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Court : Mumbai Aurangabad

Decided On : Feb-28-2014

Judge : S.S. Shinde &Amp; V.M. Deshpande

Appeal No. : Criminal Appeal No. 659 of 2011

Appellant : Yogesh

Respondent : The State of Maharashtra

Judgement :

S.S. Shinde, J.

1. The present appeal arises out the judgment and order of conviction recorded against the appellant (original accused no.1) by the learned Additional Sessions Judge, Jalgaon, on 23.11.2011, in Sessions Case No.80 of 2011, for the offence punishable under Section 302 of the Indian Penal Code, sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to suffer further rigorous imprisonment for six months.

2. The trial court, in the afore said Sessions Case, was pleased to acquit accused no.2-Leelabai, who is the mother of appellant, for the offences with which she was charged.

3. In nut shell, the facts giving rise to the prosecution case, can briefly be stated as follows :-

The appellant/original accused no.1-Yogesh, along with his mother Leelabai (original accused no.2, who is acquitted by the trial court) was residing at village Chilgaon. The marriage between deceased Alka @ Sonali with the appellant Yogesh was solemnized on 20.5.2006. After the marriage, the deceased Alka was residing at her matrimonial home. The appellant/accused by profession is an agriculturist and has 12 to 13 acres of agricultural land.

4. Deceased Alka was treated well for about six months of the marriage. Thereafter the accused started ill-treating her for their demand of Rs. One lac to be brought by her from her parents for the purposes of digging a well in the agricultural field. In turn, the deceased came to her parental house and told them about the afore said demand of the accused persons. Thereupon Yogesh Shinde, the brother of the deceased, who is examined as prosecution witness no.2 accompanied the deceased to her matrimonial house and told the accused that they may start work of digging the well and he will arrange for the money. Accordingly, work of digging well was started. Initially, PW-2 Yogesh gave Rs.30,000/- to the accused, and thereafter, from time to time, within 1 years period, payment of Rs.1,00,000/-, as demanded by the accused, was made to them. During the afore said period, whenever PW-2 Yogesh had been to the house of accused, the deceased Alka used to complain with him about scolding and beating her by the appellant for making delay in payment.

5. About one month prior to the date of the incident, deceased Alka had come to her parental house and told her parents that accused used to abuse, scold and beat her over the further demand of Rs.50,000/- for drip irrigation in the field. For about 2-3 months the deceased was at her parental house. Thereafter appellant went there to bring her back to his house. There also appellant repeated the said demand with PW-2 Yogesh, however, PW-2 Yogesh refused the said demand, saying that he has already made the payment of previous demand of Rs. One lac by selling the agricultural produce. The accused took deceased Alka with him and while leaving the house of his parents-in-law, the appellant extended threat to PW-2 Yogesh that since money was not paid, he will cause something wrong to the deceased. Deceased Alka, on 28.12.2010, while she was at village Pimperkhed for engagement ceremony of her relative, had also told her cousin sister PW-5

Hirabai about the ill-treatment given to her by the accused over demand of Rs. 50,000/- for drip irrigation.

6. On 18.1.2011, PW-2 Yogesh at about 10.00 a.m. made cell call to the appellant requesting him to send deceased Alka for fare at village Mandwa, however the appellant told him that as he was busy in his agricultural operations in the field, he will send her on next day evening.

7. However, on the same day at about 11.30 a.m. PW-2 Yogesh received phone call of Dr. Sopan Patil of village Chilgaon that his sister Alka died of poisoning in the field. PW-2 Yogesh told the appellant to keep the dead body of the deceased as it is, and along with his parents and relatives proceeded in a jeep to village Chilgaon and reached there at 12.30 p.m. The dead body of deceased Alka was brought in the village. PW-2 Yogesh and PW6 Sunil noticed black spots on the neck of the deceased and they concluded that the deceased died of throttling. PW-5 Hirabai, who along with his husband came at Chilgaon, had also noticed black spots over the neck from front side of deceased Alka.

8. Accordingly, the information about the incident of death of deceased Alka was given by the appellant to the police, stating therein that the deceased Alka expired while carrying the deceased to the hospital in a rickshaw, as froth was coming out of her mouth and blood was oozing from her nose. On the basis of the information (Exh.56), A.D. No.5 of 2011 was registered.

