



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

CRIMINAL APPEAL NO.671 OF 2022

Mohansing Mahavirsing Gaherwar
Age 51 years, Occu. Agril. & Service,
R/o Madaj, Tq. Omerga,
District Osmanabad

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on P.P.,
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

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

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 29th February, 2024

Date of pronouncing judgment : 5th March, 2024

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

The challenge in this appeal is to a judgment of conviction and order of sentence, dated 6/8/2022, passed by learned Additional Sessions Judge, Omerga, District Osmanabad in Sessions Case No.1/2019. Vide impugned judgment and order, the appellant was convicted for the offences punishable under Sections 302 and 498(A) of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and simple imprisonment for six

months respectively and fine with default stipulations.

2. Facts giving rise to the present appeal are as follows :

Smt. Anusaya (deceased) was married to the appellant in the year 1999. The couple was blessed with two children, a son and a daughter. The daughter has been married. Son Shivam passed H.S.C. examination and was admitted to B.C.A. (Bachelor of Computer Applications) at Aurangabad. The appellant wanted his son Shivam to be at Hyderabad for higher education. The appellant's sister resides at Hyderabad. He wanted son Shivam to stay at her residence. The appellant further wanted to give his sister 2 acres of land in lieu of expenditure that she was to bear for Shivam's education. Smt. Anusaya was opposed to such proposal. There, therefore, used to be frequent quarrels between the couple. It is also the case of the prosecution that, the appellant was addicted to alcohol. He would ask his wife to fetch money from her brother. He would ill-treat her for one or the other reason.

3. It is also the case of the prosecution that, on the intervening night of 1st and 2nd October 2018, the appellant committed murder of his wife by strangulation. The appellant himself went to the Police Station and reported to have committed murder of his wife. The Police Station Officer, in-charge, asked the

Village Police Patil to verify the same. The Police Patil paid visit to the house of the appellant to find his wife dead. He reported back to the Police Station Officer, who in turn made a station diary entry to that effect.

4. The Police Station officer reported the matter to the Police Officer, In-charge of the Police Station. Smt. Sanap (Assistant Police Inspector), therefore, paid visit to the house of the appellant. The scene of offence panchanama (Exh.38) was drawn in presence of panchas. Mortal remains of Anusaya was subjected to autopsy. The inquest was also conducted therebefore. Mohansing (P.W.1), the brother of the deceased came to the village. After having realised the appellant to have killed his sister, he lodged First Information Report (F.I.R. - Exh.29).

5. A Crime vide C.R. No.275/2018 was registered with Omerga Police Station. The appellant was medically screened. The appellant was arrested post registration of the F.I.R. Pursuant to disclosure statement made by the appellant, a scarf came to be seized from his residence. Statements of 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.

6. The case was committed to the Court of Sessions for trial in accordance with law. It was assigned to the Court of Additional Sessions Judge (Trial Court). Charge (Exh.20) was framed against the appellant. He pleaded not guilty. It was his defence that on the very night his father passed away. He was present at the house of his father the entire night. According to him, someone else committed murder of his wife.

7. The prosecution examined 16 witnesses and produced in evidence number of documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced as stated above.

8. Heard. Learned counsel for the appellant would submit that, there was no evidence to indicate the appellant and the deceased to have been seen together at the relevant time. The appellant's father was residing in the neighborhood. The father was not keeping well for 4 – 5 days. Close relations had already arrived at the house of the father. The appellant was present at the house of his father to attend to his ailing father. The police officer who made the station diary entry did not identify the appellant as the one who came to the Police Station and reported the matter. According to the learned counsel, what had prevented the Police Station Officer from recording the F.I.R. on the statement made by the

appellant himself. Our attention was also drawn to inquest panchanama, the post mortem report and the C.A. report to indicate that there was blood in the nails of the deceased. Semen was noticed at her private part. On the other hand, the medical examination report of the appellant indicates him to have not suffered any injury on his person. Learned counsel meant to say that the deceased appeared to have put up resistance while being strangled or subjected to sexual intercourse. Someone else might have committed the said offence. The injury No.3 was possible to have been caused by sexual asphyxia.

