

(2023) 01 BOM CK 0040
In the Bombay High Court
Case No : Criminal Appeal No. 386 Of 2015

Avinash

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374
Indian Penal Code, 1860 — Section 302
Evidence Act, 1872 — Section 106

Citation : (2023) 01 BOM CK 0040

Hon'ble Judges : Vibha Kankanwadi, J; Abhay S. Waghwase, J

Bench : Division Bench

Advocate : Gajanan G. Kadam, A. M. Phule

Final Decision : Dismissed

Judgement

Abhay S. Waghwase, J

1. This is statutory appeal by original accused by invoking Section 374 of the Code of Criminal Procedure (Cr.P.C.) questioning the judgment and order of conviction dated 29.12.2014 passed by Additional Sessions Judge, Omerga in Sessions Case No. 25 of 2013, thereby convicting the appellant for offence punishable under Section 302 of the Indian Penal Code (IPC).

2. The prosecution case in trial court is as under :

Deceased Manisha was married to appellant-accused two years prior to the incident. Initially, deceased Manisha and accused resided in Hadapsar, but later on shifted to village Hipparga (Rava) i.e. native of accused. Since six months prior to the incident dated 16.01.2013, accused started suspecting fidelity of deceased Manisha. He suspected that she had affair with his own brother and on such count, he used to harass her and beat her. On 16.01.2013 at around 5.30 p.m., accused strangled Manisha to death in their own house. After autopsy, medical opinion was received that death was due to 'asphyxia due to

strangulation' and therefore, PW2 father of Manisha set law in motion alleging murder of his daughter Manisha by accused son-in-law. On the strength of his complaint, police registered crime bearing No.03/2013 for the offence punishable under Sections 302 and 498-A of IPC.

Investigation was entrusted to PW9, who took all necessary steps of arresting accused, getting spot panchanama and inquest panchanama drawn, causing seizure of saree, seeking medical opinion, gathering postmortem report, sending seizure for analysis and including its report in the charge-sheet and finally filed the same in the court of law.

Learned J.M.F.C., after completing initial procedure and on finding case to be exclusively triable by court of sessions, committed the case to the court of Additional Sessions Judge, Omarga. Learned Additional Sessions Judge, Omarga conducted trial, during which he permitted prosecution as well as defence to participate in adducing evidence. Evidence adduced by them was appreciated and after hearing both parties, learned trial judge by his judgment and order dated 29.12.2014, held accused appellant guilty for commission of offence under Section 302 of IPC and accordingly sentenced him for life imprisonment and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year.

It is the above judgment and order of conviction which is now taken exception to by the original accused by filing instant appeal before this Court.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT

3. We have heard learned counsel for the appellant at length. From his arguments, he seems to be questioning conviction, its legality and correctness by advancing a case that the case is based entirely on circumstantial evidence and there is no direct evidence. He emphasized that this being so, it was expected of prosecution to cogently prove and establish all circumstances relied by it and it was expected of prosecution to complete the chain of circumstances pressed into service. But the same has not been done here by prosecution.

4. He further submitted that accused appellant had performed love marriage with deceased and therefore, there is no question of suspecting her fidelity or committing any act of strangulation. Learned counsel would submit that in fact appellant was not in the house. Rather when he reached home, that day, he saw his wife lying in the house. That, under shock he too fell unconscious and he regained consciousness on being shifted to the hospital by the relatives. He further added that either someone intruded in the house in his absence or there is also a possibility of deceased committing suicide as she was upset as her mother was beaten by her father in a quarrel between them. No investigation has been carried out whatsoever with such background and rather merely for being husband, he is implicated in false case.

5. According to learned counsel for the appellant, investigation machinery has failed to prove and establish the very motive behind the occurrence and

according to him, case being based on circumstantial evidence, establishment of motive was essential. Therefore, prosecution case was weak on all counts. He pointed out that no evidence has been gathered whatsoever in support of the allegation of the prosecution that accused suspected character of deceased wife.

6. Inviting attention of this Court to the testimony of PW5, it is submitted that he is not a reliable witness. Rather he was unaware as to what happened actually that day. He merely claimed to have shifted deceased wife and present appellant himself, who was found lying in the courtyard in unconscious condition. Our attention is also invited to the testimony of PW6 son of PW5 i.e. child witness and it is submitted that such child witness has admitted in the cross-examination that he was tutored to give such evidence and as such, even his evidence ought to have been discarded by the trial court but the same has not been done and rather undue weightage has been given to the testimony of PW5 and PW6.

