

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).42 of 2010

VIJAY NATHALAL GOHIL

Appellant(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

J U D G M E N TINDIRA BANERJEE, J.

1. This appeal is against the final judgment and order dated 21.03.2009 passed by the High Court of Judicature at Bombay in Criminal Appeal No.4 of 2003, upholding the conviction and sentence of imprisonment of the appellant for life awarded by the Additional Sessions Judge under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC'). The appellant has however been fully exonerated from the charges under Sections 498A and 304B IPC.

2. Stated briefly, the appellant was married to the deceased. They had two children. The Trial Court/High Court found that the appellant and the members of his family ill-treated the deceased and there were frequent altercations between the husband and the wife. The appellant had even left his wife at the home of her parents at Rajkot where she

lived for some time. However, she was later brought back and the appellant and the deceased started living in a room adjacent to the embroidery factory of the appellant.

3. On 21.05.1990, the appellant went to the police station and reported the death of his wife. He stated that she had consumed poison. His statement and the statements of some others were recorded on the same day. It appears that the appellant gave a bottle of poison to the police in the presence of panchas claiming that the deceased had consumed poison from the said bottle.

4. Thereafter investigation was started and an FIR was registered. Postmortem examination of the body of the deceased was conducted. The postmortem examination indicates murder.

5. The prosecution has examined nine witnesses. It may be pertinent to refer to the evidence of Dr. Ashok Gangaram Shinde, the prosecution witness no.6 who conducted the postmortem. This witness stated that there were about 13 injuries around the mouth and neck and there also internal injuries as also internal hemorrhage. This witness also found 19 linear abrasions and 5 contusions. The injuries were all ante-mortem. This witness opined that it was a case of violent asphyxial death in the form of suffocation by use of the hands, causing smotherings.

6. This witness being the postmortem doctor, found that all the 13 injuries were less than 12 hours prior to death. Significantly, the doctor (PW6) also observed that there were more injuries on the dead body than those shown in the panchnama that had been prepared before starting the postmortem. These discrepancies were major and external injuries corresponding to the internal injuries found in the postmortem had not been recorded in the Panchnama. PW6 clearly stated that he had drawn the attention of the Investigating Officer to the aforesaid discrepancies. The final cause of the death was recorded in the postmortem report as "death due to violent asphyxia with Organo Phosphorus poisoning (unnatural)". From the postmortem report there can be no doubt that the death was not due to suicide as sought to be portrayed by the appellant before the police authorities.

7. The High Court has very rightly relied on the statements made by the appellant under Section 313 Cr.P.C. and also the evidence given by the brother of the deceased to the effect that he found marks of the nails piercing the cheeks of the deceased on both the sides as well as the throat. There were marks of injuries on both her wrists and marks of bangle glasses in both her wrists.

8. The appellant has, in his statement under Section 313 Cr.P.C., stated that the appellant and the deceased were

residing together in a room adjacent to his factory. He did not deny his presence at the place of occurrence. Reference may be made to question nos.21, 22, 23, 24 of the statement under Section 313 Cr.P.C. In question no.21 the appellant was specifically asked "It is the evidence of PW3 Duttakumar Khambe that you accused no.1 were residing with your wife in some of the rooms of your factory. After your wife's death you produced one poison bottle to the police". The appellant replied that was correct. The appellant was again asked that it was the evidence of PW4 Pravinchandra Parmar that the appellant had been staying with his wife in the room of his factory for about 2 ½ month's prior to the incident of her death. In reply he stated that was also correct. The next question was that it was the evidence of PW7 Vijay Kadam and PW8 Police Sub-Inspector Jadhav that the appellant reported to PW8 S.I. Yadhav that his wife had died due to consumption of poison at his residence. In answer to the aforesaid question, the appellant said that was correct. In answer to Question No. 24, the appellant said that the evidence of Police Sub-Inspector Yadhav that the appellant had produced an empty plastic bottle as proof of poison taken by the deceased was correct.

9. The High Court has after considering the evidence in detail upheld the conviction under Section 302 IPC. The High Court and the Trial Court having concurred in their findings

with regard to the guilt of the appellant, we find no grounds for a different conclusion. The conviction under Sections 498A and 304B IPC has been set aside as the High Court had doubts as to whether a person could be convicted both under Sections 302 and 304B IPC. We need not go into this aspect since there is no appeal by the State.

10. Much emphasis has been put on the fact that there were no eye-witnesses and that the conviction had been affirmed on the basis of circumstantial evidence.

11. Though the evidence may be circumstantial, the circumstances established rule out any reasonable likelihood of innocence of the appellant. The attempt of the appellant to pass off the murder of the deceased as a case of suicide by consumption of poison, notwithstanding the unexplained fresh injuries externally visible and found ante mortem upon post mortem examination, along with other circumstances noted above, including in particular the circumstance that the deceased resided with the appellant adjacent to the factory of the appellant, establishes the guilt of the appellant beyond reasonable doubt.

12. It was nobody's case that the appellant was not present at the place of occurrence when the incident took place. On the other hand, the appellant, as per his own statement under Section 313 Cr.P.C., handed over a bottle of poison to the

police, stating that the deceased had consumed poison from the bottle. This establishes his presence at the place of occurrence. The injuries and the nail marks evince resistance by the deceased to forcible administration of poison. The deceased was murdered. The chain of circumstances establishing the guilt of the appellant is complete and unbroken.

13. We are of the view that the trial court and the High Court rightly took the view, in effect, that the chain of circumstances could not lead to any conclusion other than the conclusion which has been arrived at in this case. We are not inclined to interfere with the judgment and order under appeal which is affirmed and accordingly the appeal dismissed.

.....J.
(INDIRA BANERJEE)

.....J.
(SANJIV KHANNA)

NEW DELHI;
SEPTEMBER 3, 2019

ITEM NO.119

COURT NO.14

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).42/2010

VIJAY NATHALAL GOHIL

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

(Heard by HON'BLE INDIRA BANERJEE AND HON'BLE SANJIV KHANNA)

Date : 03-09-2019 This appeal was called on for hearing today.

For Appellant(s) Mr. Shantwanu Singh, Adv.
Mr. Pragya Singh, Adv.
Mr. Ashok Kumar Singh, AOR

For Respondent(s) Mr. Anoop Khanduri, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Hon'ble Ms. Justice Indira Banerjee pronounced the judgment of the Bench comprising Her Ladyship and Hon'ble Mr. Justice Sanjiv Khanna.

The appeal is dismissed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of.

(KAVITA PAHUJA)
COURT MASTER (SH)

(RAJINDER KAUR)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)