IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL
&
JUSTICE AMAR NATH (KESHARWANI)

CRIMINAL APPEAL No. 1989 OF 2012

BETWEEN :-

UMA SHANKER @ MUKESH GUPTA, SON OF RAMKRIPAL GUPTA, AGED 30 YEARS, RESIDENT OF BENISAGAR MOHALLA, PANNA, POLICE STATION KOTWALI, DISTRICT PANNA, M.P.

……...APPELLANT

(BY SANJAY PATEL AND SHRI VINIT MISHRA - ADVOCATE FOR THE APPELLANT)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION KOTWALI, DISTRICT PANNA, M.P.

…..RESPONDENT

(BY SHRI AJAY SHUKLA - GOVERNMENT ADVOCATE)

Reserved on : 13/02/2023
Pronounced on : 17/02/2023

This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement this day, ***Justice Sujoy Paul*** *pronounced the following :*

J U D G M E N T

This appeal filed under Section 374(2) of Criminal Procedure Code is directed against the judgment dated 29.8.2012 passed in

Sessions Case No.173/2010 by learned First Additional Judge to the Court of First Additional District & Sessions Judge, Panna whereby the appellant has been convicted and sentenced as under -

Convicted under Sections	Sentence
302 of the IPC	To undergo life imprisonment and fine of Rs.5000/- and in default to undergo R.I. for six months.
304B of the IPC	Nil
498A of the IPC	Nil

2. The prosecution story, in short, is that Sunderlal, the Wardboy of District Hospital Panna informed Police Station Kotwali, Panna that appellant brought his wife Savita in dead condition and accordingly a *Merg* Intimation No.52/10 was recorded under Section 174 of Cr.P.C. During the *merg* investigation, it was found that marriage of appellant with Savita was solemnized on 23.4.2008. On 17.7.2010, the dead body of Savita was found in her matrimonial house. The allegation of prosecution is that the husband, in-laws, *jeth* and *jethani* used to demand dowry and because of that dowry demand, murder of Savita had taken place.

3. After investigation, chargesheet was filed. In due course, the matter came up before the learned Sessions Judge. Appellant abjured the guilt and prayed for full-fledged trial.

4. The Court below framed five points for its determination. The prosecution introduced 12 witnesses whereas on behalf of defence, 04 witnesses entered the witness box.

5. After recording evidence and hearing the parties, the impugned judgment of conviction and sentence was passed which is the subject matter of challenge in this appeal.

Contention of appellant :

6. Shri Sanjay Patel, learned counsel for the appellant submits that the statement of Dr. N.K. Jain (P.W.10) is clear that although as per his opinion the cause of death is 'asphyxia', the 'opinion' portion shows that he has given tentative finding and there is no element of certainty in the finding. Dr. Maya Pandey PW2s statement is also relied upon wherein she deposed that she was a member of the post mortem team who had conducted the autopsy of Savita Gupta. On the one hand she deposed that reason of death is suffocation but in the second breath, she deposed that it is not possible to state that death was homicidal in nature or not.

7. The Autopsy Report (Ex.P/3) is referred to show that although cause of death is shown to be 'throttling' but in view of deposition of Dr. Maya Pandey (P.W.2), this report does not inspire confidence.

8. *Naksha Panchnama* (Ex.P/6) was referred to show that as per this report, there was no sign of bleeding from nostrils of Savita Gupta. Babita (P.W.4) is Executive Magistrate, who deposed that there was a ligature mark on the neck of the deceased. However, she clearly stated that on the person of deceased, no abrasion/bruises of other kinds were present. Thus, there is no sign of struggle on the person of deceased. Shri Mishra placed reliance on '***A Textbook of Medical Jurisprudence***

and Toxicology' of Modi (24th Edition) to submit that in cases of strangulation, ordinarily, sign of struggle are always there. In absence of any sign of struggle, a serious doubt is being created on the story of prosecution. He placed reliance on a chart mentioned in the book which differentiates the case of 'strangulation' from 'hanging'. It is further argued that no fracture had taken place in the internal bones of the neck of the deceased. Thus, with certainty, it can not be said that cause of death is throttling.

