



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 14 OF 2010

Satish s/o. Kondiba Gawali,
Age 30 yrs., Occu. Agri.,
R/o. Shedgaon, Tq. Shrigonda,
District Ahmednagar.

...Appellant.

Versus

The State of Maharashtra

...Respondent.

Mrs. Sadhana Jadhav, Advocate for appellant.

Mr. K.G. Patil, APP for State/respondent.

**CORAM : NARESH H. PATIL &
T.V.NALAWADE, JJ.**

DATED : 4th May, 2011.

JUDGMENT : [PER T.V. NALAWADE, J.]

1. This appeal is filed against the judgment and order of Sessions Case No. 11/2007, which was pending in the Court of Additional Sessions Judge, Ahmednagar. By the decision dated 15.10.2009, the appellant/accused is convicted and sentenced by the Trial Court for offences punishable under sections 302, 498-A and 201 of the Indian Penal Code.

2. In short, the facts leading to the institution of the appeal, can be stated as follows :-

(a) Complainant - Gorakh Khedkar is a resident of village Khalegaon, Tahsil Karjat, District Ahmednagar. The deceased Swati was his daughter and she was given in marriage to the present appellant on 20.5.2006. Original accused Nos. 2 and 3 are the real brothers of the appellant and accused No. 6 is sister of appellant. Accused Nos. 4 and 5 are the parents of the appellant. After the marriage, Swati started cohabiting with appellant in his village Shedgaon, Tahsil Shrigonda, District Ahmednagar. All the accused were living in the same house. Swati was treated well for about one month of the marriage.

(b) Swati used to visit the house of her parents on the occasions of festival. On the occasion of "Nagpanchami" festival of the year 2006, when Swati came to the house of her parents, she disclosed that all the accused were asking her to bring Rs. one lac from her parents as they wanted to construct new house. She disclosed that for fulfilling the demand of bringing amount, they were giving taunts to her and continuously teasing her. She also complained that the accused were asking her to do heavy work and virtually

starving her. After hearing the disclosures, the complainant called a meeting of respectable persons of his village and they advised him to call appellant to the village to convince him. The mediators tried to convince the appellant not to make such demand and not to harass Swati. Complainant also promised that he would give some money afterwards as he was not in a position to meet the demand immediately. The appellant was not convinced and he expressed displeasure. After 10 to 12 days of this meeting, when Swati was cohabiting with the appellant, uncle of the complainant visited the house of appellant and on that occasion also Swati made similar disclosures. Appellant was insisting Swati to bring amount from her parents. On the previous day of "Shravan Pola" festival, when complainant contacted accused to invite him for celebration of "Pola" festival, the accused refused to come to the house of the complainant and he also refused to send Swati. When the Complainant talked with Swati on phone, she disclosed that illtreatment was continued to her as the demand was not met with. Swati was not sent for "Pola" festival to the house of her parents. Twenty days after the "Pola" festival, complainant visited the house of appellant and on that occasion also similar disclosures were made to the complainant. On that occasion, Swati further expressed fear that there was danger to her life from the accused

persons.

(c) On 8.10.2006 after 8 p.m. the accused contacted Manisha, relative of complainant, to inform that Swati was missing since 4 p.m. of the day. The parents of Swati searched for her, but she could not be traced. On 9.10.2006 the accused/appellant gave report to Shrigonda Police Station at about 11 a.m. that dead body of Swati was found in the well, in his field. Appellant also informed about this incident to Manisha. A.D. was registered on the basis of report given by the appellant.

(d) The complainant, his relatives and some persons from his village went to village Shedgaon on the morning of 9.10.2006. After learning about the finding of dead body, they went to the well. They noticed that there were injuries on arms and on the neck of the dead body. Inquest panchanama was prepared by police in the inquiry of A.D. and the dead body was referred to the Government Hospital. The post mortem was conducted on the same day and doctor gave opinion that Swati died due to asphyxia due to throttling. After learning about the cause of death, Gorakh - the complainant, gave report to police and the crime at Cr. No. 245/2006 came to be registered at about 20.30 hrs. for aforesaid

offences on 9.10.2006. The complaint was given against the husband and his relatives.

(e) On 10.10.2006 the appellant came to be arrested. Injuries were found near left eye and over right eyebrow of the accused which were fresh. Police prepared spot panchanama. Shri. Hajare, the P.I., who was attached to Shrigonda Police Station, has made the investigation. He recorded the statements of the witnesses. Viscera was preserved and it was sent to CA office. After completion of the investigation, chargesheet came to be filed in the Court of Judicial Magistrate, First Class, Shrigonda. JMFC committed the case to the Court of Sessions. The charge was framed against all the accused persons for the aforesaid offences. All the accused pleaded not guilty. Prosecution examined in all eight witnesses. The accused persons took a defence of total denial during statements given under section 313 of Criminal Procedure Code. Defence examined one Bapurao Gavali as defence witness. The Trial Court acquitted the relatives of the husband and the husband came to be convicted and sentenced for aforesaid offences.

(f) The Trial Court has believed the evidence given by

prosecution witnesses regarding the demand of Rs. one lac made by accused No. 1. The fact that Swati died homicidal death, was not seriously disputed before the Trial Court and the prosecution also proved that Swati died homicidal death. The Trial Court has held that accused gave false information to police and he concealed the offence. The Trial Court has taken into consideration the conduct of the accused immediately after the incident and on the basis of circumstantial evidence, the conviction is given. In the appeal, both sides are heard. Points raised by both sides are being discussed alongwith the evidence.

3. The prosecution has relied only on circumstantial evidence. In the evidence of Sonawane (PW 7), the spot panchanama is proved. It is not disputed that the land Gat No. 44 belongs to the family of Kondiba Gavali, father of appellant. The spot was shown by the accused. The well in which dead body was found, according to the accused, is situated in land Gat No. 44. The dead body was taken out from the well by the appellant and his brothers and after that report was given by the appellant to police. In the evidence of Vasant Jadhav (PW 4) the report given by accused to Shrigonda Police Station is proved as Exh. 66. During the statement given under section 313 of Cr. P. C., the appellant has admitted that he

had given this report to police. This document shows that the dead body was taken out from the well as per the case of appellant at about 7.30 a.m. on 9.10.2006. In the evidence of Kundlik Khedkar (PW 2), the prosecution has proved the inquest panchanama as Exh. 63. This document was also prepared during the inquiry of A.D. and the dead body was identified by complainant Gorakh (PW 1). The panchanama was prepared in between 12.45 p.m. and 13.45 p.m. Though Kundlik (PW 2) is relative of the complainant, there is also the evidence of Investigating Officer Sonawane (PW 7) on the inquest panchanama. The defence has not seriously disputed this record. In the argument also, the fact that Swati died homicidal death was not seriously disputed. This document shows that there were injuries on both the arms, on the forehead and on the throat. There were blood stains on the sari also.

4. Dr. Shaila Dange (PW 8) conducted the PM examination on the dead body and in her evidence, the PM report at Exh. 82 is duly proved. The evidence of doctor and PM report shows that injuries like contusions were found on left and right side of neck. Injuries like abrasions were found over posterior aspect of left arm and right arm. There was a fracture of right superior horn of thyroid cartilage. All these injuries are said to be anti-mortem in nature.

Doctor has given opinion that the cause of death as due to asphyxia due to throttling. In the cross examination, it is only suggested that such injuries can be caused due to fall on stone or due to snatching of ornaments from the neck. The suggestions are denied. Surprisingly, suggestion of causing of injuries due to fall during scuffle are also given. There is no need to discuss this evidence more. Further the inquest panchanama at Exh. 63 shows that the ornaments were intact and no ornament was removed from the dead body. No such specific defence is also taken by the accused/appellant. This evidence is sufficient to prove that Swati died due to asphyxia due to throttling. There was no symptom that death was caused due to asphyxia due to drowning. The aforesaid evidence is sufficient to prove that in the well of the land of father of appellant, the dead body of Swati was thrown after committing her murder.

5. Section 8 of the Evidence Act shows that conduct of the accused in such a case is relevant, if conduct influences or is influenced by any fact in issue or relevant fact, whether the conduct of the accused was previous or subsequent to the incident. The Explanation (1) to section 8 shows that if statement of person like accused in such a case which accompanies and

explains acts other than the statement, such statement can also be treated as part of conduct. In view of this position of law, the report given by accused, Exh. 66, is relevant piece of evidence. In this report, the accused informed to police following things :-

(a) On 8.10.2006 at about 4 p.m. he was present in the field and to his knowledge, his father and deceased had also reached the field prior to 4 p.m.

(b) He learnt from his father that the deceased had left the company of father by saying that she was proceeding to answer nature's call and the deceased had not returned for quite some time.

(c) The accused searched for the deceased by giving calls in sugarcane crop and then he went to well situated in his field.

(d) The accused saw footwear, the Chappal, of deceased floating on the water of well.

(e) As per his case, the accused gave missing report to police at 1.30 hrs. of 9.10.2006. [This report is not brought on record by the accused, when in view of other provisions of the Evidence Act, it was necessary for him to do so.]

(f) On 9.10.2006 at about 7.30 a.m. the accused searched in the water of the well and then he found the dead body.

6. The accused has taken the defence of total denial. He has not specifically come out with any case as to when exactly he went to the field. There are many suggestions given for accused to various witnesses to point out the distance between the well and the residential place of the accused and also to show that the accused was cultivating this land. To witness Gorakh (PW 1) suggestions are given in cross examination to the effect that accused No. 1/appellant was living with Swati separately, from other accused persons. Suggestions are given that other accused were also living separately with their respective families. A suggestion is given that accused No. 3 was running a photo studio in Shrigonda and he had shifted there about 4 to 5 years prior to the date of incident. A suggestion is given to PW 1 that accused No. 2 - Laxman was doing the business of agricultural operation like Us-Bandhani (preparing groups of standing sugarcane by tying them together). A suggestion is given that accused Nos. 4 to 6 were taking care of cows. It is specifically suggested that yield from agricultural sugarcane crop of the accused was Rs. 2.5 lacs per annum. Another specific

suggestion is given that accused No. 1 is a member of Shrigonda Co-operative Sugar Factory. It is further suggested that due to load shedding, it had become necessary to lift the water from well manually. Similarly it is suggested to Manisha (PW 5) during cross examination that Swati was given in marriage to the appellant as he was having 8 acres of agricultural land. This suggestion is admitted by Manisha (PW 5). She has also admitted suggestion given to her that the appellant was cultivating the land. It is suggested to her that Laxman, other accused, was having thrashing machine and he was doing that business. She has expressed ignorance about it. She has admitted the suggestion that other accused Ashok was in the business of photography and he was doing the business at Shrigonda. The report at Exh. 66 given by the accused and aforesaid suggestions indicate that the accused was not disputing that he was cultivating the land in which the well is situated. By giving suggestions, it was also contended that other accused had no concern with this land or its cultivation.

7. In spite of the aforesaid circumstances, the accused examined his defence witness Deoram Gavali (DW 1) to show that accused No. 2 Laxman is having bullocks and he is doing cultivation of the land and accused No. 1 is doing the business by

using thrashing machine. This witness was used by police for preparation of spot panchanama, but he has tried to deny the contents of this document when there was no reason for doing so. He has admitted that the accused are his relatives and he generally sits in his grocery shop. There is no record to show that accused No. 1 was doing some business by using thrashing machine. In view of these circumstances, the evidence of Deoram (DW 1) is of no use to accused. This witness cannot be trusted due to aforesaid circumstances.

8. The accused has not examined himself on oath and the father of accused is also also not examined to show that the deceased had left the field or she was last-seen alive when she was alone by somebody. Though it is true that the initial burden of proving few circumstances which are required to be proved for the use of section 106 of the Evidence Act is on prosecution, there is the aforesaid report of the accused and there are other connecting circumstances due to which it was necessary for the accused to give some explanation. In view of the provisions of section 8 of the Evidence Act and aforesaid record and circumstances, this Court has no hesitation to hold that at the relevant time, the accused was present in the field and it was necessary for the accused to given

appropriate explanation regarding the cause of death of Swati.

9. For defence on aforesaid incriminating circumstance two reported cases were cited. In the case reported as **AIR 1974 SC 778**, (**Sawal Das Vs. State of Bihar**), the Apex Court has observed that :-

"The burden of proving a plea specifically set up by accused lies upon him. But neither section 103 nor section 106 can absolve prosecution from discharging its general or primary burden of proving its case beyond reasonable doubt. It is only when prosecution has led evidence which if believed will sustain conviction, or makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused."

There cannot be any question of disputing this proposition made by the Apex Court. In the case reported as **2004 AIR SCW 819** (**Sashi Jena and others Vs. Khadal Swain and another**), the Apex Court has discussed section 33 of the Evidence Act and also the provisions of section 106. Homicidal death of wife was proved, but in view of the facts of that case, the Apex Court held that mother in law and two brothers of the husband cannot be convicted only for the single circumstance like homicide took place in their house.

The facts were entirely different. Few relevant facts appearing from the record are already mentioned and other evidence of the present case is being discussed.

10. On the other hand, for prosecution also few cases were cited. In the case reported as **2007 (Supp.) Bom. C.R. 853 (Aurangabad Bench) (Ramprasad Tukaram Gadade Vs. State of Maharashtra)**, the death of wife was caused due to strangulation. Husband and wife were living in the said house. In view of this circumstance, this Court held that if the prosecution proves that they were living together in the same house, the burden of prosecution is discharged and it is up to the accused to explain the special circumstance under section 106 of the Evidence Act. It is further observed that if the husband does not explain, adverse inference can be drawn and conviction in such a case is possible. This Court referred the case of Apex Court reported in **2006 (10) SCC 681 (Trimukh Maroti Kiran Vs. State of Maharashtra)**. The Apex Court has observed that when the accused has an opportunity to plan and commit the offence at the time and in the circumstances of his choice, it is extremely difficult for prosecution to lead evidence for establishing the guilt. It is further observed that in such cases strict principle of circumstantial evidence cannot be insisted upon by

the Court. This proposition also cannot be disputed. In the case reported as **2003 (11) SCC 271 (State of Punjab Vs. Karnail Singh)**, the Apex Court has laid down that it is the duty of the prosecution to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case and after that section 106 of the Evidence Act can be used. Similar observations were made by the Apex Court in the case reported as **AIR 2007 SC 144 (State of Rajasthan Vs. Kashi Ram)**. However, the facts of the other cases cited for prosecution viz. **2000 ALL MR (Cri) 514 (Vanappa Sadashiv Pujari Vs. State of Maharashtra)** were totally different.

11. The observations made by the Apex Court and Bombay High Court in the cases cited supra show that in such a case, the provisions of sections 101, 103, 106 and 114 of the Evidence Act need to be considered together. The combined effect of these provisions show that the initial burden to prove the guilt of the accused is on prosecution and section 106 does not relieve prosecution of that burden. However, section 106 is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are "especially" within the knowledge of accused and which he could prove without difficulty or

inconvenience. Thus, the facts which are established as within the knowledge of the accused need to be explained by the accused. If he does not explain these facts, there will be some missing links in the chain of circumstances. In view of these special provisions like sections 103 and 106 of the Evidence Act, these missing links can be inferred from the proved facts. In view of section 114, in drawing the inference, a judge of fact is required to have due regard to the common course of natural events to human conduct and their relation to the facts of a particular case. If that is not done, section 114 of the Evidence Act would become useless and the criminal justice system will become ineffective.

12. Thus, in view of the facts of the present case, in ordinary course of nature and in view of the report which is at Exh. 66, it needs to presume that the accused was present in the field where the well is situated and his wife was also there. As the dead body was found in the well and death took place due to asphyxia due to throttling, it was necessary for the accused to explain as to how the wife sustained these injuries. The inquest panchanama and the evidence of the witnesses show that the routine ornaments were on the body of the deceased and there was no attempt to commit theft. In any case, the thief would not have thrown the dead body

in to a well. The injuries were found only on the hands, in addition to the injuries which were present on the throat. There was no injury on mouth, lips. If some stranger was attempting to kill her by throttling, the deceased would have certainly raised hue and cry and the accused would have certainly learnt about it, if he is not the real culprit. Due to these circumstances, it needs to be presumed that whatever happened to the wife is within special knowledge of the appellant. There are no steps to the well. The description of well given in the spot panchanama and medical evidence has ruled out probability of suicidal and accidental death.

13. The mention of name of father in report at Exh. 66 is of no use to the accused, as there is nothing positive on the record in respect of this contention. The aforesaid circumstances are certainly against this mention in Exh. 66. In Exh. 66, the accused has not mentioned that he noticed injuries on the two arms of the dead body and also on the throat of the dead body. The accused did not express suspicion regarding the cause of death and he even did not mention that it was the case of probably suicide or accidental death. The mentioning that at about 4 p.m. of 8.10.2006 the accused had seen the footwear of the deceased floating in the well shows that there was circumstance, reason for the accused to

draw inference that his wife was in the well. In ordinary course, husband would have immediately tried to take steps to see as to whether she was there and she was alive. No such steps were taken by the accused and the accused tried to trace the dead body only on the next day, after more than 14 hours. The step was taken by the accused on the next morning before the arrival of police even when as per his case, he had given missing report at about 1.30 hrs. of 9.10.2006. It is already observed that the accused ought to have brought the first missing report on the record. Even during the hearing of appeal, a query was made to the defence counsel and she was asked whether the defence is interested in bringing the said report on the record. No interest was shown in that regard by the counsel of the appellant. This circumstance creates probability that when the accused saw footwear of his wife floating in the water of well at about 4 p.m. of 8.10.2006 he was sure that she was dead. Thus, the fact that the cause of death is within the knowledge of the appellant, can be easily inferred. These circumstances are relevant under section 8 of the Evidence Act also.

14. In the evidence of prosecution witnesses and also in the evidence of defence witness, it is brought on record by defence that the house of the accused is situated at the distance of 1/2 k.m.

from the field. The deceased was newly married woman. If she really wanted to answer the nature's call, she would have returned to residential place for the same. Thus, the contention of the accused in this regard does not appear to be true. In view of the aforesaid circumstances and provisions of section 8 of the Evidence Act, it needs to be presumed that by the aforesaid conduct, the accused has destroyed the presumption of innocence which is available in criminal law in his favour. By giving the report, Exh. 66, the accused gave version favourable to himself and which was not true. Thus the record and the conduct can be used against him in view of illustration (e) of section 8 of the Evidence Act.

15. The accused has admitted the arrest panchanama - dated 10.10.2006 which is at Exh. 57. He was arrested at about 0.45 hrs. Fresh injuries were found near left eye and right eyebrow. In the same document, the accused had given explanation to the police that the injuries were caused by the relatives of the deceased on parents side. No such injury was found on the person of any other accused. There is no medical evidence in this regard. The incident probably took place prior to 4 p.m. of 8.10.2006 and so in absence of medical evidence, it is difficult to infer that these injuries were

caused in the course of same transaction and this circumstance can be used under section 7 of the Evidence Act.

16. In addition to the aforesaid circumstantial evidence which points finger only to the accused, there is other evidence on motive and also for the offence punishable under section 498-A of IPC. Gorakh (PW 1) has given evidence that the marriage took place on 20.5.2006. Swati died on 8.10.2006 i.e. within four and half months of the marriage. Gorakh has given evidence that Swati used to visit his house on the occasions of festival and after one month of the marriage, at the time of "Nagpanchami" festival, the first disclosure about the illegal demand and illtreatment was made by Swati. Gorakh has deposed that Swati disclosed that the accused were demanding Rs. one lac from her parents as they wanted to construct a new house. Gorakh has given evidence that he called Kundlik Khedkar (PW 2) and Popat (PW 3) and meeting was held to convince the appellant not to make such demand. He has deposed that he promised to give some amount in future as he was not in a position to pay Rs. one lac at that time. According to him, accused expressed displeasure. He has deposed that after "Nagpanchami" festival, Swati returned back to appellant for cohabitation. Kundlik (PW 2) and Popat (PW 3) have given similar evidence. Both the

witnesses are admittedly relatives of the complainant. Both these witnesses have given similar versions and they have also deposed that such a demand of money was made to Swati and there was illtreatment to her due to that demand.

17. Gorakh (PW 1) has given evidence that Mohan Khedkar, other relative, had visited the village of accused after few days of first incident and to him also similar disclosure was made by the deceased. This witness is not examined by the prosecution and so there is no need to discuss more the evidence of Gorakh in that regard.

18. Gorakh (PW 1) has further deposed that one day prior to "Shravan Pola" he called accused No. 1 on phone and requested him to send Swati for "Pola" festival. He has deposed that the accused refused to send Swati. He has deposed that when he talked with Swati on the same occasion, Swati started crying and she requested to make urgent arrangement of money as there was illtreatment to her. Gorakh has deposed that Swati was not sent to his house for celebration of "Pola" festival. He has given evidence that 15 to 20 days after "Pola" festival, he had visited house of accused No. 1 and on that occasion also similar disclosures were

made by Swati. He has further deposed that on the last occasion Swati had disclosed that accused Nos. 1 to 4 were saying that "she will be done away" as the demand was not meet with. Manisha (PW 5) has given evidence that after one and half months of the marriage, she felt that Swati was not happy and she was under mental pressure. All the three witnesses ,who have given evidence in corroboration to the version of complainant, are relatives of complainant. But, only due to this circumstance, their evidence cannot be discarded. Swati had expressed fear that there was the danger to her life due to this demand. This disclosure is relevant under section 8 and also under section 32 (1) of the Evidence Act. Swati died homicidal death and so such disclosure needs to be given due importance.

19. Gorakh (PW 1) has given evidence that on 8.10.2006, in the afternoon, he learnt from his relatives that Manisha (PW 5) had informed that Swati was missing since afternoon. He has deposed that on 9.10.2006 he left for the village of accused. The record of panchanama shows that prior to 12 noon the complainant and other witnesses were present in the village of the accused. These witnesses have given evidence that they saw the injuries on the arms and throat. Much was argued in respect of some

discrepancies in the evidence of Gorakh (PW 1). At one point he admitted that the report was given near the well and at other point, he stated that the report was given in the police station after learning about the cause of death. The report is duly proved as Exh. 61. The post mortem was completed at 6.45 p.m. and the crime on the basis of report was registered at 20.30 hrs. of 9.10.2006. Thus, the report was given immediately. It was submitted for defence that as the report was given only after learning the cause of death, the allegations regarding the demand of money and illtreatment on the count of the demand cannot be believed. This submission is not acceptable. If the father waited to know the reason of death and only after confirming the reason, he gave the report, his evidence cannot be looked with doubt. The report is fully consistent with the evidence given by PW 1 in the Court. The only inconsistency in the substantive evidence and Exh. 61 is that in the report, it is mentioned that they learnt about the incident of missing Swati at about 11 p.m. on 8.10.2006 and in the substantive evidence, he has mentioned that in the afternoon of 8.10.2006 he learnt about this incident. Whatever they learnt was on the basis of news given by Manisha (PW 5). So the evidence of Manisha needs to be given preference on this point. She has deposed that she learnt about the incident at about 8 p.m. when the accused gave

her a call.

20. Some suggestions were given to all the prosecution witnesses for defence which are not consistent with the aforesaid record and also the defence taken by the accused. It is suggested to PW 1 that accused No. 1 had called him on phone at about 6 to 7 a.m. of 8.10.2006 to inform that Swati was missing. This suggestion is denied. It is suggested to PW 1 that accused No. 1 had informed on phone to Gorakh and the relatives of Gorakh at about 7.30 to 8 a.m of 9.10.2006 that Swati fell in the well. This suggestion is also denied. It is suggested to PW 1 and also to other two male witnesses, who are relatives of Gorakh that false certificate was procured regarding the cause of death by them. This suggestion is denied. A suggestion was given to both Gorakh and Manisha that marriage of Swati was to be settled with a son of sister of Gorakh, but due to some circumstances, it could not be settled, though Swati wanted to marry with the said relative. It is also suggested that Gorakh had spent amount of Rs. 75,000/- for getting job for the said relative. These suggestions are denied. The reason behind the suggestions is not directly brought on the record in the evidence of these witnesses. As Swati died homicidal death, there is no need to consider the effect of these circumstances in favour of

the accused. A suggestion is given to Popat (PW 3) that after the incident, the accused had approached the complainant with amount of Rs. one lac to settle the matter, but the complainant had refused to accept the amount. It is surprising that such suggestion was also given for the defence.

21. There is no reason to disbelieve Gorakh and his aforesaid three relatives in respect of the evidence that the demand of Rs. one lac was made by the accused No. 1 and there was illtreatment to Swati. This evidence can be used as motive under section 8 of the Evidence Act and also as disclosures of the deceased which is relevant under section 32 (1) of the Evidence Act. There is certainly proximity as regards the time in respect of the disclosures and the incident. This evidence has strengthened the case of the prosecution and it is admissible under section 32 (1) and 8 of the Evidence Act. On the other hand, the accused tried to create a false story of missing and his conduct of creating such record and story can be used under section 8 of the Evidence Act against him.

22. The aforesaid evidence and the position of law show that only the appellant had an opportunity to finish Swati. He gave false explanation and he created some false record with the intention

that such story would help him and would conceal the offence. He threw the body in to the well and he tried to make evidence disappear. Thus, the evidence given by the prosecution is sufficient to prove the offences punishable under section 302, 498-A and 201 of IPC.

23. The Trial Court has discussed most of the aforesaid circumstances and there is no reason to interfere in the decision of the Trial Court. So the appeal stands dismissed.

[T. V. NALAWADE, J.]

[NARESH H. PATIL, J.]

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