

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 214 OF 2012

WITH

CRIMINAL APPLICATION NO. 4352 OF 2012

Dattatraya Bajirao Lagad,
Age : 29 years, Occu. Agril.,
R/o Kolgaon, Tq. Shrigonda,
Dist. Ahmednagar.

... **APPELLANT / APPLICANT**
(Original Accused)

VERSUS

The State of Maharashtra,
Through Police Station Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar. ...

RESPONDENT
(Original Complainant)

...
Mr. R. M. Deshmukh, Advocate with Mr. V. M. Chate, Advocate for
the Appellant / Applicant.

Mr. A. S. Shinde, APP for Respondent / State.
...

**CORAM : A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATED : 16th October, 2015.

JUDGMENT: (Per Indira K. Jain, J.)

. This appeal is preferred by the sole Accused against the judgment and order dated 30th August, 2011, passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 121 of 2010. By the said judgment and order learned Additional Sessions Judge convicted the Appellant under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.2,000/-, in default rigorous imprisonment for six months. Appellant was however acquitted of the offences punishable under Sections 498-A, 504, 506 read with 34 of the Indian Penal Code.

2 For the sake of convenience, we shall refer the Appellant in his original status as Accused as he was referred before the Trial Court.

3 The gist of prosecution case as necessary to decide present appeal may be stated as under:

- i. Informant Janardhan Babasaheb Shirke resident of Baburdi, Taluka Shrigonda, District Ahmednagar was brother of victim Kavita. Kavita was married to

Accused on 4th May, 2007. After marriage, she started residing with the Accused at village Kolgaon, Taluka Shrigonda, District Ahmednagar. Couple was blessed with a daughter Siddhi.

- ii. It is the case of prosecution that initially for 6 months, Kavita was treated well. Thereafter, Accused, his father and mother started ill-treating Kavita on demand of Rs.15,000/- for running a poultry farm. They also demanded Rs.10,000/- for household expenses and purchasing agricultural implements. To avoid ill-treatment her brother had given money on some occasions. It is alleged that Accused under the influence of liquor used to beat, abuse and threaten Kavita. She informed about ill-treatment to her parents and brother.
- iii. On 29th January, 2010, Janardhan invited Accused, Kavita and their daughter for fair in the village. Kavita and her daughter Siddhi came to house of Janardhan. Accused though promised did not accompany them. That time Kavita disclosed to

her brother that her husband was demanding Rs.4,00,000/- for purchasing agricultural land. Kavita stayed for 3-4 days at the house of Janardhan. He could not arrange money. Thereafter, Kavita was sent to the house of Accused.

- iv. After 2-3 days, Kavita had been to her parents house. She informed them that Accused had driven her out as she could not give money as per his demand. Siddhi was with Kavita that time.
- v. On 13th February, 2010 Accused came to the house of parents of Kavita and told them to send Kavita with him. Parents of Kavita refused to send her back as she was being ill-treated. Accused assured them that he would not beat Kavita but then her parents should arrange and give him money. Kavita was pacified by the relatives and sent alongwith Accused.
- vi. On 16th February, 2010 at 03:00 am, Sambhaji Lagad informed Janardhan on phone that Kavita

was serious. On receiving information Janardhan with other relatives went to Kolgaon. They saw dead body of Kavita and noticed ligature mark around her neck. Report was lodged with Police Station by Janardhan. Crime No.I-52 of 2010 was registered against the Accused and his relatives under Sections 498-A, 302, 323, 504, 506 read with 34 of the Indian Penal Code.

- vii. In the meanwhile, Police Patil of village informed the Police Station about death of Kavita. A.D.No.21 of 2010 was registered. PW-7 P.I. Anil Jadhav visited the spot. He recorded inquest panchanama and sent the dead body for postmortem. It was followed by recording of spot panchanama. PW-7 P.I. Anil Jadhav found that Accused was lying in the field behind his house. Mouth of Accused was smelling of bitter smell of insecticide. He saw one bottle of insecticide lying on the place. Accused was referred to Civil Hospital Ahmednagar. Statements of several witnesses came to be recorded during

investigation. On completion of investigation charge-sheet was submitted to the Judicial Magistrate First Class, Shrigonda who in turn, committed the case for trial to the Court of Sessions.

4 On committal of case Trial Court framed charge against the Accused at Exhibit 3. Accused pleaded not guilty and claimed to be tried. His defence was of total denial and false implication.