9. PW-9 A.P.I. Dhikale took over the investigation of the A.D. He went to the house of the appellant and prepared inquest panchanama (Exh.27) of the dead body of deceased Alka in presence of PW-3 Ashok Patil and other panch. The investigating officer along with panchas noticed two black spots on front side on the neck of deceased Alka. Photographs of dead body were obtained and then the dead body of Alka, along with requisition letter (Exh.58), police report and the inquest panchanama, was sent for postmortem examination at Rural Hospital, Pahur.

10. A.P.I. PW-9 Dhikale then proceeded to the field of the appellant along with the panchas. The spot of the incident was shown by the appellant to the police. PW-9

A.P.I. Dhikale prepared spot panchanama (Exh.59) in presence of panchas. He also took photographs of the spot site.

11. PW4 Dr. Kurankar, Medical Officer, Rural Hospital, Pahur examined the dead body of Alka between 3.45 p.m. to 4.45 p.m. on the same day. On external examination, the Medical Officer found two incised wounds on middle part of anterior aspect of neck on skin overlying thyroid cartilage measuring 1.5 cm. X 1 cm. running horizontally. On internal examination of neck, he found fracture of thyroid bone, ruptured intima of carotid arteries and ruptured neck muscles. He found those injuries to be ante mortem injuries. According to PW-4 Dr. Kurankar, probable cause of death of deceased was cardio respiratory failure due to asphyxia due to throttling. Accordingly, he issued postmortem report at Exh.31.

12. After funeral, PW2 Yogesh, on the next day, went to the police station and lodged report (Exh.25) against the accused.

13. PW-8 P.S.I. Farukh Khan took over the investigation. Appellant was arrested vide arrest panchanama (Exh.49). He seized one torn pant at the instance of the appellant. He also seized the clothes of the deceased. He also collected 7/12 extracts of the field of the accused. Thereafter he recorded statements of witnesses. On completion of the investigation, charge sheet came to be filed in the court of the Magistrate, who in turn committed the case to the Court of Sessions for trial of the accused. The charge (Exh.11) against the appellant, for the offences punishable under Sections 498-A and 302 r/w 34 of the Indian Penal Code, was framed, to which he pleaded not guilty and claimed to be tried.

14. The defence of the appellant/accused, from cross-examination and their statements recorded under Section 313 of the Code of Criminal Procedure, was of total denial. It is further the defence of the appellant that he has been falsely implicated at the instance of PW-2 Yogesh on suspicion due to death of deceased Alka. It is also the defence of the accused persons that PW2 Yogesh and his parents want to grab their property.

15. The prosecution, to lend support to their story, has examined in all nine witnesses. However, the accused did not lead any evidence to support their

defence.

16. The Additional Sessions Judge, Jalgaon, after recording the evidence and hearing the arguments of the Counsel for the parties, framed points for its determination and after full-fledged trial, convicted the appellant herein. Hence this appeal.

17. The learned Counsel for the appellant submitted that the appellant has been acquitted under Section 498A of IPC. It is submitted that the prosecution case was that the appellant ill-treated the deceased on account of demand of dowry and since the appellant has been acquitted u/s 498A of IPC, he should have been acquitted even for the offence punishable under Section 302 of IPC. It is submitted that PW-1 Nivrutti Raghunath Patil panch witness to the panchanama has been turned hostile. Learned Counsel for the appellant invited our attention to the evidence of PW-2 Yogesh Prabhakar Shinde an submitted that in his evidence though he alleged that the accused demanded money, on which date such demand was there and on which date he gave money to the accused, has not been stated by him. It is submitted that this witness admits that he is not able to recollect the date on which deceased Alka told him about the demand of Rs.50,000/- for drip irrigation. He further admitted that deceased never expressed her feeling that she did not like to cohabit with accused. It is submitted that this witness has not stated that economical condition of the accused is better than him or not. It is submitted that the appellant himself lodged report with the Police Station and therefore, it cannot be said that the appellant has committed murder of Alka. It is further submitted that the complaint was lodged belatedly and no explanation has been offered for lodging delayed complaint.

