REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1181 OF 2011

JAVED ABDUL RAJJAQ SHAIKH ... APPELLANT

VERSUS

STATE OF MAHARASHTRA ... RESPONDENT

J U D G M E N T

K.M. JOSEPH, J.

1. The appellant, calls in question, his conviction under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC', for short) by the High Court. Originally, the appellant was accused no.1 before the Trial Court. Accused nos. 2 to 4 were his parents and his brother. They were altogether charged with offence under Section 302 read with Section 34 of the IPC. This is besides being charged

under Section 498A of the IPC. The Trial Court convicted all the accused for offences under Section 302 read with Section 34 and Section 498A of the IPC. On appeal filed by the appellant and the other accused, accused nos. 2 to 4 stand acquitted of all the offences. The appellant has also been acquitted of the offence under Section 498A of the IPC. However, the High Court, by the impugned order, had convicted him for the offence under Section 302 of the IPC instead of Section 302 read with Section 34 of the IPC. This is besides a fine.

2. The prosecution case, in short, is that the appellant and the other accused committed murder of the wife of the appellant. As already noticed, the charge was of committing murder under Section 302 read with Section 34 of the IPC.

3. The father of the deceased lodged a complaint wherein it was *inter alia* alleged that the marriage of

the appellant and his deceased wife took place prior to two years as per custom. Half *tola* gold remained to be provided. Due to poverty, he could not provide half *tola* gold. The accused maintained the deceased properly for the period of first eight months. Three months prior to the incident, the deceased disclosed to the complainant and his wife that all the accused were maltreating the deceased by insisting her to bring half *tola* gold, dress and Rs. 5,000/- for business of bakery. They insisted her to bring this from her parents and assaulted her. They did not provide food to her and maltreated her. She was threatened with murder if the demand was not fulfilled. So, deceased decided to stay with her father for two months. Within two months, nobody from the accused came to receive her. The deceased disclosed about the maltreatment to his sister. His sister convinced the deceased and brought her to the house of the accused. Eight days prior to the incident, his sister informed him that accused Javed visited her house and demanded half *tola* gold,

dress and the amount. On 10.03.2005, he received information by phone that deceased was serious and admitted to a hospital at Naldurg. The complaint activised the Police. Investigation was done. Charge-sheet was filed. Charges were framed, as already mentioned. Rejecting the contentions of the appellant and other accused, the Trial Court convicted them. It was found that the deceased had been throttled. The evidence of the Doctor, supported the case of murder. The claim that it was a suicide by the deceased, was rejected.

4. The High Court, however, found only the appellant guilty under Section 302 of the IPC.

5. We have heard Shri D. N. Goburdhan, learned counsel for the appellant who appeared before us and also learned counsel for the State.

6. Counsel for the appellant would submit that the case of the prosecution was one of commission of

offence under Section 302 read with Section 34 of the IPC. It was the case of the prosecution that all the accused together committed the act of murder. He would complain that in appeal, when the High Court found it fit to acquit accused nos.2 to 4, the accused cannot thereafter be convicted. He drew our attention to the judgment of this Court in Sawal Das v. State of Bihar[1] and Sukhram s/o Ramratan v. State of Madhya Pradesh[2].

7. He would submit that when the prosecution failed to establish the guilt of accused nos.2 to 4, in the circumstances of this case, it must be taken that prosecution has also failed to establish the case against the appellant as it would be the case under Section 302 simpliciter. He would submit that it was a case where the deceased had taken her own life. Appellant and her brother had married around the same time. Two years into the marriage, the appellant and his late wife/deceased were not blessed with a child.

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1 **(1974) 4 SCC 193**

2 **1989 Suppl.(1) SCC 214**

On the other hand, a child was born to his brother. This caused frustration, and finally, led the deceased to take the extreme step.

8. Next, he would contend that the incident took place and the post-mortem was conducted allegedly on 10.03.2005. However, the report is prepared allegedly only on 25.08.2005. Learned counsel posed the question as to the possibility that the post-mortem report, in fact, may be related to somebody else. In this regard, he drew our attention to the deposition of the father of the deceased. Father of the deceased had deposed that it was true that the marriage of the appellant and the deceased was performed happily and there was no quarrel between the spouses. He had also deposed that the custom of *jumaki* was followed. That some *jumaki* was performed in the house of the appellant and some *jumaki* was performed in his house. Further, he has stated as follows:

> **"It is true that there are four rooms in the house of accused. It is true that**

accused Nos.1 and 4 were using separate bed room in the house. It is true that within six months from the marriage, when ever Sultana visited to my house, she told me that I had performed her marriage in proper house and she is happy in the house of accused. It is true that my daughter was co-operative and helpful natured girl."

"It is true that when Sultana came to my house for Ramzan' festival, that time, Sultana told me that I should take her in the house of accused and there is no entertainment in my house."

9. He would further point out that reversing the verdict of the Trial Court, the High Court has acquitted the appellant as also the other accused of the charge under Section 498A of the IPC. This means that the appellant was not found guilty of cruelty under the said provision. It was, therefore, wholly illogical and not warranted by the evidence to convict the appellant under Section 302 of the IPC. The inconsistency between the inquest report and the post-mortem report was highlighted and it was submitted that it has not received due consideration. He would submit

that the external injuries which were noted in the inquest *panchanama* in respect of swelling of the head, ligature mark of rope to neck, injuries to thigh and back are not noted by the Doctor in the post-mortem report. He complains that the Trial Court has got over this by merely finding that in a case of difference of injuries between the inquest *panchnama* and the post-mortem report, the post-mortem report will prevail over the inquest *panchnama*. He reminds that the post-mortem report has been prepared after more than five months from the date on which the post-mortem was allegedly performed. He would submit that when doubts were established, the appellant should have been the beneficiary of doubts. He would further submit that if an adult person is throttled, there would be resistance and the resistance would be manifested. There is no evidence of any such resistance. All this points to the deceased having committed suicide. He further points out that as noted by the Court itself, it was the appellant who took the deceased to the hospital. Had

the appellant been the culprit, he would have destroyed the body and certainly not taken the person to the hospital.

