

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

CRIMINAL REVISION APPLICATION NO. 78 OF 2003

Ramchandra s/o Dhulichand Gorame,
Age: 48 years, Occ: Cobbler,
R/o. Rohidaspura, Aurangabad.

...Applicant

versus

1. The State of Maharashtra

2. Kishore s/o Khemchand Sarone,
Age: 43 years, Occ: Labour,
R/o. Rohidaspura, Balaji Mandir,
Aurangabad.

3. Dhondiram s/o Haribhau Gosavi,
Age: 52 years, Occ: Service,
R/o. G. No. J-6 In front of
Thorat Kirana Provision,
Bhawani Nagar, Aurangabad.

...Respondents

.....
Mr. S.G. Ladda, Advocate for applicant
Ms. R.P. Gour, A.P.P. for respondent No.1
Mr. S.S. Jadhav, Advocate for respondent Nos. 2 & 3
.....

CORAM : N.W. SAMBRE, J.

DATE : 11th APRIL, 2016

ORAL JUDGMENT :

Present criminal revision application is by the original complainant against the judgment of acquittal delivered on 27/12/2002 by 2nd Adhoc Additional Sessions Judge, Aurangabad in Sessions Case No.295 of 2002, acquitting the present respondents-

accused for the offence punishable under Section 376 and 302 read with Section 34 of the Indian Penal Code.

2. The facts, as are necessary for deciding the present criminal revision application, are as under :-

PW-2 Ramchandra Gorame, the applicant herein, had seven brothers, having their home at Rohidaspura and were living adjacent to each other. Ramchandra had two wives namely Parvatibai and Hirabai and three daughters from Parvatibai of whom, Savita was last one. Savita was studying in 7th standard in the school. Ramchandra was also blessed with son by name Ashok.

3. That accused No. 1 i.e. respondent No.2 and accused No. 2 are resident of same area, adjacent to Rohidaspura. It is claimed that both the accused were friends and were prosecuted for committing the rape and murder of Savita, daughter of Ramchandra, in the night between 06/05/2002 and 07/05/2002.

4. It is claimed that on 05/05/2002 the engagement ceremony took place in the family of Ramchandra and his brothers, complainant Ramchandra alongwith his wife Parvatibai was sleeping on *Ota* with two daughters namely Savita and Anita. Another wife

namely Hirabai, and son Ashok were sleeping in the house. It is claimed that at that time, Savita was 12 years old. Ashok, brother of Savita got up from sleep at 5-00 a.m. and noticed that Savita was no longer on her bed and he immediately apprised the family members about the same. Family members then tried to search Savita but could not locate. He is then informed by the ladies members of the house that Savita's dead body was located nearby Balaji temple, which was brought at home by accused No. 1.

5. It is then noticed that blood was oozing from nostrils and mouth of Savita and she was lying dead, as was strangulated by her own *Salwar*.

6. In the morning at 6-50 a.m. the complainant Ramchandra narrated the above referred fact to the police station officer, resulting into registration of Crime No. 55 of 2002 for the offence punishable under Section 302 of the Indian Penal Code.

7. After the investigation was set in motion, the dead body was sent for post mortem and spot panchnama, seizure panchnama in relation to articles and clothes, part of soil/earth was drawn. The said articles were sent by P.S.I. Sirsat for chemical analysis and thereafter recorded the statements of witnesses namely Radhakisan,

Hirabai and others. As blood stains were noticed on the underwear, which was seized from the house of accused No.1, same was sent for chemical analysis. Accused No.2-respondent No. 3 was found to have given clothes for washing at Jai Bajrang Laundry, having blood stains. They were also referred for chemical analysis. Certain semen stains were found on the clothes of accused No. 2, hence same were also sent for chemical analysis.

8. It is then claimed that accused No. 2 Dhondiram has reserved Cot No. 23 in Sangam Lodge by giving false name as Jagannath Rajaram Jaiswal and has not stayed in the said lodge in the night.

9. During autopsy, 8 external injuries were noticed in Column No. 17. The injuries under scalp shown multiple petechial haemorrhage apart from six injuries to neck, four on trunk and one on private part.

10. After investigation was complete, charge sheet came to be filed against present respondent Nos. 2 and 3. The charge was framed against the accused at Exhibit-3 on 24/09/2002 for the offence punishable under Sections 302 and 376 of the Indian Penal Code.

11. During the trial, 11 witnesses were examined by the prosecution. PW-1 Dr. Rathod, who conducted post mortem, PW-2 Ramchandra Gorme, father of deceased Savita, PW-3 Sarika, laundress, who had refused to accept the clothes for washing and cleaning from accused No. 2 because of highly dirty, PW-4 Radhakisan Gorme, PW-5 Hirabai, another wife of Ramchandra, PW-6 Puransing, who was running Jai Bajrang Laundry in Kailasnagar area during the relevant days, PW-7 Krishna Garbade, manager of Sangam Lodge, PW-8 Sk. Zaheer, gate keeper of State Talkies, Shahgunj, PW-9 Police Inspector, Ghuge, who handled bulk of investigation, PW-10 P.S.I. Sirsat, who made initial investigation, and PW-11 Police Inspector Sonawane, who submitted the charge sheet.

12. It is upon appreciation of the evidence, learned Adhoc Additional Sessions Judge, Aurangabad by an order dated 27/12/2002 acquitted the accused of the charges. As such, present revision application by complainant.

13. Mr. Ladda, learned Counsel for the applicant complainant would submit that the complainant is examined as PW-2, so also laundress PW-3, lodge manager PW-7, and PW-4

Radhakisan Gorme, who have specifically named the present respondents-accused, who are responsible for the commission of crime in question. Mr. Ladda, learned Counsel for the applicant complainant would then submit that the entire case is based on circumstantial evidence and the circumstances as could be appreciated from the evidence on record, takes to the only conclusion that deceased Savita died homicidal death, for which the present respondents are responsible.

14. Learned A.P.P. has assisted the Court in the matter of analyzing the evidence alongwith Mr. Ladda, learned Counsel for the complainant.

15. With the assistance, I have analyzed the evidence as is brought on record.

16. It is required to be noted that the evidence of three witnesses is required to be appreciated, particularly as regards proving involvement of the respondents in the crime in question. It is not in dispute that deceased Savita died homicidal death, as she was strangled by her own *Salwar*. It is then to be noted that PW-2 Ramchandra, PW-4 Radhakisan, PW-5 Hirabai were examined so as to substantiate the claim of prosecution. The presence of both the

accused persons is sought to be established relying upon the evidence of above referred witnesses. It is brought on record that it is for the first time, the complainant noticed absence of Savita, after same was brought to his notice, by his son Ashok at 5-30 a.m. Accused No. 1 Kishor lifted the body of deceased Savita and brought it in the house of one Mohanlal and has placed the said body on *Sofa*. The first information report does not speak of presence of accused No. 1 Kishor, as noticed by complainant Ramchandra, Radhakisan, so also Hirabai near the *Ota* of his house on the date of occurrence, as both of them were awakened for answering nature's call at 12-30 in the night. The testimony of the witness-complainant if examined, there were certain improvements noticed in his testimony before the Court, which story was not stated by him in the complaint.

17. It is then claimed by Radhakisan that he woke up twice in the night so as to answer nature's call i.e. 1-30 a.m., however, none of the said witnesses namely Hirabai or Radhakisan stated about movements of accused persons near Savita, who was sleeping in the court yard of Mohanlal on the date of occurrence. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt of connecting their involvement to crime in question, particularly in the matter of how the accused persons got custody of Savita in the intervening night and committed heinous

crime of rape and then murdered her. It is to be noted that the crime in question if to be committed by present accused persons, they must have suffered some injury, so also, other persons who were present around would have heard screaming of deceased Savita, while she suffered crime in question. Though it is true that accused No. 2 had been to the place of accused No.1 and requested him to accommodate him for the night and it is accused No.1, who told him to sleep in Balaji Mandir and in Balaji Mandir, presence of accused No. 2 was noticed in the night at 1-30 a.m. when he was reading newspaper by the complainant and his family members. However, said circumstance cannot be considered and stretched to the extent of convicting the respondent-accused.

18. It is then required to be noted that though witness Krishna Garbade was sought to be examined in the matter of conduct of accused No. 2 booking cot in Sangam Lodge, however the said witness has failed to identify the accused persons. The alleged claim of prosecution that accused No. 2 was in habit of watching English Cinema on every Saturday and Sunday, will be of hardly any consequence so as to support the case of prosecution.

19. The report of Chemical Analyzer, if is considered in the above referred background, though it is noted that deceased Savita

suffered homicidal death, no blood or semen was evident vide Exhibit-46 in the nail clipping and other samples relating to the deceased. Even Exhibits-47 and 48, which relates to analysis of blood and pubic hair of both the accused, do not notice any semen. Chemical Analyzer's reports also do not support the case of the prosecution.

20. In this back ground, in my opinion, no case for showing any indulgence in the revisional jurisdiction in the matter of acquittal ordered by learned 2nd Adhoc Additional Sessions Judge, Aurangabad on 27/12/2002 in Sessions Case No. 295 of 2002 is made out before this Court. As such, criminal revision application stands dismissed.

Sd/-
[**N.W. SAMBRE, J.**]