

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

CRIMINAL APPEAL NO.34 OF 2009

The State of Maharashtra,
Through Sadar Bazar Police
Station, Tq. and Dist. Jalna

..Appellant
(Prosecution)

Vs.

1. Hemant Kumar s/o. Basavraj
Appa Radenwar, Age : 40 years,
Occ: Business, r/o.Ranibhimar,
Dist. Haweri, Karnataka State

..Respondent no.1
(Original accused
no.1)

2. Mahadevappa Basavrajappa
Radenwar, Age : 36 years,

Appeal dismissed
against resp.
nos.2 and 3

3. Lingappa Veerappa Sutgatti,
Age : 48 years,

as per Court's
order dt.16.1.2009

Mr. S.K.Tambe, APP for appellant

Mr. Joydeep Chatterji, Advocate for respondent

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.
DATE : NOVEMBER 03, 2017**

JUDGMENT (PER SANGITRAO S. PATIL, J.) :

The State/prosecution has taken exception to
the judgment and order dated 07.05.2008 passed in
Sessions Case No.41 of 2006 by the learned Ad-hoc

Addl. Sessions Judge, Jalna acquitting the respondents of the offence punishable under Section 302 of the Indian Penal Code ("I.P.C.", for short).

2. The deceased Vijayalaxmi was the wife of respondent no.1. Respondent no.2 is the brother, while respondent no.3 is the maternal uncle of respondent no.1. All of them hail from the State of Karnataka. Respondent no.1 was trading in betel-nuts. He had supplied betel-nuts on credit to the proprietor of Sanket Gutkha Company, Jalna. An amount of Rupees One Crore was due and payable from Sanket Gutkha Company to respondent no.1. Respondent no.1 had camped at Jalna in Madhuban Hotel in room no.104 for recovery of the dues from the proprietor of Sanket Gutkha Company since before 5 to 6 months of the incident that took place in the night intervening 22.01.2006 and 23.01.2006. The deceased Vijayalaxmi also was accompanying respondent no.1 in order to exert pressure on the proprietor of Sanket Gutkha Company to pay the amount due from him. Respondent

no.1 called respondent nos.2 and 3 as also his brother-in-law i.e. the informant - namely, Basavraj Shivappa Itgi (PW 6), resident of Haweri, Karnataka State, to Jalna to seek their assistance for recovery of the dues.

3. It is the case of the prosecution that respondent no.1 used to hurl abuses and beat Vijayalaxmi on trifle grounds. On 23.01.2006, at about 8.30 a.m., the informant - Basavraj (PW 6) received a phone call from his mother, who was residing at Haweri, whereby he was asked to visit room no.104 in Madhuban Hotel, since she had received a phone call from respondent no.1 that Vijayalaxmi was hanging against a ceiling fan. Accordingly, the informant went in front of that room. At that time, respondent no.1 was found locking the room from outside and proceeding away along with respondent nos.2 and 3. When the informant asked them as to where they were going, they told that they were going to Police Station to lodge report.

4. After sometime, police came there since the hotel owner had phoned to police. Room no.104 was opened in the presence of police. It was noticed that Vijayalaxmi was lying on a cot in dead condition. There was bluish mark near left side of her neck. Since respondent nos.1 to 3 did not inform the informant about death of Vijayalaxmi, he entertained suspicion against them for killing her. He, therefore, lodged report against them in Police Station, Jalna.

5. On the basis of the report lodged by the informant, Crime No.26 of 2006 came to be registered against the respondents for the offence punishable under Section 302 read with Section 34 of the I.P.C. Investigation followed. Inquest panchnama of the body of the deceased Vijayalaxmi was prepared. Her dead body was referred to the Civil Hospital, Jalna for post mortem. The Medical Officer conducted post-mortem and opined that Vijayalaxmi died due to 'asphyxia secondary to compression of neck'. The

statements of witnesses were recorded. After completion of the investigation, the respondents came to be charge-sheeted for the above-mentioned offences.

6. The offence punishable under Section 302 of the I.P.C. being exclusively triable by the Court of Session, the learned Chief Judicial Magistrate, Jalna, committed the case to the Court of Session for trial.

7. The learned Ad-hoc Addl. Sessions Judge, Jalna, to whom the case was assigned, framed charge against the respondents for the above-mentioned offence vide Exh.48 and explained the contents thereof to them, to which they pleaded not guilty and claimed to be tried. They denied that they committed murder of Vijayalaxmi. According to them, she committed suicide due to frustration and depression.

8. The prosecution examined sixteen witnesses to establish guilt of the respondents for the above-

mentioned offence. After scrutinizing the evidence, the learned trial Judge did not find it sufficient to bring home guilt of the respondents for the above-mentioned offence. The learned trial Judge inferred that the deceased Vijayalaxmi committed suicide by hanging herself and acquitted the respondents of the above-mentioned offence.

9. The prosecution preferred the present appeal against the judgment of acquittal passed by the trial Court in favour of the respondents. At the time of admission of the appeal, this Court considered the evidence on record and as per the order dated 16.01.2009, held that there was no incriminating evidence against respondent nos.2 and 3. Therefore, the appeal came to be dismissed against respondent nos.2 and 3 and admitted against respondent no.1 only. The prosecution did not challenge the order dated 16.01.2009 dismissing the appeal against respondent nos.2 and 3. The said order has attained finality.

10. The learned A.P.P. submits that though there is no direct evidence to connect respondent no.1 with the murder of Vijayalaxmi, it is established by the prosecution that respondent no.1 and Vijayalaxmi only were in room No.104 of Madhuban Hotel in the night of the incident. Since the deceased Vijayalaxmi was in the custody/company of respondent no.1, as per Section 106 of the Evidence Act, he was under an obligation to explain the circumstances under which she died since the said facts were within his special knowledge. According to the learned A.P.P., respondent no.1 did not explain as to how Vijayalaxmi died. He further points out to the medical evidence, which shows that Vijayalaxmi died due to 'asphyxia secondary to compression of neck'. The learned A.P.P. submits that neck of Vijayalaxmi was pressed and therefore, she suffered asphyxia leading to her death. However, respondent no.1 tried to make a show that Vijayalaxmi hanged herself by means of saree

against ceiling fan. He submits that dead body of Vijayalaxmi was not found hanging against the ceiling fan of the room, but was found lying on the cot. Therefore, the theory of suicide set up by respondent no.1 cannot be accepted. He submits that instead of informing about death of Vijayalaxmi to the informant, who was very much present in front of Hotel Madhuban, respondent no.1 informed that fact to the mother of the deceased Vijayalaxmi. This fact also indicates guilty mind of respondent no.1. He submits that the oral evidence of the brothers and son of the deceased Vijayalaxmi shows that she was being ill-treated and beaten by respondent no.1 on trifle grounds. He submits that there is a complete chain of circumstances proving that respondent no.1 only committed murder of Vijayalaxmi. According to him, the learned trial Judge wrongly rejected the evidence on record and acquitted respondent no.1.

11. On the other hand, the learned Counsel for respondent no.1 submits that the deceased Vijayalaxmi

was residing with respondent no.1 since before 5 to 6 months of the incident in room no.104 of Madhuban Hotel at Jalna. There was no reason for him to illtreat her. The informant, who is the brother of the deceased Vijayalaxmi, was called by respondent no.1 himself to Jalna from his native place in order to get his support for recovery of dues from the proprietor of Sanket Gutkha Company. Respondent no.1 had called his other relatives i.e. brother and maternal uncle also, so as to exert pressure on the proprietor of Sanket Gutkha Company to pay his dues. The informant never complained against respondent no.1 to anybody in respect of the alleged ill-treatment meted out by respondent no.1 to the deceased Vijayalaxmi. He submits that the informant himself admits that the deceased Vijayalaxmi was looking after the business of respondent no.1 at his native place in Karnataka State. Respondent no.1 and the deceased Vijayalaxmi had purchased betel-nuts from various farmers on credit. Those farmers were

pressing the deceased Vijayalaxmi hard for payment of their dues. Since she was not in a position to pay that amount, she had come to reside at Jalna with respondent no.1. Her mother had phoned her that the farmers/creditors of the native place of the deceased Vijayalaxmi were insisting for payment of their dues and that they were using filthy language against her. Since respondent no.1 was not getting his dues recovered from the proprietor of Sanket Gutkha Company, the deceased Vijayalaxmi was not in a position to go back to her native place with money for being paid to her creditors. Even she was not ready to meet her children, who were at her native place, unless money was paid to her for being given to the creditors/ farmers of her native place. She was very much nervous because she had not got money from Sanket Gutkha Company. She used to express that why for she should live. The learned Counsel submits that due to frustration/depression, the deceased Vijayalaxmi committed suicide by hanging herself

against ceiling fan. He submits that the medical evidence also probablises the defence of respondent no.1. He submits that respondent no.1 personally informed the informant about the suicidal death of Vijayalaxmi, who, in turn, phoned Basavraj Pujar (PW 10) and called him to room no.104. After arrival of Basavraj (PW 10), the dead body of Vijayalaxmi was removed from the ceiling fan and placed on the cot in the presence of the informant. Respondent no.1 further phoned the mother of Vijayalaxmi also about her death. He submits that false report has been lodged against respondent no.1. He supports the impugned judgment and order and prays that the appeal may be dismissed.

12. Indisputably, there is no direct evidence to connect respondent no.1 with the death of the deceased Vijayalaxmi. The case is entirely depending on circumstantial evidence. There is no dispute that respondent no.1 and the deceased Vijayalaxmi were residing in room no.104 of Madhuban Hotel for about 5

to 6 months before the incident that took place in the night intervening 22.01.2006 and 23.01.2006.

13. Basavraj Pujar (PW 10)(Exh.80), who was one of the persons called by respondent no.1 from his native place Jalna, for the purpose of recovery of money from Sanket Gutkha Company, states that he used to cook food for respondent no.1 and the deceased Vijayalaxmi. He had noticed certain bickering between respondent no.1 and the deceased Vijayalaxmi whenever there was some delay on the part of the deceased Vijayalaxmi in making Pan for respondent no.1. However, this statement would not be sufficient to show that respondent no.1 had motive to finish the deceased Vijayalaxmi on such a trifle ground. He further states that in the morning of 23.01.2006, the informant phoned him and asked him to come to Madhuban Hotel where Vijayalaxmi died. He then went to the room in the hotel along with the informant. Respondent no.1 and the informant entered the room and saw that the dead body of the deceased

Vijayalaxmi was connected to the ceiling fan of the room by means of a saree. It has come in his cross-examination that the dead body of the deceased Vijayalaxmi was removed from the ceiling fan and placed on the cot. Thereafter, respondent no.1 locked the room and went to the Police Station. If this version is considered, the evidence of the informant recorded at Exh.74 that the dead body was not hanging against the ceiling fan of the room and was simply lying on the cot, cannot be accepted. If that be so, the case of the prosecution that the neck of the deceased Vijayalaxmi was pressed when she was sleeping on the cot, cannot be accepted.

14. Dr.Kulkarni (PW 16)(Exh.98), who conducted post-mortem of the body of the deceased Vijayalaxmi on 23.01.2006, noted the following external injuries :-

(i) Abrasion over the neck on left side starting from mid-line and extending laterally and superiorly slowly tapering,

surrounding tissue swollen, wound was dark red in colour size of injuries/wound was 7 x 1½ inches wide towards the mid-line.

(ii) The abrasion was continuous on right side with a contusion going posteriorly, and up of size 6 x 1" similar contusion was seen on left side in continuity with abrasion going posteriorly and up of size 3 x 1 inch.

Both contusions did not meet posteriorly leaving an area of 5" in between.

The subcutaneous tissue was congested and show haematoma in the area below the abrasion. No evidence of fracture of cartilages. The great vessels of neck are congested and enlarged. The muscles below the injury showed congestion and accumulation of blood.

Dr. Kulkarni (PW 16) states that the above-mentioned injuries were ante-mortem. On internal examination, he found that gums and tongue were bluish. Tongue was not protruded. Liver was congested. Larynx, Trachea

and both lungs were congested. He states that death might have been caused of asphyxia secondary to compression of neck.

15. It has come in his cross-examination that in case of hanging, the tongue may or may not protrude. He states that the injuries mentioned in column no.17 of the post-mortem report (Exh.99) i.e.above-referred external injuries, were indicating symptoms of hanging. If this evidence is considered, the case of the prosecution that the the deceased Vijayalaxmi died of compression of neck when she was sleeping on the cot, cannot be accepted. On the contrary, the medical evidence probablises the defence of respondent no.1 that the deceased Vijayalaxmi committed suicide by hanging herself.

16. It is true that respondent no.1 and the deceased Vijayalaxmi were inside room no.104 of Madhuban Hotel in the night of the incident. Since respondent no.1 was inside of that room, it was

expected of him to explain the circumstances under which the deceased Vijayalaxmi died. Respondent no.1 has come with a specific case that the deceased Vijayalaxmi committed suicide by hanging herself.

17. The informant himself states in his cross-examination that the business of respondent no.1 in the village Haweri was being looked after by the deceased Vijayalaxmi. She had purchased betel-nuts on credit from farmers in the absence of respondent no.1. The dues of the farmers were not paid by the deceased Vijayalaxmi since the amount of about Rupees One Crore due and payable from Sanket Gutkha Company was not paid to respondent no.1 and therefore, the deceased Vijayalaxmi had come to Jalna to reside with respondent no.1. He admits that the deceased Vijayalaxmi was staying with respondent no.1 so as to enable her to discharge her liability because of purchasing of betel-nuts on credit from farmers. He further admits that his mother was saying on phone that the creditors/farmers of the deceased

Vijayalaxmi were troubling her for payment of their money and they were using filthy language. The children of the deceased Vijayalaxmi were residing at Haweri only. This witness admits that the deceased Vijayalaxmi was desirous of meeting her children but unless payment was made to her, she was not ready to go to meet her children. He admits that the deceased Vijayalaxmi used to remain unhappy on that count. He specifically admits that she used to say as to why for she should live. This evidence clearly indicates the mental condition of the deceased Vijayalaxmi. She was very much desirous to meet her children who were residing at Haweri in Karnataka State. However, because of fear of her creditors, she was not in a position to go there for want of money, even to meet her children. She was very much worried about the situation created by her creditors as they were not paid their dues by her. In the circumstances, it was probable on the part of the deceased Vijayalaxmi to end her life out of frustration and depression.

18. There was no reason for respondent no.1 to finish the life of his wife. He was not going to gain anything by finishing her, who, in fact, was helping him by looking after his business at native place in his absence. Thus, the motive to finish the deceased Vijayalaxmi on the part of respondent no.1 was totally absent.

19. All these facts and circumstances of the case show that the defence of respondent no.1 that the deceased Vijayalaxmi committed suicide by hanging herself, is quite natural and probable. Thus, he has explained the circumstances under which the deceased Vijayalaxmi died and discharged the burden that was cast on him vide Section 106 of the Evidence Act.

20. The evidence of the brothers and minor son of the deceased Vijayalaxmi that she was being ill-treated by respondent no.1 for money, is totally vague, general and scanty. Had respondent no.1 subjected the deceased Vijayalaxmi to cruelty, she

would not have come to reside with him from her native place. The case of the prosecution that respondent no.1 committed murder of the deceased Vijayalaxmi on account of trifle domestic disputes, is not at all natural, probable and acceptable.

21. The prosecution failed to establish that respondent no.1 committed murder of the deceased Vijayalaxmi. The evidence on record probablises the defence of respondent no.1 that the deceased Vijayalaxmi committed suicide by hanging herself. The learned trial Judge rightly appreciated the evidence on record and rightly acquitted respondent no.1. The view taken by the learned trial Judge is quite a possible and probable view. We concur with the findings recorded by the learned trial Judge and hold respondent no.1 not guilty of the above-mentioned offence.

22. The appeal is sans substance. It is liable to be dismissed and accordingly dismissed. Bail bonds

of respondent no.1 are cancelled. He is set at liberty.

[SANGITRAO S. PATIL, J.]

[SUNIL P. DESHMUKH, J.]

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