

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.635 OF 2012

1. Haribhau Kondiba Varpe,	]	
Age : 32 years,	]	
	]	
2. Usha Haribhau Varpe,	]	
Age : 23 years,	]	
	]	 Appellants /
Both residing at Jategaon,	]	(Original
Tal.: Nandgaon, Dist. Nashik	]	Accused)
V/s.		
State of Maharashtra,	]	
Through Police Station, Nandgaon,	]	
Tal.: Nandgaon, Dist. Nashik.	]	 Respondent

Mr. M.K. Kocharekar for the Appellants.

Mr. H.J. Dedhia, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 12TH MARCH, 2015.

ORAL JUDGMENT [PER P.V. HARDAS, J.] :

1. The Appellants, who stand convicted for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- each, in default of which to undergo further S.I. for two months, by the Ad-Hoc Additional

Sessions Judge-1, Malegaon by Judgment dated 27th April, 2012, by this Appeal challenge their conviction and sentence.

2. Facts, in brief, as are necessary for the decision of this Appeal may be stated thus :-

PW-8 Pandurang Sonawane, a Police Patil of Village Jategaon, was informed about the death of deceased Roshani, the daughter of Appellant No.1, and accordingly he had gone to the house of Appellant No.1 and had noticed that Appellant No.1 had consumed some poisonous substance. He also noticed the daughter of Appellant No.1 to be dead. He accordingly went to Bolthan Out Post and lodged his occurrence report at Exhibit-41.

3. PW-12 PI Somnath Malkar, who was attached to the Nandgaon Police Station and within whose jurisdiction Bolthan Out Post was, was informed about the registration of Accidental Death No.37 of 2010 in respect of death of Roshani, daughter of Appellant No.1. An Inquest Panchanama of the dead body of deceased Roshani was drawn at Exhibit-17. A Spot Panchanama of the scene of the incident was also drawn at Exhibit-19. The dead body of deceased Roshani was referred for

postmortem examination. On 5th July, 2010, PW-4 Ambadas, grand-father of deceased Roshani, lodged his report at Exhibit-24, on the basis of which an offence vide Crime No.59 of 2010 was registered. On the offence being registered, the investigation of the said crime was entrusted to PW-12 PI Malkar.

PW-12 PI Malkar, on being entrusted with the investigation, recorded the supplementary statement of PW-4 Ambadas. Appellant No.1 was suspected to have consumed poison and was accordingly admitted in the Aurangabad Civil Hospital. Appellant No.2-Usha was arrested on 5th July, 2010 under an Arrest Panchanama at Exhibit-49. Appellant No.1-Haribhau was arrested, after he was discharged from the hospital, under an Arrest Panchanama at Exhibit-50. Statement of the shop-keeper, from whom Appellant No.1 had purchased poison, was recorded. Discharge papers were collected from the Aurangabad Civil Hospital. Statement of PW-9 Aruna, first wife of Appellant No.1, was recorded. A sketch of the scene of the incident was drawn at Exhibit-51. The seized property was then referred to the Chemical Analyzer under requisition at Exhibit-44. Further to completion of investigation, a Charge-Sheet against the Appellants was submitted.

4. Postmortem on the dead body of the deceased was performed by PW-11 Dr. Pratap Pawar, who noticed that deceased had sustained abrasions on the neck and a strangulation mark was also present on the neck. On internal examination, he noticed that the meningeal petechial haemorrhage was present. Organs mentioned in Column No.19 were found congested and collapsed. He, therefore, opined that deceased had died due to "*asphyxia due to strangulation*". The Postmortem Report is at Exhibit-47.

5. On committal of the case to the Court of Sessions, the Trial Court, vide Exhibit-9, framed charge against the Accused for the offence punishable under Section 302 r/w. 34 of the IPC. The Accused denied their guilt and claimed to be tried. Prosecution in support of its case examined 12 witnesses. The Trial Court, upon appreciation of the evidence, convicted and sentenced the Accused, as afore-stated.

6. The case against the Accused is based on circumstantial evidence. It is well to remember that in cases resting on circumstantial evidence, the Prosecution has to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of an incriminating nature i.e. they should have a definite tendency of

implicating the Accused. The circumstances so proved should form a complete chain, which should exclude every hypothesis of the innocence of Accused and should unerringly point to the guilt of the Accused. In other words, the circumstances should be capable of only one inference that the Accused and the Accused alone has committed the offence. A reference may usefully be made to the Judgment of the Supreme Court in ***Hanumant Vs. State of Madhya Pradesh, AIR 1952 SC 343***, and ***Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622***.

7. We have heard Mr. Kocharekar, learned Counsel for the Appellants, and Mr. Dedhia, learned A.P.P. for the Respondent-State, and in order to effectively deal with the submissions advanced before us, it would be useful to refer to the evidence of the prosecution witnesses. Prosecution has examined PW-4 Ambadas, father of the first wife of Appellant No.1 and grand-father of deceased Roshani. PW-4 Ambadas deposes that his daughter PW-9 Aruna married to Appellant No.1 and thereafter the Appellant No.1 performed a second marriage with Accused No.2 and was residing with Accused No.2. The two daughters of PW-9 Aruna i.e. Saniya, who was aged about 6 years, and Roshani, who was aged about 3 years, were residing with Appellant No.1. He further deposes that he was

informed about death of Roshani and, accordingly, he had gone and seen the dead body of Roshani and had thereafter lodged his report at Exhibit-24. In cross-examination, he was confronted with portions from his earlier statements that PW-9 Aruna was present at the time of the second marriage of Appellant No.1 and that she had thereafter eloped and was staying with one Jagannath. The evidence of PW-4 Ambadas, in our opinion, does not advance the Prosecution case any further.

8. Prosecution has examined PW-3 Shivaji Gaikwad, who had taken Appellant No.1 to the hospital, as Appellant No.1 was suspected to have consumed some poisonous substance. Similarly, the Prosecution has also examined PW-5 Nitin Rindhe, a shop-keeper, who has alleged to have sold the insecticides to Appellant No.1. According to PW-5 Nitin, Appellant No.1 had purchased the insecticides and PW-5 Nitin had also prepared a bill. Appellant No.1, however, had informed him that he would be returning some of the insecticide containers and, therefore, would collect the bill subsequently. Prosecution has also examined PW-6 Bhagwan Varpe, nephew of Appellant No.1, but PW-6 Bhagwan did not support the Prosecution case and was declared hostile. The evidence of PW-7 Dr. Pradeep Benjarge discloses that he had obtained the stomach wash of Appellant No.1, when he was admitted in the hospital. Report of the

Chemical Analyzer also discloses that the stomach wash of Appellant No.1 contained insecticides.

9. The evidence of PW-9 Aruna also does not advance the Prosecution case any further. The evidence of PW-11 Dr. Pratap Pawar establishes that deceased Roshani had died a homicidal death.

10. In the entire Prosecution case, we find that PW-11 Dr. Pratap Pawar has not been able to establish the exact time of death. The stomach contents of deceased Roshani also do not assist the Prosecution in establishing the time of death. There is no evidence in respect of motive. In cases resting on circumstantial evidence, motive as a circumstance assumes importance. In the present case, we find that there is no evidence about the exact time of death. There is no evidence regarding motive for Appellant No.1 to commit murder of his own daughter and there is no evidence that Appellant No.1 was present near about the scene of the incident at about the time when the offence is alleged to have been committed.

11. Mr. Kocharekar, the learned Counsel for the Appellants, has referred to the Judgment of the Supreme Court in ***Sohel Mehaboob***

Shaikh Vs. State of Maharashtra, (2009) 2 SCC 588. The Supreme Court, in the said Judgment, at paragraph (8), has observed that the circumstance that of homicidal death and the circumstance that the deceased and the Accused were residing together would be of no consequence on failure of the Prosecution to prove the presence of the Accused at the time of commission of the offence. In this case also, the Prosecution has utterly failed to prove the presence of the Accused at the scene of the offence. The Prosecution has also not been able to establish the time of death and consequently the Prosecution cannot claim that the Accused have failed to explain the death of deceased. Section 106 of the Indian Evidence Act cannot and is not a substitute for the burden of proof resting on the Prosecution. A reference may usefully be made to the Judgment of the Supreme Court in ***Shambu Nath Mehra Vs. The State of Ajmer, 1956 SC 404.***

12. Merely because a dead body was found in the house cannot be a ground for prosecuting all the inmates of the house. In the present case, it is true that deceased Roshani had died an unnatural death. However, there is no evidence to connect the Appellants with the commission of crime. The Supreme Court in ***Mulak Rajand and Ors. Vs. State of Haryana, (1996) 7 SCC 308,*** has held that “*merely because the dead*

body was found in the house is no ground for presuming that all the inmates or some of the inmates had committed the crime”.

13. For the aforesaid reasons, therefore, we find that the Prosecution has utterly failed to prove the offence punishable under Section 302 r/w. 34 of the IPC against the Appellants beyond reasonable doubt. The Appellants, in our opinion, are entitled to be given the benefit of doubt.

14. Accordingly, Criminal Appeal is allowed and conviction and sentence of the Appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by them, be refunded to them. Since Appellant No.1-Haribhau Kondiba Varpe is in Jail, he be released forthwith, if not required in any other case. Bail Bonds of Appellant No.2-Usha Haribhau Varpe stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]