



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

CRIMINAL APPEAL NO.784 OF 2019

Kailas s/o. Ananda Narke,
Age : 42 years, Occ.Nil,
r/o. Kasari, Tq. Shirur,
Dist. Pune

..Appellant

Vs.

The State of Maharashtra,
Through Police Inspector,
Belwandi Police Station, Tq.Shrigonda,
Dist. Ahmednagar

..Respondent

Mrs.S.K.Doke and Mr.K.R.Doke, Advocates for appellant
Mr.N.R.Dayma, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : JUNE 13, 2024
PRONOUNCED ON : JUNE 19, 2024**

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

The challenge in this appeal is to the judgment and order dated 05.07.2019, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.156 of 2017. Vide the impugned order, 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 two years and to pay fine of Rs.5,000 and Rs.1,000/-, respectively, with default stipulation.

2. The prosecution case before the trial court, in short, was as under:-

Savita (deceased) was wife of the appellant. The marriage between the appellant and deceased Savita took place on 24.05.1997. The couple was blessed with two daughters - Vrushali (PW 7) and Rupali. Both were grown up daughters. One was studying in 12th standard, while the other was in 10th standard. The appellant was in transport business. The appellant developed extra-marital relationship with a woman. There, therefore, used to be frequent quarrels between the appellant and Savita. Quarrel ensued between the two over the same issue on 09.05.2017. When both Vrushali and Rupali went to attend the tuition classes, the appellant took Savita under the pretext of taking her with him to Akola. He took her on motorbike from the place of his residence at village Kasari-Narkewadi, Tq. Shirur to Talegaon-Dhamdhere. He then took her with him in the truck from village Talegaon-Dhamdhere. On the way, near Chikhali Ghat, he strangled her with rope. She died. He then threw her dead body out of the truck, under the bridge of Shiv river and went to Akola.

3. Someone noticed the dead body of a woman in decomposed condition. The place whereat the dead body was found,

was within the limits of Belwandi Police Station. An intimation regarding finding of the dead body was given to police. The police officer rushed to the place. As the dead body was in highly decomposed condition, spot-inquest (under panchnama Exh.19) was conducted. The dead body was buried. On the other hand, the appellant had, on 12.05.2017, lodged a missing-person's report. The photographs of the dead body were shown to the appellant and his brother-in-law, PW 1 Sandeep (brother of deceased Savita) before identifying the dead body. He also identified the photographs of the articles shown to them on Whatsapp. Therefore, the dead body was exhumed. It was subjected to post-mortem examination. The post mortem report (Exh.17) indicates that it was the case of strangulation. Vrushali (PW 7) and Rupali had informed their maternal uncle, PW 1 - Sandeep, that on the given day, there was quarrel between the appellant and their mother and since then, they disappeared.

4. PW 1 - Sandeep (brother-in-law of appellant) lodged the First Information Report (Exh.15), alleging the appellant to have killed Savita. Based on the same, crime vide C.R. No.I-40 of 2017, came to be registered. The appellant was arrested. During investigation, the appellant was found to have had made extra-

judicial confession to his friend PW 11 – Sachin. The seized articles were sent to the Chemical Analyst. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing charge-sheet before the court of Judicial Magistrate, First Class, Shrigonda, Dist. Ahmednagar. Learned Judicial Magistrate, First Class, Shrigonda, committed the case to the Court of Session. The case, in turn, came to be assigned to learned Addl. Sessions Judge, Ahmednagar (Trial Court).

5. The trial court framed Charge (Exh.4) for the offences punishable under Sections 302 and 201 of Indian Penal Code. The appellant pleaded not guilty and claimed to be tried. His defence was of false implication. To bring home the Charge, the prosecution examined fourteen witnesses and produced in evidence certain documents before the trial court. The trial court, on appreciation of the evidence in the case, convicted and consequentially, sentenced the appellant, as stated above.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellant would submit that the case is based on circumstantial evidence. She relied on the

judgment of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**. According to her, none of the circumstances on the basis of which the charge was sought to be proved, has been conclusively established. According to her, Vrushali (PW 7), daughter of the appellant and the deceased, did not stand by the prosecution. There was no evidence of last seen together. The prosecution is relying on the extra-judicial confession, allegedly made by the appellant to PW 11 – Sachin. She would further submit that the extra-judicial confession is a very weak piece of evidence. No conviction could be based solely on the extra-judicial confession. She relied on the following set of authorities :-

- (i) State of Maharashtra Vs. Uttam Sakharam Kamble, 2020 DGLS (Bom.) 1399;
- (ii) H.S.Pradeep Vs. State of Karnataka and anr., 2015 DGLS (Kar.) 1146;
- (iii) Balwinder Singh Vs. State of Punjab, AIR 1996 SC 607;
- (iv) Padala Veera Reddy Vs. State of A.P. and others, AIR 1990 SC 79;
- (v) Suvarna Shankar Yadav Vs. State of Karnataka, AIR Online 2018 Kar 2488;
- (vi) Moorthy Vs. State of Tamil Nadu; AIR Online2023 SC 645

Learned counsel, ultimately, urged for allowing of the appeal with acquittal of the appellant.

