



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

CRIMINAL APPEAL NO.52 OF 2020

Tukaram s/o. Nivrutti Avachite,
Age : 32 years, Occ. Labour,
r/o. Achalgaon, Tq. Vaijapur,
Dist. Aurangabad
At present : New Gaothan,
Bidkin, Tq. Paithan, Dist. Aurangabad

..Appellant

Vs.

The State of Maharashtra,
Through Bidkin Police Station,
Tq.Paithan, Dist. Aurangabad

..Respondent

Mr.Madhukar Parghane, Advocate for appellant
Mr.S.J.Salgare, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : DECEMBER 02, 2024**

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

The appellant has been convicted for committing murder of his wife and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand), with default stipulation, vide the judgment and order dated 13.07.2018, passed by learned Addl. Sessions Judge, Aurangabad (trial court), in Sessions Case No.198 of 2015. He is, therefore, before this court in appeal.

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

Sushila (deceased) had married the appellant in May, 2013. Initially, the couple was residing at village Achalgaon, Tq. Vaijapur, Dist. Aurangabad. Since the brother of the appellant was residing at Uran, Panvel, Navi Mumbai, the couple was shifted to his place. Within a few days, Sushila realised the appellant to have extra-marital relations with the wife of his brother. She, therefore, questioned him. The appellant and the wife of his brother, therefore, beat her up. She came back to her father's (PW 5 - Subhash) house. After the stay of about more than six months thereat, the mother of the appellant and the other well-wishers came to PW 5's house and requested him to allow them to take her back to her matrimonial home. PW 5 - Subhash, therefore, secured a room on rent at village Bidkin. The couple started residing therein.

3. It was the case of prosecution that both appellant and Sushila would suspect each other's fidelity and therefore, there used to be frequent quarrels between them. The appellant was serving in a company. He would return home after work by 03.30 p.m. On 21.05.2015, he did not return home until 5.00 p.m. Sushila, therefore, made a phone call to her father. He came to his

daughter's residence. He saw the appellant on his way home. In his presence, quarrel between the appellant and Sushila took place. It was settled by him and the landlady. PW 5 - Subhash then returned to his home. During the intervening night of 21st and 22nd May, the appellant throttled Sushila to death. He himself went to the police station and reported the same to the police station officer. The P.S.O. informed the same to his higher-up. Presence of two panchas was secured. In their presence, the appellant made disclosure statement and then took them to his residence. He opened the same. Sushila was found dead in the room. Inquest panchnama (Exh.31) was drawn thereat. Her body was shifted to the hospital.

4. PW 1 - Pramod was A.P.I. at Bidkin Police Station. He lodged the FIR (Exh.32) on behalf of the State. He took up the investigation of the crime, which was registered vide C.R. No.121 of 2015, for the offence punishable under Section 302 of Indian Penal Code. He drew the spot panchnama (Exh.33) and recorded statements of the persons acquainted with the facts and circumstances of the case. Autopsy was conducted on the mortal remains. The appellant was arrested. Articles seized were sent to the F.S.L. for analysis and report. On completion of the investigation, charge-sheet was filed.

5. The trial court framed Charge (Exh.3). The appellant pleaded not guilty. It was his defence that somebody else had killed his wife. He, therefore, went to the police station to lodge a report. Instead of recording of his report, the police arrested him and framed in this crime. To bring home the Charge, the prosecution examined seven witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial court convicted the appellant and consequently, sentenced as stated above.

6. Heard learned counsel for the parties. Learned counsel for the appellant would submit that the appellant had, in fact, been to the police station to lodge FIR against an unknown person, since, on return home, he found his wife dead. The police officer, instead of recording his statement, detained him. While PW 1 - Pramod, API, reached the appellant's room, there was crowd. Same indicates that the factum of homicidal death of the wife of the appellant had already come to the knowledge of the people. Therefore, whatever allegedly stated by the appellant could not be termed to be discovery under Section 27 of the Evidence Act. More so, when he, allegedly, made such statement, crime was not registered nor was he arrested. He would further submit that there is no evidence at all to indicate that the appellant had ever suspected character of his

wife (deceased Sushila). The case is based on circumstantial evidence. The prosecution could not make out the case of motive. He adverted our attention to the evidence of the appellant's father-in-law (PW 5 – Subhash), who admitted that the appellant would love his wife. He would further submit that the father would visit the appellant's house. Same indicate that the relation between the two were very good. Turning to the medical evidence, he would submit that the tongue of the deceased was inside. There were no injuries on the person of the appellant. The same indicates that if the deceased had resisted the act, there would have, at least, been abrasions on her person. According to learned counsel, the chain of circumstances relied on by the prosecution has not been proved and complete, as has been expected in view of the dictum of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**. Learned counsel would urge for allowing the appeal.

