



Judgment

477 apeal187.19

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.187 OF 2019

Chandu @ Chandrashekhar Prabhakar Sarode, aged
about 32 years, occupation agriculturist,
r/o Pardi Karanja (Gh), tahsil Karanja (Gh),
district Wardha. **Appellant.**

:: VERSUS ::

State of Maharashtra, through Police
Station Officer, P.S.Talegaon (SP), tahsil
Arvi, district Wardha. **Respondent.**

Shri J.D.Bastian, Counsel for the Appellant.
Mrs.Sneha Dhote, Additional Public Prosecutor for the State.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 04/09/2025
PRONOUNCED ON : 18/09/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (accused)
challenges the judgment and order of sentence passed in
Session Case no. 96/2016 dated 10.8.2018 by which the
accused is convicted of the offence punishable u/s 302

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2

IPC and sentence to suffer Life imprisonment (for the remainder of his life) along with fine of Rs. 50,000/- passed by Additional Sessions Judge, Wardha.

2. Brief facts which are necessary for the disposal of the appeal are as under:

The complainant who is the member of the Gram Panchayat of Village Pardi, Taluka Karanja (Ghatge), District Wardha. On 03.06.2016, when he was present in the medical shop he received a phone call of one Anil Chafle who informed him that the accused namely Chandu Sarode has killed his wife. Therefore, he immediately rushed towards the house of accused at Shivaji Chowk. Being he is the member of Gram Panchayat he verified the fact and saw that deceased Rupali wife of the accused is lying in a pool of blood. He also observed blood all over the floor and on mattress on

3

which deceased was lying. One Axe was also lying there. Deceased had sustained injuries on her head and neck. He immediately informed the said incident to the President of Tanta Mukti Samiti about the incident by the telephonic call and thereafter he lodged report. On the basis of his report Police have registered the crime against the present accused.

3. After registration of the crime, wheels of investigation started rotating. During investigation the Investigating Officer has visited the spot of incident and drawn the spot panchanama. The accused was absconding. Therefore he was searched. He was found in an unconscious state in the field of Kisan Bhalavi. The accused was admitted in the hospital. The inquest panchanama as to the dead body of the deceased was also drawn and dead body was forwarded for conducting the Post mortem report. From the spot of incident the

4

weapon of the offence was seized. During investigation the blood stained clothes of the deceased as well as the blood stained clothes of the accused are also seized. During spot panchanama Article 2 quilt, broken pieces of glass bangles, hair samples of the deceased are also collected. The statement of the accused as he was under the apprehension of the death due to the consumption of poison after the incident, his statement was also recorded. Prior to forwarding the dead body of the deceased for the post mortem report, the spot was protected by deputing the Police Constable at the said spot of incident. During investigation the Investigating Officer has collected relevant documents as to the dispute between the accused and the deceased referred to the counselor for settlement and the settlement terms are included in the investigation papers. After recording the relevant statement of the witnesses and after forwarding

5

the incriminating articles to the chemical analysis, on completion of the investigation the charge-sheet was submitted against the accused in the Court of JMFC Karanja (Ghatge).

4. As the offence punishable under Section 302 of IPC was exclusively triable by the Court of Sessions. Learned JMFC committed the case to the Court of Session, Wardha. The Session Judge framed the charge against the accused vide Exh. 9. The contents of the charge are explained to the accused in vernacular in Marathi and he pleaded not guilty and claimed to be tried.

5. To substantiate the charge levelled against the accused, the prosecution has examined in all 17 witnesses as follows.

PW1	Gunwant	vinajkayraoExh.15	Informant
	maske		

6

PW2	Ashish Bhojraj Sakharkar,	Exh.24	Panch on seizure memo as to the seizure of cloths of Ac-cused.
PW3	Shrikrushna Bhirmaroji Nikam	Exh.26	Panch on spot of incident and inquest.
PW4	Dr. Deji Mahdukarji Talekar,	Exh.32	Medical Offi-cer
PW5	Mangesh Laxmanrao kaware,	Exh.39	Neighbor.
PW6	Indira Vijay Rewatkar,	Exh.41	mother of the deceased.
PW7	Vasant Wadueorao landge,	Exh.42	Photographer.
PW8	Ruprao Babuji mankar,	Exh.54	Villager
PW9	Devendra Purushottam Sarode	Exh.57	Neighbour
PW10	Vasanta Budhhaji Mungale	Exh.62	Head Constable.
PW11	Ashish Kashirrao Newahare	Exh.64	PC
PW12	Kishor Pratabshingh Chandel	Exh.68	PHC
PW13	Manoj Wasudeorao Kakde	Exh.73	PC
PW14	Ashish Pradiprao Chavahan	Exh.77	PC, carrier
PW15	Mangesh Digamabr Milkhe	Exh.81	
PW16	Kiran sudhakarrrao Khekade	Exh.89	Councilor
PW17	Dharmaraj Bhaatsing Patle	Exh.108	Investigating officer