10. ***Per contra*****, the learned counsel for the State supported the judgment passed by the High Court. He would point out that as regards the discrepancy in the date of preparation of the post-mortem report, questions have been put in the examination of P.W.1 doctor and answers elicited. There was a valid explanation which was the non-availability of one of the doctors. He further pointed out that the provisional report was given on the date of the post-mortem, i.e., on 10.03.2005.**

THE FINDINGS OF THE TRIAL COURT

11. The trial court has accepted that the following circumstances stood proved against the appellant and other accused:

(1) Motive;

(2) Custodial death of the deceased;

(3) Non-disclosure of death by the appellant to the complainant(father of the deceased);

(4) False evidence of accused of hanging;

(5) Inquest panchnama;

(6) Spot panchnama.

12. As regards motive, the trial court relied on the evidence of PW 3 that all the accused were insisting on the deceased to bring half tola gold which remained to be provided by the time of marriage besides one choice dress and Rs.5000/- for Bakery business. The appellant reiterated his demand and repeated his threat to kill deceased if the demands were not met after eight days of her return to his house. The trial court also placed reliance on PW 4, the aunt of the deceased in this regard. It is after the threat mentioned above that the deceased died after 8 to 10 days. It is found that medical evidence showed that the death is caused by throttling. All the accused by their joint act -one by pressing her neck, one by catching hold of her hand,

another by catching hold of her leg and one by pressing her leg killed her. There is medical evidence to prove violence by killing her by throttling by pressing her neck. As the demands made by the accused were not fulfilled, in furtherance of common intention, the appellant's wife was killed. All the accused were residing in the same house. They participated in the crime and brought the body before the doctor saying she hanged herself. Therefore, motive to kill is clearly established. There is no evidence to prove that PW-4 was at the house.

13. Exhibit 24 is enlisted to show that the appellant brought the dead body before the doctor. Evidence of the complainant (PW-3) and PW-4 is referred to show that the deceased was residing with all the accused in the house. When it is noticed that death took place due to throttling, then the accused must prove as to how she died. While explaining in the statement under Section 313 of Cr.P.C., none of the accused explained

about the death of the deceased. The point as to custodial death was found established.

14. As regards non-disclosure of death by the accused to the complainant, it is found that PW-3 complainant has deposed that about 8.00 A.M. on the date of the incident, he came to know from Isaq, son of PW-4 by telephone from Solapur. The accused had not disclosed about the death to the complainant. PW-4 has not deposed that she was intimated. The accused seemed to have kept mum after the death and has not reported to complainant and other relatives. Also, the Court goes on to find that a false statement was made regarding the death of the deceased by hanging which is contrary to the medical evidence.

15. In regard to the inquest panchnama, it is stated that it shows external injury like rope mark at neck, swelling to head, injury to thigh and back as well as two teeth from the front side are broken and blood was oozing from the jaw. It is the case of the accused that

the injuries noted on the thigh, back and swelling to head and ligature mark of rope to neck is not noted in the post-mortem in Exhibit 22. Therefore, there is a conflict between the inquest panchnama and the post-mortem report. The trial Court goes on to find that the external injuries noted in the inquest panchnama as noted above, were not noted by the doctor in the post-mortem which is official. It is concluded that when there is difference of injuries in the inquest panchnama and the post-mortem, post mortem will prevail over the inquest panchnama because panchnama (witnesses) are not experts like doctors. Accused cannot get benefit of inconsistencies. Expert evidence based on scientific method will prevail over knowledge of ignorant men in that field. It was found that PW-1 was an eminent doctor and in the last five years, he had done many post-mortems and he was treated as an expert man. Thereafter, the trial Court also relied upon the spot panchnama. The spot panchnama was effected on the very day of incident i.e. on 10.3.2005.

One rope of nylon was seized. The spot of incident was one of the rooms situated in the house of the accused. It is having two-metre height wall. The height of the room is 5-feet 10-inches. The photograph of the deceased, the panchnama and the photograph of the place of the incident proved by PW-5 led the Court to hold that the height of the room is such that it was not probable for any person having normal height to hang in that room and normal height of the man is 5 feet or more. The Court further proceeds to find that the F.I.R. is late but goes on to hold that merely because the F.I.R. is late, it does not mean that the case is false. Having referred to the circumstances, the Court also found that the complaint was filed by the complainant late on the next day at the night hours but the explanation of the complainant that due to death of his daughter, he was unhappy was found acceptable. Regarding the contention of the accused that it was a case of suicide as the deceased had not delivered a child whereas the wife of the fourth accused (sister-

in-law) of the deceased had delivered a child and therefore, she was frustrated was found unacceptable. The deceased was only 20 years old. At the age of 20 years, it could not be said that she cannot become pregnant in future. It was found that it was nobody's case that the deceased was having some problem having a child. There is no case of any medical treatment.

