

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 660 OF 2016

Raju @ Rajendra Baliram Borse,
Age. 40 years Occu. Nil,
R/o. Ahirwadi, Tq. Raver,
Dist. Jalgaon.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Satej S. Jadhav, Advocate for the Appellant.
Mrs. V. S. Choudhari, APP for the Respondent-State.
.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

Reserved on : 13.06.2023

Pronounced on : 23.06.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. This appeal takes exception to the judgment and order of conviction passed by learned Additional Sessions Judge, Bhusawal dated 10.08.2015 in Sessions Case No. 443 of 2014, by which appellant came to be convicted and sentenced to suffer imprisonment for life and pay fine for commission of offence under Sections 302 of the Indian Penal Code [IPC].

Brief background of the case before trial court.

2. Deceased Savita was married to accused and out of their wedlock they had two children. Precise accusation of the prosecution is that accused suspected fidelity of Savita and after getting drunk, he

used to beat her. She had also approached Women's Grievances Cell at Jalgaon but later on, disputes *inter se* were resolved and she was back in the company of accused husband. On 08.06.2014, both accused and deceased went to collect fire wood and returned home in the evening around 6.00 p.m. Savita approached her brother PW1 Subhash and told him that in the afternoon that day, husband had again abused and beaten her after suspecting her character. Informant, his uncle and aunt approached accused around 8.00 p.m. and gave him understanding and even suggested that he should not stay with her and rather go to his own village.

3. Around 2 a.m. that night, informant brother woke up for urination and at that time, he claims that, accused was seen hurriedly going out of the house and in spite of being accosted, he did not respond and rather went ahead. Informant became suspicious and therefore he went in the room to see his sister, but he found her in hanging condition. Therefore, he raised hue and cry. Relatives gathered and information was given to police. In the morning, informant set law into motion by lodging FIR alleging that on the intervening night of 08.06.2014 and 09.06.2014, in the backdrop of suspicion of character, accused Raju throttled deceased Savita and thereafter hanged her body to feign it as a suicide. On the strength of

such report, crime was registered and investigation was carried out and finally, accused was chargesheeted.

4. On assignment of case before learned Additional Sessions Judge, Bhusawal, trial commenced. Prosecution adduced oral as well as documentary evidence. Case of prosecution is rested on testimony of seven witnesses. Learned trial Judge heard both sides and thereafter, on appreciation of the evidence, reached to a conclusion that accused had committed murder of his wife Savita and hence he came to be convicted and sentenced as stated above. Hence this appeal.

SUBMISSIONS

On behalf of the appellant:

5. Learned counsel for the appellant took strong exception to the judgment by pointing out that at the first count, prosecution has not proved death of Savita to be only homicidal and not otherwise. On this count, learned counsel took us through the post-mortem findings and would point out that the autopsy doctor has not ruled out death to be suicidal and in spite of not issuing final cause of death, in substantive evidence doctor spoke about death to be homicidal due to strangulation. He next submitted that there is no evidence for namesake to suggest that accused was in the company of deceased

that night. He pointed out that there is no corroboration to the testimony of informant brother, who claims seeing accused leaving house in the night at 2.00 a.m. It is pointed out that though PW1 informant Subhash claimed that he had informed his uncle, however, said uncle is not examined by prosecution for the best reasons known to it. Learned counsel submitted that out of two children, one child who was with mother and father, is also not examined by prosecution. Thus, according to him, material witnesses are withheld by prosecution. He would point out that though other relatives are examined by prosecution, it is apparent that by no means they can be said to be eye witnesses, rather they are interested witnesses. For all above reasons, it is submitted that learned trial Judge has failed to consider and appreciate the available evidence on record in the correct perspective and has drawn conclusion in absence of any evidence and hence, he prayed for allowing the appeal.