PW-4 Shivaji Jagdeo Kurankar was working as Medical Officer at Rural Hospital, Pahur, taluka Jamner. He stated in his examination-in-chief that he conducted post mortem over the dead body of deceased Alkabai. That as per his opinion cause of death was Cardio Respiratory Failure due to Asphyxia. He admits in his cross-examination that in case of throttling tongue may be bruised bitten by teeth and protruding. He further admits that injuries on face, cheek etc., indicating the struggle. He further admits that bruises and ecchymoses are found around the

neck. He further admits that in larynx white froth is found. He further admits that in cases of throttling lungs show blood stain froth and the lungs became blackish. He further admits that the right side of the heart is full of dark fluid and the left side of the heard is empty. He further admits that in the present case no such signs are found. He further admits that during life of deceased the evidence of throttling can be gathered from nail marks on a bruising of neck due to thumb and fingers there will be swelling of tissues at and above the level of compression, there will be bruising larynx, trachea and surrounding muscles. He further admits that he did not find these signs in the present case. He further admits that in case of throttling if fingers are used marks of pressure of thumb and finger tips are usually found on either side of the throat. Besides these marks, there may be abrasions and bruises on the mouth, nose, cheeks, forehead and lower jaws. However, in the present case, no such signs of throttling are found in present case. To the answer of the question put by the learned Judge, he admits that the deceased most probably died up cardio respiratory failure due to asphyxia due to throttling. That the present case rests on the circumstantial evidence and therefore, the prosecution has to prove that the circumstances so proved by the prosecution must lead to the conclusion that the present appellant is the only author of the said crime. However, in the present case the opinion given by the doctor on probability could not be sufficient to prove the guilt of the accused and hence, the conviction of the appellant has resulted in to grave miscarriage of justice and hence, he prays that he be acquitted in the interest of justice.

It is further submitted that PW-5 Hirabai Shinde deposed before the Court that Alkabai disclosed her that there was ill-treatment at the hands of the present appellant on account of Rs.50,000/- for drip irrigation. However, in her cross-examination, she admits that police had been to the house of appellant when she was present their but at that time she had not disclosed or she had not made any complaint against the appellant to the police.

It is submitted that P.W.6 Sunil Shinde in his cross-examination admitted that relation between accused and his brother were friendly and his brother Yogesh and the accused used to help each other at the time of necessity at the time of financial crisis. It is submitted that this witness was not able to recollect that when

they had given Rs.30,000/- to the accused. His evidence is full of omissions and improvements before the Court.

18. It is further submitted that PW-7 Pralhad Sonawane is the panch witness for the seizure of clothes of deceased and also the seizure of clothes of accused. However, in his cross- examination, he admitted that the police had shown one pant in police station and said to him that he had seized that pant of accused. Therefore, recovery of the clothes of the accused becomes doubtful. It is further submitted that P.W.9 API Ramrao Dhikale who registered AD report on the basis of the statement given by the appellant, conducted inquest panchanama and found two black patches on the neck of the deceased on front side. In AD inquiry, spot panchanama was also conducted. In cross-examination he admits that during AD inquiry, relatives of deceased Alkabai did not make any complaint against accused. The learned Counsel for the appellant submitted that the contents of the AD report given by the appellant are not admissible in the evidence.

19. The learned Counsel for the appellant further submitted that the prosecution case rests upon the circumstantial evidence. That the circumstances alleged against the present appellant are that ill-treatment at the hands of the appellant on non-fulfillment of demand of Rs.50,000/-; secondly, the homicidal death of Alkabai in the field of the appellant and thirdly, false explanation given by the appellant. However, so far as the first circumstance is concerned, the prosecution has not been able to prove as to when the appellant had demanded money from them. So far as the second circumstance is concerned, it is proved by the prosecution that the death of Alkabai was homicidal, however, the prosecution has not proved that the appellant alone is the author of the death of Alkabai by the clinching evidence and so far as the third circumstance is concerned, it cannot be said that the appellant had given a false explanation because when he saw the dead body he had seen that froth was coming fro the mouth of Alkabai and therefore, he thought that Alkabai must have died due to poisoning. Hence the Counsel submitted that the prosecution has not proved the circumstances against the appellant and therefore, the appellant prays that he be acquitted in the interest of justice.

20. The learned Counsel for the appellant invited our attention to the reported judgment of the Supreme Court in case of Hanuman Govind, Nargundkar and another vs. State of M.P.(AIR 1952 SC 343 (1)) and in particular, para 10 thereof. He submitted that in dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind.

