



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

CRIMINAL APPEAL NO.677 OF 2020

Bhimrao s/o. Bhagwan Bansod,
Age : 47 years, Occ. Labour,
r/o. Warappaon, Tq. Kaij,
Dist. Beed

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.S.J.Salunke, Advocate for appellant
Mrs.U.S.Bhosle, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : APRIL 08, 2024
PRONOUNCED ON : APRIL 16, 2024

JUDGMENT (PER R.G.AVACHAT, J.) :

The challenge in this appeal is to the judgment of conviction and consequential sentence, passed by learned Addl. Sessions Judge, Ambajogai, in Sessions Case No.62 of 2015, on 30.03.2019, whereby the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to life imprisonment with fine of Rs.1,000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for six months. He was acquitted of the offence punishable under Section 498-A of Indian Penal Code. Neither the State nor the victim has filed appeal against acquittal.

2. The facts in brief, giving rise to the present appeal, are as follows:-

First Information Report (F.I.R. - Exh.15) was lodged by PW 1 - Usha (informant). Priya (deceased) was one of the daughters of the informant. Priya married the appellant in 2012. She was treated well by the appellant and her in-laws for 4-5 months of marriage. The appellant, thereafter, started asking Priya to fetch money from her mother for day-to-day expenses. He even used to beat her up on that count and also, as she was not conceiving. The appellant was addicted to alcohol. The informant had paid the appellant Rs.10,000/- once. Whenever Priya used to visit the house of the informant, she would relate her woes.

3. On 11.06.2015 little past 05.00 p.m., Bapurao, brother of the appellant, made phone call to the informant and informed Priya to have suffered attack. The informant, therefore, asked her relations to visit Priya's house. The informant also went to Kaij along with her father and mother. PW 2 - Baliram and PW 3 - Sanjiwani, in turn, visited Priya's residence to find her lying dead on cot in a room of the house. All of them, first, approached the police station.

4. PW 6 – Nana was Police Inspector, Kaij Police Station. He visited the house of the appellant and brought the dead body of Priya at Kaij Police Station. On the following morning, inquest was conducted under panchnama (Exh.13). Mortal remains of Priya was subjected to post-mortem (Exh.30). It was realised that the cause of death was throttling. The informant, therefore, lodged the FIR (Exh.15). This witness did investigation of the crime. Scene of offence panchnama (Exh.33) was drawn. The appellant was arrested. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, charge sheet was filed against the appellant.

5. Learned Addl. Sessions Judge framed charge (Exh.8) for the offences punishable under Sections 498-A and 302 of Indian Penal Code. The appellant pleaded not guilty. His defence was of false implication. The prosecution to bring home the charge, examined six witnesses and produced in evidence certain documents. The trial court, on appreciation of evidence in the case, passed the judgment and order impugned herein.

6. Heard learned counsel appointed to represent the appellant. Also heard learned APP for the respondent – State.

7. Learned counsel for the appellant would submit that the case was based on circumstantial evidence. No prosecution witness deposed to have seen the appellant in the company of the deceased sometime before Priya met with homicidal death. According to him, it might be a case of hanging. The Medical Officer, who conducted post mortem, made some overwriting in the sentence giving cause of death. Our attention was drawn thereto. According to learned counsel, initial burden to prove the appellant to have committed the crime, rests on the prosecution. It is only after some evidence adduced against him, the appellant is expected to explain the circumstances within his knowledge. According to learned counsel, the judgment impugned herein was based on surmises and conjectures. He, therefore, urged for allowing the appeal.

8. Learned APP would, on the other hand, submit that the deceased died at her matrimonial home. It was shared by the appellant and deceased alone. In view of Section 106 of Evidence Act, it is, therefore, for the appellant to explain the circumstances, in which his wife met with homicidal death. A wrong defence of hanging or keeping mum would go a long way to fill in the missing link, if any. Learned APP relied on the judgment of the Apex Court in

the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681**. She reiterated the reasons given by the trial court. Learned APP took us through the evidence on record, to ultimately, urge for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence and the judgment impugned herein.

10. Paragraph 12 in the case of **Trimukh Maroti Kirkan** (supra), reads thus :-

12. In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain 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 their innocence.

11. To bring home the charge, following circumstances are sought to be relied on :-

- (i) The appellant and deceased Priya to have been residing together;
- (ii) The appellant to have harassed and illtreated deceased Priya in connection with unlawful demand of money and as she was not conceiving;
- (iii) Priya was found dead at her matrimonial home;
- (iv) The appellant did not offer any explanation as to the circumstances in which Priya met with homicidal death.

12. True, the Apex Court in the case of **Trimukh Maroti Kirkan** (supra) in paragraph 22 observed thus :-

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is

found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh* AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khukhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under *Section 313 Cr.PC.* The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under *Section 302 IPC.* In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were

seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

Close reading of the facts in the case of **Trimukh Maroti Kirkan** (supra), would indicate that the husband and in-laws of the deceased therein, had informed one and all that deceased died of snake bite. When the deceased met with homicidal death, the family members were in the house. Some injuries were noticed on her person. The appellant therein did not offer any explanation.

