

(2015) 08 BOM CK 0007
In the Bombay High Court
Case No : Criminal Appeal No. 1138 of 2008

Narsing Dhondiba Pol

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 08 BOM CK 0007

Hon'ble Judges : V.K. Tahilramani, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Nasreen S.K. Ayubi, Appointed Advocate, for the Appellant; A.S. Pai, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar Joshi, J—The appellant, who stands convicted by Additional Session Judge, Mumbai, in Sessions Case No. 705 of 2004, vide judge dated 11.09.2008, for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 2,000/-; in default to suffer rigorous imprisonment for one year, by this appeal, challenges his conviction and sentence.

2. Brief facts of the appeal can be stated as follows :-

Deceased Aruna was the wife of the appellant. She had a daughter by name Swarupa and a son by name Pawankar (P.W.5) Alongwith them, she was residing in room No. 216 in PCL Colony, Chembur. The appellant was working as Welder and Fitter and in relation to his job he used to go abroad. P.W.1 Madhavi is a social worker and residing in the same locality where the appellant and deceased were residing.

3. On 10.4.2004, the appellant had returned from abroad and he met P.W.1

Madhavi on 12.4.2004 in the shop of Laxmi Tailor at about 7 to 8.00 p.m. There he told P.W. 1 Madhavi that he had sent amount of Rs. 80,000/- to his wife Aruna, but she was not giving account of the said amount. He further told her that Aruna has also not explained as to what she has done of 35 tolas gold ornaments. Aruna has also pledged the photo-pass of the room with P.W.3 Sanjeevani Kawade and took loan of Rs. 10,000/- from her. She has also borrowed an amount of Rs. 5,000/- each from Parvati Pol and Shakuntala. The appellant further told her that he was going to take Aruna to the house of her parents to convince her.

4. In this backdrop, incident giving rise to this case, took place on 19.4.2004. On that day at about 5.30 a.m. P.W.2 Asha Gaikwad-the neighbour of Aruna, noticed that some persons were talking outside the house of Aruna. Hence she came out and went to the house of Aruna. There she found Aruna lying dead on carpet and the appellant was present there. She, therefore, called P.W.1 Madhavi on phone, who came there and gave information of the same to the police. On enquiry by her with the appellant, he admitted his mistake of committing murder of Aruna by strangulating her with nylon rope.

5. On receipt of information from P.W.1 Madhavi, P.W.10 PSI Jadhav, attached to R.C.F. police station, came to the spot at about 7.30 a.m. and found dead body of Aruna lying there. The appellant was also present on the spot itself. He recorded complaint of P.W.1 Madhavi vide exh.10. He obtained crime number on phone from police station. It was C.R. No.80 of 2004. Then he prepared inquest panchanama and spot panchanama vide Exh.12, sent the dead body for postmortem and arrested the appellant on the same day. After inquest panchanama, he has taken in custody the clothes of deceased and also seized the clothes of appellant under panchnama. From the spot he seized, blanket and nylon rope. All these seized articles were sent to Chemical Analyzer vide requisition letter Exh.33. The Chemical Analyzer's reports are produced in the case vide Exh.34 to 38. The postmortem report Exh.24 disclosed cause of death as asphyxia due to strangulation. Further investigation of the case was taken over by P.W.11 Police Inspector Deshmukh. He has recorded the statements of witnesses and further to completion of investigation, filed chargesheet in the Court against the appellant.

6. On committal of the case to the Sessions Court, trial Court framed charge against appellant vide Exh.3. The appellant pleaded not guilty and claimed trial.

7. In support of its case, prosecution examined in all 11 witnesses and on appreciation of their evidence, trial court was pleased to convict and sentence the appellant as aforesaid.

8. This judgment of the trial Court is the subject matter of this appeal. We have heard learned counsel for appellant and learned APP. In our considered opinion, before advertng to rival submissions advanced by them, it would be useful to refer to the evidence on record.

9. This case stands on circumstantial evidence alone. The prosecution has relied upon three circumstances, first is that of Aruna spending amount of Rs. 80,000/- which appellant has sent to her and also disposing of the gold ornaments, pledging photo-pass of the room and further borrowing amounts in the absence of appellant, hence the appellant being annoyed with her. The second circumstance relied upon by prosecution is that of homicidal death of Aruna due to asphyxia, in her residential house where the presence of appellant is proved. The last circumstance relied upon by the prosecution is that of no explanation is offered by the appellant about her unnatural death.

10. To prove the first circumstance, prosecution has relied upon evidence of P.W.1 Madhavi before whom, as per prosecution case, appellant has disclosed about Aruna spending an amount of Rs. 80,000/- and disposing of her gold ornaments etc. P.W. 1 Madhavi has stated that on 12.4.2004, appellant met her in the shop of Laxmi Tailor at about 7.00 to 8.00 p.m. There appellant told her that he had sent amount to his wife from abroad on number of occasions and she has spent the said amount as per her desire. Moreover, she had also taken amount as loan by pledging the photo-pass of their room. He further told her that he was going to take his wife to the house of her mother so as to convince her.

