

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 702 OF 1995**

1. Birudeo Rohidas Vaidhya,	)	
age 21,	)	
2. Rohidas Subrao Vaidhya,	)	
age 55,	)	
3. Sou. Kalawati Rohidas Vaidya,	)	
age 45,	)	
4. Sou. Rajjubai Bibhishan Bavkar,	)	
age 30,	)	
5. Bibhishan Nivrutti Bavkar,	)	
age 30, all R/o Upalai Dhonge,	)	
Tal. Barshi, Dist. Solapur.	)	...Appellants/ Original Accused

Versus

1. The State of Maharashtra	)	
2. Pandurang Yeshwant Hajare,	)	
age 65 years, R/o. Pune,	)	
Survey No. 71, Pathari Vasti,	)	
Mundhawa, PUNE	)	...Respondents Original Complainant

Mr. Abhaykumar Apte, appointed Advocate for the Appellants

Mr. H. J. Dedia, A.P.P for the Respondent-State

**CORAM : SMT. V. K. TAHILRAMANI &
REVATI MOHITE DERE, JJ.
FRIDAY, 27th JANUARY, 2017**

JUDGMENT (Per Revati Mohite Dere, J.) :

1. By this appeal, the appellants have impugned the judgment and order dated 2nd December, 1995 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 9 of 1995, convicting and sentencing them as under :

- all the appellants for the offence punishable under Section 498A r/w 34 of the Indian Penal Code ('IPC'), to suffer RI for 1 year and to pay fine of Rs. 1,000/- each, in default, to suffer RI for 3 months;
- appellant Nos. 1 to 3 for the offence punishable under Section 302 r/w 34 of the IPC, to suffer imprisonment for life and to pay a fine of Rs. 1,000/- each, in default, to suffer RI for 3 months; and
- appellant Nos. 1 and 2 for the offence punishable under Section 201 r/w 34 of the IPC, to suffer RI for 3 years each and to pay a fine of Rs. 500/- each, in default, to suffer RI for 1 month.

All the appellants were, however, acquitted of the offence punishable under Section 304(B) r/w 34 of the IPC.

2. The prosecution case in brief is as under :

Birudeo (appellant No. 1) is the husband of Megha (deceased). They were married sometime in May, 1994. Rohidas (appellant No.2) is the father-in-law of the deceased; Kalawati (appellant No.3) is the mother-in-law; Rajjubai (appellant No.4) is the sister-in-law and Bibhishan (appellant No.5) is Rajjubai's husband. Hereinafter, for the sake of convenience, the appellants will be referred to, by their respective names.

According to the prosecution, Pandurang Hajare (PW 7-Megha's father) had given Rohidas Rs. 20,000/- as dowry and had also presented him with cot and utensils, at the time of his daughter Megha's marriage with Birudeo. It is alleged that after marriage, when Pandurang visited the appellants' house to bring Megha home on some occasions, the appellants refused to send her along with him. During the Nagpanchami and Diwali

festivals, Megha's brothers Angad and Ashok are stated to have brought Megha home for the said festivals. It is alleged that at that time, Megha was nervous and weak and when questioned, Megha disclosed to her family members that the appellants were insisting that she bring one tola gold ring and clothes. Megha is also alleged to have disclosed, that the appellants were teasing her and insisting that she should work in the field and as such she was fed up of life. Megha is stated to have requested her father-Pandurang to satisfy the appellants' demand, however, Pandurang convinced Megha and compelled her to go back to her in-laws house and assured her, that he would fulfill the demand as soon as his financial position improved.

On 6th November, 1994, Megha's brother Ramchandra is stated to have visited the appellants' house and requested them not to ill-treat his sister Megha. Bhaurao Hajare (PW 5), the mediator, who had arranged the marriage, was also requested to instruct the appellants not to ill-treat Megha.