7. Learned APP took us through the evidence on record and the reasons given by the trial court, to ultimately urge for dismissal of the appeal.

8. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

9. Admittedly, the appellant married Sushila in May, 2013. After marriage, she started residing at village Achalgaon. The evidence of her father (PW 5 – Subhash) indicates that after some days of marriage, the couple went to reside with the appellant's brother at Uran, Panvel, Navi Mumbai. The deceased noticed extra-marital relationship between the appellant and his brother's wife. She, therefore, questioned him. Both appellant and wife of his brother, therefore, assaulted her. She informed the same to his father on phone. She came back to his residence and stayed there. The mother-in-law of the appellant and other well-wishers came PW 5's home after six months and requested to allow them to take her back to her matrimonial home. PW 5 – Subhash, therefore, took a room on rent at Bidkin for residence of the appellant and deceased Sushila. It is further in his evidence that while deceased Sushila was at PW 5's residence, she had suffered paralysis attack. Her face was disfigured. She was, however, cured completely. He denied that the appellant would visit his residence to meet Sushila. It is true that he has admitted that the appellant would love his wife. According to

him, it was the past. Many more incidents took place after the marriage.

10. It is further in the evidence the PW 5 – Subhash that the appellant would return home from his work-place by 03.30 p.m. On 21.05.2015, the appellant did not return home by 03.30 p.m. or little thereafter. His daughter (Sushila), therefore, informed him on phone. He came to Bidkin. It was by 07.00 p.m. While he was proceeding towards the house of the appellant, he saw him proceeding ahead of him. He went to the house of the appellant. It is further in his evidence that a quarrel took place between the appellant and Sushila over the appellant's late returning home from his work place. The quarrel was subsided by PW 5 and the landlady (PW 6). The appellant and his wife then took meals. He (PW 5) then returned to his residence.

11. On the same lines is the evidence of PW 6 – Sindhubai, landlady. Admittedly, in her two rooms, the appellant along with his wife (deceased Sushila) would reside together. She testified that on 21.05.2015, the appellant came home by 06.00 p.m. There was quarrel between him and Sushila. The appellant used to suspect Sushila's fidelity; Sushila would also suspect appellant's. PW 5 -

Subhash had come to the appellant's residence. Both of them tried to convince the couple. After the quarrel was subsided, she went back to her house. The appellant's father-in-law (PW 5) also went to his village. She further testified that she had requested Sushila to come to sleep on the terrace of her house. This was with a view to avoid further quarrel. Sushila, however, refused. It is further in her evidence that on the following morning, she came down from the terrace and saw the police-vehicle and the appellant. She saw Sushila dead. She further claimed to have not known who killed Sushila.

12. Appreciation of the aforesaid evidence would indicate that both appellant and his wife Sushila (deceased) were the only persons residing in the two room-premises belonging to PW 6 - Sindhubai. On the fateful night, both were the only persons in the room.

13. PW 3 - Govind was the Police Head Constable, attached to Bidkin Police Station. His evidence disclosed that he was police station officer during the relevant time. His duty hours were from 08.00 am. to 08.00 pm. on 21.05.2015 and 22.05.2015. According to him, one person came to the police station. He was in frightened

condition. His lips were dry. He disclosed him to have committed murder of his wife by throttling by 03.30 am. PW 3 - Govind asked him to seat. He served him water. On inquiry, he gave his name as Tukaram Avchit (appellant). He (PW 3) then informed his higher-up, namely, API - Bhatnate (PW 1). He came to the police station. He too made inquiry with the appellant. Presence of two panchas was secured. The appellant made disclosure statement (Exh.29) about having throttled his wife to death, at his residence. During cross-examination, it was suggested to PW 3 - Govind that the appellant simply stated him that his wife was dead. He denied. According to him, he made a station-diary entry (Exh.34) as regards what was disclosed to him by the appellant. Learned counsel would submit that the station diary entry was silent to mention, in which vehicle, the police officials proceeded to the house of the appellant. In our view, the same is not of much assistance.