He further pressed into service unreported judgment of this Court in case of Namdeo Tukaram Budde vs. The State of Maharashtra in Criminal Appeal No.124 of 2009 and in particular, para 11 thereof and submits that in case of circumstantial evidence, conditions laid down in said para must be fulfilled before a case against the accused based on circumstantial evidence can be said to be fully established.

He further invited our attention to the exposition of the Supreme Court in case of Harendra Narain Singh, etc. v/s State of Bihar (AIR 1991 SC 1842) and submitted that in case of circumstantial evidence, if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to his innocence, the Court should adopt the latter view favourable to the accused. He further invited our attention to para 5 and 6 of the said judgment.

The learned Counsel for the appellant also invited our attention to the reported judgment of the Supreme Court in case of Sarwan Singh Rattan Singh vs. State of Punjab (AIR 1957 SC 637) and in particular, para 12 thereof. Relying upon the said judgment, he strenuously urged that while considering the case based upon circumstantial evidence, the prosecution story may be true; but between may be true and must be true there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

He further pressed into service exposition of the Supreme Court in case of Shankarala Gyarasilal Dixit vs. State of Maharashtra (AIR 1981 SC 765(1)) and in particular, paragraphs 22, 32, 33 and 36 thereof. It is submitted that as held by the Supreme Court in the aforesaid authoritative pronouncement, each circumstance in the chain of circumstances has to be firmly established beyond reasonable doubt. Therefore, learned Counsel for the appellant relying upon the grounds

taken in the appeal memo, annexures thereto and the judgments of this Court and the Supreme Court, cited supra, submitted that the appeal may be allowed.

21. Learned APP appearing for the State submitted that the trial Court has relied upon various circumstances and each circumstance has been proved by the prosecution beyond reasonable doubt. It is submitted that though the appellant has been acquitted for the offence punishable under Section 498A of IPC on technical ground that demand of money to P.W.2 Yogesh Sinde could not lead to the conclusion that there was ill-treatment to the deceased. The learned APP submits that the prosecution has convincingly established that the accused was in the company of the deceased, he is bound to offer explanation about death of his wife since those facts were within special knowledge of the appellant/accused. It is submitted that the accused was in the company of the deceased on the relevant date and time, and this circumstance has been established by the prosecution through the evidence of P.W.2 Yogesh Shinde and also the evidence of other prosecution witnesses. It is submitted that the medical evidence unequivocally indicates that the deceased died unnatural death and the medical officer who was examined, has stated deceased Alkabai met homicidal death. Therefore, according to the learned APP, all the circumstances have been convincingly proved by the prosecution, the chain of circumstances is complete. It is submitted that the death of the deceased was within seven years from the date of marriage. Therefore, the case in hand is covered under presumption u/s 113 of the Evidence Act. The evidence of P.W.2 Yogesh Shinde, P.W.5 Hirabai Shinde and P.W.6 Sunil Shinde clearly indicates the conduct and demand by the appellant. It is submitted that recovery of the dead body is from the field of the appellant. Death of the deceased, as stated by the Medical Officer, was due to throttling. Learned APP placed reliance on the judgments in cases of Vansha Lakama Gangad vs State of Maharashtra (2010 (2) Bom.C.R. 295) and Ankush Desu Rathod and ors. Vs State of Maharashtra and anr .(2009(1) Bom.C.R. (Cri) 245) and submitted that the appeal may be dismissed.

22. We have given careful consideration to the arguments advanced by the learned Counsel for the appellant and the learned APP for the State. With their able assistance, we have carefully perused the original record and proceedings

and also other material placed on record and also the judgments of this Court and the Supreme Court cited by the learned Counsel for the appellant and the learned APP for the State.

So far as delay in filing the complaint is concerned, P.W.2 Yogesh Shinde complainant in his evidence before the Court has categorically stated that, when the complainant and other relatives came to the house of the accused after occurrence, both the accused were present in their house. He was in shock due to death of his sister and therefore, he did not even inquire with the accused as to how his sister died. He was sitting near the dead body. He did not go to the spot of incident. Police came to the house of the accused. It appears that the court asked the witness P.W.2 whether he had made any complaint to the police against the accused when they were present there? On asking this question, the witness said weeping that at that time his mother was crying and his father also became unconscious and therefore, he was taken out of house by some persons and he was also under shock due to death of his sister. Since he was also crying, he had no word with the police. Therefore, this version of the P.W.2 Yogesh Shinde is complete answer to the point raised by the appellant that there was delay in filing FIR.