8. Learned APP would, on the other hand, submit that conviction can be sustained solely based on the extra-judicial confession, provided that it is proved and found to be true and made voluntarily. He relied on the Apex Court judgment in the case of **Gura Singh Vs. State of Rajasthan, AIR 2001 SC 330**. He then adverted to our attention to the crime-scene panchnama (Exh.17). According to him, the rope with which the appellant strangled his wife was found. The appellant made disclosure statement pointing out his truck. According to him, the trial court has passed a well-reasoned judgment and therefore, no interference therewith is warranted.

9. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same. Before taking up the said exercise, it is reiterated that the case is based on circumstantial evidence. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, the Apex Court has observed thus :-

“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."

10. Although the prosecution examined fourteen witnesses, a few witnesses are only relevant. However, a brief reference to the evidence of each and every witnesses would be made.

11. Admittedly, Savita had married the appellant on 24.05.1997. The couple was blessed with two daughters – Vrushali (PW 7) and Rupali. The family would reside at village Kasari-Narkewadi, Tq. Shirur, Dist. Pune. The house of the parents-in-law of the appellant was at village Talegaon-Dhamdhere, Tq. Shirur. The distance between Kasari-Narkewadi and Talegaon-Dhamdhere was about 5 kms. Vrushali (PW 7) and Rupali were aged 17 years and 16

years, respectively, at the relevant time. Both were taking education in 12th and 10th standard. They would visit village Talegaon-Dhamdhere for tuition classes. The appellant was in transport business. He owned a truck. As such, he used to be away from home.

12. PW 2 - Balasaheb is a witness to the spot whereat the dead body of Savita was found. The spot panchnama (Exh.17) indicates that it was a place under the bridge on Shiv river, within the limits of village Chikhali. The dead body was in highly decomposed condition. PW 3 - Sanjay is witness to the inquest panchnama (Exh.19). It appears that since the identity of the dead body had not come to light, same was buried.

13. On the other hand, the appellant had lodge a missing-person's report at Belwandi Police Station. A phone-call was received by him from Belwandi Police Station, informing that the dead body of a lady was noticed near Belwandi bridge. PW 1 - Sandeep, brother of deceased - Savita, with some of his friends, therefore, accompanied the appellant to the police station. Earlier, the police had shown them a photo of the dead body and her articles, on cellphone. PW 1 - Sandeep had identified it to be the dead body of his sister Savita. It is in his (PW 1-Sandeep) evidence that on 12.05.2017, Vrushali

(PW 7) had informed him that there was quarrel between the appellant and Savita over the appellant's extra-marital relationship. He along with his friends, therefore, went to the house of the appellant to find both appellant and Savita were not home. They, therefore, took search for both of them. The appellant returned home in the evening. He lodged the missing-person's report with Shikrapur Police Station. When PW 1 – Sandeep identified the dead body to be that of his sister, same was exhumed. Needless to mention that the dead body was buried since it was in highly decomposed condition and its identity was not established.

14. PW 4 – Dr. Manohar conducted autopsy. In his opinion, there was ligature mark on the neck of the deceased with ligature material. Viscera and articles were preserved. After the C.A. Report relating to the viscera was received, he concluded it to be the case of strangulation (post-mortem report Exh.21). In his final opinion and further going through the C.A report, he gave the cause of death of the deceased - Savita as “death due to ligature strangulation”. As such, the fact that the deceased met with homicidal death has been proved.

15. The prosecution relied on the following circumstances:-

- (i) Motive :- Extra-marital relationship of the appellant;
- (ii) Quarrel took place between the appellant and deceased Savita on 12.05.2017;
- (iii) Both of them, after the quarrel, found to have been disappeared;
- (iv) Extra-judicial confession made by the appellant

Motive:-

16. It is in the evidence of PW 1 - Sandeep that the appellant had extra-marital relationship with one lady (name withheld). According to him, there used to be frequent quarrels between the appellant and the deceased over the same. It is further in his evidence that on 12.05.2017, Vrushali (PW 7), daughter of the appellant and the deceased, had informed him on phone that there was quarrel between the appellant and his wife. He, therefore, accompanied by his friends went to the appellant's house. Both appellant and Savita were not present there. They, therefore, took search of both of them. It is further in his evidence that in the evening of the very day, the appellant returned home. According to him, he had gone to Akola. The appellant had lodged a missing-person's report with Shikrapur Police Station.

