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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1218 OF 2008

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|--------------------------------|---|----------------------|
| 1. Mahadev Vithal Salgar, |] | |
| age 24 years, Occn. Agri. |] | |
| r/o Mamhdabad (Shetfal) |] | |
| Tal. Mangalwedha, |] | |
| District: Solapur. |] | .. <u>Appellants</u> |
| |] | Ori. Accused |
| 2. Lochanbai Vithal Salgar |] | Nos 2 & 3. |
| age: 40 years, Occn. Household |] | |
| r/o Mamhdabad (Shetfal) |] | |
| Tal. Mangalwedha, |] | |
| District: Solapur. |] | |

V/s.

The State of Maharashtra].... Respondent

ALONGWITH
CRIMINAL APPEAL NO.1219 OF 2008.

Balu @ Sadashiv Vithal Salgar	]	
age: 22 years, Occn. Agri.	]	
r/o Mamhdabad (Shetfal)	]	.. <u>Appellant</u>
Tal. Mangalwedha,	]	Ori. Accused
District: Solapur.	]	No.1.

V/s.

The State of Maharashtra].... Respondent

Mr. A. G. Toraskar, appointed advocate for the Appellant in Cri. Appeal No.1219 of 2008

Mr. Sachin Deokar I/by Mr. V.V. Purwant, for appellant in Criminal Appeal No.1218 of 2008

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

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

DATE :24th JULY, 2015.

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

1. Both these appeals are arising out of one and the same judgment dated 3rd October, 2008, of Additional Sessions Judge, Pandharpur, in Session Case No.11 of 2008. Hence they are decided by this common judgment. For the sake of convenience the parties are referred by their original nomenclature.

2. Accused No.1 husband has preferred Criminal Appeal No.1219 of 2008, challenging his conviction for the offence punishable under Section 302, 498A read with Section 34, 201 of IPC and sentence of life imprisonment with fine of Rs.1,000/- in default rigorous imprisonment for two months;

rigorous imprisonment for 2 years with fine of Rs.500/- in default rigorous imprisonment one month and rigorous imprisonment for 3 years with fine of Rs.500/- in default rigorous imprisonment for one month, respectively, on each of the three counts.

3. Criminal Appeal No.1218 of 2008 is preferred by accused No.2 Mohadev the brother-in-law and accused No.3 Lochanabai, the mother-in-law, challenging their conviction for offence punishable under Section 498A read with 34 of IPC and sentence of rigorous imprisonment for two years with fine of Rs.500/- each in default rigorous imprisonment for one month.

4. Brief facts of these appeals are stated as under :-

The marriage of Chiu @ Jijabai, the daughter of P.W.2 Bira was solemnized with accused No.1 on 16.4.2007. After the marriage, she went to reside in the house of accused No.1. There she was residing jointly alongwith accused No.2 her brother-in-law and accused No.3 mother-in-law.

5. As per prosecution case, after marriage, accused started demanding to deceased Chiu and her parents, an amount of Rs.30,000/- for purchase of motorcycle and Rs.50,000/- for purchase of agricultural land. On that count, she was subjected to beating and starvation. She disclosed about this demand and illtreatment to her parents when she was brought to their house, as per custom, on the occasion of Gudipadwa. Hence her father and uncle went to her house and requested accused persons not to subject her to such harassment and cruelty. They also tried to persuade accused about their inability to pay amount as their financial condition was not good. However, there was no change in the conduct of the accused.

6. On second occasion when Chiu came to the house of her parents for the festival of Bendur, at that time also she informed them about illtreatment and cruelty on the count of demand of money. Her parents again pleaded their inability to satisfy the said demand, convinced her and sent her back. Thereafter they got news of her death on 25.7.2007. Hence they rushed to her village and found her dead body kept near

the well.

7. Meanwhile P.W.5 Krishna Sonawale, Police Patil of village, on information of this incident, had gone to Mangalwedha Police Station and conveyed it to P.W.8 PSI Yadav. P.W.8 PSI Yadav, registered A.D.R. No.37 of 2007 in respect of death of Chiu and proceeded to the spot of incident. There, he conducted inquest panchanama (Exh.45) and sent the dead body for postmortem, with Constable Kazi, to Rural Hospital. On the spot, he drew scene of offence panchnama Exh.29 in presence of panch P.W.3 Sukhdeo Kharat.

