



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

CRIMINAL APPEAL NO.41 OF 2022

Hirasinh @ Umeshsinh Ankushsinh Thakur,
Age : 32 years, Occ. Nil,
r/o. Hatta, Tq. Basmat,
Dist.Hingoli,
presently at Central Prison,
Harsool, Aurangabad

..Appellant

Vs.

1. The State of Maharashtra,
Through Police Station Officer,
Nanded Rural Police Station,
Nanded.
2. Padmasai w/o. Kawalsinha Parmar,
Age : 56 years, Occ. Housewife,
r/o. Basweshwar Nagar, Old Kavtha,
Dist. Nanded

..Respondents

Mr.V.P.Sawant, Advocate for appellant (appointed)
Mr.B.B.Bhise, APP for respondent no.1
Mr.R.J.Nirmal, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : APRIL 26, 2024
PRONOUNCED ON : MAY 02, 2024

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

The challenge in this appeal is to the judgment and order
dated 29.02.2020, passed by learned Sessions Judge, Nanded, in

Sessions Case No.74 of 2016, whereby the appellant was convicted for the offences punishable under Sections 302 and 498-A of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and R.I. for three years, respectively, and directed to pay fine with default stipulations. Substantive sentences were directed to run concurrently. The appellant is, therefore, before us in this appeal.

2. Along with the appellant, his brother and mother were prosecuted for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code. The brother and mother of the appellant have been acquitted of the offences they were charged with. The appellant too was acquitted of the offences punishable under Sections 323, 504 and 506 read with Section 34 of Indian Penal Code. Neither the State nor the victim/informant (father of the deceased) preferred appeal against acquittal.

3. The facts, giving rise to the present appeal, are as follows:-

The appellant married Komal (deceased), daughter of PW 2 - Kavalsinh, about four years before the incident dated 05.02.2016. On marriage, Komal started residing at her matrimonial

home at village Hatta, Tq. Vasmat, Dist. Hingoli. She was treated well for about 5-6 months of marriage. Thereafter, the appellant, his mother and brother (since acquitted) started asking her to fetch Rs.50,000/- for purchase of an auto-rickshaw.

4. The First Information Report (Exh.69) was lodged by PW 2 Kavalsinh, stating therein that one Anita (PW 5) had come to his residence to inform the appellant to have assaulted Komal with stick. He along with his family members, therefore, rushed to the house of the appellant to find Komal to have suffered multiple injuries. Komal was rushed to the hospital. Unfortunately, she succumbed to the injuries.

5. Based on the FIR (Exh.69), crime was registered. The scene of offence panchnama (Exh.62) was drawn. Inquest was conducted. Mortal remains of Komal was subjected to post mortem examination. The appellant was arrested. The clothes on the person of both appellant and deceased were seized. The stick used in committing the offence was also seized. All the seized articles were submitted to C.F.S.L. for analysis and report. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, charge sheet was laid.

6. As stated above, the trial court framed Charge (Exh.27). The appellant pleaded not guilty. His defence was of false implication. The prosecution examined eight witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case, convicted and consequentially sentenced the appellant as stated above.

7. Heard learned counsel for the parties. Learned counsel for the appellant would submit that although eight witnesses were examined by the prosecution, even the informant and the neighbours of the appellant, who had reported the informant that the appellant had assaulted the deceased, did not stand by the prosecution. The evidence of the witness to the scene of offence would, therefore, be not of much relevance. The evidence of the parents of deceased indicates that the appellant and the deceased had a happy married life. According to learned counsel, the case is based on circumstantial evidence. He referred to the judgment of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** to submit that the circumstances relied on, have to be proved upto the hilt; and then and then only, the conviction can be sustained. According to him, the appellant is behind the bars since 05.02.2016. A tacit

understanding was arrived at between the appellant and his in-laws. He, therefore, urged for allowing the appeal.

