

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

**CRIMINAL APPEAL NO. 77 OF 2013**

- |                                               |    |            |
|-----------------------------------------------|----|------------|
| 1. Vilas @ Rajesh Laxman Ghantalwad           | .. | Appellants |
| Age. 24 years, Occ. Munim                     |    | [original  |
|                                               |    | accused    |
| 2. Laxman Hari Ghantalwad                     |    | Nos.1to3]  |
| Age. 57 years, Occ. Post Master,              |    |            |
| 3. Sow. Anusayabai w/o. Laxman Ghantalwad     |    |            |
| Age. 55 years, Occ. Household                 |    |            |
| All R/o. Somthana, Tq. Umri,<br>Dist. Nanded. |    |            |

Versus

|                                 |    |            |
|---------------------------------|----|------------|
| The State of Maharashtra        | .. | Respondent |
| Through : Police Station, Umri. |    |            |

Mr. P.K. Chavare, Advocate for the appellants.  
Mr. R.B. Bagul, A.P.P. for respondent/State.

|                      |          |                                                |
|----------------------|----------|------------------------------------------------|
| <b>CORAM</b>         | <b>:</b> | <b>A.V.NIRGUDE &amp;<br/>V.L. ACHLIYA, JJ.</b> |
| <b>RESERVED ON</b>   | <b>:</b> | <b>09.06.2016</b>                              |
| <b>PRONOUNCED ON</b> | <b>:</b> | <b>10.08.2016</b>                              |

**J U D G M E N T [PER : A.V. NIRGUDE, J.] :-**

1. This appeal challenges judgment and order dated 28.01.2013 passed by the learned Additional Sessions Judge, Bhokar, Dist. Nanded, convicting the appellants in Sessions Case No.33 of 2012 for the offence punishable

under sections 302, 304-B, 498-A and 201 read with section 34 of the Indian Penal Code and sentenced to suffer life imprisonment and other sentences for various sections. For the sake of convenience, the appellants would be referred to as accused Nos.1 to 3 in this judgment.

2. Accused No.1 is son of accused Nos.2 & 3. The victim of this crime was Sapna-wife of accused No.1. The charge framed against the accused indicated that they were charged for both the offences such as murder as well as causing dowry death.

3. In order to prove its case, the prosecution examined in all nine witnesses. The facts that emerged from the depositions and other material that came on record from prosecution side can be narrated as under :-

4. P.W.3-Janabai stated that Sapna was her daughter and was married to accused No.1 in 2008. Sapna even

delivered a boy child and for the purpose of delivery she resided with her for six months. Thereafter, Sapna started telling her that she was harassed for not bringing good clothes and other gifts. Hearing this, P.W.3-Janabai visited the accused. At that time, Sapna told her that the accused were demanding Rs.50,000/- for buying a motor-cycle. P.W.3-Janabai showed her inability to pay such amount. The harassment to Sapna, therefore, continued. Sapna became pregnant. Again on 4<sup>th</sup> May, 2012 at about 8.30 a.m., Sapna called P.W.1-Janabai and informed her that her parents-in-law were harassing her for demand of Rs.50,000/-. P.W.3-Janabai promised her that she would come meet her at Somthana and for taking Sapna back to her house. Since, it was summer time, she promised her that she would come later in the day. At about 3.30 p.m. P.W.3-Janabai received another telephone call from village Somthana informing her that Sapna died due to hanging. Hearing this, P.W.3-Janabai and her relatives went to Somthana and saw Sapna hanging with rope in her house. At that time, one Sushila - sister-

in-law of Sapna was present in her house. Accused were not present there. P.W.3-Janabai saw injury marks on Sapna's body and suspected that Sapna was killed. She, therefore, went to Police Station and filed her complaint.

5. In the cross-examination P.W.3-Janabai admitted that there are few houses of Muslim persons near the house of the accused, but she did not make enquiry with the neighbours about the incident. She also admitted that she did not in the past file any complaint to Police or any other authority against the accused about Sapna's harassment and demands.

6. P.W.4-Sonubai is elder daughter of P.W.3-Janabai and Sapna's sister. She too reiterated that after she received telephone call from village of the accused on 04.05.2012, they came to village Somthana and saw Sapan's dead body hanging in her house. She also stated that Sushila – sister-in-law of Sapna was present in the house

and she ran away after seeing them. She also noticed certain injury marks on Sapna's body.

