

Pradipsingh Vs. State of Maharashtra

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SooperKanoon Citation : sooperkanoon.com/369649

Court : Mumbai

Decided On : Aug-11-2003

Reported in : I(2004)DMC382

Judge : R.K. Batta and ; P.S. Brahme, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 354 and 366; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 141 and Confirmation Case No. 2 of 2003

Appellant : Pradipsingh

Respondent : State of Maharashtra

Advocate for Def. : D.B. Patel, Addl. P.P.

Advocate for Pet/Ap. : M.R. Daga, Adv.

Judgement :

R.K. Batta, J.

1. The appellant was tried for the murder of his wife under Sections 302, 498A and 304-B of the Indian Penal Code. In support of the charges, the prosecution had examined 13 witnesses. The Trial Court found the appellant guilty for murder under Section 302 of the Indian Penal Code as also for subjecting the deceased to

cruelty under Section 498A of the Indian Penal Code. The appellant was, however, acquitted of the offence under Section 304-B of the Indian Penal Code. The appellant was sentenced to be hanged till death for the offence of murder under Section 302 of the Indian Penal Code and in addition he was also sentenced to undergo three years R.I. and fine of Rs. 3,000/-, in default, R.I. for one year under Section 498A of the Indian Penal Code. The period of detention in custody during trial was set off in terms of Section 428 of Cr.P.C. The learned Additional Sessions Judge, Nagpur has forwarded the record to this Court for confirmation of sentence of death in terms of Section 366, Cr.P.C. The appellant has filed appeal challenging his conviction and sentence.

2. The prosecution case, in brief, is that the marriage between the appellant and the deceased was solemnized in the year 1994. The appellant was serving as Police Constable in Police Station, Panchpaoli, Nagpur. It is the prosecution case that the appellant used to ask his wife Pushpa to bring money from her parents for purchase of plot and on account of that there used to be quarrel and the appellant also used to beat her. On 24.2.2001, between 9.00 to 10.00 a.m., there was a quarrel between the appellant and the deceased Pushpa. The appellant is said to have strangled the deceased with gamcha, and made a show that she had become unconscious. The deceased was taken to the hospital by neighbours and she was pronounced dead. The prosecution has examined three witnesses to prove the charge under Section 498A of the Indian Penal Code namely Brijeshsingh (P.W. 1) who is the brother of the deceased, Sangita (P.W. 5), who is the wife of Brijeshsingh (P.W. 1) and maid servant Savitri who was working in the house of appellant and deceased. In order to prove the charge of murder, besides the said three witnesses, the prosecution has also examined Prashant Bhangade (P.W. 3) and Vishal Kamble (P.W. 11) and Dr. A.A. Mukherjee (P.W. 9). The prosecution also relies upon recovery of gamcha at the instance of the appellant under Section 27 of the Evidence Act. The Panchas of said recovery have not supported the prosecution case but the recovery is sought to be proved through the Investigating Officer. The appellant, in his written statement filed after examination under Section 313 of Cr.P.C., has denied to have either beaten or ill-treated the deceased. According to him, on the previous night of the incident there was an altercation between them and they stopped talking with each other. The

altercation was on the question that deceased Pushpa wanted to go out of station. In the morning, Pushpa got ready for going out but the appellant refused. He slept on diwan in the front room. Some time in the morning, Prashant and Vishal came to his house. Prashant went away from outside itself whereas Vishal came and sat on the chair besides diwan. While Vishal was sitting in the front room, he went inside for urination. When he returned within half minute, he saw that Pushpa had strangled herself by tying on Odhani (a cloth to be thrown overhead and shoulders) to the window in sitting position. He called Vishal and both of them untied and laid her. He asked Vishal to inform neighbours and bring a doctor and in the meantime, he started making Pushp conscious. She was taken to the hospital. He asked Vishal to take him to his father in Ashok Nagar on scooter. On the way, brother of appellant met who told them that his father was coming. He asked Vishal to take him to Brijeshsingh at Silewara, but he refused. He dropped him near the square. He started going to the hospital, but he was mentally disturbed and got amiss. He was not able to understand where he was moving and while he was sitting under a tree at about noon time, the police caught him. Brijeshsingh who was in the Police Station, threatened to implicate him in the case. According to the appellant, police and Brijeshsingh have levelled false charge against him for strangulating Pushpa with Dupatta (long scarf). He also stated that Pushpa was giving money to her sister-in-law. He placed on record sick note and X-ray report and contended that a rod is inserted in his hand and it has been rendered feeble. We shall refer to the answers given by the appellant in his statement under Section 313 of Cr.P.C. at a later stage which will go to show that the written statement filed by him is to large extent contrary to the stand taken by him under Section 313 of Cr.P.C.

