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(2010) 04 BOM CK 0146

In the Bombay High Court

Case No : Criminal Appeal No. 298 of 2008

Rangnath Bhagwanta Pawar — APPELLANT

Vs

The State of Maharashtra — RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 24, 25, 26, 27, 27
Penal Code, 1860 (IPC) — Section 201, 302, 498A

Citation : (2010) 112 BOMLR 2114

Hon'ble Judges : S.S. Shinde, J;S.B. Deshmukh, J

Bench : Division Bench

Advocate : S.T. Veer, for the Appellant; N.R. Shaikh, APP, for the Respondent

Judgement

S.B. Deshmukh, J.—The appellant (accused) aggrieved by the judgment and order of conviction and sentence, passed by the learned Ad-hoc Additional Sessions Judge-I, Jalgaon, in Sessions Case No. 55 of 2007, dated 11.4.2008 has preferred the present appeal. By the impugned judgment, the appellant was convicted for the offense punishable u/s 302 of Indian Penal Code ("IPC") and sentenced to suffer imprisonment for life and fine of Rs. 500/- in default of payment of fine, to suffer rigorous imprisonment for one month. The appellant, however, was acquitted of the another charges under Sections 498A and 201 of IPC by the learned trial Judge.

2. The brief matrix of the prosecution case are as under:

(A) Prior to three years of the incident, appellant married Savita d/o Kisan Tupe. Out of the wedlock they got a daughter, namely, Pinti. Before 5-6 months of the incident, the appellant was working in the field of one Shri Mangate at village Mitmita, District Aurangabad. He had taken Savita and Pinti for cohabitation with him. On Diwali festival, when Sarita came to her parental home, she complained that the appellant is insisting her to bring Rs. 50,000/- for business and on that

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count, is ill-treating her. The members of paternal home of Savita, therefore, asked her to stay with them.

(B) On 17.11.2006, the appellant on telephone assured parents of Savita that he will behave properly and will not ill-treat her. On his assurance, it was decided to send Savita to him. Appellant also asked them to reach Savita and his daughter to Farshi fata at 12.00 to 12.30 noon, as he will collect both of them from the said spot. At about 2.00 p.m. appellant arrived at the spot and Savita and her daughter were sent with him by a Black-Yellow Jeep for Aurangabad.

(C) On 29.11.2006, father in law of Savita, namely, Bhagwanta came to village Jatwa, Taluka Fulambri to the house of parents of Savita and inquired about her. It was informed to him that Savita has not come there. Without telling anything Bhagwanta left them. The complainant - Sheshrao and other family members suspected some foul play since Savita was ill-treated since last six months by the appellant on account of demand of Rs. 50,000/-.

(D) On 30.11.2006, complainant, his brother Rambhau and nephew Mukunda went to village Jatwa to trace Savita. Father-in-law of Savita did not give any satisfactory information to them. They felt that the information given by him was suspicious. Therefore, they asked Shrirang - brother of appellant - to bring the appellant to them. They again went to village Jatwa on 1.12.2006 to the house of accused and inquired about Savita with the accused. However, he gave evasive answers. They suspected some foul play.

(E) Thereafter, the complainant along with his brother and nephew came to Vadod-Bazar Police Station. In the meantime appellant also reached the police station. PSI Shinde of the said police station inquired with the appellant about Savita and her daughter. At that time, it is alleged that the appellant made a confessional statement that on starting from Farshi fata, on that day, they first came to Aurangabad, thereafter, took a bus to Dhule and alighted at Chalisgaon. While going to Pachora from Chalisgaon by a jeep, they dropped at village Anturli fata at about 11.00 p.m. It is further alleged that, the appellant took wife Savita and daughter Pinti in one field in Anturli Shiwar and then dragged them in the well in the field and thereafter, went to his native place.