FINDINGS OF THE HIGH COURT

16. This is a case entirely based on circumstantial evidence. The deceased was living in her matrimonial home. She was living with her husband. As regards the case under Section 498A IPC is concerned, the High Court finds that there is reason to infer that the deceased was leading a happy married life. The following part of the cross examination of the PW 3, father of the deceased is relied upon:

> **"It is true that there are four rooms in the house of accused. It is true that accused Nos. 1 and 4 were using separate bed room in the house. It is true within six months from her marriage, whenever**

Sultana visited to my house, she told me that I had performed her marriage in proper house and she is happy in the house of husband. It is true that my daughter was co-operative and helpful natured girl."

"It is true that when Sultana came to my house for Ramzan' festival, that time, Sultana told me that I should take her in the house of accused and there is no entertainment in my house."

17. On the basis of the aforesaid, the High Court finds that the same speaks of a different story. The deceased expressed her desire to return to the place of her husband (appellant) at a point earlier than contemplated by her father. It is found that there was ample admission on the part of the father of the deceased and his sister that the parents did not take any legal steps such as lodging complaint with the police station nor did they call elderly and respectable relatives for a meeting and inviting accused persons to explain their conduct. The High Court found it difficult to believe that there was a persistent demand from all the four accused. In view

of certain admissions, PW 4 aunt of the deceased was found unreliable. The High Court found that it was difficult to believe that all the four accused were persistently demanding gold or amount and for pressurising the deceased or that they were subjecting her to ill treatment such as physical beating or starvation. It is thereafter that the case of the appellant was found to stand on a different footing. The deposition of PW 4 is noted, namely, "thereafter after 8 days Javed accused came to my house at Solapur. He told me that his father-in-law has not provided gold, cloth and money till now and if it is not provided, he will kill sultana and thus by giving the threat he went away." The conveying of the aforesaid message to him by his sister on telephone gave assurance to the deposition of PW4. If at all, it was found that there was pressure upon the deceased for complying with the demands, it was from appellant alone. As regards the circumstances relied upon by the trial Court in regard to their motive, the High Court

proceeds to find that the motive is not proved as against accused 2 to 4 in as strong manner as against the appellant. As far as the custodial death is concerned, it was found from Exhibit 24 that the deceased died sometime before 7.15 a.m. Post-mortem was performed at 3.30 p.m.. Therefore, it can be ascertained that the death ensued 12 hours earlier sometime about 3.30 a.m. Support from P.W.3 is drawn to conclude that the two newly married couple were using separate bed room which allowed the accused 2 to 4 to escape from the allegation of custodial death against them at that time of the day and only the couple is bound to be in the bed room. Therefore, custodial death was proved only against the appellant. Referring to the prosecutor's argument based on the injuries of the deceased that it was not the husband alone but others as held, was not found the only possible inference. Breaking of the front teeth was indicative of some violence. The High Court proceeds to find that a possibility cannot be ruled out that the

victim was found unguarded and last but not the least, the impression injury on the thigh and ankle cannot be ruled out, even though the sole assailant tried to pin down the victim by riding on the person of the victim and putting pressure on the thighs by his knees and on the ankles by his feet. It is found that although admissions are obtained from the doctor that such injuries are possible if the victim is gripped by someone else such admission is to be read only to the extent of medical opinion, that is, the injuries are possible, if the pressure is put on the thighs or ankles gripped. It was found an inference of involvement of more than one accused on the basis of medical evidence, is a matter of imagination and therefore somewhat risky. Lastly, the statement of the appellant when he had admitted the deceased to the hospital that he had brought up the deceased for treatment that she had hanged herself in an attempt to commit suicide, was used against the appellant as it was found to be settled legal position that false

information by the deceased who is obliged to offer explanation for death is a circumstance which strengthens the chain of circumstantial evidence. It is accordingly that the appeal was partly allowed. His conviction under Section 498-A IPC was set aside, so was his conviction under Section 302 read with Section 34 IPC and he stood convicted under Section 302 IPC alone. The appeal filed by the other three accused was allowed.

THE POST MORTEM REPORT

18. The injuries noted in paragraph 17 of the Post Mortem report are as follows:

> **"Bruising and ecchymosis present on both sides on neck from center to laterally on both sides of neck about 7 cm x 1 cm.**
>
> **1. Abrasion (crescentric) present on left side extending from center to lateral about 5 cm long.**
>
> **2. Pale pressure mark present over both legs ante collaterally over ankle region about 7 cm x 1 cm.**
>
> **3. Contusion of upper lip 3 cm x 2 cm."**

Under paragraph 20 which deals with injuries to the Thorax region, the following injuries have been noted:

> **"A] Walls, ribs, cartilages/ a & b are noted as normal.**
>
> **B] Pleura.**
>
> **C] Larynx, trachea and bronchi**
>
> 1. **Subcutaneous tissue over both lateral aspect of both side swollen and subcutaneous haemorrhage present.**
> 2. **Both sternomastoid muscle crushed and severe haemorrhage present beneath it.**
> 3. **Thyroid cartilage crushed laterally on both sides more on left side.**
> 4. **Cricoid cartilage crushed on both sides.**
> 5. **Multiple small clots of blood seen around the laryangeal cartilages.**
>
> **D] Right Lung-Both lung congested.**
>
> **E] Left Lung – with petechiae and exuding dark blood on section.**
>
> **G] Heart with weight – Left side contained little blood, Right side of the heart contained full of dark fluid blood.**
>
> **Bucal cavity, teeth gongue: Upper left central incisor partly broken and right central incisor totally broken within bleeding from gums."**

Stomach contents were noted as empty.