11. The prosecution has then examined P.W.3 Sanjeevani Kawade from whom Aruna has borrowed an amount of Rs. 10,000/-. As deposed by this witness, she is also residing in the same locality. She was knowing Aruna quite well. She and Aruna were on visiting terms. On one occasion Aruna had come to her house and demanded an amount of Rs. 10,000/- for hospital expenses. At that time Aruna has pledged photo-pass of her room with her as security. She has further deposed that 3 to 4 days prior to the incident, appellant had come to her house and made enquiry about the amounts which Aruna had borrowed from her and she has told appellant that Aruna had obtained amount of Rs. 10,000/- for hospital expenses. It may be true that this witness has subsequently deposed that Aruna has refunded said amount and therefore, she was declared hostile. However, in cross-examination by learned APP, she has admitted that on 17.4.2004, Aruna had come to her house and demanded photo-pass. At that time, she told Aruna that unless the amount of Rs. 10,000/- is returned, she will not give photo-pass to her. As per her evidence Aruna did not repay an amount of Rs. 10,000/- and therefore, she did not return the photo-pass. Subsequently the appellant assured her and told her that he will pay the amount.

12. Further there is also evidence of P.W.4 Shaukeenkumar Jain, who is running business of Jewellery in the name of "Kavita Jewellers and Manali Jewellers", at Vashi Naka, Chembur. As per his evidence, he was acquainted with Aruna as she resides near his shop. She had purchased jewellery items from his shop. On one occasion, she has given order of gold bangles and chain, costing Rs. 14,000/- and Rs. 12,000/-, respectively. She had purchased these ornaments on credit. At that time, she had paid only Rs. 4,000/- and remaining amount was in balance.

Two to three months thereafter, she came to his shop and returned the ornaments saying that she has no amount to pay towards balance consideration. Therefore, he returned her amount of Rs. 4,000/-. He has further deposed that she again came to his shop and demanded an amount of Rs. 9,000/-, assuring that she will return the said amount after arrival of her husband from abroad. Accordingly he gave her an amount of Rs. 9,000/-, out of which she returned only Rs. 1,000/- saying that as her husband did not come, she cannot repay the entire amount and will pay the balance amount of Rs. 8,000/- subsequently after return of her husband.

13. The evidence of P.W.7 Smt. Yashoda Pol, who resides in the vicinity to the house of Aruna, also proves that Aruna had demanded money from her. As she has denied that she gave the amount of Rs. 5,000/- to Aruna, prosecution has declared her hostile and cross examined her. Though prosecution could not succeed in eliciting admission from her that she has given amount of Rs. 5,000/- to Aruna as loan, in our opinion, it does not make much difference as her evidence to the effect that Aruna had demanded an amount from her is also sufficient to prove the prosecution case.

14. There is absolutely no cross-examination of these four witnesses their evidence to the effect that Aruna has borrowed some amount from them and has also sold her gold ornaments and further pledged photo-pass of room. The evidence of these witnesses has remained completely unshattered and unchallenged on record. It is coupled with the evidence of P.W.1 Madhavi that when appellant came to know about it after he returned from abroad, he was very much annoyed with Aruna. He also intended to take her to the house of her mother. In our considered opinion, thus, there is more than sufficient evidence on record to prove motive or the genesis of the incident on the part of the appellant to do away with Aruna.

15. The second incriminating circumstance in the instant case is that of homicidal death of Aruna in her residential house where the presence of appellant is proved at the time of her death. P.W.9 Dr. Kachare has conducted postmortem on her dead body and his evidence goes to prove that on external examination, he has noticed following injuries on her person which were corresponding to internal injuries.

1. Ligature mark around neck is seen, encircling neck fully, with impression of abraded groove at right neck region, resembles knot, seen below and laterally from right. Ligature extends below and then horizontally at out of neck region, above thyroid cartilage, 5 cm below from chin, ligature further extends to above and laterally to left neck region, seen below left ear and then extends posteriorly at hair line, ligature, dark reddish brown in size 28 x 0.5 a.m. N.C. 28 cms at mid thyroid level.

haemorrhage are seen in neck strap muscles. Evidence of fracture is seen,

2. Contused Abrasion over right cheek, reddish brown

3. Contused Abrasion over mandibular region below lips, 2 in numbers 1.5 cm x 0.1 cm and 1.5 cm x 0.1 cm, reddish brown.
4. Contused Abrasion over anterior chest, upper part 10 cm x 5 cm, reddish brown.
5. Contused Abrasion over middle of chest in between memory 2 cm x 0.5 cm, reddish.

