

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.539 OF 2008

1. Deepak Maruti Gund,	]	
Age : 29 Years	]	
	]	
2. Malan Maruti Gund,	]	
Age : 46 Years	]	
	]	
3. Maruti Kerappa Gund,	]	
Age : 54 Years	]	
	]	
All R/of Konheri, Tal. Mohol,	]	 Appellants /
Dist. Solapur	]	(Original Accused
	]	Nos.1 to 3)

Versus

The State of Maharashtra	]	 Respondent
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Mr. Madhav V. Thorat, i/by Mr. V.M. Thorat, for the Appellants.

Dr. F.R. Shaikh, A.P.P., for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 21ST JULY, 2015.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. The Appellants, who stand convicted for the offences punishable under Sections 302 and 498-A r/w. 34 of the IPC and sentenced to suffer imprisonment for life and to pay fine of

Rs.500/- each, in default to suffer R.I. for three months, on the first count, and R.I. for three years and to pay fine of Rs.200/- each, in default to suffer R.I. for one month, on the second count, by the Additional Sessions Judge, Solapur by Judgment dated 21st May, 2008 in Sessions Case No.86 of 2007, by this Appeal challenge their conviction and sentence.

2. Facts, as are necessary, for deciding this Appeal may be stated as follows :-

Appellant No.1 Deepak is the husband of deceased Sarika. Appellant Nos.2 and 3 are the parents of Appellant No.1. The marriage of Sarika, the daughter of PW-1 Shivaji Magar, with Appellant No.1 Deepak was solemnized on 25th February, 2006. It was an arranged marriage. Appellant No.2 Malan is the sister of Sarika's father. After the marriage, Sarika went to reside in the house of the Appellants. She was treated properly hardly for 15 to 20 days. Thereafter her ill-treatment and harassment started in order to coerce her and her father to meet the demand of Rs.50,000/- for purchase of motor-cycle. Sarika used to inform about the demand and harassment to her uncle PW-3 Pandurang on phone. Hence, her father and uncle went to the house of the

Appellants just before the festival of Akshay Tritiya and tried to persuade them not to subject Sarika to harassment and how they were unable to satisfy the demand of Rs.50,000/-. The Appellants were not ready to listen. As a result, on the day of Akshay Tritiya, the Appellants assaulted Sarika and drove her out of the house with a threatening not to return without bringing the cash amount of Rs.50,000/-. Sarika came to the house of her parents, stayed with them for 2 to 4 days. However, thereafter again, her father and his cousin brother PW-5 Changdev brought her to the house of the Appellants and again persuaded them, requesting to give some time to collect the amount to satisfy the demand. Though the Appellants did not agree for the same, Sarika's father and uncle kept her in the house of the Appellants and returned back.

3. Within few days thereafter, on 13th June, 2006, Sarika's uncle Pandurang received the message on phone about the death of Sarika by hanging. Hence, Sarika's parents, uncle Pandurang and others went to the house of the Appellants and found the dead body of Sarika lying on the floor and the Police preparing the Inquest Panchanama.

4. After the Inquest Panchanama, her dead body was sent for postmortem to Rural Hospital at Mohol. There PW-7 Dr. Jayashri Dhavale conducted the autopsy and issued Postmortem Report (Exhibit-46), stating that her death was due to asphyxia on account of strangulation. Sarika's father then went to Mohol Police Station and lodged complaint against the Appellants vide Exhibit-29. On his complaint, C.R. No.201 of 2006 came to be registered against the Appellants. Investigation of the said crime was handed over to PW-8 PSI Mahamad Sharif. He recorded the statements of the witnesses and arrested the Appellants. He then sent the Viscera to Chemical Analyzer. The C.A. Report is produced at Exhibit-48. Further to completion of investigation of the case, PSI Sharif filed Charge-Sheet in the Court against the Appellants for the offences punishable under Sections 302 and 498-A r/w. 34 of the IPC. In due course, the case was committed to the Sessions Court.