8. Learned APP and learned counsel for respondent no.2 would, on the other hand, support the impugned judgment and order. They would submit that the offence took place in the matrimonial home of the deceased. It was shared by the deceased and the appellant alone. The deceased met with homicidal death. It was in the wee hours of the day. It is, therefore, for the appellant to explain the circumstances, in which his wife met with homicidal death. They relied on Section 106 of the Indian Evidence Act. According to learned APP and learned counsel for respondent no.2, the appellant did not offer any explanation. Same speaks in volumes, indicating the appellant's involvement in the crime. They, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record. Also gone through the judgment impugned herein.

10. Let us advert to the evidence on record and appreciate the same. Admittedly, the appellant had married Komal (deceased) about four years prior to the incident. She met with homicidal death.

The FIR was lodged by the father-in-law of the appellant, PW 2 – Kavalsinh. He appears to have been won over. It is in his evidence that he did not know how the deceased suffered injuries. He admitted to have very good relationship with the appellant. According to him, his maternal father-in-law (Jammusinh) and other relations had accompanied him to the police station. His maternal father-in-law reported the matter to the police. The police obtained his (PW 2's) signature below the same (FIR – Exh.69). Same suggests whatever PW 2 has deposed to before the court, was not his say in the FIR (Exh.69). PW 2 – Kavalsinh, in examination in chief, testified that his daughter (deceased) was illtreated by the appellant and his brother and mother 4-5 months after she started residing at her matrimonial home. The illtreatment was in connection with demand of Rs.50,000/- for purchase of auto-rickshaw.

11. It is further in the evidence of PW 2 - Kavalsinh that he had been to the house of the appellant to reason with him and his brother and mother. Komal (deceased) was, thereafter, treated well for few months. Thereafter, the appellant dropped Komal at her parental house and went away. It is further in his evidence that he, therefore, along with his 2-3 community members went to the house of the appellant and his brother and mother and convinced them.

His evidence further indicates that he deposited a sum of Rs.50,000/- with the finance company and brought 'Ape' auto-rickshaw and gave it to the appellant. The appellant had agreed to repay the loan amount in installments. His evidence would further indicate that the appellant regularly paid installments for one year. Meanwhile, Komal (deceased) delivered baby-girl. It is further in his evidence that the appellant, thereafter, again started asking Komal to bring money from him (PW 2 - Kavalsinh) for day-to-day sustenance. His evidence further indicates that the brother and mother of the appellant would also illtreat the deceased for the aforesaid reasons. His evidence further goes to show that the appellant, his brother and mother sold out the auto-rickshaw. They cleared the loan and retained the balance money. It is further in his evidence that Komal would relate him that the appellant, his brother and mother were assaulting her. He had, therefore, been to their residence to reason with them. At that time, since the brother of the appellant asked him (appellant) to kill his wife (Komal), he brought Komal back to his residence at Nanded.

12. PW 2 - Kavalsinh further deposed that the appellant, his brother and mother came to his residence at Kautha and requested to send Komal back to the matrimonial home. They assured to treat

her well. He, however, refused to send her back to her matrimonial home. Thereupon, the appellant told him that he would reside with her at Kautha itself. PW 2, therefore, agreed to allow his daughter to join the appellant. Both of them, thereafter, started residing in a room taken on rent from one Sherusing, at Kautha.

13. It is further in the evidence of PW 2 - Kavalsinh that the appellant, thereafter, stopped going for work for earning his living. He started picking up quarrel with his wife. It is further in his evidence that on 05.02.2016 at 06.30 a.m., one Anitabai Thakur and Sitalsing Thakur came to his house and informed the appellant to have been assaulting Komal. He along with his family members, therefore, went to the house of the appellant. He saw Komal was lying on bed in injured condition. They shifted her to Government Hospital at Vishnupuri. Komal succumbed to the injuries. He then went to the police station and lodged report (Exh.69).

