

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 904 OF 2018

Ashok S/o Lakhanlal Sura
age 36 years, occ. Labour
r/o Charwaripura, Balaji Galli
Near Maratha Building
Jalna, Dist. Jalna.

Appellant

Versus

The State of Maharashtra

Respondent

Mr. N. S. Ghanekar, Advocate holding for Mr. S. G. Ladda, Advocate
for the appellant.

Mr. S. P. Sonpawale, APP for the State.

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.**

RESERVED ON : 21st DECEMBER, 2022.

PRONOUNCED ON : 21st APRIL, 2023.

JUDGMENT : (PER R. M. JOSHI, J.)

1. Being aggrieved by the judgment and order dated 15th November, 2018 passed by the Additional Sessions Judge, Jalna in Sessions Case No. 150/2016 of conviction for offence punishable under Section 302 of the Indian Penal Code thereby sentencing him to suffer imprisonment for life and to pay fine of Rs. 10,000/-, in

default to suffer rigorous imprisonment for one year, the appellant has preferred this appeal.

2. Case of prosecution can be narrated in brief as under :-

On 19th June, 2016, Ashok Lakhan Lal Sukla Sura (appellant) went to Sadar Bazaar police station at around 6:30 a.m. and met Duty Officer and disclosed to him that he had committed murder of his wife (Pooja). He had knife stained with blood in his hand. So also his hands and clothes were smeared with human blood. The Duty Officer took him to PSI Pardesi. Therefore, police along with the said person went to his house situated on first floor in building near Maratha building at Charvai Pura. The said room admeasured 10×10 sq. ft. wherein dead body of a woman was found lying with number of injuries on her person. Police conducted Punchnama of the spot in presence of panch witnesses. PSI Pardesi at around 12:19 p.m. registered First Information Report (FIR) on behalf of the State and offence came to be registered. Appellant was taken into custody, knife brought by him to the police station which was kept in safe custody was seized drawing seizure panchanama.

3. PI Nimbhore conducted investigation into the crime. He recorded statements of witnesses and muddemal properties seized were sent to forensic laboratory and on conclusion of investigation charge-sheet was filed against the appellant.

4. As appellant abjured charge, he was tried. In order to prove the guilt of the appellant, prosecution examined eight witnesses i.e. P.S.I. Pardeshi (PW 1)(Informant) (Exhibit 14), Pradeep Bhadare (P.H.C.) (Exhibit 19), Namdeo Borse (PW 3) (Panch witness) (Exhibit 20), Manoj Kajve (PW 4) (Memorandum panch) (Exhibit 25), Sandeep Sura (Brother of accused) (Exhibit 33), Dr. Bhimsing Chavan (Medical Officer) (PW 6) (autopsy) (Exhibit 38), Bhanudas Nimbhore (Investigating Officer) (Exhibit 44) and Shivnath Yadav (PW 8) (father of deceased).

5. Learned counsel for the appellant argued that the burden is on the prosecution to prove guilt of the appellant beyond shadow of reasonable doubt and having regard to the nature of evidence adduced, the guilt cannot be said to have been conclusively proved. To support his contention, he relied upon the circumstances on record which indicate that though allegedly the appellant had been to

the police station at about 6.30 am, however, the knife allegedly carried with him was seized only after 6 to 8 hours, which creates doubt about its recovery. It is further contended that there is no evidence on record to show that knife was kept in the sealed condition till it was sent for chemical examination. In support of his contention, he placed reliance on the judgment in the case of State of Rajasthan vs. Motia, **1953 SCC Online Raj 51**. According to him, in case of circumstantial evidence whenever there is missing link, the guilt of the accused cannot be said to have been proved. By referring to observations in the judgment of Sharad Birdhichand Sarda Sarda vs. State of Maharashtra, **(1984) 4 SCC 116**, it is stated that the onus is on the prosecution to prove the chain of events was complete and any infirmity or lacuna in the prosecution case cannot be cured by false defence or any plea of the accused.

