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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.9 OF 2014**

Suresh Ladak Bhagat
(at present undergoing sentence at
Thane Jail) of Thane Indian Inhabitant
and residing at Modgaon, Sawarpada,
Taluka – Dahanu, District – Thane. Appellant
... (Orig. Accused)

V/s.

The State of Maharashtra
(At the instance of Kasa Police Station, Respondent
Dist. Thane) ... (Orig. Complainant)

Mr. Samir Arunkumar Vaidya a/w Mr. Hare Krishna Mishra,
Advocates for the Appellant.

Ms. M.M. Deshmukh, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

DATE : 19th APRIL, 2022

JUDGMENT : (Per Sadhana S. Jadhav, J.)

1. The appellant herein is convicted for the offence punishable under section 302 of Indian Penal code and sentenced to suffer R.I. for life and fine of Rs.5,000/- by the Additional Sessions, Palghar in Sessions Case No.5 of 2011 vide judgment and order dated 16th August 2013. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows:-

(i) On 18.10.2010, Laxman Daji Bhoje lodged a report at Kasa Police Station alleging therein that on 18.10.2010, in the afternoon at about 12.00 noon, one person from Sawarpada informed him that on 17.10.2010 at night Suresh Bhagat had killed his wife Lalita Bhagat. He went to the spot to verify the same. He saw Suresh Bhagat ('the present appellant') seated besides the dead body of his wife who was lying in a pool of blood. Upon inquiry with Suresh he disclosed that when he returned home from the house of his relatives after watching television, he knocked on the door. There was no response. He therefore entered the house through the window. He noticed that his wife was in deep sleep. He assaulted on her head and back and thereafter paid no attention to her. In the morning, at about 6.00 am, he realized that his wife has passed away. Upon receipt of the said information from Suresh Bhagat, P.W.1 informed the Police about the history narrated by Suresh and on the basis of the said FIR, Crime No.79 of 2010 was registered against Suresh Bhagat at Kasa Police Station for the offence punishable under section 302 of the Indian Penal Code. After completion of investigation, charge sheet was filed.

The prosecution has examined five witnesses to bring home the guilt of the accused.

(ii) The case mainly rests on the evidence of P.W.1 - Laxman Bhoje as according to the prosecution, there is an extra-judicial confession by the accused.

3. P.W.1 - Laxman Bhoje has stated before the Court that on the day of incident, he was at his home when the villagers informed him frantically that the appellant has killed his wife. P.W.1 had visited the house of the appellant. He saw that Suresh was seated next to his dead wife. In his substantive evidence he has not deposed about the disclosure statement made by the accused to him on the night of 17th. However, he has not referred to the extra-judicial confession made by the accused and has deposed before the Court that upon inquiry of the said incident, the accused told him that his wife was dead. The witness is therefore declared hostile. However, the witness has admitted to have stated the contents of the FIR before the Police.

4. P.W.2 – Savji Bhagat happens to be the brother of the accused Suresh and resides at a distance of one furlong from the house of the accused. According to him, on 17th in the morning, his brother

Suresh informed him that his wife was not talking. He, therefore, accompanied his brother to his wife and saw his wife lying in their house. P.W.2 is also declared hostile. He was confronted with portion marked 'A' and 'B' of his statement under section 313 of Cr.PC and he has admitted to have stated so before the Police. In the cross-examination, he has denied that he had stated so before the Police. He has deposed that his statement was not recorded by the Police.

5. PW.3 – Santosh Shingda who has acted as a Panch for the scene of offence is also declared hostile.

6. PW.4 – Ganesh Sawar has stated before the Police that at the request of the Police Officer of Kasa Police Station, he had visited the house on 18.10.2010 and noticed that dead body of the wife of the Suresh Bhagat was lying in the house. The cross-examination is of no consequence.

7. PW.5 – Devram Vadmare was attached to Kasa Police Station as API. According to him, on 18.10.2010 Laxman Bhoje has lodged a report and stated that he had seen the dead body of one Lalita in her house and according to the first informant she was killed by her husband. Hence, the crime was registered. He had then taken

steps in the investigation. He has proved the omissions and contradictions of the witnesses. It is elicited in the cross-examination that the house of the accused has thatched walls and thatched roof. It had transpired in the course of investigation that the deceased was gainfully employed and was addicted to consumption of alcohol. He has denied the suggestion that it had transpired in the course on investigation that on the day of the incident the deceased had returned home under the influence of alcohol and on her way home she had fallen down at various places due to which she had sustained several injuries on her body. She had sustained injury to her head.

8. The inquest panchanama would show that there were several abrasions on her hands. At a distance of 50 feet from the house, there is a nullah. He has denied the suggestion that it had transpired in the investigation that the deceased had fallen in the nullah under the influence of alcohol and that her husband lifted her and brought her home and thereafter, he also consumed alcohol and retired for sleep. The police had not recorded the statement of any person living in that locality. It is admitted that the contents of the spot panchanama initially did not show as to when the panchanama was conducted, however, the time has been filled in the blank. P.W.5 has

volunteered that the witnesses were not willing to give any statement. In fact, the only incriminating circumstance as against the accused is that the dead body was found in the house of the accused and that when P.W.1 and the Police arrived at his house the accused was simply found to be sitting next to his deceased wife.