23. The present case rests upon circumstantial evidence inasmuch as, there is no eye witness to the incident. As held lby the Supreme Court in case of Hanuman Govind, Nargundkar and another (supra), this Court has to bear in mind that since the case rests upon circumstantial evidence, conjecture or suspicion should not take place of the legal proof and each of the circumstances relied upon by the prosecution has to be established fully and further chain of the circumstances is so complete which would lead to hypothesis of guilt of the accused. The circumstances should be of conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. It is also required to be borne in mind that the prosecution must establish each circumstance firmly. In circumstantial evidence, an important circumstance is last seen in the company of the deceased. In the present case, the appellant herein lodged AD at Exh.56 at Pahur Police Station on 18th January, 2011. He in his said report, stated that on 18th January 2011, in the morning he himself and his wife

Alkabai Yogesh Patil, aged 24 years, went to his field in the Chilgaon Shivar for thrashing Tur. After going to the field, he was thrashing Tur. He went to village at 10 a.m. to bring his daughter Ashwini from school. Thereafter, he left the daughter with his mother and went to the field. That time, he saw his wife Alkabai lying under a Neem tree in his field. He went near her. At that time, bubbles and froth were coming from her mouth, blood was oozing from her nose. Therefore, he called on Dr. Sopan Dagadu Patil by making mobile call and stated about the incident. Thereafter, Dr. Sopan Dagadu Patil along with four - five other persons, came to the field. Wife was taken to the hospital by rickshaw. However, on the way to the hospital near village Chilgaon at about 12.45 she died. Her dead body was kept in the house and he has given intimation to the police station along with his relatives. He further stated that said complaint was read over to him and as per his narration the contents are written. It appears that for giving this information, he went to Pahur Police Station and informed the police accordingly.

It is submission of the learned Counsel for the appellant that the contents of this report are not admissible in evidence. The Supreme Court in case of Faddi vs State of Madhya Pradesh (AIR 1964 SC 1850), in para 15 held thus:

œ15. The report is not a confession of the appellant. It is not a statement made to police officer during the course of investigation. Section 25 of the Evidence Act and S.162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder of Gulab was committed, or whether the appellants statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. Admissions are admissible in evidence under S.21 of the Act. Section 17, defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to S.21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in S.21 to the provision that admissions could not be

proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.?

Therefore, in the light of the law laid down by the Supreme Court in the aforesaid authoritative pronouncement, which is followed in various subsequent judgments, the report lodged by the appellant is not a confession of the appellant. It is not a statement made to the police officer during the course of investigation. Section 25 of the Evidence Act and S.162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder was committed, or whether the appellants statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. Therefore, the contention of the Counsel for the appellant that the said report at Exh.56 is not admissible in evidence deserves no consideration and the same stands rejected.

24. In order to find out whether death of Alka was accidental, suicidal or homicidal and whether she died due to throttling, it is necessary to discuss the evidence of medical officer.

25. In the present case, it is true that the appellant has been acquitted for the offence punishable under Section 498A of IPC since according to the learned Sessions Judge, there was no sufficient evidence to convict the appellant. However, so far as motive for commission of offence is concerned, evidence of P.W.2 Yogesh Shinde and P.W.6 Sunil Shinde establishes that a month before the incident the appellant had given threat to P.W.2 Yogesh Shinde that since he had not given him Rs.50,000/- for drip irrigation, he would see his sister and will do something wrong with her. Therefore, non fulfillment of the demand was the motive for appellant to commit murder.

26. It has come on record that on the day of incident, in the morning the appellant with his wife had gone to their field to thrash Tur. The said work was done by the appellant for some time. According to the appellant, after reaching to the field, for some time they thrashed Tur and thereafter, at 10 a.m., he left the field to bring his daughter back from school. Accordingly, he brought his daughter from school and