5. Trial Court framed charge against the Appellants vide Exhibit-11. The Appellants pleaded not guilty and claimed trial, raising the defence of false implication.

6. In support of its case, Prosecution examined in all 8

witnesses, whereas, the Defence also examined 2 witnesses and on appreciation of their evidence, the Trial Court was pleased to convict and sentence the Appellants, as aforesaid.

7. This Judgment of the Trial Court is challenged in this Appeal by learned Counsel for the Appellants, whereas supported by learned A.P.P. In our considered opinion, in order to effectively deal with the rival submissions advanced by them, it would be useful to refer to the evidence on record.

8. Some undisputed facts of the case emerging from the evidence of prosecution witnesses are to the effect that the marriage of deceased Sarika with Appellant No.1 was solemnized on 25th February, 2006 and within less than four months, on 13th June, 2006, she has succumbed to an unnatural death, that too, in the house of the Appellants. One more aspect, which is also undisputed and proved on record, is that the Appellant No.2 Malan, the mother of Appellant No.1 Deepak, is the real sister of Sarika's father PW-1 Shivaji. Further, it is also undisputed fact that Sarika's marriage with Appellant No.1 Deepak was an arranged marriage.

9. In this back-drop, the evidence of the prosecution witnesses

is required to be appreciated. To prove the demand of cash amount and ill-treatment of Sarika on that count, the Prosecution has placed reliance on the evidence of Sarika's father PW-1 Shivaji, her uncle PW-3 Pandurang, PW-5 Changdev, his cousin brother and PW-6 Bharat, the relative. Their evidence is consistent to the effect that after the marriage, Sarika was treated properly by the Appellants only for about 15 to 20 days. Thereafter her harassment started for fulfillment of the demand of Rs.50,000/- for the purchase of motor-cycle for Appellant No.1. To coerce her to meet this demand, Appellants were subjecting her to harassment, both, physical and mental. As deposed by PW-3 Pandurang, her uncle, Sarika used to inform about the said ill-treatment on phone to him. He used to tell about it to her father. Hence, her father PW-1 Shivaji and he himself went to the house of the Appellants before Akshay Tritiya. They tried to persuade the Appellants not to make such demand as they were unable to fulfill the said demand. They informed the Appellants that in the marriage of Sarika, they had already spent substantial amount. They have still to repay the debts borrowed for the purpose of solemnization of her marriage. In such situation, it was not possible to satisfy the demand of Rs.50,000/-. However,

the evidence of these witnesses, proves that the Appellants were not ready to listen to them.

10. Their evidence further proves that as the demand of the Appellants was not satisfied, at the time of Akshay Tritiya the Appellants assaulted Sarika and drove her out of the house with a threatening to bring the amount of Rs.50,000/- or else not to return to the house. As per evidence of these witnesses, Sarika stayed in their house for about 2 to 4 days and thereafter her father PW-1 Shivaji and PW-5 Changdev, his cousin brother, went to the house of the Appellants with Sarika and again requested them to accept her in the house and to treat her properly. In view of the fact that the Appellants were not ready to give up their demand of Rs.50,000/-, Shivaji and Changdev requested the Appellants to give them some time for arranging the said amount with an assurance that the amount will be paid within some days, they kept Sarika in the house of the Appellants and returned to their home.

11. There is also corroborating evidence of PW-6 Bharat, who is from the brotherhood of Shivaji and who has also stated that before Akshay Tritiya, Shivaji had come to request him to

persuade the Appellants as they were ill-treating Sarika and, therefore, along with Shivaji and Pandurang, he had gone to the house of the Appellants and persuaded them not to ill-treat her and also requested them that Sarika's parents were not in a financial position to give the amount for purchase of motor-cycle. However, the Appellants did not pay any heed to their request.