On 14th November, 1994, in the evening, Pandurang received a message on phone from Barshi, that Megha had fallen in the well and had expired, pursuant to which, Pandurang, his family members and others came to village Upalai in the night. On 15th November, 1994, in the morning, Pandurang along with the police went to the spot and found Megha's dead body in the well, which was situated in the appellants' field. In the well, apart from the dead body, one pitcher was found floating. The body was removed from the well. Police prepared the inquest panchanama (Exhibit 23) of the dead body and sent the dead body for post mortem examination. On the very same day at 9:45 p.m, Pandurang lodged a complaint (Exhibit 45) with the Vairag Police Station, Solapur, pursuant to which, C.R. No. 125 of 1994 was registered as against the appellants, alleging offences punishable under Sections 302, 498A, 201 r/w 34 of the IPC. Pursuant to the said complaint, appellant Nos. 1 to 4 were arrested on 16th November, 1994 and appellant No. 5 was arrested on 18th November, 1994. After completion of investigation, charge-sheet was filed in the Court of the learned

Judicial Magistrate First Class, Barshi. As the offences were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The learned Judge was pleased to frame charge as against the appellants.

The appellants pleaded not guilty to the charge and claimed to be tried. The defence of the appellants was that of denial and false implication. According to the appellants, there was no demand by any of them nor was Megha ill-treated.

3. The prosecution in support of its case, examined 12 witnesses. PW 1-Gurunath Kapse, panch to the clothes of deceased Megha and articles on her person. The said panchanama is at Exhibit 21; PW 2 – Arun Langote, panch to the inquest panchanama (Exhibit 23) and spot panchanama (Exhibit 24). PW 3-Indubai Todkar, a resident of Village Mundhawa, Pune and Pandurang Hajare's neighbour; PW 4-Laxmibai Kumbhar, also Pandurang's neighbour; PW 5-Bhaurao Hajare, the mediator who settled the marriage of Megha with appellant-Birudeo; PW 6 – Gorakh Kavathe, panch to the seizure of bangles of the

deceased. The said panchanama is at Exhibit 31; PW 7-Pandurang Hajare, the complainant (Megha's father); PW 8-Dr. Namdev Patil, the doctor who performed the post-mortem examination; PW 9-Ramchandra Hajare, brother of the deceased; PW 10-Hiralal Tanpure, the Investigating Officer, who received the report of Police Patil Khasherao (Exhibit 51), prepared the inquest panchanama (Exhibit 23) and thereafter handed over the investigation to API Anis Kazi (PW 12); PW 11-Arjun Mangale, the Police Constable, who carried the articles to the Chemical Analyser's Office; and PW 12-Anis Kazi, API, who conducted further investigation and filed the charge-sheet.

4. The learned Judge, after hearing the parties, was pleased to convict and sentence the appellants as aforesaid in para 1.

5. Learned Counsel for the appellants assailed the judgment and order on several counts. He submitted that the prosecution had failed to establish that the appellants had subjected Megha to cruelty. He submitted that there are several

material inconsistencies and omissions in the evidence of the witnesses examined in that behalf. He further submitted that the prosecution had also failed to prove that the appellant Nos. 1 to 3 had committed the offence punishable under Section 302 r/w 34 of the IPC. He further submitted that though the deceased used to write letters to her family members, no letter has been produced by the said witnesses, as the same would belie the prosecution case. According to Mr. Apte, learned Counsel for the appellants, on the day of incident, the appellants were not in their vasti and that appellant-Birudeo's younger brother disclosed to them that Megha had gone to the well and had fallen in the well. He submitted that the prosecution had failed to prove beyond reasonable doubt, the circumstances as against the appellants, and as such, the appellants ought to be acquitted.

6. Learned A.P.P supported the impugned judgment and order and submitted that no interference was warranted.

7. Perused the papers and scrutinized the evidence with the assistance of the learned Counsel for the appellants and the learned A.P.P.

8. At the outset, we may note that the prosecution case rests entirely on circumstantial evidence. There is no dying declaration of the deceased or evidence of last seen or any recovery at the instance of the appellants.

9. In order to prove that deceased Megha was subjected to cruelty, the prosecution examined five witnesses. According to the complainant-Pandurang Hajare (PW 7), deceased Megha was his younger daughter and at the time of the incident, he was residing at Mundhawa, Pune. He has stated that Megha was married to appellant-Birudeo about 6 months prior to the incident. He has stated that at the time of the marriage, he had given Rs. 20,000/- as dowry to appellant-Rohidas and had also presented cot, utensils, and had also given proper '*Maanpaan*'. He has stated that after Megha's marriage, he had been to the

