
(2017) 11 BOM CK 0131
In the Bombay High Court
Case No : 404 of 2002

Manohar s/o. Mahadu Kate

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 311](#) - Power to summon material witness, or examine person present
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#)

Citation : (2017) 11 BOM CK 0131

Hon'ble Judges : T.V. Nalawade, Arun M. Dhavale

Bench : DIVISION BENCH

Advocate : B.S. Kudale, V.S. Badakh

Final Decision : Dismissed

Judgement

1. The appeal is filed against judgment and order of Sessions Case No. 2/2001, which was pending in the Court of learned Additional Sessions Judge, Nilanga, District Latur. The appellant is convicted for the offence punishable under section 302 of Indian Penal Code ("IPC" for short) and he is sentenced to suffer imprisonment for life and to pay fine of Rs.500/-. Heard learned counsel Shri. Kudale, who is appointed counsel and the learned APP.

2. In short, the facts leading to the institution of the present appeal can be stated as follows :- Deceased Vijayabai (Sujata) was the wife of appellant/accused. The appellant is resident of Savri, Tahsil Nilanga. Kadaji is the father of deceased. He is resident of village Dapka, Tahsil Nilanga. The deceased was given in marriage to the appellant 5-6 years prior to the date of incident and she has left behind one daughter aged about 2-3 years.

3. After marriage, the deceased cohabited with the appellant in village Savri. There was some dispute and after two years of marriage, the deceased had returned to the house of her parents. The deceased used to complain about the

illtreatment which she was receiving from the appellant and her mother. When she returned to the parent's house, she was pregnant and she delivered female child when she was living in the house of Kadaji. She stayed there for about two years. After her delivery, Kadaji made attempts to see that the deceased is sent back to the matrimonial house, but the accused refused to accept the deceased back in the matrimonial house. To pressurize the appellant/accused, the deceased filed maintenance proceeding against him. After that the appellant went to the house of Kadaji, he gave undertaking to behave well and then Kadaji agreed to send the deceased back to the matrimonial house.

4. Few days prior to the Nagpanchami festival, the appellant had visited the house of Kadaji and Kadaji had agreed to send the deceased after celebrating Nagpanchami festival. The deceased was sent to the matrimonial house and that was done about two months prior to the date of incident.

5. Appellant was living separate from his father since 10 years. On 1.10.2000 the villagers realized that Vijayabai was dead and her dead body was lying in the house of appellant. Gopal Suryawanshi is the person from the community of the appellant and after learning about the death in the morning, he went to the house of appellant at about 6.00 p.m. He noticed that father of appellant was sitting outside of house and he was taking care of daughter of deceased. On inquiry, father of appellant said that he had no knowledge about the whereabouts of appellant. Gopal entered the room and he noticed that the dead body of the deceased was lying there, but it was covered by using blanket. Gopal gave A.D. report to Kasarshirsi Police Station and A.D. No. 23/2000 came to be registered.

6. Assistant Police Inspector Shri. Gaikwad of Kasarshirsi Police Station started making inquiry in to A.D. He prepared inquest panchanama and he sent the dead body for post mortem ("P.M." for short) examination. He prepared the panchanama of the spot, of the room of the appellant and he noticed that pieces of bangles were lying in the room and cap having blood stains was also lying there. One ditch having sufficient depth which was recently made was also found there and the floor of the room appeared to be wet showing that recently an attempt was made to clean it. In the meantime, Kadaji, father of deceased reached Savri and after P.M. was conducted on the dead body, he gave report against present appellant and his mother. On the basis of this report, the crime at C.R. No. 130/2000 came to be registered for offences punishable under sections 498-A, 302 r/w. 34 of IPC against the appellant and his mother. Doctor had given opinion that the death had taken place due to strangulation.

7. During investigation of the crime, statements of various persons including the relatives of deceased on parents side came to be recorded. The accused was not available till 13.10.2000. After his arrest, his clothes like shirt and trouser were taken over. One faint blood stain was found on his shirt. During investigation, accused gave statement under section 27 of the Evidence Act and on the basis of the statement, one string used by the accused for strangulation was recovered in the presence of panch witnesses and it was seized. The articles which were taken

over from the spot of offence were sent to C.A. office along with blood sample. Human blood was detected on the shirt of the appellant/accused and also on the cap which was found in the room of accused. Chargesheet came to be filed for aforesaid two offences against the appellant and his mother.

8. When the charge was framed and plea was recorded, present appellant pleaded not guilty. Prosecution examined eight witnesses. The Trial Court used the power given under section 311 of Criminal Procedure Code ("Cr.P.C." for short) and examined five witnesses. The Trial Court has held that Sujata (Vijayabai) was murdered due to suspicion which accused was having about her character. The Trial Court has further held that it is the present appellant, who had prepared the ditch for burying the dead body for destruction of evidence of murder. The Trial Court has held that only the appellant had an opportunity to finish Sujata as mother of the appellant was living separate from him. The subsequent conduct of the appellant is also considered by the Trial Court against him.

9. The defence has not seriously disputed that Sujata died homicidal death. For proving homicide, the prosecution has placed reliance on the evidence of inquest panchanama and P.M. report. Vikas Sarvade (PW 2) is examined to prove the inquest panchanama, which is at Exh. 14. The panchanama was prepared inside of house of appellant and the dead body was shown by Gopal, the person who had given A.D. report. The face of the dead body was in upward direction and the clothes were intact. Mud was found on the head and on hair of the dead body. There were injuries mainly on the face and the neck. The panchas described one injury as ligature mark. The panchas noticed that on inside portion of thighs, there were some injuries and the lady witness noticed that there was mark of violence at the private part. The panchas gave opinion that the death had taken place due to injuries found on the dead body.

10. Dr. Bibhishan Jadhav (PW 5) conducted the P.M. examination on the dead body on 2.10.2000. He noticed following external injuries on the dead body :-

- i) Abrasion on right cheek at Mandibular region.
- ii) Abrasion on left mandibular region circular in nature 3 cm in diameter.
- iii) Abrasion on neck midline 3 cm. in length.
- iv) Multiple abrasion on neck.
- v) Abrasion on left thigh on lateral aspect upper 1/3rd region.

He noticed that there was fracture of thyroid bone, trachea was congested and lungs were also congested. On the basis of this examination, he gave opinion that death had taken place due to strangulation. Suggestions are given to him that it is not a case of strangulation, but it is not the specific case of defence that it is a case of hanging. Further, there was no such circumstance in existence in the room for giving such suggestion. The P.M. report prepared by Dr. Jadhav and

the provisional death certificate are proved as Exhs. 22 and 23. One mistake is admitted by the doctor which is mentioning of "cheek" for injury No. 3 when it ought to have been "neck". He has mentioned that there were multiple abrasions appearing on the neck, but he has not noted those in the P.M. report.

11. It appears that the defence counsel had confronted some portions from the book of Ezaz Ahmed's Expert Evidence 5th Edition, 1999 to Dr. Jadhav (PW 5) to suggest that there can be other cause of death like introduction of something in uterus. This suggestion is denied by the doctor. It can be said that the defence is admitting that there were some marks of violence at the private part. It is also suggested to him that in case of artificial abortion, the death can take place due to asphyxia, saftysemia, tetaneous followed by air embolisam. These suggestions are denied by the doctor. Suggestion is given that rigor mortis starts appearing after 1-2 hours of the death and it is admitted, but no suggestion is given as to when rigor mortis disappears. Doctor has given specific evidence that the injuries found were bleeding injuries. The viscera was preserved, but no poison was detected in the viscera. This Court sees no reason for not accepting the opinion given by the doctor that the cause of death is strangulation. Thus, the prosecution has proved that the death took place due to strangulation and it is case of homicide.

12. The Trial Court has acquitted the appellant of the offence punishable under section 498-A of IPC and so, the evidence only on the offence of murder needs to be considered. Gopal Suryawanshi (PW 1), the person from the community of the appellant has given evidence that after learning about the death of Sujata, he visited the place of residence of appellant in the evening time. He has given evidence that appellant was not present and father of appellant was taking care of daughter of the appellant. In the cross examination of this witness, it is brought on the record by the defence that in this house only the appellant was living with the deceased and accused No. 2, mother of the appellant was living separate from him. It is brought on the record that house of father of appellant is situated at the distance of 100 ft. from the house of appellant. It is also brought on the record that the field of Datta Patil where appellant was working is situated at the distance of 6 k.m. from the house of appellant. A.D. report given by Gopal is proved as Exh. 12.