(F) In the meantime, two unclaimed dead bodies of one lady and one girl aged about 1 to 1-1/2 years were found in the well situated in the field of one Daga Dhudku Pagare in Anturli Shiwar on 19.11.2006. Police Patil Rohidas had informed this fact to Pachora Police Station. A.D. No. 74 of 2006 was accordingly registered. ASI Rama Vasatkar of Pachora Police Station inquired into the matter of accidental death. He visited the spot, recorded spot panchanama so also inquest panchanama. He arranged for post mortem of the dead bodies from the Rural Hospital, Pachora and also performed funeral of the dead bodies. The clothes on the persons of victim were seized under a seizure panchanama. He also arranged to publish a news in the news paper about receipt of the unclaimed bodies.

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(G) It is alleged that thereafter, the complainant, along with his relatives and appellant came to police station Pachora, accompanied by Vadod Bazar Police. There they saw some clothes and photographs of victim and identified them as of Savita and Pinti. Therefore, complainant Sheshrao lodged a complaint to the police station Pachora on 1.12.2006. Based on the said complaint, offenses under Sections 302, 201, 498A of IPC so also Sections 3 and 4 of the Dowry Prohibition Act came to be registered against the accused.

(H) After lodging of the complaint, API Rajendra Lokhande investigated into the matter. He arrested the appellant on 2.12.2006 and recorded his statement so also statements of necessary witnesses. On 4.12.2006, during police custody, the appellant made a disclosure statement and showed his readiness to show the spot where he has concealed the bag of clothes of deceased. They were seized by the police under a seizure panchanama.

(I) On completion of the investigation, charge sheet was filed in the Court of learned Judicial Magistrate (F.C.), Pachora, who, in turn, committed the case to the Court of Sessions, Jalgaon, since it was triable by the court of Sessions.

(J) Based on the prosecution case, the learned trial Judge framed charge against the appellant for the offenses punishable under Sections 302, 498A and 201 of IPC. The plea of the appellant was recorded. He pleaded not guilty and claimed to be tried.

3. To bring home the guilt, prosecution examined seventeen witnesses. PW 1 is Police Patil Rohidas, who had informed Pachora Police about the dead bodies (Exhibit 9), PW 2 is Namdeo Patil, who took out the dead bodies out of the well along with others so also a panch (Exhibit 21), PW 3 is Pradip Eknath Pawar, a panch (Exhibit 15), who was declared hostile, PW 4 is Walmik Prabhakar More, panch of seizure of wedding card so also photographs of the victim and appellant (Exhibit 16), PW 5 is Kishor Dodhu More, a panch witness, who was declared hostile (Exhibit 19), PW 6 is Chudaman Raghunath Patil, another panch witness, who was also declared hostile and cross examined by the prosecution (Exhibit 20), PW 7 is Rambhau, uncle of deceased (Exhibit 21), PW 8 is Sheshrao, complainant and uncle of deceased (Exhibit 23), PW 9 is Narayan Govind Patil, an eye witness, (Exhibit 26), PW 10 is Nitin Shamrao Jathar, a panch witness to the disclosure made by the appellant to show the place where clothes of victims were hidden by him (Exhibit 29), PW 11 is Namdeo, cousin of deceased Savita (Exhibit 33), PW 12 is Daga Dhudku Pagare, a witness (Exhibit 35), PW 13 is Vijay Murlidhar Jagtap, a municipal hospital employee, who buried the dead bodies (Exhibit 37), PW 14 is Shamrao Mahadu Patil, who helped in taking out the dead bodies out of well (Exhibit 38), PW 15 is Sampat Sakharam Shinde, Investigating Officer - API, Police Station Vadod Bazar (Exhibit 40), PW 16 is ASI Rama Vasatkar, Police Head Constable Pachora Police Station, who has registered the A.D. case (Exhibit 42), and PW 17 is Rajendra Radhakurshna Lokhande, Investigating Officer and API of Accidental Case registered with Pachora Police Station Exhibit 50).