14. PW 2 - Kavalsinh was subjected to searching cross-examination. He appears to have been won over by the defence. He gave in to each and every question put to him in the cross-examination. In his cross-examination, he admitted that the deceased Komal had a happy married life. Both of them were residing separately at Kautha. The appellant was going for work

every day. It was he, who had paid the appellant Rs.50,000/- for purchasing the auto-rickshaw. His maternal father-in-law (Jammusinh) and other relations had accompanied him to the police station. It was Jammusinh, who narrated the incident to the police. The police recorded the same and obtained his (PW 2) signature below the same. He went on to state that he did not state to the police anything about the incident. He even denied to have shown the police the spot of the incident. He admitted that the spot panchnama was drawn in his presence. He went on to state to have good relations with the appellant.

15. Appreciation of the evidence of PW 2 – Kavalsinh would indicate that he was not an eye-witness to the incident. He is not author of the FIR. Whatever he has deposed to in his examination-in-chief became doubtful in view of his admissions in the cross-examination. Even if we accept his case as it is on the same evidence, the brother and mother of the appellant have been acquitted by the trial court. Be that as it may.

16. PW 1 – Sanjay is witness to the scene of offence pnahcnmama (Exh.62). The scene of offence is the place in the room. It is said to have been occupied by the appellant and the deceased. Said room was taken on rent.

17. PW 6 - Dr. Mohan's evidence indicates that on 05.02.2016, he conducted post-mortem examination on the dead body of Komal. He noticed following external injuries on her person :-

01- Lacerated wound present on left frontal region, 4 cm lateral to midline, 3.5 cm above to the lateral end of left eye brows, vertically placed with 1 suture present in situ, on opening the suture, size of injury 2 Cm x 0.3 cm x bone deep, margins contused.

02- Lacerated wound present on left frontal region, 0.4 cm below to the injury No.1 with 1 suture present in situ, on opening the suture, size of injury 1 cm x 0.3 cm x bone deep, margins contused.

03- Lacerated wound present on lateral aspect of left side of forehead, at the level of lateral edge of left eye brow with 2 sutures present in situ, on opening the suture size of injury 4 cm x 1.7 cm x bone deep, margins contused with fracture of underlying bone present.

04- Lacerated wound present on lateral canthus of left eye with 1 suture present in situ, on opening the suture, size of injury 0.5 cm. X 0.3 cm. x bone deep, margins contused.

05- Lacerated wound present on left mallor prominence of size 0.5 cm x 0.3 cm x subcutaneous deep with contusion present on margin and surrounding area of size 2 cm x1 cm, red in colour.

06- Tramatrack contusion present on left zygomatic and temporal region extending up to left mastoid, horizontally placed, passing through left ear pinna of size 11 cm x 3 cm with pale area between two lines and oedema with bluish discoloration in surrounding region merging into injury No.3 and 4 with crush laceration of left ear pinna and underlying cartilage at it's upper end, crushed through and through for a length of 3 c.m.

07- Diffuse contusion with swelling present on left parietal prominence in an area of size 8 cm x 6 cm, bluish in colour.

08- Abraded contusion present on dorsum of right hand of size 8 cm x 6 cm with bluish discoloration and swelling present over whole dorsum of hand.

He noticed following internal injuries on her person :-

01- Under scalp hematoma present on left side of whole cranium.

02- Left frontal, temporal and parietal bones fractured into multiple pieces with linear fracture extending through coronal suture up to right temporal suture and linear fracture extending from left parietal prominence up to sagittal suture horizontally, fractured pieces of frontal bone and parietal bone depressed inwards to an extent of 0.5 cm, corresponding in injury No. 1, 2, 3, 6, 7 in column No.17. The fracture margins infiltrated with blood.

03- Base fractured at left side of anterior and middle cranial fossa into multiple pieces, fracture

margins infiltrated with blood, corresponding to injury Nos.1, 2, 3, 6, 7 in column No.17.

04- Meninges torn over left high parietal region and left frontal region,

05- Diffuse subarchnoid hemorrhages present all over brain matter

06- Contusion present on basal part of left temporal and parietal lobe.

07- Contusion present on basal part of mid-brain and pons.

The post-mortem report is at Exh.105. In his opinion, the deceased died of head injuries.