14. PW 1 - Pramod Bhatnate was A.P.I., attached to Bidkin Police Station. He testified that in the early morning of 22.05.2015, he received a phone call of PW 3 - Govind, informing one person to have come to the police station and confessed to the crime. He, therefore, rushed to the police station. Here, learned counsel for the appellant would submit that PW 1 - Bhatnate was residing at N-7,

while Bidkin Police Station was 25 kms. away. His evidence would further indicate that he asked the police to secure two panchas. A telephone call was made to the Tahsildar to depute two staff members. They were sent. They were Satish Joshi and Santosh Ingle. It is in his evidence that the appellant made statement in the presence of these panchas that his wife used to suspect his fidelity. There was, therefore, quarrel between the two. On the given night, quarrel took place. He pressed her neck and throttled her to death. Statement was reduced into writing (Exh.29). Making of the disclosure statement by the appellant, has been proved by the evidence of PW 2 - Joshi, who testified that he had attended the police station on the directions of the Tahsildar. The appellant made statement accordingly.

15. The evidence of PW 1 - Bhatnate and PW 2 - Joshi would further indicate that the appellant took them to his room. It was latched from the outside. He opened it. On opening the same, they found Sushila motionless. She was dead. We are conscious of the fact that whatever has been stated by the appellant about having killed his wife and the reasons therefor, to the police officials, cannot partake the character of evidence. It is his confession to the police. It is inadmissible. The timing of the disclosure statement was pointed

out. It pertains from the time the appellant made the disclosure statement, until the dead body was shifted to the hospital. The inquest panchnama (Exh.31) was drawn on the spot. He referred the same in the evidence. Clause 10 therein, would indicate, "गळ्याजवळ हाताने दाबल्याने व्रण पडून रक्त गोठले आहे".

16. The mortal remains of Sushila was subjected to autopsy by Dr. Anjali (PW 4). It is in her evidence that she conducted post mortem examination and in her opinion, the Sushila died due to "*asphyxia due to throttling*". Viscera was preserved. Learned counsel would submit that the Medical Officer was not confident about the cause of death. She, however, in her evidence before the court, positively stated that the deceased died due to throttling. The post mortem report is placed on record at Exh.41. Her evidence indicates that following injuries were noticed on the neck of deceased Sushila :-

1. Reddish bruise of the size 3 x 3cms. Over left side of front of neck 4 cms. from midline, 2 cms. Below lower jaw.
2. Crescentic abrasion of size 2 x 0.1 cm. right side of front of neck 3.5 cm. from midline and 2.5 cms below lower jaw.

3. Reddish bruise 1 x 1 cm. right side of front of neck, 3 cms. From middle of neck below abrasion.
4. Reddish bruise 1 x 1 cm. front of neck.

17. PW 4 – Dr. Anjali, in her examination-in-chief, testified to have not noticed thumb marks on the neck of the deceased. Our attention was drawn to page 90. A questionnaire was given by the Investigating Officer to the very Medical Officer, wherein she has stated that there were thumb marks on the neck. This contradiction was sought to be relied on by learned counsel for the appellant. In our view, the evidence was recorded after three years of the incident and the same might be the reason regarding the inconsistency in the evidence. The Medical Officer is an independent witness. She has no reason to take side.

18. As such, the evidence on record, undoubtedly, go a long way to prove that the deceased Sushila met with homicidal death at her matrimonial home, which was occupied by her with the appellant. No third person was residing with them. On the given night, the appellant was at his house. His going to the police station and informing about the incident is admissible as his conduct under Section 8 of the Evidence Act. Moreover, the law is well settled when

an accused person goes to the police station and makes a confessional statement and any discovery is made pursuant thereto, same is relevant without the confessional statement. Here, the dead body has been recovered pursuant to his discovery statement, first, made to PW 3 - Govind.

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

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration

(b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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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. ...”

(Emphasis supplied)

20. In view of the evidence on record, it was for the appellant to explain the circumstances in which his wife met with homicidal death. He failed to offer a plausible explanation. The inference that could be drawn from the evidence on record is that the appellant is the author of the homicidal death of his wife. We are at one with the findings recorded by the trial court. The appeal, therefore, fails. The same is dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

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