

(2020) 01 BOM CK 0040
In the Bombay High Court
Case No : Criminal Appeal No. 140 Of 2000

State Of Maharashtra

APPELLANT

Vs

Raju Mahipat Sakate

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302

Code Of Criminal Procedure, 1973 — Section 154, 161, 164

Evidence Act, 1872 — Section 8, 21, 24, 25, 26, 27, 28, 29, 30, 145, 157

Citation : (2020) 01 BOM CK 0040

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

Bench : Division Bench

Advocate : M.M. Deshmukh

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This appeal takes an exception to the judgment and order passed by the Special Judge (Atrocities on women) and 3rd Additional Sessions Judge on 28.10.1999 in Sessions Case No. 357 of 1998, thereby acquitting the accused from the offence punishable under Section 302 of Indian Penal Code (for short "IPC").

2. The prosecution case in brief can be stated thus- Kalpana (deceased) was the daughter of Shyamrao Bhau Ware (PW 2). She married to the accused on 16.04.1989. After the marriage the spouses started residing together at Ghatkopar. Before two years the spouse shifted to Manorama Nagar, Thane. Vimal is the eldest sister of the Kalpana (deceased). Vimal was married to Sanjay Awale (PW 3), who was serving as a sweeper in Mumbai Municipal Corporation. Vimal and Sanjay Awale (PW3) were residing in the house of Shyamrao (PW 2). Kalpana (deceased) used to visit her parental house i.e. the house of Shyamrao (PW 2) at Ghatkopar. The accused suspected that, Kalpana (deceased) had developed intimacy with Sanjay Awale (PW 3), and she had illicit relations with

him. The accused, therefore, used to beat and harass the Kalpana (deceased). Her father i.e. Shyamrao (PW 2) and others used to convince the accused. However, the accused had been perturbed. On 15.05.1998 the accused and the Kalpana (deceased) were in the home. The accused asked her to stitch his torn underwear. Kalpana (deceased) refused to stitch underwear. The accused was thereby annoyed. He already had suspicion about illicit relation between Kalpana (deceased) and Sanjay Awale (PW 3). He therefore, caused her to fall down and throttled her with his hands to death. He then locked the door of his house and went to Kapurbawadi police station where PSI Jafar (PW 1) was on duty as police station officer. The accused gave information to PSI Jafar (PW 1) that, he committed murder of his wife Kalpana by throttling her and locked the house and came to the police station. PSI Jafar (PW 1) asked about cause behind murder of Kalpana. The accused told him that, he had suspicion about character of Kalpana (deceased) and she refused to stitch his underwear. He therefore, committed her murder by throttling her. PSI Jafar (PW 1) therefore, collected two panch witnesses including Ramesh Hande (PW 7), before whom the accused reiterated what he had already informed PSI Jafar (PW 1). Statement of the accused was recorded. Then, the accused took them to his house at Manorama Nagar, Thane. The accused opened the lock of the house with a key which was with him. The accused, PSI Jafar (PW 1) and panch witnesses entered the house, and found that, the accused's wife Kalpana had been lying dead inside the house. On her body there were marks showing throttling of her neck. Then PSI Jafar (PW 1) went to the police station and lodged the report. Crime No. I-159/98 under Section 302 of IPC was registered against the accused. Further investigation was entrusted to Police Inspector Rajendra Tambat (PW 10). PI Rajendra Tambat (PW 10) had also accompanied PSI Jafar (PW 1) and the panch witness and they went to the house of the accused to confirm the say of the accused.

3. During the investigation inquest panchnama of the dead body of Kalpana (deceased) and panchnama of the place of the occurrence were drawn up. The dead body was sent for post mortem examination. Clothes on the person of the Kalpana (deceased) were received and they were seized under panchnama. Statements of witnesses were also recorded. On post mortem examination it was confirmed that, the Kalpana (deceased) died of asphyxia due to throttling. After completion of investigation, the accused was charge-sheeted in the court of the Magistrate and then, the case came to be committed to the court of Sessions, Thane.

The accused pleaded not guilty. The Trial Court framed charge, which reads as follows:-

That you on 15/5/1998 at about 8 a.m. at your house at Manorama Nagar, Thane did commit the murder of your wife namely Kalpana by throttling intentionally or knowingly causing the death of said Kalpana and thereby committed the offence punishable u/s 302 of Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by me on the aforesaid charge.

Dated this 30th day of November 1998.

The defense of accused is of denial. According to the accused, on 14.05.1998 he had gone to his brother Prakash Sakate (DW 1), residing at Ghatkopar to collect money as he was in need of money. He collected Rs. 900/- from his brother Prakash (DW 1). As it was late night to return to Thane, he stayed overnight in the house of his brother Prakash (DW 1). On the next day morning, he returned to his house at Manorama Nagar, Thane, and found his wife Kalpana (deceased) dead in the house. He therefore, locked the house and went to the police station to give the information and then police arrested him. The accused has examined his brother Prakash (DW 1) in his defence. After full fledged trial, the Trial Court acquitted the respondent-accused. Hence, this appeal filed by the Appellant-State against the order of acquittal of respondent-accused.

4. In order to find out, whether the death is homicidal, suicidal or accidental, the prosecution examined Dr. Anil Sakharam Sawant (PW 4), medical officer, Civil Hospital, Thane. In his examination in chief he stated that, he has been working in Civil Hospital Thane as Medical Officer from last 10 years. On 15.05.1998, he was on duty in the civil hospital, Thane. On that day Kapurbawadi police sent dead body of Kalpana Raju Sakate for post mortem examination. He carried out post mortem examination between 1.00 pm and 2.00 pm on 15.05.1998 and noted the following external injuries.

- i. Four radish brown bruises on left and lower side of neck on lateral aspect, size 1cm × 1½ cm.
- ii. Three linear curved abrasions on left side of neck, size 1 cm in length each.
- iii. Three radish brown soft bruises on right side of neck on lower and lateral aspects size 1cm × 1 ½ cms.
- iv. One linear curved abrasion on right side of neck, 1 cm in length.

On dissection of neck, extra vasion of blood in sub-cutaneous issue on both side was seen opposite above injury No. 1 and 3. Hemorrhage near corner of hyoide bone on left side was present. Hemorrhage in left side of muscles of neck was present. There were internal injuries. All the injuries were ante mortem. External injuries 1 and 3 coupled with corresponding internal injuries were sufficient in ordinary course of nature to cause death.

It is further stated by him that, Kalpana (deceased) was in 10th weak of pregnancy. He had also noted external features of the dead body as under:-

- i. Cymosis of palm and finger nails were present.
- ii. Face was swollen.
- iii. Eyes were closed.
- iv. Mouth was partly opened with tongue slightly protruding out.

v. Cymosis of face, lips, tongue were present.

vi. Sub conjunctial himrage were present.

vii. Pupils were dilated.

viii. Bloody discharge from mouth and nostrils were present.

5. Dr. Anil Sawant (PW 4) further stated that, on examination of brain it was found that, brain was congested and petichal hemorrhage were seen all over the surface of brain. This occurs because of death by asphyxia. On thoracic examination he found that, larynx, trachea ring were congested and bronchi had contained bloody and frothy discharge. Both lungs were highly conjusted. Petichal hemorrhage on surface of both lungs were present. Right side of heart was full of blood and left side was empty. On examination of abdomen, he found vocal cavity containing bloody and froth discharge. Oesophagus was congested, liver was congested, spleen and kidney were congested. According to Dr. Anil Sawant (PW 4) the cause of death was asphyxia due to throttling. Accordingly, he issued the post mortem report.

6. He was cross examined and a suggestion was given to him that, the injuries sustained by Kalapana are possible by self infliction, however, the same was denied by Dr. Anil Sawant (PW 4).

It is true that, Dr. Anil Sawant (PW 4) opined that, the death was homicidal, and cause of death was asphyxia due to throttling, and accordingly, he issued post mortem report. In his evidence no where he has stated the age of injuries or approximate time of the death.

7. The prosecution examined Shyamrao Bhau Ware (PW 2). He stated in his examination in chief that, he has 7 daughters. He know the accused. The accused was his son-in-law. The accused was husband of his third daughter Kalpana. They were married before about 10 years. After marriage they were residing at Ghatkopar. They resided at Ghatkopar for about 2 years. The accused treated Kalpana nicely for one to one and half year. Then he started beating Kalpana. Because the accused used to suspect her character. Kalpana told him about the same. Then he convinced the accused. Despite the accused was persuaded, he used to beat her. As the accused continued to beat Kalpana, he lodged the report against the accused with Ghatkopar police station and took Kalpana to home. Kalpana stayed in his house for about one year. Then, he sent kalpana to the house of the accused, as he thought married daughter should not be kept in his house. Kalpana went to the house of the accused. The accused said that, he would treat Kalpana neatly. Then Kalpana and the accused stayed together nicely for five to six months or one year. Then the accused asked for Rs. 70,000/-from him to purchase a house. He could not pay the money to the accused. Then the accused started beating Kalpana. The accused suspected that, Kalpana had illicit relations with his elder son-in-law i.e. Sanjay Awale.

Before one year, he had gone to his village Ankalkop. There he came to know

that the accused killed Kalpana. Then he came to Thane. He went to Kapurbawadi police station. He saw dead body of Kalpana in Thane, civil hospital.

8. During his cross examination he denied the suggestion that, Kalpana used to reside in his house for most of the time after marriage. He did admit that, police did not file case against the accused on the basis of his report. In the cross examination he stated that, when his statement was recorded by the police, he stated that, accused asked for Rs. 70,000/- to purchase a room for him. He also stated before police that, accused started beating Kalpana as he did not pay Rs. 70,000/-. He cannot tell the reason as to why the aforesaid version has not been mentioned in the statement recorded by the police under Section 161 of Code of Criminal Procedure. He also admitted that, he had gone to Ankalkop one day earlier to death of Kalpana. Kalpana died at Thane when he was at village Ankalkop. Village Ankalkop is about 200 to 300 kilometers away from Thane. He denied the suggestion that, accused did not suspect the character of Kalpana, nor did he beat Kalpana.

9. The evidence of Shyamrao (PW 2) can be useful to the extent of allegation of harassment to the Kalpana by the accused. However, so far demand of Rs. 70,000/- is concerned, since in his police statement the said version is not appearing and first time he deposed before the Court that, there was demand of Rs. 70,000/- by the accused, it cannot be taken into consideration.

10. The prosecution examined Sanjay Awale (PW 3). In his examination in chief he stated that, he know the accused. The accused is husband of his sister-in-law. His wife's name was Vimal. The accused's wife name was Kalpana. He was residing alongwith his wife in the house of his parents-in-law. His marriage took place earlier then the marriage of the accused. After marriage the accused and Kalpana were residing at Ghatkopar. Initially, they were living happily. After one or two years the accused started suspecting the character of Kalpana. He also used to beat her. The accused suspected that Kalpana had illicit relations with neighbors and Sanjay (PW 3). The accused and Kalpana came to reside at Thane from Ghatkopar. Kalpana died at Thane. At that time he was at village Akkalkot, Dist. Sangli. Police Patil of Akkalkot told him that, Kalpana died. Then he himself, his wife, his parents-in-law came to Thane.

11. In his cross examination Sanjay Awale (PW 3) stated that, Kalpana did not tell him that, the accused used to suspect her character and to beat her. His wife told him that, the accused used to suspect the character of Kalpana and beat her. He denied the suggestion that, the accused suspected that Kalpana had illicit relations with him and neighbors.

The evidence of Shyamrao (PW 2), so also Sanjay Awale (PW 3) is not useful for the purpose of connecting the Respondent-accused with the actual commission of offence of murder of Kalpana (deceased).

12. The prosecution examined Jayashiri Shirke (PW 5). In her examination in chief she deposed that, he know the accused. The accused is her neighbor. The

accused was residing alongwith his wife Kalpana in her neighborhood. Kalpana is dead. She died before about one year. She knows the incident about her death. The incident occurred before one year at 9.00 am., in the house of the accused. At that time she was in her house. Police had come there on that day. The accused was alongwith the police at that time. The accused opened lock of his house and then police and the accused went into the house of the accused. She also entered in the house of the accused thereafter. Kalpana was lying in the house of the accused at that time. There used to occur quarrel between the accused and Kalpana. She did not know the cause behind the quarrel.

In her cross examination she denied the suggestion that, there was friendship between her and Kalpana. She stated that, she did not know as to what had happened prior thereto. The quarrel between the accused and Kalpana was like the general quarrel between the spouses. She did not know any quarrel between the accused and Kalpana occurred on 15.05.1998. She denied the suggestion that, accused opened lock of his house. She denied the suggestion that, she deposed falsely because she is friend of Kalpana.

13. If the evidence of this witness is considered in its entirety, it is not helpful at all to connect the Respondent-accused with the actual commission of offence of murder of Kalpana.

14. The star witness of the prosecution is Jafar Anwar Sayyad (PW 1), who was working as PSI at the relevant time in the anti encroachment unit of police station Ulhasnagar. At the relevant time he was on duty as police station officer in Kapurbawadi police station since 9.00 am., on 14.05.1998 to 9.00 am., on 15.05.1998. On 15.05.1998 at about 8.20 am., Raju Mahipat Sakate i.e. accused came into police station. He told him that, he committed murder of his wife Kalpana by throttling her in his dwelling house. He told that, before eight months he alongwith his wife Kalpana came to Ghatkopar, Mumbai Manorama Nagar for residing. But there was no change in her i.e. Kalpana's character. He told him that, on 15.05.1998 at about 8.00 am., he was to go back to Ghatkopar alongwith his wife, and since he found his underwear torn, he asked Kalpana to stitch it, but she refused thereto and hence he caused her to fall down on the ground and he was sitting on her chest and press her neck with both the hands. He also told Jafar (PW 1) that he kicked her and confirmed that, she died. He locked his room and he came to the police station.

Jafar (PW 1) called two panchas. Then accused reiterated before the said panch witnesses what was told to Jafar (PW 1). Jafar (PW 1) took entry in the station diary. The accused showed his house to Jafar (PW 1). He took out the key from pocket, opened the lock and then opened the door of his house. Then all of them entered in the room. They saw the dead body of Kalpana. There were scratches on her neck. Then, Jafar (PW 1) deployed police staff at the place of occurrence. Then he returned alongwith accused to the police station. He lodged the report on behalf of State against accused. Prior to lodging of the report, he drew panchnama of the place of occurrence. The said panchnama was signed by the

panch witnesses. He further stated that, on 18.05.1998 police constable Patil produced clothes of Kalpana (deceased) from the hospital, then he seized the said clothes.

15. In his cross examination he stated that, on 15.05.1998 accused alone came in the police station. He did not tell Jafar (PW 1) as to with whom his wife Kalpana had illicit relations. He did not mention in the report at Exh. 13 that the accused told before panch witnesses that he committed murder of his wife Kalpana. He did not record the information given by the accused as first information report. He did not record the statement of the accused even before the panch witnesses before they went to home of the accused. He did not arrest the accused immediately after he gave information in the police station. He stated that, the room of the accused was in chawl. When they went to the house of accused people gathered there. He asked the people gathered there, whether they knew about the incident, they stated that they are not aware of the incident, or they did not hear any voice. It appears that, a suggestion was given to this witness that, accused told him in police station that, when he returned from work, he found dead body of his wife in the room, the said suggestion was denied by him.