18. PW 6 - Dr.Mohan has categorically denied the suggestion that if a person lost balance and his head gets banged against wall, then the injuries like which were noticed on the person of Komal (deceased) were possible. He was shown a stick (Article 5). In his opinion, the injuries on the person of the deceased were possible by said stick.

19. The evidence of PW 6 - Dr.Mohan indicates that the deceased met with homicidal death. The question is, whether the appellant is an author thereof. True, almost all the witnesses did not stand by the prosecution.

20. PW 3 – Namita is a witness to the panchnama of seizure of clothes of the deceased (Exh.90). PW 4 – Padmabai is mother of the deceased. She did not support the prosecution. It is in her evidence that Komal had no sort of illtreatment at her matrimonial home. At Kautha, the appellant and the deceased were residing in a rented premises. They were doing labour work to earn their living. The couple (appellant and deceased) was blessed with a baby-girl. It is further in her evidence that about four years before she gave evidence, Komal died. One of the neighbours had come to her residence to inform Komal to have suffered head injury. She along with her husband (PW 2) and their children, therefore, went to the house of the appellant. They saw Komal lying on the cot. Komal had suffered multiple injuries. She claimed ignorance as to how Komal suffered injuries. Her evidence further indicates that they shifted Komal to Vishnupuri hospital. Komal succumbed to the injuries while under treatment.

21. PW 4 – Padmabai was also subjected to searching cross-examination by learned APP. She admitted that the incident took place by 06.30 in the morning. The neighbours of Komal namely, Anitabai Thakur and Shitalsinh Parmar came to their house and informed (in Hindi) that Komal was assaulted by the appellant with stick on her head and she was lying in the pool of blood. The

aforesaid evidence has been brought on record in response to the leading question put to the witness. In the examination-in-chief, she did not stand by the prosecution.

22. The material witness, PW 5 - Anita Thakur, who, according to the prosecution, had last seen the appellant assaulting his wife and therefore, she had been to the house of the parents of Komal to inform the same, unfortunately, did not stand by the prosecution. She even went on to state to have not known son-in-law (appellant) of Kavalsinh. She even claimed to have not been recognising Komal. She claimed to have not known what incident took place with the deceased Komal. She went on to state that she was not aware as to whether Komal was alive or dead. According to her, the police did not record her statement. Although she was subjected to searching cross-examination, nothing fruitful to the prosecution could be brought on record.

23. PW 8 - Parshuram is the Investigating Officer. His evidence indicates that he conducted inquest (Exh.65) and drew scene of offence panchnama (Exh.62). He sent the seized articles to C.F.S.L. The evidence of the Investigating Officer does not further the prosecution case unless the witnesses, on whose statements charge sheet was filed, stand by the prosecution.

24. Appreciation of the aforesaid entire evidence on record would indicate that none of the witnesses stood by the prosecution. Even, the parents of the deceased claimed ignorance as to how their daughter (Komal) met with death. Anita, the star-witness, who had been to the house of the parents of the deceased, to inform them the appellant to have been beating Komal (deceased), claimed altogether ignorance about the incident. She even went on to state to have not been recognising the appellant and the deceased.

25. It is reiterated that the brother and mother of the appellant have been acquitted. True, Komal met with homicidal death at her matrimonial home, wherein, she was residing along with the appellant and their new-born. It is true that as per Section 106 of the Evidence Act, when, any fact is within the knowledge of any person, burden to prove that fact is upon him.

26. In the case of **Trimukh Maroti Kirkan Vs. The State of Maharashtra; (2006) 10 SCC 681**, the Apex Court 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 H.P.¹³ it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' 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 Maharashtra¹⁴ 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 were 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 Mittal⁹ 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 T. N. v. Rajendran⁸ 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."

The said Judgment in the case of **Trimukh Maroti Kirkan** [*Supra*] has been considered in **Darshan Singh Vs. State of Punjab; (2024) 3 SCC 164**, wherein, it was the case of Prosecution that because of illicit relationship, the husband and co-accused, administered poison in tea and intentionally caused death of wife inside the house. In this case, the presence of husband in his house where his wife was found dead was not proved by the Prosecution, as is seen from the observation in Paragraph No.35, which reads as under:

“35. However, we have come to the finding above that the circumstance of appellant and Rani Kaur being present in the house has not been convincingly proved beyond doubt.....”