6. He further drew attention of this Court to the cross examination of panch witness as well as evidence of brother of appellant which shows that the house of the appellant is situated at such a place with access from terrace of the adjoining building. According to him, in view of evidence on record showing articles in the house being in scattered condition, the theory of defence that the

possibility of deceased being killed in an attempt to commit theft is probabilised. It is further argued that there was no motive for the accused to kill his wife and in absence of any motive, he cannot be held guilty. To support said submission, he placed reliance on State (Delhi Administration) vs. Shri Gulzari Lal Tandon, (1979) 3 Supreme Court Cases 316. He also tried to convince this Court with submission that investigation in this case is not fair and that there is no explanation for delay in lodging First Information Report as well as recovery of the weapon and took support of the judgment of the Hon'ble Apex Court in the case of Mohmood vs. State of Uttar Pradesh, (1976) 1 Supreme Court Cases 542, to submit that in such situation benefit of doubt must go to the accused. It is also stated that if the case of the prosecution is accepted that the accused had reported to the police that he committed murder of his wife, in that case, the said statement ought to have been treated as First Information Report and the First Information Report sought to be filed by PSI Pardeshi needs to be discarded as held by the Hon'ble Apex Court in the case of Ramesh Baburao Devaskar and others vs. State of Maharashtra, 2008 All MR (Cri) 293 (S.C.) It is further argued that there is no evidence in order to connect the allegedly seized weapon with the death of the deceased. In this regard,

reference is made to the cross examination of the Medical Officer who conducted autopsy on the dead body. In response to the submissions of learned APP that the conduct of the accused and the defence taken by him of alibi is not sustainable, it is argued that the initial burden to establish the case against accused beyond reasonable doubt is on prosecution and in absence of such proof, even false defence taken by accused cannot become a ground for his conviction. In this regard reliance is placed on the case of Vijayee Singh and others vs. State of Uttar Pradesh, (1990) 3 Supreme Court Cases 190. In addition to the judgments cited supra, he placed reliance on the following judgments to justify arguments seeking acquittal :-

- i) Malaichamy and another vs. State of Tamil Nadu,
(2019) 17 Supreme Court Cases 568
- ii) Suresh and another vs. State of Haryana,
(2018) 18 Supreme Court Cases 654
- iii) Shankarlal Gyarsilal Dixit vs. State of Maharashtra
(1981) 2 Supreme Court Cases 35
- iv) Bhagirath Bhaurao Kanade vs. State of Maharashtra
1996 SCC Online Bom 316.
- v) Trilok Chand Jain vs. State of Delhi,
(1975) 4 Supreme Court Cases 761
- vi) Aghnoo Nagesia vs. State of Bihar
(1966) 1 SCR 134

- vii) Satye Singh and another vs. State of Uttarakhand
(2022) 5 Supreme Court Cases 438

7. Learned APP on the other hand supported the impugned judgment by stating that all circumstances if taken together lead to the only conclusion that the accused is the author of the crime. According to him, accused was staying with his wife. There is no evidence on record to show that except for them anyone else than their small daughter was staying with them. According to him, it is not in dispute that accused had been to the police station with his clothes smeared with human blood and also with a knife and in such circumstances, the only inference which can be drawn from this evidence is that after committing murder of his wife he went to the police station. According to him, this is not a fit case wherein any benefit of doubt can be given to the accused to acquit him.

8. As a rule burden of proof of guilt of accused beyond doubt lies on the prosecution and unless the prosecution succeeds in proving the basic facts as alleged against the accused, there is no occasion for the accused to offer explanation regarding any circumstance. The prosecution also must prove the entire chain of

circumstances which may compel the Court to arrive at the conclusion that the accused only had committed the alleged crime and that without any hesitation the Court should be able to convict the accused.

9. Case in hand is based on circumstantial evidence as no one has witnessed the incident in which deceased Pooja died. Before advertng to factual matrix and assessment of evidence on record, five golden principles laid down by Apex Court in case of Sharad Birdhichand Sarda need to be considered which read thus :-

(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 merely 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable doubt 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.

10. The fact about deceased met with death in her matrimonial home on 19th June, 2016 before 5.00 to 5.30 pm due to the assault caused on her with weapon is not in dispute. It is a precondition for the proof of charge of murder that death of deceased must be proved to be homicidal. Prosecution examined Dr. Bhim Singh Chauhan (PW 6), who has conducted autopsy on the dead body. He found six incised wounds on the dead body and according to him, the stab injuries were caused by sharp edged object. He opined that the death of the victim was due to cardio respiratory arrest due to haemorrhagic shock due to injury to vital organ and lung perforation. Defence had cross examined this witness only for the purpose of disputing the fact about the time of death. Prosecution was able to prove that deceased had sustained injuries and the Punchnama of the dead body further supports the said fact.

There is further support to this evidence from inquest panchanama (Exhibit 16) (admitted by defence). This is not the case of natural or suicidal death. Even defence has come out with the case that when the accused came to house, he found his wife dead with injuries on her person, and thus, from evidence on record it is conclusively established that deceased Pooja died a homicidal death.

11. It is not in dispute that on 19th June, 2016, at 6.00 to 6.30 pm appellant had been to police station. As per testimony of PSI Pardeshi, appellant came to police station with blood stained clothes and knife. There is no reason to discard the evidence because in the cross examination it is specifically suggested to this witness that appellant came in police station with knife to report death of his wife caused by someone else. Sandip Sura (PW 5), brother of appellant also states that appellant was asked to go to police station to lodge report. He further states that clothes of appellant were smeared with blood as he had held his wife. Thus, the evidence on record conclusively proves that appellant went to police station with blood stained clothes and knife in his hand.

12. The defence is challenging the First Information Report lodged by PSI Pardeshi and no recording of the statement of accused promptly when he went to the police station and also challenge is made to delayed recovery of knife. These issues are however amply explained from the evidence on record. On receipt of information from appellant, PSI Pardeshi immediately went to spot of incident and found Pooja lifeless with injuries. He, therefore, informed about it to his superior and API Nimbhore was asked to take further steps. Dead body was sent to Civil Hospital, Jalna, by police constable Tange and Waghmare. He was present at spot upto 10.00 am. He, thereafter, went to police station and lodged First Information Report. This evidence on record is self explanatory to the time taken in lodging report as well as not recording statement of appellant as First Information Report. PSI Pardeshi by visiting the spot ascertained fact of death of wife of appellant and which was normal in view of unnatural conduct of appellant to come to police station claiming murder of wife. Ascertainment of actual death of appellant before lodging First Information Report needs to be taken as appropriate step in peculiar facts and circumstances of the case. In absence of any malafides in lodging report against appellant, the delay caused in registering First Information Report is not fatal to the case of

prosecution. There is no universal rule that, in every case delay in lodging First Information Report is treated as fatal to prosecution case and more particularly, when it is explained properly, cannot be considered as ground for acquittal of accused. Non recording of statement of appellant also stands explained from fact of ascertainment of the truthfulness of information given by appellant. We, therefore, do not find reason to discard First Information Report.

13. Though it is sought to be argued that the recovery of knife from the accused is doubtful but there is admission of the accused that he had been to the police station with knife, in view of suggestion in cross examination to PSI Pardeshi that accused had been to the police station with knife in his hand for recording incident of death of his wife by someone. The said suggestion is binding upon the accused. Considering the steps taken by PSI Pardeshi for ascertainment of facts, no doubt time has lapsed in between the seizure of knife, but its seizure is proved through panch witness Borse who claimed that knife was seized at police station vide Panchanama (Exhibit 22). No suggestion is made to this witness about no such seizure is made but it is only suggested that the knife was not seized from possession of accused.

14. Apart from recovery of knife, there is further evidence to connect the said knife with the incident of assault. Medical Officer Dr. Chavan has candidly deposed that the injuries caused to deceased are possible with knife. During cross examination, it is tried to be brought on record that he is not sure that the injuries to deceased are by Article 9 knife only.

15. It is necessary to take note of the fact that evidence of Medical Officer is always in the form of opinion. Thus, statement therefore, does not rule out completely use of knife in assault on deceased. Particularly, when there is further evidence in the form of appellant himself taking knife to police station and it is not denied that Article (9) is different knife and not the one taken by him to police station. This knife is stained with human blood, though inconclusive for grouping. However, there is no suggestion to Investigating Officer about planting human blood on knife or any other muddemal articles. Thus, there is sufficient evidence to connect knife with the murder of deceased.