9. That, Column No.17 of the post-mortem notes would show the following injuries:-

- “(1) 5 x 1 cm CLW one left side 9 fatal bone.
- (2) CLW and skull 4 cm x 1 cm x 2 cm.
- (3) # left size of mandible.
- (4) 5 x 5 cm CLW at back (left).
- (5) 5 x 5 cm CLW on back (m) (-----).
- (6) Contusion on low back (-----).
- (7) Contusion on shoulder.
- (8) Abrasion on left elbow.
- (9) Abrasion on Rt. & left knee.”
- (10) Age of injury approx. 18 – 24 hr.”

10. It is pertinent to note that the post-mortem notes are admitted by the accused under section 294 of the Code of Criminal Procedure. That, the deceased had sustained a fracture of skull and fracture of left side of mandible and contused lacerated wound on the back, contusion on the shoulder.

11. It is the case of the prosecution that the accused appellant is the author of the said injuries and to substantiate the same the

prosecution has placed reliance upon Exh.29 which is the memorandum for recovery of weapon and Exh.29A which is the recovery of the alleged weapon.

12. Exh.29 and Exh.29A would indicate that at a distance of 10 ft. from the house of the accused, there was a carton of cardboard containing newspaper. A bamboo stick admeasuring 62 cm with a diameter of 9 cm was concealed below the newspapers and the same was recovered at the instance of the accused under section 27 of the Indian Evidence Act. The time of recording the said panchanama does not find place on Exh.29A. It has been interpolated subsequently just like filling in the blanks. The said panchanama is not proved in accordance with law and it would be difficult to hold that the said piece of bamboo stick which was recovered at the instance of the accused was used for assaulting deceased Lalita.

13. The question before us would be as to what is the evidence as against the accused which would lead to a necessary inference that the accused is the author of the injuries sustained by the deceased Lalita. Except for the fact that the dead body was found in his house. Section 3 of the Evidence Act reads thus:-

“Evidence. - means and include;

Proved. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

14. An accused can be convicted only in the eventuality that the investigation places on record such material which could be converted into admissible evidence and can be read in evidence. In the present case, in view of the nature of the evidence adduced by the prosecution, it would be difficult to act upon the supposition that the fact of homicidal death at the hands of the accused is proved.

15. The learned counsel for the appellant has submitted that this is a case of no evidence in the eyes of law and hence, the accused deserves to be acquitted of the charge levelled against him.

16. Per contra, the learned APP has submitted that it is incumbent upon the accused to offer an explanation as contemplated under section 106 of the Indian Evidence Act and the very fact that the dead body is found in the house of the accused and he has not put forth any plausible explanation is sufficient to convict the accused for an offence punishable under section 302 of Indian Penal Code. The

learned APP has further submitted that there is an extra-judicial confession before P.W.1 which goes to the root of the matter and points towards the culpability of the accused.

17. Section 106 of the Indian Evidence Act reads as follows:

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

18. However, Section 106 of the Indian Evidence Act does not discharge the initial burden on the prosecution to prove its case beyond reasonable doubt. Unless the prosecution is able to stand on its own legs and give a conclusive proof of the fact that the accused is the author of the injuries sustained by his wife the onus would not shift upon the accused to explain the circumstances in which his wife has died, and her dead body is found in the house occupied by the accused and the deceased. It is a settled principle of criminal jurisprudence that an accused has a right to maintain silence and it is for the prosecution to prove its case beyond reasonable doubt. In the present case, the defence has given suggestions that the deceased was addicted to alcohol and that on her way home she had fallen in the nullah and had sustained the said injuries.

19. As far as extra-judicial confession is concerned, the same is not reliable for the simple reason that the person to whom the purported extra-judicial confession was made has resiled from his earlier statement and has been declared hostile by the prosecution. Even if he has admitted to have stated so before the Police, it was incumbent upon the prosecution to establish that a reliable extra-judicial confession was rather made to P.W.1.

20. An extra-judicial confession is a weak piece of evidence and can be relied upon provided, it is voluntary and is made in a fit state of mind. It would be apt to refer to the judgment of the Supreme Court in the case of *State of Rajasthan vs. Rajaram*¹, wherein the Supreme Court has held that “an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has made. The value of the evidence depends on the reliability of the witness who gives the evidence.”

21. Hence, the question as to whether extra-judicial confession made to P.W.1 is proved in accordance with law and the answer would

1. (2003) Cr.L.J. 3901

have to be necessarily in the negative. Hence, this could be a case of no evidence and thus, falls in the category of disproved. In view of the above discussion, we pass the following order:-

ORDER

- (i) The Appeal is allowed;
- (ii) The Judgment and order passed by the Additional Sessions, Palghar in Sessions Case No.5 of 2011 vide Judgment and Order dated 16.08.2013 is hereby quashed and set aside;
- (iii) The Appellant is acquitted of the offence punishable under section 302 of the Indian Penal Code;
- (iv) The Appellant be released forthwith if not required in any other offence;
- (v) Fine amount, if paid, be refunded;
- (vi) Appeal is disposed of on above terms.

(MILIND N. JADHAV, J.)

(SMT. SADHANA S. JADHAV, J.)