12. The evidence of all these four witnesses we find to be thoroughly consistent and reliable to prove that the married life of Sarika was not at all happy as the Appellants were subjecting her to physical and mental torture to satisfy their unlawful demand of Rs.50,000/- for purchase of motor-cycle. Though all these four witnesses have been cross-examined, nothing worthwhile is elicited in their cross-examination to disbelieve them. Even if some admissions are brought out in the cross-examination of PW-3 Pandurang to the effect that after Pooja Ceremony, Sarika had come to the house of her parents for some days and again in the month of March also, at the time of Padwa festival, she had come to the house of her parents, considering that it was as per the custom, nothing much can be made out of the said fact. The suggestion put to all these witnesses that the marriage of Sarika with Appellant No.1 Deepak was performed

without her consent, is denied by them. It is also denied that she was not interested in residing in the field at the house of the Appellants.

13. In our considered opinion also, as the marriage of Sarika with Appellant No.1 Deepak was an arranged marriage, it does not appear probable that without her consent, it was solemnized. Moreover, as the Appellants were closely related to Sarika and her father, as Appellant No.2 Malan was the real sister of her father, it has to be held that she was knowing everything in advance before settlement of marriage, like, she had to reside in the field. We are also not inclined to accept the defence of false implication in view of the fact that Appellant No.2 Malan is the real sister of her father PW-1 Shivaji and also of PW-3 Pandurang and cousin sister of PW-5 Changdev. In the absence of any suggestion of the relations between these witnesses and Appellants being strained on any other count, it does not appear even remotely probable at all that they will implicate the Appellants falsely, if there was no such demand or any harassment to Sarika. Their evidence is, thus, found to be completely trustworthy on this aspect and an implicit reliance can be placed thereon. In our considered opinion, therefore, the

Prosecution has succeeded in proving that in order to meet their unlawful demand of Rs.50,000/-, Appellants have subjected Sarika to willful cruelty and harassment.

14. This brings us to the cause of her death. As stated by these witnesses, on 13th June, 2006, i.e. within few days after they reached Sarika to the house of the Appellants, they received a message about the death of Sarika by hanging. Hence, they rushed there and found her dead body lying on the floor and Police were conducting the Inquest Panchanama. The Prosecution has examined PW-2 Kantabai Kambale, who was Panch to the Inquest Panchanama. She has stated that there was scratch mark on the neck of the dead body. Prosecution has also led the evidence of PW-4 Ankush Gade, who has acted as Panch to the Spot Panchanama (Exhibit-34). His evidence reveals that there were broken pieces of bangles lying on the ground and there was also one blue rope hanging to the angle of the roof. Appellants have, to prove their defence that Sarika's death was on account of hanging, led the evidence of the witness DW-2 Rajkumar Koulage to prove that he has removed the dead body of Sarika, which was hanging to the rope.

15. In our opinion, the crucial evidence to decide whether the death of Sarika was on account of hanging or on account of strangulation, is that of the Medical Officer PW-7 Dr. Jayashri Dhavale, who has conducted autopsy on her dead body. As per her evidence, on that day itself, in between 1:30 to 2:30 pm, she and her colleague Dr. Y.G. Jagtap had conducted postmortem examination. On external examination, she found following injuries :-

- *A single ligature mark completely encircled to the neck, almost horizontal, below thyroid cartilage, which was brownish black in colour, admeasuring 33 cm x 0.75 cm in size.*
- *The dissection of tissue below ligature mark showed evidence of ecchymosed subcutaneous tissue petechial haemorrhages into deeper tissue of neck.*
- *There was contusion over submental region 2.5 cm x 1.5 cm in size.*

16. According to her, these injuries were antemortem in nature

and sufficient in the ordinary course of nature to cause the death.

17. She has further deposed that the rigor mortis was present all over the body; laryngeal cartilage and tracheal rings present; both the lungs were congested, showing the evidence of pink frothy secretion of pulmonary oedema; the liver, pancreas, spleen and bladder were also found congested. On the basis of her postmortem examination, she has opined that the cause of the death was "*asphyxia due to strangulation*". She has, however, preserved the Viscera for chemical analysis. In evidence before the Court, she has deposed that the C.A. Report of the Viscera (Exhibit-48) did not reveal any poisonous substance. Hence she has confirmed that the cause of the death was "*asphyxia due to strangulation*". The Postmortem Report issued by her is produced on record at Exhibit-46.

