



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

**CRIMINAL APPEAL NO.804 OF 2019
AND
CRIMINAL APPLICATION NO.407 OF 2023**

Shankar s/o. Harishchandra Gaikwad,
Age : 24 years, Occ. Labour,
R.o. Lodga, Tq. Ausa, Dist. Latur

..Appellant

Vs.

The Stare of Maharashtra

..Respondent

Mr.Sachin Panale, Advocate for appellant
Mrs.S.N.Deshmukh, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : NOVEMBER 14, 2024
PRONOUNCED ON : NOVEMBER 19, 2024**

JUDGMENT (Per R.G.Avachat, J.) :-

The appellant has been convicted for the offences punishable under Sections 302 and 201 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and R.I. for three years, respectively, with default stipulation, vide the judgment and order dated 02.05.2019, passed by learned Addl. Sessions Judge, Latur, in Sessions case No.92 of 2016. The appellant is, therefore, in this appeal before us.

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

Appellant married Karishma (deceased) on 10.07.2016, at village Kavtha-Pati. The appellant started suspecting character of his wife (Karishma). He, therefore, assaulted on her cheek. On 2-3 occasions, post marriage, Karishma had been to her parental house. She had related the same to her mother. It so happened that on 25.08.2016, Karishma (deceased) was found dead at her matrimonial home. It was said that saree was around her neck. Her brother-in-law Balaji informed Karishma's father (PW 2 - Ram) that she committed suicide. PW 2 - Ram along with her wife and other relations, therefore, visited Karishma's house. After funeral, they went back to their village. On the other hand, the son of village Police Patil had informed in writing to the concerned police station that Karishma committed suicide by hanging. Based on the said report, a case of unnatural death (A.D.) was registered. An enquiry therein was made. Spot panchnama (Exh.42), inquest and autopsy were conducted during A.D. enquiry. Post mortem report indicates the that the deceased died due to *"cardio respiratory arrest due to asphyxia due to compression of neck structures due to strangulation i.e. throttling (manual strangulation)"*.

3. A Police Head Constable (Kishor Mangalgire), therefore, lodged the FIR (Exh.4). Based on the said FIR, a crime, being C.R. No.216 of 2016 was registered for the offences punishable under Sections 302 and 201 of Indian Penal Code. Statements of the persons acquainted with facts and circumstances of the case were recorded. Seized articles were forwarded to the F.S.L. for analysis and report. The appellant was arrested. On completion of the investigation, charge sheet was filed against him.

4. The trial court framed Charge (Exh.23). The appellant pleaded not guilty. His defence was of false implication. According to him, the deceased committed suicide. The neighbours and PW 10 – Vijaykumar, son of village Police Patil had witnessed the same. For no oblique motive, the deceased was removed from hanging state and laid on the floor. It is his defence that the deceased was not happy with him. Her marriage took place against her wish.

5. To bring home the charge, the prosecution examined thirteen witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial court convicted and consequently, sentenced the appellant, as stated above.

6. Necessarily, the case is based on circumstantial evidence. Before adverting to the evidence on record, it would, therefore, be necessary to refer to the observations of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** as under :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully 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 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 the 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. The prosecution to bring home the charge, relied on the following circumstances:-

- (i) Homicidal death;
- (ii) Motive, i.e. appellant was suspecting character of the deceased;
- (iii) Deceased died at her matrimonial home;
- (iv) The appellant failed to explain the circumstances that resulted into death of his wife.

8. Admittedly, the deceased died within 45 days of her marriage. During this period, she had been to her parental home on three occasions. On 25.08.2016, by 12.00 noon, she was found dead at her matrimonial home. Her brother-in-law Balaji informed accordingly to the father of the deceased (PW 2 - Ram). On the other hand, PW 10 - Vijaykumar, son of village Police Patil, made a report in writing (Exh.76) to the Police Inspector, Police Station, Ausa, stating therein that Karishma committed suicide at her house by 2.00 p.m. It was so informed to him by her brother-in-law - Balaji Gaikwad. He, therefore, along with village Sarpanch and other villagers, paid visit to the appellant's house and noticed Karishma to have hanged herself to the rafter below the tin-sheet of the room. Based on this report, an unnatural death case was registered vide R.No.62 of 2016. Surprisingly, this witness was examined by the prosecution in support of his case. Learned APP in-charge of the

case did not subject him to the cross-examination. As such, his evidence could not be brushed aside.

