

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.91 OF 2015

Vishnupriya Pahadi	]	
Age : 51 Yrs., Occ.: Housewife,	]	
R/at Room No.186, Baithi Chawl,	]	
Opp. Cuffe Parade, Budhwar Park,	]	 Appellant /
Nariman Point, Mumbai - 400 021.	]	(Org. Complainant)
<i>Versus</i>		
1. Munna Pitambar Panigrahi	]	
Age : 34 Yrs., Occ.: Service,	]	
R/at Sayab Nagar, Near Shivilal	]	
Temple, Kalwa, Dist. Thane.	]	
	]	
2. Shailu Pitambar Panigrahi	]	
Age : 55 Yrs., Occ.: Not known,	]	
	]	
3. Pitambar Hari Panigrahi	]	
Age : 61 Yrs., Occ.: Nil,	]	
	]	
Respondent Nos.2 and 3 residing	]	
at Indira Sahakar Nagar, J.N. Road,	]	 Respondents /
Mulund, Mumbai.	]	(Respondent Nos.
	]	1 to 3 are Original
4. The State of Maharashtra	]	Accused Nos.1 to 3)

Mr. Abhaykumar Apte for the Appellant.

Mrs. A.S. Pai, A.P.P., for the Respondent-
State.

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

DATE : 30TH JUNE, 2015.

P.C. :

1. Original Complainant, the mother of the deceased, has preferred this Appeal challenging the Judgment and Order dated 27th August, 2014 in Sessions Case No.162 of 2011 of Additional Sessions Judge, Thane, as by the said Judgment and Order, Respondent Nos.1 to 3 are acquitted for the offences punishable under Sections 302 and 304-B r/w. 34 of the IPC.

2. Facts, as are necessary, for deciding this Appeal can be stated as under :-

Respondent No.1 is the husband and Respondent Nos.2 and 3 are the parents-in-law of deceased Rashmita, the daughter of the Appellant and PW-5 Niranjana Pahadi. Her marriage with Respondent No.1 had taken place in the year 2009. As per Prosecution case, Respondent No.1 used to harass and ill-treat Rashmita to satisfy his demand of cash amount and, ultimately, on 12th January, 2010, Respondent No.1 committed her murder by strangulating her.

3. The information of the incident was given to PW-4 PSI Subhash Wagh at Kalwa Police Station by Respondent No.1 himself. The said information was treated as F.I.R. and C.R. No.15 of 2011 came to be registered thereon. PW-4 PSI Wagh made Station Diary Entry of the said information and then visited the spot to verify the said information. There he found the dead body of Rashmita with strangulation mark on her neck. He made Inquest Panchanama (Exhibit-35) and Spot Panchanama (Exhibit-36). Thereafter, he sent the dead body for postmortem examination. PW-11 Dr. Mangesh Ghadge conducted the postmortem and opined that the cause of her death was "*asphyxia due to throttling*". PW-4 PSI Wagh then, accordingly, submitted report (Exhibit-44).

4. PW-13 PI Shashikant Kulkarni, attached to Kalwa Police Station, has taken over further investigation of the case. He seized the clothes of the deceased, arrested Respondent Nos.1 to 3, collected Postmortem Report and further to completion of investigation, filed Charge-Sheet in the Court against Respondent Nos.1 to 3.

5. On committal of the case to the Sessions Court, the Trial Court framed charge against Respondent Nos.1 to 3 vide Exhibit-9. Respondent Nos.1 to 3 pleaded not guilty and claimed trial.

6. In support of its case, Prosecution examined in all 13 witnesses and on appreciation of their evidence, the Trial Court was pleased to hold that the Prosecution has not convincingly established the guilt of the Accused/Respondent Nos.1 to 3 to be proved beyond reasonable doubt and, accordingly, acquitted them of both the charges.

7. Being aggrieved by the acquittal of Respondent Nos.1 to 3, present Appellant, the mother of deceased Rashmita, has preferred this Appeal. Learned A.P.P. Mrs. Pai has submitted that State has neither preferred nor intend to prefer any Appeal challenging the said Judgment.

8. At this stage, it may be stated that, in view of the order passed by this Court on 30th March, 2015, this Appeal is proceeded against Respondent No.1 Husband alone, as it is not pressed against Respondent Nos.2 and 3.

9. In this Appeal, we have heard learned Counsel for the Appellant Mr. Abhaykumar Apte, with whose assistance we have perused the evidence of all the witnesses recorded in the case and on the basis thereof, we are of the considered opinion that no interference is warranted in the view taken by the Trial Court, it being the probable view.

10. Our reasons for the same are as follows :-

As per the evidence of the parents of deceased Rashmita, namely, PW-5 Niranjana and PW-6 Vishnupriya, Respondent No.1 used to harass and beat Rashmita to satisfy his demand of cash amount and various articles. Once Rashmita even consumed phenyl due to constant beating by Respondent No.1. She was admitted in the hospital by Respondent No.1. According to the evidence of her father PW-5 Niranjana, after discharge from the hospital, he has decided to bring her to his house. However, she was taken to his house by Respondent No.1. Subsequent thereto, his daughter succumbed to the homicidal death by throttling. According to them, the Respondent No.1 has, thus, killed their daughter.

11. Prosecution has also examined PW-7 Chitrasen Sahu, the relative of Rashmita, who has deposed that there used to be constant quarrels between the deceased and Respondent No.1. Hence, out of anger, Rashmita had once consumed phenyl. She had also lodged report at Cuff Parade Police Station against Respondent No.1. However, in cross-examination, he has admitted that the nature of quarrels between Accused/Respondent No.1 and Rashmita was of usual wear and tare.

12. PW-8 Bhanumati Badatiya and PW-9 Sadanand Ramuth, who were residing near the house of Accused/Respondent No.1 and Rashmita, have also deposed about the quarrels between the deceased and Respondent No.1 and further the fact that Accused/Respondent No.1 had committed her murder. However, in their cross-examination, this evidence is brought on record in the nature of omission.

13. The Trial Court in its Judgment has, therefore, noted that the evidence of the prosecution witnesses is not reliable and it is of a vague, general and omnibus nature. Though these witnesses

are deposing that Respondent No.1 has killed Rashmita, their evidence cannot be believed, as they are not the eye witnesses to the incident. Their evidence is in the nature of inferences and guess work. Even the evidence of PW-10 Gurunath Panda, who is residing nearby, is also not found to be worth placing reliance by the Trial Court, as he has not supported the Prosecution case. We do not find any perversity in the appreciation of evidence of these witnesses.

14. In our considered opinion also, even assuming that there was some harassment and ill-treatment to Rashmita at the hands of Respondent No.1, there is no evidence on record, as observed by the Trial Court, to show that it was Respondent No.1 who has strangled her. The confessional F.I.R. given by Respondent No.1 before the Police cannot be admitted in evidence, being hit by Section 25 of the Evidence Act. If it is excluded from consideration, then there is no other iota of evidence brought by the Prosecution to show that Respondent No.1 was present in the house, so as to shift the burden on him, under Section 106 of the Evidence Act, to explain the circumstances of the death of his wife.

15. In our considered opinion, therefore, as we are dealing with the Appeal against acquittal, unless some perversity is shown in the Judgment of the Trial Court, we cannot interfere therein, merely on the ground that from the evidence on record, another view is also possible.

16. Consequently, this Appeal stands dismissed.

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