OPINION AS TO THE CAUSE

19. It is stated that Dr. I.C. Kolle and Dr. A.I. Syed have done the post-mortem on 10.03.2005. Under the opinion as to the probable cause of death, it is written Acute Cardio respiratory arrest. Secondary to acute asphyxia secondary to throttling. The report is signed dated 25.08.2005. In the last page it is stated, forwarded to the police custody and the date is shown as 10.03.2005.

DEPOSITION OF P.W.1 - THE DOCTOR WHO CARRIED OUT THE POST MORTEM

20. PW.1 is Dr. I.C. Kolle aged 32 years. He states that he has carried out nearly 32 post-mortems during his service period. On 10.03.2005 he received the dead body of the deceased in this case from the police station. He started doing post-mortem at about 3.30 p.m. and completed by about 4.45 p.m.. The inquest

panchnama was given to him by the concerned police station. He noticed eyes semi open, tongue within mouth which has been noted at paragraph 13 of the post-mortem note. He noticed 4 injuries on the dead body and those were noted as surface wounds and the injuries are at paragraph No.17 of the post-mortem note. He further deposed that these are surface injuries and ante-mortem injuries. These injuries occurred due to throttling by pressing neck by fingers and palm. Thereafter, he noted the injuries which we have already extracted. He prepared the note. It is in his handwriting and signed by him. Dr. Syed was with him as colleague and he also signed on the post-mortem note. Injuries 1 and 2 noted in paragraph 17 are corresponding to the internal injury of Larynx, trachea and bronchi noted in paragraph 20 are only probable by pressing the neck by using fingers and palm. These injuries are sufficient to cause the death of the deceased. The external injury, namely No.4, that is contusion of upper lip is corresponding to injury to

teeth and tongue. These two injuries are probable by pressing the mouth by hand. Paragraph 7 and 8 of the PW1 deposition:

> **"Injury no. 3 noted in para no. 17 occurred to both legs are probable by caught hold of both the legs with pressure of hand.**
>
> **Injury nos. 1 to 4 are probable at once, if one person caught hold the legs by pressing with his hands of that deceased, one person if press the mouth by his hand and another person press the neck by his hand and all these persons acted so at one time, to deceased, injury nos. 1 to 4 are probable at one time."**

He agrees with the proposition given by Modi's Medical Jurisprudence, 22nd edition at page no.333 "Bruises or contrusion injuries which are caused by compression. He also agrees with the following statement contained in Modi on Medical Jurisprudence 22nd Edition:

> **"Suicidal strangulation is not very common, though sometimes cases are met with. In these cases, some contrivancem is always made to keep the ligature tight after insensibility supervenes. This is done by twisting a cord several**

times round the neck and then tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed. In such cases, injuries to the deep structures of the neck and marks of violence on other parts of the body are, as a rule, absent."

He agrees with the said proposition. He says according to him in suicidal death there are no marks of violence and in homicidal death there are marks of violence. He also agrees with the following proposition from the work Modi's Medical Jurisprudence at page 270:

"3. Saliva- Dribbling out of the mouth down on the chin and chest.

4. Neck – Stretched and clongated in fresh bodies.

7. Ligature mark – Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment- link.

10. Injury to the muscles of the neck- Rare.

14. Scratches, abrasions and bruises on the face, neck and other parts of the body – Usually not present."

21. He states that the above features can be noticed in a case of hanging and he agrees with the same proposition. While doing post-mortem he deposed he has not noticed any of the above symptoms on the dead body and it is not noted in the post-mortem as it is not seen. He definitely opines that in the given case, the death occurred due to throttling by external violence and it is homicidal death. He goes on to depose that injury No.2 and 3 in column 20 of the post mortem are only to be noticed in case of homicidal death. And these are marks of violence and thus cannot be noticed in case of hanging and suicidal death. He issued Exh. 23 provisional death certificate immediately to the police. It is in the hand writing of Dr. Syed. Both he and Dr. Syed have signed it. In cross examination he would state as follows:

The dead body of the deceased was brought at about 7 to 7.30 a.m. After checking the deceased was

declared dead and information was given to the police. He denies that when deceased was brought she was alive. He denies that he was confused and the exact time of the death was not mentioned. Rigor Mortis was stated to develop 3 hour after death and completes within 12 hours. He has not preserved the viscera. According to him Police Commissioner immediately demanded provisional death certificate. He denies that he issued the post-mortem report on 25.08.2005. The post-mortem note was already prepared and one doctor was not available to sign it and therefore after signing it, it was issued. He denies that he has prepared on 25.08.2005. He further denies that when the body of deceased was brought, it had elongated neck. He states it is untrue to say that Injury No.1 in para 17 of the post-mortem note can appear in case of hanging also. Bruises and ecchymoses are sometimes seen in case of hanging also in the groove of the ligature mark. He deposed that it is not true that

Injury No.3 in para No.17 of the PM note is not at all possible to occur when the body is in hanging condition and some persons by catching one leg and another leg are trying to remove the dead body. He says in further cross examination that it is true that Injury No.1 in para 20(c) of post-mortem note is probable in the case of hanging. As far as Injury No.2 in Para 20(c), he states that it is not true that Injury No.2 occur in the case of hanging. He also deposed that it is not true to say that in the case of hanging thyroid cartilage may be crushed. He has not seen nail mark and scratch of nail mark on the face or neck of the deceased. He deposed that these types of marks used to be present in the case of throttling but it is not necessary to be present.

Injury No.5 at 20(c) occur in the case of hanging. Lungs getting congested is common in hanging as well as throttling. He further says that it is not true to say that in the case of hanging when person is

struggling in that case teeth may break. He further says it is not true to say that saliva was coming out from the mouth of the deceased and relatives were cleaning it. He has not seen whether the face of the deceased was pale or not. In the case of strangulation by rope or 'Dupatta', the ligature mark may be noticed around the neck. While doing post-mortem he has noticed injuries at the head and back of the deceased. It is true that in the case of hanging, the eyes used to close or used to remain in semi close condition. It is true that in the case of hanging fracture of larynx and trachea - often found also hyoidbone. It is true he says that the deceased had not faced fracture to larynx, trachea and hyoidbone. In the case of hanging fracture by larynx and trachea – very rare and that too in judicial hanging. He denies that her stomach may remain empty due to vomiting. In cross examination for the 4th accused, he states *inter alia* as follows:

In case of hanging and in case of throttling pressure on neck is common factor. In the case of throttling by hand, a person can resist that throttling. In case of resistance there will be mark of nail on neck. The person who is facing throttling when one person is pressing the mouth and other person is catching the legs by using pressure of his hands he will resist by banging the hand on earth in that case there will be injuries to hands. It is probably if the legs are caught hold by hand, then it is possible to occur injury at posterior side of the leg. In post-mortem, no-injury marks on hands are noted. And also no injury marks at posterior side of leg is noted. He deposed that it is not true that the injuries in para 17 are possible by accident and by assault also. He also says that it is not true to say that the injuries shown in in para 20 are possibly by hanging. Ligature mark are occurred on the basis of smoothness and hardness of the

things used for occurring of the ligature mark. It is true that if the smooth article like 'Dupatta of Malmal' used for hanging then there will be no ligature mark on the leg. He states it is not true that Injury Nos. 1 to 4 noted in paragraph 17 are probable to occur one by one and not at once. It is not true that in case of hanging injury No.3 is possible by coming into contact of legs with stool and table etc. If only external injury No.1 and 2 occurred as shown in paragraph 17 and immediately medical aid is provided he may survive. In the case of throttling by hands by using fingers and palm there cannot be fracture of larynx. In re-examination he said that in the case of strangulation by hand fracture of larynx and trachea is not necessary to be occurred even though it is said in column No.12 of strangulation at page No.270 (apparently in Modi's work). According to him, fracture of larynx and trachea

used to occur in strangulation but in the case of throttling by hand such fracture cannot occur. By using hard and blunt object like stone and stick if the strangulation is caused, in that case fracture of larynx and trachea often found also hyoidbone.

22. **The differences between hanging and strangulation have been highlighted by Modi on Medical Jurisprudence and Toxicology, 25th Edition, as follows:**

	Hanging		Strangulation
1.	Most suicidal.	1.	Mostly homicidal.
2.	Face-Usual pale and petechiae rare.	2.	Face-Congested, livid and marked with petechiae.
3.	Saliva-Dribbling out of mouth down on the chin and chest.	3.	Saliva-No such dribbling
4.	Neck-Stretched and elongated in fresh bodies.	4.	Neck-Not so.
5.	External signs of asphyxia usually not well marked.	5.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect.
6.	Ligature mark-Oblique, Non-continuous placed high Up in the neck between the Chin and the larynx, the Base of the groove or furrow	6.	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being

Being hard, yellow and Parachment-like.	soft and reddish.
7. Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7. Abrasions and ecchymoses round about the edges of the ligature Mark, common.
8. Subcutaneous tissues Under the mark-White, Hard and glistening.	8. Subcutaneous tissues under the mark-Ecchymosed.
9. Injury to the muscles of neck- Neck-Rare.	9. Injury to the muscles of the Common.
10. Carotid arteries, Internal coats ruptured in	10. Carotid arteries, internal coats ordinarily ruptured.
11. Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.	11. Fracture of the larynx, trachea and hyoid bone.
12. Fracture-dislocation of the cervical vertebrae- Common in judicial hanging.	12. Fracture-dislocation of the the cervical vertebrae-Rare.
13. Scratches, abrasions and bruises on the face, neck and other parts of the body- Usually not present.	13. Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body- Usually present.
14. No evidence of sexual Assault.	14. No evidence of sexual assault.
15. Emphysematous bullae on Surface of the lungs- Not present.	15. Emphysematous bullae on the surface of the lungs - May be Present.

23. As to what is the distinction between strangulation and throttling is also dealt within the self-same work:

> **"Definition-Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.**
>
> **Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body.**
>
> **When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).**
>
> **A form of strangulation, known as Bansdola, is sometimes practised in northern India. In the form, a strong bamboo or *lathi* (wooden club) is placed across the throat and another across the back of the neck. These are strongly fastened t one end. A rope is passed round the other end, which is bound together, and the unfortunate victim is squeezed to death. The throat is also pressed by placing a *lathi* or bamboo across the front of the neck and standing with a foot on each of *lathi* or bamboo.**
>
> **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. The assailant is then able to tie the ligature."**

24. It is necessary in this case to look at the post-mortem and also the evidence of the medical officer P.W.1. In the light of the differences between hanging and strangulation, in a case of hanging, saliva will dribble down the mouth down on the chin and the chest whereas in a case of strangulation, there will be no such dribbling. P.W.1, Medical Officer was specifically asked with respect to Saliva. He has stated that while doing post-mortem he has not noticed saliva. In cross examination also he states that it is not true to say that Saliva was coming out of the mouth of the deceased and relatives were cleaning it. In the case of hanging, the neck will be stretched, elongated in fresh bodies while it is not so in the case of strangulation. P.W.1 has stated that he has not noticed that the neck was stretched and elongated in the case of the deceased.

25. P.W.1, it is true, has opined that in the case of hanging, eyes used to close or used to remain in semi closed condition. It may be noted at this juncture

that paragraph 13 of the post-mortem wherein it is stated eyes semi open, tongue within mouth.

External Injury No.1 in paragraph 17 is stated to be bruising and ecchimoysses present on both side of neck about 7 cm. x 1 cm.. In this connection the deposition of P.W.1 doctor is relevant:

> **"5. Injury nos. 1 and 2 noted in para no.17 are corresponding to internal injuries of larynx trachea and bronchi noted in para 20 under the head thorax in PM note Ex.22. these injuries noted in PM note are only probably by pressing the neck by using fingers and palm. These injuries are sufficient to cause the death of deceased in ordinary course of nature."**

26. Abrasion and Ecchymosses round about the edges of ligature mark is stated to be common in case of strangulation. Further P.W. 1 deposes that upper external injury No.4, that is contusion, on upper lip noted in paragraph 17 is corresponding injury to teeth and tongue which is described in paragraph 21. He further states that these two injuries are probable for pressing mouth by hand.

27. **Injury to the muscles of the neck is stated to be common in case of strangulation whereas in a case of hanging injury to the muscles of the neck is rare. In this connection it is to be noticed that in paragraph 20 of the post-mortem, it is stated that both sternomastoid muscle crushed and severe haemorrhage present beneath it. In this connection, it is relevant to understand what is sternomastoid muscle and where it is located. The Sternocleidomastoid muscle is also known as sternomastoid muscle. It is one of the largest and most superficial cervical muscle located in the superficial layer on the side of the neck. It has its origin from the middle portion of the clavical and the manubrium sternix. Manubrium sternix is upper most portion of the sternum bone. The post mortem finding in this case is to the effect that sternomashoid muscle is crushed and there is severe haemorrhage present beneath it. This feature is compatible with the case being one of strangulation as injury to the muscle of**

the neck is rare in hanging. Fracture – dislocation of the cervical vertebrae is common in judicial hanging whereas it is rare in the case of strangulation. The post-mortem result does not show that there is fracture or dislocation of cervical vertebrae. The cervical vertebrae are the vertebrae of the neck immediately below the skull. Neither in the post-mortem nor in the deposition of PW 1 is anything brought out to show that there is either fracture or dislocation of the cervical vertebrae. The absence of the same also probablises clearly the case of prosecution that this is a case of strangulation or rather throttling.

28. It is no doubt true that in the case of hanging, fracture of the larynx and trachea is very rare and that too it may be found in judicial hanging. On the other hand, fracture on the larynx, trachea and hyoidbone indicates strangulation. P.W.1 doctor states in cross examination thus say that it is true that the deceased had not faced fracture to the larynx, trachea

or hyoidbone. P.W. 1 in the re-examination explains the absence of fracture to larynx, trachea and hynoidbone in the following terms:

> **In case of strangulation by hand fracture of that larynx and trachea is not necessary to be occurred and the distinction between hanging and strangulation and the general tendencies of hanging and strangulation are given.**

29. He further states according to him, in the case of throttling by hand, fracture of the larynx and trachea cannot occur. It occurs in strangulation. He deposed that by using hand and blunt object like stone and stick, if strangulation is caused, in that case fracture of the larynx, trachea and hyoidbone have been found also. We have noticed that throttling is constriction produced by pressure of fingers and palm upon throat. In ligature strangulation it can be

either by leg or by any other means. Mugging is when strangulation is brought about with the foot, knee, bend of elbow or some other solid substances. The deposition of the medical officer is not inconsistent with the distinction between throttling and strangulation. In this case the choice is between finding death by hanging or by throttling. We have noticed that among the injuries, Injury No.3 in paragraph 20 is thyroid cartilage is crushed laterally on both side on left side. The further injury which is noted is cricoid cartilage and it is also crushed on both side. P.W. 1 doctor has deposed that Injury No.2 and 3 in paragraph 20, namely, both sternomastoid muscle being crushed and severe haemorrhage being present beneath it and Injury No.3 thyroid cartilage being crushed literally on both sides on left side are only noticed in the case of homicidal death. He has further deposed that these are marks of violence and they cannot be noticed in the case of hanging and suicidal death. We have already noticed that injury to

the muscle of the neck, is only rarely found in the case of hanging whereas injury to the muscle of the neck is common in strangulation and that the sternomastoid muscle is indeed a muscle of the neck.

30. One of the contentions of the appellant is if there is a case of throttling or any other form of strangulation, the victim would undoubtedly resist. The resistance would produce struggling and there would be marking of nail on the neck and face. P.W. 1 has indeed deposed that he has not seen nail marks and scratches of nail marks on the face and the neck of the deceased. In the work by Modi, scratches, abrasion fingernail and bruises on the face, neck and other parts of the body are usually present in the case of strangulation. P.W. 1 would however, state that these types of marks used to be present in the case of throttling but it is not necessary to be present. He also further says that bruising is itself indicate, it is reddish brown colour.

31. **Having considered the conclusion in the post-mortem and the deposition of medical officer and analysed in the light of the principles laid down in the work Modi's Medical Jurisprudence and Toxicology, let us also appreciate the other evidence on record.**

32. **Both the courts have noted from the spot panchnama that the height of the room was just 5 ft. 10 inches. A conclusion has been reached that the theory of hanging is incompatible by a person of normal height or even if the height is 5 ft. We see no reason to take a different view in this regard. This also strengthens the case of the prosecution based on findings in the post-mortem and the deposition of the medical officer.**

33. **There is a case for the appellant that it was the appellant who took the deceased to the hospital. This is true but the further inference sought to be drawn by the appellant that it means that the appellant was**

innocent and had he not been innocent he would have not brought the body of the deceased to the hospital, is not true. Having regard to the other evidence which we have already discussed pointing it to be a case of strangulation or rather throttling, apparently the appellant sought to build up a case of the deceased dying as a result of hanging. In fact, in his questioning under Section 313 Cr.P.C. he does not specifically set up a case of hanging as such. He states in answer to question No.42 that all witnesses are speaking lie against us due to teaching of his father-in-law and Sunnabee (P.W.4). In answer to question No.45 which was, do you want to say anything else about the case, he says it is a false case.

34. There remains the contention of the appellant that since the prosecution has set up a specific case and the said charge was under Section 302 read with Section 34 IPC on the basis that appellant along with accused Nos.2 to 4 together had committed the crime and once

the High Court has acquitted accused No.2 to 4, it is not open to the High Court to convict the appellant under Section 302 IPC on the basis that the crime was committed by only him and therefore he was entitled to an acquittal.

35. In *Krishna Govind Patil v. State of Maharashtra*[3], four accused were charged for the murder of one Vishwanath. The prosecution case *inter alia* was that there was a grudge against Vishwa Nath as he had helped Deoram Maruti Patil in getting acquittal in a murder case where relatives of the four accused were murdered. The four accused were charged under Section 302 IPC read with Section 34 IPC. They were all separately charged under Section 302 IPC. The Sessions Judge acquitted all the accused. The State preferred an appeal to the High Court against acquittal under Section 302 read with Section 34 IPC. No appeal was preferred against the order of acquittal under Section

3 AIR 1963 SC 1413

302 IPC. The High Court dismissed the appeal against accused 1,3 and 4. The High court, however, convicted the 2nd accused under Section 302 read with Section 34 IPC. It is in this appeal by the 2nd accused that this Court proceeded to consider various situations which may arise and thereafter proceeded to held as follows:

> **"8. But the present case falls outside the said three illustrations. The High Court gave conflicting findings. While it acquitted Accused 1, 3 and 4 under Section 302, read with Section 34 of the Indian Penal Code, it convicted Accused 2 under Section 302, read with Section 34, of the said Code, for having committed the offence jointly with the acquitted persons. That is a legally impossible position. When accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of doubt to them, the result in law would be the same: it would mean that they did not take part in the offence. The effect of the acquittal of Accused 1, 3 and 4 is that they did not conjointly act with Accused 2 in committing the murder. If they did not act conjointly with Accused 2, Accused 2 could not have acted conjointly with them. Realizing this mutually destructive findings of the High Court,**

learned counsel for the State attempted to sustain the finding of the High Court by persuading us to hold that if the said finding was read in the context of the whole judgment, it would be clear that the learned Judges meant to hold that persons other than the acquitted accused conjointly acted with the convicted accused. We have gone through the entire judgment carefully with the learned counsel. But the observations of the learned Judges as regards the "other participants" in the crime must in the context refer only to the "one or other of that said three acquitted accused participated in the offer he committed by Accused 2". There is not a single observation in the judgment to indicate that persons other than the said accused participated in the offence, nor is there any evidence in that regard. We, therefore, hold that the judgment of the High Court cannot stand. We are satisfied that on the findings arrived at by the High Court, the conviction of Accused 2 is clearly wrong."

36. In similar vein is the view taken in the judgment of this Court in *Sawal Das v. State of Bihar*[4] wherein the appellant, his father and his step mother were accused of committing an offence charged under Section 302 simpliciter. The appellant, his father, driver and

4 1974 (4) SCC 193

8 others were charged under Section 201 IPC. The appellant's step mother was charged under Section 302 read with Section 109 IPC. Though the trial Court convicted the appellant, his father and step mother under Section 302 read with Section 34 IPC which was the amended charge by the trial Court, the High court acquitted the appellant, his father and step mother under Sections 302 read with Section 34 IPC but instead found the appellant guilty under Section 302 simpliciter. This is besides finding him guilty under Section 201 IPC but without separate sentence against the appellant. This Court considered the circumstantial evidence. It referred to the judgment of this Court in *Krishna Govind Patil v. State of Maharashtra*(supra) and held as follows:

> **"14. Mr. Mulla, appearing for the appellant, has also drawn our attention to *K.G. Patil* v. *State of Maharashtra* [AIR 1963 SC 1413] . This Court held there that, when two out of three accused persons, each having been charged under Section 302 read with Section 34, Indian Penal Code, were**

acquitted, it must be assumed that the two acquitted persons did not participate in the commission of the offence at all. It is contended that the natural result of this view is that the particular act of the individual accused which brought about the death of the murdered person must be established beyond doubt before he is singly and separately convicted under Section 302, Indian Penal Code simpliciter."

But it is relevant to notice paragraph 17 and 18 of the judgment and the same read as under:

"17. We think that, upon the facts of this case, there could be a reasonable doubt as to whether Section 34 IPC could be applied to convict any of the three accused persons of murder. <u>After excluding the application of Section 34 IPC to the case, the evidence does not also appear to us to prove conclusively that the appellant must have either throttled the deceased or done some other act, quite apart from the acts of his father and step-mother, which brought about the death. This result follows from the totality of evidence and the presumption from the non-production of Geeta Kurmini which destroys the value of the evidence, which weighed so much with the High Court, that the appellant was doing something like pushing or taking the</u>

murdered woman inside her room at the time when she was last seen alive.