3. Learned Advocate Mr. M. R. Daga, argued on behalf of the appellant and learned A.P.P. Mr. D.B. Patel argued on behalf of the State.

4. Learned Advocate Mr. M. R. Daga took us through the evidence of all the witnesses on record and has made following submissions before us.

(i) There is error in the charge inasmuch as the time mentioned in the charge is 12.55 p.m., whereas according to the prosecution case, the incident in question

had taken place before 10.00 a.m. and this error in the charge has caused serious prejudice to the appellant;

(ii) Death is not homicidal but suicidal;

(iii) Recovery of gamcha has not been proved since both the Panchas have not supported the same;

(iv) Insofar as the offence of cruelty is concerned, there are material omissions in the statements of the witnesses on account of which the charge does not stand proved;

(v) The circumstantial evidence on record is not sufficient to come to the conclusion/hypothesis that it is the appellant alone who has committed the offence in question; and

(vi) The time of death, which was a material circumstance, has not been proved and that according to the Medical Officer, the injuries found on the deceased were fresh which means within six hours of conducting of the post-mortem which does not fit in with the prosecution case.

5. According to learned Advocate for the appellant, the defence case is not only probable but plausible taking into consideration the evidence of Doctor (P.W. 9). Learned Advocate for the appellant pointed out that the conduct of the appellant in making efforts to go to Silewara to inform the brother of the deceased has to be taken into consideration while determining the question of guilt. He also urged that the absence of the appellant from the house is explained by Satyanarayan (P.W. 8) to whom he had gone to collect money for the funeral of his wife. He, therefore, contends that the prosecution has failed to prove the charges and the appellant is entitled to acquittal. A number of rulings have been quoted by him on circumstantial evidence. On the question of death penalty also, a number of rulings have been quoted by him and it has been urged that the facts and circumstances of the case do not call for death penalty since by no stretch of imagination the case under consideration can be said to be rarest of the rare. We shall refer to the rulings upon which the reliance has been placed at the

appropriate stage.

6. Learned A.P.P., on the other hand, has urged before us that the deceased was four months' pregnant at the time of incident; the incident has taken place in the background of demand of the appellant for money in order to purchase plot; that the appellant used to ill-treat and beat the deceased since said demand was not met. He submitted before us that on the date of incident, the appellant was on leave and he was in the house, the door was bolted from inside; that when Prashant and Vishal (P.Ws.) knocked the door, the appellant opened the door and subsequently made a drama that the deceased was unconscious; the theory of suicide taken by the appellant was never conveyed to any of the neighbours or Prashant and Vishal (P.Ws.) who came to the spot; that the appellant absconded after the commission of the crime and was arrested only at 6.00 p.m. at a place which is seven to eight kilometres away from the place of incident. According to the learned A.P.P., the recovery has been duly proved through the Investigating Officer even though the Punch witnesses did not support the prosecution case. He also pointed out that the contrary stand has been taken in the written statement vis-a-vis 313 statement and that the false explanation given is an additional link to determine the culpability of the appellant. It is further submitted by him that the circumstances on record totally ruled out the theory of suicide and that the prosecution has proved that it was the appellant alone who had murdered his wife. On the question of death penalty, the learned A.P.P. urged before us that this is a cold blooded murder on account of non-fulfilment of the amount sought by the appellant; the appellant was in a dominating position; that the murder in question has shaken the conscience of the society and in every case of bride burning or dowry death, death penalty should be awarded. In support of his submissions, he has placed reliance on a number of authorities of the Apex Court to which we shall make reference at the appropriate stage.