7. While concluding his submissions, learned counsel submitted that apart from evidence of recovery to be doubtful, there is no cogent, reliable or established circumstances so as to fix responsibility on the appellant for the death of his wife Manisha and therefore, it is his submission that, conviction awarded is erroneous and unwarranted and liable to be set aside.

8. Learned counsel for the appellant, in order to substantiate his contentions, placed reliance on the following rulings:

1. Ramanand v. State of Uttar Pradesh ; MANU/SC/1324/2022
2. Radhe Zulidas Mandal v. The State of Maharashtra ; MANU/MH/3760/2022
3. Khema and Others v. State of Uttar Pradesh ; MANU/SC/0984/2022
4. Md. Jabbar Ali and Others v. The State of Assam ; MANU/SC/1351/2022
5. Ravi and Others v. The State of Maharashtra ; MANU/MH/4494/2022

SUBMISSIONS OF APP ON BEHALF OF STATE

9. Learned APP strongly opposed by submitting that though marriage of accused-appellant and deceased Manisha was a love marriage, it has come in the evidence of PW2 and PW5 that prior to the occurrence, accused started suspecting character of deceased. That, he suspected that she had relations with his own brother and on such count, he used to beat her. Deceased used to promptly inform her father as well as PW5. That, it has already come on record that immediately prior to the alleged incident, there was beating on account of suspicion of character. That, accused was also found in the house when his wife was found dead with a saree entangled around her neck. As such, it was incumbent upon appellant-husband to offer satisfactory explanation as to under what circumstances she was lying in his house while cohabiting with him. But no explanation has been put forth by him in spite of opportunity to do so while answering questions put to him under Section 313 of Cr.P.C. Learned APP pointed out that rather appellant attempted to feign that deceased wife and he himself

consumed poison. That, nothing had happened to accused-appellant. Rather, his wife was declared to have died due to strangulation and it was not at all a case of poisoning. Thus, it is submitted that, unsuccessful attempt has been made by appellant to show that it was suicidal death or third party involvement by intruding in the house. But such defence has not been probalibilized, also leave aside proving it. Taking us through the testimony of PW2, PW5 and PW6, it is submitted that presence of accused in the house has been successfully brought on record by these witnesses. Only in the backdrop of suspicion of her character, wife was done to death and this was precisely the motive behind the murder. Both circumstances relied by the prosecution stand proved. Learned trial court has carefully considered and appreciated the entire evidence produced by prosecution before it. Thereafter, guilt has been recorded and thus, learned APP prayed that, no interference in the judgment and order of trial court is called for.

In support of his above submissions, learned APP seeks reliance on the ruling Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681.

10. Admittedly, we are dealing with an appeal by a convict who is suffering life sentence. He has preferred appeal against conviction by invoking section 374 of Cr.P.C. The Hon'ble Apex Court in the case of Ishvarbhai Fujibhai Patni v. State of Gujarat ; (1995) 1 SCC (Cri.) 222 has held that it is expected of High Court to discuss the evidence and to consider the submissions made across the bar while dealing with said appeals under Section 374 of Cr.P.C. In such background, we are required to proceed to decide the appeal by discussing the evidence and hearing the submissions advanced across the bar. We have already dealt with the submissions of each of the side in the aforesaid paragraphs. Therefore, now we undertake the exercise of dealing with evidence which had come before learned trial court.

11. The evidence adduced by the parties in the trial i.e. role and status of each of the witnesses and the sum and substance of their evidence in the witness box is as under:

ORAL EVIDENCE IN BRIEF

12. PW1 who is an autopsy doctor and who had conducted autopsy, had issued opinion about death to be due to asphyxia due to strangulation. On examining accused also, he ruled out possibility of consumption of poison. Though doctor is cross-examined at length, the crucial aspect of mode of death has not been disturbed by cross-examiner in the trial court.

13. PW2 father of deceased had also narrated about marriage of his daughter with accused who was driver. According to him, everything was smooth for a period of one year. Thereafter, when his son-in-law accused shifted with his daughter to Hipparga and just six months prior to the incident, he started suspecting her character i.e. regarding she having an affair with her brother-in-law, and so he gave understanding to him and that he learnt on telephone about the occurrence dated 16.01.2013. It is he who has set law into motion.

14. PW3 seems to be a pancha to inquest panchanama and he is categorical about seeing black mark on neck and about coming across scratch marks on other parts of the body.

15. PW4 is pancha to memo and seizure of saree dated 22.01.2013.

16. PW5 is uncle of deceased i.e. brother of PW2, and he is a teacher. He stood by his statement given to police while giving evidence in the witness box wherein he stated that deceased Manisha used to complain to him about accused suspecting that she had relations with his brother. That, on 16. 01.2013 in morning she had complained about it. He had met her in the afternoon and in the evening he learnt from his son about some occurrence and so he went there and found accused as well as deceased lying there. Assuming that they had consumed poison, they were shifted to the hospital and there Manisha was declared dead. He is very categorical about murder by accused in the backdrop of suspicion of character.

17. PW6 i.e. son of PW5, was examined as a child witness and he also reiterated about Manisha visiting their house in the morning complaining about suspicion and beating by her husband. According to him, at 5.00 p.m when he went to play cricket near the house of deceased, seeing gathering there, he went there and saw accused as well as Manisha lying in the house and so he ran home and informed his father PW5.

18. PW 7 and PW 8, pancha to spot panchanama have not supported prosecution.

19. PW 9 is the Investigating Officer, who stated about all steps taken by him during investigation till filing of charge-sheet, including arrest of accused.

20. PW10 is the police official who drew inquest panchanama Exhibit 43 and referred the body for postmortem and further drew spot panchanama Exhibit 44.

21. Having dealt with the status/role and testimonies of prosecution witnesses, we now proceed further to ascertain whether prosecution has succeeded in bringing home the charge under Section 302 of IPC. Admittedly, there being no eye witness account, case is based entirely on circumstantial evidence. It is trite law that in a case based on circumstantial evidence, primary burden on prosecution is to prove their case beyond reasonable doubt. Here, as the entire case of prosecution is built on circumstantial evidence, it would be apt to briefly discuss settled legal position while appreciating a case based on circumstantial evidence to ascertain whether guilt has been proved beyond reasonable doubt or not.

When a case is based on circumstantial evidence, it is fairly settled that the evidence on record must satisfy the following tests.

[a] The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

[b] Those circumstances taken cumulatively should form a chain, so complete

that there is no escape from the conclusion that within all human probabilities, the crime has been committed by the accused and none else.

[c] Those circumstances should unerringly point out towards the guilt of accused.

[d] The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of accused and such evidence should not only be consistent with the guilt of the accused, but should also be inconsistent with his innocence.

The above enumerated tests are culled out from various pronouncements of the Hon'ble Apex Court time and again i.e. from landmark cases cited as under:

1. Hanumant Govind Nirgudkar and another v. State of M.P. ; AIR 1952 SC 343.
2. Shivaji Sahebrao Bobade v. State of Maharashtra ; AIR 1973 SC 2622.
3. Sharad B. Sarda v. State of Maharashtra ; AIR 1984 SC 1622
4. Padala Veera Reddy v. State of Andhra Pradesh ; 1989 (Suppl.2) SCC 706
5. Dhananjay Chatterjee @ Dhana v. State of West Bengal ; 1994 SCC (2) 220.
6. State (NCT of Delhi) v. Navjyot Sandhu @ Afsan Guru ; 2005 (11) SCC 600.

22. Further, criminal jurisprudence calls for conducting criminal trial by bearing in mind few cardinal principles which are dealt and discussed in the case of Dhananjay Chatterjee @ Dhana v. State of West Bengal [1994 SCC (2) 220] ; Bhagirath v. State of M.P. [AIR 1976 SC 975] ; Shankarlal Dixit v. State of Maharashtra [AIR 1981 SC 765]. The principles drawn are reproduced as under:

"70] A Court conducting criminal trial has also to bear in mind the Cardinal Principles of Criminal Jurisprudence and law, which are as under:-

[i] The principal onus of affirmatively proving the case lies on prosecution.

[ii] The onus of the prosecution never shifts.

[iii] Foul the crime, greater the degree of proof.

[iv] Prosecution must prove its case beyond reasonable doubt.

[v] The case of prosecution must be judged as a whole having regard to the totality of the evidence.