"18. The trial court and the High Court, relying on the evidence of some bleeding of the body of the deceased, admitted by the appellant to have been carried in the car to the burning ghat, and the absence of evidence of death caused by burning, came to the conclusion that the appellant must have throttled the deceased. This was pure conjecture after eliminating the defence case of burning by accident. If it had been a case of throttling only, it would be difficult to explain the cries of murdered woman for help which were heard by witnesses on the road unless we assume that the murdered woman cried out, as she may have done, before the hands which choked her were placed on her throat. Therefore, although we may hold, as we do, that this must be a case of murder, it is not possible for us to find conclusively that it was a case of throttling and of nothing else or that the person who could have throttled or done some other act which actually killed the deceased was the appellant and not his father or stepmother."

(emphasis supplied)

37. **In Sukhram case (supra) two accused persons were convicted by the trial Court under Section 302 read with Section 34 IPC and under Section 436 read with Section 34 IPC. The High Court acquitted one of them giving him the benefit of doubt. It is found that though the co-accused and the appellant were individually charged under Sections 302 and 436 IPC and alternatively under Sections 302 read with 34 IPC and Section 436 read with Section 34 IPC, the latter was found acceptable to the Sessions Judge. The co-accused was acquitted on the ground of benefit of doubt. In such circumstances, since this was a case where the co-accused was a named person and was acquitted, the appellant could not be said to have acted conjointly with anyone in the commission of the offence. The court also noticed infirmities and contradictions in the evidence.**

38. It is clear the evidence in this case clearly supports the case of throttling. As far as the motive is concerned, there is the evidence of P.W.4 that a few days prior to the date of incident appellant had visited her and told her about not being given the half tola gold and money. She also deposed about being told by the appellant that result of non-compliance with his demands would be that he would kill his wife. P.W.3 has also spoken of the threat as conveyed by P.W.4. This has been believed in by two courts.

39. Another circumstances which is found by the High Court is that, as is natural, the appellant and his wife had a separate room, therefore, there was a custodial death in which the appellant alone has been implicated. The death is found to have taken place somewhere around 3.30 in the morning. The finding by the High Court is that by that time the appellant would be with his wife. This cannot be described as manifestly erroneous.

40. As far as the contention of the appellant that the date of incident is 10.3.2005 but post mortem note shows date 25.8.2005, P.W.1 says that it is not true that he issued Post-mortem note on 25.8.2005. He further says that it is his say that PM Note was already prepared and one doctor was not available to sign it and therefore after signing it was issued. He further says, it is not true to say that he has prepared the PM note on 25.8.2005.

41. The post-mortem note indicates time of receipt of the body as 3.15 p.m. on 10.3.2005. The post mortem is stated to have begun at 3.30 p.m. on 10.3.2005 and ended at 4.45 p.m. on 10.3.2005. It is stated to be done by P.W.1 medical officer and by one another, namely, Dr. A.I. Syed. The date is shown as 25.8.2005 on the post mortem note. This apparently, is in tune with the deposition of P.W.1 that other doctor was not available. At the same time, we notice that on said

date 10.3.2005, there is a provisional death certificate which has been issued, according to P.W.1 him, to the police immediately. It is in the handwriting of Dr. syed. He deposes that he and Dr. Syed have both signed on it and the contents are true and correct. It is marked as Exh.23. In his cross it is deposed by him that according to him police machinery immediately demands provisional death certificate and when the cause of death is known after post-mortem they immediately issued the provisional death certificate. It can be understood as follows:

> **Apparently, the post-mortem was conducted. They came to the conclusion that the cause of death was as noted in the provisional death certificate and so issued the same. The detailed contents of the post-mortem were thereafter entered. No doubt, there is some gap, that is from 10.03.2005 to 25.08.2005 but this is on the basis that one doctor was not available to sign it.**

42. It is *inter alia* certified by the two doctors in the provisional death certificate that they have done the post mortem on the body of Mrs. Sultana Javed Sheikh, 20 years of age on 10.3.2005 and the probable cause of death seems to be acute cardiorespiratory arrest secondary to acute asphyxia, secondary to throttling. The said certificate is dated 10.03.2005. There is the date, 25.08.2005 on the Post Mortem report. Also, the date 10.03.2005 is shown against the Column-forwarded to the Police Sub Inspector, Naldurg. But the reason appears to be that though Post Mortem was conducted on 10.03.2005, it was signed by the doctor on 25.08.2005. Though it could be argued that the reason for the date 25.08.2005 is that one of the doctors was not available but however, on 10.03.2005, in the provisional death certificate how could both the doctors have signed. It would appear from the report that Dr. A.I. Syed is the Medical Officer of Primary Health Centre, Jalkot and it is his non availability after the content were entered in the Post Mortem

report that led to report being delayed. Though there is a gap, we find assurance from the fact that the provisional death certificate which is marked as Exh.E-23 and which is dated 10.03.2005 corroborates E-22 Post Mortem.

43. As far as the injuries in the Inquest report not being noticed in the post-mortem report is concerned, there can no doubt that the medical doctor knows exactly what medical injuries are and ordinarily in case of inconsistency, the medical report of the doctor should prevail. Having regard to the post mortem and the evidence of P.W.1, the nature of injuries noticed as explained by the deposition of P.W.1 unerringly point to the death being caused by throttling as opined by the doctor. Much may not turn on the injuries which are alleged to have been noted in the Inquest not being noted in the post mortem note.

44. We see no merit in the appeal. The appeal is dismissed. As appellant has been released on bail, the

bail bonds are cancelled and appellant be taken into custody to serve out the remaining sentence.

……J.
[SANJAY KISHAN KAUL]

……J.
[K.M. JOSEPH]

NEW DELHI
NOVEMBER 06, 2019