

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

CRIMINAL APPEAL NO. 575 OF 2006

The State of Maharashtra,

APPELLANT.

VERSUS

Shobharam Ukhiram Pawra,
Age; 41 years, Occupation: Agril,
Resident of Samradevipada,
Taluka Shirpur, District; Dhule.

RESPONDENT.

Mr. Y.G.Gujrathi, A.P.P. for the State
Mrs. S.G. Chincholkar learned Counsel for the respondent.

**CORAM : T.V. NALAWADE, JJ
SUNIL K. KOTWAL, JJ.**

**Reserved on : 27th April, 2018.
Pronounced on : 04th May, 2018.**

JUDGMENT (Per : Sunil K. Kotwal, J) :

1) This appeal is directed by the State of Maharashtra against the order of acquittal passed by the Sessions Judge, Dhule in Sessions Case No. 98/2005, where the accused was acquitted of the offence punishable under Section 302 of Indian Penal Code (Hereinafter referred to as the "IPC"). The respondent is the original accused.

2) Shorn off unnecessary details, the prosecution case in brief is that accused was the husband of Leelabai Shobharam Pawra (Hereinafter referred to as "deceased"). They used to reside

at Samradivipada, Taluka Shirpur, District Dhule alongwith their three sons and one daughter. Accused was addict to liquor and on account of his doubt about the character of his wife, quarrels frequently arose between them. On 27/08/2005 at night, quarrel arose in between accused and his wife. The deceased had bitten to the accused on his left side of the chest. Therefore, accused got enraged and strangled the deceased with the help of rope which was available in his house.

3) On 28/08/2005 at about 10.00 a.m. accused informed Narshya Pawra, who was the Village Patil of Samradevipada, that his wife Leelabai committed suicide by hanging. Accused also informed that he had taken down body of the deceased and kept it on the cot in his house. Therefore, Village Patil Narshya Pawra (PW 4), Sarpanch, Police Patil and another villagers visited to the house of accused and noticed the dead body of the deceased. Narshya Pawra lodged accidental death report (Exh. 24) (Hereinafter referred to as "A.D.") to Police Station, Shirpur. In the result, A.S.I. Anandsingh Pawar (PW 5) started A.D. enquiry. He prepared inquest panchanama (Exh. 9) and spot panchanama (Exh. 20). Medical Officer, Shirpur was called on the spot at Samradevipada as the body was in the state of decomposition. Dr. Prakash Gawit (PW 1) performed autopsy examination of the dead body on the spot of occurrence and by submitting postmortem report

(Exh.15) opined that the cause of death of the deceased was “asphyxia due to strangulation”. After A.D. enquiry, A.S.I. Anandsingh Pawar (PW-5) lodged First Information Report (for short “F.I.R.”) (Exh. 28) to the Police Station Shirpur on 30/08/2005. In the result, offence was registered against accused under Section 302 of IPC. He was arrested and referred for medical examination. Dr. Bharat Gohil (PW 2) examined accused and found teeth bite mark on the left upper anterior chest of the accused. P.I. Rajendra Raising (PW 8) conducted investigation of this crime. After completion of investigation, he filed charge-sheet in the court of Judicial Magistrate First Class, Shirpur.

4) Offence punishable under Section 302 of IPC being exclusively triable by the Court of Sessions, this case was committed to the Sessions Court, Dhule.

5) Charge (Exh. 3) was framed against accused for the offence punishable under Section 302 of IPC. He pleaded not guilty and claimed to be tried.

6) Defence of the accused is of total denial.

7) In the statement recorded under section 313 of Code of Criminal Procedure (for short “Cr.P.C.”), he contended that at the night of the incident he went to his field and when returned back in the next day morning, he found that his wife committed suicide by hanging in the house. Therefore, with the help of sharp stone he cut

rope and took down dead body on the cot and thereafter informed Narshya Pawra about that occurrence.

8) Prosecution examined total eight witnesses. After considering the evidence placed on record by the prosecution, the learned trial Court pleased to acquit accused for the offence punishable under Section 302 of IPC, therefore, this appeal.

9) Heard learned A.P.P. for the State and Smt. S.V.Chincholikar, learned Counsel for the respondent.

10) Learned A.P.P. for the State submitted that though accused informed to the Police Patil about the commission of suicide by his wife, the Medical Officer (PW 1) opined the cause of death of the deceased-due to strangulation. He pointed out that Dr. Bharat Gohil (PW 2) noticed human bite injuries on the chest of the accused. He pointed out that before Narasya Pawra (PW 4) and other prosecution witnesses, accused had given extra judicial confession about the commission of murder of the deceased by strangulation.

11) The contention of the learned A.P.P. is that from the spot panchanama, it emerges that the height of attic of the house of accused is only 6 feet, and therefore, the commission of suicide by hanging with the help of rope is impossible. The contention of the learned A.P.P. is that the medical evidence together with extra judicial confession by accused and the situation of the spot of the

incident is sufficient to hold that accused committed murder of his wife. According to A.P.P., learned trial Court erroneously refused to accept the medical opinion of Dr. Prakash Gavit (PW 1) regarding cause of death of the deceased, due to strangulation. He has drawn our attention towards various paragraphs of book of Forensic Medicine and Toxicology written by Dr. K.S. Narayan Reddy. He placed reliance on "**State of M.P. Vs Sanjay Rai**" [(2004) 10 SCC 570].