7. The prosecution case is that the motive for murder is repeated demands made by the appellant for the purchase of plot which were not fulfilled by his in-laws on account of which the appellant had murdered the deceased. In order to prove the demands and cruelty, the prosecution has examined Brijeshsingh (P.W.1) and Sangita (P.W. 5), wife of Brijeshsingh (P.W. 1) and Savitri (P.W. 4). Brijeshsingh

(P.W. 1), who is the brother of the deceased, has stated that the appellant and deceased were married on 12.12.1994. After two-three months of the marriage, he received a telephonic message from the house of Pushpa and went to meet her. She started weeping and told that the accused was harassing her for the purpose of plot amount and that he also used to beat her. He told the appellant and the deceased that he could not make arrangement for the amount for the plot since he had already spent Rs. 2.50 to 3 lakhs on the marriage. After two to three months of this incident, the accused brought her to his house and at that time also the accused was demanding the amount to purchase a plot at Nagpur. The accused had demanded Rs. 50,000/- to purchase the plot. On 19.2.2001 that is to say about a week prior to the incident in question, the deceased and accused came to his house at Silewara and even at that time Pushpa told him that the accused had not stopped harassment and requested to make the payment. The said amount was not paid and the accused went back as he was angry. On 24.2.2001, he received phone message from Prashant at about 9.45 a.m. to the effect that Pushpa was unconscious. Immediately within ten minutes thereafter second phone came informing that Pushpa had died. He along with his family members went to the house of the accused at Nagpur. The accused was not there in the house and the deceased was lying in dead condition in front room. There was red colour wheel mark on neck towards left side as also one swelling and tenderness on the back side of scalp. The matter was reported to the police at about 12 noon. His supplementary statement was recorded on 4.3.2001. This witness was cross-examined at length and it was suggested to him that he along with the police had prepared a false report resulting in First Information Report which was recorded at 4.00 p.m. which was denied by this witness. He was cross-examined on the question of demand, ill-treatment, harassment and beating and was confronted with the First Information Report. We would like to point out that it is now settled that First Information Report is not an encyclopaedia. In this case, the supplementary statement of this witness was recorded by the police on 4.3.2001. The witness was confronted only with the First Information Report, but there was no confrontation at all with the supplementary statement dated 4.3.2001. Even in the First Information Report, it had been stated that three months after her marriage, Brijeshsingh had gone to the house of Pushpa and at that time while

weeping she told him that Pradip asks her to bring money from parents' house for purchasing plot and over the issue of the said reason, he quarrels and beats her. Only specific amount of Rs. 50,000/- does not figure in the First Information Report. Though the said amount did not figure in the First Information Report yet it figures in the supplementary statement dated 4.3.2001 with which the witness was never confronted. The basic details of demand for purchase of plot as also quarrel and beating Pushpa are very much there in the First Information Report which was lodged within hours of Brijeshsingh reaching the spot. In the First Information Report, there is also reference to a complaint made by Pushpa again when he came to Nagpur. These facts are also stated by him in his examination-in-chief. This witness has also referred to the incident dated 19.2.2001 which we have already referred above.

8. The evidence of Brijeshsingh (P.W. 1) is fully supported by his wife Sangita (P.W. 5) who has stated that after three months of the marriage, Pushpa had informed that the accused used to harass her and force her to demand the amount from her parents. She also informed her that the accused used to beat her. After some days, Pushpa came to her house and told that accused pledged her golden necklace for the amount of Rs. 4,000/- and she (Sangita) paid her Rs. 4,000/- to get released the golden necklace. There is no challenge to this fact in the cross-examination of this witness. This is another clever way of getting money from the in-laws that is to say pledge the golden necklace of wife for Rs. 4,000/- and she will bring money from parents to get her golden necklace released. She has further stated that after some days, Pushpa and accused came to their house at Silewara and halted for a night. On the next day morning, accused quarrelled with Pushpa and asked to demand amount from her. Accused used to rush to beat her. Pushpa had not demanded amount and, therefore, the accused went in their kitchen and brought can of kerosene oil. He rushed to pour said kerosene oil on the body of Pushpa. She intervened in the quarrel and accused was annoyed. He, therefore, poured kerosene oil from the can on his body. Though there was no challenge to this part of the deposition of this witness in cross-examination, yet she was confronted only with her statement with the police about the accused pouring kerosene on his body. Of course, this fact was not stated by this witness before the police, but the fact of the appellant going to kitchen, bringing kerosene oil and

