

Prabhakar Jasappa Kanguni

Vs

State of Maharashtra

Criminal Appeal No. 338 of 1974

(R. S. Sarkaria, O. Chinnappa Ready JJ)

15.02.1980

JUDGMENT

SARKARIA, J. –

1. The appellant, a graduate in agriculture, was working as a lecturer and Head of the Agricultural Department in the Composite Training Centre of the Manvi Vidyapeeth at Gargoti in the district of Kolhapur. He was tried and convicted by the Sessions Judge, Kolhapur under Section 302, Indian Penal Code for the murder of his wife, Smt. Malti, and sentenced to imprisonment for life. The learned Judges of the Division Bench of High Court who heard Prabhakar's appeal were divided in their opinion. Bhole, J. opined that the conviction of the appellant be upheld while his companion judge held a contrary opinion. the case was then referred to a third judge and was heard and disposed of by Kotwal, C.J., who agreed with Bhole, J. and dismissed Prabhakar's appeal. Prabhakar has come in appeal to this Court after obtaining special leave under Article 136 of the Constitution.

2. We have heard learned counsel for the parties and examined the record very carefully.

3. The conviction of the appellant mainly rests upon circumstantial evidence. The facts of the prosecution case may be set out as under :

4. Malti deceased was married to the appellant in 1963. The appellant was addicted to drinking. Malti used to protest and object against this conduct of her husband. She wanted him to give up this obnoxious habit. The appellant's father also had written letters, advising him to correct himself. The appellant did not desist from drinking and his relations with the deceased became unhappy. There was no issue from their marriage.

5. The appellant was residing within the premises of the Vidyapeeth. His sister Surekha (PW 9), aged about 10 or 12 years also used to live in the same house. The appellant's father is a landlord in the same district. His brother-in-law Dr. Chali is a well-known medical practitioner practising at Gadhilganj. Dr. Chali was married to the sister of the accused.

6. On the day of occurrence (September 7, 1969), the deceased wanted to go to her brother's place in Gadhilganj. She had asked permission of her husband for the contemplated trip and he had allowed her to go. But she missed the bus and could not go. In the morning on the day of occurrence, only three persons, namely, the accused-appellant, Surekha and Malti deceased were in the house. Surekha was in the bathroom. When she heard the outcry of Malti to the effect : "I am dead! I am dead!", Surekha rushed out to the kitchen where Malti was. The appellant also rushed to the kitchen.

They saw a small bottle lying near her. The bottle contained Baygon, an insecticide. The appellant then administered saline water to the deceased to induce vomiting and she vomited. The appellant sent Surekha to fetch Dr. Kulkarni, the Medical Officer of the Public Health Centre in Manvi Vidyapeeth. Surekha ran to Dr. Kulkarni's house, gave the massage and returned to the house. Dr. Kulkarni (PW 2) followed by his compounder Kambale (PW 5) came to the house. The appellant informed the doctor that Malti had consumed the insecticide and that he had given her saline water to induce vomiting. After examining the patient Dr. Kulkarni gave more salt water to her and she vomited. Dr. Kulkarni gave her three injections : one was of coramine, the second of terramycin and third of betnisol. On his advice, the appellant prepared tea and administered it to her. She sat on the bed, took the tea but vomited it. After remaining with the patient for about an hour, Dr. Kulkarni went away at 8.45 or 9.45 a.m., telling the appellant that if he was needed he might be called again.

7. A couple of hours thereafter, the appellant again sent Surekha out to fetch Dr. Kulkarni. On receiving the message Dr. Kulkarni accompanied by his compounder went to the appellant's house and rang the bell twice. Dr. Kulkarni went inside, while the compounder carrying the medicine chest waited outside. Dr. Kulkarni wanted to enter the room in which the patient Malti was, but the appellant came into the door and told the doctor that his wife Malti was alright and that he would himself manage. Dr. Kulkarni, thereupon (as he deposed) immediately left the house without seeing the patient, saying that if there was any emergent need, he could be sent for again. Dr. Kulkarni then went to Dr. Mali (PW 1), the Director of the Vidyapeeth, and told him all that had happened. Thereupon, Dr. Mali, Dr. Kulkarni and Professor Chandake proceeded towards the house of the appellant to see Malti. On their way, at about 11.15 or 11.30 a.m. gardener, Market (PW 4) met and told them that Malti had expired. Dr. Kulkarni followed by the other two, then hurriedly reached the house of the appellant. On going inside, the doctor, did not find Malti on the bed on which he had seen her on his earlier visit, but found her lying on the floor, without saree and blouse on her body. Her body was however found covered with a bed sheet. Dr. Kulkarni examined her hear, pulse and eyes and declared her dead. Information was also sent to Dr. Chali, the brother and also to the father of the deceased, who came at about 4.30 p.m. Thereafter, Dr. Mali reported the matter to the police. In the first information report Dr. Mali stated that he himself did not see anything after entering the house of the accused but was told by Dr. Kulkarni that on examination he found that Malti had consumed a poisonous drug. At first, the case was registered as one of accidental death. But after receiving the post-mortem examination report, it was altered to an offence under Section 302, Indian Penal Code. The post-mortem examination of Malti was conducted by Dr. Khade on the following day in the morning. Dr. Khade found these five external injuries on her body :

1. Two linear scratches on the middle of the nose on the right side 1 inch x 1/4 inch each, respectively.
2. Five crescentic scratches on the right side of the face. Two on the right maxilla and three below it, varying from 1/4 inch x 1 inch each.
3. An oblique linear scratch 1/4 inch in length on the lower border of the mandible, on the left side + inch left to the chin.
4. A transverse linear scratch on the anterior part of the neck, just below the thyroid cartilage and going towards the left side of the neck by 1+ inches in length.
5. a pea-sized abrasion, near the posterior superior iliac spine, on the right buttock.

Injuries 1, 2, 4 and 5 were brownish red. Dr. Khade found ecchymosis in the surrounding tissues underneath injury 4 on dissection. He also found extravasation of blood in the subcutaneous tissues underneath the wound, and in the surrounding muscles of the neck, and marked congestion. The doctor also found laceration of the sheath of the left carotid artery. All these injuries, in the opinion of Dr. Khade were ante-mortem. The internal injuries found on her by Dr. Khade were as under :

- (1) Abrasions on the left side of chest wall.
- (2) Left lung exudes dark blood mixed with froth in fair amount.
- (3) Thoracic lumber is covered with froth and mucous membranes are congested.
- (4) Fracture of the cricoid cartilage in the middle.
- (5) Fracture of the first two tracheal rings.
- (6) Right side of the heart is full of dark blood. The left side of the heart is empty.

In Dr. Khade's opinion, injury (4) must have been caused by violent pressure on her throat and the force applied must have been sufficient to cause fracture of the thyroid cartilage and of the first two tracheal rings. On the above data, Dr. Khade opined that the death of Malti was due to asphyxia as a result of throttling. Dr. Khade was apprised of the fact that case was of suspected poisoning. He therefore preserved the viscera which was in due course sent for chemical examination. The Chemical Examiner reported that Baygon was detected in the stomach contents and also in intestine, liver, spleen and kidneys.

8. The conviction of the appellant for murder of his wife, rests on an inference drawn from these facts and circumstances :

- (a) Malti met a homicidal death. She was throttled to death, and did not die of poisoning.
- (b) (i) The accused was addicted to heavy drinking and he did not leave this habit in spite of the repeated protests of his wife and the reprimands and advice of his father. As a result, the relations of the accused with his wife were not happy and on the morning of September 7, 1969, she attempted to commit suicide by taking Baygon poison, (ii) but she did not die of poisoning because of the saline emetic first given to her by the accused and later by Dr. Kulkarni.
- (c) During his first visit which lasted for about one hour, Dr. Kulkarni found Malti lying on the cot. He found her quite conscious. Her pulse and blood pressure and chest were normal. He gave her injections. Malti at that time sat up in the bed and took tea. She asked for a towel and wiped her face. Dr. Kulkarni had examined her throat and finding Malti alright left the house around 9 or 9.45 a.m.
- (d) At about 10.45 a.m. when Dr. Kulkarni visited the house of the accused second time and tried to enter the room in which Malti was, the accused came in the doorway and turned back Dr. Kulkarni with the representation that Malti was alright and he himself would manage.