[vi] In reaching to the conclusion of guilt of accused, the Court has to appreciate, analyze and assess the evidence placed before it by yardstick of probabilities, its intrinsic and animus of the witness.

[vii] The Court has to keep in mind that the accused "must be" and not merely "may be" guilty of the offence and the distance between "must be" and "may be" is long and divides conjectures from sure conclusion.

[viii] Suspicion, however, strong cannot take place of legal proof.

[ix] Court must ensure that miscarriage of justice is avoided and if facts and circumstances of case so demand, the benefit of doubt must be given to the accused. However, the Court must borne in mind that the reasons of doubt should be trivial or merely probable, it must be fair doubt i.e. based upon reasons and common sense.” Bearing in mind above settled legal position, we proceed to deal with the appeal in hand.

23. In paragraphs 12 to 20 herein, we have already reproduced the sum and substance of oral account of prosecution witnesses in the witness box. In our opinion, crucial evidence is of informant father PW2, uncle PW5 and son of PW5 i.e. PW6. For taking decision regarding mode of death to be homicidal or otherwise, evidence of PW1 is significant. Rest of the witnesses are panchas, who admittedly have not supported prosecution, and police witnesses. Therefore, we accordingly first intent to ascertain whether at all prosecution has succeeded in proving death of Manisha to be homicidal one. It needs to be noted that neither before the trial court nor before us there is serious dispute about death due to strangulation. PW1 autopsy doctor in his evidence at Exhibit 11 has narrated the injuries and marks noticed by him while examining the body i.e. regarding coming across ligature mark encircling neck on anterior and bilateral sides above thyroid cartilage ad-measuring 1 cm in breadth by soft smooth wrinkled material. He has noticed abrasion marks on back, scapular region, heel and elbow joint. He conducted internal examination and found evidence of eccymosis with patachial haemorrhages above thyroid cartilage in the neck above and below ligature mark with construction of lumen on trachia. Though he has preserved viscera, he is of firm opinion that as per autopsy finding death is due to asphyxia due to strangulation and there is no evidence of poisoning. In his evidence before the court he is categorical that death is homicidal one. Though this medical witness is subjected to cross-examination, his above opinion has not been shaken or rendered doubtful. Thus, medical evidence, which is independent, is cogently established. Resultantly, there is no hesitation on our part also to hold that Manisha died homicidal death.

24. Having found death to be homicidal one, now it is to be seen as to whether accused husband (appellant herein) is solely responsible for said death. To find answer in that regard, we are required to visit the evidence of informant father of deceased, PW1, PW5 and PW6 on whom heavy reliance has been placed by prosecution in trial court and by learned APP before us in this Court.

On going through the informant father’s evidence, it is emerging that his deceased daughter Manisha was married to appellant and initially they both stayed at Hadapsar, Pune. Thereafter, accused shifted with deceased to Hipparga Rava, Osmanabad. According to father, his daughter was treated well for one year, but since six months prior to the incidence, accused harassed his daughter by suspecting her character and assaulting her under influence of liquor and so, understanding was required to be given to him. He claims that he learnt about death of his daughter at around 6.00 p.m on 16.01.2013 and after reaching

Hipparga Rava, he saw dead body of his daughter and set law into motion. This witness has faced cross-examination at the hands of defence and para 4 and 5 are devoted on the point of place of stay of this witness, number of daughters to him. There is suggestion about death of his youngest daughter Amruta and he has answered that she died due to accidental consumption of insecticide. Then he is questioned about how marriage of Manisha was fixed with accused and where deceased was working prior to marriage. Details of house of accused at Hipparga are also asked along with the nature of articles in the said house. In para 6 there is denial of assault to accused with belt, about falsely deposing regarding harassment, suspicion on illicit relations, suicidal tendencies in his daughters and lodgement of false complaint.

Therefore, there is virtually little, no cross or ineffective cross-examination on the point of suspicion of character, harassment and assault after getting drunk.