17. In the cross-examination of PW 1 – Sandeep, it has been brought on record that he was not knowing about the incident, if any, happened at the house of the appellant at Kasari-Narkewadi. It is in his evidence that both Vrushali (PW 7) and Rupali used to visit Talegaon-Dhamdhere to attend the tuition classes. It is further in his evidence that he had no occasion to visit Kasari-Narkewadi before 12.05.2017. He met the appellant on 13.05.2017. He could not tell that Savita was missing for 2-3 days before 12.05.2017. He, however, denied to have lodged the FIR against the appellant on suspicion. Since the case is based on circumstantial evidence and PW 1 – Sandeep being not knowing of extra-marital relationship of the appellant, his evidence would be relevant only for setting criminal law into motion.

18. The material evidence is that of PW 7 – Vrushali. Unfortunately, she did not stand by the prosecution. It is in her evidence that it was ninth day of the month of May. On that day, the appellant had left the house for village Yavat to load the goods in his truck. Thereafter, she and Rupali went to Talegaon-Dhamdhere to attend the tuition classes. Both she and Rupali returned home within an hour. On the given day, the appellant did not return home. She denied the appellant to have had come home on motorbike. She

denied that there was quarrel between him and her mother Savita and thereafter, both appellant and his wife left the home together (last seen together).

19. Since Vrushali did not stand by the prosecution, she was subjected to searching cross-examination. She was confronted with her police statement. Her attention was adverted to certain part of her statement recorded under Section 161 of Cr.P.C. She disowned to have stated said matter. She was suggested that the appellant returned home on 12.05.2017. She admitted the same. It is further in her evidence that both Rupali and herself were residing along with their paternal grand-parents at Talegaon-Dhamdhere. True, PW 7 – Vrushali being daughter residing with the parents of the appellant, did not stand by the prosecution. The fact remains that the evidence as regards the circumstances, i.e. the appellant's extra-marital relationship; there used to be frequent quarrels between him and his wife; on the given day too, there was quarrel and then, he took his wife with him on motorbike; and thereafter, the dead body of deceased Savita was found, could not be established, so as to call upon the appellant to explain what he did/or happened with his wife post he took her with him.

20. According to the prosecution, the appellant made disclosure statement pointing out his truck. We fail to understand how said disclosure statement (Exh.75) is relevant to further the prosecution case, as there is nothing to indicate any nexus between the offence and the truck pointed out by the appellant pursuant to his disclosure statement.

Extra-judicial confession:-

21. PW 11 – Sachin testified that he owned a truck. He was in transport business. He used to transport the products of Pravin Masale. He knew the appellant since both of them were in the same business. It is further in his evidence that on 09.05.2017, he had gone to Yawat for loading the good in his truck. The appellant had also come to Yawat on the given day. After loading his truck, the appellant asked him to take some advance money from petrol-pump on his behalf. The appellant told him that he wanted to go his home and he will collect said amount from him (PW 11-Sachin) during journey. Accordingly, the appellant left for his home. Thereafter, PW11 – Sachin collected advance amount from petrol-pump and started proceeding to Akola. On the next day, at 10.00 a.m., he reached Akola. The appellant came there. He gave him money. PW11 – Sachin then found the appellant in frightened condition. He

inquired with him as to why he (appellant) was frightened. The appellant replied to have committed murder of his wife. Said witness stated to have not asked the appellant as to why did he kill his wife. He denied the appellant to have told him about the quarrel between him and his wife being the reason for committing her murder. Said witness was declared to have not been supporting the prosecution. Learned APP in-charge of the case, therefore, put PW 11 – Sachin leading questions, whereby, it has been brought on record that the appellant had stated him that on 09.05.2017, he (appellant) went to Talegaon-Dhamdhere with his truck and thereafter, went to his home on motorcycle. At that time, his wife – Savita told him not to continue with the illicit relationship and on that count, quarrel took place between the two. The appellant abused and beat Savita as he was annoyed. Savita was also angry. The appellant pacified her anger and under some pretext, took her to Talegaon-Dhamdhere on motorcycle. Thereafter, the appellant took Savita with him in the truck. They started proceeding along Ahmednagar – Daund road. On the night of 10.05.2017, at about 02.00 a.m, after crossing Chikhali Ghat, quarrel again took place between them. The appellant, in anger, parked his truck near the bridge over Shiv river and committed murder of his wife Savita by strangulating her with rope and threw her corpse from the truck. It appears that the said

statement was part of PW 11 – Sachin's police statement. It was marked as “A”. He admitted that he had cordial relations with the appellant.