13. Let us, now, turn to the evidence on record. The informant (mother of deceased) testified that Priya married the appellant in 2012. She was treated well for 4-5 months. The appellant, thereafter, started illtreating her so as to coerce her to fetch money from her mother. It is further in her evidence that she paid the appellant sum of Rs.10,000/- once. Priya (deceased) would relate her woes whenever she used to visit the informant's house. It

is further in her evidence that on 11.06.2015 little past 05.00 p.m., Bapurao, brother of the appellant, made phone call to the informant and informed Priya to have suffered attack. The informant, therefore, asked her relations to visit Priya's house. The informant also went to Kaij along with her father and mother. PW 2 - Baliram and PW 3 - Sanjiwani, in turn, visited Priya's residence to find her lying dead on cot in a room of the house of the appellant. All of them, first, approached the police station.

14. During cross-examination of PW 1, it has been brought on record that the appellant was well educated. He was Post-Graduate in Arts stream with specialisation in subject "English". When his marriage was settled, he was serving as assistant of Talathi (private job). The informant admitted her husband to have died of suicide. It is further in her evidence that the deceased was well-built and introvert. Her evidence would further indicate the couple (appellant and deceased) would visit her residence occasionally (on festivals). Her evidence further indicate that Priya was taken to a clinic for fertility treatment. Her evidence further indicates that the appellant's brother - Bapurao was staying at Ambajogai and his wife was Lecturer in college thereat. She denied Bapurao to have told her that Priya committed suicide by hanging. Her evidence further

indicates that she asked her brother – Gautam to see what the matter was. She learnt about the details of incident from him. Her evidence indicates that in the mid-night, she reached Kaij hospital. She saw the dead body of Priya. She noticed injuries on her neck. She then lodged the FIR (Exh.15).

15. PW 3 – Sanjiwani, wife of informant's brother, was witness to the inquest panchnama (Exh.13). It is in her evidence that she had accompanied her husband to the house of the appellant and then, to the hospital. According to her, she had noticed ligature mark on the neck of the deceased. She was, however, confronted with her police statement and omission to that effect, has duly been brought on record. The post mortem report (Exh.30) also indicates no ligature mark on the neck of the deceased.

16. PW 4 – Dr. Aruna conducted autopsy on the mortal remains of Priya. In her opinion, cause of death was "*asphyxia due to throttling*". She, however, did not give in. Our attention was drawn to the last column of the post-mortem report to indicate that the first letter "H" was converted into "T" to make word "Throttling". True, the overwriting is obviously seen. There appears to have been mistake. Details of the post-mortem examination have been given in

the post-mortem report. It is reiterated that although PW 4 – Dr.Aruna was subjected to searching cross-examination, nothing could be brought on record to indicate the deceased to have died of hanging.

17. PW 5 – Dnyaneshwar was Talathi at Kaij. In his presence, the scene of offence panchanma (Exh.33) was drawn on 13.06.2015. Close reading of the panchnama (Exh.33) indicates that no rope was noticed at the scene of offence. It was tin-shed room admeasuring 10 ft. x 12 ft. A cot was seen therein. Admittedly, the dead body of Priya was removed from the cot and taken to Kaij hospital by Nana (PW 6), Investigating Officer.

18. Then, we have evidence of PW 2 – Baliram. It is in his evidence that the informant was his sister-in-law. On demise of informant's husband, he bad brought up Priya (deceased). Gautam, brother of informant, told him Priya to have suffered attack. PW 2 – Baliram, therefore, went to the house of the appellant at Warapgaon. He saw the appellant and his father sitting at the door in front of the house. He inquired with the appellant to learn from him that Priya passed away. There was darkness. Arjun, brother of appellant, came outside of room. On inquiry with him, PW 2 learnt Priya to have suffered attack. His evidence further indicates that he noticed

injuries on the neck of Priya. He along with Gautam and Gautam's wife, therefore, went to police station and reported the matter.

19. The evidence of PW 6 - Nana, Investigating Officer, indicates that he visited the room of Priya on her death. He then brought Priya's dead body to the hospital. He then conducted inquest under panchnama (Exh.13) and submitted the dead body for post mortem.

20. Close analysis of the aforesaid evidence would indicate that Priya met with homicidal death (strangulation) at her residence. Not a single witness has been examined by the prosecution testifying that the room in which Priya was residing, was shared by the appellant and in-laws of the deceased. One may presume that the appellant being husband of the deceased must have been residing in the very room. None of the prosecution witnesses, however, testified the appellant and the deceased to have been seen together or the appellant was at his residence a few hours before the incident. Admittedly, the appellant was well educated (M.A. in English). At the time of marriage, he was serving as assistant to Talathi. There is nothing to indicate that during the relevant days, he was unemployed. There is also nothing to suggest that he was addicted to alcohol. No evidence is forthcoming to indicate the appellant to

have been in the company of the deceased or the deceased was in his custody sometime before the deceased met with homicidal death. The evidence of PW 2 - Baliram, on the contrary, would indicate that the other elderly family members were present at the room, wherein Priya was found dead. The appellant's brother was seen coming out of the room. He told PW 2 - Baliram that Priya suffered attack. The medical evidence is conspicuously silent to state the exact time of death.