7. P.W.7 is photographer Shankar Sitawad. He stated that on 4<sup>th</sup> May, 2012, Police Inspector Mairal called him for taking photographs of the scene of occurrence. Accordingly, he went to the spot and saw Sapna hanging inside the house. He took nine photographs and got them printed.

8. P.W.9-Ashok Mairal stated that on 4<sup>th</sup> May, 2012, he was on duty at Umri Police Station as Police Inspector. He received telephone call from Police Patil of Somthana informing him that a woman had died by hanging at village Somthana. He took entry of this information in station diary and went to the spot along with other police officers. He saw Sapna's dead body in hanging condition in the house of the accused. He also marked some injuries on the Sapna's body. He started investigation, got scene of offence photographed. He

also drew scene of occurrence panchanama. He, thereafter, sent the dead-body for post-mortem in Government Hospital, Umri. He then recorded statement of complainant-Janabai (P.W.3) and registered offence. The scene of occurrence panchanama indicates that the house of the accused consisted of three rooms. On East side, there was a drawing room. On the West side, there was bed room, where Sapna was found hanging. On the northern side, there was kitchen. Most of the houses adjoining the house of the accused belonged to Muslim persons. In the bed-room the dead body was found. The feet of the deceased were almost touching the floor of the room. At a distance of 2 feet from the dead-body, a folding chair was found in sitting condition. On the floor, Mangalsutra and broken pieces of bangles were found.

9. P.W.8-Dr.Anis Shaikh stated that on 4<sup>th</sup> May, 2012 while he was working as a Medical officer in Rural Hospital, Umri, he received Sapna's dead body for post-mortem examination. On 5<sup>th</sup> May, 2012, he conducted examined

at about 8.30 a.m. He found following injuries on the dead-body.

- (1) Bluish contusion over left thigh.
- (2) Bluish contusion over right thigh and buttock 40 x 10 cm, 10 x 5 cm approx.
- (3) Bluish contusion over right calf 15 x 8 cm.
- (4) Redness over both arms and forearms.
- (5) Peri-orbital contusion over left eye approx. 20 x 10 cm.

. In addition to this, he also found deep ligature mark over neck from right mastoid and above thyroid prominence and up to left mastoid and over back from right mastoid and left mastoid. Ligature mark was found in one plane parallel to ground in standing position. He opined that the ligature mark he described was possible only in case of strangulation and not in case of hanging. He also opined that the ligature was possible if victim is strangled by rope. He also opined that in this case the victim was strangled and then apparently hanged. In cross-examination, he further explained that

in-case of strangulation, the ligature mark would be parallel, but in case of suicide it would be in the shape of second day moon.

10. On the basis of this evidence, the prosecution asserted that they could prove their case against the accused. On the other hand, learned Counsel for the accused asserted that there are number of lacunae in the prosecution case and so, the accused deserved benefit of doubt. At the time of argument, we discussed the case with the learned Counsels and following question arises for our consideration.

**(i) Whether Sapna died homicidal death or suicidal death?**

**(ii) If the answer is homicidal, who killed Sapna?**

11. We narrated the gist of evidence above, which indicates that there is no eye-witness account available on record. Even the neighbours did not come forward to state as to what they heard or saw prior to the discovery of the dead-body. The Police Patil, who made phone call

to the Police, did not come forward to depose as to how he learnt about the death. There is no material on record to suggest that someone first noticed the Sapna's dead body and alerted others. P.W.3-Janabai stated that she received telephone call from the village that her daughter died, but did not elaborate as to who made such telephone call to her. This means that the information about the dead-body hanging inside the house of the accused came out from an unknown source. No one stated that this information was supplied by the accused. No witness came forward to say that he or she saw the accused inside the house during that day. No one came forward to suggest that he or she saw the accused or any of them coming out of the house or going inside the house during that day. As said above, the dead-body was found at about 03.00 p.m. It was afternoon. Till then number of persons including neighbours could have seen or heard the accused either inside the house or coming out of the house. No one comes before the Court to state that the house was locked from outside or inside. P.W.3-Janabai,

the complainant stated that she walked inside the house and found the dead-body. The house was thus open. She also stated that one Sushila was present in the house. P.W.3-Janabai did not ask Sushilabai as to how Sapna died or where accused persons had gone. The evidence thus clearly suggests that throughout the day till 3.00 p.m. the accused were not seen in and around the house.

12. Now we go to the question which posed for our determination. There is no difficulty in answering question No.1. We have no doubt in our mind that Sapna died homicidal death. She was strangulated and done to death. It was clearly a homicidal death. The perpetrator or someone else thereafter hanged Sapna's dead body by ceiling to create an impression that she committed suicide.

13. The next and most important question in this case is - Who killed Sapna?

14. The circumstances that are brought on record creates strong suspicion against the accused. The accused persons were staying with Sapna in the same house where her dead body was found and thereafter we must first come to conclusion on facts that it was a case of custodial death. We must find out the probable time of death. P.W.8-Dr.Shaikh did not state possible time of death. He simply stated that on 4<sup>th</sup> May, 2012, he received dead-body, which he got in mortuary and conducted post-mortem on next date in the morning at 8.30 a.m. He did not state as to when, prior to how many hours, the death might have occurred. We carefully went through the post-mortem report. The Medical Officer had ample opportunity to state as to what was the probable time of death on the basis of last meal or the contents of stomach. But this part of post-mortem report (Column No.21) is left blank. In Column No.11 the Medical Officer noted that he found rigar mortis present in both upper and lower limbs. He specifically noted that rigar mortis was slight. No one asked the Medical Officer from the state of rigar mortis

as to at what time Sapna could have died. We have, therefore, no answer to the question about possible time of Sapna's death. We can at the most say that Sapna died sometime prior to 3.00 p.m. Whether she was killed in the morning on that day or during previous night is left unanswered.

15. The defence has examined four witnesses to establish that the appellants have left the house in between 9.00 a.m. to 10.00 a.m. to attend their duties. Appellant No.1 has claimed that at the relevant time he was working as a Sales-man in the shop of (D.W.4) Gajanan Bachewar and on the day of incident as usual he left the house at around 8 a.m. to report on duty at 9 a.m. In support of the case, the appellants have examined (D.W.4) Gajanan Bachewar, whose testimony is at Exh.78, who has fully supported the case of the defence. He has deposed that on the day of incident, appellant No.1 came to his shop at 9.00 a.m.. At about 2.20 p.m. he received phone call from the President of Tantamukhi of village

Somthana. He informed him that the wife of appellant No.1 hanged herself and requested to send accused No.1. He, therefore, took accused No.1 to his house on his motor-cycle. The testimony of this witness remained intact during cross-examination and the facts deposed by him were even not challenged and disputed.

16. On the same line, in support of the case of appellant No.2 that he left the house in the morning to report on duty at Umri Post Office and he remained there till 12 noon, the defence has examined Digambar Singankar (D.W.1), the Sub-Post Master, posted at Umri, where appellant No.2 was posted as a post-man. He has deposed that on the day of incident, appellant No.2 came to Umri Post Office between 11.00 a.m. to 12.00 noon. He has deposed that appellant No.2 was looking after the transactions of Bothi Branch as well as Umri Branch. The distance between the two branches is about 15 kms. On 4<sup>th</sup> May, 2012, accused No.2, came to Umri Post Office at 11.00 a.m. and he was there till 12.00 noon. He left the

office of Umri Post Office at 1=00 p.m.

17. In order to support the case of the appellants that they left the house as usual on 4<sup>th</sup> May, 2012 at about 7.00 a.m. to 8.00 a.m., the defence has examined Chandbi (D.W.2) and Begumbi (D.W.3), the neighbours of the appellant. Both of them have deposed that the accused persons used to leave the house at about 8.00 a.m. to 9.00 a.m. and used to return in between 6.00 to 7.00 p.m. and on the day of incident they left the house as usual and Sapna was alone in the house. The testimony of these witnesses was also not shattered in the cross-examination.

18. The prosecution must show that Sapna died during such time of the day when either of the accused was present in the house. In other words, the prosecution ought to have proved that Sapna's death occurred during previous night or during early hours of the day and at such time accused or any one of them was present in the

house. If such was the case of the prosecution, the principal of *res ipsa loquitur* would arise against the accused and it is only then they were under obligation to explain as to how Sapna died. It is only then one may say that the accused had special knowledge of the incident and it is they alone could explain the same.

19. The prosecution evidence does not explain possible time of Sapna's death. The prosecution did not even bring on record that during the day or even during the previous night the accused were present in the house. A neighbour could have examined, who would have deposed that, in the early morning he saw accused present in the house and one by one they left their house. Had this been brought on record, the prosecution could have proved that the accused were present in the house during previous night. Even this evidence is absent. We cannot, therefore, assume that since it was a house of the accused, they were present in the house till Sapna was done to death. The presence of the accused in the house

at the relevant time ought to have been proved with reasonable certainty. In absence of such evidence, we are not able to draw conclusion that this is custodial death and the accused are answerable. In other words, it can be said that while Sapna was alone in the house, someone came and killed her. A feeble attempt is made by the prosecution to connect accused No.1 with the incident. After his arrest, it is stated that he led police to discover stick from his house. The discovery of such stick would not take the case of prosecution further because such sticks are found in most of houses of villages. The police ought to have sent the accused for medical examination soon after their arrest (they were arrested soon after registration of offence). Had they been examined medically within 24 hours from the discovery of dead body, the Medical Officer could have found some injuries on their person which would have indicated that the accused were involved in a scuffle etc. The victim suffered number of injuries. Assuming that the accused or one of them strangulated the victim

using rope, the victim would have struggled. Such scuffle would have caused minor injuries on the person of assailant/s. The Investigating Officer did not investigate this part of investigation at all. When the case was tried before the Sessions Court, necessary witnesses were not examined to establish presence of the accused inside the house at the relevant time.

20. The next question that come for our consideration is :-

**(iii) Whether the prosecution could prove that the accused committed Sapna's dowry death?**

21. In order to answer this question, we must also appreciate the evidence regarding alleged harassment over alleged dowry demands. It is a fact that Sapna was married in 2009 and her dead body was found in 2012. This was within four years old marriage. During these four years Sapna gave birth to a boy, who at the time of incident was three years old. In such background we have to appreciate the bald allegation that the accused were

demanding Rs.50,000/- for buying a motor-cycle. Such allegation requires some sort of corroboration. This allegation could have been corroborated by corresponding complaint made to either elders of the community/relatives or Police. P.W.3-Janabai admitted that she made no complaint about this harassment to anyone. In view of this answer, one may at the most come to a conclusion that there could have been some harassment to the victim but it was not severe so as to prompt a complaint to some authority including elders of the community etc.

22. Number of injuries found on Sapna's dead body clearly indicated that she was first beaten-up before she was strangled. If in-laws were responsible for this beating, in last four years of marriage, there was possibility that Sapna had undergone similar ill-treatment. In other words, the accused must have beaten up Sapna earlier also. Had Sapna been beaten up so severely on previous occasion, she would have certainly

mentioned it to her mother or father (It has come on record that Sapna's father was working as a Watchman in irrigation department and therefore had some status in the society). P.W.3-Janabai in her deposition stated that Sapna had told her that accused were harassing her. P.W.3-Janabai could have easily elaborated as to what harassment consisted of. P.W.4-Sonubai the elder sister of Sapna could have also stated as to whether Sapna was previously beaten up utilising stick etc. by the accused or any one of them. It, therefore, appears to us that the incident of assault utilising stick was rather unusual. We are, therefore, inclined not to accept the allegation that Sapna was harassed over demand of Rs.50,000/-. One of the main ingredients of Section 304-B is that the prosecution must prove that soon before death of the victim, she was subjected to cruelty or harassment by the accused. In absence of corroborating material, we are unable to draw such conclusion. It is, therefore, clear that in this case Sapna died unnatural death within seven years of her marriage, but it cannot be said that

she was subjected to cruelty by the accused in connection with any demand of dowry.

23. We are, therefore, inclined to allow this appeal.

**O R D E R**

(i) The Criminal Appeal is allowed.

(ii) The judgment and order passed by learned Additional Sessions Judge, Bhokar dated 28.01.2013 in Sessions Case No. 33 of 2012 is hereby quashed and set aside.

(iii) The appellants are acquitted of the offences with which they were charged and fine amount, if any, deposited by the appellants be refunded to them.

(iv) Since appellant No.1 – Vilas @ Rajesh s/o. Laxman Ghantalwad and appellant No.2-Laxman s/o. Hari Ghantalwad are in jail, they be released from custody forthwith, if they are not required in any other case.

(v) Bail bond of appellant No.3-Anusayabai  
w/o. Laxman Ghantalwad stands discharged.

**[V.L. ACHLIYA, J.]**

**[A.V.NIRGUDE, J.]**