7

6. Besides the oral evidence the prosecution placed reliance on report Exh. 16, FIR Exh. 17, seizure memo as to the seizure of clothes of Accused Exh. 25, requisition letter Exh. 28, spot panchanama Exh. 29, inquest panchanama Exh. 30, requisition Exh. 33, PM report Exh. 34, requisition to CA Exh. 35 and 36, query by IO Exh. 37, query report by Medical Officer Exh. 38, letter to circle officer Exh. 51, map Exh. 52, Form II Exh. 74, Form B Exh. 75, letter to CA Exh. 79, requisition to counselor Exh. 90, notice to the deceased calling for her counseling prior to the incident Exh. 91, counseling form Exh. 92, statement of the deceased at counseling center Exh. 93, statement of accused at counseling center Exh. 96, settlement deed at counseling center at Exh. 103, letter to MO Exh. 109 and 110, arrest panchnama Exh.112 , non cognizable report by the father of the

8

accused against accused Exh. 123, CA report Exh. 135 to 137.

7. On the basis of the above oral as documentary evidence prosecution claimed that prosecution has proved its case beyond reasonable doubt. All the incriminating evidence is put to the accused in order to obtain his explanation by recording his statement under Section 313 of CrPC. The defence of the accused is of total denial and of a false implication. In support of the defence, the accused has examined DW1 Prabhakar Ramraoji Sarode Exh. 128, and DW2 Anant Wamanrao kalambe Exh. 129.

8. After recording the evidence and on appreciation of the same learned Session Judge convicted and sentenced the accused as aforestated.

9

9. Being aggrieved and dissatisfied with the judgment and order of conviction and sentence by learned Sessions Judge below the present Appeal is preferred by the accused on the ground that entire case is based on circumstantial evidence, the prosecution has not proved all circumstances proving the guilt of the accused, there is no convincing evidence which unerringly point out the guilt of the accused. There is no eye witness to the incident. For all above the grounds the judgment and order of conviction and sentence is liable to be set aside.

10. Heard Mr. Bastian, learned Counsel for the accused, who made his oral submissions as well as filed on record the detailed submissions. The sum and substance of his written submission is that the FIR is registered by PW 1 Gunwant maske on the basis of the information received by him. He has no personal knowledge as to the incident. The other witnesses which

10

are examined by the prosecution as to the incident i.e. PW 5 Mangesh kaware, PW 6 Indira Rewatkar, PW 8, Ruprao Bupji Mankar, and PW9 Devendra P Sarode, none has witnessed the incident. The evidence of PW16 Kiran Khekale as to the counseling and settlement terms is also not trustworthy and believable. The evidence of panch witnesses especially the evidence of PW 2 Ashish Skahakrar and Shrikrushna Nigam who opted as Panch are also not trustworthy and liable to be discarded. The presence of the accused at the spot of incident itself is not established. The evidence of PW 3 Panch witness is also silent whether the weapon of the incident is sealed at the time of spot panchnama. Thus, the evidence on record is not sufficient and casting a shadow of doubt on the investigation. In support of his contention he placed reliance on **Shiva Kumar @ Shiva @ Shivamurthy vs State Of Karnataka**, reported in (2023) 9 SCC 817;

11

Karkatutu Md. Bashir. Vs State of Kerala, reported in (2024) 10 SCC 813.

11. Per contra the learned APP submitted that the evidence of PW1 Gunwant who received the information' as to the incident and after verifying the incident lodged the report is corroborated by PW 8 Ruprao Mankar , PW9 Devendara Purushottam, PW5 Mangesh Kaware . The evidence shows that at the time of incident the deceased and accused were residing together in the house of the father of the accused. The parents of the accused were residing separately in the same house. The relationship between the deceased and accused was not cordial. Prior to the incident deceased made a complaint as to the ill-treatment at the hands of the accused. Evidence of PW 16 shows that he is working as councilor and after receipt of the complaint he has called the deceased and accused for counseling. Their statements were recorded. The

12

settlement terms are finalized and the accused agreed to treat the deceased without any ill treatment and subsequently the said incident has occurred. She submitted that, the relationship of the deceased and the accused was not cordial has been further established through the evidence of PW 5 Mangesh Kawre, PW8 Rupraor Mankar PW9 Devendra Sarode, who are the villagers and PW6 Indira Rewatkar. The death of the deceased is homicidal one is established by the prosecution through the evidence of PW 4 Dr. Deji Talekar. The other circumstantial evidence that the death is occurred in the matrimonial house where the deceased and accused were residing, the seizure of the blood stained samples from the house and articles and weapon axe are forwarded to CA. Chemical Analysis report shows the blood stained on the said articles. The shirt of the accused was also seized having blood stains on it. The CA

13

report sufficiently shows that blood stains of blood Group “A” which is of the deceased was found on the shirt of the accused which connects the present accused with the alleged offence.