appellants' house to bring Megha home but she was not sent, however, for Panchami and Diwali festivals, Megha was sent to his house. He has stated that his sons Angad and Ashok had brought Megha to his house at the time of Panchami and Diwali festivals. According to Pandurang, at that time, Megha was found to be weak in health and was nervous. He has stated that on inquiry with her, she disclosed to him and his wife, that the appellants were assaulting and abusing her, not providing her with food and were demanding one tola gold and clothes. He has stated that he convinced Megha and assured her that he will provide the gold ring and money for clothes, as soon as he had sufficient funds. He has stated that after Diwali, he sent Megha alongwith Ramchandra to the appellants' house. He has further stated that Ramchandra (PW 9) had disclosed to him that he had convinced the appellants that they would provide them with gold ring and clothes after some time. Pandurang has stated that after about 2 days, Bhaurao Hajare (PW 5) disclosed to him that Megha was being ill-treated, pursuant to which, he requested Bhaurao Hajare to instruct his sister – appellant-Kalawati, his brother-in-law Rohidas and nephew-Birudeo not to ill-treat

Megha. He has stated that 2 days thereafter, they received a message on phone that Megha had expired by falling in a well and that the said message was received from Bhaurao Hajare (PW 5).

According to Pandurang (PW 7), pursuant to the said message, he alongwith his family members and neighbours went to village Uplai at about 2:00 a.m., and thereafter to Vairag Police Station to lodge a complaint. He has stated that the appellants were residing in the field at Uplai and that the field of the appellants was at a distance of about 3 kms from Village Uplai. He has stated that in the morning, they went to the spot but on the way, as there was heavy rain, they stopped and reached the spot at about 12:00 noon. He has further stated that when they reached the spot, they saw Megha's body floating in the well water and also saw one pitcher (*ghagar*) in the well. According to Pandurang, when Megha's body was removed, they saw some marks on her throat and chest; some yellowish colour dirty water oozing from her nose; and that Megha's throat had swollen. According to Pandurang, after the inquest panchanama

of the dead body was done, the body was sent for post-mortem and after the post-mortem was performed, Megha's body was handed over to them and that he lodged a report/complaint as against the appellants. The said complaint is at Exhibit 45.

Pandurang (PW 7) in his cross-examination has admitted that he was doing labour work at Pune, as the income from his land was not sufficient to maintain his family. He has also admitted that he and his wife, both were doing labour work in Pune. He has also admitted that the appellants were having agricultural land and that the proposal for Mehga's marriage with appellant-Birudeo had come from the appellants' side. He has further admitted that he was residing in Pune for the last 27 years and that his family including all the children were residing with him. He has also admitted that Village Uplai was a small village.

Pandurang has denied the suggestions that his daughter Megha was insisting him to get married to a person residing in Pune City, and also was requesting him to search for

a job for her husband Birudeo in Pune City. He has also denied the suggestion that he was insisting appellant-Birudeo to come and reside in the city, however, Birudeo was not ready to leave the village, as his parents were residing in the village. He has stated that he had disclosed to the police at the time of lodging of the report i.e. Exhibit 45, that he had given Rs. 20,000/- as dowry to the appellant-Rohidas, however could not assign any reason why the same is not mentioned in the report. Several suggestions were put to this witness, however, the same were denied by him.

10. The evidence of PW 9-Ramchandra Hajare, brother of deceased Megha is on similar lines as that of PW 7-Pandurang Hajare. According to Ramchandra (PW 9), Megha had disclosed to them about demand of 1 tola gold and clothes and the ill-treatment meted out to her. He has stated that when he dropped Megha to her matrimonial home after Diwali, he had told appellant Nos. 2 to 5 that he would provide the gold ring and clothes in a few days. He has further stated that Bhaurao Hajare (PW 5) came to their house and informed them that

Megha was being ill-treated and asked them to convince the appellants. He has stated that infact, they asked Bhaurao Hajare to convince the appellants as they were his near relatives. The rest of the evidence is more or less similar to that of PW 5 - Pandurang Hajare.

Several suggestions, similar to what were put to Pandurang, were also put to the said witness, however, the same have been denied by him.