18. This witness is cross-examined at length to elicit her opinion that the cause of the death might be hanging as a result of suicide. However, Defence has not succeeded in eliciting any material worth the name to that effect. An attempt is made to suggest her that in case of strangulation, there may be the

marks of resistance and struggle on the body of the deceased, which were not found in the instant case. However, her evidence reveals that if hands and legs of the deceased are caught by someone else, the signs of struggle will not be present. Here in the case, the Appellants were three in number and hence the possibility of their holding the hands and legs of Sarika cannot be ruled out. Moreover, the signs of struggle and resistance can be found from the Spot Panchanama (Exhibit-34), which shows the presence of broken pieces of bangles at the spot.

19. According to us, the very fact that the injuries were antemortem in nature is more than sufficient to prove that it was a case of homicidal death. It is also a medically recognized fact that in case of strangulation, the ligature mark is horizontal, continuous, round the neck, low down in the neck, below the thyroid at the base of the groove or furrow, whereas, in case of hanging, the ligature mark is oblique, non-continuous, placed high up in the neck between the cheek and the layerings, the base of the groove or furrow being hard yellow and parchment like. In the instant case, as referred above, the evidence of Dr. Dhavale and the Postmortem Report clearly go to prove that there was a single ligature mark completely encircling to the

neck, almost horizontal, below thyroid cartilage and underneath the ligature mark, there was evidence of ecchymosed subcutaneous tissue. There was also contusion over submental region on left side, thereby leaving no manner of doubt that it was a clear case of strangulation and not at all of hanging.

20. Evidence of Dr. Dhavale further reveals that on internal examination, she found fracture of laryngeal cartilage, which, according to her, is uncommon in hanging, though it is common in strangulation. The ligature mark was also found below the thyroid cartilage. Therefore, in our considered opinion, the medical evidence leaves no manner of doubt as to the cause of Sarika's death as "*asphyxia due to strangulation*". The case of hanging, which is tried to be put up by the Defence, is thus not at all even probablized.

21. In the present case, therefore, as the death of Sarika had taken place in the house of the Appellants, when she was in their custody, it was for them to explain the circumstances under which her death has occurred in such an unnatural condition, as those circumstances were in their special knowledge.

22. In this respect, useful reference can be made to the

Judgment of the Supreme Court in ***Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681***, wherein it was held by the Supreme Court that,

“Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the Prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden on the Prosecution would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the Prosecution and there is no duty at all on an Accused to offer any explanation.”

23. As per Apex Court,

“If an offence takes place inside the privacy of a house and in such circumstances, where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence, is insisted upon by the Courts.”

24. In the instant case, the Prosecution has discharged initial burden of proving that death of Sarika was homicidal in nature and soon before her death, she was subjected to ill-treatment and cruelty to satisfy the unlawful demand of cash amount. The Prosecution has also discharged its burden of proving that Sarika's homicidal death had taken place in the house of Appellants at night while she was in their custody and in their presence. Hence, burden was shifted now on the Appellants to offer probable and cogent explanation about her death. The Appellants have, however, not offered any explanation about the

death of Sarika. The explanation offered by them that her death was on account of hanging and hence suicidal, is not proved to be true and correct and is falsified by the medical evidence on record.

25. In our considered opinion, therefore, the Trial Court has rightly held the guilt of the Appellants to be proved beyond reasonable doubt for both the offences punishable under Sections 302 and 498-A r/w. 34 of the IPC. The Appeal, therefore, holds no merit and, hence, stands dismissed. Appellant No.1 Deepak is in Jail and he is to undergo the punishment, as imposed by the Trial Court. Appellant No.2 Malan and Appellant No.3 Maruti, who are on bail, are given time of six weeks to surrender to their Bail Bonds.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]