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4. Based on the evidence adduced by the prosecution, taking into consideration the statement of the appellant / accused u/s 313 of the Code of Criminal Procedure and after hearing counsel for the respective parties, the learned trial Judge convicted and sentenced the accused for the offenses as said in the opening paragraph of this judgment.

5. Before adverting to the submissions of learned Counsel for the parties, we shall proceed to list un-controversial facts amongst the parties.

(i) The death of Savita and her daughter Pinti by drowning

(ii) Dead bodies were recovered from the well of one Daga Pagare (PW 12) in the vicinity of village Anjurli on 19.11.2006 and beat of drum was given on 21.11.2006 to identify the dead bodies kept in the Municipal Council Hospital, Pachora. Exhibit 18 is the document dt. 21.11.2006 showing drum beats admitted by the appellant.

(iii) Post mortem reports Exhibits 45 and 46 were also admitted by the appellant and cause of death is shown as due to drowning in relation of death of Savita and Pinti. Appellant has, however, strongly contended that death of Savita and Pinti is homicidal.

(iv) The prosecution case is based on circumstantial evidence.

6. The Supreme Court has laid down guidelines from time to time in regard to the finding of guilt solely on the basis of circumstantial evidence in number of cases. Leading judgment is in the matter of Hanumant Vs. The State of Madhya Pradesh, wherein the law was laid down in the following terms:

...It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused....

Again in Sharad Birdhichand Sarda Vs. State of Maharashtra, Supreme Court laid down the law in the following terms:

A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and

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"must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made - ''Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ''may be'' and ''must be'' is long and divides vague conjectures from sure conclusions.''

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These two judgments have been quoted and followed by the Supreme Court in the matter of Aloke Nath Dutta and Others Vs. State of West Bengal, .

7. We have heard learned Counsel for the parties. Learned Advocate for the appellant submitted that the trial Court ought not to have convicted the appellant for the offence punishable u/s 302 of IPC. According to him, the circumstantial evidence adduced on behalf of the prosecution is not sufficient to bring home guilt to the appellant. He relied on the reported judgments in support of his submissions to which, we shall make a reference at the appropriate stage. Learned Additional Public Prosecutor supports the judgment of the learned Sessions Judge. He has also pointed out some reported judgments, to which also we shall make reference at the appropriate place.

8. We shall now list the circumstances revealed from the evidence adduced on behalf of the prosecution and considered by the trial Court.

(1) Marital discord amongst the appellant and deceased Sarita on account of alleged demand of Rs. 50,000/-, non fulfillment of the same, resulting into stay of deceased Savita with her daughter before the date of incident at her parental house.

(2) Request of the appellant to the family members of deceased Savita, reaching deceased Savita for cohabitation, on telephone, on 17.11.2006.

(3) Handing over of custody of deceased Savita and Pinti by PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo to appellant on 18.11.2006 at about 2.00 PM.

(4) Deceased last seen alive in the company of appellant.

(5) Conduct of the appellant in not reporting the missing or whereabouts of deceased Savita and Pinti to parents of deceased Savita or to the police

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authorities.

(6) Discovery of the bag containing articles of the deceased at the instance of the appellant.

(7) Denial or non explanation by the appellant in relation to incriminating circumstances.

9. To substantiate circumstances Nos. 1 to 3 above, evidence of three prosecution witnesses is relied upon i.e. evidence of PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo. PW 7 Rambhau and PW 8 Sheshrao are uncles of deceased Savita and PW 11 is cousin of deceased Savita. According to these three witnesses, after marriage of Savita, she was residing at her in-laws place in a joint family. Marriage was blessed for the period of two and half years. Thereafter, demand of Rs. 50,000/- was made to deceased Savita, to be brought from her parents. According to the witnesses, this demand was disclosed to them by deceased Savita when she visited her parents'' place. The reason for disclosure of demand to these witnesses, according to them, was obvious since undisputedly, father of Savita was no more. This demand was also disclosed by Savita to her mother. These witnesses in their evidence have also testified that assurance was given to meet the demand after making some arrangement after the cotton season. It is also disclosed in the evidence of these witnesses that since they could not fulfill the demand of the appellant, they advised Savita to stay at the parent''s house for sometime. Thus, according to the prosecution witnesses, before the incident, Savita and her daughter were staying at her parent''s house.