On behalf of the respondent State:

6. In answer to above, learned APP would point out that learned trial Judge has considered each and every aspect of the matter. Medical evidence clearly suggests that death was unnatural and rather it is noticed to be homicidal one. There were struggle marks on both, deceased as well as accused. Accused was in the company of

deceased that night. Informant who stays at a stone's throw distance, had interacted with accused at around 8.00 p.m.. Therefore, there was reliable evidence about accused to be the only person in the company of deceased. Moreover, informant had also spotted accused hurriedly leaving the house at 02.00 a.m. He has deposed to that extent and his such testimony has remained unshaken. Therefore, for above reasons, learned APP submits that no fault can be found whatsoever in the judgment passed by learned trial Judge and he prays to dismiss the appeal.

7. Here, we are called upon to test the sustainability and legality of judgment and order of conviction. At the foremost, we wish to address the question as to whether death of Savita was homicidal or it was suicidal. To take a call on such issue, we propose to visit medico legal expert's evidence who had occasion to conduct autopsy.

PW6 Dr. Babulal Banga Barela, autopsy doctor narrated the following external injuries which he claims to have come across on examination of dead body:

1. Abrasion on left chick size $\frac{1}{2}$ X $\frac{1}{2}$ cm redish brown.
2. Contused abrasion on left side of neck size 1 X $\frac{1}{2}$ cm redish brown.

3. Ligature mark is seen above thyroid cartilage obliquely going upwards measuring 26 cm in length and 2 cm in breadth. It is 7 cm below the chin and 8 cm from sternal margin.
4. There is another ligature mark between chin and above mentioned ligature which is 6 cm in length and 3 cm in breadth due to slippage of ligature.
Also in injury nos. 3 and 4 signs of vital reaction absent.

He also claims to have come across following internal injuries as mentioned in column nos. 19 to 22 :

19	Head -	
i	Injuries under the scalp, their nature	No injuries under the scalp
ii	Skull-Vault and base-describe fractures, their sites, dimensions, directions etc.	Skull vault intact. No fracture seen.
iii	Brain-The appearance of its coverings, size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted (Weight M.3 gram F. 2.75 grams).	Meninges intact. Brain oedematous and congested petechial haemorrhages seen. No haemotoma on cut section.
20	Thorax -	
a	Walls, ribs, cartilages	Walls, ribs, cartilages are intact. No fracture of ribs.
b	Pleura	Intact, congested and petechial haemorrhages seen
c	Larynx, Trachea and Bronchi	Intact, mucosa shows haemorrhagic infiltration and contain bloody froth
d	Right Lung	Intact, highly congested and subpleural haemorrhages seen
e	Left Lung	
f	Pericardium	Intact
g	Heart with weight	Intact, blood and blood clots seen. Coronaries patent on cut section.

h	Large vessels	Intact, blood and blood clots seen.
i	Additional remarks	Haemorrhages in the strap muscles and in the tissues by the side of larynx and trachea is seen.
21	Abdomen	
	Walls	Intact
	Peritoneum	Intact
	Cavity	Intact, no free fluid seen
	Bucal Cavity, teeth, tongue and pharynx	Mouth open, tongue protruded and bitten in between the teeth, teeth intact.
	Desophagus	Intact, mucosa congested
	Stomach and its contents	Intact, mucosa congested and contain about 200-300 ml liquid food material. No peculiar odour perceived.
	Small intestine and its contents	Intact traces seen.
	Large intestine and its contents	Intact traces and gases present
	Liver (with weight) and gall bladder.	Intact congested.
	Pancreas and Suprarenals	Intact
	Spleen with weight	Intact congested
	Kidneys with weight	Intact
	Bladder	Intact, empty
	Organs of generation	Intact, no structural abnormality seen. Uterus empty.
	Additional remarks with where possible, Medical Officer's deduction from the state of the contents of the stomach as to time of death and last meal.	Nil
	State which viscera (if any) have been retained for chemical examination and also quote the numbers on the bottles containing the same.	Bottle No.1-Stomach and parts of small intestine with its content in saturated solution of common salt. Bottle No.2-Liver with gall bladder, slices of lung, spleen and kidney in saturate solution of common salt.

		Bottle No.3-Blood 5 ml in a EDTA Bulb.
22	Spine and spinal cord	Spine intact. Spinal cord not examined.

In the opinion of doctor, cause of death is “**asphyxia in alleged case of hanging**”. However viscera came to be preserved.

8. It would be desirable to also take note of medical jurisprudence, which is widely accepted and taken aid of for deciding mode and manner of death. Modi’s Medical Jurisprudence is usually referred and relied since ages by courts of law. In his 25th edition the author has spelt out some classic features appearing on a dead body to ascertain whether death is suicidal, homicidal or accidental. The difference between signs in cases of hanging and strangulation which are distinguishable, are said to be as under:

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 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-Rare	9.	Injury to the muscles of the neck-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 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.

9. In the light of above discussed material, we proceed to analyze the substantive evidence of autopsy doctor PW6 Dr. Babulal Banga Barela.

Autopsy doctor PW6 Dr. Barela at Exhibit 18 gave evidence that dead body was examined by him and it transpired to him that her fist was in clinched condition which was suggestive of defence taken on being attacked. That he noticed face to be dark, mouth was found to be wide open and tongue was protruding, reddish froth emanating from nose and mouth. He stated that such features were abnormal and rather unnatural. In para 3 he gave measurement of the injuries on neck and cheek and claims to have come across ligature mark on thyroid cartilage. He gave its measurement below chin and claims to have come across second ligature mark. He further clarified that those two ligature marks did not show that they were caused while the person was alive. He stated that injury nos. 1 and 2 were ante-mortem in nature whereas injury nos. 3 and 4 were post-mortem injuries. That, he noticed bleeding in the trachea, bronchus and larynx and blood was mixed with mucus. There was sub-plural haemorrhage in the lungs and they were highly congested. There was haemorrhage in the strap muscles in the tissues by the side of larynx and trachea. He clarified that these injuries are possible in case of excessive application of pressure on the neck. He elaborated that injury 17/2 is possible by throttling and death may result on its account, whereas injury no. 17/1 is possible due to scratching with nail and both these

injuries were ante-mortem, for which he assigns reason that there were vital reactions and colour changes seen. He further stated that death might have been caused 8 to 10 hours before post-mortem. He preserved viscera and further testified that the probable cause of death is asphyxia but not due to hanging. He has clarified that in post-mortem report, cause of death is mentioned as asphyxia in the alleged case of hanging which, according to him, meant that though it was shown that she died because of hanging, it was not so, death was caused by asphyxia. In para 4 of his substantive evidence he stated that queries were raised by police and he replied vide Exhibit 20 that injury nos. 1 and 2 are possible with hands and nails, whereas injury nos. 3 and 4 are possible with rope. He further stated that he had occasion to examine accused and he noticed three abrasions on his nose and nostril which were caused by nails and he gave its age as 18 to 24 hours. (*emphasis laid*)

10. Above witness is subjected to extensive cross by learned defence counsel. The material answers given by him are that he did not find hair, cloth or skin in the clinched fist of deceased nor he found anything in her hands and nails. He admitted that in a case of suicide, face can be distorted and deviated. He answered that there can be some abrasions in between two ligature marks and the

abrasions can be connecting two ligature marks. He admitted that he did not find marks of pressure either on chest, stomach or thighs of deceased. He described the shape of abrasion as oblique round. He answered that there was subcutaneous haemorrhage below the injury on the neck, but it is not mentioned in the postmortem report. He answered that in case of suicidal strangulation, veins are less congested, whereas in case of homicidal strangulation, they are more congested. He admitted that in case of postmortem strangulation, bruises are not seen. He admitted that neck of the deceased was normal and that it was not short. He admitted that because of bending of neck, ligature mark could appear and he denied that corresponding internal injuries could be caused because of bending of neck or because of body in hanging condition for a long time. He answered shape of second ligature to be oblique and denied coming across fracture to larynx or cervical vertebrae. He answered that he had taken cut section of neck and had inspected it. He answered that if there is postmortem strangulation, blood in the nearby cells is less, but in case of death by hanging, it is more. **He admitted that in case of pressure on the neck, asphyxia is possible.** He admitted that in case of hanging, the hyoid bone may get fractured due to body weight, but he clarified that it is not that in all cases of hanging it may so happen. On being referred to Medical Jurisprudence of Dr. Narayan Reddy, he

admits about mentioning at page 389 that in case of suicidal strangulation, congestion of veins is prominent and well developed.