13. Kadaji (PW 6), father of the deceased has given evidence on the dispute which was there between the appellant and the deceased and on the maintenance proceeding which was filed by the deceased against the appellant. There is no need to discuss the evidence on illtreatment. The evidence of Kadaji shows that the deceased had lived with accused for about two years after her marriage and she had returned after about two years of marriage to his house. When she had returned to him, the deceased was pregnant of seven months and she delivered a female child in his house. He has given evidence that 5-6 days prior to the Nagpanchami festival, appellant and his father had come to him to request him to send the deceased to matrimonial house. This attempt was made

by the appellant only after filing of maintenance proceeding by the deceased against him. He has given evidence that appellant gave undertaking not to give illtreatment to the deceased and there was condition that the deceased was to withdraw the proceeding filed for maintenance. Promise was given to the appellant to withdraw the maintenance proceeding after some time. Evidence is given by Kadaji that after celebrating Panchami festival, he sent the deceased to the house of appellant for resuming cohabitation. The incident in question took place after two months after returning of the deceased to the house of the appellant. The report given by him against the appellant is proved as Exh. 25 and it is consistent with the aforesaid evidence of Kadaji.

14. In the cross examination of Kadaji (PW 6), it is brought on the record that the parents of appellant were living separate from him from about 10 years. It is brought on the record that after Panchami festival of the year 2000 i.e. after returning of Vijayabai to matrimonial house, appellant had meet him at Bazar and he had informed that the deceased was admitted in hospital due to abdominal pains. It is brought on the record that due to miscarriage she was admitted in the hospital. Thus, the deceased had the cohabitation of about two months after returning to matrimonial house and the abortion had taken place and this circumstance is brought on the record by the accused. It is also brought on the record that when the deceased was living with Kadaji, she was doing labour work in the field of one Akhil Patel and Akhil Patel used to help them in all problems. It is brought on the record that Vijayabai used to return to house from the field of Akhil Patel very late and due to that Kadaji scolded her on 2-3 occasions. These circumstances are used against the appellant by the Trial Court and rightly so. It can be said that the accused had that information and inference is possible that he had suspicion that deceased had illicit relations with said Akhil Patel.

15. Kisan (PW 4) is a person from Dapka and in his evidence, it is brought on the record that few days prior to the festival of Panchami of 2000, appellant had visited the house of Kadaji with a request to send the deceased to matrimonial house. Other evidence given by this witness is similar to the evidence given by Kadaji (PW 6) on the point of dispute, illtreatment given to deceased, filing of maintenance proceeding by the deceased and sending the deceased to matrimonial house after Panchami festival by Kadaji. Similar evidence is given by Gautam (PW 7), who is also from Dapka. This evidence also shows that only to avoid the liability of making payment of maintenance amount, appellant had taken back the deceased to the matrimonial house. Thus, if the deceased wanted to return from matrimonial house due to any dispute, she would have prosecuted the matter filed for maintenance and this can be also motive for the crime.

16. Court witnesses have also given some evidence. Court witness Madhav, father of appellant has given evidence that the parents of the appellant were living separate from appellant and Sujata died in the house of appellant. In his evidence, it is brought on the record that on the night between 30.9.2000 and

1.10.2000, he was not present even in his house and on the next day, he learnt about the death of Vijayabai. He has deposed that he was not on talking terms with the appellant for about 10 years. The evidence of this witness and Gopal show that in the morning of 1.10.2000 itself people knew that Vijayabai was dead and her dead body was lying in the house of accused.

17. Datta Patil, another Court witness has tried to support the accused. Accused was working with him in the field and he has deposed that on 1.10.2000 appellant/accused was present in the field for work. However, his evidence is not that specific as to when on that date the accused had come to the field for work.

18. The evidence of Dr. Bibhishan Jadhav (PW 5) and the P.M. report prepared by him shows that rigor mortis was absent, but uenus merbling was present. The P.M. was conducted on 2.10.2000 after 15.00 hours i.e. 3.00 p.m. Inference is easy that after rigor mortis had completely appeared it had disappeared. The stomach was found empty and both large intestine and small intestine were empty. These circumstances show that either no dinner was taken by the deceased or in early hours of the morning when the deceased had answered nature's call, the incident in question took place. It can be said that nobody could hear hue and cry of the deceased and so, the murder must have been committed in early hours of 1.10.2000 or on the night between 30.9.2000 and 1.10.2000.