rushing to pour kerosene oil on the body of Pushpa has not been at all challenged and the same stands proved through the testimony of this witness. Sangita (P.W. 5) has further deposed that before one week of the incident, the accused came to their house and was discussing with her husband about money to purchase plot. The accused demanded Rs. 50,000/-. Her husband told that he will make arrangement within one or two days and will come to Nagpur. Accused and Pushpa went back to Nagpur and after a week the incident in question took place. There was again no challenge to the incident which has taken place one week prior to the incident and the confrontation was in relation to the demand of Rs. 50,000/- with her husband. It appears that the Trial Court without looking into the police statement, recorded that, 'I cannot assign any reason why all these facts are not mentioned in the statement before police'. The said facts are very much there in the police statement. Thus, the reply after confrontation has been wrongly recorded. Moreover, the method of confrontation is also not correct. This demand of the appellant was not satisfied which furnished immediate motive for the appellant for the commission of crime.

8-A. P.W. 4 Savitri, who was working as maid servant in the house of appellant and deceased has stated that there used to be quarrel and hot exchange between accused and deceased, though in cross-examination she stated that the same was of normal nature. P.W. 2 Sulochna, neighbour of the appellant speaks of dispute and quarrel between the appellant and deceased on the date of incident itself.

9. The wilful conduct of the appellant not only amounts to harassment in order to coerce her to meet unlawful demand for property and consequent failure to meet the demand but it also amounts to mental cruelty. The above evidence, in our opinion, is sufficient to bring home the charge under Section 498A of the Indian Penal Code and as such the conviction and sentence of the appellant therein does not call for any interference whatsoever.

10. Coming to the charge of murder, the evidence of Vishal Kamble (P.W. 11) is crucial. Vishal (P.W. 11) has stated that on 24.2.2001 at about 8.45 a.m., he went to the house of Prashant where he took tea. Thereafter, they went to the house of

deceased Pushpa for chewing tobacco. They knocked the door. Accused opened the door and they entered the house. They took tobacco and Prashant went back, but Vishal continued to be there. He enquired with the accused that where is Bhabhi (reference to deceased Pushpa). Accused went in kitchen and was there for two minutes. He gave call to him and asked to see the condition of Bhabhi. When he entered the kitchen, he had seen Bhabhi was lying, facing towards ground. Accused made her straight and seen the pulses and breathing. Breathing and pulses were absent. Her hand was loose and had no sense. The accused asked him to bring auto rickshaw. While proceeding, he gave a message to Prashant. The neighbours had put Pushpa in auto. Accused asked him to give message to his father's house. Deceased was declared dead by the doctor. After he returned from the hospital, he along with the accused went to his father's place. The accused then asked him to come along with him to Silewara but he refused. He had seen red mark on the neck towards left side. He also states that his relations with accused were good and he had seen quarrel in between him and Pushpa. In cross examination, it was suggested to him that when he entered the kitchen, Bhabhi was in sitting condition with support of wall which was denied by him. It was further suggested to him that gamcha was tied to her neck and window, which was denied by him. It was also suggested to him that he and the accused had released the said gamcha, which was again denied by him. The defence case was thus totally ruled out by him. From his evidence, it is proved that the house of the accused was closed before Prashant and Vishal came to his house at about 9.00 a.m. The accused opened the door. The accused and the deceased were the only persons in the house. The deceased was seen by this witness lying facing towards ground and she had no pulse or breathing. Her hand was loose and she had no sense which means that she was already dead.

11. Prashant Bhangade (P.W. 3) has stated that Vishal came to his house at about 8.15 to 8.30 a.m. and they took tea, after which they went to the house of the accused. The door of the house of accused was closed. It was bolted from inside. Thereafter, there was talk between Vishal and accused and he went back home. While turning back, he saw Pushpa in sitting position resting with the help of wall. Subsequently, he was told by Vishal that Pushpa was unconscious. Accordingly, he along with Vishal went to the house of accused and found Pushpa in sleeping

position and water was sprinkled on her face by them and the accused. Thereafter she was taken to the hospital and there she was declared dead. When Pushpa was brought back to her house, accused was not present in the house.

