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

CRIMINAL APPEAL NO. 737 OF 2014
(Through Jail)

Dadaram Navnath Satav

Convict C/16365, Presently lodged at
Yerawada Central Prison,
Pune 411 006.

.. Appellant
(Org. Accused)

Versus

State of Maharashtra

.. Respondent

Appearances:-

<i>Mr. Abhaykumar Apte</i>	<i>Advocate (appointed) for the Appellant</i>
<i>Mr. H.J. Dedia</i>	<i>APP for the State</i>

**CORAM : SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : MAY 5, 2016.

JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. This appeal is preferred by the appellant - original accused against the judgment and order dated 05.06.2012 passed by the learned II Ad-hoc Additional Sessions Judge, Solapur in Sessions Case No. 300 of 2008. By the said judgment and order, the learned Session Judge convicted the

appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer life imprisonment and fine of Rs. 10000/-, in default R.I. for two years.

2. The prosecution case, briefly stated, is as under:

(a) Deceased Rekha was the wife of the appellant.

She was about 21 years of age at the time of the incident. Rekha was married to the appellant about two years prior to the incident. After the marriage, Rekha went to cohabit with the appellant at his house in Village Nimgaon. The appellant had illicit relations with one Vaishali. On account of this, the appellant used to assault Rekha. At the time of the incident, Rekha was about 7 months pregnant. On account of pregnancy, she was brought to her parents' house at Village Ketaki Nimgaon. When she came to the house of her parents, she informed them about the appellant having illicit relations with one

Vaishali.

- (b) The incident occurred on 6.9.2008. On that day, Rekha who was at her parents' place was informed by the appellant that they would go to Pune for witnessing Ganpati Festival and for that purpose, he told her to come to Indapur, hence, Rekha went to Indapur. At the S.T. stand at Indapur, the appellant made her sit in S.T. bus going to Tembhurni. Rekha alighted from the S.T. at Tembhurni. At that time, her husband came there on motorcycle and told her that they would go to Pune to see Ganpati. Rekha then sat on the motorcycle. The appellant then took Rekha to Dhavalas. He took her near a well which was about 250 feet deep and under which there was a water tunnel. After sometime people stopped passing by the well. At about 9.30 p.m., the appellant pushed Rekha into the well. The

appellant then sat on the motorcycle and went away from the spot.

- (c) Rekha started shouting for help. This was heard by PW 4 Pravin and PW 7 Sandipan who were the residents of village Dhavalas. People of village Dhavalas came to know that somebody had fallen in the well, therefore, the villagers arrived there. Then with the assistance of a crane and a rope, Rekha was taken out of the well. When Rekha was brought out of the well, PW 4 Pravin inquired with Rekha about her identity. She informed that she was Rekha Dadaram Satav and she is the resident of Nimgaon. She further informed that her husband had pushed her into the well. She told that her husband's name was Dadaram Satav. The villagers then gave her dry clothes and lit a fire. Meanwhile, police arrived at the spot and took Rekha to the hospital.

- (d) PW 15 Dr. Sunanda Gaikwad, the medical officer at Rural Hospital at Kurduwadi, examined Rekha at about 12 midnight. Rekha gave her history that she had sustained injuries as she was thrown into a canal. On examination, Dr. Gaikwad found six injuries on the person of Rekha.
- (e) PW 16 Police Constable Londhe who was one of the constables who brought Rekha from the place of the incident to the Rural Hospital at Kurduwadi recorded the statement of Rekha in presence of the Doctor. In her statement, Rekha stated that her husband took her to the water tunnel. Rekha further informed constable Londhe that her husband was having illicit relations with a lady and due to that reason, her husband has pushed her inside the water tunnel. This dying declaration was treated as F.I.R. Exh. 77 Thereafter, investigation commenced.

- (f) As the condition of Rekha was not good, she was sent to Solapur General Hospital. She expired on 7.9.2008. Her dead body was sent for post mortem. PW 12 Dr. Punde performed the postmortem on the dead body of Rekha. Amongst other injuries, he found rupture of spleen and uterus was torn. Rekha was 6 to 7 months' pregnant. According to Dr. Punde, the probable cause of death was due to hemorrhage due to rupture of spleen and rupture of pregnant uterus. According to Dr. Punde, these injuries were sufficient in ordinary course of nature to cause the death and such injuries are likely to be caused if a person is pushed into a tunnel or aqueduct. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence, this appeal preferred by the appellant against his conviction and sentence.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that there is no merit in the appeal.

5. The conviction of the appellant is based on dying declaration Exh. 77. This dying declaration was recorded by PW 16 Police Constable Londhe. In addition, the conviction is based on two oral dying declarations made by Rekha to PW 4 Pravin and PW 7 Sandipan. As the oral dying declarations were made first in point of time, we shall deal with the same first.

6. PW 4 Pravin has stated that his farm is situated in Village Dhavalas. At about 9.00 to 9.30 p.m., he was going from his house to the house of one Bhalekar. After he reached the well, he heard the sound of a fall, hence, he proceeded towards the well. He saw one person getting up and proceeding away from the well. Pravin inquired with that person as to what he had thrown in the well whereupon the person replied that he had thrown a stone in the well. Pravin inquired why he had thrown the stone in the well. Thereupon, the person replied that he threw the stone in the well in order to measure the depth of water in the well. The

person informed him that he was proceeding to village Nimgaon. The person then started his motorcycle and went away. Pravin then proceeded ahead, however, he heard a sound, "save, save". Pravin then called Bhalekar and one another person and informed them that somebody had fallen in the well and requested them to come immediately. Meanwhile people from the village Dhavalas came to know about the incident. The villagers arrived at the spot. Pravin then threw a rope in the well and with the assistance of rope, lifted Rekha on to a crane. She was then brought out of the well. Pravin inquired with Rekha about who she was. She replied that her name was Rekha Dadaram Satav and she is the resident of Nimgaon. Rekha further informed him that her husband had pushed her inside the well. She told that the name of her husband was Dadaram Satav. The villagers then gave dry clothes to Rekha and lit a fire. Meanwhile, police arrived there and took Rekha away.

7. PW 7 Sandipan was the resident of village Dhavalas. He has stated that at about 9.00 p.m., he heard shouts of one lady from the well. He called his son Pravin. A crane was there. Then with the assistance of crane, the people brought the lady up from the well. She was in a conscious condition. She informed that her husband had pushed her in the well. She was taken to Kurduwadi for medical treatment.

8. Rekha was taken to Kurduwadi Rural Hospital by PW 16 Police Head Constable Londhe. Constable Londhe has stated that they received a telephonic message that a lady had fallen into a water tunnel. He was directed to go to the tunnel where the lady had fallen. They went to Seena Madha tunnel situated at Dhavalas. Villagers had gathered there. They had taken the lady out of tunnel with a crane. The lady was in a scared condition and was totally wet, however, she was in a conscious condition, oriented and in a position to speak. Constable Londhe then took the lady to Rural Hospital, Kurduwadi. Dr. Gaikwad (PW 15) examined the

patient and administered saline. Constable Londhe then recorded the statement of the lady. The said dying declaration bears the endorsement of the doctor that the patient was in a conscious condition and in a condition to give a statement. Briefly stated, in the dying declaration, Rekha has stated that her husband told her that they will go to see Ganpati and for that purpose, he called her to Indapur. From there, he asked her to go to Tembhurni by bus. From Tembhurni, he took her on his motorcycle to Dhavalas. He brought her to underground water tunnel. He asked her to see inside the tunnel to see how deep it was. Once she peeped inside, he pushed her inside the tunnel. She further stated that her husband was having illicit relations with a lady and due to that reason, her husband had pushed her inside the tunnel. Thus, the dying declaration Exh. 77 and two oral dying declarations made to PW 4 Pravin and PW 7 Sandipan show that the appellant pushed his wife Rekha into the water tunnel in order to cause her death.

9. Not only Rekha has stated in her dying declaration the motive for the appellant to cause her death but the evidence of PW 5 Sindhu, PW 8 Anjanabai and PW 9 Ashok also shows the motive for the appellant to commit the offence.

10. PW 5 Sindhu was the mother of Rekha. She has stated that the marriage of the appellant and her daughter Rekha had taken place two years prior to the incident. After the marriage, Rekha was residing at Nimgaon. Rekha had told her that her husband i.e the appellant was having illicit relations with one Vaishali and he was assaulting Rekha on that count. At that time, her daughter was seven months' pregnant, hence, she was brought to her parental home at Ketaki Nimgaon. When Rekha was brought to her parental home, she informed her parents about her husband having illicit relations with some other lady due to which the appellant i.e her husband was assaulting her.

11. PW 8 Anjanabai was the stepmother of Rekha. She has stated that Rekha was married to the appellant in the year 2006. After the marriage, Rekha was residing with the appellant at Nimgaon. Two months before her death, Rekha had visited their house. At that time, Rekha informed her that her husband was troubling her and her husband was having illicit relations with one Vaishali. Rekha informed Anjanabai that on account of this illicit relation, the appellant was annoyed with her and often assaulting her.

12. PW 9 Ashok was the father of Rekha. He has stated that his daughter was married to the appellant about two years prior to the incident. His daughter informed him that her husband was assaulting her and her husband had illicit relations with one Vaishali. When Rekha was about 7 months' pregnant, they brought Rekha to their house. After the religious formalities were completed, Rekha was to be sent back to her matrimonial house for cohabitation. On 6.9.2008, he came to know that his daughter was pushed

into the well by her husband i.e the appellant. After they came to know about it, they went to Solapur but by then, Rekha had expired.

Thus, the evidence of PW 5 Sindhu, PW 8 Anjanabai and PW 9 Ashok also shows the motive for the appellant to commit the crime.

13. PW 12 Dr. Punde conducted the postmortem on the dead body of Rekha on 7.9.2008 at 8.00 a.m. On external examination, Dr. Punde found that Rekha had sustained abrasion on left lateral aspect, abrasion on left arm measuring 3 x 6 c.m., abrasion over left limb 5 x 4 c.m., lateral aspect, abrasion over right thigh lateral aspect 4 x 4 c.m., 5 x 2 c.m. and 3 x 2 c.m. respectively one by one parallel to each other 2 cm. distance in each., contusion on left lateral aspect of chest on hypochondria region left side 2 x 4 c.m., contusion on lower abdomen below the umbilicus 5 x 4 c.m.

On internal examination, Dr. Punde found 100 cc blood present in plural cavity of thorax. Rupture of spleen 2 x 1 c.m. Uterus 2 c.m torn on anterior aspect with female dead foetus present inside. She was 6 to 7 months' pregnant then. In the opinion of Dr. Punde, the probable cause of death was due to hemorrhage due to rupture of spleen and pregnant uterus. According to Dr. Punde, the external injuries are corresponding to internal injuries and these injuries in ordinary course of nature are sufficient to cause death. Such injuries are likely to be caused if pushed into a tunnel or acqaduct.

14. PW 15 Dr. Gaikwad was the first doctor who examined Rekha. She has stated that Rekha was brought to the Rural Hospital at Kurduwadi on 7.9.2008 at about 12.00 midnight. She was brought by Police Head Constable Londhe (PW 16). On external examination, Dr. Gaikwad noticed the following injuries on the person of Rekha :-

1. Contusion over left lateral aspect 6 x 4 c.m.;
2. Contusion over abdomen below umbilicus 5 x 4 c.m.;
3. Abrasion on left arm lateral aspect 6 x 3 c.m.;
4. Abrasion over left forearm 9 x 4 c.m.;
5. Abrasion over right thigh three in number near parallel 4 x 4 c.m., 5 x 2 c.m., 3 x 2 c.m.;
6. Per abdomen 22 to 24 weeks pregnancy FHS absent, uterus contracted tonically.

According to Dr. Gaikwad, Injuries Nos. 3 to 5 were simple in nature but the remaining three injuries were not simple and may be that the patient had sustained fracture of the ribs and therefore, she was referred to Civil Hospital, Solapur. Dr. Gaikwad has stated that the patient gave history that she was thrown in the canal.

15. The act of the appellant of pushing his seven months pregnant wife into a water tunnel which was 250 feet in depth and which had flowing water in it clearly shows the intention of the appellant to cause the death of his wife Rekha.

16. Mr. Apte, learned Advocate for the appellant submitted that there is no evidence to show that the appellant was at Village Dhavalas on 6.9.2008, hence, it cannot be said that the appellant was at Village Dhavalas on the night of 6.9.2008. It is to be noted that PW 4 Pravin and PW 7 Sandipan are independent eye witnesses. They are the residents of Village Dhavalas. Both of them have stated that Rekha told them that her husband had pushed her into the well. The dying declaration Exh. 77 also shows that Rekha has stated that her husband had pushed her into the well. We see no reason to disbelieve the evidence of PW 4 Pravin and PW 7 Sandipan who are independent eye witnesses. So also, we see no reason to discard the dying declaration Exh. 77. Thus, the evidence on record is sufficient to show that the appellant was present at the well and he pushed Rekha into the well.

17. Thereafter, Mr. Apte argued that the prosecution has not proved the chain of circumstances against the appellant

which conclusively proves that it was the appellant alone who caused the death of Rekha. The first lacuna in this argument is that it does not take into consideration that this is a case which is based on dying declarations both written and oral. The law is well settled that for the purpose of conviction, reliance can be placed solely on a dying declaration if it is found to be trustworthy and reliable. In the present case, we not only have the dying declaration Exh. 77 but in addition, we have the testimony of PW 4 Pravin and PW 7 Sandipan who are independent witnesses who have stated that Rekha told them that her husband had pushed her into the well. When a case is based on the dying declaration, there is no question of proving any chain of circumstances to show beyond reasonable doubt that the accused had committed the offence.

18. Looking to the evidence on record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed the murder of his wife Rekha. Thus,

we find no merit in the appeal. The appeal is dismissed.

19. Office to communicate this order to the appellant who is in jail.

[SMT. ANUJA PRABHUDESSAI, J]

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

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