22. PW 11 – Sachin was then subjected to cross-examination by the defence Advocate. He was confronted with his statement (Exh.63) under Section 164 of Cr.P.C. He admitted the appellant to have told him on phone, that his wife was missing from his house. He was asked, as to whether he did inquire with the the appellant, as to why he committed murder of his wife. He answered said question as he thought that he (appellant) might have consumed liquor.

23. The evidence of the other witnesses is not of any assistance to the prosecution. PW 12 – Sanjay is the photographer who snapped the photo of the crime-scene and the dead body. PW 8 – Bandu is panch to the disclosure statement, pursuant to which the appellant pointed out the truck. Same has no relevance under Section 27 of the Evidence Act. PW 9 - Sambhaji is panch witness to the panchnama (Exh.53), relating to seizure of clothes and articles of the deceased. PW 10 – Changdeo was entrusted with the inquiry of the A.D. No.27/2017. It is he who did the inquest panchnama (Exh.19) and drawn the spot panchnama (Exh.17). PW 13 – Sachin

Wangade is the Investigating Officer. As such, the case is solely based on the extra-judicial confession made by the appellant to PW 11. In the catena of authorities, it has been observed that the extra-judicial evidence is a weak piece of evidence. It is true that in the case of **Gura Singh** (supra), it has been observed that conviction can be based on extra-judicial confession, provided the same is proved or found to be true. In the case in hand, PW 11 – Sachin to whom the appellant is said to have made extra-judicial confession is resident of the place whereat the in-laws of the appellant would reside. It appears that the Investigating Officer did not make any investigation as to whether really both appellant and PW 11 – Sachin were close friends and whether both of them had been to Yawat on the given day, to load the goods namely, Pravin Masale for transporting it to Akola. It is not known as why the appellant required advance money and that too from the petrol-pump owner. There is no other evidence to indicate the truthfulness of the extra-judicial confession made by the appellant, meaning thereby the prosecution would be under obligation to show that the extra-judicial confession made by the appellant was true. To prove the same, there has to be, at least, some corroborative evidence to indicate the appellant's involvement in the crime in question. Except the so called extra-judicial confession made by the appellant to PW 11 –

Sachin, there is nothing on record to indicate that same was, in fact, made and true as well. The Investigating Officer was expected to make investigation to prove that the appellant had really made such extra-judicial confession and it was true, more so, when PW 11 – Sachin thought the appellant to have made such statement under influence of alcohol. It was the prosecution itself, which declared PW11 – Sachin to have not been supporting the prosecution. Learned APP in-charge of the case, therefore, put him leading questions and cross-examined him. Same suggests that the prosecution found him to be not reliable witness. There is nothing to indicate that the said witness had shared said fact to anyone else or approached the police station to report the same.

24. The facts in the case of **Gura Singh** (supra), on which learned APP relied on, indicate that there was some corroborative evidence in the nature of disclosure statement made by the appellant therein, pursuant to which incriminating articles were recovered. There were blood stains on the clothes so recovered. The person to whom the extra-judicial confession was made by the appellant therein, himself had lodged the FIR against the appellant therein. As such, on the basis of the facts and circumstances in the case of **Gura Singh** (supra), the Apex Court upheld the conviction and consequential sentence imposed by the trial court and

confirmed by the High Court. It is reiterated that the facts in the said case would indicate that there was some evidence corroborating the extra-judicial confession made by the appellant therein. So is not the case herein. One to him the appellant is said to have made extra-judicial confession was declared hostile. True, the term “hostile” is not there in any Act. The fact remains that the prosecution, i.e. learned APP in-charge of the case, put said witness leading questions in his cross-examination. There being no other evidence in corroboration of the extra-judicial confession said to have been made by the appellant to PW 11 – Sachin, in our view, the conviction and consequential sentence recorded by the trial court warrants interference.

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

- (i) The appeal is allowed.
- (ii) The impugned order dated 05.07.2019, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.156 of 2017, convicting and sentencing the appellant for the offences punishable under Sections 302 and 201 of Indian Penal Code, is set aside. The appellant 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.]

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