25. The other crucial witness is brother of PW2 i.e. PW5. We have already discussed the sum and substance of his evidence in para 16. In witness box he has stated that accused suspected that deceased had affair with his own brother and she was supplying him money. According to him, deceased used to come to his house and inform about it and she had in fact visited his house on 16.01.2013 itself at 8.00 a.m. or so and informed about beating to her by accused in the background of suspicion. This witness is categorical that he visited deceased at around 1.00 p.m. to ask whether she had meals and according to him, after answering in affirmative, she had smiled. Around 5.00 p.m. his son PW6 informed him and so he went to the house of deceased. There he found accused lying in the courtyard and on entering the house he found deceased Manisha lying with a saree entangled around her neck. He claims that after removing the saree he came across black mark on her neck. Therefore he shifted Manisha as well as accused to the hospital and reported history of consumption of poison. He is very specific that for last one year before death of Manisha, accused Avinash was torturing her by suspecting her character and according to him, he committed murder by strangulation.

While facing cross-examination, he is questioned about family of his brother Nagnath PW2 and he is asked when he has visited his brother. He is asked about form of marriage of deceased and accused, occupation of mother of deceased. In para 9, case of prosecution is put up as false, of which there is complete and outright denial i.e. regarding events that took place on 16.01.2013 since 8.30 a.m. regarding visit of deceased to the house of this witness complaining suspicion and beating at the hands of accused, he visiting her house at 1.00 am and learning about some incidence from his son PW6 at 5.00 p.m. and he visiting the scene of occurrence and shifting both of them to the hospital.

Therefore, evidence of brother of informant, who is resident of same village, has also not been rendered doubtful by defence.

26. Third witness PW6 i.e. son of PW5, though in his examination-in-chief

reiterated about suspicion of character of Manisha by accused and she visiting their house in the morning and about seeing deceased and accused lying in courtyard and near Devghar respectively, while he had been to play cricket near the house of deceased at 5.00 pm, in cross-examination, this child witness appears to have candidly admitted that he has learnt the evidence which was to be given by him in the witness box by heart. Therefore, his evidence being of such nature, cannot be taken support of.

27. Thus, evidence of PW2 and PW5 clearly shows that 6 months prior to the incident while at Hipparga, accused and deceased both were residing together till the date of incident. There is reliable evidence of PW2 on the point of hearing from his daughter and PW5 regarding conduct and behaviour of accused towards his daughter Manisha by suspecting her character. He is categorical about giving understanding to the accused. Likewise, evidence of PW5 also inspires confidence as he is resident of same village and to whom deceased confided about treatment meted out to her by accused husband. In fact, he speaks of her visit to his house in the morning hours complaining suspicion and beating. The occurrence had apparently taken place in the early evening of same day. Therefore, we are of the considered opinion that evidence of PW2 and PW5 is firm, cogent and reliable.

28. Very case of prosecution is that accused spotted deceased wife keeping her hand on shoulder of his brother. He had already started suspecting that his wife had affair with his own brother. Therefore in the rage of anger and out of suspicion accused strangled his wife. We have already discussed in the aforesaid paras that since six months prior to the incident, accused used to beat deceased in such backdrop after getting drunk and deceased used to report it to her father and even her uncle who resided in the very same village i.e. Hipparga. We have already held that testimonies of PW2 and PW5 does inspire confidence. Though cross-examined, this aspect has not been dislodged by defence. Resultantly, in our opinion prosecution has discharged the burden of motive behind the crime.

29. Neither before trial court nor before this Court, there is denial that accused was residing with his deceased wife. In fact, he was found by PW5 lying in the courtyard. Both, deceased Manisha and accused were shifted to the hospital together. PW1 had occasion to even examine accused. While giving testimony before the court, doctor spoke about history being given by relatives as consumption of poison. However, further in his evidence doctor has clarified that it was not a case of consumption of poison, rather accused was malingering i.e. pretending to be ill. Such evidence of doctor has also not been disturbed or dislodged. Therefore, there is room to infer that accused was very well conscious and also aware of the deeds at his own hands.

DEFENCE RAISED BEFORE THIS COURT

30. Learned counsel for the appellant would strenuously submit that accused was

not in the house and was rather at his work place. When he returned home, he found his wife lying in such condition. Learned counsel for accused appellant also submitted that deceased herself was upset on learning that there was a quarrel between her parents which was followed by beating to her mother by her father and therefore also, deceased might have committed suicide.