9. PW 1 – Kishor, Police Head Constable, was asked to make enquiry into the unnatural death case. It is in his evidence that the uncle of the deceased identified the dead body. The dead body was in the middle of the room of the residential house of the deceased and the appellant. Her eyes were closed. Mouth was open. Legs were straight and hands were near the body. There was yellow colour saree around her neck. As the saree was around her neck, the neck was not visible. He sent the dead body for post-mortem examination. He then referred to the inquest panchnama (Exh.40) and spot panchnama (Exh.42). His evidence further disclosed that the post mortem examination was conducted at Primary Health Centre, Hasegaon. The Medical Officer gave a provisional report regarding the cause of death on 27.08.2016. The report disclosed that deceased died due to pressing of her neck. He, therefore, reported the matter to the superior. He then inquired with the father of the deceased. He learnt from him that the appellant was suspecting character of the deceased. He would, therefore, illtreat her. PW 1 – Kishor lodged the FIR (Exh.4) on behalf of the State.

10. During cross-examination of PW 1 – Kishor, it has been brought on record that the son of village Police Patil had given a report that the deceased died of hanging with the support of the tin roof of the house. He admitted that there was crowd gathered at the place of the incident. The villagers and relatives of the deceased were also amongst them. He admitted that both the witnesses to both the panchnamas were not from village Lodaga. They had come from a nearby village.

11. The Medical Officers, who conducted autopsy, have both been examined as witnesses. One of them is PW 4 – Dr.Govind. His evidence disclosed that he conducted the post-mortem examination and issued the provisional death certificate (Exh.45). According to him, there was no injury on her person except on neck. After dissection, projection of cartilage showed that there was fracture of thyroid cartilage laryngeal cartilage palpable. This was internal injury of neck. According to him, it was a case of manual strangulation. He issued post mortem report (Exh.49). He then received a questionnaire to which he replied vide Exh.51, stating therein that the strangulation could not be caused if one gets hanged with cloth like saree. There can be no strangulation in an attempt to commit suicide. It was not necessary to preserve nail clipping in case of

death by strangulation. In his opinion, the deceased died within twelve hours next before the post mortem examination was over. The post mortem report indicates that autopsy started by 5.15 p.m. and it was over by 6.30 p.m. on 25.08.2016. Going 12 hours behind means the death could be said to have occurred from 5.00 in the morning or little thereafter.

12. On the same lines is the evidence of another Medical Officer namely Dr.Santosh (PW 8), who conducted autopsy along with PW 4 – Dr.Govind. During cross-examination, he stated that it was not possible for him to mention words strangulation by manual throttling in provisional death certificate. According to him, it was not necessary to make mention, accordingly. His evidence would further indicate that the ligature mark depends upon the ligature, which was being used. He admitted that if ligature was soft and body was cut down from ligature immediately after death, then there would be no ligature mark. Internal section of neck was complicated. It was always not necessary that the victim would resist throttling by the assailant. If there was struggle, then it might be possible that there were injury marks and nail marks on the body of the victim. Except palpable fracture injury, he did not see any other injury on the body of the deceased Karishma. He denied to have given report

simply on the basis of palpable. Similar were the answers to the questions put to PW 4 – Dr.Govind during his cross-examination.

13. Both PW 4 – Dr.Govind and PW 8 – Dr.Santosh being independent witnesses and have no reason to take side, we find their opinion `might' be correct. We cannot say that it `must' be correct since, after all, it is the opinion evidence. Learned APP was right in submitting that there was no reason to discard the evidence of both the Medical Officers.