16. It clearly emerges on record from the cross examination of Jafar (PW 1) that, accused did not tell him about with whom his wife Kalpana had illicit relations. He did not record the statement of accused before the panch witnesses. From inquiry from the people gathered at the spot of incident, nobody showed awareness about the incident or anything heard by them at the relevant time of incident. So far motive attributed to the accused is concerned at the most it is to be stated that, accused asked Kalpana to stitch his torn underwear, however, she refused and therefore, in anger he caused her death. Admittedly, Jafar (PW 1) did not seize the said underwear. The disclosure by the accused to Jafar (PW 1) in police station that, he committed murder of his wife Kalpana by throttling her in his dwelling house, because he was suspecting the character of his wife Kalpana, is not admissible in the evidence.

The Supreme Court in the case of Agnoo Nagesia V. State of Bihar AIR 1966 Supreme Court 119 held that, the first information report recorded under Section 154 of Criminal Procedure Code as such is not substantive evidence, but may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act, if the informant is called as a witness. Where the accused himself gives the first information the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant. But a confessional first information report by the accused to a police officer cannot be used against him in view of Section 25 of the Evidence Act. AIR 1964 SC 1850 and (8) AIR 1957 SC 899 and AIR 1917 PC 25, relied on.

17. In another authoritative pronouncement in the case of Khatri Hemraj

Amulakh V. The State of Gujarat AIR 1972 SC 922 (V 59 C 175), the Hon'ble Supreme Court in Paragraph 14 held that, the confessional statement, Ex. 27, which was made by the accused to Sub Inspector Rojia and which formed the basis of the first information report was not admissible in evidence as the same was hit by section 25 of the Indian Evidence Act. We may in this connection refer to the case of Aghnoo Nagesia V State of Bihar, wherein this Court held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.

18. In yet another decision in the case of Bheru Kalyan Singh V/s. State of Rajasthan 1994 Law Suit (SC) 157, the Hon'ble Supreme Court held that, a confession or an admission is evidence against the maker of its so long as its admissibility is not excluded by some provisions of law. Provisions of Sections 24 to 30 of Evidence Act of Section 164 Cr.P.C. deal with confession. Inadmissibility of a confessional statement made to a police officer under Section 25 of Evidence Act is based on the ground of public policy. Section 26 deals with partial ban to the admissibility of confession while Section 27 is of the nature of proviso lifting ban imposed by Sections 25 and 26. Where first information report is given by an accused himself to a police officer and amounts to confessional statement, no part of such confession can be proved in evidence except to the extent it is permitted by Section 27 of Evidence Act.

19. In view of aforementioned authoritative pronouncements, the disclosure statement of the accused in the police station to the Jafar (PW 1) that, he committed murder of his wife Kalpana by throttling her in his dwelling house, because he was suspecting character of his wife Kalpana is not admissible in the evidence.

20. As already observed, the evidence of Shyamrao (PW 2) and Sanjay (PW 3) is not useful to the prosecution in as much as they have not stated any incriminating circumstances which would connect the accused with commission of offence. The evidence of Shyamrao (PW 2) that accused demanded Rs. 70,000/- is by way of improvement, in as much as he told the said fact first time before the Court. The said version does not find place in his police statement. As already observed, the police did not seize the torn underwear of the accused, and therefore, the prosecution failed to established the motive. So far alleged ill treatment is concerned, there is vague version of the prosecution that, before four years prior to the incident, there was non cognizable offence registered by the Kalpana against the respondent-accused for alleged ill-treatment. It is too difficult to connect the alleged offence with the said alleged motive which according to the prosecution said non cognizable offence was registered four

years prior to the date of incident.

21. There is no other material collected by the prosecution including nail clippings of the accused which could have been thrown light on the prosecution case. As rightly observed by the Trial Court, from the medical evidence it is seen that, Kalpana had sustained abrasions and bruises of nail. Hence, the investigation officer should have seized the nail clippings of the accused to know whether there was blood of the group of Kalpana (deceased) in his nail clippings.

22. The findings recorded by the Trial Court are in consonance with the evidence on record, and there is no perversity as such. The Trial Court has taken a plausible view, and therefore, no case is made out to cause an interference in the order of acquittal. Hence the following order:-

ORDER

1. Appeal stands dismissed.
2. Bail bonds, if any, shall stand cancelled.