9. According to the learned counsel, the evidence of the son of the appellant would indicate that the appellant was a best father. The appellant's sister and her husband were examined as defence witnesses to suggest the appellant had made telephone calls to them informing his father to have passed away. They came to the village in response to the appellant's phone call. Our attention has also been drawn to the evidence of the appellant's sister Sarlabai (D.W.2) to suggest that the appellant was there all along at the house of his father. The learned counsel then questioned how the appellant came to be arrested so late i.e. by 3/10/2018 by 00:53 Hrs. when the appellant allegedly went to the Police Station and reported to have killed his wife. The scene of offence panchanama was also adverted to. Relying on the same, it

was submitted that, it contained minute details of all the articles seen in the room. That time only the police officer could have seized the scarf allegedly used for strangling the deceased. The learned counsel meant to say that, the disclosure statement made by the appellant, pursuant to which the scarf came to be seized, was fabricated evidence. The learned counsel would submit that, the prosecution evidence fell short to bring home the charge beyond reasonable doubt. According to him, the burden of proof never shifts on the accused. He relied on the host of following authorities:-

- 1) P. Mani Vs. State of T.N. AIR 2006 SC 1319
- 2) Syed Aslam Syed Abdul Vs. State of Maharashtra
2008 BCI 68
- 3) Dhanpal Vs. State by Public prosecutor, Madras
2009 AIR SCW 5973
- 4) Arjun s/o Babarao Parche & Ors. Vs. State of Maharashtra
2012 ALL MR (Cri) 2932
- 5) Sou. Ranjana Vs. State of Maharashtra
2018(3) ABR (CRI) 487
- 6) Nazir Pathyekhanvar Vs. State of Goa
2019(3) ABR (CRI) 525
- 7) Shailendra Rajdev Pasvan Vs. State of Gujarat etc.
AIR 2020 SC 180
- 8) Shivaji Chintappa Patil Vs. State of Maharashtra
2021 ALL MR (Cri) 1569 (SC)
10. The learned A.P.P. would, on the other hand, submit

that, the death occurred within the fourwalls of the matrimonial home of the deceased. Except the appellant and the deceased, no one was residing with them. The appellant approached the Police Station and gave the information of the incident of having killed his wife. The Police Station Officer verified the same through Police Patil of the village. Although the information given by the appellant to the Police Station Officer would be inadmissible being confession to police, the same would very much be relevant as a discovery of fact pursuant to the information given by him. The learned A.P.P. took us through the evidence to submit that, even the children of the appellant speak against him. According to her, there is voluminous evidence to suggest the appellant was harassing and ill-treating the deceased. It was the appellant and none else has been involved in the crime in question. According to her, the Trial Court has rightly convicted the appellant. No interference with the impugned judgment and order is, therefore, warranted. She ultimately urged for dismissal of the appeal.

11. Considered the submissions advanced. Perused the evidence on record. Let us refer thereto and appreciate the same.

Admittedly, the appellant married Anusaya (deceased) way back in 1999. The couple was blessed with two children- Shivam (P.W.7) and Sukanya (P.W.10). Sukanya married a year

before the offence in question. Son Shivam passed H.S.C. examination and took admission for B.C.A. at Aurangabad. The appellant was said to have been serving with Water Supply Department at M.I.D.C., Bhigwan. The appellant allegedly ill-treated Anusaya (deceased) on account of her refusal to give 2 acres of land to his sister towards expenditure that would have been borne by her for education of Shivam. Close reading of the evidence on record indicates that the financial condition of the appellant was good. It was the appellant who incurred expenditure of marriage of his daughter. He also spent for education of his son Shivam. Except a faint evidence that the appellant would ill-treat his wife so as to coerce her to fetch money from her brother, there is nothing to invoke the offence under Section 498-A of the Indian Penal Code. The Trial Court, based on such evidence, ought not to have convicted the appellant for the said offence.

12. The question is, whether the deceased met with homicidal death. Other question is whether the appellant is author thereof. Post mortem report (Exh.44) indicates the deceased died due to sudden cardio respiratory arrest due to asphyxia due to throttling. P.W.3 Dr. Sunanda conducted post mortem examination. She noticed following injuries on the neck of the deceased :-

- 1) The bruise on neck, oval, approximately 1 x 1 cm. impression on right side of neck under lower jaw over thyroid cartilage

laterally.

- 2) The 2 – 3 bruise marks approximately 1 x 1.5 cm. on left side of neck obliquely downwards and outwards.
- 3) Faint ligature mark seen below thyroid cartilage approximately 4 cm. long and ½ broad.
- 4) 2 – 3 abrasion marks 0.5 x 0.5 cm. on neck bilaterally.

13. The appellant did not dispute his wife to have met with homicidal death. Inquest panchanama (Exh.46) reinforces existence of injuries on the neck of the deceased.