- (i) Accused raised a specific defence that he and his family members were running poultry farm since before 4-5 years of his marriage. Family owns 3 1/2 acres irrigated agricultural land and as such prosecution story regarding demand is palpably false.
- (ii) Next defence of Accused is that Kavita insisted him to reside separately from his parents. As parents of Accused were old aged and could not take their own care Kavita was required to

do household work and the work in agricultural land. So she was insisting Accused to reside separately.

(iii) According to Accused on the day of incident Kavita told him that if he would not reside separately from his parents she would do anything to her life. She hit her head on the floor of house twice.

(iv) Seeing the behaviour of Kavita, Accused was tense. He therefore picked up bottle of insecticide and consumed the same. After consuming insecticide he had vomiting, suffocation and fell unconscious. He did not know what happened later. He regained consciousness in the hospital at Ahmednagar. Police recorded his statement. After he was discharged from hospital he was arrested. In support of defence Accused examined himself at Exhibit 37.

5 To bring home the guilt of Accused prosecution examined in all 7 witnesses. After going through the evidence adduced by prosecution learned Trial Judge convicted and sentenced the Appellant as stated hereinbefore. Hence this appeal.

6 We have heard the learned counsel for parties. After giving our anxious consideration to the facts and circumstances of the case, submissions made on behalf of learned counsel for parties, reasonings recorded by Trial Court and evidence on record for the below mentioned reasons we are of the opinion that prosecution could not prove guilt of Accused beyond reasonable doubt and Accused ought to have been acquitted.

7 At the outset it is to be mentioned here that offences under Sections 498-A, 504 and 506 have not been proved against Accused and he had been acquitted of the charge under these sections. So far as conviction of Accused under Section 302 of the Indian Penal Code is concerned, there is no direct evidence. Prosecution case is based on circumstantial evidence. In this connection vehement reliance is placed on medical evidence relating to factum of homicidal death and since death occurred in

the house of Accused, he could not explain the circumstances under which death has occurred he was held responsible for causing death of Kavita.

8 In respect to the factum of homicidal death prosecution has placed reliance on the evidence of PW-6 Dr. Nitin Khamkar. Relying on the evidence of Dr. Khamkar Trial Court recorded its finding that it was not a suicidal hanging but a homicidal death. Dr. Khamkar had performed postmortem. He found injuries shown in column No.17 of postmortem report Exhibit 27. On performing postmortem Dr. Khamkar opined probable cause of death due to asphyxia due to throttling.

9 Needless to state that medico-legal postmortem examination is very important part of prosecution evidence and it is therefore necessary that it should be conducted by a doctor fully competent. It is the statement of doctor in the Court and not the postmortem report which a substantive evidence. In our view doctor who examines deceased and conducts postmortem is the only competent person to opine about nature of injuries and cause of death. But where competency itself is inherently defective question arises whether the Court would discard such evidence or

based on such evidence of witness who is otherwise not competent would fasten the criminal liability on the Accused.

10 In the case on hand PW-6 Dr. Khamkar had stated in his examination-in-chief that he is B.A.M.S. In cross-examination he admitted that he is not qualified as M.B.B.S. He has not completed the course in Orthopedic. He had no exclusive knowledge in respect of bones. He conducted postmortem in the case of throttling for the first time. Though Dr. Khamkar stated in further cross-examination that he conducted postmortem in 40-50 cases of death due to asphyxia, fact remains that he performed postmortem in case of throttling for the first time i.e. in the present case. There is no evidence to show that Dr. Khamkar had an experience or training to conduct postmortem in case of throttling. On the contrary unequivocal admissions elicited in cross-examination of Dr. Khamkar indicate that he was not competent to perform postmortem in the case in question.

11 We therefore find the opinion given by Dr. Khamkar who had no experience, training and qualification in the subject as inherently defective. If expert's evidence is defective Court cannot substitute its opinion for that of the doctor.

12 In this view of the matter we hold that factum of homicidal death is not established by legal, proper and convincing evidence. If medical evidence is kept out of consideration prosecution case falls to the ground and Accused would deserve acquittal.

13 In the above premise we find conviction and sentence of Appellant unsustainable in law and we pass the following order:

ORDER

- 1] Criminal Appeal No.214/2012 is allowed.
- 2] The impugned judgment and order dated 30.8.2011 passed by the learned District Additional Sessions Judge, Ahmednagar, in Sessions Case No.121/2010 convicting the appellant for the offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for six months, is set aside.

- 3] The appellant is held not guilty of the offence punishable u/s 302 of the Indian Penal Code and is acquitted of the said charge framed against him.
- 4] The appellant be released forthwith if not required in any other crime.
- 5] Fine amount, if paid by the appellant, be refunded to him.
- 6] Criminal Application No.4352 of 2012 for bail, is disposed of.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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