14. The question is, whether the appellant is the author of the crime. The inquest panchnama (Exh.40) indicates that no injury mark was noticed on the neck of the deceased. Learned APP adverted our attention to the crime scene panchnama (Exh.42), which was drawn between 3:30 pm. and 4:00 pm. on the fateful day itself. According to her, close reading of the crime scene panchnama (Exh.42) indicates that there was nothing like a stool or any article in the room, to suggest the same was used by the deceased to stand on it to get herself hanged for reaching to the rafter/support of the tin-sheet roof of the room. We concur with her submissions. There are, however, other aspects of the matter.

15. PW 2 - Ram, father of the deceased, and his family members, even after having seen the dead body of his daughter, did not lodge report with the police immediately, suspecting involvement of the appellant. Admittedly, the FIR was lodged by the police officer. The parents and other relatives of the deceased were called by the police and then, their statements were recorded on 27th i.e. two days after the incident. PW 2 - Ram, father of deceased, testified that after the marriage, Karishma had come to his house for 5-6 days. Then, she went back to her matrimonial home. She again returned to his residence for Panchami festival. According to him, Karishma had stated to his wife that the appellant would suspect her character and therefore, harass and beat her. If we read the evidence of PW 5 - Dropadi, she denied to have so informed to her husband PW 2 - Ram. He admitted that while he had reached the house of the appellant, crowd had gathered there. According to him, initially, there was no saree around her neck. When he again visited, he found saree around her neck. If it was so, it was a reason for him to entertain suspicion then and there. Be that as it may.

16. PW 3 - Gopal was witness to the crime scene panchnama and seizure of clothes of the deceased. His cross-examination indicates that the house in which the incident took place, was owned

by Balaji, brother of the appellant. He admitted that the house was situated in a populated area. He went on to admit that there was no mark or injury around the neck of the deceased. Her bangles were intact in her hands.

17. PW 5 - Dropadi was mother of the deceased. She testified that after the marriage, Karishma had been to her house for 5-7 days. She then went back to her matrimonial home. She again came back for Panchami festival. That time, Karishma stated her to have destroyed her life by marrying her with the appellant. She told her that the appellant would beat on her cheek as she was looking here and there. The appellant had stated her that he had sexual intercourse with her for two days and now, she would have to work like a maid in the house. Karishma further told her mother that the appellant wanted her to share the bed with him everyday. She did not like the same. She had pulled her husband (appellant) when he was sleeping with her. Thereupon, PW 5- Dropadi had assured to reason with the appellant. This witness further deposed that the appellant came and told them that they should make understand Karishma, as she was not allowing him to share the bed with her. She, thereupon, told both of them that they were newly married and Karishma was very young. Two days thereafter, the brother-in-law of the deceased came and took her back to her matrimonial home.

18. Learned APP would submit here that although PW 5 – Dropadi had not related her husband about illtreatment to Karishma, the fact remains that Karishma had related her that the appellant would assault on her cheek suspecting that she was looking here and there. Learned APP meant to say that, this was the motive behind the crime. According to her, even the appellant's house was shared by other family members. They did not have motive and it is the appellant and appellant alone, who must have killed the deceased.

19. It was suggested to the mother of the deceased that Karishma had come three hours late at the time of her own marriage. The appellant meant to suggest that her marriage took place against her wish. The suggestion was denied.

20. PW 6 – Vilas is witness to the panchnama (Exh.56) as regards seizure of the clothes of the appellant. PW 7 – Dattatraya was witness to the seizure of sim-card under panchnama (Exh.61). It is now known, as to why the sim card was seized from the house of the appellant. There is no further evidence in this regard. PW 11 – Riyaz is Police-Naik attached to the Cyber Cell, Latur. He drew screen-shots from the memory card and drew hash value thereof.