14. Admittedly, the appellant and the deceased were the only persons residing together. Although the deceased was staying with her son Shivam at Aurangabad for his education purpose, she had come to the house of the appellant a fortnight before she met with homicidal death.

15. In case of **Trimukh Maroti Kirkan Vs. State of Maharashtra [(2006) 10 SCC 681**, it has been observed that :-

“21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of

circumstances to make it complete. This view has been taken in a catena of decisions of this Court [See State of T.N. V. Rajendran (1999) 8 SCC 679, (SCC para 6)

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.”

16. Needless to mention, each case has to be decided on its peculiar facts and circumstances. We have perused the authorities relied on by the learned counsel for the appellant. The judgment in case of Dhanpal (supra) indicates the trial Court had acquitted the appellant Dhanpal. The High Court reversed the finding of conviction with its own reasons. While the facts in the case of P. Mani (supra) indicate that the deceased therein had bolted the door from inside after she made her children go out of the room. It was not the case that the husband and wife were seen together inside the room.

While the facts in case of Syed Aslam Syed Abdul (supra) would indicate that the appellant therein would run a pan

shop. The incident took place by 3.00 – 3.30 p.m., the time by which he happened to be at his pan stall. There is no evidence that they were seen together before the incident in question therein took place.

17. We have to decide the present appeal on the basis of the evidence adduced before the Trial Court. Most of the witnesses including the children of the appellant testified that he was addicted to alcohol. For one or the other reason, he would harass and ill-treat Anusaya (deceased), his wife. To the last question put to him, in his examination under Section 313 of the Cr.P.C., he stated :-

"माझ्या व माझ्या पत्नीशी भांडण होत नव्हते. मी २० वर्षांपासून संसार करत होतो. मी घटनेच्या वेळी आजारी असल्याने मित्राकडे होतो."

18. It is true that, on the night on which the appellant's wife met with homicidal death, his father passed away due to old age and somewhat prolonged illness. Admittedly, the appellant's father would reside separately, some distance away from the appellant's house. There is also evidence to indicate that the appellant has siblings (brothers and sisters). They had come to the house of his father since the father was not keeping well. It is the defence of the appellant that he was at the house of his father to attend to him. He examined his sister Sarlabai (D.W.2) and her husband Basantsing

(D.W.1) in that regard. Both these witnesses testified that it was the appellant who had informed them of his father to have passed away and they therefore came down to the village. Evidence of P.W.1 Mohansing is also relied on in that regard. This witness did not stand by the prosecution. Meaning thereby, the prosecution would not propose to rely on his evidence. What this witness has testified is that the children of the deceased father of the appellant were at his (father's) residence. The admission is as vague as it could be. Since the appellant had other siblings, it was not specifically put to this witness that the appellant too was present at the house of his father.

19. On the contrary, we have evidence of P.W.13 Prabhakar, Assistant Police Inspector with Omerga Police Station. His evidence indicates that he was on duty as Police Station Officer on the intervening night of 1st and 2nd October 2018. A person by name Mohansing Gaherwar came to the Police Station at 4.45 a.m. The said person told him (P.W.13) to have killed his wife by compression of neck. P.W.13 Prabhakar found him under influence of liquor and even mentally disturbed. True, self incriminating matter stated by him to the Police Station Officer would be inadmissible in evidence, being confession to police. The evidence of P.W.13 Prabhakar further indicates that, with a view to verify what was told to him by that person, he contacted the Village Police

Patil Maruti (P.W.8). His evidence would further indicate that, P.W.8 Maruti, in turn, went to the house of that person and reported him back to have seen the wife of the appellant dead. He (P.W.13 Prabhakar) thereupon made a station diary entry No.275/2018 to that effect. Same finds place at Exh.103. It reads thus :

"त्याला थांबवून घेतले होते. स्टेशन डायरीला नोंद
क्र. २७५/२०१८ ही घेतली."

20. While the station diary entry was admitted in evidence, no objection to its admissibility was ever raised. It is made clear that, we are not proposing to read the statement which was in the nature of confession made by the appellant to the police.

21. P.W.8 Maruti was admittedly a Police Patil of the village. It is in his evidence that, in the early morning of 2/10/2018, he received a phone call of Police Station Officer. He was asked to verify whether wife of person by name Mohansing (appellant) was died at her residence. It is further in his evidence that he therefore, went to the house of the appellant. The entrance door was simply closed (not bolted) either from inside or outside). One Ranveersing and his cousin Sonu were in his company. He entered the house of the appellant to find the appellant's wife was lying on a bed. He found her to have passed away. He accordingly reported back to the Police Station Officer. His evidence further indicates that he

remained in the house of the appellant until the police arrived and scene of offence panchanama was drawn.