12. The theory put forward by the accused to Vishal (P.W. 11) has been categorically denied by Vishal (P.W. 11). The accused in his written statement admits altercation which took place on previous night. In fact, Sulochana Bhangade (P.W.2), who resides in the neighbourhood of the accused, also speaks of quarrel and dispute between, the accused and his wife which was at about 9.00 to 10.00 a.m. Savitri Uikey (P.W. 4), who is maid servant working in the house of the appellant has also stated that there used to be quarrel between accused and the deceased. There used to be hot exchange of words also. In cross-examination, she stated that the exchange of hot words between husband and wife is a normal thing in every house. The accused in his written statement had stated that Prashant and Vishal had come to his house; that while Vishal was sitting in the front room, he went inside for urination and when he returned within half minute, Pushpa had strangulated herself by tying Odhani (a cloth to be thrown over head and shoulders) to the widow in sitting position. He called Vishal and both untied and laid her. As we have already pointed out that this defence theory has been totally negated by Vishal (P.W. 11). We have referred to the contradictory stand taken by the appellant in his written statement vis-a-vis., his answers to questions under Section 313 of Cr.P.C. The accused has categorically stated in reply to questions 9 and 20 that, 'it is false'. Question No. 9 reads as under :

'Q.9.--It has come in the evidence of P.W. 3 Prashant Bhangade that on 24.2.2001 at about 8.15 to 8.30 a.m. he and his friend Vishal came to your house. Pushpa was in sitting condition resting towards wall. He came back to his home. After some time Vishal came to him and told that Pushpha is unconscious. He and his family members came to your house. You were sprinkling water on the face of Pushpa. They had taken Pushpa to the hospital on your request. What you have to say about it ?'

Question No. 20 reads as under :

'Q. 20--It has come in the evidence of P.W. 11 Vishal Kamble that on 24.2.2001 he and his friend Prashant came to your house at about 8-35 a.m., they did inquiry about Pushpa and you went in kitchen. You called him in kitchen. He had seen Pushpa in lying condition facing towards earth. Her pulses and breathing was stopped. He informed to Prashant and neighbours. What you have to say about it ?'

The accused thus even denies the coming of Prashant (P.W. 3) and Vishal (P.W. 11) in, his statement under Section 313 of Cr.P.C., but he admits in his written statement that they had come to his house and even defence case has been put to Vishal (P.W. 11), which was denied by him.

13. It is pertinent to note that not only Vishal (P.W. 11) categorically denied the defence case put to him, but the appellant did not inform anyone including Prashant (P.W. 3), Vishal (P.W. 11), Sulochana (P.W. 2), who came to his house that the deceased had committed suicide. If she had committed suicide, it is but natural that the appellant/accused would have told everyone who came there that the deceased had committed suicide. But, there was no whisper of the same. There is no evidence to show that one end of gamcha was tied to the window and the other end of gamcha tied to the neck of the deceased. On the contrary, the evidence on record is that the deceased was in sitting/lying position as deposed by Prashant (P.W. 3) and Vishal (P.W. 11) respectively.

14. Learned Advocate for the appellant has urged before us that the suicide theory is in fact supported by Medical Officer Dr. A.A. Mukherjee (P.W. 9) who conducted post-mortem on the dead body of the deceased. The post-mortem was conducted by him at 5.30 p.m. on 24.2.2001 and it was completed by 6.30 p.m. He found following external and internal injuries on the dead body:

Injury No. 1 : Ligature mark left side of neck, oblique midline and lateral aspect above thyroid cartilage and posteriorly at left mastoid up to midline of size 18 x 1 cms. 1 cm. mark present on right mastoid, right anterior lateral 16 cms. missing and posterior right missing, fresh.

Injury No. 2 : Nail abrasion 'C' shape present in right side of neck of size 1/2 x 1/4th cms. with concavity downward, reddish brown in colour. Both these injuries were ante mortem and fresh.

2. On internal examination he found following injuries :

Under scalp vault haematoma present 6 x 3 cms. Defused, serum separated, fresh. In the brain matter sub-arachnoids multiple minute haemorrhagic spots present. P. M. report is at Exh. 59, it bears his signature.'