12) In reply, learned Counsel for respondents has drawn our attention to the cases of "**Bhagwan Das and another Vs State of Rajasthan**" reported in (**AIR 1957 Supreme Court 589**) and "**Sunderlal Vs The State of M.P.**". (**AIR 1954 Supreme Court 28**), wherein it is held that,

"Where the opinion of authors were neither shown to have been given in regard to circumstances exactly similar to those in the particular case before Court nor were they put to the medical witness it is not a satisfactory way of disposing of the evidence of the witness to discredit it on the ground that the doctor was a comparatively young man and his statements did not accord with the opinions expressed in the books"

13) Next limb of the argument of the learned counsel for the respondent is that the medical opinion is not binding on the Court

and the Court has to form his opinion on the basis of evidence placed on record to ascertain whether the death is homicidal death or suicidal death. She pointed out that the house of the accused is situated in secluded place and no witness is examined by the prosecution to prove that accused was present in the house in the night of the occurrence. Learned counsel for the respondent Smt. Chincholikar submitted that no other family member of the accused who used to reside in the same house alongwith accused and deceased, is examined by prosecution to prove that at the time of occurrence only accused and deceased were present inside their house. Therefore, onus never shifted on accused to explain the circumstance in which the deceased died. Learned counsel for the respondent submitted that parents of the deceased are not examined in whose presence the extra judicial confession was given by accused. According to the learned counsel for the respondent even after the occurrence, accused did not abscond and he informed to the Police Patil about the suicidal death of his wife, which indicate his innocence.

14) In the case at hand, no direct evidence is available on record to prove occurrence of the incident. From the evidence of Motiram Pawra (PW 6) it has been brought on record by the prosecution that accused used to reside jointly with his three sons, one daughter and the deceased. However, unfortunately any one of

the family member of the accused is not examined by the prosecution to prove occurrence of the incident. Due to absence of the evidence of family members of the accused, prosecution is not in position to establish that on the date of incident at night hours only accused and deceased were present inside the house. Therefore, under Section 106 of the Evidence Act, onus does not shift on the accused to explain the circumstance in which the deceased died.

15) During the course of argument, heavy reliance was placed on extra judicial confession by the accused before Narshya Pawra (PW 4), Motiram Pawra (PW 6) and other villagers including the parents of the deceased. However, regarding the extra judicial confession by accused, though parents of the deceased were important witnesses, they are not examined by the prosecution, without assigning any reasons. To prove the extra judicial confession, prosecution has examined Narshya Pawra (PW 4) and Motiram Pawra (PW 6). According to Narshya Pawra (PW 4) on 28/08/2005 at about 8.00 a.m. accused informed with witness that the deceased committed suicide by hanging herself inside the house. Therefore, Narashya Pawra (PW 4) went to the house of accused and saw the dead body of the deceased which was lying on the cot. Thereafter, Narshya Pawra (PW 4) sent message to the Police Patil as well as to the parents of the deceased. At about

10.00 to 11.00 a.m. Police Patil and Sarpanch as well as parents and brother of the deceased came to Samradevipada and when they went to the house of accused Narshya Pawra (PW 4) inquired with accused and in reply accused gave statement that in the last night on account of his quarrel with his wife and due to biting by his wife he strangled her with the help of rope. However, Motiram Pawra (PW 6) who claims that in his presence accused gave extra judicial confession, no where deposed regarding presence of Narshya Pawra (PW 4) at the time of confessional statement by the accused. On the other hand, according to Motiram Pawra (PW 6) on 28/08/2005 at about 8.00 a.m., he came to know about occurrence and after arrival of Police Patil and Sarpanch, Narshya Pawra (PW 4) went to Shirpur and lodged report regarding the incident. Thereafter, this witness, Sarpanch, Police Patil, parents of deceased and other villagers went to the house of accused and that time accused gave statement that he was doubtful about the character of Leelabai and on that count in the previous night there was quarrel in between him and the deceased and during that quarrel, because, deceased had bitten him, accused strangled her with the help of rope.

16) Thus, it emerges that Narahya Pawra (PW 4) and Motiram Pawra (PW 6), though deposed regarding giving of extra judicial confession by accused in their presence and in the presence

of parents of the deceased, they are silent regarding the presence of each other. On the other hand, according to Motiram (PW 6) when accused gave extra judicial confession that time Narshya Pawra (PW 4) had gone to Police Station, Shirpur to lodge report. Thus, it is evident that Narshya Pawra (PW 4) and Motiram Pawra (PW 6) are contradicting each other about giving of confessional statement by accused in their presence respectively. As observed above important witnesses like parents of the deceased, Sarpanch and Police Patil are not examined by the prosecution. Therefore, on the basis of such contradictory statements of Narshya Pawra (PW 4) and Motiram Pawra (PW 6), prosecution cannot establish extra judicial confession given by the accused. In the case of **"Baskaran and another Vs State of Tamil Nadu"** [(2014) 5 SCC 765], the Apex Court observed that

"It is no doubt true that this Court time and again has held that an extra judicial confession can be relied upon only if the same is voluntarily and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial

evidence and corroborated by independent witness, which is the position in the instant case. The courts cannot be unmindful of the legal position that if the evidence relating to extra judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction"

17) Thus, in view of this settled position of law and the above discussed unreliable testimony of Narshya Pawra (PW 4) and Motiram Pawra (PW 6) is not sufficient to establish extra judicial confession by accused before these witnesses. Thus, the evidence placed on record in the form of extra judicial confession deserves to be rejected.

18) Regarding other witnesses examined by the prosecution Rajaram Pawra (PW 3) is the pancha witness of spot panchanama (Exh.20) who can only prove the seizure of two pieces of rope from the house of the accused. From his cross-examination, it emerges that there was attic at the height of six feet from the floor. However, as no evidence is available on record about the exact height of the deceased, conclusion cannot be drawn that deceased was not in position to commit suicide by hanging herself to this attic with the help of rope.

19) Anandsing Pawra (PW 5) is the Police Officer who held A.D. enquiry and lodged FIR (Exh. 28) to Police Station Shirpur. However, his opinion is not acceptable that it was impossible for

deceased to commit suicide by hanging herself, for the same reasons which have been discussed above. Therefore, the evidence of this police witness is of no help to the prosecution to establish the guilt of accused. Laxman Suryawanshi (PW 7) is the Circle Officer who prepared only sketch map (Exh.36) of the spot of incident. Therefore, his evidence is of no help to connect the accused with the death of the deceased. Police Inspector Rajendra Raising (PW 8) is the Investigating Officer. As there are not material contradictions and omissions on record, even the evidence of this Investigating Officer does not carry much importance.

20) Motiram Pawra (PW 6) though deposed before the court regarding past attempts by accused to kill his wife. From his testimony it emerges that he came to know about those past attempt of killing by accused from the deceased herself. Thus, he is not the eye witness of past occurrence. The testimony of Motiram Pawra (PW 6) regarding previous attempts of murder of deceased by accused by is not corroborated even by parents of the deceased. So also as homicidal death of the deceased is not established by the prosecution, so called disclosure by deceased before this witness cannot be read in evidence with the aid of Section 32 (1) of the Evidence Act. Therefore, even evidence of Motiram Pawra (PW 6) is of no help to the prosecution to connect accused with the death of the deceased in any manner or to prove motive behind so called

murder.

21) In the circumstances, only evidence of the Dr.Prakash Gavit (PW 1) is available who performed autopsy examination of the dead body. From the evidence of this witness it emerges that on 29/08/2005 he performed postmortem examination of the dead body of the deceased on the spot and found ligature marks over antero lateral aspect of neck of the deceased of size 10 c.m. in length directed upward upto mastoid process over both side. According to this witness the breadth of the ligature mark was 2 ½ c.m. He also noticed cyanosed pale face with swollen and semi closed eyes of the deceased. There was oozing from mouth and nostrils of the deceased. This witness opined that cause of death of the deceased was asphyxia due to strangulation.

22) However, from his cross-examination it emerges that on the basis of ligature marks and position of various limbs of the body, he opined that the death was due to asphyxia due to strangulation. However, this opinion is not accepted by the trial court for the reason that ligature marks were in "V" shape i.e. towards upward direction of the neck. In view of this position the ligature marks, possibility of suicidal death due to hanging cannot be ruled out as opined by the trial court. The view taken by the learned trial court is possible view and cannot be disturbed in this appeal against acquittal. We hold that prosecution failed to prove that the

death of deceased was homicidal death. Though learned A.P.P. placed reliance on “**State of M.P. Vs Sanjay Rai**” (cited supra), in that case Apex Court disapproved of judges drawing conclusions adverse to the accused by relying upon passages in textbooks by specialist authors in the absence of their being put to medical witnesses. The Apex Court accepted previous view taken by the Supreme Court in “**Sundarlal Vs State of M.P.**” and “**Bhagwandas Vs Rajasthan**” (cited supra). Therefore, authors' passages from the books on Medical Jurisprudence relied on by A.P.P. cannot be considered as those passages were not referred to Dr. Prakash Gavit (PW-1).

23) In view of the above discussion, we have no hesitation to hold that prosecution has miserably failed to prove that accused caused homicidal death of the deceased with requisite intention. No evidence is placed on record by the prosecution to establish motive behind the murder of the deceased. So also the circumstantial evidence placed on record is not sufficient to establish the chain of circumstances which point figure only towards accused as killer of the deceased. Therefore, the view taken by the trial court while acquitting accused cannot be termed as perverse view which calls for interference by this court. It follows that this appeal being devoid of merit deserves to be dismissed. Hence the following order :

ORDER

- 1) Criminal Appeal No. 575 of 2006 is dismissed.
- 2) Fees of Mrs. S.G. Chicholkar who was appointed for the respondent as amicus-curiae is quantified at Rs. 7,000/- (Rs. Seven Thousand).

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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