12. Though the deceased was found dead in the matrimonial house, the appearances of the blood stains in the house and on the shirt of the accused which is exclusively in the knowledge of the accused which are not explained by him. Thus, the prosecution has proved all the circumstances which unerringly points out the guilt of the accused. Therefore, the judgment and order of conviction and sentence calls no interference and hence, the Appeal has no merits and the same is liable to be dismissed.

13. To prove the homicidal death of the deceased the prosecution has placed reliance on evidence of PW 4

14

Dr. Deji Madhukar Talkear vide Exh. 32. As per his evidence on 13.6.16, he received a requisition from police station Talegaon to conduct the PM report of deceased Rupali which is at Exh.33. On examination of deceased Rupali following injuries are found on her person:

“i) Incised wound below right shoulder 8 cm. x 3 cm. and muscle deep (0.5 cm,) spindle shaped with edges are clean cut and angles are clear;

ii) Incised wound below right scapula region, spindle shaped 7 cm. X 3 cm and cavity deep (3 cm) with edges are clean cut and angles are clear;

iii) Incised wound in lower neck 8 cm. X 2 cm and cavity deep (5 cm). Spindle shaped, edges are clean cut and angles are clear;

iv) Chopped wound over back of neck 6 cm. X 7 cm and cavity deep with exploration of all neck structures including major vessels, cervical vertebra, spinal cord, cut trachea and oesophagus;

15

v) Incised wound over left forehead upto left temporal region 8 cm. X 3 cm and deep with edges are clean cut scapula region, spindle shaped 7 cm. X 3 cm and cavity deep (3 cm) and skin deep with edges are clean cut;

vi) Walls, ribs, cartilages were intact, pleura intact and congested, larynx, trachea and bronchi congested, right lung congested and upper lobe 5 cm x 1 cm. Cavity deep incised wound of right scapula, left lung congested, pericardium intact and congested; and

vii) Organs of generation gravid uterus present of 18 cm. X 13 cm. (length x breadth), 6 cm. in width. Fetus present (12 cm. X 11 cm.) with 200 ml amniotic fluid and placenta attached anteriorly. All structures developed, sex could not be identified. Viscera was preserved. Blood sample, nail clippings and gauge piece of blood (air dried) was also preserved”.

His oral evidence further shows that on internal examination he found upper lobe of right lung get injured by cavity deep incised wound of right scapula was noted. On examination of abdomen he noted gravid

16

uterus present of 18 cm in length and 13 cm by breadth containing approximately 4 months fetus present which is 13 cm X 11 cm with 200 ml amniotic fluid and placement attached ante really. He opined cause of death appears to be shock and hammeroge due to chopped wound but vicera preserved and opinion reserved.

14. His evidence further shows that accordingly he prepared the PM notes Exh. 34. He has forwarded viscera to Chemical analysis vide Exh. 36. He received a requisition from IO on 9.6.16 along with the weapon Axe to seek his opinion which is at Exh. 37. After examination of the weapon he gave a opinion that the injuries sustained by the deceased are possible by the said Axe, which is article A . The said opinion is at Exh. 38.

15. During cross examination he admitted that, the said weapon was not brought in a sealed condition.

17

Except this cross examination nothing incriminating is brought on record. On perusal of requisition letter it reveals that the Axe which was seized by the police was forwarded to the Medical officer for seeking an opinion and accordingly he has opined that the injuries are possible by the above mentioned weapon.

16. Ld. APP submitted that, the injuries sustained by the deceased were sufficient to cause the death and there is no cross examination to suggest that there was any other reasons to cause the death. The injuries found on the person of the deceased as per the medical evidence were sufficient to cause the death in the ordinary course of nature. The evidence of medical witness who performed PM examination is a witness of a fact though he has given an opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex Court in the case of **Smt. Nagindra Bala**

18

Mitra and vs. Sunil Chandra Roy and Anr., reported in in 1960 SCR (3) 1 , wherein the Hon'ble Apex Court observed that “ the value of a medical witness is not merely a check upon the testimony of eye witness; it is also independent testimony, because it may establish certain facts , quite apart from the other oral evidence . If a person is shot at closed range the marks of tattooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victims' person.” Thus, testimony of the medical witness is very important and it can be safely accepted.

17. The evidence adduced by the medical officer is further corroborated by the evidence of PW 3 Shrikrishna

19

Bhimraroj Nikam who acted as a pancha on inquest panchanma, who testified that in his presence the police conducted the inquest panchanma and the contents thereof are correct which is at Exh. 30. The recitals of the inquest panchnama also shows there were injuries on the head and neck of the deceased. The dimensions of the injuries are also mentioned in the inquest panchnama. Thus, the fact that injuries which are found on the person of the deceased which resulted to the death of the deceased and corroborated by the inquest panchanama would prove that death is homicidal one. The medical evidence, therefore, establishes that the death of the deceased is homicidal one.

18. The present case is one more example of the victim who lost her life due to the ill treatment at the hands of the husband. The deceased is the wife of the accused. As per the allegations the relationship between

20

the deceased and the accused were not cordial. The accused was in habit of consuming the liquor and was not only illtreating and harassing the wife but also to the parents. Father of the accused has also lodged the NC report. The wife i.e. the deceased has also filed the complaint against him. On receipt of her complaint the Police Station Talgegaon Katol the matter to the counselor attached to the Katol Police Station and with the mediation of the counselor the matter was settled and deceased started cohabiting with the accused but on the day of incident there was a quarrel between the accused and the deceased and deceased was assaulted by the accused on 3.6.16 by means of Axe which resulted into her death. After the quarrel the deceased was found dead in the house.

19. It is not in dispute that there is no direct evidence in the nature of the eye witnesses but entire

21

case of the prosecution is based on the circumstantial evidence. In such a case, the prosecution is under obligation to establish the chain of circumstance so complete that it unerringly establishes the guilt of the accused and does not lead any scope for any interference consistent with the innocence of the accused. The circumstances relied upon by the prosecution must be incompatible with the hypotheses consistent with the innocence of the accused and should negate all possibilities of the innocence of the accused. The law regarding circumstantial evidence is well settled that :

“(1) the circumstances from which an inference of the guilt is sought to be drawn must cogently and firmly established, (2) though circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances taken

22

cumulatively, should form a chain so complete that there is no escape that within all probabilities the crime was committed by the accused and none else; (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of a guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Sir Alfred Wills in his admirable book “Wills Circumstantial evidence” (Chapter VI) lays down following rules specially to be observed in the case of circumstantial evidence;

1. The facts alleged as the basis of any legal inference must be clearly proved and beyond

23

reasonable doubt connects with the factum probandum;

2. the burden of proof is always on the party who asserts the existence of any fact , which infers legal accountability;

3. in all case, whether of a direct or circumstantial evidence the best evidence must be adduced which in the nature of the case admits.

4. in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt,

24

5. if there be any reasonable doubt of the guilt of the accused, he is entitled as of a right to be acquitted.

20. In the light of the above settled legal position, we have to see whether the prosecution succeeded in proving the chain of circumstances to prove the guilt of the accused. The circumstances on which the prosecution relied upon can be summed up as follows.

(1) the deceased was residing along with the accused separately at the time of the incident and no other third person was residing along with them;

(2) the death of the deceased is at her matrimonial house;

(3) the deceased was ill-treated, abused and assaulted prior to the incident as well as there

25

was quarrel between the deceased and the accused on the date of the incident;

(4) prior to the incident, the deceased filed an application with Katol Police Station and Katol Police Station referred the said matter to the Councilor appointed at the Katol Police Station. In the said report, the deceased has alleged that after marriage, initially for 7-8 months, she was treated well and thereafter started ill-treating her under the influence of liquor and assaulting her and abusing her. On giving undertaking by the accused, she resumed cohabitation at the house of the accused;

(5) in what circumstances, the death of the deceased was caused, is exclusively within the

26

knowledge of the accused and the accused has not given any explanation to that effect, and

(6) the injuries were on the person of the deceased. The human blood of Blood Group “A” was found on the clothes of the accused, which is not explained. The spot panchanama and seizure of the clothes of the accused, having blood stains of Blood Group of the deceased, were found are incriminating circumstances.

21. To prove the alleged circumstances, the implicit reliance is placed by the prosecution on the evidence of complainant PW1 Gunwant Mhaske, who lodged the FIR; neighbour PW5 Mangesh Kaware; PW6 Indira Rewatkar, PW8 Ruprao Mankar, and PW9 Devendra Sarode.

27

Complainant PW1 Gunwant Mhaske, testified that on 3.6.2016 through the telephonic call of one Anil Chafle, he came to know that the deceased has been murdered by the accused. Therefore, he immediately rushed to the house of the accused. The door of the house was open and the people had gathered outside the house and saw that the deceased was lying in a pool of blood. There was blood all over the floor and mattress on which the deceased was lying. An axe was also lying near her and she had sustained injuries on her head and neck. After informing the President of the Tanta Mukti Samiti, he approached the Police Station and lodged the report, which is at Exh.16 and FIR is at Exh.17.

His cross examination shows that he has not witnessed the incident. He came to know about the incident as he was informed by one Anil Chafle. He further admitted that it was only informed to him that

28

the deceased is murdered. His further cross examination shows that when he reached the spot of the incident, people had already gathered there and he is not aware what exactly happened.

Neighbour PW5 Mangesh Kaware, deposed that the accused is his neighbour. The accused married with the deceased approximately two years prior to the incident. After marriage, he used to regularly fight with the deceased after consuming liquor and these fights used to lead nuisance for them. His parents also resided separately from them because of the said fight. On the day of the incident i.e. 3.6.2016, when he returned home, crowd was gathered in front of the house of the accused and he went to see and witnessed that the deceased was lying in a pool of blood. The Head of the Tanta Mukti Samiti had called the police. The accused was found lying in the said field.