8. P.W.1 Dr. Pattanshetti, attached to Rural Hospital, Mangalwedha, conducted postmortem on the dead body of Chiu in between 6.00 to 6.30 p.m. and opined that the cause of death was asphyxia due to smothering. After postmortem, dead body was handed over to her father P. W.2 Bira. After performing funeral on her dead body, her father went to police station at night and lodged complaint (Exh.25) against accused.

9. On his complaint P.W.7 Head Constable Pawar

registered C.R.No.120 of 2007 against accused and handed over further investigation to P.W.8 PSI Yadav alongwith enquiry papers of A.D.R.No.37 of 2007. On the next day, P.W.8 PSI Yadav recorded statements of about 8 witnesses and seized the clothes of deceased, which were produced by Constable Kazi, under panchanama Exh.30. On the same day, he arrested accused and obtained postmortem report (Exh.22) from P.W.1 Dr. Pattanshetty.

10. During custodial interrogation on 28.7.2007, accused No.1 gave disclosure statement that he was ready to produce the stick used in the commission of offence. His statement was reduced to memorandum panchanama Exh.32 in presence of P.W.4 Pawar. Thereafter accused No.1 guided P.W.8 PSI Yadav and panchas to his house and produced the stick which was kept below the cot. P.W.8 PSI Yadav seized it under panchanama (Exh.32). He also carried out panchanama of the spot where deceased was assaulted. The spot was below the Jambul tree, in front of house of accused. Said panchanama was made vide Exh.34. Viscera, which was preserved by P.W.1 Dr. Pattanshetty, was sent to Chemical Analyzer vide requisition (Exh.46). The Chemical Analyzer's

report was received vide Exh.20. Further to completion of investigation, P.W.8 PSI Yadav filed chargesheet in the Court against accused.

11. On committal of the case to the Sessions Court, trial court framed charge against accused vide Exh.7. Accused pleaded not guilty and claimed trial.

12. In support of its case, prosecution examined in all 8 witnesses and on appreciation of their evidence, trial Court was pleased to convict and sentence the accused No.1 for offence punishable under Sections 302, 498A read with 34 and Section 201 of IPC and accused Nos 2 & 3 for offence punishable under Section 498A read with 34 of the IPC and sentenced them as aforesaid.

13. In these appeals, we have heard learned counsel for appellant and learned APP for the State. With their able assistance, we have also perused the entire evidence and the impugned judgment of trial Court. On careful consideration of the same, we are of the opinion that prosecution has succeeded in establishing the guilt of the accused, as held by

the trial Court, for the following reasons:-

14. The facts of the case are tell-tale. The marriage of deceased with accused No.1 was solemnized on 16.4.2007 and her unnatural death took place on 25.7.2007. i.e. within just three months and 9 days from the date of her marriage, that too, in the house of accused when she was in their custody. The evidence of P.W.1 Dr. Pattanshetty is self eloquent to the effect that on her dead body at the time of postmortem, he found not less than 10 to 12 abrasions and bruises as under :-

1. Two abrasions (i) 2 cm (L), (ii) 1½ cm in length on the right cheek near the nose
2. Abrasion on right side of the Columella of nose about 8 mm in length.
3. Bruise about 4 x 4 cm in size, circular in shape over left breast over in upper medial quadrant.
4. Bruise 4 x 5 cm in size irregular in shape over right breast in upper medial quadrant.
5. Bruise 3 x 3 cm on upper left side of abdomen.
6. Bruise 5 x 5 cm over back scapular region on upper right side.
7. Bruise 5 x 4 cm over lower right side of back near 10th rib posteriority.

8. Bruise 3 x 2 cm over just upper side of right buttock.
9. Bruise over medial aspect of left thigh near knee, 5 x 5 cm in size.
10. Large Bruise 18 x 10 cm on lateral aspect of right thigh, right knee and area of right leg near knee.

On internal examination, he found that the brain was edematous and congested. Meninges and both lungs were also found congested with haemorrhage fluid of very small quantity oozing from the cut surface. There was also foul smell of gas emitting from large intestine. The walls of the large intestine, livers and buttock were congested. Hence he preserved viscera for chemical analysis giving preliminary opinion on the basis of his postmortem examination that the death was due to asphyxia as a result of smothering. On receipt of the C.A. report (Exh.20), which was not showing any evidence of poisonous substance in the viscera, he has confirmed opinion that the cause of death was asphyxia due to smothering.

15. In the evidence before the Court, he has further stated that the injuries found on the dead body were antemortem in nature. Injury Nos 1 & 2 were caused by sharp

object like nails; whereas injury Nos 3 to 10 were caused by hard and blunt object. According to him, injury Nos 3 to 10 are possible due to assault by stick; whereas injury Nos 1 & 2 are possible if the nose of the person is closed by means of fingers at the time of smothering. He has further opined that if the mouth and nose of person is pressed and closed by means of hand pressure, death due to smothering is possible which has happened in the present case, as can be seen from the injuries found on the mouth and nostril caused by sharp objects like finger-nails.

16. Abrasions and bruises found on the dead boy clearly go to prove that before the smothering the deceased was subjected to severe assault by hard and blunt object like stick. The presence of abrasions and bruises all over body of the deceased is more than sufficient to indicate severity of the assault. The suggestion put up to this witness that these injuries are possible by fall is denied by him. Otherwise, there is absolutely no cross-examination of this witness to challenge the cause of death as smothering, which necessarily proves that the death of deceased was homicidal and homicidal alone.

17. The evidence of P.W.2 Bira, the father of the deceased and her uncle P.W.6 Krishna, goes to prove that the deceased was subjected to severe harassment and illtreatment by the accused persons to satisfy their unlawful demand of cash amount of Rs.30,000/- for purchase of motorcycle and Rs.50,000/- for purchasing of agricultural land. The deceased has disclosed about this demand and harassment to her on two occasions when she had come to the house of her parents at the time festivals of of Gudipadwa and Bendur. As per evidence of both these witnesses, when deceased disclosed about this demand and harassment, they had gone to the house of accused and tried to convince them that it was not possible for them to satisfy the demand of cash amount as their economical condition was not sound. They requested the accused persons to treat her property. However, it was of no use. At the time of Bendur, when deceased came to the house of appellant, she again informed them about harassment. Within 2 to 4 days after she went to the house of accused after Bendur, they received message that she was missing from the house and within one hour, they got another telephone message that she had fallen in the well and died.

When they reached to the spot, they found her dead body lying near well and police conducting inquest panchanama and spot panchanama.

18. Both these witnesses are cross examined by the defence but except for some omissions of minor nature which are bound to occur in the evidence of any truthful witness, nothing is elicited to disbelieve them in any way. The substratum of their evidence has remained unchallenged to the effect that after marriage on two occasions, deceased had come to their house and on both occasions, she had made complaint of illtreatment and harassment at the hands of accused, for coercing her to fulfill the demand of cash amount. Their evidence about the visit to the house of accused and trying to convince them is also not shaken or shattered in any way. Therefore, in our considered opinion, implicit reliance can be placed on the evidence of these two witnesses, as they are found to be thoroughly trustworthy having no reason to implicate the accused falsely.

19. The only ground on which defence has challenged the prosecution case, is alleged delay in lodging complaint. It

is urged that when these witnesses reached to the spot, police were very much present there and making inquest and spot panchanama. Though the police made enquiries with these witnesses, at that time they did not make any grievance or complaint against the accused. The complaint is lodged as an *after thought*, only on the receipt of the postmortem report, therefore, it cannot be called as truthful one.

20. However, in our considered opinion, this submission is devoid of merits because while appreciating the evidence on this aspect, the mental condition of father and uncle of the deceased has to be kept in mind. As they got the news of sudden death of their daughter, they must be panic stricken and traumatic. The dead body was fished out from the well and the cause of death was yet to be established, whether as per case made out by the accused, it was an accidental death or homicidal death. Naturally unless and until all the facts were made clear before them, it cannot be expected that they will lodge complaint in haste or make any reckless allegations against accused, of causing her death. The impact of incident on these witnesses who are close relatives of the deceased and shock which must have ruled supreme at the relevant

time, must be kept in mind by this Court while considering whether there is any delay in lodging complaint. The first priority of the parents at such an event is naturally to complete funeral rites after postmortem and then to take necessary action against the culprits. It is significant to note that postmortem was performed in between 6.30 to 7.30 p.m. and immediately, after funeral rites, complaint is lodged at 11.30 p.m. Therefore, in the instant case, in our opinion, there is absolutely no delay in lodging complaint, so as to cast any doubt of fabrication of case against accused.

21. When the death of deceased had taken place that too of homicidal in nature and when she was in the custody of the accused in their house, it was for the accused to explain the circumstances in which her death has occurred as those circumstances were in the special knowledge of the accused. As per defence taken by accused No.1, he and deceased were alone sleeping in the courtyard of the house but when he got up in the morning, he did not find her and hence he has apprehended that at night she might have gone to answer natural call near the well and some unknown person might have smothered her, on being unsuccessful in attempting to

sexually molest her.

22. This defence, in our considered opinion, is too far fetched to be accepted. The explanation which the accused is expected to offer u/s 106 of Evidence Act, has to be probable and reasonable and not something imaginary. Offering an explanation which is in the nature of figment of imagination, just for the sake of it, cannot absolve the accused from the burden cast upon them. In this respect, useful reference can be made to the judgment of Supreme Court in **Trimukh Maroti Kirkan -vs- State of Maharashtra**¹; wherein it was held that :-

“Where an offence like murder is committed in secrecy inside a house, initial burden to establish the case though would undoubtedly be upon 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

¹ (2006) 10 SCC 681

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”.

(emphasis supplied)

23. In the present case, prosecution has discharged initial burden of proving that death was homicidal in nature and soon before her death she was subjected to cruelty and illtreatment by the accused to satisfy their unlawful demand of cash amount. The prosecution has also discharged its burden of proving that her death has taken place in the court yard of accused at night while she was in the custody of accused No.1, in his presence. Hence the burden was shifted upon accused No.1 to offer “probable” and “cogent” explanation about her death. Accused No.1 has, however, not offered any such explanation. The explanation offered by him appears to be on the face of it also not probable and reasonable. If the deceased had got up at night and was assaulted by someone else, there was every chance of accused No.1 coming to know about it. Therefore, in our considered opinion, the trial Court

has rightly held accused No.1 guilty for offence punishable under Sections 302 of IPC. The act of accused of throwing the dead body in the well after committing murder also proves offence punishable under Section 201 of IPC. Hence as regards accused No.1, the case stands squarely proved against him for all the offences charged and held to be proved against him by the trial Court. Hence his appeal deserves to be dismissed in toto.

24. As regards to accused Nos 2 & 3 also, the prosecution has succeeded in proving the charge under Section 498A read with 34 of the IPC against them. Therefore, their conviction also required to be upheld. However, as to the sentence, the trial Court has imposed rigorous imprisonment of two years and fine of Rs.500/- each in default to suffer rigorous imprisonment for one month. The record shows that the accused Nos 2 & 3 have already undergone imprisonment for a period of about one year and two months. Thereafter they were released on bail by this Court. Hence, in our opinion, the period already undergone by them in jail is sufficient punishment, instead of directing them to undergo remaining sentence. In view, thereof, in our opinion, it would

be just and proper to reduce sentence of two years rigorous imprisonment to that of the period already undergone by them and to increase fine amount of Rs.500/- to Rs.5,000/- each, maintaining the default imprisonment of one month. Therefore, their appeal deserves to be allowed partly. Hence following order.

- I. Criminal Appeal No.1219 of 2008 preferred by accused No.1 stands dismissed, confirming his conviction and sentence as recorded by the trial Court
- II. Criminal Appeal No.1218 of 2008 preferred by accused Nos 2 & 3 is allowed partly.
- III. Their conviction for the offence punishable under Section 498A read with 34 of IPC is maintained. However, sentence of rigorous imprisonment for two years, as awarded by trial Court, is reduced to that of the period already undergone by them, by increasing fine amount to Rs.5,000/- from Rs.500/-; in default to suffer rigorous imprisonment for one month.
- IV. The accused Nos 2 & 3 to surrender to their bail to pay increased fine amount within a period of 8 weeks from the date of this order and on failure to

do so, the learned trial Judge shall have them arrested to undergo the default sentence of rigorous imprisonment for one month.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K.TAHILRAMANI, J.]