left her with his mother and again went to his field. As already observed, he saw his wife Alkabai lying under a Neem tree in his field. He went near her. At that time, bubbles and froth were coming from her mouth, blood was oozing from her nose. Therefore, he called on Dr. Sopan Dagadu Patil by making mobile call and stated about the incident. Thereafter, Dr. Sopan Dagadu Patil along with four - five other persons, came to the field. Wife was taken to the hospital by rickshaw. However, on the way to the hospital near village Chilgaon at about 12.45 she died. Her dead body was kept in the house and he has given intimation to the police station along with his relatives. The fact that the appellant on the relevant day went to the field for thrashing Tur has also been stated by P.W.2 Yogesh Shinde in his evidence. P.W.2 Yogesh Shinde in his examination-in-chief stated that on 18th January, 2011 at around 9.30 to 10 a.m., he made call from his mobile to appellant Yogesh on his mobile and he told appellant that there is a fair at village Mandva near village of P.W.2, so appellant Yogesh should send his sister Alka; whereupon, appellant Yogesh told that he was in the field and was doing thrashing work. He will send Alka either in the evening or tomorrow. Thereafter, about one to one and half hour, he went to village Neri for Bazar. When he was in Bazar, he received telephone call of Dr. Sopan Dagadu Patil of village Chilgaon on his mobile. He informed him that his sister Alka died due to poisoning. On receiving the call, immediately P.W.2 and his cousin Shivaji Bhanudas Patil went to the village of appellant/accused.

It is contention of the Counsel for the appellant that the prosecution should have brought on record entries of phone calls. However, since those are not brought on record, the said circumstance cannot be taken into account so as to establish presence of the appellant/accused in the field on the relevant date for thrashing Tur. In fact, the version of P.W.2 Yogesh Shinde that, he made phone call and accused appellant Yogesh told him that he is in his field to thrash Tur on the date of incident is fortified by the other evidence brought on record by the prosecution and also the statement of P.W.2 that there was telephonic conversation between him and appellant finds corroboration from the AD report at Exh.56. As already observed, the contents of the AD report can be read in evidence, as held by the Supreme Court in case of Faddi vs State of Madhya Pradesh (supra). The evidence of P.W.2 Yogesh Shinde further gets confirmation from the fact that Dr.

Sopan Dagadu Patil had made telephone call informing death of his sister. AD report shows presence of Dr. Sopan Patil in the field of appellant. The said Dr. Sopan Patil is not examined since, according to the prosecution, said witness was won over by the accused and, therefore, prosecution has given up the said witness. Therefore, the deceased was in the company of the accused till last. It is an admitted position that the field belongs to the appellant and incident occurred in his field. Therefore, the important circumstance in the chain of the circumstances last seen together, has been firmly established by the prosecution.

27. It is the contention of the appellant that he went to the school to bring his daughter back and after leaving her with his mother, he came back to his field and he saw his wife Alkabai lying under a Neem tree in his field. He went near her. At that time, bubbles and froth were coming from her mouth, blood was oozing from her nose. Therefore, he called on Dr. Sopan Dagadu Patil by making mobile call and stated about the incident. Thereafter, Dr. Sopan Dagadu Patil along with four - five other persons, came to the field. Wife was taken to the hospital by rickshaw. However, on the way to the hospital near village Chilgaon at about 12.45 she died. Her dead body was kept in the house and he has given intimation to the police station along with his relatives. In this respect, nothing has been placed on record by the appellant to suggest that on the date of incident, he actually went to bring his daughter and he left his daughter with his mother and then came to the field and saw his wife lying under the Neem tree. In fact, all these facts were within special knowledge of the appellant Yogesh and he was bound to offer his explanation under what circumstances his wife died in his own field. The appellant has also not placed anything on record to suggest that his daughter was school going. P.W.2 Yogesh Shinde in his evidence has stated that marriage between appellant and his sister was performed in the year, 2006 and at the time of incident, age of the daughter was two years. The prosecution has claimed the age of the daughter as two and half years. Under these circumstances, it was for the appellant to offer some probable explanation since those facts were within his special knowledge. Therefore, the next important question which would arise is, whether the deceased Alka died unnatural death or otherwise.

28. P.W.4 Dr. ShivajiJagdeo Kurankar, in his evidence, has stated in detail that the injuries mentioned in Column No.17 of the post-mortem report cannot be self-inflicted injuries. Those injuries also cannot be caused by hanging. Such type of injuries can be caused if a person is overpowered by another with hands. The injuries in Column No.17, as stated by him in his evidence, are as under:

œThere were two incised wounds on middle part of anterior aspect of neck on skin overlying thyroid cartilage, measuring 1.5 cm. And 1 cm. respectively and running horizontally.

