

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 617 OF 2012

Rajendra Amrita Gaikwad .. **Applicant**
Age. 45 years, Occ. Nil,
R/o. Aurad, Tal. Omerga,
Dist. Osmanabad.

Versus

The State of Maharashtra .. **Respondent**

Mr. R.D. Biradar, Advocate for the appellant.
Mr. S.D. Ghayal, A.G.P. for respondent/State.

CORAM : A.V.NIRGUDE &
INDIRA K.JAIN, JJ.
DATED : 24.02.2016

ORAL JUDGMENT [PER : A.V. NIRGUDE, J.] :-

1. This appeal challenges judgment and order dated 26.09.2012 passed by the learned Additional Sessions Judge, Osmanabad, in Sessions Case No.10 of 2011. The Trial Court convicted the appellant for the offence punishable under section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment and to pay a fine of Rs.5000/- with default clause.

2. The appellant is accused of committing murder of his own daughter. It is stated that the appellant/accused got annoyed with his daughter because she had eloped with her boy friend for few days and came back. The

appellant/accused felt insulted and therefore he committed her murder. The prosecution case mainly depended on deposition of P.W.5-Muktabai, who is neighbour of appellant/accused. She said that on the day of incident at about 8.00 to 9.00 a.m., she saw that the appellant's wife and their son Akash left their house and went to hospital at Gunjoti. She said that after they left, appellant/ accused and deceased Shital were the only persons in their house. She then said that she heard noise of assault and abuses. She went to see as to what was happening. She saw that the accused was assaulting and abusing his daughter – Shital. She said that she did not go and intervene because she apprehended that the accused/appellant would be rude to her. She then said that after some time noise of quarrel stopped. She also saw that accused came out of the house closing the door and sat on the steps of his house. Thereafter, she saw son of accused Akash and wife of accused Chandrakala came back to their house. They raised alarm. Hearing it she went to their house and saw Shital dead. She also noticed marks of throttling on Shital's neck.

3. Second important witness for the prosecution is P.W.2-Ravan – Police Patil. He said that on 19.02.2011, he had gone to Omerga. At about 12° clock he visited police station and saw his villagers – Satyawan, Ashok,

Pramod etc. present in the police station. He made enquiry with them. He learnt that Shital was killed. He, therefore, took police to the house of the appellant/accused. There all of them saw dead body of Shital inside the house of the accused. They also found black mark around neck of Shital. He said that he made enquiry with the wife of the accused who informed him that at the time of incident, it was only appellant/accused and deceased Shital who were present in the house. He then lodged the complaint. The dead-body was sent for post-mortem and P.W.1-Dr.Sunanda has opined that Shital died of asphyxia due to throttling. P.W.1-Dr.Sunanda also confirmed that besides mark of throttling, there were about 10 injuries all over Shital's body.

4. There are other witnesses such as spot panch etc. The accused also examined his son Akash as defence witness No.1, who gave completely different story about the incident.

5. The question that arises for our consideration is — whether depositions of P.W.5-Muktabai and P.W.2-Ravan deserve to be believed.

6. We found no reason why we should disbelieve

them. They are natural witnesses. The incident took place in broad day light. Due to noise of the quarrel, attention of neighbours would certainly get attracted and so witness Muktabai got curious. She went close to the house of the accused and saw appellant/accused having quarrel with the victim. She even saw him assaulting the victim. This witness [P.W.5-Muktabai] did not exaggerate to state that she saw appellant/ accused throttling his daughter, but she simply stated that after some time the quarrel stopped and she saw the accused coming out of the house. She stated very clearly that during the incident, there were only two persons present in the house of the accused and they were the appellant/accused and the victim-Shital. Soon thereafter Akash and his mother came and were shocked to find Shital's dead-body in the house. They naturally raised alarm. Hearing their alarm, the neighbours rushed to the house of the appellant/accused and he was almost caught red-handed. Soon thereafter some villagers went to the police station and informed the police. Unfortunately for the accused/appellant, police patil P.W.2 was present in the police station and subsequently the investigation proceeded as expected.

7. There is one more circumstance against the appellant/accused. It was admitted fact that Shital had eloped with her boy-friend. They remained away from the

village for few days and came back. The appellant/accused could have felt insulted because of this rebellious conduct of his daughter and therefore he had strong motive to assault and kill his daughter.

8. We find no reason to interfere in the appreciation of evidence of the Trial Court. The learned Judge of the Lower Court has rightly convicted the appellant for the offence of murder. The appellant practically does not have any defence in this case. The evidence of defence witness is utterly unbelievable and after-thought. If the appellant/accused wanted the Court to believe that at the time of incident, he was away from his house and was not responsible for homicidal death of his daughter, he ought to have brought on record admissions of witness that they saw him going away from the house while victim Shital was hospitalized, but such defence was not raised.

9. In the result, the Criminal Appeal is dismissed.

[INDIRA K.JAIN,J.]

[A.V.NIRGUDE,J.]