29

His cross examination shows that there was no fight between him and the accused. He is not aware about the reasons regarding fights between husband and wife.

22. PW6 Indira Rewatkar, is the mother of the deceased, testified that the marriage of the deceased and the accused was performed on 16.6.2014, thereafter, she was treated well by the accused for five months. The deceased disclosed to her that the accused is in habit of consuming liquor. He used to ask her money for drinking and used to harass the deceased. He assaulted her by handle of axe and, thereafter, they lodged the complaint in the police station, which was referred to the Mahila Cell wherein the matter was settled and the deceased again resumed the cohabitation. She further deposed that after resuming cohabitation, the accused has not treated her well and was assaulting her. She came to her

30

house and disclosed that still the accused is harassing her. On 3.6.2016, at about 11:00 pm, she received a phone call of Ruprao Mankar who disclosed to her that the accused has killed the deceased. She went to the house of the accused and the deceased and saw the deceased was lying on the floor. The blood was spread all over as well as on the mattress and an axe and the deceased had sustained injuries on her head, neck and cheek. The accused was addicted to liquor and, therefore, he used to beat his daughter. Her daughter was pregnant of five months and the accused killed her after harassing her.

Her cross examination shows that the defence of the accused is that the deceased was having love affair with one Kailash, which was denied by PW6 Indira Rewatkar. It was suggested that alphabets “R” and “K” were mentioned on the hands of the deceased, which is denied by PW6 Indira Rewatkar. She further admitted

31

that Ruprao Mankar had arranged the marriage and they have sought help of Ruprao in holding the meeting.

Thus, the defence is that the deceased was having love affair with one Kailash and she was meeting him.

23. PW8 Ruprao Mankar, is examined by the prosecution, whose evidence shows that on the day of the incident, he was sitting on the verandah opposite to the house of the accused. There was quarrel between the deceased and the accused and they could hear the noise outside. The door was shut from inside. They have even heard noises of his wife crying. Thereafter the accused opened the door and ran away. He saw the dead body of the deceased. He informed the said fact to the mother of the deceased. The deceased sustained injuries on her neck and head and back. The axe was lying there. His

32

evidence further shows that the accused always used to beat his wife after consuming liquor.

During his cross examination, some omissions are brought on record to the extent that he has not stated before the police that he went to the house of one Hajare to collect his wages. The house of Hajare is near to the house of Chandu Sarode. He has also not stated that he heard the noises of crime and the accused opened the door and ran away.

24. Except this cross examination, nothing incriminating is brought on record.

25. The evidence of PW9 Devendra Sarode, who is another neighbour, also shows that there used to be regular fights between the accused and his wife. Being he was neighbour, he could hear voices. On the day of the incident also, there was quarrel between the deceased

33

and the mother of the accused. The accused returned home from work and the fight continued. He could hear the noises of the accused, his mother, and his wife. Till 7:00 pm, the fight was going on between the family members. At about 8:00 pm, he was proceeding to attend the nature's call and he saw the deceased and his mother coming out of his house who were followed by his father also. At about 10:00 pm, he saw the crowd gathered outside the house and on making enquiry, he came to know that the dead body of the deceased was lying in the house and one axe was lying next to her, and her body was stained with blood. There was blood all over the place and the deceased had sustained injuries on her head and neck. He identified the axe Article-1.

His cross examination shows that the accused is his relative. He also admitted that on the day of the incident, there was a crowd in the evening at his pan

34

stall. He further admitted that he cannot say whether inside the house the wife of the accused and his parents were residing separately or together. He further admitted that he has not personally witnessed from which place the police found the accused.

26. Besides the evidence of these witnesses, the prosecution placed reliance on the other circumstances. One of circumstance is the spot panchanama. To prove the spot panchanama, the prosecution examined PW3 Shrikrushna Nikam who testified that he received requisition Exh.27. As per the direction of the Tahsildar, he went to the police station to act as pancha. The spot panchanama was the house of Prabhakar Sarode. At the spot, one female dead body was lying. The blood was oozing from her injuries which were sustained on the neck and on the head above her ears and the axe was lying on the spot. The dead body was on the mattress,

35

hair was stuck to the axe and on the floor, broken pieces of glass bangles were also on the spot, floor was also stained with blood. Accordingly, the spot panchanama was drawn, which is at Exh.29.

Though he is cross examined at length, as far as the spot of the incident is concerned, nothing incriminating is brought on record to shatter his evidence.

He also acted as a pancha on inquest panchanama Exh.30. His further evidence shows that the said dead body was lying in the house of Sarode i.e. the accused. He has identified the axe.

His entire cross examination is on the aspect that he has not received the letter, timing was not mentioned on the requisition letter. As far as the spot

36

and inquest panchanamas are concerned, nothing incriminating is brought on record.

27. To prove the another circumstance, that blood stains are found on the shirt of the accused, the prosecution has examined PW Ashish Sakharkar, who testified that he was called in Kasturba Hospital, Sewagram. The police seized the clothes of the accused in his presence, which was one yellow colour shirt and blue colour pant and white colour vest. These are Articles-5 and 6. Article-4 is shirt.

During his cross examination also, the aspect of seizure of clothes in his presence was not shattered.

28. The another circumstance on which the prosecution relied upon is, previous to the incident, the deceased made complaint against the accused at Katol Police Station as she was assaulted by the accused by

37

handle of the axe. Her complaint was referred to the Councilor. The Councilor has mediated into the matter and the deceased resumed cohabitation as per the settlement terms.

29. PW16 Kiran Khekale, was working as Councilor in May 2014 at Katol Police Station. On 16.7.2016 API Patle of Talegaon Police Station came to the Katol Police Station and gave letter to the Katol Police Station, which is at Exh.90. By the said letter, API Patle has asked for documents and decision in the case of Counselling of the deceased. He handed over all documents. All the documents are related about counselling to deceased which took place in his presence. The settlement deed between the deceased and the accused was arrived in his presence. The documents filed on record show that requisition letter by the Investigating Officer is at Exh.90. The NC Report filed by the deceased

38

and receipt was issued to her as to filing of the NC Report Exh.91. During the counselling, the form filled up by the deceased is Exh.92. The statements of the deceased and accused were recorded. They both arrived at a settlement and in view of undertaking Exh.103 executed on Rs.100/- stamp, shows that the accused accepted liability to treat her well and she agreed to resume the cohabitation.

30. Besides the oral evidence, the prosecution also placed reliance on the Postmortem Report, which is proved by PW4.Dr.Deji Talekar, which is already discussed and the same Postmortem Report discloses that the death of the deceased is due to shock and and due to hemorrhage due to chop wound. The evidence of PW4.Dr.Deji Talekar further shows that four incised wounds and one chop wound were found on the persons of the deceased. She has also sustained internal injury on

39

right lung. The opinion was sought from her by issuing her query letter Exh.37 and she opined that the said injuries caused to her are possible by the said axe. She obtained blood samples of the deceased and forwarded the same to the Chemical Analyzer. The samples collected during the investigation are forwarded to the Chemical Analyzer and the Chemical Analyzer's Report Exhs.135 to 137 are also on record. As per the Chemical Analyzer Report, Exh.136, mattress, hair wrapped in plastic parcel, reddish colour powder, cotton swab, full shirt of the accused and hair found on Exh.1 were forwarded to the Chemical Analyzer and the blood stains of Blood Group "B" were found on the mattress, hair reddish colour powder, cotton swab, and full shirt of the accused. The blood stains are also found on hair found on Exh.1, but blood group was not determined. As per Exh.135, blood group of the deceased is of "B." Whereas,

40

as per Exh.137, blood group of the accused was not determined.

31. The evidence of PW10 Vasanta Mungale, who is the head constable, shows that on 4.6.2016, he was attached to the Talegaon Police Station and duty pass was issued to him by PSI Patle. He went to the Kasturba Hospital at Sewagram wherein the accused was admitted. He seized clothes i.e. light yellow striped shirt, blue pant and white sando vest by drawing panchanama in presence of panchas, which is Exh.25.

During his cross examination, he admitted that no date is mentioned on duty pass as to when the duty pass was received. He also admitted that he did not carry panchas with him.

32. PW11 Ashish Neware, is another constable, who carried five sealed parcels to the CFL, Nagpur. His

41

duty pass is at Exh.65. His cross examination also shows that he admitted that no date and time is mentioned when he received the duty pass. He also mentioned that his police station maintains muddemal register. Admittedly, the extract of muddemal register Exh.10 shows the description of five parcels.

33. PW12 Kishor Chandel, is the head constable, who recorded the statement of the accused when he was admitted in the hospital as he consumed poison after the incident.

34. PW13 Manoj Kakade, has taken the accused to the Sub District Hospital, Arvi wherein the Medical Officer collected his samples by using Form NO.II and Form No.B.

35. PW14 Ashish Chavan, is also carrier, who carried viscera to the CFL, Nagpur. Duty pass is at

Exh.78. He has also carried blood samples and other samples of the accused and forwarding letter is at Exh.79. He has also admitted that malkhana register is maintained in the police station and entry about taking muddemal was made in the malkhana register.

36. PW15 Mangesh Milkhe, was also as Police Constable at Talegaon Police Station. On 4.6.2016, he was assigned duty to guard the dead body and the spot. The said duty pass is at Exh.82. He has also carried dead body for postmortem examination.

Though he is cross examined at length, only the procedural aspect was brought on record. He admitted that in Exh.82 duty pass, it is not mentioned on which date it was received. It came in his evidence that the entry of duty pass was taken in in station diary entry.

43

37. PW17 Dharmaraj Patle, is the investigating officer, who narrated about the investigation carried out by him. His cross examination shows that entry was taken in station diary about the information received on the phone from Moreshwar Sawai. He annexed the extract along with the chargesheet. He has also taken entry in station diary of searching the accused and, thereafter, admitting him in the hospital. The said extract is also included by him along with the chargesheet. He further admitted that malkhana register is maintained in the police station and he has taken the entry in malkhana register while forwarding the muddemal the CFL, Nagpur. He further admitted that he has taken station diary entry for issuing duty passes Exhs.63, 65, 78, and 82.

The omissions came on record during the evidence of PW8 Ruprao Mankar are proved by this witness. His further chief examination shows that the

44

clothes of the accused were blood stained which were forwarded to the Chemical Analyzer.

38. The defence of the accused is of total denial and of false implication. The additional statement of the accused under Section 313 of the CrPC was recorded by this court as incriminating portion appearing in CA Report Exh.36 was not put him in order to obtain his explanation.

39. The accused examined DW1 Prabhakar Sarode, who is the father of the accused. His evidence shows that the accused used to trouble them also. The deceased used to visit her brother and sister. The accused has troubled them as to why they performed the marriage with the deceased who does not listen to him. He used to say that she goes to somebody. His further evidence shows that the accused was unhappy and blaming his

45

wife and, therefore, he told the accused to resolve his own affairs and gave him a separate house. His evidence further shows that the deceased used to abuse them in a filthy language. On the day of the incident, it was the accused who was giving bad words to his wife and and fighting with her and, therefore, he lodged the report with the police station. The said report is at Exh.123.

Thus, the evidence of this defence witness shows that as the accused was not behaving properly, his parents were living separately in the same house.

40. DW2 Anant Kalambe, is also examined as a defence witness. His evidence also shows that on 3.6.2016, he received a phone call from his home that the accused is assaulting his mother.

41. Thus, the defence witnesses also support the prosecution case that conduct of the accused was not

46

proper. He was not only troubling the deceased but also to his parents. One NC Report was filed by the father of the accused, which is at Exh.123.

42. On appreciation of the entire evidence, admittedly, there is no eyewitness to the incident and the case of the prosecution rest on the circumstantial evidence. The principles based on the circumstantial evidence is that circumstances from which inference of the guilt is sought to be drawn must be cogently and firmly established that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused and that the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and it should be incapable of explanation on any hypothesis

47

other than that of the guilt of the accused and inconsistent with his innocence.

43. In the present case, the accused is facing charge that he was ill-treating the deceased by abusing and beating her and the deceased was constrained to file the complaint at Talegaon Police Station which was referred to the Councilor attached to the Katol Police Station.

44. The evidence of PW16 Kiran Khekale, serving as Councilor, shows that twice the deceased was referred to him for counselling. The statement of the deceased as well as the accused was recorded and the accused undertook that he will not ill-treat her and, therefore, she resumed cohabitation at the house of the accused. The various documents collected by the investigating officer from the said Councilor are placed on record. Exh.90 is

48

the requisition given by the investigating officer to the Councilor. The statement of the deceased was recorded during the counselling. Prior to that, her personal information was recorded in one form Exh.92. In the statement of the deceased, she specifically alleged that under consumption of liquor the accused is ill-treating her. The statement of her mother was also recorded before Councilor as well as the statement of the accused. Due to the efforts taken by the Councilor, the matter was settled and the accused undertook that he would not ill-treat her and will not suspect against her. The fact of quarrel by the accused on the day of the incident is narrated by PW5 Mangesh Kaware who is neighbour, PW8 Ruprao Mankar who is villager, and PW9 Devendra Sarode who is also neighbour.

45. There is no dispute that death of the deceased is caused in matrimonial house wherein she was residing

49

along with the accused. The evidence of DW1 shows that as the accused who is his son was not behaving properly with him and his wife and, therefore, they were residing separately in the same house. Thus, it is an admitted position that the deceased and the accused were residing separately in the same house. The accused has not explained how the said injuries are appearing on the person of the deceased. Admittedly, the alleged incident occurred in matrimonial house wherein the accused and the deceased were residing separately. the death of the deceased caused when the deceased was in the company of the accused.

46. It is well settled that if an offence takes place inside the privacy of the house, in view of Section 106 of the Indian Evidence Act, burden is on the accused to give an explanation regarding the fact which is especially within the knowledge of the accused.

47. The Hon'ble Apex Court in the case of **Trimukh Maroti Kirkan vs. State of Maharashtra**, reported in (2006) ALL MR (Cri) 3510 observed that if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts.

It has been further held that A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.

51

The Hon'ble Apex Court has also referred the decision in the case of **Stirland v. Director of Public Prosecution, reported in 1944 AC 315** and observed that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the 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 other cases 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

52

of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

48. In the present case, though the death of the deceased occurred at her matrimonial house where the deceased and the accused are residing together and no other third person was residing along with them, presence of the accused prior to the incident is established in the house. It is the accused who has to explain in what circumstances the death of the deceased occurred.

53

49. Where the question of burden of proof and facts are within personal knowledge of the accused, the provisions of Section 106 of the Indian Evidence Act come into play.

50. It is true that guilt of the accused must be proved beyond all reasonable doubts. However, where incident occurred inside the house in a secrecy, then after proving the material facts, burden shifts on the accused to give an explanation regarding nature and circumstances in which the death of the deceased occurred. In a case based on circumstantial evidence, when no eyewitness account is available, another principle of law which must be kept in mind that when incriminating circumstances are put to the accused and the accused either offers an explanation which is found to be untrue or offer no explanation, the same become an

54

additional link in the chain of circumstances to make it complete.

51. By applying these principles, if the evidence of the prosecution witnesses in the present case adduced is considered, the prosecution has proved that (i) the death of the deceased is homicidal one; (ii) the death of the deceased has occurred at her matrimonial house wherein the deceased was residing along with the accused; (iii) there was previous ill-treatment by the accused by abusing and assaulting her; (iv) the deceased made complaint to Talegaon Police Station which was referred to the Councilor attached to the Katol Police Station and the evidence of Councilor PW16 Kiran Khekale supports the contention that the accused assured that he will not ill-treat the deceased in future.

52. The medical evidence shows that the death of the deceased is due to shock and hammeroge due to chopped wound sustained by her. The Chemical Analyzer's Report shows that blood stains found on the shirt of the accused, which was seized, is of Blood Group "B" i.e. of the deceased.

53. The fact exclusively within the knowledge of the accused, that how the death of the deceased occurred, is not explained.

54. In the earlier part of the judgment, the evidence is discussed in detail which fully establishes that the deceased was being ill-treated by the accused by suspecting her character and under the influence of liquor. Therefore, she made complaint to the Talegaon Police Station which was referred to the Councilor. The accused assured in writing that he will not ill-treat the

56

deceased and, thereafter, caused the death of the deceased. Though the defence of the accused is of total denial and of false implication, no reason came forward to show that there was any ulterior motive for the witnesses to implicate the accused falsely. The evidence of complainant PW1 Gunwant Mhaske and neighbour PW5 Mangesh Kaware who heard the quarrel between the deceased and the accused on the day of the incident; PW8 Ruprao Mankar who is villager who has also heard the quarrel, and PW9 Devendra Sarode who is also neighbour who has witnessed the quarrel between the accused and the deceased and subsequently the dead body of the deceased was found at matrimonial house of the deceased. The evidence of the defence witnesses corroborates the version of the prosecution that the accused was not behaving properly and even his father lodged NC Report against him. All the incriminating

57

circumstances supported with the fact that the accused has not offered any explanation how the deceased has received injuries at the matrimonial house resulting into her death.

55. As the circumferences enumerated above unerringly point out the guilt of the accused and are inconsistent with his innocence, the appeal has no merits.

56. Though learned counsel for the accused placed reliance on various decisions including **Shiva Kumar @ Shiva @ Shivamurthy vs State Of Karnataka, reported in (2023) 9 SCC 817**, the same are not helpful to him as the facts are not identical.

57. Coming to the aspect of imposing the sentence by learned Sessions Judge to undergo life imprisonment (for remainder of his life) is concerned, in the decision of the Constitution Bench of the Hon'ble Apex Court in the

58

case of **Union of India vs. V.Sriharan alias Murugan and ors, reported in (2016)7 SCC 1** it has been held that there is power which can be derived from IPC to impose fixed term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal by the Supreme Court and not by any other court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

58. Thus, it is held that the trial court has no jurisdiction or power to impose sentence by mentioning any specific term of incarceration and, therefore, the operative portion of the judgment impugned in the appeal, that the accused is sentenced to undergo life

59

imprisonment (for the remainder of his life) for the offence punishable under Section 302 of the IPC along with fine Rs.50,000/-, requires to be modified. Accordingly, we modify the judgment and order impugned in the appeal that the accused shall undergo imprisonment for life for the offence punishable under Section 302 of the IPC along with fine of Rs.50,000/-.

59. In view of that, we proceed to pass following order:

ORDER

(1) The Criminal Appeal is **partly allowed**.

(2) The judgment and order dated 10.8.2018 passed by learned Additional Sessions Judge, Wardha in Sessions Case No.92/2016 convicting the accused for offence punishable under Section 302 of the IPC and sentencing

60

to undergo life imprisonment (for the remainder of his life) along with fine Rs.50,000/- is modified.

(3) We direct that the accused shall undergo imprisonment for life for offence punishable under Section 302 of the IPC and fine Rs.50,000/-. In default to pay the fine amount, he shall undergo rigorous imprisonment for 2 years.

With this, the appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! Bhimte, PA/BrWankhede, PS !!

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