22. Although P.W.8 Maruti, in his cross-examination, admitted that on the said night the father of the appellant had passed away and his children and other relations had gathered there, he was not specific to state that appellant was one of them to be present there i.e. of father's house.

23. True, P.W.13 Prabhakar did not identify the appellant before the Court as one who had come to the police station and reported the matter. Close reading of evidence of P.W.13 Prabhakar would indicate that, when his evidence was recorded, the appellant was not produced from jail. P.W.13 Prabhakar was categorical to state that he would identify the person who had come to the police station and reported the matter.

24. It is true that, the appellant was arrested on 3/10/2018 by 00:53 Hrs. The conduct of the appellant, however, is inconsistent with his innocence. When his wife met with homicidal death in his house, his absence in the house while the scene of offence panchanama was drawn speaks in volumes. The station diary entry indicates the appellant to have been detained at the police station. It is not known as to why the investigating officer

arrested the appellant so late. The fact remains that a person by name Mohansing (appellant) went to the police station and reported the matter. The Village Police Patil immediately rushed to the appellant's residence to find his wife to have met with homicidal death. This fact would be relevant under Section 27 of the Evidence Act. Some lapse on the part of the investigating officer not going to the root of the matter is of little consequence. The dead body of the wife of the appellant was even rushed to the hospital only on arrival of the appellant's brother-in-law Mohansing (P.W.1), real brother of the deceased. It is P.W.1 Mohansing who lodged the F.I.R. This is the reason why the appellant came to be arrested post registration of the crime. True, the Police Station Officer could have recorded an F.I.R. on the basis of the statement given by the appellant in the early morning. There is further evidence to indicate that after post mortem, the dead body was given to the brother of the deceased. Her funeral took place in the village of her parents. The appellant did not offer any explanation as to why he, being husband of the deceased, did not claim body and perform final rites.

25. Our attention was also drawn to the C.A. report (Exh.7) to indicate that, in the nail clippings of the deceased, some blood was noticed while the medical examination report of the appellant indicates him to have not suffered any external injury. Learned

counsel for the appellant wanted to suggest that, while the deceased was being throttled/ strangled, she appears to have put up her resistance and since the culprit was not the appellant, he did not receive nail scratch occurred as a result of the resistance put up by the deceased. Our attention was also drawn to injury No.3, which was said to have probably caused on account of sexual asphyxia. Discharged semen was detected at the private part of the deceased. The appellant meant to say that someone else might have committed sex and then killed the deceased. We are not ready to buy the submissions made by learned counsel for the appellant.

26. It is reiterated that, there is voluminous evidence to indicate the appellant was addicted to alcohol. He was residing along with his wife (deceased). No one else was residing along with them. His father was residing separately. Although his father died the same night, there is nothing to indicate that he was attending to his father. He did not offer any explanation as to why his response was luke warm while his wife met with homicidal death at his own residence. We have every reason to rely on the evidence of P.W.13 Prabhakar, the Police Station Officer to infer that it was the appellant and none else who had been to the Police Station and reported the matter. The Police Station Officer got it verified from the Police Patil Marti (P.W.8). The appellant was

detained at the Police Station itself. His response to the last question put to him in his examination under Section 313 of the Cr.P.C. goes a long way to infer that at the material time he was in the company of the deceased. He did not offer any explanation as to how his wife met with homicidal death. In our view, the evidence on record undoubtedly lead us to infer that it was the appellant and none else who has committed the murder of his wife. The Trial Court rightly convicted the appellant for the offence of murder. However, for the reasons given hereinabove, we are not in agreement with the Trial Court's finding, convicting the appellant for the offence punishable under Section 498-A of the Indian Penal Code.

27. For the reasons given hereinabove, the appeal partly succeeds. Hence the order :-

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The order of conviction and sentence dated 6/8/2022, passed by learned Additional Sessions Judge, Omerga in Sessions Case No.1/2019, convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and consequential sentence of imprisonment and fine with default stipulation is maintained.

(iii) Conviction of the appellant, for the offence punishable under Section 498(A) of the Indian Penal Code and the consequential sentence is, however, set aside. The appellant is acquitted of the offence punishable under Section 498(A) of the Indian Penal Code. Fine amount on that count, if paid, be refunded to the appellant.

(iv) The Criminal Appeal stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-