21. The appellant has admittedly been acquitted of the offence under Section 498-A of Indian Penal Code. The motive for commission of the offence, therefore, vanished. It is reiterated that Priya appears to have met with homicidal death during day time. There is nothing on record that no one else had access to her room. Considering the prosecution evidence on record, it would be just difficult to jump to the conclusion that merely because she died at her matrimonial home, it is the appellant (husband) and none else to have committed murder. True, from the suggestion given to the prosecution witnesses, it appears that the appellant took a wrong defence of hanging. Close reading of cross-examination of the Medical Officer indicates that it was a studied cross-examination. Even the last column of post-mortem report indicates that the first

letter “H” was converted into “T” to make word “Throttling”. Unless and until there is some evidence to suggest something incriminating against the appellant, then and then only wrong defence could be taken in aid to fill-in the missing link.

22. In our view, the findings recorded by the trial court in paragraphs 27 to 29 of the impugned judgment are based on surmises and conjectures. For better appreciation, we propose to reproduce the same below:-

27. Admittedly, the body of the victim was found in the house of accused. The evidence on record does not suggest any other person having access to the said place of incident. The victim apparently was residing with the accused at the same place as husband and wife. No other circumstance or possibility is brought forth with regard to the probability of any other person having access to the house. Thus, in my view provision of Section 106 of Evidence Act would be squarely applicable. In the case of Ulhas Gore Vs. State of Maharashtra reported in 2019 (1) B.Cr.C. 384, accused and victim were alleged to be staying live in relationship and in such circumstances the aspect of last seen was held to be of importance. Such is not the case in the present case. In the case of Raj Kumar Vs. State of Rajasthan reported in 2006 (2) Crimes the prosecution had failed to establish death due to throttling and there were other circumstances to indicate that it was case both trying to commit suicide. Same is not applicable here.

28. *In the present case one has to consider the fact that the accused was found outside the house when PW. No.2 went to the house immediately on getting knowledge of attack of victim. It is necessary to point out that the victim was lying dead on the cot. It was dark at that time. Thus, for a considerable period of time there was no effort to disclose death or take medical help or inform police or other persons relating to death of the victim. The entire machinery started moving only after PW. No.2 came there and saw that death was apparently homicidal. Thus, in such circumstances this aspect is of importance of trying to suppress the death of the victim. The aspect of death or untoward incident was informed to the mother PW. No.1 who stays at Rahuri. Surprisingly the other relatives who stay quite nearby in the adjoining village were not informed. Thus, the purpose of intention of informing the mother also is a circumstance to be consider with intention to suppress death of victim.*

29. *As regards the aspect considering the residence and last occupation of accused same are not denied herewith. It is also necessary to Consider that none of the witnesses state or were informed that the victim had committed suicide. The evidence on record is totally is silent about anything done with regard to the victim, to bring home the aspect, of doing something with regard to death of the victim by the accused. The provision of Section 106 of the Evidence Act would be applicable when a person fails to disclose evidence or facts solely to his knowledge. What happens in the house or four walls in a house is known only to the accused and the victim. There was additional chance to give explanation in this court when the witnesses were*

examined and also when he himself was examined. In the case of Neel Kumar Vs. State of Haryana reported in 2012(5) S.C.C. It is held that it is the duty of the accused to explain incriminating circumstances against him and keeping silent and not furnishing any explanation is additional link. In Trimukh Kirkan Vs. State of Maharashtra 2006 (10) S.C.C. 681 it has been held that when offence takes place in dwelling house where the husband also normally resided, if the accused does not offer any explanation as to how wife received injuries or offers an explanation which is found to be false, it is strong circumstance indicating his responsibility for commission of offence."

Whatever legal position has been quoted in these paragraphs cannot be disputed. Inferences drawn by the trial court, however, are reiterated to be based on surmises and conjectures.

23. In our view, the evidence on record fell short to sustain the conviction of the appellant for the offence punishable under Section 302 of Indian Penal Code or for any other offence. We are, therefore, not at one with the conclusion arrived at by the trial court. The appeal, therefore, succeeds.

24. Hence, the following order:-

(i) The appeal is allowed.

(ii) The judgment and order dated 30.03.2019, passed by learned Addl. Sessions Judge, Ambajogai, in Sessions Case No.62 of 2015, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code, is quashed and set aside. He stands acquitted thereof.

(iii) The appellant be released forthwith, if not required in any other case.

(iv) Fine amount paid by the Appellant, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP