath, landlord has admitted that he never heard quarrel or dispute between husband and wife. Therefore, there was no motive or intention and at this point learned Counsel would submit that case being based on circumstantial evidence, motive was expected to be proved by prosecution, however, it failed to do so. He further submitted that there is no independent witness who had seen appellant in company of his wife. For all above reasons, he submits that with such quality of evidence, learned trial Court ought not to have accepted the case of prosecution as proved and having erred by accepting the case, it is his submission that his appeal deserves to be allowed.

In support of above, he has relied on following judgments.

- (a) ***Ashok v. State of Maharashtra; (2015) 4 SCC 393.***
- (b) ***Manthuri Laxmi Narsaiah v. State of Andhra Pradesh; (2011) 14 SCC 117.***
- (c) ***Rishipal v. State of Uttarkhand; (2013) 12 SCC 551.***
- (d) ***Nathiya v. State Represented by Inspector of Police, Bagayam Police Station, Vellore; (2016) 10 SCC 298.***

- (e) *Jose Alias Pappachan v. Sub-Inspector of Police, Koyilandy and Another;*
(2016) 10 SCC 519.

On behalf of APP :

4. Learned APP would point out that deceased was in the company of accused appellant. Landlord and independent witnesses have seen appellant taking his wife for walk. She did not return alive and rather appellant who alone came, pretended to be ill and his clothes were blood stained. Medical expert had found appellant hale and hearty. Dead body of deceased was spotted at his instance. Investigation revealed his involvement. Scientific evidence also confirms his involvement. Therefore, with such quality of evidence, it is submitted that learned trial Judge has committed no error in returning the guilt.

5. This being appeal under Section under Section 374 of the Code of Criminal Procedure and this being First Appellate Court, we proceed to re-appreciate, re-examine and re-evaluate the evidence to ascertain whether judgment of conviction under challenge is legally maintainable and sustainable or it requires interference.

6. Here case is admittedly based on circumstantial evidence. Before analyzing the evidence, it would be apt to throw light on the settled legal

position about manner of appreciation of case based on circumstantial evidence. Since the landmark case of *Hanumant Govind Nirgudkar and another v. State of M.P.*; AIR 1952 SC 343 followed by water shedding judgments in the case of *Shivaji Sahebrao Bobade v. State of Maharashtra*; AIR 1973 SC 2622, *Sharad B. Sarda v. State of Maharashtra*; AIR 1984 SC 1622, *Padala Veera Reddy v. State of Andhra Pradesh*; 1989 (Suppl.2) SCC 706, *Dhananjay Chatterjee @ Dhana v. State of West Bengal*; 1994 SCC (2) 220 and *State (NCT of Delhi) v. Navjyot Sandhu @ Afsan Guru*; 2005 (11) SCC 600, five golden principles are enunciated for appreciation of case based on circumstantial evidence, which are as follows:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions,
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except that 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.

7. It transpires that there is no serious challenge to the aspect of appellant and deceased to be husband and wife. There also does not seem to be any dispute about appellant and deceased residing and cohabiting at Kanchanwadi.

SUM AND SUBSTANCE OF EVIDENCE ON BEHALF OF PROSECUTION

8. Prosecution to establish their case seems to have examined as many as 12 witnesses and their role, status and sum and substance of their evidence are as under :

9. **PW1** Bhagwan Govinda Patil is father of deceased. He testified about marriage of his daughter with appellant on 20-01-2010. After marriage, she went to reside with him and her parents-in-law. After being treated well for 15 days, ill-treatment began. They beat her, abused her and kept her starved for failing to bring articles like fridge, cooler and gas-stove. That one month back of the incident, deceased and husband had shifted to Kanchanwadi. He alleges instigation by parents-in-law and appellant husband beating after consuming liquor. He deposed about receiving information on 15-03-2010

from one Ushabai Ishwar Patil and so he went with his relatives to Kanchanwadi. His daughter was not present in the house. Around 01:30 to 2:00 a.m. Police came with appellant and he took all of them to the place where he killed Madhuri. The spot was near a rivulet. Body of Madhuri was lying in pool of blood and therefore, he lodged report.

10. **PW2** Vijay Atmaram Khairnar is Pancha to seizure of clothes of accused at Exh.46 as well as spot panchanama at Exh.47.

PW3 Syd. Rafiq Syd. Razak is Pancha to seizure of clothes of deceased at Exh.46.

11. **PW4** Eknath Bhaurao Nil, is landlord of appellant and deceased. His evidence is at Exh.52. He spoke about appellant coming to reside in his house as tenant with his wife. According to him, on 15-03-2010 while he was sitting in front of house, he saw appellant and deceased going for evening walk at 06:00 p.m., but around 08:00 p.m. appellant alone returning home from the side of rivulet. After hearing shouts of **PW5** Jaywantabai - another tenant, he came out and saw appellant Mukesh lying on the platform. Hair of appellant were in disorder and his clothes were blood stained and he was not responding. Police was called who took him to the hospital. Parents and relatives of deceased were called and they reached at midnight. Police came back with appellant, who took all of them towards eastern side of

Nakshatrapal locality and showed dead body of Madhuri.

12. **PW5** Jaywantabai Kachru Vetral is also a tenant and neighbour of appellant and deceased. Her evidence is at Exh.54. She also deposed as like **PW4** Eknath about appellant and deceased going out of house in the evening on 15-03-2010 and appellant accused returning alone at 08:00 p.m. That his clothes were smeared with blood and therefore, she accosted **PW4** Eknath landlord and he intimated Police and they arrived.

13. **PW6** Eknath Dadarao Sonkamble is Pancha to house seizure panchanama i.e. Exh.61 during which there was seizure of Mangalsutra and air tops. His evidence is at Exh.60.

PW7 Dr.Girish Vijay Tasgaonkar is Autopsy Doctor, who conducted post mortem, issued report and opined that death was due to head injury. His evidence is at Exh.65.

PW9 Dr.Anil Sahebrao Pungale is the Doctor, who examined appellant and drew blood sample, nail sample and hair sample. His evidence is at Exh.79 and he handed over OPD papers.

PW10 Dr.Mohd. Yusuf Abdul Raheman Maniyar is another Doctor, who physically examined appellant on 20-03-2023. His evidence is at Exh.84.

PW8 Ganpat Haribhau Sonune and **PW11** Narayan Kondiram Butte are the Police Officials.

PW12 Rajendrasing Shivsing Dobhal is the Investigating Officer. His evidence is at Exh.92.

ANALYSIS

14. We proceed to scrutinized the above substantive evidence to ascertain whether appellant husband is convincingly shown to be responsible for death of his wife. What can be gathered from prosecution case is that they are relying on following circumstances:

FIRST CIRCUMSTANCE

15. Appellant and deceased being husband and wife staying together.

We have noticed that there is no dispute or issue raised by appellant about deceased to be his wife. There is also no dispute that deceased was cohabiting with him and they both were together on 15-03-2010. **PW1** Bhagwan spoke about his daughter to be with husband. **PW4** Eknath (landlord) and **PW5** Jaywantabai (neighbouring tenant), who are independent witnesses are unequivocal and unanimous about appellant and deceased coming to reside in the room let out by **PW4** Eknath on rent since 15-02-2010. Taking into consideration such evidence, there is no hesitation to hold that first circumstance is proved.

SECOND CIRCUMSTANCE

16. Appellant taking deceased for a walk and deceased found dead on account of fatal head injury and therefore, theory of last seen together.

PW4 Eknath (landlord) has deposed about he sitting outside his house at 06:00 p.m. on 15-03-2010. According to him, appellant and deceased wife went for evening walk. **PW5** Jaywantabai also testified about appellant and deceased going out of house in the evening while she was sitting in courtyard. She claims that appellant alone returned home at 08:00 p.m. from the rivulet side. Clothes of appellant were smeared with blood stained and out of fright she called landlord **PW4** Eknath who came out of the house. **PW4** Eknath in his testimony has stated that he heard shouts given by **PW5** Jaywantabai and hearing her call, he went out and claims to have seen appellant alone returning back at 08:00 p.m. This witness had stated that he tried to talk with him and he has narrated the condition of appellant. He further stated that one Bhagwan Dandge, who was from the village of appellant was called. Police was informed and accused being taken to hospital. According to this witness, after parents of deceased reached in the midnight, Police came back to house alongwith appellant and he took all of them towards the eastern side of Nakshatrapal locality and appellant pointed out the dead body and spot.

17. Both **PW4** Eknath and **PW5** Jaywantabai are subjected to cross. On carefully going through the nature of questions and suggestions, except the

answer of PW4 Eknath that he did not notice quarrel between accused and deceased, nothing damaging from the prosecution evidence has been solicited. Rather suggestion is given that appellant and his wife daily went for evening walk and which is affirmed by this witness. Similarly, in cross of **PW5** Jaywantbai also mere omission about portion marked 'A' and 'B', nothing further is brought except stating that her vision is weak due to old age.

Thus from the evidence of **PW4** Eknath and **PW5** Jaywantabai, who are independent witnesses, it has come on record that appellant and his deceased wife used to go for evening walks. On 15-03-2010 also they both went around 06:00 p.m. for walk but appellant alone returned home at 08:00 p.m. Therefore, there is no hesitation to hold that there is evidence suggesting accused taking his wife to the evening walk to the rivulet side and thereafter, the deceased was found lying in pool of blood. Rather at husband's instance, spot and dead body are said to be traced. There is no challenge to such evidence.

18. From the above discussed evidence, it is emanating that appellant alone returned home but in sick condition. **PW4** Eknath and **PW5** Jaywantabai are speaking about he coming and lying on the platform in front of the house and as he was not responding, Police took him to the hospital. Prosecution has examined the Doctor who had occasion to conduct medical examination of appellant. **PW10** Dr.Mohd. Yusuf Abdul Raheman Maniyar in examination-in-

chief stated that on examination of accused, he did not find any injuries on his body and there was only complaint of back pain. Therefore, it seems that appellant was merely examined in casualty and he was not admitted. **PW4** Eknath and **PW5** Jaywantabai are both speaking about Police bringing appellant back to the house. Consequently, there is no defence by appellant for he alone returning back home. No defence has been put forth while answering statement under Section 313 of the Code of Criminal Procedure.

19. Evidence of **PW7** Dr.Girish (Autopsy Doctor) clearly suggest that deceased had died due to head injury. Spot is detected on disclosure of appellant. As stated above **PW4** Eknath and **PW5** Jaywantabai spoke about appellant taking his wife towards the rivulet side. Dead body is found in such vicinity. The cumulative effect of above discussed material is that deceased was in the company of appellant husband. Such evidence of prosecution has not been rendered doubtful by any means and mode. Therefore, theory of last seen together also stands proved at the behest of prosecution.

THIRD CIRCUMSTANCE

20. Recovery, discovery and scientific evidence.

Vide scene of occurrence panchnana drawn on 16-03-2010 articles like blood stained stone, earth with and without blood, broken pieces of bangles are seized in presence of **PW2** Vijay, whose evidence has apparently remained

unshaken and moreover, there is absolutely no cross-examination, except suggesting that he is deposing falsely. According to Investigating Officer, after arrest, clothes of accused were seized again in presence of **PW2** Vijay. This seizure is also not rendered doubtful inspite of opportunity i.e. while cross-examining **PW2** Vijay. Therefore, blood stained clothes of appellant is eventually seized after his arrest.

By examining **PW9** Dr.Anil it has been demonstrated that blood sample, hair and nail of appellant are drawn for chemical analysis purpose. Chemical Analyzer report at Exh.68 shows that seized Muddemal was despatched on 16-03-2010 itself. Blood, hairs and nail of deceased, on examination revealed to be having 'O' blood group. Viscera of deceased did not reveal any poisoning. Exh.70 report of blood, nail and hairs of appellant, on analysis of blood, revealed his blood group as 'B', whereas Exh.71 analysis of stone Exh.A, hair Exh.1, small stones Exh.B, hair found on Exh.3, Manila, Full Pant, Baniyan, Saree, Petticoat, Brassiere and Blouse, are carrying blood stains and the same are analyzed to be of 'O' group. Therefore, scientific evidence clearly carries blood of deceased on stone and even clothes on the person of appellant. This corroborative piece of evidence supports case of prosecution about deceased Madhuri being done to death while she was in company of appellant on the evening of 15-03-2010. In the light of above discussion, here prosecution has cogently proved and established even the circumstance of recovery, discovery and scientific evidence.

SUMMATION

21. To sum up, all circumstances relied by prosecution are firmly and cogently established. Appellant being custodian of his wife and she having suffered fatal head injuring and succumbing to it, he owed an explanation which he failed to offer. Scientific evidence connects him with death of his wife. Independent witnesses confirm appellant taking his wife in the evening out of the house. At his instance, dead body has come in light. Therefore, rightly finger of accusation points to his involvement .

22. On going through the judgment, learned trial Judge has considered and appreciated available evidence in the light of quality of evidence and law as required also has been put to use for reaching to a conclusion. Findings and conclusion drawn are based on sound reasons and as such no fault can be found in the impugned judgment. Therefore, there is no merit in the appeal. Hence, we proceed to pass following order :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)