

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.**DIVISION BENCH: HON'BLE SHRI JUSTICE ALOK VERMA &
HON'BLE SHRI VED PRAKASH SHARMA, JJ****CRIMINAL APPEAL NO.169/2013****Mewalal S/o Mangru****Vs.****State of Madhya Pradesh**

Shri Abhinav Dhanodkar, learned counsel for the appellant.

Shri C.S.Ujjainia, learned counsel for respondent/State.

J U D G M E N T**(Passed on this 12th day of April, 2017)****PER: ALOK VERMA,J.**

This criminal appeal is directed against the judgment of conviction and sentence passed by the learned V Additional Sessions Judge, Indore in S.T.No.842/2012 dated 15.01.2013 whereby the learned Additional Sessions found the present appellant guilty under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs.1000/- with default stipulation. The present appellant stood charged before the trial Court under Sections 302 and 377 of IPC.

2. The prosecution story in brief was that on 26.02.2012, the complainant who is daughter of the present appellant, Neha Kaithwas-PW-1, lodged a written complaint at Bhandari Hospital and

Research Centre where the mother of the complainant, the deceased was shifted after the incident. The complainant was living with her younger brother Ankit, mother, the deceased Lalita and father, the present appellant. On 26.02.2012, the whole family went to sleep at about 8-8.30 and around 12-12.30 A.M.in the night, she heard cries of her mother. When she got up, she saw that the present appellant, her father, after throwing her mother on the floor, was sitting on her and was strangulating her. Her younger brother also got up and hearing cries of her mother, a neighbour Sanjay PW-3 also reached there. They got her mother released from hold of the present appellant. Her mother came out of the room and then she fell down and went unconscious. The complainant and her younger brother ran to call their maternal uncle Sunderlal Kaithwas PW-2, who lived nearby. When PW-2 came on the spot, neighbour Sanjay PW-3 narrated the whole story to him. She also stated in the complaint that the present appellant used to do obscene acts with her. He used to ask her to remove her clothes and also to take his private part in her mouth. The deceased Lalita used to object on this acts of the appellant and therefore, annoyed by her interference, he killed her.

3. Charges under Sections 302 and 377 of IPC were framed against the present appellant. The trial Court found that the charge under Section 377 of IPC was not made out and therefore, the present appellant was acquitted of charge under Section 377 of IPC, however, he was found guilty under Section 302 of IPC for committing murder of his wife and sentenced him to life

imprisonment as aforesaid. Aggrieved by the judgment of conviction and sentence, this present appeal is filed by the appellant.

4. Learned counsel for the State supports the judgment and prays that the conviction and sentence awarded on the present appellant be confirmed and the appeal be dismissed.

5. The question is whether the trial Court erred while placing reliance on the statements of the complainant Neha Kaithwas PW-1, her maternal uncle Sunderlal Kaithwas PW-2, her neighbour Sanjay PW-3, other relatives of the deceased Rajesh Kaithwas PW-4 and Gulabsingh PW-8.

6. Neha Kaithwas PW-1 is the complainant and daughter of the present applicant. According to her, she saw the present appellant sitting on her mother and strangulating her. Her mother was crying and listening to her cry, the neighbour Sanjay PW-3 came there who also saw the present appellant strangulating the deceased.

7. Sanjay PW-3 stated in his statement that at about 12-12.30 A.M. in the night of 26.02.2012, he heard cry of deceased Lalita. He went to the house of the present appellant and saw that the present appellant was sitting on the chest of his wife and was strangulating her. He got the deceased freed from his hold and asked the complainant and her brother to call their maternal uncle Sunderlal Kaithwas PW-2. They gave water to the deceased and she was taken in a Maruti Van to hospital. This witness stated that while the deceased was taken in the van, she informed him that the

present appellant used to do obscene acts with her daughter and when she objected, he tried to kill her. This part of his statement was not believed by the trial Court as complainant stated that after the incident her mother remained unconscious till she died.

8. The maternal uncle Sunderlal Kaithwas PW-2 reached when the complainant called him and informed him about the incident. He stated that he saw Sanjay PW-3 on the spot, who informed him about the incident. Rajesh Kaithwas, another maternal uncle of the complainant, who was also informed about the incident by the complainant and he also reached the spot immediately after the incident.

9. Dr. Ajay Kumar Soni, PW-5 is Professor and Neurologist in the Aurobindo Institute of Medical Science, Indore. According to him, due to some reason the blood flow in left carotid artery was blocked and due to this the brain of the deceased was damaged. This resulted in her death.

10. Dr. Adarsh Naneriya, PW-7 performed post-mortem on the body of the deceased. During post-mortem, multiple abrasions were found on right side of her neck, jaw and cheek and also on the left side of her neck contusions and abrasions were found due to which her skin was also torn. There were several injuries on her humerus bone, nipple and her left arm. During the post-mortem, it was found that hyoid bone of her neck was found broken.

11. In this case, the Dehati Nalishi Ex.P-1 was prepared at about 3 A.M. by Shri J.P.Trivedi, PW-9. The incident is about

12-12.30 A.M. in the night. After receiving intimation from the hospital, the police reached at the hospital and prepared the Dehati Nalishi and, therefore, the act of the police is also prompt. In Aurobindo hospital the cause of death of the deceased was given as throttling. In the post-mortem report, the death was due to asphyxia due to throttling. In the FSL, the nail cutting of the present appellant, human blood was found.

12. The complainant in this case is a minor girl of 12 years. Her statement was recorded immediately after the incident by the police. There are no contradictions and omissions in her statement before the Court. Her statement was supported by other prosecution witnesses, who reached the spot immediately after the incident. No discrepancy was pointed out by the learned counsel in the cross examination of all the witnesses to make their statement unreliable. The medical evidence also supports the theory of prosecution that she was strangulated. There were severe muscular damage and bony injuries found on her neck and blood flow in one of the major artery was blocked due to strangulation and this resulted in her death. So far as motive is concerned, though the trial Court did not rely on that portion of the statement, in which it was stated that the present appellant used to do obscene acts with his daughter, but there is nothing in the cross examination to show that she was speaking lie against her own father. There is also no possibility or suspicion shown by the defence that this witness was tutored prior to recording of her statement and neither anything is shown against

other prosecution witnesses to show that they were interested in falsely implicating the present appellant.

13. In this view of the matter, in our considered opinion, this appeal is devoid of merit and is liable to be dismissed and dismissed accordingly.

14. The judgment of conviction and sentence passed by the learned trial Judge is hereby confirmed. The sentence awarded on him under Section 302 of IPC is also confirmed. The order of the trial Court in respect of seized property is also confirmed.

This appeal stands disposed of.

C.C.as per rules.

(ALOK VERMA)
JUDGE

(VED PRAKASH SHARMA)
JUDGE

RJ