According to these witnesses, on 17.11.2006, appellant requested reaching of deceased Savita and Pinti for cohabitation. Message of the appellant was accordingly acted upon. From the evidence of these witnesses, it reveals that appellant asked to reach deceased Savita and Pinti at Farshi fata on 18.11.2006 at about 12.00 to 12.30 PM.

We have considered the cross examination of these witnesses. Their evidence remained unshattered. Thus, circumstance Nos. 1 and 2 have been proved.

10. Circumstance No. 3 is regarding handing over custody of deceased Savita and Pinti to appellant, in view of the telephonic message dated 17.11.2006. On 18.11.2006, PW 8 Sheshrao and PW 11 Namdeo reached Savita and Pinti to the appellant at Farshi fata. The appellant came there. He took Savita and daughter Pinti along with him and left the place by Black and Yellow Jeep towards Aurangabad. PW8 Sheshrao and PW 11 Namdeo returned their home from Farshi fata. Thus, custody or deceased Savita and Pinti was handed over to the appellant by these prosecution witnesses. After this time, Savita and Pinti could not be seen alive. Circumstance Nos. 3 and 4, as alleged by the prosecution, thus stand established in the evidence of these three witnesses.

In the cross examination of these witnesses, it is significant to note that there is

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even no suggestion given to them that custody of deceased was not handed over to appellant as claimed. However, in the cross examination of these witnesses, it is tried to be suggested that these witnesses have not lodged the report with the police. We have noticed that in the cross examination of PW 8 Sheshrao and PW 11 Namdeo, suggestion has been given that Savita and Pinti had died at the parental home. It seems to be an attempt on behalf of the appellant to say that death of Savita and Pinti might have taken place when they were staying at the parental house of deceased Savita. However, there is no specific and clear suggestion that custody of Savita and Pinti was not handed over to the appellant by PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo.

11. Appellant took deceased Savita and Pinti in a Black and Yellow Jeep on 18.11.2006 from Farshi fata and travelled towards Aurangabad. In the meantime, Police Station Vadod Bazar has received a report from PW 1 Rohidas, Police Patil of village Anturli that there are two dead bodies in the well of PW 12 Daga. His report was received by ASI Rama (PW 16). Based on the said report, AD case No. 74 of 2006 was registered. Dead bodies were taken out from the well. Inquest panchanamas (Exhibits 12 and 13) were carried out by ASI Rama (PW 12). Spot panchanama was also recorded and established in the evidence of PW 16 Rama (Exhibit 14). Panch witnesses have also been examined on behalf of the prosecution to prove these panchanamas. Dead bodies were sent to Municipal Hospital, Pachora for post mortem.

12. PW 8 Sheshrao, as referred in the foregoing paragraphs, has lodged a report Exhibit 23 on 1.12.2006. Till this date, there was no missing report lodged on behalf of the appellant with any of the Police Stations, either Fulambri or Vadod Bazar. On the contrary, father of the appellant had been to the village of PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo to enquire the whereabouts of deceased Savita and Pinti on 29.11.2006. According to the prosecution, appellant approached Police Station when PW 8 Sheshrao had been to the Police Station for lodging report Exhibit 23. This conduct of the appellant from 18.11.2006 i.e. the date when he had alleged to have taken custody of deceased Savita and Pinti till the date of reporting the matter by PW 8 Sheshrao is the incriminating circumstance. This incriminating conduct has been proved by the prosecution. Thus, circumstance No. 5 is proved by the prosecution.