9. The testimony of PW7 Yogita Gupta, sister-in-law of deceased is referred and it was contended that she had not taken the name of present appellant while taking the names of relatives who demanded dowry and harassed/victimized the deceased. The alleged demand of dowry was at Sihora. The demand is relating to Rs.20,000/- from the family of Savita. Laxmi Prasad Gupta (P.W.8) is the father of deceased who deposed that Rs.20,000/- was given at Panna. Thus, there is inconsistencies between the statements of P.W.7 Yogita Gupta and P.W.8 Laxmi Prasad Gupta. Similarly, Smt. Santosh, the mother of deceased Savita stated that Rs.20,000/- was given at Sihora. P.W.11 Subodh Gupta, brother of deceased did not mention where Rs.20,000/- were given. Suggestion was given to Subodh by defence whether he visited the appellant. He in turn, admitted that he indeed visited the appellant in jail but categorically denied the allegation that he demanded money from the appellant to settle the dispute.

10. It is pointed out that on 19.7.2010, the statement of appellant was recorded but he was arrested only on 21.7.2010.

11. The testimony of Nishchhal Jhariya (P.W.12) is referred to bolster the submission that *merg* intimation had taken place on 19.7.2010 whereas appellant was arrested on 21.7.2010.

12. Betu (D.W.4) deposed that he used to supply milk to appellant's house. On the day of incident at 1:30 P.M., when he visited the house of appellant, the main door was partially opened. The wife of appellant was lying in the room and her daughter was weeping. Betu informed this to appellant who was sitting in a medical shop. One Bank employee was also sitting in the shop of appellant. The appellant along with that Bank employee went to his own house. The person claiming himself to be that Bank employee i.e. Ramkaran Singh Parihar (D.W.3) entered the witness box and deposed that Betu Yadav informed him and Mukesh that appellant's wife is lying on the floor and her daughter was badly weeping. Thus, both of them visited his house and took her to hospital on rickshaw. This witness also visited the hospital where wife of appellant was declared as dead. Shri Sanjay Patel, learned counsel submits that Court below has erred in disbelieving the statement of Defence Witnesses.

13. By taking this Court to the statutory provisions of Sections 498A, 304B and Section 300 of IPC one by one, Shri Patel, learned counsel for the appellant submits that Section 304B and 498A of IPC cannot be pressed into service because prosecution could not establish that soon before the death of Savita, there was any demand of dowry or any cruelty caused to her. Since, 'intention' is missing and could not be established with necessary clarity, offence under Section 302 of IPC

is not made out. Reliance is placed on **Dhaniya Bai vs. State of M.P. I.L.R. [2013] M.P. 2238, Vadugu Chanti Babu vs. State of Andhra Pradesh (2002) 6 SCC 547** and **Pradyumnasahu vs. State of Odisha** reported in **2022 Latest Caselaw 5274 Ori.** It is submitted that observation of doctor shows that no bone inside the neck was fractured and therefore, it cannot be said that any external pressure existed to strangulate the deceased. The opinion of doctor, at best, indicates a possibility and cannot be treated as proof. The judgment of Orissa High Court in **Pradyumnasahu (supra)** is cited to support the contention that prosecution could not establish that cause of death is asphyxia/throttling, therefore, the death was homicidal in nature is not established beyond reasonable doubt. Ligature mark and absence of any sign of struggle, does not support the case of prosecution. On the basis of possibility alone, the appellant cannot be held guilty.

14. At last, the judgment of Supreme Court in **Balaji Gunthu Dhule Vs. State of Maharashta (Cr. A. No.784 of 2008)** is relied upon to submit that the post mortem report at best can corroborate the evidence of eye-witness and said report alone is not sufficient to reach to conclusion of convicting the appellant. A Division Bench Judgment of this Court **Cr. A. No. 1622 of 2010 (Manoj alias Guddu Vs. State of M.P.)** is referred to bolster the submission that prosecution needs to establish with utmost clarity that the appellant and appellant alone had committed the offence. Suspension, however strong it may be, can not take the place of proof. Lastly, the judgment of the Supreme Court in **Cr.A. No.453 of 1996 (Sabimal Sarkar Vs. Shachindra Nath**

Mondal) is referred to press the point that in absence of any material to establish any intention/motive on the part of the appellant, he cannot be held guilty. The judgment delivered in **Cr.A. No.1188 of 2009 (Manohar Lal Vs. State of Haryana**) was relied upon to show that the essentials of Section 304B are not established. No specific incident has been indicated by the prosecution witnesses suggesting cruelty or harassment made by the accused.