His initial opinion was that the cause of death was hanging. Subsequently, his opinion was sought after forwarding gamcha to him and he opined that the ligature material was sufficient to cause death and ligature mark was possible by said gamcha. In his opinion, injuries to the neck of the deceased could be caused by compression of gamcha on the neck. He admitted that in strangulation the ligature marks are usually situated down in the neck below the thyroid cartilage and horizontal and in the present case, the ligature mark was above thyroid and oblique. He also admitted that the hanging may be partial or complete. The circumstances on record go a long way to prove that it is not a case of suicide but it is a case of homicide. We have already pointed out that the defence theory has been categorically denied by Vishal (F.W. 11) who has categorically stated that when the accused called him he entered the kitchen and he had seen Bhabhi lying faced towards ground. He denied that the gamcha was tied to her neck and window. He also denied that he along with the accused had released the said gamcha. Admittedly, the appellant and the deceased were the only persons in the house which was bolted from inside. It is pertinent to note that the appellant did not even whisper of suicide by his wife when people gathered and found injury on the left side neck as also haematoma on the scalp which included Sulochana (P.W. 2) and Prashant (P.W. 3). The accused even did not accompany deceased Pushpa to the hospital, but he absconded from the house and was not found to be present when Brijeshsingh (P.W. 1), Sangita (P.W. 5) and Rameshkumar Singh (P.W. 7) came. In this respect, the stand taken by the accused in the written statement under Section 313 of Cr.P.C. is that he had asked Vishal to take him to Brijeshsingh at Silewara, but he refused and dropped him near the square. He

started going to the hospital, but he was mentally disturbed and got amiss. He was unable to understand where he was moving and when he was sitting under a tree during noon time police caught him. This is nothing but a cock and bull story which cannot be accepted. The appellant was arrested at 6.00 p.m. at a distance of about seven to eight kilometres from the place of incident. Till his arrest, he never returned back to the house. Learned Advocate for the appellant has stated that the appellant had in fact gone to demand money from Satyanarayan (P.W. 8) for the funeral of his wife. However, the accused in his statement under Section 313 of Cr.P.C. in reply to question No. 23, has replied that the same is false. Question No. 23 reads as under :

'Q. 23--It has come in the evidence of P.W. 8 Satyanarayan Rai that on 24.2.2001 at about 11.00 to 12.00 a.m. you had been to his shop and demanded Rs. 500. He paid this amount to you. What you have to say about it ?'

15. The police has recovered gamcha at the instance of the appellant. Both the panchas of recovery have not supported the prosecution case and the recovery is sought to be proved through the Police Inspector. Learned A.P.P. has relied upon judgment of the Apex Court in Mohd. Aslam v. State of Maharashtra, reported in 2001(9) SCC 362, wherein it is laid down that the evidence of Police Officer effecting recovery could not stand vitiated by reason of panch witnesses turning hostile. Investigating Officer (P.W. 13) has stated that on 26.2.2001, the appellant/accused expressed his readiness to show gamcha. The accused took them to his quarter and the gamcha (dupatta was shown by him. Gamcha was seized from beneath the bedding on the diwan. Gamcha was found concealed. According to the Medical Officer (P.W. 9) the ligature mark could be caused by the said gamcha. Therefore, we do not find any merit in the submission of the learned Advocate for the appellant that the recovery of gamcha cannot be believed.

16. The circumstances on record referred to above, when examined in the background of demand for purchase of plot, harassment, beating etc., prove that at the time of the incident, the appellant and the deceased were the only persons in the house; the appellant made an attempt to show that he had not done anything but, on the contrary, the deceased had committed suicide. The said

theory was not only negated by Vishal (P.W. 11) but the same is also under the circumstances, neither probable nor plausible. The appellant did not even whisper or inform the persons who came to his house that the deceased had committed suicide. On the contrary, he tried to cover up by putting up a false defence. The appellant instead of going to the hospital, absconded from the scene of offence. All these circumstances unerringly point out that it is the appellant who had strangled the deceased. Learned A.P.P. has placed before us the judgment of the Apex Court in *Ram Kumar Madhusudan Pathak v. State of Gujarat*, reported in VII : 1998 CriLJ4048 , where in almost similar facts, the suicide theory was rejected. In that case, the deceased had met homicidal death by strangulation; the deceased and the appellant were the only persons who occupied the room; the appellant had come out with a false explanation that the deceased was lying unconscious. The Apex Court found that the fact that the body with ligature mark around the neck was found on the cot and not hanging completely demolishes the theory of suicide. In the case before us also, there is evidence on record to suggest that the dead body was found with ligature mark around the neck, but the evidence is that the dead body was found sitting/lying according to Prashant (P.W. 3) and Vishal (P.W. 11) respectively without any ligature material in neck and the other end tied to widow. The injuries on account of which the death had occurred are ante mortem injuries and obviously a dead body cannot remove either the ligature material used after committing suicide or untie the other end of the ligature material. In our opinion, the prosecution has proved that the death of the deceased Pushpa was homicidal and it was the appellant who is responsible for the same. We also do not find any merit whatsoever in the arguments of learned Advocate for the appellant regarding error in framing of the charge. The timing in the charge mentioned is 12.55 whereas the deceased was found around 10 O'clock. This error in the charge does not cause any prejudice whatsoever to the appellant. Likewise, we do not find any merit in the submission of the learned Advocate for the appellant that according to Dr. A.A. Makherjee, the injuries were fresh which means within six hours. The doctor was not at all cross-examined as to what he meant by fresh injuries and in the absence of the same, it cannot be said that the time of death does not tally with the finding of the post-mortem report.