(e) At about 11.15 or 11.30 a.m., when Dr. Kulkarni, Dr. Mali and Professor Chandake were on their way to the house of the accused, gardener Markat (PW 4) told them that Malti had expired.

(f) On going into Malti's room at about 11.40 a.m. or 12 noon, Dr. Kulkarni found her lying dead on the floor, without any saree or blouse over her body; while, during his first visit, Malti was on the cot with the clothes on her person and was practically alright.

(g) (Inferentially), Malti died sometime between 9.45 and 11 a.m. Probably, she had already died a homicidal death when Dr. Kulkarni, on his second visit at 10.30 a.m. tried to enter Malti's room but was prevented by the accused on the false representation that she was feeling better and he would himself manage.

(h) At the time of Malti's death, no other person, excepting the accused was in the house. In fact, Surekha was sent away by the accused to Mrs. Rajadhya's house. In the morning of the day of occurrence, when the maidservant, Akkatai came to work in the house, the accused sent her back saying that there was no work of cleaning posts in the house.

9. In his examination under Section 313, Criminal Procedure Code, the accused first tried to set up the defence that Malti committed suicide by taking Baygon poison. He then stated that he had gone into the bathroom where he heard the sound of "dhab" "dhab" from Malti's room. The accused thereupon came out and saw this wife lying on the floor near the diwan. It was difficult for her to breathe at that time. He, therefore, made her sleep in the middle of the room. Her saree had become loose and had also been stained with vomits. He, therefore, tried to change her clothes because the doctor was to come after some time. His wife, however, became more restless and serious. He, therefore, went out for calling the doctor. But he could not spot anybody, and when he went inside he saw his wife was no more. He then went out, and on his way, met Markat, whom he informed that his wife was no more. Markat then went to Dr. Mali and Dr. Kulkarni to inform them about the death of his wife. The accused admitted that his wife was "utterly dissatisfied" : and was unhappy because he was addicted to drink, but stated that he had endeavored to control his vice. The accused further admitted that he and his wife, Malti, were the only inmates of the house when Surekha had gone in the bathroom and Malti had raised the outcry. As regards the scratches and other external injuries found on the chin, lip and neck of the body of the deceased by Dr. Khade, the accused stated that he did not see them and the same must have been sustained by her as a result of the fall from the cot. He further stated that the evidence of Dr. Khade to the effect, that the death of Malti was due to asphyxia caused by throttling, was false.

10. The prosecution evidence with regard to (a) mainly consists of the testimony of Dr. Khade who conducted the post-mortem examination of Malti. supporting evidence is also furnished by the Panchnama (Ex. P-3) in which, the investigating officer noted the injuries seen by him on Malti's dead body during the inquest. With regard to (b) (i) evidence is furnished, inter alia by Akkatai, the maidservant and the letters written to the accused by his father. As regards (b) (ii), the prosecution evidence party consists of the testimony of Dr. Khade and partly of Dr. Kulkarni. Surekha also deposes to the presence of Baygon bottle lying near Malti. The Chemical Examiner also found some Baygon poison in the viscera of the deceased. Dr. Kulkarni is the chief prosecution witness in regard to circumstances (c), (d), (e), (f). To an extent, Compounder Kambale (PW 5) gives supporting evidence in respect of circumstances (d), inasmuch as he stated that Dr. Kulkarni entered the house

of the accused and came out immediately thereafter. Dr. Mali also renders evidence regarding (g).

11. The accused does not seriously dispute the existence of facts (b) (i), (c), (e), (f) and (h). But he strenuously controverts fact (a), namely, that Malti was strangled to death. He maintains that Malti died of poisoning and her death was suicidal and not homicidal. He also disputes the correctness of (d) and Dr. Kulkarni's evidence to that effect. He has tried to explain (f) and also the last limb of (h) as to why he had sent Akkatai away.

12. Circumstance (a) listed above is by far the most clinching of all the facts catalogued above. Proof of this circumstance primarily turns on the question whether the testimony of Dr. Khade is reliable. We have set out in detail, earlier the external and internal injuries which were found on the body of Malti by Dr. Khade. We have also given the substance of his evidence. In his opinion, Malti was strangled to death. Dr. Khade has given cogent and convincing reasons in support of his opinion. The learned Trial Judge and two learned Judges of the High Court (Bhole, J. and Kotwal, C.J.) found Dr. Khade's evidence entirely trustworthy.