15. Recent judgment of the Supreme Court delivered in **Cr.A. No.1348 of 2013 (Shivaji Chintappa Patil Vs. State of Maharashtra)** is relied upon to submit that the chain of circumstantial evidence must be clear and complete. The celebrated judgment of the Supreme Court in **Sharad Birdhichand Sharda Vs. State of Maharashtra** reported in **(1984) 4 SCC 116)** became the foundation of this judgment. Non-explanation of accused under Section 313 of Cr.P.C. at best can be an additional link to fortify the findings and it cannot be used as a substantive piece of evidence.

16. Shri Ajay Shukla, learned Government Counsel supported the impugned judgment and contended that the father, mother and brother of the deceased (PW-8), (PW-9) and (PW-11) respectively in clear terms deposed that the dowry was indeed given to the appellant at the time of marriage. Thereafter Rs.20,000/- as demanded by the appellant were handed over to him. All three witnesses aforesaid specifically deposed that when they had seen the dead body of Savita, they found black marks on her neck and bruises on her hands. Thus, there is no iota of doubt about unnatural death of deceased Savita.

17. Statement of Dr. N.K. Jain (PW-10) is referred to establish that he was heading the team which conducted the autopsy. Opinion of the team is clear which shows that the reason of death is asphyxia and death is homicidal in nature. The appellant although placed heavy reliance on the statement of Dr. Maya Pandey (PW-2), a careful reading of her statement shows that limited role attributed to her being a lady Doctor was to examine the private parts of the deceased – Savita. Thus, her opinion is relating to and confined to those private parts only. Thus, her statement by no stretch of imagination will improve the case of the prosecution.

18. Learned counsel for the parties confined their arguments to the extent indicated above.

19. We have heard learned counsel for the parties at length and perused the record.

<u>Findings</u> :

20. Admittedly, the marriage of appellant with Savita was solemnized on 23/04/2008. Savita died on 17/07/2010. The death was within seven years from the date of marriage and death was in suspicious circumstances.

21. The first contention of learned counsel for the appellant is based on the statement of Dr. N. K. Jain (PW-10) and Dr. Maya Pandey (PW-2). Both the said Doctors were members of the team which had conducted autopsy on the person of Savita. The 'opinion' part of postmortem report (Ex. P/3) shows that a clear finding is given by the team which reads as under :-

> "In our opinion, deceased had died due to asphyxia, caused by throttling. Duration of death is between 12 to 24 hours."

(Emphasis Supplied)

22. Dr. N.K. Jain (PW-10), Dr. Vijay Parmar and Dr. Maya Pandey were members of the said team which conducted the postmortem. Dr. N. K. Jain (PW-10) during his examination-in-chief referred about his opinion wherein in the first line, he deposed that the deceased died because of 'asphyxia' whereas in second line, he deposed that death appears to have taken place because of 'throttling'.

23. Shri Patel, learned counsel for the appellant has made an attempt to take advantage of the second line wherein it is deposed that the death *appears to have taken place because of 'throttling'.* A conjoint reading of postmortem report and his opinion leaves no room for any doubt that reason of death is 'throttling' and we have no cavil of doubt that death was homicidal which is evident by the 'opinion' of the team of three Doctors which is reduced in writing in the postmortem report.

24. The argument based on Dr. Maya Pandey (PW-2)'s statement appears to be attractive on the first blush but when her entire statement is read carefully, the argument has lost its complete shine. Para-3 of cross-examination shows that she deposed that whether death was suicidal or homicidal she cannot depose anything about it. However, when this cross-examination portion is read conjointly with her main deposition/examination-in-chief, it will be clear like noon-day that her role in the team which conducted the autopsy was limited and she was only required to give finding after examining the private parts of the

deceased. Thus, we are unable to persuade ourselves with the line of argument of learned counsel for the appellant. The prosecution, in our opinion, proved it beyond reasonable doubt that death of Savita was homicidal in nature and cause of death is throttling.