13. The prosecution claims that a cloth bag containing apparels of Savita and Pinti has been discovered at the instance of the appellant. In other words, resort to Section 27 of the Indian Evidence Act has been taken by the prosecution for establishing circumstance No. (6). Section 27 of the Evidence Act has been considered by the Honourable Supreme Court time and again. Leading judgment on the point can be said to be in the matter of Pulukuri Kottaya and Ors. v. Emperor AIR 1947 PC 67 Larger Bench. It has been held by the Privy Council that where, in a case, the evidence has been admitted, which ought not to have been admitted, it is the duty of the Court to apply its mind to the question whether, after disagreeing the evidence improperly admitted, there is left

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sufficient to justify the conviction. In paragraph No. 10 of the judgment, Section 27 of the Evidence Act has been interpreted It is held;

...The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offense in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact there by discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate....

The view taken by the Privy Council in the matter of Pulukuri (supra) has been referred to and followed by the Supreme Court. We may quote some of the judgments of the Supreme Court as under :

(i) State of Maharashtra v. Damu Gopinath Shinde 2000 (Supp.) Bom. C. R. 616. In this report and more specifically in paragraph No. 35, it is observed by the Supreme Court that the basic idea embedded in Section 27 of the Indian Evidence Act is the Doctrine of Confirmation by the subsequent events. It has been observed;

...The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum....

(ii) Ponusamy Vs. State of Tamil Nadu, . Factually, this case was based on the circumstantial evidence. Therein, the appellant and deceased were last seen together. Deceased was missing. Dead body was found, after few days only, upon disclosure made by the accused. jewellery put on by the deceased was produced by the appellant. In paragraph No. 17 of the judgment, The Supreme Court referred the decision of the Supreme Court in the case of State of Maharashtra Vs. Suresh, and opined in relation to Section 27 of the Evidence Act.

(iii) State of Maharashtra v. Suresh 2005 (5) Bom. C.R. 736. In this case the allegations were of rape and murder of a child. The case was based on the circumstantial evidence. One of the most incriminating circumstances was recovery of dead body at the instance of the accused. There the Honourable Supreme Court had considered the provisions laid down u/s 27 of the Evidence Act.

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In paragraph No. 25 of this report, the Honourable Supreme court has countenanced three possibilities when an accused points out the place where a dead body and/or incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it, second is that he would have seen somebody else concealing it and the third is that he would have been told by another person that it was concealed there. If the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal court can presume that it was concealed by the accused himself.

This is the case where accused is the only person who can either explain as to how else he came to know of such concealment and if he chooses to refrain from telling the Court as to how else he came to know of it, the presumption is well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is in consistent with the principles embodied in Section 27 of the Indian Evidence Act.

(iv) Aloke Nath Dutta and Others Vs. State of West Bengal, .

14. After survey of the judgments of the Supreme Court interpreting Section 27 of the Evidence Act, we shall now proceed to consider the evidence adduced on behalf of the prosecution to establish the circumstance No. (6) against the appellant. It is the case of the prosecution that one cloth bag containing apparels of deceased Savita and Pinti was discovered at the instance of the appellant. To substantiate such allegations, the prosecution has examined PW 10 Nitin - a panch witness. The appellant had made voluntary disclosure statement (Exhibit 29), according to the prosecution, on 4.12.2006. This statement is produced on record and established by examining the relevant witnesses on behalf of the prosecution From the evidence of PW 10 Nitin, it appears that he was present along with another witness on 4.12.2006 at Police Station Pachora. According to him, disclosure statement was made by the appellant in the presence of himself and another panch witness. Nothing could be elicited in the cross examination of this witness to disbelieve his testimony. In the cross examination he states that the spot of incident is a open place accessible to anybody. He denied the suggestion that the appellant did not make any disclosure statement. He has proved the statement of appellant Exhibit 29, allegedly made on 4.12.2006. We have considered the admissible portion of this memorandum Exhibit 29 in view of the law laid down by the Supreme Court in view of Section 27 of the Indian Evidence Act. We have also seen memorandum of panchanama Exhibit 30. This memorandum of panchanama is also established by PW 10 Nitin. Articles, which were found in the bag have been mentioned in this memorandum of panchanama.