16. Panch witness, further, deposed about seizure of blood stained baniyan, trouser and underwear under panchanama (Exhibit

23). In the cross examination, no dispute is made about this seizure. There is further evidence on record to show that when appellant went to police station he was wearing baniyan and night trouser smeared with blood. Appellant tries to explain smearing of his clothes with blood by stating in statement under Section 313 of the Code of Criminal Procedure that when he saw dead body of wife he embraced her and therefore, the clothes were smeared with blood. In this regard, it would be relevant to take note of CA report (Exhibit 55) which shows that few blood stained were found on the lower portion of Sandow baniyan and front portion of night pant. This fact indicates that clothes won't have got stains like these on embracing dead body. Similarly, if the nature of clothes worn by appellant is considered, then it is clear that he was at home in the night and not as claimed, came in the morning from Aurangabad. If it was so, it is absolutely impossible that he came home in baniyan and night pant, unless it is plausibly explained by appellant. These facts clearly rule out the possibility that appellant was not at home and he came home from outside after death of his wife.

17. Moreover, the fact of knife being brought by him before police is not explained by appellant. Ordinarily, if he is not assailant,

the appellant would have no reason to take knife with him to police station. This conduct of accused becomes relevant under Section 8 of the Evidence Act which indicates his guilty mind.

18. As far as maintaining the muddemal intact till referred to Forensic Science Laboratory, there is evidence of panch witness, Namdeo Borse, who has duly proved seizure panchanama (Exhibit 22). It is clear from the said panchanama that the muddemal properties were seized and sealed at the spot. Moreover, prosecution has also placed on record receipt exhibit 3 showing that the seized muddemal was handed over to the muddemal clerk and letter addressed to Chemical Analyser shows that all muddemal properties were in sealed condition and therefore they were accepted by Chemical Analyser. In our considered view, there is sufficient evidence on record to show that the muddemal articles which were seized from the spot as well as at the police station were duly preserved free from tampering.

19. It is also sought to be argued that from evidence of panch witness as well as brother of appellant, a possibility is created that any one can enter into the house of deceased from terrace and

since the articles in the house were found scattered and hence murder could have occurred in an attempt to theft. The evidence on record however, does not support the said theory in any manner whatsoever. Though articles in the house are said to be scattered, there is no complaint about any articles being stolen from house. Most importantly, the ornaments on person of deceased were intact, as it can be seen from inquest panchanama. Thus, this is not a case where it can be said that for theft murder is committed.

20. Post Mortem notes show that deceased sustained 6 incised injuries. The number of injuries and manner in which deceased is assaulted also sufficiently demonstrates the intention of assailant. Thus, there is no reason to accept submission that murder could have taken place in assault by someone else, who entered home for committing theft. Moreover, there is no other evidence to support that anyone else could have entered the house of appellant and deceased. It is trite law that an accused would be entitled to get benefit of reasonable doubt and not any created doubt, if not reasonable. The appellant, therefore, is not entitled for acquittal on this ground.

21. According to defence, prosecution has failed to prove motive for accused to kill his wife. Needless to say that motive is always hidden into the mind and there can be hardly any direct evidence of the same. Herein this case, however, there is testimony of Shivanath (PW 8), father of deceased, who deposed that appellant used to beat deceased under influence of liquor. Though he admits that there is no previous complaint about the same, considering relationship of husband and wife, non lodging of complaint to police would not be sufficient to discard his evidence. At least this evidence indicates the strained relationship between husband and wife.

22. The evidence on record conclusively establishes that deceased died in the four walls of house. The defence of alibi of appellant is not established for want of proof thereof. The burden therefore lies on appellant to explain the circumstances in which his wife died. In absence of any explanation, the burden contemplated under Section 100 of the Evidence Act cannot be said to be discharged by the appellant. Evidence on record leaves no room for doubt that it is appellant who has committed murder of wife and the possibility of the same could have been done by someone else is completely ruled out.

23. Having regard to evidence and over all circumstances on record, it must be held that prosecution has proved guilt of appellant beyond doubt. We, therefore, find no reason to cause interference in impugned judgment of conviction. Resultantly, appeal stands dismissed.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

dyb