21. PW 9 – Shivaji was uncle of the deceased. His evidence disclosed that having learnt about death of the deceased Karishma, he went to her village alone, as he was away at Ganj-Golai at Latur. His evidence is on the point of receiving dead body of the deceased under acknowledgment (Exh.74). The same does not further the case of prosecution. PW 12 – Hanumant had recorded the FIR in the capacity as police station officer.

22. PW 13 – Vikas was the Investigating Officer. His evidence disclosed that initially, A.D. was registered vide R.No.62 of 2016. Based on the post mortem report, crime was registered on the report lodged by the Police Head Constable. Then, he recorded statements of the persons acquainted with the facts and circumstances of the case. During his cross-examination, he was candid enough to admit that during the A.D. enquiry, it was realised to be a case of hanging. The post mortem report showed death due to strangulation. He admitted that the spot of the incident was house of Balaji Gaikwad, real brother of the appellant. Certain questions were put to him, which, in fact, ought not to have been allowed to put by the trial court. He admitted that he recorded statements of the daughters of Balaji on 28.08.2016 in 'Question and Answer form'. Both the daughters stated to him that on return from the school, they had

seen Karishma in hanged state. He then admitted to have recorded statement of one Devidas, who stated him that the appellant was serving with him on yearly remuneration. He also stated him that the appellant was in his field when the phone call was received and one Mukesh Parve informed Karishma to have committed suicide. He further testified that statement of one Bharatbai Dhole, neighbour of the appellant, disclosed that she had never heard any quarrel between the couple. Similar statements were given by witnesses - Ram Rathod, Dnyanoba Chothve, Vithal Ujalambe and Ramakant Samble. According to him, Karishma's cousin (Anusaya @ Sonali) was also examined and she stated that when she met Karishma at the time of Panchmi festival, she did not make any complaint against her husband. He further admitted that one Bharat Dhole stated that when Karishma had been to her parental house for Panchmi, there was quarrel between her father and herself and her father told her to go to the appellant's house and die there and thereafter, Karishma committed suicide.

23. Learned APP first relied on the judgment of the Apex Court in the case of **Jayantilal Verma Vs. State of M.P. (Now Chhattisgarh) in Criminal Appeal No.590 of 2015** delivered on 19.11.2020, wherein in paragraph 9, it has been observed thus:-

9. The High Court in the given situation, apart from relying on the testimony of PW-1, turned its attention to the postmortem report. In this context, it was noted that there was blood oozing from both nostrils and mouth of the deceased, there was swelling over the right cheek, marks of ecchymosis at epiglottis region and back of the neck, bruise present at left axillary of cheek and there was depression mark of a mala on the left side of the neck. It went on to state that since the incident had taken place inside the privacy of the house, the onus was on the persons residing in the house, to give an explanation. In such situations, it was noted that it is difficult for the prosecution to lead any direct evidence to establish the guilt of the accused. In this regard, the High Court referred to [Section 106](#) of the Indian Evidence Act, 1872 (hereinafter referred to as the '[Evidence Act](#)'), which reads as under:-

“106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.” It, thus, opined that in such cases, while the initial burden to establish the case would be upon the prosecution, it would be of a relatively light character. There would be a corresponding a burden on the inmates of the house to give cogent explanation as to how the crime was committed. They could not get away by keeping quiet and offering no explanation.

24. In the said case, suicide theory was also ruled out since scratch marks were noticed on the neck. The judgment of the Apex

Court in the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, 2006 AIR SCW 5300** was referred to in the said judgment.

25. Learned APP relied on paragraph 25 of the judgment in the case of **Jayantilal** (supra), wherein, it has been observed thus:-

25. We are confronted with a factual situation where the appellant herein, as a husband is alleged to have caused the death of his wife by strangulation. The fact that the family members were in the home some time before is also quite obvious. No explanation has been given as to how the wife could have received the injuries. This is a strong circumstance indicating that he is responsible for commission of the crime. The appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation.

26. Learned APP further relied on the judgment of the Apex Court in the case of **Jayantibhai Bhenkaarbhai Vs. State of Gujarat, AIR 2002 SC 3569**, to submit that the defence of alibi ought to have been proved by the appellant upto to the hilt and not on preponderance of probabilities.