On behalf of the prosecution, evidence of PW 17 Rajendra - Investigating Officer is also pointed out to us by learned Additional Public Prosecutor. Thus, the memorandum of panchanama and/or disclosure statement - Exhibits 29 and 30 - are established by the evidence of PW 10 Nitin and PW 17 Rajendra. Nothing could be elicited to doubt the genuineness of Exhibits 29 and 30.

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On behalf of the appellant, it is submitted that memorandum Exhibit 29 and Exhibit 30 are not genuine. For this proposition, time of these two documents was pointed to us. According to learned Counsel for the appellant, disclosure statement Exhibit 29 was started at 12.20 p.m. and completed at 12.50 p.m. on 4.12.2006. Exhibit 30 - discovery panchanama was started at 12.50 p.m. and completed at 13.45 p.m. From the evidence of PW 10 Nitin and PW 17 Rajendra, it has been pointed out that the distance in between the Pachora Police Station and place where from the alleged recovery was made is around 5-7 kms. According to learned Counsel for the appellant, it was not possible to discover the incriminating articles after alleged voluntary disclosure statement.

15. In the light of the case law discussed in foregoing paragraphs, we have examined the submissions of the learned Counsel for the respective parties in relation to memorandum Exhibit 29 and panchanama Exhibit 30. In the memorandum Exhibit 29, in our opinion, the information supplied by the appellant is recorded. The text of which reads as; "...The bag containing clothes of wife and daughter is concealed at the place. I will take it out and produce the same. Come with me...." This is the admissible portion from the text of memorandum Exhibit 29 proved in the evidence of PW 10 Nitin and PW 17 Rajendra. This much limited admissible evidence which led to the discovery of the bag containing clothes of deceased Savita and Pinti, incriminating articles, is admissible in the evidence. Thus, we have to appreciate the submissions of the learned Counsel for the parties on the touchstone of the law laid down by the Honourable Supreme Court, interpreting Section 27, which is discussed herein above. Submission of learned Counsel for the appellant pertaining to the timings of memorandum Exhibit 29 and panchanama Exhibit 30, in our view, is not material to discard Exhibits 29 and 30 and evidence of PW 10 Nitin and PW 17 Rajendra.

The submission of learned Counsel for the appellant that the bag was not mentioned by PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo in their oral evidence, in our opinion, is simply to be recorded for the rejection because when Savita leaves the house of her parents along with her daughter, she is bound to leave along with apparels of her own and her daughter.

16. On behalf of the prosecution, confessional statement, alleged to have been made by the appellant Exhibit 41 is being relied upon. This statement was also considered by the trial Court as extra judicial confession. Learned Counsel for the appellant submitted that the extra judicial confession in itself is a weak piece of evidence and the Court would normally expect sufficient and reliable corroboration. In support of the submission the learned Counsel for the appellant relied upon the judgment of the Division Bench of this Court in the case of Sitaram Vishnu Chalke Vs. State of Maharashtra, .

He has also relied upon the judgment of the Honourable Supreme Court in the case of Khatri Hemraj Amulakh Vs. The State of Gujarat, wherein, the Honourable Supreme Court has held that the confessional statement made by

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the accused to the police which forms the basis of the first information report is inadmissible. We have seen the facts and ratio of the said judgment.

Learned Counsel for the appellant also cited the judgment of the Larger Bench of the Supreme Court in the case of Aghnoo Nagesia Vs. State of Bihar, . In the said case, the honorable Supreme Court has considered Sections 24 - 30 of the Indian Evidence Act on the background facts brought before it.

