

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.400 OF 2016
WITH
CRIMINAL APPLICATION NO.1207 OF 2020
WITH
CRIMINAL APPLICATION NO.859 OF 2019

Mahesh Shamrao Pawar

Age : 30, Occ.: Medical Practitioner

R/at : Tarale, Tal : Patan, Dist.: Satara

Kalamba Central Prison.

... Appellant

V/s.

State of Maharashtra

(Through Umbraj Police Station)

... Respondent

Mr. Niteen Pradhan a/w Ms. Ameeta Kuttikrishnan, Mr. Ramsingh Rajput, Ms. Tanvi Tapkire, Mr. Amey Mahadik and Mr. Anthony Nadar i/b. Ms. Shubhada Khot, Advocate for the Appellant.

Ms. M.H. Mhatre, APP for the Respondent - State.

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

JUDGMENT RESERVED ON : 2nd FEBRUARY 2021.

JUDGMENT PRONOUNCED ON : 31st MARCH 2021.

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

1. The accused – appellant herein takes an exception to the judgment and order dated 16th May 2016 passed by the Additional Sessions Judge, Karad in Sessions Case No.31 of 2008 thereby convicting the appellant for the offences punishable under section 302

of the Indian Penal Code and sentencing him to suffer imprisonment for life and fine of Rs.3,000/- in default to suffer SI for 3 months.

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

(i) That, on 20th November 2007 Arjun Sawant – father of the deceased Rajashri lodged a report at Tarale Police Station alleging therein that his daughter was married to the accused Mahesh on 3rd June 2005. Both the husband and wife were practising Doctors with a Degree in Bachelor of Homeopathy in Medical Sciences. The couple was blessed with a daughter named Sae. According to the complainant, on 20th November 2007 at about 5.00 am, the neighbour of the accused had called upon the complainant and informed him that when Rajashri was proceeding to answer nature's call she had fallen down, sustained injuries and was admitted in Siddhivinayak Hospital at Karad. The complainant – P.W.5 and his relatives reached Siddhivinayak Hospital at about 7.00 am. That, Rajashri was on life support. Doctor informed them that Rajashri had expired. The autopsy was performed on the dead body of Rajashri and the cause of death was shown as "throttling". P.W.5 has further alleged that on 19th

November 2007 the couple had been to Karad for performing Pooja on the plot where they intended to construct a Hospital. The couple had then returned to Tarale whereas the parents of the accused had stayed back at Karad. That the couple had a quarrel over some reason unknown to the complainant and thereafter, the accused had throttled his wife Rajashri. On the basis of the said complaint, Crime No.144 of 2007 was registered at Umbraj Police Station for the offences punishable under section 302 and 201 of the Indian Penal and Code. The prosecution examined as many as 12 witnesses to bring home the guilt of the accused. The prosecution has placed implicit reliance upon the evidence of P.W.5 i.e. the complainant. P.W.6 Dr. Amreesh Sawant who happens to be the brother of the deceased Rajashri, P.W.9 – Dr. Dilip Pandurang Patil who was working as Doctor in Siddhivinayak Hospital and had issued the medical certificates which are at Exh.103 and had identified the signature of Dr. Avinash Patil at Exh.92/1 and 92/9, P.W.10 – Dr. Jeevan Rahoti was the Medical Officer at Civil Hospital, Satara and has proved the medical certificate of accused at Exh.106. P.W.11 – Dr.Dhondiram Jadhav who had performed autopsy on the dead body of Rajashri and P.W.12 is the Prakash Kumar Patil, the Investigating Officer in Crime No.144/2007 registered at Umbraj

Police Station.

(ii) However, it is to be noted that P.W.1 is the panch for the scene of offence panchanama. He has proved the contents of the scene of offence panchanama :-

(iii) The witnesses in the present case are of three classes :-

First class is of the relatives of the victim :-

- (a) Father of the victim Arjun Sawant - P.W.5;
- (b) Brother of the victim – Dr. Amarsinh Sawant, P.W.6, who had a telephonic conversation with her on 19th November 2007 at 5.00 pm when he learnt that she had left Karad for Tarale along with her husband after Bhoomi Poojan Program.