Internal examination neck reveals fracture of hyoid bone, ruptured intima of carotid arteries and ruptured neck muscles.

All the aforesaid injuries were ante mortem.

Internal examination:

Brain was congested and meninges were also congested. So also pleura, right lung, left lung and pericardium. Periotoneum was also congested, stomach was empty. Small intestine contained gases and large intestine contained faecal matal. Liver, gall bladder, pancreas, suprarenals, spleen and kidneys all were congested. Bladder was empty. No abnormality was deducted in the organ of generation. Viscera was not preserved.?

He opined that probable cause of death was cardio respiratory failure due to asphyxia due to throttling. He was confronted with post-mortem report which he identified and also he identified his signature and stated that the contents of the said report are correct. It is also relevant to mention that on internal examination, neck revealed fracture of hyoid bone, ruptured intima of carotid arteries and ruptured neck muscles.

The defence counsel cross-examined this witness at length so as to establish that the death is not homicidal. It appears that many questions were asked to this Medical Officer. One contention of the appellant is that there were no marks of violence or injuries on the person of deceased Alka. In that respect, it can be observed that, in every case of throttling, it is not necessary to have signs of

violence when person is not unknown. That is possible only in cases where unknown person tries to throttle. After this witness was cross-examined at length in order to ascertain firm opinion of this witness, the Sessions Court asked the question:

œCourt Que: Doctor you did not find several signs of throttling in the present case. Do you want to say that even in the absence of those signs there may be the death due to throttling?

Ans.: Yes, I maintain that the deceased died due to throttling even in the absence of the signs admitted by me in cross examination. Fracture of hyoid bone and rupture of intima of carotid arteries led me to opine that the deceased most probably died of cardio respiratory failure due to asphyxia due to throttling. Absence of the signs which I have admitted above are not sufficient to form an opinion that it is not a case of throttling.?

Therefore, the Medical Officer was of firm opinion that deceased Alka died due to throttling even in absence of signs admitted by him in cross-examination.

In this respect, it is relevant to mention that it has come in AD report itself that the appellant / accused saw froth coming out from mouth, and blood was oozing from nose of deceased. Therefore, in view of the medical evidence on record and the fact that the medical officer firmly expressed his opinion that the deceased died due to throttling. Therefore, the death of deceased Alka was homicidal is firmly established by the prosecution.

29. The next question is, who is the author of death of the deceased Alka? As already observed, prosecution has firmly established that deceased Alka was last seen in the company of the accused/appellant. The said fact also gets confirmation from AD report. Admittedly, the field where the incident had taken place belongs to appellant Yogesh. Therefore, he is the person who has special knowledge of all the facts right from reaching to the field for thrashing Tur till the incident and therefore, he was bound to offer explanation. The prosecution has discharged its burden of firmly establishing that deceased Alka was last in the company of appellant Yogesh and the field where both of them were working,

belongs to appellant/accused and therefore, it was for the appellant Yogesh to explain how his wife Alka died. There are also no circumstances on record that anybody else had enmity with the deceased who could have committed her murder. As already observed, appellant/accused had motive for commission of murder of Alka. Since his demand for money was not fulfilled by her brothers. There were injuries on the neck of the deceased. It is established that deceased died due to throttling. Accused Yogesh was present on the spot soon before the incident. Death of deceased was the fact within his exclusive knowledge and therefore, in view of the provisions of section 106 of the Indian Evidence Act, it was for the accused Yogesh to explain as to how the deceased died. However, he has not offered any explanation and not tendered any evidence. The Bombay High Court while interpreting the provisions of Section 106 of the Indian Evidence Act in case of Eknath s/o Ramu More (Bhil) vs State of Maharashtra(2010 ALL MR (Cri.) 2871), held that, where the facts are within special knowledge of the accused, he is bound to offer his explanation. Therefore, in the light of discussion herein above and looking to the circumstances appearing on the record and taking into consideration the entire evidence brought on record, there is no slightest doubt that the appellant Yogesh s/o Ramraj @ Maharu Patil is the author of the murder of his wife.

30. Therefore, upon re-appreciating the entire evidence on record, in our considered view, the impugned judgment and order needs no interference since the same is in consonance with the evidence on record.

Appeal sans merits and the same is dismissed.

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