17. On behalf of the State, reliance is placed on the judgment of the Honourable Supreme Court in the case of Bheru Singh Kalyan Singh v. State of Rajasthan 1994 DGLS (Soft.) 157. With the assistance of the learned Additional Public Prosecutor, we have considered paragraph Nos. 15 and 16 of the said judgment. In paragraph No. 17, it has been laid down by the Supreme Court that the fact of giving information by the accused to the police is admissible against him as evidence of conduct u/s 8 of the Evidence Act and to that extent it is non confessional in nature. In paragraph No. 19 of the said report, the Supreme Court has considered part of the statement in that case, which was admissible in evidence on the background facts brought before the Court.

18. Turning to the facts of the present case, it appears that the complainant had been in the police station for lodging his report along with other prosecution witnesses as clarified in his evidence. At that time, it is alleged that the appellant had visited the police Station. Police Officer concerned interrogated him and that is how the statement Exhibit 41 came to be recorded. In our view, in the facts and circumstances of the present case, provisions laid down under Sections 24 - 30 of the Evidence Act and considering the case law on the subject referred above, Exhibit 41 - alleged confessional statement of the appellant could not have been relied upon by the trial Court in its entirety. We have examined the statement Exhibit 41. In our opinion, portion of this statement, which reads; "....Wife was carrying daughter Pinti on her hip has been pushed in the well ...." is clearly in-admissible in the evidence. The learned trial Judge did not consider the admissibility of alleged confessional statement of the appellant Exhibit 41 and has considered the said statement as a whole. We are, however, not accepting the in-admissible portion from this statement which we have reproduced herein above

19. On behalf of the appellant, death of Savita and Pinti by drowning is not disputed. Learned Counsel for the appellant submitted that possibility of suicidal death by Savita cannot be ruled out. On behalf of the State, spontaneously, learned Additional Public Prosecutor has pointed out Exhibit 14 - spot panchanama, which is duly established. According to him, the spot panchanama Exhibit 14 gives the description of the well. According to him, this well was not in use and dead body of Pinti was floating on the water. One footwear out of the pair was near the electric pole adjoining to the well and another was in the well water. In the case of suicide by deceased Savita, entire pair must be in the well water or near the well. According to him, committing suicide by deceased Savita would be one aspect of the matter but being a mother of small daughter, it would

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not be probable that she may commit suicide along with small child Pinti who was being carried by her. In our view, considering the material brought on record by the prosecution, the trial Court is justified in recording the finding that death of Savita and Pinti cannot be said to be a suicidal as suggested by the appellant.

In-disputably, appellant is resident of village Jatwa, Taluka Fulambri, District Aurangabad. PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo are residents of village Narala, Taluka Fulambri, District Aurangabad. It is pertinent to note that the dead bodies of Savita and Pinti were found in a well within the vicinity of village Anturli, District Jalgaon. Learned Counsel for the appellant does not dispute that the well where at dead bodies were found is around 130 kms. away from the place of residence of the appellant and PW 7 Rambhau, PW 8 Sheshrao and PW 11 Namdeo. In our view, there is no occasion for deceased Savita and Pinti to go to the well within the vicinity of village Anturli - a far away place. Thus, the possibility of accidental death is also totally ruled out.

20. In our view, the facts disclosing 6th circumstance, which are discussed above, have been duly proved on behalf of the prosecution by an admissible evidence. Along with these circumstances, non explanation or false explanation by the appellant/accused, which could be seen from the answers given by the appellant in his statement u/s 313 of the Code of Criminal Procedure, it can be said that missing link is provided in the case on hand, to conclude that the case of the prosecution against the appellant stands proved beyond reasonable doubt. For this proposition, we rely upon the judgment of the Supreme Court in the case of Aftab Ahmad Ansari v. State of U.P. 2010 AIR SCW 1008 .

21. In the view taken by us, appeal is devoid of any substance. It stands dismissed, upholding the conviction and sentence imposed upon the appellant by the trial Court.

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