11. The prosecution has also examined Pandurang Hajare's (PW 7) two neighbours; Indubai (PW 3) and Laxmibai (PW 4) in order to substantiate the claim of ill-treatment by the appellants on Megha. According to PW 3-Indubai, after Megha's marriage, she came to her parents house at the time of Nagpanchami and Diwali. She has stated that Pandurang Hajare's (Megha's father) house was opposite to her house and there was a railway line between their houses. She has stated that when Megha came to her father's house during Nagpanchami, she disclosed to her that the appellants were ill-

treating her for 1 tola of gold and clothes and that they were not providing food to her and were getting more work done from her. She has stated that she convinced Megha and assured her that they would provide gold and clothes. She has stated that again when Megha came to her parents' house for Diwali, she stayed for 8 days and went back to her in-laws house. She has stated that after 8 days, they received a message that Megha's body was seen in a well, pursuant to which she accompanied PW 7- Pandurang and his family to village Uplai. PW 3-Indubai has admitted that she had received a letter from Megha when she was staying with the appellants, however, she refused to produce the said letter in Court. The said witness was unable to state when Megha met her. She has denied the suggestion that she was deposing falsely at the instance of Pandurang.

12. Laxmibai Kumbhar (PW 4) has stated that after marriage, Megha was being ill-treated and assaulted and that she was not provided with food. She has stated that she was ill-treated for 1 tola gold ring and clothes. She has stated that she was Pandurang Hajare's neighbour at Pune and that Megha had

disclosed to her about the ill-treatment, when she had come down to Pune, at the time of Nagpanchami and Diwali. Her evidence is on similar lines as that of PW 3-Indubai. She has admitted in the cross-examination that there is a railway line between her house and the house of Pandurang Hajare; and that Pandurang Hajare was like her brother. The said witness could not remember the date, time, month when Megha had come to her house. She has also admitted that she had not informed anyone that Megha had visited her house at any time before her statement was recorded by the police.

13. A perusal of the aforesaid evidence of PW 7- Pandurang, PW 9- Ramchandra i.e. the immediate relatives of Megha and PW 3-Indubai and PW 4-Laxmibai, neighbours of Pandurang shows, that the said evidence of ill-treatment, assault and demand is general in nature against all the appellants and that no specific role or act has been attributed to any of the appellants. It is a general omnibus statement made by all the witnesses against all the appellants. Infact, PW 3 - Indubai had

admitted that Megha had sent her a letter from the appellant's house, however, she refused to produce the said letter.

14. The said evidence, if read with the evidence of PW 5 - Bhaurao Hajare, also creates some doubt in the prosecution case. Bhaurao Hajare (PW 5) was the Mediator who arranged the marriage of Megha with appellant-Birudeo. He is also the brother of appellant-Kalawati. He has stated that at the time of marriage, all the articles as agreed to be given were given by Megha's parents. He has stated that after marriage, Megha had come to his house at Pune, during Panchami and had disclosed to him that her in-laws were insisting for a gold ring and that her in-laws and her husband were ill-treating her. He has stated that after Diwali, he went to the appellants' house and asked them not to ill-treat Megha. He has stated that he returned home on the very same day and received a message, that Megha had fallen down in the well and had expired. He has stated that thereafter, he informed Megha's parents on phone and went to the appellants' field and was present at the time when the dead body was removed. There is an omission in the police statement

with regard to the payment of Rs. 20,000/- made by Pandurang to Rohidas, at the time of marriage. He has admitted that Megha's marriage with appellant – Birudeo had taken place at the house of the appellants and that it was the appellants who had spent on the marriage. He has also admitted that appellant No. 4 - Rajjubai and appellant No. 5 - Bibhishan were residing at Bavkar Vasti and that the said Bavkar Vasti was at a distance of 500 ft. from Vaidya Vasti, where Megha was residing with her in-laws. It is also pertinent to note, that Baburao's evidence does not show that he had visited Megha's parents house, 2 days prior to the incident and informed them about the ill-treatment meted out to Megha. The said evidence is contrary to the evidence of Pandurang and Ramchandra. If the same were true, the said fact would have certainly been deposed to by Baburao.

15. What emerges from the evidence of the aforesaid witness and other witnesses is, that the proposal of marriage had gone from the appellants; that the marriage had taken place at the house of the appellants; and that the appellants had spent on the marriage. It has come on record that the financial

position of Megha's parents was not good, whereas, the appellants were having agricultural land. It also appears that appellant - Rajjubai and appellant No. 5 - Bibhishan were not residing in Megha's matrimonial house and were staying at Bavkar Vasti, which is at about 500 ft from Vaidya Vasti. The evidence of alleged ill-treatment by the husband, in-laws, sister-in-law and brother-in-law of the deceased, is general in nature and does not set out the particulars, more particularly, when there are so many appellants involved. As noted earlier, its an omnibus statement, against all the appellants, without attributing any role or act, to any of the appellants. Considering the nature of evidence that has come on record, we find that the prosecution has failed to prove beyond reasonable doubt, that Megha was ill-treated by the appellants.

16. Now coming to the next circumstance i.e. whether the prosecution has proved beyond reasonable doubt, that it is the appellant Nos. 1 to 3 who are responsible for causing the death of Megha, we are of the opinion that the prosecution has also failed to prove the same, beyond reasonable doubt.

17. The evidence of panch witness i.e. PW 2-Arun Langote shows that he was panch to the two panchanamas i.e. inquest panchanama (Exhibit 23) which was prepared on 15th November, 1994 between 2:00 to 2:30 p.m. and the spot panchanama (Exhibit 24) which was conducted on the very same day at 5:00 p.m. It has come in the spot panchanama that one rope along with ghaghar was found in the well.

18. Dr. Namdev Patil (PW 8) conducted the post-mortem. He has stated that at the relevant time, he was working as a Medical Officer at the Primary Health Centre at Vairag. The said doctor has given his opinion that the probable cause of death was due to asphyxia due to strangulation. He has stated that if anybody's throat is pressed with leg, then the injuries mentioned in Column Nos. 17 and 18 of the post-mortem report, are possible and that the person may also die and that it was a strangulation by a man.

In his cross-examination he has admitted that it was true that due to shock, instantaneous death can be caused and

that if a person falls before he reaches the water and dies, no water will be seen or found in the lungs and stomach. He has admitted that in the present case, they have not done any histopathological test. He has denied the suggestion that he has falsely given an opinion of manual strangulation.

A perusal of the evidence of the doctor shows that the deceased Megha died due to asphyxia due to strangulation and that it is not a case of accidental/suicidal death. It is pertinent to note, that the prosecution had charged all the appellants for the offence punishable under Section 302 r/w 34 of the IPC, however, the trial Court was pleased to convict only appellant Nos. 1 to 3 for the said offence. It is also pertinent to note, that the trial Court whilst acquitting all the appellants for the offence punishable under Section 304B of the IPC, has observed that there is no evidence on record to show that deceased Megha was subjected to cruelty/harassment in connection with any demand for dowry soon before her death. There are no circumstances brought on record or any other material to show that it was only appellant Nos. 1 to 3, who had caused the death

of deceased Megha. The trial Court, has convicted appellant Nos. 1 to 3, only on the premise that Megha was living with them. Admittedly, Megha's body was found in the well situated in the appellants' field and not in the matrimonial home. Admittedly, there is no last seen evidence or recovery evidence against any of the appellants. Nothing incriminating was also found in the appellant's house. Considering the aforesaid, we are of the opinion that the prosecution has failed to prove beyond reasonable doubt, that appellant Nos. 1 to 3 had committed Megha's death. In view of the finding recorded by us, it is also difficult to sustain the conviction of the appellant Nos. 1 and 2 for the offence under Section 201 r/w 34 of the IPC.

19. As noted earlier, the prosecution case rests on circumstantial evidence. The Supreme Court in the case of ***Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh***¹ has observed in para 10 as under:

“10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of

1 1953 Cri.L.J. 129

guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability he act must have been done by the accused.”

20. Keeping in mind the aforesaid settled position of law, we are of the opinion that the prosecution has failed to prove the circumstances against any of the appellants, which would unerringly point to their guilt. We may note, that suspicion however strong, cannot take the place of legal proof. In the absence of any incriminating material, we are inclined to give benefit of doubt to the appellants and acquit them of the offences with which they are charged.

21. Accordingly, the appeal is allowed. Appellants are acquitted of all the offences with which they are charged. Their bail bonds stand cancelled and sureties discharged.

22. We express our gratitude for the able assistance rendered by the learned Advocate appointed to espouse the cause of the appellant. Legal fees to be paid to the appointed Advocate is quantified at Rs. 5,000/-.

(REVATI MOHITE DERE, J.)

(V. K. TAHILRAMANI, J.)