27. Further, reference to the relevant observations from the following authorities would not be out of context : -

(a) In **Sawal Das Vs. State of Bihar; (1974) 4 SCC 193**, wherein, it is observed thus:

“10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused. The crucial question in the case before us is has

the prosecution discharged its initial or general and primary burden of proving the guilt of the appellant beyond reasonable doubt?

(b) In **Kalu Alias Laxminarayan Vs. State of Madhya Pradesh; (2019) 10 SCC 211**, wherein, it is observed thus:-

“14. In Tulshiram Sahadu Suryawanshi v. State of Maharashtra⁶, this Court observed : (SCC pp. 381 – 82, para 23)

‘23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of [Section 114](#) of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in [Section 106](#) of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in [State of W.B. v. Mir Mohammad Omar⁷](#): (SCC p. 393, para 38)

‘38. Vivian Bose, J., had observed that [Section 106](#) of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which

are particularly within the knowledge of the accused. In *Shambhu Nath Mehra v. State of Ajmer*² the learned Judge has stated the legal principle thus: (AIR p. 406, para 11)

‘11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience.’

The word “especially” stresses that. It means facts that are preeminently or exceptionally within his knowledge.”

(c) In **Surendra Kumar and Another Vs. State of Uttar Pradesh; (2021) 20 SCC 430**, wherein, it is observed thus:

*“17.
.....
.....
..... This proposition of law on criminal jurisprudence stood the test of time since Emperor V. Santa Singh⁴ where Din Mohammad J., observed as under:- (SCC online Lah para 28)*

‘28..... Section 106 of the Evidence Act, cannot be used to strengthen the evidence for the prosecution. The prosecution must stand or fall on the evidence adduced by it and until a prima facie case is established by such evidence, the onus does not shift on to the accused. Mere proof that an incriminating article is found in premises occupied by a number of persons does not in itself establish prima facie the guilt of any particular person or all of them jointly. That being so, they cannot be called

upon after such evidence to establish their innocence. They can only be called upon to do that when the evidence has established a prima facie case against any one or more of them or all of them'."

28. Hon'ble Supreme Court, in the case of **Shambhu Nath Mehra Vs. State of Ajmer, AIR 1956 SC 404**, has held that *section 106 of the Indian Evidence Act is not a substitute for the burden of proof which rests on the prosecution.*

In the case of **P. Mani Vs. State of T.N., (2006)3 SCC 161**, Hon'ble Apex Court observed thus:-

Criminal Trial – Burden of Proof – Held, is on the prosecution to prove guilt of accused beyond reasonable doubt – Charge of bride burning – Merely because deceased suffered burn injuries inside the room but her husband though present at home, had not sustained any burn injury, held, burden would not shift on the accused husband having regard to facts of the case – S.106 of Evidence Act not applicable – Evidence Act, 1872, S.106.

29. The facts of the case in hand indicate that while Komal (deceased) met with homicidal death, the appellant was neither last seen in her company nor was he present at his home, wherein, Komal met with homicidal death. As such, the evidence on record makes out the case that Komal met with homicidal death at her matrimonial home and nothing more. It would, therefore, just be difficult to reach to a conclusion that it was the appellant and none

else, has committed murder of Komal. Based on such evidence, the trial court ought not to have convicted the appellant. The appeal, therefore, succeeds.

30. Hence, the following order:-

(i) The appeal is allowed.

(ii) The order of conviction and consequential sentence dated 29.02.2020, passed by learned Sessions Judge, Nanded, in Sessions Case No.74 of 2016, for the offences punishable under Sections 302 and 498-A of Indian Penal Code, is set aside. The appellant is acquitted of the said offences.

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

(iv) Fine amount deposited by the appellant, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP