



  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

D.B. Criminal Appeal No. 947/2014

Praveen Kumar, S/o Shri Madaram, R/o Talwana, Police Station  
Neemrana, District Alwar. (At present confined in District Jail,  
Alwar)

----Appellant

Versus

State Of Rajasthan through PP

----Respondent

---

For Appellant(s)	:	Mr. Kapil Gupta with Ms. Nidhi Sharma, Mr. Chitransh Saxena and Mr. Adarsh Singhal
For State	:	Mr. Javed Choudhary, AGA
For Complainant	:	Mr. Rajesh Sharma with Ms. Zeenat Khan and Mr. Jitendra Choudhary

---

**HON'BLE MR. JUSTICE PANKAJ BHANDARI**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**Judgment**

**Judgment reserved on**        ::        **17/01/2023**

**Judgment pronounced on**    ::        **31/01/2023**

**By the Court::(Per Hon'ble Pankaj Bhandari, J)**

1.            Accused/appellant has preferred this appeal aggrieved by judgment dated 05.06.2014 passed by Addl. Sessions Judge No.2, Behror, District Alwar, whereby appellant has been convicted for offence under Sections 302 and 498-A of IPC and has been sentenced to life imprisonment for offence under Section 302 IPC and fine of Rs.20,000/- and in non-payment of fine further to undergo six months rigorous imprisonment and for offence under Section 498-A IPC, he has been sentenced to three years rigorous imprisonment and fine of Rs.5,000/- and on non-payment of fine, to further undergo three months rigorous imprisonment.



2. Succintly stated the facts of this case are that on 07.10.2012, complainant-Ram Singh lodged a written report at Police Station Neemrana, District Alwar, whereupon police registered an FIR No.251/2012 for offence under Sections 498-A, 304-B & 120-B of IPC. Police after investigation filed charge-sheet against the accused-appellant for offence under Sections 498-A & 302 of IPC. Trial Court framed charges against the accused-appellant for the aforesaid offences. Appellant denied the charges, on which prosecution examined 18 witnesses and exhibited 33 documents. Accused-appellant was examined under Section 313 Cr.P.C., wherein he denied the prosecution case. On behalf of the defence, DW-1 (Devdutt Sharma) & DW-2 (Udai Singh) were examined and 16 documents were exhibited. Trial Court after hearing both the parties, convicted and sentenced the appellant vide judgment dated 05.06.2014. Aggrieved by which, the present appeal has been filed.

3. It is contended by counsel for the appellant that the appellant went to show his wife at the hospital and while returning, they met with an accident, on which the seat belt got stuck in the neck of appellant's wife which resulted in her demise. It is contended that the learned trial Court called for the towel-*safi* (Ex.P-26) at the time of dictating the judgment and considering that the strangulation could be done by Ex.P-26 (*safi*) and convicted the appellant. It is contended that the deceased had sustained injury on the left side of the neck. There was no ligature mark on the right side, on the front of the neck and on the back of the neck.

4. It is argued that the case of the prosecution is that after the car met with an accident, appellant strangled the





deceased from the back of the front side. It is argued that none of the witnesses or the investigating officer who has conducted the investigation has stated before the Court that strangulation was done in this manner. It is also argued that it was not even put to the accused under Section 313 Cr.P.C. that he has strangled his wife with the help of *safi* (Ex.P-26). Thus, no opportunity was given to the accused to submit explanation and without there being any evidence in this regard, learned trial Court has erred in convicting the accused-appellant.

5. It is also contended that if the *safi* had been used for strangulation of the deceased, there would either be skin residue or blood stain on the *safi*, but the same was not even sent to the FSL. It is contended that from the entire evidence adduced before the Court, not a single witness has stated the manner in which the strangulation was done. Our attention was also drawn towards the photographs of the deceased, wherein ligature mark is evident on left side of the neck of the deceased.

6. Counsel for the appellant has placed reliance on **Nandu Singh Vs. State of Madhya Pradesh (Criminal Appeal No.285/2022)**, wherein it was held by the Apex Court that absence of motive in a case of circumstantial evidence weighs in favour of the accused. Reliance is also placed on **Deoman Upadhyaya Vs. State AIR (1960 All 1, 1960 CriLJ 1)**, wherein it was held by the Allahabad High Court that so much of the confession as relates strictly to the fact discovered by it may be given in evidence. Reliance is also placed on **Jai Prakash Tiwari Vs. State of Madhya Pradesh (Criminal Appeal No.704/2018)**, wherein the Apex Court has underlined the importance of Section 313 Cr.P.C. and has held that non-fulfilment





of the true spirit of Section 313 Cr.P.C. may ultimately cause grave prejudice to the accused and the Court may not have the benefit of all the necessary facts and circumstances to arrive at a fair conclusion. It was held that Section 313 Cr.P.C. confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21 of Constitution of India. Reliance is also placed on **Sunil Kundu & Anr. Vs. State of Jharkhand (Criminal Appeal No.1073/2008)** decided by the Apex Court on 09.04.2013, wherein the Apex Court has held that prosecution must stand or fall on its own feet.

7. Reliance is also placed on **Javed Abdul Rajjaq Shaikh Vs. State of Maharashtra (Criminal Appeal No.1181/2011)**, wherein Apex Court in Para-22 has held that the differences between hanging and strangulation have been highlighted by Modi on Medical Jurisprudence and Toxicology. As to what is the distinction between strangulation and throttling is also dealt with in the judgment in Para No.23.

Para 22 & 23 are reproduced as under:-

"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	5. External signs of asphyxia,





usually not well marked.

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 Being hard, yellow and Parchment-like.

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 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, coats

10. Carotid arteries, internal ordinarily ruptured.

Internal coats ruptured in

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 cervical vertebrae-rare.

13. Scratches, abrasions and bruises on the face, neck and other parts of the body-body-

13. Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the

Usually not present.

Usually present.

14. No evidence of sexual assault.

14. No evidence of sexual Assault.

15. Emphysematous bullae on

15. Emphysematous bullae on the





surface of the lungs-not  
Present.

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 to 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.”

8. Learned counsel appearing for the complainant has vehemently opposed the appeal. It is contended that the deceased has died due to strangulation. Strangulation could not have been caused by the seat belt. It is also contended that Section 106 of Indian Evidence Act would come into play as deceased was alone with the accused-appellant and it is for the appellant to explain as to how the deceased died due to strangulation. It is further





contended that earlier the deceased had lodged a complaint against the appellant and an amicable settlement took place between the couple on 24.09.2012. Within 12 days of the settlement, the incident has taken place which is also a circumstance against the appellant. It is also contended that PW-15 (Dr. Shiv Narayan) has clearly stated that it is a case of strangulation and the learned Court below has not committed any illegality in convicting and sentencing the accused-appellant for offence under Sections 498-A and 302 IPC. It is also contended that the deceased has not sustained any injuries and therefore, it was clearly a case of murder by strangulation.

9. We have considered the contentions.

10. The prosecution case as per the charges is that the accused-appellant on 06.10.2012, while the deceased was sitting on the front passenger seat, strangled the deceased with the help of *safi* like towel. It is pertinent to note that the *safi* like towel which was recovered at the instance of the accused and is exhibited as Ex.P-26, was not sent to the FSL to establish that it, in fact was used to strangle the deceased. It is also evident that no suggestion whatsoever was given to the accused when he was examined under Section 313 Cr.P.C., that he has strangled the deceased with the *safi* like towel. The *safi* like towel was also not put to the doctor to establish that the ligature mark could have been caused by the recovered article-*safi* or towel (Ex.P-26). The investigating officer has also not deposed before the Court that from his investigation, it was revealed that the accused has committed the offence of murder by strangulating his wife in the manner as stated in the charges.





सत्यमेव जयते

11. On perusal of the record, it is evident that the entire case rests on the evidence of Dr. Shiv Narayan (PW-15) as he has admitted that if someone is strangulated then there has to be ligature mark on all sides of the neck. However, he has also admitted that the deceased did not have any ligature mark on the right side of her neck. He has however stated that if some obstacle is put on the right side, then the ligature mark would not come on the right side. Witness has also admitted that there were no mark of injuries on the right side and back of the neck. Witness has also admitted that if strangulation is done with a towel like material, then this mark would not come.

12. We are of the considered view that the prosecution has utterly failed to establish that the towel like *safi* was the material used to strangulate the deceased. Moreover, the towel or *safi* was not even sent to the FSL. On perusal of the photographs, it is evident that there were skin abrasions on the neck. In all likelihood, some kind of skin remnant or blood stain would have been found on the *safi* like towel, if it was used for strangulating the deceased.

13. It is evident from perusal of Ex.D-1 that a report was lodged by father of the appellant on 06.10.2014 itself on 11:40 pm that his son and daughter in-law were coming from the hospital when the bolero vehicle in which they were travelling, met with an accident and the vehicle fell in a ditch. Investigating officer has not cared to counter the defence of the appellant that the deceased got the injury in the accident as she was having the seat belt on. The condition of the seat belt was also not seen by the investigating officer and no report in this regard is there before the Court.





14. We have also perused judgments cited by counsel for the appellant. From perusal of the statement recorded under Section 313 Cr.P.C., it is evident that none of the circumstances was put to the accused to establish that he strangled the deceased and as such, no explanation came forth on behalf of the accused-appellant. The counsel for the complainant has contended that *safi* was recovered at the instance of the appellant and is thus, a fact discovered under Section 27 of the Indian Evidence Act. From the information given under Section 27, it is revealed that the appellant has only mentioned that he can get his towel like *safi* recovered. There is nothing on record to show that the article which was recovered was in any way used to strangle the deceased. Investigating officer has clearly erred in not sending the recovered article to the FSL, which has proven fatal to the prosecution case. Hence, even if the recovery is considered to be a fact discovered, the same has not been in any way connected to the incident. It is also evident that the accused has also sustained injuries vide Ex.P-12 and as per statement of PW-15, these injuries could be caused due to accident. The fact that the accident took place is thus evident from the evidence on record. The seizure memo of the vehicle also reveals that the vehicle had met with an accident.

15. In view of the above circumstances, the case of the prosecution has not been proved beyond reasonable doubt. We thus, deem it proper to set aside the judgment dated 05.06.2014, whereby appellant has been convicted for offence under Section 302 of IPC.

16. As far as Section 498-A IPC is concerned, no argument has been advanced before the Court with regard to conviction





under Section 498-A of IPC. There is evidence of PW-5 (Ram Singh) & PW-6 (Smt. Indrawati) who has stated that after the compromise, deceased was harassed by the appellant on account of demand of dowry. Since appellant has not challenged his conviction under Section 498-A IPC, judgment of conviction for offence under Section 498-A IPC is upheld.

17. Appeal is accordingly, partly allowed while upholding the conviction for offence under Section 498-A IPC. Conviction under Section 302 IPC is quashed and set aside. As appellant has already remained in custody for a period of more than ten years, he be released forthwith, if not wanted in any other case. The appellant is acquitted of the charges levelled against him under Section 302 IPC.

18. Appellant is directed to furnish personal bond in the sum of Rs.50,000/- and a surety bond in the like amount in accordance with Section 437-A of Cr.P.C. before the Registrar (Judicial) within two weeks from the date of release to the effect that in the event of filing of Special Leave Petition against this judgment or on grant of leave, the appellant on receipt of notice thereof, shall appear before the Hon'ble Apex Court. The bail bond will be effective for a period of six months.

(ASHUTOSH KUMAR),J

(PANKAJ BHANDARI),J

chandan/