19. For drawing aforesaid inference, there are many other circumstances, which can be seen in the spot panchanama, Exh. 15. One ditch having sufficient depth was created in the room. Inquest panchanama shows that an attempt was also made to ascertain as to whether that ditch was sufficient for burying the dead body and due to that there was mud on the head of dead body. There is possibility that the accused could not bend limbs of the dead body after taking the ditch and then he left his attempt and went out. It does not look probable that outsider would have made an attempt to take ditch for burying the dead body. Further there was cap having blood stains inside of house and near the ditch. Sickie, article used for taking ditch was found there. These circumstances are sufficient to infer that it was the job of person living in that room, the accused. Thus, all these circumstances point finger only to the accused.

20. It is true that motive is relevant when the case of prosecution rests on circumstantial evidence. However, not in each and every case, there should be motive because many times the motive may be only in the mind of accused and others may not be in a position to realize what what is in the mind of accused. When there are strong circumstances like found in the present matter, the absence of evidence on motive cannot be a circumstance for discarding the evidence of aforesaid nature. This Court holds that aforesaid evidence is more than sufficient to hold the accused guilty for the offence of murder.

21. In view of the provision of section 106 read with section 114 of Evidence Act, it was necessary for the appellant/accused to explain aforesaid circumstances. In

ordinary course, he was supposed to remain present in his house on the night between 30.9.2000 and 1.10.2000. The Court is expected to go with the presumption that he must not have left for work on 1.10.2000 prior to his duty hours and there is no evidence given on his duty hours. The death took place on the night between 30.9.2000 and 1.10.2000 or at the most, in the early hours of 1.10.2000 when the deceased had not taken even tea. These circumstances are not explained by the accused. Similarly, he ought to have explained as to why there was a ditch in his house. He ought to have explained as to why he did not inform to Police Patil or others that his wife was dead or something had happened to her. Even when he was having kid of 2 years, he was not there in the house to take care of that kid after the death of his wife. This circumstance also ought to have explained by the accused. All the incriminating circumstances are proved by the prosecution and the circumstance of absence of explanation of husband/appellant is additional circumstance against him. In view of these circumstances and the provisions of section 106 read with section 114 of Evidence Act, only inference available is that it is the accused/appellant who committed murder of his wife Vijayabai (Sujata) and it is the accused/appellant, who had taken ditch in the house with the intention to bury the dead body and destroy the evidence of murder.

22. The learned APP placed reliance on the cases reported as AIR 2002 SUPREME COURT 1961 [Mandhari Vs. State of Chattisgarh] and 1993 CRI.L.J. 3029 [Rajammal and Ors. Vs. State by D.S.P.CB.CID] (MADRAS HIGH COURT). In the first case, when there were similar circumstances, the Apex Court held that inference was easy that it is the accused, who had committed murder and who had created a show of suicide by his wife. Subsequent conduct which was unnatural of the accused was also considered against him. Madras High Court also considered subsequent conduct which was consistent with the guilt of the accused. The relevant facts of the present matter are quoted by this Court.

23. For the appellant/accused reliance was placed on the case reported as 2015 ALL MR (Cri) 1287 (BOMBAY) [Suresh Vithal Parkar Vs. The State of Maharashtra]. In that case, this Court held that when exact time of death was not known, presence of accused was not established, it was not necessary for the accused to explain the circumstances by using section 106 of Evidence Act. In the case, reported as AIR 2015 SC (Supp) 412 [Tomaso Bruno and Anr. Vs. State of Uttar Pradesh] cited by the learned counsel for appellant, the Apex Court while considering circumstantial evidence reiterated that when the case rests on circumstantial evidence, the chain of circumstances needs to be completed. The Apex Court has further reiterated that in such cases, motive is relevant. The facts of that case were different. In the present case, husband is involved as the accused and the murder took place in his house where the deceased was cohabiting with him. The things which ordinarily happen in routine course need to be considered by the Court and inference needs to be drawn by the Court on the basis of evidence given in that case. There is no dispute over the propositions made in the cases by this Court and Supreme Court cited supra. These

propositions cannot help the accused in the present matter in view of the facts of the present matter. This Court holds that it is not possible to interfere in the decision given by the Trial Court by which appellant is held guilty for the offence of murder. In the result, the appeal stands dismissed. Fees of the learned counsel appointed for the appellant is quantified as Rs.5000/- (Rupees five thousand).