25. The *Naksha Panchnama* (Ex.P/6) and statement of Babita, Executive Magistrate (PW-4) was referred to show that the only injury found on the person of deceased was a ligature mark on her neck. As per aforesaid material, there exist no sign of struggle on the person of deceased. We do not see much merit in this contention. We could not see any finding in ***'A Textbook of Medical Jurisprudence and Toxicology' of Modi'*** that as a rule in cases of 'throttling', the sign of struggle must be there. On the contrary from the above book following passage is worth considering :-

> "Garrotting is another method that was used by thugs around 1862 in India. A rope or a loincloth is suddenly thrown over the head and quickly tightened around neck. Due to sudden loss of consciousness, there is no struggle."
>
> **(Emphasis Supplied)**

In ***Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, Eighth Edition***, at page no.194, the author opined as under :-

> "In an adult, signs of struggle and usually present, but if the throat is seized and firmly compressed, the victim cannot struggle."

26. As a rule of thumb it cannot be said that in absence of any clear sign of struggle on the person of deceased, the possibility of throttling

is totally ruled out. We find no reason to doubt the finding of postmortem team which opined that reason of death is 'throttling'. Thus, this argument of appellant deserves to be rejected. We find support in our view from a Division Bench judgment of Gujarat High Court in **Criminal Appeal No.1156 of 2009 (Mavjibhai Ramjibhai Taviyad vs. State of Gujarat)**. The relevant portion reads as under :-

> "**7.4** What flows with certainty from the medical evidence is that the death was by strangulation. The strangulation may be suicidal, homicidal or accidental. In homicidal strangulation, there is a single turn of ligature round the neck with one or more knots. The same is the position in the present case. The evidence of struggle may be there or may not be there, depending upon the facts and circumstances of each case and the preceding conditions in committing of crime. Therefore, merely because there is no injury and there are no struggling acts on part of the deceased indicated, thereby alone it cannot be concluded that the nature of death was not homicidal."
>
> **(Emphasis Supplied)**

27. Furthermore, it is argued that Yogita Gupta (PW-7), sister-in-law of deceased, did not take the name of present appellant whereas name of other relatives were taken relating to demand of dowry. A minute reading of statement of Yogita Gupta (PW-7) makes it clear that she did not take the name of present appellant in the first para of her deposition but in para-2 she made it clear that appellant also demanded money/dowry. In para-3, she made it clear that when she entered the mortuary of Panna Hospital, she found the dead body of Savita and there were black marks on her neck whereas in her hands the sign of

bruises were there. Thus, statement of Yogita Gupta (PW-7) is of no assistance to the appellant.

28. An attempt is made by learned counsel for the appellant to show that demand and handing over of Rs.20,000/- to appellant by the family members of deceased is relating to different places. In other words, there is cleavage of opinion amongst Yogita Gupta (PW-7), Laxmi Prasad Gupta (PW-8) and Subodh Gupta (PW-11) regarding the town where said amount of Rs.20,000/- was given.

29. All the said witnesses unequivocally deposed that Rs.20,000/- were demanded by the appellant and same were given to him by family members of deceased. The memory fades with passage of time. Thus, if place of town is different in somebody's deposition, it will not cause any serious dent on the story of the prosecution.

30. Subodh Gupta (PW-11) brother of deceased in his cross-examination admitted that he visited the appellant in jail but this statement will not make his deposition as unreliable.

31. Section 304B of IPC was referred to submit that there is no material to show that demand of dowry was soon before the death of deceased. The phrase '*soon before*' used in Section 304B of IPC was interpreted by the Supreme Court in catena of judgments. In **Satbir Singh Vs. State of Haryana** reported in **(2021) (6) SCC 1**, the Apex Court opined as under :-

> **"15.** Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon

> before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exactly the phrase "soon before" entails."
>
> **(Emphasis Supplied)**

32. The Apex Court gave above finding after considering the catena of judgments. This principle was recently followed in **Devendra Singh Vs. State of Uttarakand** reported in **2022 SCC OnLine SC 489**. It was clearly held that it is trite that phrase 'soon before death' ought to be interpreted to mean proximate and to be linked with but not to be understood to mean immediately prior to the death. If present case is examined on the anvil of litmus test laid down by the Apex Court in **Satbir Singh and Devendra Singh** (Supra), it will be clear like cloudless sky that there is no need to establish the exact date and time when dowry was actually demanded and paid. No mathematical precision or accuracy is expected in the statute. What is expected is close proximity with the incident and demand. The factual backdrop of this matter shows that Savita died within seven years from the date of marriage. To be precise, she was married on 23.04.2008 and died on 17.07.2010. The demand of dowry and incident of cruelty have taken place during this intervening period. The unshaken statements of Yogita Gupta (PW-7), Laxmi Prasad Gupta (PW-8), Santosh (PW-9) and Subodh Gupta(PW-11) are in the same line that dowry was indeed

demanded by the appellant soon before the death of Savita. In this view of the matter, we are unable to hold that necessary ingredients for attracting Section 304B and Section 498A of IPC were not present in the instant case.