According to him, all these injuries were antemortem in nature and the cause of death was asphyxia due to strangulation, hence unnatural. The postmortem report issued by him to that effect is produced on record at Exh.24. In evidence before the Court, he was shown nylon rope recovered from the spot of incident and he has stated that ligature mark found on the dead body of Aruna is possible by the said nylon rope. In his cross examination, suggestion is put up that the cause of death can be suicidal. However, this suggestion is denied by him. Otherwise also evidence of ligature mark on neck totally rules out the possibility of death on compression of neck with hands. Evidence of P.W. 9 Dr. Kachare, thus, proves the cause of death as homicidal death.

16. The evidence of P.W.2 Asha Gaikwad who has first noticed the dead body of Aruna in her house at 5.30 a.m., proves that the appellant was very much present in the house at that time. According to her appellant told something to the police about the cause of Aruna's death. Police also seized nylon rope which was produced by the appellant. The police have also seized carpet, blanket alongwith broken bangles of Aruna. In our opinion, the seizure of broken bangles with nylon rope from the spot further corroborates evidence of P.W.9 Dr. Kachare about the cause of death being homicidal in nature.

17. The evidence of P.W.1 Madhavi Pujari, who has reached there on receipt of telephonic message from P.W.2 Asha Gaikwad, goes to prove that when she reached there, she found that Aruna was lying on the mat. Appellant was present and weeping there. She made enquiry with the appellant about death of Aruna and appellant told her that mistake has happened at his instance. Thereafter she has informed the police and after police came there, her complaint came to be recorded. The prosecution has declared her hostile only to the extent that she has denied that in her presence accused made confessional statement that he has strangled Aruna with nylon rope thereby causing her death. Though the contents to that effect in her complaint are denied by her, her evidence that the accused has admitted that he has committed some mistake in respect of death of Aruna is more than sufficient to prove complicity of appellant. In addition thereto, her evidence also proves presence of appellant at the spot in the house where homicidal death of Aruna had taken place.

18. Even the evidence of P.W.5 Pawankumar, son of appellant and Aruna proves that his father was very much present in the house when the death of his mother was noticed.

19. Thus, in this case, the prosecution has established that death of Aruna was homicidal in nature on account of strangulation. Prosecution has further established the seizure of nylon ropes from the spot and that ligature marks found on the dead body of Aruna were tallying with the nylon rope. The prosecution has also established that Aruna's homicidal death had taken place in her residential house. The prosecution has also proved presence of appellant in the said house at the time of her death.

20. In view of the prosecution discharging thus initial burden cast upon it, onus is naturally shifted upon the appellant to offer plausible and reasonable explanation about the cause of his wife Aruna's death. Section 106 of the Evidence Act makes it necessary for the accused to discharge such burden as to the circumstances and facts in which her death had taken place as those are within his special knowledge. In this respect, we may make a useful reference to the decision of Apex Court in Trimukh Maroti Kirkan Vs. State of Maharashtra, (2007) CLT 471 Supp : (2007) CriLJ 20 : (2006) 2 DMC 757 : (2006) 9 JT 50 : (2006) 10 SCALE 190 : (2006) 10 SCC 681 : (2006) 8 SCR 156 Supp : (2006) 148 STC 638 ; wherein the Apex Court observed that,

"where an offence like murder is committed, in secrecy inside the house, the initial burden to establish the case would undoubtedly be upon 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 any other case 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 cogent explanation as to how crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation.

It was further held that

"where accused is alleged to have committed murder of his wife and 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 husband also, normally resides, it has been consistently held that if accused does not offer any explanation as to how the wife received injuries or offers explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime".

21. In the instant case there is absolutely no explanation offered by the appellant as to the cause of homicidal death of Aruna. His defence is simpliciter of denial. Neither in his statement under Section 313 of Code of Criminal Procedure nor in cross-examination of prosecution witnesses, any effort is made by the appellant to explain the cause of Aruna's death. Thus, mere denial of the prosecution case coupled with the absence of any explanation offered by the appellant is inconsistent with his innocence, but consistent with the hypothesis that accused is culprit in commission of murder of his wife.

22. In the instant case, therefore, in our opinion, the prosecution has succeeded in proving by cogent and consistent evidence on record all the three incriminating circumstances against appellant and these three incriminating circumstances form link so complete that no other hypothesis except that of the guilt of the appellant can be drawn therefrom. Hence trial Court has rightly held the guilt of the appellant to be proved beyond reasonable doubt. The appeal, therefore, being devoid of any merits, stands dismissed.

23. The fees payable to appointed advocate by Maharashtra State Legal Services Authority, are quantified at Rs. 5,000/-.