17. The rulings upon which the reliance has been placed by the learned Advocate for the appellant are based upon the facts of the cases therein and the facts are not identical. In *Mulak Raj and Ors. v. State of Haryana*, reported in III : 1996 CriLJ1358 , upon which the reliance has been placed, it was found that merely because the deceased died homicidal death and her body was found in kitchen with post-mortem burns it cannot be said that the said circumstance by itself would connect all the accused or anyone of them with the crime. In that case, it was found that the evidence was totally unsatisfactory. Reliance has also been placed on *Babu and Ors. v. State of Orissa*, reported in 2003 Cri.L.J. 1011, which is a judgment of Division, Bench of Orissa High Court. In that case, the alleged demand of dowry by her in-laws was not proved and in that case the possibility of death due to suicide could not be ruled out. In that case, no injury on the neck by nails was found. In our opinion, the case under consideration is governed more by the judgment of the Apex Court in *Ramkumar Madhusudan Pathan v. State of Gujarat* (supra), rather than the Orissa High Court case.

18. Reliance is also placed on *Harbans Lal v. State of Punjab*, (reported in I : 1996 CriLJ1871 , wherein it was held that mere circumstance of recovery of dead body with extensive burns from the house of the appellant was not sufficient to hold him guilty. The facts of this case are different which cannot be applied to the case under consideration. Learned Advocate for the appellant has also placed reliance on the judgment of Apex Court in *Vaduguchanti Babu v. State of Andhra Pradesh*, reported in IV : 2002 CriLJ3791 , which has been decided on the facts of its own and cannot be applied to the case under consideration. In this case, delay in lodging FIR was not explained and the prosecution case was found to be doubtful. Further reliance is placed on *Vadugu Chanti Babu v. State of Andhra Pradesh*, reported in (supra), wherein the prosecution case was found inconsistent with medical evidence and was suffering from improbabilities and the evidence was found to be unsafe to rely upon and besides that there was delay in lodging the FIR. The same does not in any manner help the appellant. In *Nesar Ahmed and Anr. v. State of Bihar*, reported in 2002 SCC (Cri) 1100, upon which also reliance is placed, it was found that the vital link of the appellants being present in the house at the crucial time could not be established by the prosecution. The chain of circumstantial evidence was not complete so as to be consistent with the

hypothesis of the guilt of the appellants.

19. In view of the above, we do not find any reason or justification to interfere with the findings of the Trial Court insofar as conviction of the appellant under Sections 498A and 302 of the Indian Penal Code is concerned. The question which remains to be decided is the punishment for the crime. The Trial Court in terms of Section 366 of Cr.P.C. has made a reference for confirmation of death sentence imposed on the appellant. We shall first briefly refer to the principles applicable on the subject.

20. Section 354(3) of Cr. P.C. required special reasons for awarding the death sentence. The Apex Court in *Balwant Singh v. State of Punjab* reported in : 1976 CriLJ291 , has laid down:

'Under Section 354(3) the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now under the new Code and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of death sentence in a case. But to indicate just a few, such as, the crime has been committed by a professional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like.

Since there were no special reasons the High Court was not justified in confirming death sentence by relying on some decisions of the Supreme Court given under the old Code.'

21. While dealing with the constitutional validity of death sentence in *Bachan Singh v. State of Punjab*, (reported in : 1980 CriLJ636), the Constitution Bench of the Apex Court has laid down :

'From a reading of Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear that for making the choice of punishment or for

ascertaining the existence or absence of 'special reasons' in that context, the Court must pay due regard to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and, therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.

There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. It cannot be over emphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the Courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be blood thirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, in the instant case, show that in the past, Courts have inflicted the extreme penalty with extreme infrequency a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that Courts, aided by the broad illustrative guidelines indicated, will discharge the onerous function with ever more scrupulous care and humane concern., directed along the high road of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative options unquestionably foreclosed,'

22. The Apex Court in *Machhi Singh and Ors. v. State of Punjab*, reported in : 1983 CriLJ1457 , after relying upon *Bachan Singh v. State of Punjab* (supra), has laid down :

'The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'. Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In order to apply these guidelines inter alia the following questions may be asked and answered: (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.'

These principles have been followed in number of subsequent judgments and as such it is not necessary to refer to them.

23. Learned A.P.P. has placed reliance on *State of Maharashtra v. Suresh, I* : (2000)1SCC471 , wherein the accused had committed rape and murder on four

years old girl, the Apex Court held that the case was perilously near the region of 'rarest of the rare cases', but, since the accused respondent was acquitted by the High Court, the lesser option is not foreclosed and as such the death sentence was altered to imprisonment for life.

24. Learned A.P.P. has also placed reliance on *Kailash Kaur v. State of Punjab*, reported in : 1987 CriLJ1127 , and argued that in bride burning for dowry where the offence is clearly proved, Courts must award death sentence as a deterrent. He has also placed reliance on *Lehna v. State of Haryana*, reported in I (2002) SLT 502: 2000(3) SCC 76, wherein the guidelines which emerged (2002) CCR 101 (SC) from *Bachan Singh* case (supra) have been noted down which are as follows :

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence if an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.'

The Apex Court has further observed :

'In order to apply these guidelines, inter alia, the following questions may be asked and answered, (a) is there something uncommon about the crime which renders sentence of imprisonment for the life inadequate and calls for a death sentence

and (b) are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances :

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in position of trust; or murder is committed in the course of betrayal of the mother land.

(3) When murder of a member of a Scheduled Caste or minority community, etc., is committed not for personal reasons but in circumstance, which arouse social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions taking into account the answers to the questions posed by

way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.'

Learned A.P.P. specifically placed reliance on para 3 above and submits that the death punishment imposed on the appellant should be confirmed.

25. First of all, we must point out that the reasons given by the Trial Court can by no stretch of imagination be said to be special reasons. The first reason given in para 32 of the judgment is survival of the accused after life imprisonment is also not helpful to his son. The second reason given is found in para 34 of the judgment that the intention to cause death was specific and the time was selected by the accused when none was in the house. The Trial Court also refers to the fact that volume of tape recorder and T.V. set was usually kept high whenever quarrel takes place. In this case also, those articles were in operation. We do not find any material to support this conclusion. The crime was pre-planned and cold-blooded and that whenever there is bride burning dowry case where the offence proved beyond reasonable doubt, the Court should deal in most severe and strict manner and award maximum penalty. We do not find that any of these reasons can be said to be special reasons for imposing death sentence inasmuch as intention to cause death is there in all murders. Many of the murders are pre-planned and cold-blooded. We do not find that the crime in question and circumstances are such so as to fall within the guidelines of rarest of rare cases. Every second or third case which this Court is dealing is dowry death or bride burning and the normal sentence imposed is life imprisonment which is the rule. State, which is the repository of the conscience of the community has hardly approached this Court for imposition of death penalty in such cases. Death sentence has to be imposed where life imprisonment appears altogether inadequate punishment having regard to the relevant circumstances of the crime. There is nothing uncommon about the crime so as to call for death sentence and it cannot be said that the case under consideration is such where the collective conscience of the community is so shocked that death penalty is the only solution. Taking an overall view of the facts and circumstances, we are of the opinion that the crime in question does not fall in the category of rarest of rare cases and as such death punishment in this matter is not called for.

26. For the aforesaid reasons, while upholding the conviction of the appellant under Section 302 of the Indian Penal Code, we are of the opinion that for the crime in question, life imprisonment should be imposed on the appellant instead of death penalty imposed by the Sessions Court and the sentence is modified accordingly. The reference stands answered accordingly. Insofar as the conviction and sentence of the appellant under Section 498A of the Indian Penal Code is concerned, the same is hereby upheld and confirmed. The appeal and reference stand disposed of accordingly.

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