Unfortunately, though attempt is made to prove alibi, no effort whatsoever has been done by appellant to discharge the burden of proving alibi. He ought to have examined his employer or ought to have examined some witness to show that he was at his work place. It was open for accused to even adduce the evidence on the point of alleged quarrel between parents of deceased which, according to him, could be the reason for her to get upset and commit suicide. Rather, medical expert has categorically ruled out the possibility of suicide. Even circumstances at the scene of occurrence do not remotely also suggest any act of suicide. Therefore, as appellant has not led any evidence in support of his defence, nor had probalibilized his defence, the same cannot be entertained.

31. Though pancha witnesses have not supported the prosecution case i.e. pancha to spot panchanama and pancha to recovery of clothes and seizure of saree, the Investigating Officer has proved the said panchanamas. It is pertinent to note that we have come across that in overzealousness the Investigating Officer has committed irregularity in causing seizure. Prosecution's own case was that finding accused and deceased wife lying in the house, they were both shifted to the hospital on 16.01.2013. Deceased wife was declared dead and accused was admitted in the hospital. But according to Investigating Officer, he arrested accused from the hospital and while in custody, on 22.01.2013 there was memorandum of disclosure and in consequence to it there was seizure of saree. However, Investigating Officer seems to have lost sight of the fact that having accused brought from house to the hospital and kept there up till his arrest dated 20.01.2013 and since then being in custody, there was no occasion for accused to go back and hide the saree which infact PW5 had allegedly removed after finding it entangled on the neck of deceased on 16.01.2013. Infact, Investigation Officer has not taken pains to place on record very medical papers of admission of accused since 16.01.2013 till alleged discharge dated 20.01.2013. Therefore, there is irregularity at the hands of Investigating Officer which has not been explained. Be it so. Merely because irregularity is committed by the Investigating Officer or if he has stated as above regarding seizure, the other cogently proved circumstances of motive and presence of accused in the house will not get washed away or overshadowed. In our opinion, though case is based on circumstantial evidence and there is heavy burden on prosecution to establish circumstances firmly and cogently, sometimes it also becomes extremely difficult for prosecution to lead evidence to establish guilt of the accused if strict principles of circumstantial evidence are laid stress upon.

As discuss above, motive is clearly established as accused was entertaining suspicion over character of deceased. He was fond in the house with his wife.

Therefore, though there is initial burden on prosecution to establish the charge, but in view of Section 106 of the Indian Evidence Act there is also corresponding burden on accused husband to give cogent explanation as to how the incident occurred. There are numerous pronouncements reiterating proposition of law on the principle underlying Section 106 of the Indian Evidence Act. The burden to establish those facts is cast on the person concerned, i.e. facts which are to his exclusive knowledge, and if he fails to establish or explain those facts, courts are free to draw adverse inference. The said principle has been time and again approved and followed in cases like Balram Prasad Agrawal v. State of Bihar reported in (1997) 9 SCC 338 ; Nika Ram v. State of H.P. reported in (1972) 2 SCC 80 ; Ganeshlal v. State of Maharashtra reported in (1992) 3 SCC 106 ; Therefore, here, finger of accusation is rightly raised against accused. For above reasons, the defence raised by accused before this Court is of no significance.

SUMMATION

32. Case is based on circumstantial evidence. It is firmly established that deceased met homicidal death i.e. due to strangulation. Deceased wife was in the company and custody of accused husband on the day of occurrence. Accused suspected fidelity of his deceased wife. She had promptly informed her father and uncle, a resident of same village. Therefore, motive is forthcoming. Wife meeting homicidal death in the house of accused, so accused husband was accountable and was expected to offer explanation which he failed to do so in spite of opportunity to that extent. His presence in the house is more than confirmed. Section 106 of the Indian Evidence Act comes into play. There was onus on the accused to give satisfactory explanation for the unnatural death of his wife while she was cohabiting with him. He having failed to do so, presumption comes into play. Prosecution has established and proved the charge under Section 302 of IPC against accused.

33. We have independently assessed and evaluated the entire oral and documentary evidence before us. We have carefully gone through the impugned judgment and order passed by learned Additional Sessions Judge, Omerga. We have come across that cases advanced by prosecution as well as defence have been properly considered and appreciated. After hearing both sides, a well reasoned judgment has been passed. Required law has been applied. In appeal, how and where learned trial court erred in appreciating the evidence is not pointed out to us. There being no merits in the appeal, we are of the opinion that the same deserves to be dismissed and we accordingly proceed to pass the following order :

ORDER

The appeal is hereby dismissed.