33. The appellant has placed reliance on the judgment of **Dhaiya Bai, Vadugu Chanti Babu and Pradyumnasahu (Supra)** to contend that observation of Doctor that no bone inside the neck was fractured and therefore, it cannot be said that any external pressure existed, cannot be accepted in view of the categorical finding in the autopsy report that cause of death of Savita is ‘throttling’. In **Pradyumnasahu (Supra)**, the Odisha High Court disbelieved the story of prosecution because in the factual backdrop of that case prosecution could not establish beyond reasonable doubt that cause of death is asphyxia / throttling. We have already recorded our satisfaction relating to the cause of death mentioned in the autopsy report. Thus, judgment of **Pradyumnasahu (Supra)** is of no assistance to the appellant.

34. In **Balaji Gunthu Dhule (Supra)** the Apex Court opined that the postmortem report is a piece of corroborative evidence. This Court in **Manoj @ Guddu (Supra)** made it clear that the entire chain of circumstances must be established with utmost clarity. Suffice it to say that in the instant case, the postmortem report is treated to be a corroborative piece of evidence by the Court below. The report supported the statement of Dr. Jain (PW-10). The chain of circumstances were also meticulously proved by the prosecution. Right from the date of marriage till the date of death, the incidents were

narrated by family members/prosecution witnesses to show that periodically dowry demands were made by the appellant. The appellant also caused cruelty on his wife Savita. Thus, these judgments are of no help to the appellant.

35. In **Subimal Sarkar (Supra)** the benefit was given to the appellant for want of showing the intention on his part. In view of legislative intention and mandate ingrained in Section 304B and 498A of IPC, the 'motive' is not required to be established separately. A suspicious death of a woman within 7 years of her marriage in her matrimonial house expects that a plausible explanation of her death will be given by the husband / family members.

36. The judgment of **Manohar Lal** (supra) was referred to show that specific incidents have not been shown by the prosecution witnesses. The said judgment cannot be made applicable in the instant case because the parents and brother of Savita in no uncertain terms deposed about the demand of dowry by appellant and cruelty caused by him. It is not expected from the family members of the deceased to keep a record of each and every misbehaviour/cruelty date-wise in a diary. Their statements could not be demolished during extensive cross–examination. A conjoint reading of statements of family members makes it clear that dowry was indeed demanded by the appellant and Rs.20,000/- were handed over to him by the family members of deceased- Savita.

37. So far testimony of defence witnesses are concerned, the Court below has considered their testimony in para-20 of the impugned

judgment. No neighbour of appellant has entered the witness box to depose that on the date of incident anybody else has entered or left the house where the dead body of Savita was found. Ramshankar (D.W.1) and Ramkripal (D.W.2) were examined before the Court below and they stated that on the date of incident, except Savita and Mukesh, all family members were present in Kishorji Temple in a *Mundan* ceremony of a child. Thus, Court below has rightly opined that as per the stand of defence itself, appellant was not present with his family members in the *Mundan* ceremony. We have also considered the statements of Jayram Sharma (P.W.3) and Naib Tahsildar Smt. Babita Rathor (P.W.4). P.W.4 deposed that she did not inform the police regarding the incident when she accompanied appellant to hospital alongwith the dead body. Thus, Court below held that their statements appear to be afterthought and did not inspire confidence. In our judgment, the Court below has taken a plausible view which does not require any interference.

38. As noticed above, we have given our stamp of approval on the chain of circumstantial evidence established by the prosecution in the instant case. Thus, the judgment of **Shivaji Chintappa Patil** (supra) and **Sharad Birdhichand Sharda** (supra) are of no assistance to the appellant.

39. In view of foregoing analysis, it is clear that the prosecution has established its case before the Court below beyond reasonable doubt. In absence of any procedural impropriety or perversity in the decision making process and in the judgment, we deem it proper to give our

stamp of approval to the judgment dated 29.08.2012 passed in Sessions Trial No.173 of 2010. Resultantly, the appeal fails and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

PK