11. On critical analysis of expert's evidence, which is decisive, it is clear that doctor has opined about possibility of attack on finding fists of the deceased to be in clinched condition. He has noted bloody froth emanating from nose and mouth. He has noted several abrasions on the facial part including nose of the deceased and he is categorical about injury nos. 1 and 2 to be ante-mortem in nature. There is a communication from his side on query raised by the Investigating Officer to that extent. Equally, he came across bleeding to the trachea, bronchus and larynx and blood was found to be mixed with mucus. That apart, on dissection he claims to have come across haemorrhage in the strap muscles in the tissues by the side of larynx. In cross he has answered that in case of pressure on the neck, asphyxia is possible. Taking into account the above features on the dead body, there is no reason to disbelieve the medical evidence. The symptoms noted by this witness and narrated by him excludes the possibility of suicide. There are marks of violence and struggle not only on the person of deceased but as stated by him, he has noted abrasions on the accused as well.

12. Now let us come to the other evidence adduced by prosecution.

On close examination of evidence of informant **PW1-Subhash**, it is emerging that his sister was abused and beaten by suspecting her fidelity. She had promptly reported it. During the day time, she had approached this witness with complaint of being beaten in the field in same backdrop. Around 8.00 p.m., informant, his uncle and aunt had been to accused to give him understanding and had also suggested him to stay away from her and go back to his village. Witness has also stated about seeing accused rushing out of the house around 2.00 a.m. when this witness was out of the house for urination and finding above suspicious circumstances, informant had visited the room of his sister and had found her hanging. Matter was promptly reported to local body member, police and relatives. His evidence has not been demolished or rendered doubtful in cross.

PW5-Asha, i.e. wife of informant also reiterated the version given by her husband on the count of suspicion of character and beating since previously and even on the day of incident.

Similarly, neighbour **PW3-Husnabi** also testified about informant approaching her at 2.00 a.m. to summon her to his house. This witness has also seen deceased in hanging condition. At such time, accused was not said to be present in the house.

Very child of accused and deceased i.e. **PW4-Harshal** also spoke about father suspecting character of his mother and beating her.

Therefore the above discussed oral evidence is clear about motive.

13. Though convict appellant has attempted to put forth a plea of *alibi* by examining DW1-Anil and DW2-Govinda, it is seen that only DW1-Anil attempted to give support to the convict by stating that on insistence of mother of this witness, accused had spent night at their house. Said mother is not examined. Though DW2-Govinda was examined, he has not supported the defence.

SUMMATION

14. The upshot of above material on record clearly suggests that deceased Savita met unnatural death, rather homicidal death while she was established to be in the company of accused husband. As stated above, motive is also forthcoming. At no point of time evidence of any witnesses has gone in favour of accused. The plea of alibi has not been probalilized by accused. Mere failure to examine other witnesses like uncle and aunt of informant, who allegedly accompanied him to the house of accused at 8.00 p.m., is not fatal,

more particularly when evidence of PW1-Subhash is convincing. Prosecution has therefore, in our considered opinion, discharged the primary burden of establishing complicity of accused.

15. We have gone through the judgment under challenge. It seems that both ocular and documentary evidence is evaluated by learned trial Judge in the light of legal requirements. Reasons and findings recorded are compatible with the available evidence. No perversity or illegality is brought to our notice so as to interfere in the judgment under challenge. Hence, the appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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