Second class would be of the neighbours of the accused and the deceased who had seen the deceased after she had fallen down in Pendase Wada and had brought her to Siddhivinayak Hospital at Karad.

- (a) P.W.2 – Rajendra Deshmukh resides as a tenant in the wada of Nirmala Pendase.
- (b) P.W.3 – Nirmala Pendase (Hostile witness) was the land lady.

The third class of witnesses is Doctors who had examined the deceased and accused.

- (a) P.W.7 – Dr. Shashikant Lahoti runs a private clinic at Tarale and according to him, on 20th November 2007 at about 3.00 to 3.30 am, the son of Deshmukh (Talathi) had requested him to examine Rajashri who had fallen on the ground;
- (b) P.W.8 - Pradip Kadam, the Medical Officer at Siddhivinayak Hospital;
- (c) P.W.9 – Dr. Dilip Patil attached to ICU Siddhivinayak Hospital.
- (d) P.W.10 - Dr. Jivan Lahoti had examined the accused at about 9.45 pm on 20th November 2007;
- (e) P.W.11 – Dr. Dhondiram Jadhav was attached to Sub-District Hospital at Karad and had performed autopsy on the dead body of the deceased and;
- (f) P.W.12 – is the Investigating Officer.

3. It is proved that the accused was residing in the wada owned by P.W.3 – Nirmala Pendase (Hostile witness) who is the landlady. It is proved that the said wada has a courtyard in the centre of the wada. P.W.1 – Shivaji Ghadge, the panch for the scene of offence panchanama has deposed before the Court that upon entering into the

wada he had seen broken bangles and two mobile handsets. There were domestic articles. The said wada is in the heart of the village. The recitals of the spot panchanama (Exh.42) which is drawn on 21st November 2007 at about 10.50 am show that two mobile handsets and broken bangles were lying in the courtyard. They had entered the house of the accused. There is a canister for keeping grains. On the eastern side, there is a small bathroom. There was a mobile handset of Motorola Company which was kept for charging, a suing machine and broken pieces of bangles scattered on the floor. The accused was present at the time of conducting the scene of offence panchanama. There was a mobile handset of Sezam Company with charger. The toilet is at a distance of 100 ft. from the house of the accused. According to the accused, when she was proceeding to go to the toilet she had fallen at the threshold and had sustained injuries. She was therefore, taken to the Hospital and she died. At the spot, one handset of Motorola Company with charger, broken bangle pieces, peach colour hankerchief with multiple stains of vermilion were seized. P.W.1 stated that he had not seen any W.C. in the wada at the time of panchanama and that in fact, the wada is blocked by building on all four sides but the courtyard is in the centre of wada. P.W.1 claims to be a social

worker and an active member of Nationalist Congress Party.

4. PW.2 – Rajendra Deshmukh also resides as a tenant in the wada of Nirmala Pendase i.e. P.W.3. The accused happened to be his neighbour. According to him, on the day of incident, it was Mrs. Pendase who woke him up and informed that Rajashri had fallen down. He saw that Rajashri had fallen down near the door of the accused and her head was on the threshold of the house. P.W.2 along with Mrs. Pendase had picked her up and put her in the jeep of Prakash Jadhav and she was taken to the Siddhivinayak Hospital at Karad. The jeep was called by Mrs. Pendase. The accused had come to the hospital and soon Rajashri was declared dead. P.W.2 had acted as a panch. Inquest panchanama is at Exh.45. At the time of inquest panchanama, it was noticed that there were bruises on her lips, cheeks and nose, there were small scratches on the mouth and neck. Accidental death was registered under section 174 of Cr.P.C.

5. PW.3 – Nirmala Pendase, land lady is declared hostile. She has admitted that the accused and P.W.2 were her tenants. She had seen Rajashri at the door step of the house fallen in supine position. She has feigned ignorance to the fact that Rajendra Deshmukh and

Mahesh Pawar had taken Rajashri to the Hospital in the jeep of Banda Jadhav. But she has admitted that soon after the incident Mahesh and Rajendra had taken Rajashri inside the house. She followed them. At that time, Mahesh attempted to take steps to see that Rajashri regains consciousness. She has stated that she does not recollect as to whether her supplementary statement is recorded. However, her supplementary statement was recorded on 30th November 2007. According to her, Police had not read over her statement to her. Despite all these contradictions she has categorically admitted the presence of the accused in the wada at the time of the incident by admitting to have stated before the Police that he had tried to revive his wife Rajashri.

6. PW.4 – Prakash Jadhav also has been declared hostile by the prosecution. PW.4 was the Driver of the jeep in which Rajashri was taken to the Hospital.

7. PW.5 – Arjun Sawant happens to be the father of the deceased Rajashri. According to him, at the time of marriage the accused was practising at Tarale Taluka Patan. The parents of the accused and his siblings were residing jointly at Tarale. That, at the time of incident Rajashri was carrying pregnancy of 2½ months. On

28th November 2007 he received a call from Rajendra Deshmukh (Talathi) informing him that Rajashri had fallen while going to answer nature's call, she is serious and therefore, admitted in Siddhivinayak Hospital at Karad. He reached the Hospital at 7.00 am. He saw Rajashri in I.C.U. and soon thereafter, the Doctor informed him that she has expired. After the funeral, the Police informed him that the post-mortem notes indicate that the cause of death is throttling. He had then lodged a report at outpost Tarale. According to him, on 19th November 2007, after Bhoomi Poojan of the bungalow the accused and Rajashri had returned to Tarale. That, his son Dr. Amarsinh Sawant had called upon Rajashri and at that time, she had informed him that she has returned to village Tarale along with her husband and that the other members have stayed back at Karad. Same information was given by Rajashri to her sister Sunita. According to him, when he visited the house of Rajashri after the funeral he saw that the accused had created a scene to show that Rajashri had fallen on her way to the lavatory. He has proved the contents of the FIR which is marked at Exh.58. He had learnt from his son and his daughter that the accused and the deceased had returned to village Tarale. That, he had specifically stated that his son Dr. Amarsinh Sawant - P.W.6 had called

Rajashri at 5.00 pm whereas his daughter Sunita had called upon Rajashri at 8.00 pm and on both occasions Rajashri had stated that she had returned to village Tarale along with her husband. Certain photographs were shown to P.W.5 which he has admitted to be that of his daughter and son-in-law. According to him, name of the mother of the accused is Sunanda whereas his father's name is Shyamrao and the name of their clinic at Tarale is 'Nanda-Shyam'. That, accused was in-charge of the Clinic at Koparde whereas Nanda-Shyam Clinic at Koparde, Taluka Satara was run by Rajashri and she has a consultancy room in Nanda-Shyam Clinic at Tarale.

8. P.W.6 – Dr. Amarsinh Sawant is the brother of the deceased Rajashri. According to him, both the husband and wife were practising at Tarale. He has corroborated the evidence of P.W.5. According to him, he had spoken to his sister at about 5.00 pm to discuss about the medicines to be kept in OPD and at that time, he had learnt that she had returned from Karad to village Tarale along with her husband. He was next to his sister Sunita when she spoke to the accused and the deceased at 8.00 pm. That, a loan was raised in the name of Rajashri at the time of the marriage of Vidya, the sister of the accused and she had also taken a loan for the purchase of a plot at Karad. It is admitted

that there is no reference to the phone calls made to Rajashri in Exh.58. He had also attended Bhoomi Poojan Program at Karad.

9. PW.7 – Dr. Shashikant is declared hostile.

10. PW.8 – Dr. Pradip Kadam, R.M.O. at Siddhivinayak Hospital has deposed before the Court that according to him, 6 Doctors were attached to the clinic. He has deposed before the Court that on 20th November 2007 at about 5.00 am a lady patient was admitted in the Hospital. The relative of the patient narrated the history “as unconscious due to fall”. Upon examination, he had not found any head injury but pulse and blood pressure was not recordable. Since, he had some doubt he called Dr. Avinash Patil. He did not examine the patient. He asked the relative of the patient to shift the patient to Cottage Hospital for post-mortem. He has proved the medical case papers of the victim which are at Exh.92/1 to 92/9. The recitals of Exh.92/1 are as follows :-

“History told by Dr. Mahesh Pawar.

History of fall. Patient unconscious,
pulse BP not recordable, pupils not reactive to light,

External injuries
Bruises over neck region
Redish discolouration over nose,

Patient's seriousness informed to relatives.

Dr. Avinash Patil examined the patient at 5.15 am and noted alleged head trauma and unconscious (proper history not available)."

11. The recitals of Exh.92/5 at 8.30 am on 20/11/2007 indicates as follows :-

"30 years old female brought by her husband name Mr. Mahesh Pawar.

History of fall in bathroom. Unconscious.

No past history of HTN. BP not recordable, pupils semi-dilated. Not reactive to light.

She was admitted under Dr. Avinash Patil.

Treatment given : Cardio massage given

Medicines : --

death declared at 6.15 am

primary cause of death is head injury. Exact cause of death referred for post-mortem. Dead body hand over to Mr. Vairat at 8.45 am.

Atropin injection given.

Exh.92/6 shows that the patient was kept on ventilatory support at 8.00 am and although pulse was not recordable she was administered Adrenaline, Atropine, Hydrocortisone."

12. Dr. Avinash Patil has expired in the year 2014 and therefore, he could not be examined. Electro Cardiogram mapping was done. The witness has stated that he could not identify any of the five to six persons who had admitted the lady patient. He could not even identify the accused Dr. Mahesh Pawar. According to him, he had

subsequently learnt that previously Dr. Mahesh Pawar was attached to Siddhivinayak Hospital but he was not acquainted with Dr. Mahesh Pawar. It is admitted that there were scratches of nail on the throat and nose of that lady. Dr. Avinash Patil had written a letter to the Police Station in respect of the said lady patient. The prosecution has declared him hostile. In the cross-examination, PW.8 has admitted the contents of the medical case papers at Exh.92/1. It is also admitted that soon after examination Dr. Avinash Patil declared the lady patient dead. Yet, cardio massage and injections were given to the lady at 8.30 am as per Exh.92/5. Exh. 92/3 shows that someone had signed for Dr. Avinash Patil and informed the Police that the patient is being treated at Siddhivinayak Hospital.

13. PW.9 – Dr. Dilip Patil happens to be one of the Directors of the Siddhivinayak Hospital since 2001. He heads team of Doctors at the said hospital. He has categorically stated that after receiving the Court summons he had taken search of the medical case papers dated 20th November 2007, however, they could not be traced. The report at Exh.103 was submitted to that effect in the Court. He has also identified the signature of Dr. Avinash Patil at Exh.92/1 to 95/9. It is admitted that Mahesh Pawar was attached to Siddhivinayak Hospital

as R.M.O. for 3 years before 12 to 13 years. It is pertinent to note that the hospital has commenced functioning only in 2001 and the incident is dated 20th November 2007.

14. PW.10 – Dr. Jivan Lahoti has examined the accused Mahesh Pawar at 9.45 pm on 20th November 2007. He had noticed the following injuries on his person :-

- “(a) Abrasion below right eye at medial canthus 1 cm x 1 cm local oedema plus;
- (b) Abrasion over nose oblique 2 cm x ½ cm.”

15. The age of injury was within 2 hours. Both the above injuries were on the face of the accused and the distance between both the injuries was 2 cm to 3 cm. According to the witness Exh.106 is not injury certificate but it is pre-arrest certificate. The accused has not stated any transaction/ circumstance in which he had sustained the said injuries on his face.

16. PW.11 – Dr. Dhondiram Jadhav has performed autopsy on the dead body of Rajashri and had found the following external injuries on her person :

- “(a) Abrasions 2 in number, over right nostril ranging from 0.5 cm x 0.5 cm to 1 x 0.5 cm, red in colour,

- (b) Abrasion over tip of nose, centrally placed of size 1 x 0.5 cm red in colour,
- (c) Contusion over right side of lower lip of size 1 x 0.5 cm red in colour,
- (d) Multiple abrasions on upper lip externally more on left side of size 0.5 x 0.5 cm each, red in colour,
- (e) Contusion just below the chin on right side of size 1 x 0.5 cm red in colour,
- (f) Contusion over inner side of lower lip of size 0.5 cm x 0.5 cm red in colour,
- (g) Contusion over inner side of upper lip centrally placed of size 0.5 cm x 0.5 cm red in colour,
- (h) Abrasion on anterior part of neck over the thyroid cartilage transverse of size 0.5 cm x $\frac{1}{4}$ th cm, red in colour,
- (i) Contusion on left side of neck just below the angle of mandible of size 0.5 cm x 0.5 cm, red in colour,
- (j) Abrasion on left hand posterior aspect at the base of middle finger of size 1 x 0.2 cm, red in colour,
- (k) Puncture marks on left side of chest just lateral to midline five in number.”

17. According to him, all the above injury nos.1 to 10 were caused by hard and blunt object whereas injury no.11 was due to puncture marks. On internal examinations, he found the following injuries :-

- “(i) Head : injuries under the scalp : there was haematoma 2 in number present under the scalp over frontal parietal region of size 2 x 2 cm, red in colour,
- (ii) Brain : Brain coverings and brain matter congested.
- (iii) Thorax : Walls, ribs, and cartilages :
Puncture marks five in numbers present on left side of chest just lateral to midline.
- (iv) pleura : congested
- (v) larynx, Trachea and Bronchi.

.....

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- (ix) Organs of generation : Gravid uterus of length 10 cm. fetus of length 5 cm., corresponds to 2½ months of intra uterine gestnal age.”

Deceased Rajashri was pregnant in 2½ months of pregnancy. He has opined that the cause of death of Rajashri was death due to asphyxia due to throttling. He was present at the time of post-mortem.”

18. PW.12 – Prakash Patil is the Investigating Officer who was attached to Umbraj Police Station on 20th November 2007. On 20th November 2007 the complainant had approached the Police and informed that he has learnt about the death of his daughter who was throttled by her husband. The report is at Exh.58. On the basis of the said report he had registered Crime No.144/2007 against the accused for the offences punishable under sections 302 and 201 of the Indian Penal Code. On 20th November itself he had received the advance cause of death certificate of the deceased Rajashri Pawar which indicated that the cause of death was “asphyxia due to throttling”. He had conducted spot panchanama and had completed the investigation. According to him, along with the charge sheet he had filed 1 CD in which he had recorded the purported confession of the accused. In any case, it is not admissible evidence. The witness has proved the omissions and contradictions of all the witnesses including that of the

hostile witnesses. It is admitted in the cross-examination that he had received the advance cause of death certificate prior to registration of Crime No.144/2007. According to him, he had not informed the Police and relatives of deceased Rajashri about the cause of death. However, the relatives had learnt about the same from the Police.

19. Needless to reiterate that the Death certificate which indicates that the death is due to throttling is admitted under section 294 of Cr.P.C. Hence, homicidal death of Rajashri is admitted by the accused.

20. The three-fold submissions of the learned counsel which are being discussed are as follows :-

- (i) Firstly, that the accused was not at village Tarale in the intervening night of 19th and 20th November 2007;
- (ii) Secondly, the accused had no motive to eliminate his wife who was carrying pregnancy of 2½ months;
- (iii) Thirdly, the prosecution has not proved that the deceased Rajashri had died at the hands of the accused.

21. The prosecution has been able to establish through the witnesses that deceased Rajashri had died a homicidal death and the

cause of death was asphyxia due to throttling. The accused has pleaded that he was not at village Tarale on the day of the incident. However, the said plea has not been taken to its logical end. The facts are otherwise. There is a clear admission by P.W.3 – Pendase that after Rajashri had fallen down the accused and Rajendra Deshmukh had taken her inside the house and the accused had made attempts to revive his wife. The learned counsel for the appellant has vehemently submitted that in fact, P.W.3 is a hostile witness and no implicit reliance could be placed upon her. The omissions and contradictions are proved through P.W.12. It would be appropriate to place implicit reliance upon the judgment of the Apex Court in the case of **Bhagwansingh Vs. State of Haryana**,¹ in which it is observed as follows :

“The prosecution could have avoided requesting for permission to cross-examine the witness under section 154 of the Indian Evidence Act. But the fact that the Court gave permission to the prosecutor to cross-examine his own witness, thus, characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence.”

22. The said judgment was followed by the Apex Court in the case of **Rabindrakumar Dey vs. State of Orissa**². In the case of

1 (1976) 1 SCC 389

2 (1977) AIR 170

Rabindrakumar Dey (Supra), the Apex Court has observed thus :-

“It is also clearly well-settled that the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him unreliable witness so as to exclude his evidence from consideration altogether.”

23. The admission of P.W.3 to the effect that the accused was present at home and called upon her and then tried to revive the life of his wife at 3.00 am in Pendase wada cannot be overlooked.

24. The submission of the learned counsel for the appellant that the accused was informed by Rajendra Deshmukh that his wife had fallen down in the middle of the night at about 3.00 am and therefore, they are bringing her to the hospital would show that the accused had resided at Karad in the intervening night of 19th and 20th November 2007 cannot be taken into consideration. The distance between Tarale and Karad is about 40 kms and the accused has failed to demonstrate the mode of transport which was adopted by Rajashri on 19th to reach Tarale. There is nothing on record to show that she had travelled alone to Tarale from Karad. Moreover, evidence of P.W.6 – Amarsinh Sawant that his sister had informed him that they both had returned to Tarale has not been shattered in the cross-examination and

hence, the same needs to be taken into account. Unless the said evidence was shattered in the cross-examination, it cannot be disbelieved.

25. The learned APP submits that the accused has taken a plea of *alibi* in his statement under section 313 of Cr.PC by way of stray suggestions and therefore, the same cannot be taken into consideration. It is also submitted that the witnesses who are residents of the same wada have been won over by the accused. It is further submitted that the accused was working in Siddhivinayak Hospital a few years before the incident and therefore, the deceased was taken to Siddhivinayak Hospital. That, the Hospital has tampered with the evidence. The learned APP has drawn the attention of this Court to the medical case papers which need to be appreciated. Firstly, the history of fall in bathroom was given by none other than the accused. P.W.8 Dr. Kadam had examined the patient at 5.00 am and could not find any head injury but the pulse and BP was not recordable and therefore, being confident that the patient was brought dead, he had requested the relatives to shift the patient to Cottage Hospital. The bruises over neck region were apparent. It was Dr. Avinash Patil who examined the patient at 5.15 am and had noted head trauma, he had also recorded

that the blood pressure and pulse is not recordable, the pupils semi-dilated and yet, the patient was admitted in I.C.U. and was given cardio-massage which was apparently to show the parents of the deceased, who were soon to arrive that the patient had expired in the course of medical treatment. Doctor Patil had deliberately recorded the cause of death as head injury only on the basis of the history given by the accused as accused had worked with Dr. Avinash Patil in Siddhivinayak Hospital. At the relevant time i.e. in 2007 Dr. Kadam had just joined Siddhivinayak Hospital and therefore, did not know the accused Dr. Pawar. There is a categorical admission by Dr. Kadam that 3 to 4 days after 20th November 2007 he had learnt that Dr. Mahesh Pawar was previously attached to Siddhivinayak Hospital. Dr. Kadam has proved the signature of Dr. Avinash Patil who had expired in 2014. It is also admitted that initially Dr. Patil had asked the relatives of the patient to shift her to Cottage Hospital for post-mortem. PW.8 had also noticed scratches of nails on the throat and nose of that lady, the hostility of the witness is clearly seen after he had learnt that the accused was attached to Siddhivinayak Hospital. He has deposed in contradiction to the contents of Exhs.91/1 to 92/9. He was therefore, declared hostile by the prosecution. But the documents at Exh.92/1

and 92/6 prove that the patient was brought dead to the hospital. In these circumstances, it would be incumbent upon the accused to give a plausible explanation for the homicidal death of his wife while in custody. Moreover, the victim was carrying pregnancy of 2½ months at the time of her death. The same is not mentioned in the medical case papers.

26. Post-mortem notes show that although the autopsy was performed at about 10.00 am rigor mortis was well marked in the whole body which falsifies the fact that the deceased had died at 6.15 am. Post-mortem lividity was also present all over the body. Moreover, the presence of petechial hemorrhage in mucosa of lip and cheek would clearly show that there was bleeding under the skin. That there were multiple abrasions on upper lips externally, abrasions over the tip of nose, contusion over the inner side of upper lip, abrasion on the interior part of neck over the thyroid cartilage transverse of size 0.5 x 1¼ cm., red in colour. Column no.17 shows that there was a puncture mark on left side of chest, just lateral to midline, five in numbers and the cause of injuries nos.1 to 10 is hard and blunt object whereas injury no.11 is puncture marks. All these would establish that she had died a violent death. Being a Doctor himself the accused could not

have believed that his wife could have sustained such injuries on a fall. He has not disclosed to the Doctors that his wife was carrying pregnancy of 2½ months. On plain observation, the accused ought to have suspected that his wife died a violent homicidal death. He has not even suspected any person. All these factors are clearly inconsistent with the innocence of the accused.

27. The learned counsel for the appellant has vehemently submitted that there was no demand of dowry, neither there was any harassment or cruelty meted out to the victim at the hands of the accused and therefore, the complainant has also not alleged the same and all this would show that accused had no motive to eliminate his wife, a mother of his two year old daughter who was herself a Doctor and therefore, he deserves to be acquitted. In catena of decisions, the Supreme Court has held that “motive is not a *sine qua non* for bringing the offence of murder or of any crime home to the accused”. In any case, it is a settled position of law that “in any case, motive is an emotion or rather a state of mind”. The conduct of a person would reflect his motive because conduct is the effect and expression of that inward emotion. The motive would be known to the assailant only and to no one else, sometimes not even to the victim. The fact that the

accused attempted to stifle the investigation is relevant under section 8 of the Indian Evidence Act. The conduct of the accused which destroys presumption of innocence can be considered as material evidence against the accused. In cases where the circumstances speak for themselves the question of presumptive reasoning would not arise.

28. The Court also cannot be oblivious of the fact that the accused has given a false explanation to the Doctor and to the Court, that by itself would provide an additional link to complete the chain of circumstances established by the prosecution. A false explanation would be an additional link to lend an assurance to the Court and not otherwise. The Apex Court in the celebrated landmark judgment of *Sharad Birdhichand Sarda Vs. State of Maharashtra*³, has observed thus:-

“It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.”

³ 1984 AIR (SC) 1622

29. Hence, we have no hesitation to hold that the false explanation offered by the accused has provided an additional link to the circumstances which are established by the prosecution. The prosecution has brought home the guilt of the accused beyond reasonable doubt. Hence, no interference is called for. Hence, we pass the following order :-

ORDER

- (i) The Appeal is dismissed;
- (ii) The conviction and sentence recorded by the learned Sessions Court in Session Case No.31 of 2008 in Crime No.144 of 2007 vide judgment and order dated 16th May 2016 is maintained;
- (iii) In the eventuality, the accused has not complied with the order dated 2nd February 2021, the Police shall arrest him and produce him before the Jail Authorities;
- (iv) The appeal is disposed of in above terms.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)