13. As before the High Court, here also an attempt was made to assail his testimony on the ground that Dr. Kulkarni, who had examined her body soon after her death, did not notice any external mark of injury on her neck, lip, nose, face or the left side hip. In this connection, Dr. Kulkarni has stated : "I had not examined Maltibai minutely at the time of my third visit to the house of the accused, in order to find out whether she had any injuries. " It may be noted that on his last visit, when Dr. Kulkarni examined the pupils and felt the pulse of Malti, and declared her dead, she was lying on the floor without any saree or blouse on her person. In such a situation, Dr. Kulkarni could not have failed to notice the external injuries on her throat, nose and lip. We agree with the learned Chief Justice of the High Court, that Dr. Kulkarni had not told the whole truth and had tried to suppress the existence of these injuries to favour his friend, the accused. His conduct in reporting the matter to the police immediately after 12 noon when he found her dead, further confirmed that he had a tendency to shield the accused and was interested in him.

14. As rightly pointed out by the learned Chief Justice, the evidence of Dr. Khade with regard to the external injuries of Malti was strongly corroborated by the Panch witnesses and the Police Sub-Inspector who at the time of the inquest noted these injuries on her body :

1. Scratches on the right cheek, nose and chin.
2. Scratch-like line on the throat.
3. Scratch of the size of a gram-dal on the left side hip.

15. We further find ourselves in complete agreement with the reasoning and conclusion of the learned Chief Justice that in this case the death was not caused by the Baygon insecticide whether consumed voluntarily or administered to the deceased. Although the Chemical Analyser found some Baygon in the viscera, but he did not say how much its quantity was. Further, in his Report (Ex. 24) he did not say that the death was caused by any poisoning. The Chemical Analyser clearly mentioned that no experimental data regarding the fatal dose, fatal period and the poisonous effects of Baygon on various organs of a human being was available with them. On the other hand, Dr. Kulkarni's evidence was to the effect that during his first visit between 8 a.m. and 9.30 a.m., the deceased was conscious and normal. She vomited several times. She sat up in the bed and took tea and vomited it again. The doctor had examined her throat also. Dr. Kulkarni stated that when he left

the house, Malti was alright. Even the accused stated that after vomiting, his wife felt "much better". Contrary to what Dr. Kulkarni had stated, the accused said that Dr. Kulkarni had examined his wife on his second visit also, and after his departure, "his wife started feeling much better". The second visit of Dr. Kulkarni can be fixed at about 10.30 a.m. This means, even about two hours of her consuming Baygon, Malti was feeling better. However, according to Surekha, the bottle was less than half full of the liquid as on previous occasions they had used approximately half of its contents for killing insects. In the face of these facts it is not possible to hold that her death, - which must have occurred about or very soon after the second visit of Dr. Kulkarni - was due to Baygon poisoning.

16. A suggestion was made to Dr. Khade that injury 4 and the underlying fractures could have been the result of a fall. Dr. Khade refuted the suggestion. True, that even in insecticide poisoning, death may result from asphyxia. But the other symptoms such as the injury 4 that is laceration of the sheath of the carotid artery, which is the main artery there, and the fracture of the thyroid cartilage and extravasation of blood in the subcutaneous tissues underneath the wound and also in the surrounding muscles of the neck could not be due to such poisoning. These internal and external injuries on the throat unerringly pointed to the conclusion that the death was due to throttling or strangulation, which by inevitable implication rules out the possibility of the death having been caused by insecticide poisoning.

17. The other circumstances listed above had also been firmly established. Once circumstance (a) is established, then, taken in conjunction with the other circumstances, particularly the undisputed fact that at or about the time of Malti's death, no third person excepting the accused and the deceased, was present in the house, it will inescapably lead to the conclusion that within all human probability, it was the accused-appellant and none else, who had murdered the deceased by strangulating her to death.

18. For the foregoing reasons, we uphold the conviction and sentence of the appellant under Section 302, penal Code, and dismiss his appeal.

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