There can be no two views over the same. The initial burden to prove the offence beyond reasonable doubt rests on the

prosecution. It is only for the accused, who wish to bring his case within any of the exceptions or make out the defence of alibi, to prove the same. Needless to mention, the defence of alibi need not be proved beyond reasonable doubt. It is sufficient to prove that it was just impossible for him to be at the crime scene from the place where he claimed to have been by that time. It, however, should not have been in the mouth of the prosecution that the other witnesses examined by the Investigating Officer, who supports the appellant's case, should have been examined by the appellant as defence witnesses. Non-examination of any of them by the prosecution amounts to withholding the evidence favourable to the appellant.

27. The cross-examination of the Investigating Officer has destroyed all the case. The evidence on record indicates that the matrimonial home was not shared by Karishma and the appellant alone. The appellant's brother – Balaji and his wife were also residing with them. In the case of **Jayantilal** (supra), the husband of the deceased along with all the in-laws were accused therein. Unfortunately, the father-in-law had passed away, pending the appeal. The High Court did not find any evidence against the mother-in-law; hence she was acquitted. As such, the husband alone was the appellant before the Supreme Court.

28. Admittedly, PW 10 – Vijaykumar, son of village Police Patil, had given a report in writing to the police that he along with others had visited the house of the appellant and noticed the deceased was hanging from the rafter/support of the tin sheet. On the lines of the same, there were some statements recorded by the Investigating Officer. None of them or any neighbour was examined by the prosecution in this case as prosecution witness. When PW 10 – Vijakumar gave the written report, the prosecution preferred not to cross-examine him inspite of he claimed to have seen the deceased hanging from the rafter. On the other hand, the evidence of mother of the deceased indicates that the deceased was reluctant to share bed with the appellant. She did not like the same. It was not a case of marriage over 20 years. The deceased was 19 years of age. Her death had occurred within 45 days of marriage. This ought not to have been her attitude. The defence was, therefore, justified in suggesting her mother that the marriage took place against her wish. Said suggestion gets reinforced by the fact that the mother admitted that the deceased had alleged her to have ruined her life by marrying her with the appellant. True, said statement qualified that the appellant had hit on her cheek as she would look here and there. One Devidas Rathod admitted that the appellant was in his field when he received phone call informing Karishma to have

committed suicide. Same has come through the evidence of the prosecution witness, for which the appellant is not required to lead defence evidence.

29. On appreciation of the entire evidence on record, we conclude that the prosecution has failed to prove beyond reasonable doubt that it was a case of manual strangulation. Possibility of hanging (suicidal) could not be ruled out in view of the very many admissions given by the Investigating Officer and the written report lodged by PW 10 – Vijaykumar, son of village police patil after having witnessed the deceased hanging from the rafter and some of the neighbours, who had seen the same scene. None of the independent witnesses had been examined. The relatives of the deceased were summoned by the police for recording their evidence. Even if it is assumed that it was a case of homicidal death, there is no evidence to indicate that the appellant was in the company of the deceased at the material time. The death took place during the day time, i.e. the time by which a man, usually, happens to be at his work place. Same is made out from the statement of one Devidas Rathod. Same suggests that the appellant was not home at the material time. Moreover, the matrimonial home of the deceased was shared by more than two adult family members. It, therefore, cannot be said

that the prosecution has brought home the charge against the appellant beyond reasonable doubt.

30. In the result, the appeal succeeds. Hence, the following order:-

(i) The appeal is allowed.

(ii) The impugned order dated 02.05.2019, passed by learned Addl. Sessions Judge, Latur, in Sessions case No.92 of 2016, convicting and sentencing the appellant for the offences punishable under Sections 302 and 201 of Indian Penal Code, is set aside. He is acquitted of the said offences.

(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.

(v) In view of the above, Criminal Application No.407 of 2023 does not survive and stands disposed of.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP