

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 626 OF 2002

The State of Maharashtra,
through Police Station Officer,
Police Station, Ambhora, Taluka
Ashti, District Beed
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APPELLANT

V E R S U S

Kisan Kundlik Mete, Age 50
Years, Occupation Agriculture,
Resident of Wahira, Taluka
Ashti, District Beed

RESPONDENT

Mr. S.J. Salgare, A.P.P. for the Appellant/State
Mr. R.G. Hange, Advocate for the Respondent

**CORAM : T.V. NALAWADE
AND
ARUN M. DHAWALE, JJ.**

DATE : 9th October, 2017

JUDGMENT : (PER : T.V. NALAWADE, J.)

1. This Appeal is filed by the Appellant-State against the Judgment and Order, dated 5th July, 2002, passed by the learned II Additional Sessions Judge, Beed, in Sessions case No. 134 of 1997. The respondent

was acquitted by the learned trial Court for the offences punishable under Sections 498-A, 302, 201 read with Section 34 of the Indian Penal Code. Both the sides are heard.

2. *The facts leading to institution of the Appeal, in short, can be stated as follows :-*

The deceased Sangita was a daughter of P.W.2 Raghu Zange, resident of Wahira. Prior to five years of the date of incident, the deceased was married to accused No.1/respondent Kisan Mete, who is also resident of same village, Wahira. Accused No.2 Rakhmaji is the brother of accused No.1, accused No.3 Kusum is the first wife of accused No.1 and accused No.4 Shashikala is the wife of accused No.2. After the marriage, deceased Sangita cohabited with respondent Kisan in the same village, and during cohabitation, two issues were born to her.

3. The dispute stated about six months prior to the date of incident. Accused No.1/respondent Kisan purchased a tempo in a partnership with one Baban and for the purchase of Tempo, he started asking deceased to bring an amount of Rs.10,000/- from her parents. As the informant is a poor person, he could not arrange to disburse the amount to Kisan and father of deceased also informed to him that he is not in a position to meet this demand. Thereafter, the ill-treatment started to the deceased and the allegations are that all the accused persons gave ill-treatment to the deceased and they were beating to the deceased.

4. The incident took place on 26th November, 1996. On that day, after taking the lunch in the matrimonial house, the deceased went her to the field. The deceased did not return back to home till the night time, and so, accused No.1 started searching for the deceased. He informed the first informant that the deceased was missing and so all started searching for the deceased. The search was continued on 27th and 28th November, 1996. On 28th November, 1996, the dead-body

of the deceased was found in the well of one Bhagwan Kulthe. Information was given to the Police Patil of the said village about finding of the dead-body of Sangita, and accordingly, village Police Patil submitted report to the Police Station, Ambhora. During inquiry of AD spot-panchnama was prepared and inquest was prepared of the dead-body. The dead-body was sent for the postmortem. The postmortem was conducted of the dead-body on 29th November, 1996. Dr. Nagorao Chavan has given his opinion that the death of deceased was caused due to throttling.

5. Raghu S/o Kashinath Zanje, father of the deceased, gave complaint to the Police Station on 30th November, 1996, and accordingly, Crime No. 82 of 1996 came to be registered for the aforesaid offences, punishable under Sections 498-A, 302, 201 read with Section 34 of the Indian Penal Code against the accused persons. The statements of relatives of the deceased of her parental side came to be recorded. After completion of investigation, the charge-sheet came to be filed for the aforesaid offences. The

Charge was framed. The accused took the defence of total denial. The prosecution has examined in all six witnesses to prove the offences. Accused No.1 examined one witness in defence.

6. The trial Court has acquitted all the accused by holding that the prosecution has failed to prove everything including homicidal death. In view of the above circumstances, the evidence given by the prosecution to prove the nature of death also needs to be discussed.

7. The inquest panchnama is not disputed by the defence, but the inquest panchnama is of no help. Dr.Nagorao Chavan (PW 4) conducted postmortem examination. He has given evidence that he noticed the pressure marks over neck, and after dissection of skin and superficial part, there was oozing of blood. He deposed that part of the neck (larynx and trachea) was congested and swollen. He deposed that no evidence of froth was in lung. The postmortem report prepared by him is proved as Exhibit 51. Separate opinion was

given by him to the police, which is at Exhibit 52. The record is consistent with the oral evidence of Dr.Chavan. The spot panchnama shows that no article of deceased like foot-wear were found inside or outside the well. In cross-examination of doctor, nothing is brought on record to create probability to prove availability that the death took place due to drowning. Thus, the prosecution has proved that the death of Sangita took place due to throttling. The trial Court has committed error in holding that the prosecution has failed to prove that it is homicidal death.

8. The prosecution has examined Kontanabai w/o Pandurang Zanje (PW 1), aunt of the deceased and Raghu s/o Kashinath Zanje (PW 2), father of the deceased. Though they are resident of same village, they have not given evidence of any incident dated 25th and 26th November, 1996.

9. Raghu Zanje (PW 2) has deposed that one year prior to the death of Sangita, accused No.1 purchased

one tempo in partnership with one Baban Zanje for transport business and for that business, he was demanding Rs.10,000/- from him through the deceased. He has deposed that the deceased used to disclose about ill-treatment and demand to him. His evidence does not show that at any time he had directly asked to accused No.1 about this demand or ill-treatment. His evidence shows that he is a poor person and in any case he could not have given such amount to accused No.1. He deposed that he gave his daughter in marriage to accused No.1 even though accused No.1 had his first wife and she was cohabiting with him. Due to compulsion of poverty he had given his daughter in marriage to accused No.1. This circumstance creates serious doubt about the case of prosecution that accused No.1 had demanded an amount of Rs.10,000/- from PW 2, and on that count, there was ill-treatment to the deceased.

10. The Investigating agency did not collect any evidence with regard to purchase of tempo by the accused or about his transport business. On the other

hand, accused has examined one witness namely Baban s/o Vishwanath Zanje, as a defence witness, who has denied that there was any such transaction. Thus, there is no force in the evidence given by the prosecution witnesses on motive or ill-treatment. Further, in the First Information Report, there was a mention that tempo was purchased prior to six months of recording incident, but the substantive evidence is given that tempo was purchased twelve months prior to the date of incident.

11. Ankush s/o Aba Zanje (PW 3) is examined to prove the spot panchnama (Exhibit 49). He deposed that the well in which dead body was found is at the distance of 03 k.m. from the village. The evidence shows that the depth of water was about 15 feet. The well is owned by one Bhagwan Kulthe, and the evidence shows that on north there is a field of one Babasaheb, and on south, there is field of accused No.1. It appears that the search was made in the well on 26th November, 1996, but they could not notice the dead-body due to depth of the water. In all surrounding

fields of said well, there was standing crop of jawar.

12. In the evidence of Baban s/o Vishwanath Zanje (PW 1), who is landlord of accused No.1, it is brought on record that the deceased was happy in her married life. He has given evidence that on 26th November, 1996, he had seen deceased in her matrimonial home early in the morning, at 08.30 a.m. He has given evidence that in the evening on that day, when he met with accused No.1, accused No.1 informed him that the deceased was missing. It is not disputed that the accused had informed everybody that deceased was missing.

13. In view of the aforesaid circumstances, it was necessary for the prosecution to lead evidence to prove that on 26th November, 1996 anybody had seen accused No.1 or other accused in the company of deceased either in the field of the accused or in the vicinity of the field of the accused. Nobody had seen any accused person proceeding towards the field of the accused or towards the field of Baban with the

deceased. Considering the distance between the village and the well, where incident took place, such evidence was necessary in the present matter. Thus, there is no necessary circumstantial evidence to complete the chain of circumstances. Even the evidence of prosecution on motive, ill-treatment is very weak. Due to these circumstances, this Court holds that the trial Court has not committed any error in holding that there is no sufficient evidence to prove any offence on the part of the accused. In the result, Appeal stands dismissed.

(ARUN M. DHAVALA, J.)

(T.V. NALAWADE, J.)