

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 18 OF 2007

Rambhau s/o. Sadashiv Game
Age 26 years, Occu. Agriculture,
R/o. Jalgaon, Tq. Parli-Vaijanath,
Dist. Beed.

....Appellant.

Versus

The State of Maharashtra
Through Police Station Officer
Police Station Sirsala,
Tq. Parli-Vaijanath.

....Respondent.

Mr. A.N. Irpatgire, Advocate for appellant.

Mr. P.G. Borade, APP for respondent/State.

WITH
CRIMINAL REVISION APPLICATION NO. 67 OF 2007

GANESH ASHRUBA MISSAL,
Age 29 years, Occu. Agriculturist,
R/o. Laul No. 1, Taluka Majalgaon,
District Beed.

....Petitioner.

Versus

1. The State of Maharashtra
Through Sirsala Police Station,
Taluka Parli, District Beed.
2. Ashok s/o. Sadashiv Game,
Age 24 years, Occu. and R/o.
Jaigaon, Tq. Parli, District Beed.
3. Sau. Sojarbai w/o. Sadashiv Game,
Age 55 years, Occu. Household,
R/o. As above.

4. Sadashiv Karbhari Game,
Age 55 years, Occu. Agriculturist,
R/o. As above.

....Respondents

Mr. B.S. Kudale, Advocate for petitioner.

Mr. P.G Borade, Advocate for respondent No. 1/State.

Mr. A.N. Irpatgire, Advocate for respondent Nos. 2 to 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : APRIL 18, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Both the proceedings are filed against the judgment and order of Sessions Case No. 243/2005 which was pending before Ad-hoc Additional Sessions Judge, Ambajogai, District Beed. Appellant Rambhau is convicted and sentenced for offences punishable under sections 302 and 498-A of Indian Penal Code (hereinafter referred to as 'IPC' for short) and sentence of imprisonment of life is given to him. The respondents of revision are acquitted in the case and so, the original complainant has filed the revision. Both the sides are heard.

2) In short, the facts leading to the institution of the proceedings can be stated as follows :-

Deceased Urmila was sister of first informant Ganesh Misal. Ganesh is resident of Laul, Tahsil Majalgaon, District Beed.

The deceased was given in marriage to appellant Rambhau four years prior to the date of incident. Rambhau hails from village Jaigaon, Tahsil Parli-Vaijanath, District Beed. Original accused No. 2 Ashok is real brother of Rambhau and original accused Nos. 3 and 4 are mother and father of Rambhau.

3) The deceased has left behind one daughter and one son out of the aforesaid wedlock. It is the contention of the first informant that after the marriage the deceased started cohabiting with Rambhau in the house where his parents and three brothers were living in joint family. They have 50 Acres of agricultural land in village Jaigaon.

4) About one year prior to the date of incident, the accused persons started making demand of Rs.40,000/- from the parents of deceased as they wanted the amount for making construction of house. They used to give threat to deceased and they used to harass the deceased mentally and physically to force this demand. The deceased had disclosed about the illegal demand and about the illtreatment which she was receiving from the accused to her parents and other relatives from the side of her parents.

5) The incident in question took place on 12.1.2005. On that day, at about 8.00 a.m. Hanwatrao Game, who is relative of both the sides went to the house of first informant Ganesh and informed that Urmila was dead and she had heart attack. Ganesh and other relatives of deceased from parents side went to the place where the dead body was kept. It was a farm house constructed in the field of accused persons. The first informant and his relatives noticed that there were some marks around neck of the dead body. They suspected that the deceased was finished by hanging her or by strangulating her and so, Ganesh gave report to Sirsala Police Station. On the basis of this report, the crime came to be registered at C.R. No.6/2005 for aforesaid offences against four accused persons.

6) During the course of investigation, the spot panchanama and inquest panchanama were prepared and the dead body was referred to Rural Hospital Parli Vaijnat for post mortem. The doctor, who conducted post mortem on the dead body gave opinion that the death had taken place due to asphyxia due to hanging. All the accused came to be arrested. While in police custody, accused Rambhau produced one rope from farm house and it was taken over by police as ligature material. Statements of some witnesses who include mainly relatives of

deceased on parents side came to be recorded and chargesheet came to be filed for aforesaid offences. The charge was framed and the plea was recorded. All the accused pleaded not guilty. The prosecution examined in all eleven witnesses to prove the offences. The defence examined one witness who was working as labour in the field of accused at the relevant time. The accused took the defence of total denial, though during cross examination and the statement under section 313 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short), it was contended by accused No. 1 Rambhau that the deceased had committed suicide in the farm house by hanging herself. The Trial Court has believed the prosecution witnesses and the Trial Court has held that only Rambhau had an opportunity to finish the deceased and there was also illegal demand of Rs.40,000/- which acted as motive for finishing the deceased. The deceased was carrying of 6-7 weeks at the relevant time. The issues were with the accused persons. The evidence only given as against accused Rambhau is believed by the Trial Court and he is convicted. The points raised by both the sides in these proceedings are being discussed at proper places in the reasoning.

7) Before considering the evidence given by prosecution on involvement of the accused persons in the death of Urmila and

before considering the evidence given on illegal demand of Rs.40,000/-, it is necessary to ascertain first as to whether Urmila died homicidal death.

8) Dr. Anant Gite (PW 6) conducted the P.M. examination on the dead body on 12.1.2005 itself between 7.00 p.m. and 8.00 p.m. He noticed that rigor mortis was fully developed in all the extremities, there was postmortem lividity on back and buttock. The deceased was aged about 22 years and she used to work in the field. No external injury was found on the dead body except the ligature mark which was 'V' shaped. The ligature mark is described as depressed groove and it was having size of 5 to 10 m.m. The depth was present on anterior aspects of neck, but above the level of thyroid cartilage. The ligature mark was extending from right mastoid region and it was extending up to lateral aspect of neck on left side at the level of sterno mastoid muscle left side. The ligature mark was reddish in colour. This mark was antimortem in nature. There was no internal injury. The left ventricle was empty and right ventricle was full of blood. On the basis of these circumstances, the Medical Officer has given opinion that it is the death due to hanging. The entire evidence of the Medical Officer does not show that even suggestion was given by the prosecution to this witness that such ligature mark can be

caused due to strangulation or if one is hanged by others by using force. In the cross examination, the doctor has specifically admitted that it is a case of suicide.

9) When there is specific evidence of aforesaid nature and there is positive opinion of Medical Officer that it is a case of suicide, to come to other conclusion there must be convincing reasons. This Court has carefully gone through the reasoning given by the Trial Court and the reasoning appears to be surprising and not sustainable. The Trial Court has observed that when in inquest report the colour of ligature mark was not mentioned as red, the doctor has mentioned the colour as red. The Trial Court has observed that there were probably two ligature marks. In inquest panchanama at Exh. 14 also, there is no mention that two ligature marks were noticed. Even in inquest panchanama, there is no specific mention that ligature had completed circle. On the contrary, inquest panchanama shows that the ligature mark was extending up to right ear on one side and to the left ear on the other side. Due to such evidence on the record, this Court holds that the Trial Court has committed serious error in holding that it is a case of homicide. It needs to be kept in mind in the case like present one when there are no other external injuries found on the dead body and when on the

persons of accused no injury was found, the possibility of suicide can never be ruled out and the possibility which is in favour of the accused needs to be always accepted by the Courts.

10) The Trial Court had not framed the charge for offences punishable under section 306 r/w. 34 or 304-B r/w. 34 of IPC and there was charge for the offence punishable under section 302 r/w. 34 of IPC only. In any case, such charge would not have made much difference in the present case in view of the nature of other material available in the case.

11) So far as the conduct of the accused is concerned, it can be said that the conduct was not consistent with the guilt and it was consistent with the innocence. The evidence of Ganesh (PW 5) itself shows that the message was reached by the relative of accused viz. Hanwatrao about the death by approaching Ganesh in his village. Not only that, the evidence of Ganesh and other relatives of deceased show that a jeep was sent for them for coming to the village of accused. This jeep was actually used by them for going to the village of accused. Thus, the intimation was given at 8.00 a.m. in the village of the first informant. In the evidence of Dr. Anant Gite (PW 6), it is brought on the record that the death had taken place at about 6.00 to 6.30 a.m. on

12.1.2005. It can be said that within no time the incident was noticed and steps were taken to do the needful including sending the news to the parents of deceased. This opinion given by the doctor has support of the P.M. report which is at Exh. 28. It shows that stomach contained 100 to 120 M.L. of semi-digested food and the deceased was carrying of 6-8 weeks at the relevant time. It is the case of defence that on the night between 11.1.2005 and 12.1.2005, accused No. 1, brother of accused No. 1 namely Mahadu, labour Shakeel (DW 1) and deceased were working in the field and they were plucking cotton. They had collected the cotton for entire previous day and they had worked in the night time also and the work was going on till 4.00 a.m. of 12.1.2005. Defence evidence is given through Shakeel that after doing this work the male persons were taking rest near the shed and only female member was inside portion of shed constructed in the field. Evidence is given that early in the morning, they noticed that the deceased had hanged herself in the shed and as they felt that legs, feet of the deceased were still warm, they took her down from the beam with the hope that she can be saved. The evidence is given that as she was already dead, the dead body was then taken out and it was kept near the cotton bags by giving support of cotton bags to the dead body.

12) The defence taken by the accused shows that accused No. 1 is admitting that the dead body was taken from beam where it was hanging and that was done prior to arrival of first informant and police. It is the case of prosecution that the ligature material i.e. rope was subsequently recovered under section 27 of the Evidence Act on the basis of statement given by Rambhau. In the spot panchanama, there is no mention that the rope was hanging at the beam. Though the rope is shown to be recovered at the instance of Rambhau, the rope was not sent to Office of Chemical Analyser to ascertain as to whether the same rope was used in the incident. Further, one inconsistency is pointed out by the learned counsel of appellant that the length of rope mentioned in the seizure panchanama does not match with the length of rope shown to be produced in the Court. In any case, the circumstance that rope was not with the beam is not sufficient to infer that the deceased had not hanged herself to commit suicide and the accused had finished her. Thus, even if other circumstances are considered, it is not possible to draw inference that the accused persons or accused No. 1 had murdered Urmila. In ordinary course also, ordinary prudent man would make an attempt to save the life, if he feels that the body was still warm and she can be saved. For such an attempt, they cannot be blamed and inference against them cannot be drawn.

This Court holds that it is not possible to infer that it is a case of homicide and the inference is easy that it is a case of suicide.

13) So far as the charge for the offence punishable under section 498-A of IPC is concerned, it can be said that the allegations in that regard are very vague. The F.I.R. was given immediately on 12.1.2005 and the crime was registered at 2.00 p.m. The F.I.R. shows that vague contention was made in the F.I.R. that there was demand of Rs.40,000/- and on that count, there were threats of life and there was illtreatment, both physical and mental to the deceased. The time when demand was made is not mentioned, though the reason for demand like for construction of house, is mentioned. It is not mentioned that the demand was made by any of the accused directly to Ganesh or any other relative of the deceased and it was also not mentioned that the deceased had disclosed about the demand or about the illtreatment. When such information was given in F.I.R., Exh. 26, every witness then exaggerated the things and tried to give particulars about the demand and the illtreatment.

14) Ganesh (PW 5), the first informant has given evidence that the accused were demanding Rs.40,000/- and they had made the demand to his father about one year prior to the date of

incident. In substantive evidence, he has not mentioned the reason like need of money for construction of the house. In the cross examination, he has admitted that family of Rambhau is having a house in the village itself. In examination in chief, he has stated that the deceased was cohabiting with accused No. 1 in the house constructed in the field and the parents of the husband were also living in the same house. Thus, in examination in chief, the evidence is not given that accused Ashok was not living in that house. The spot panchanama at Exh.15 does not show that the shed was being used for living as there was only a cot and a bed and almost all the portion was used for storing agricultural produce.

15) It is already mentioned that in the F.I.R., Exh. 26, itself Ganesh (PW 5) had mentioned that the family of accused owns 50 Acres of agricultural land. He has admitted in the cross examination that accused Nos. 1 Rambhau was getting good income from cotton crop. In the F.I.R., there was no mention that accused were living in the farm house where the incident took place, though such an attempt is made in substantive evidence by Ganesh. These inconsistencies are confronted to Ganesh. It is also brought on the record that every member of family of Ganesh including female members are required to do the labour work and

they do labour work of cutting sugarcane for others also. Thus, the evidence given by Ganesh on both the contentions that all the accused were living in the farm house where the incident took place and the accused were in need of money as they wanted to construct house, is not that convincing in nature. When the financial condition of accused was sound and when they were already having constructed house in the village, it does not look probable that they were in need of money and they had demanded money from parents of deceased when parents were not in a position to meet such demand.

16) Tulsabai (PW 8), mother of deceased has given evidence that there was no harassment to the deceased for first three years of the marriage and illtreatment was started from fourth year of the marriage. She has given evidence that the deceased disclosed to her about the illtreatment at the time of Diwali festival which preceded to the incident. She has given evidence that the deceased had disclosed to her that they were living in the farm house and so, they wanted amount of Rs.40,000/- for construction of the house. She has given evidence that she had promised to consider the demand subsequently as her family had no money at that time. It is the case of prosecution that illtreatment was started one year prior to the

date of incident, but evidence of mother shows that disclosure was made at the time of Diwali festival preceding to the incident i.e. four months prior to the date of incident. Thus, the time given is not matching. Further, this lady had an opportunity to make inquiry with accused No. 1 as accused No. 1 had taken back the deceased from the house of this witness after Diwali festival was over. But, no inquiry was made with accused No. 1 either in respect of illtreatment or about the demand. Thus, the evidence given by the mother of deceased on illtreatment and demand is not that convincing.

17) Similar is the evidence of Ashruba (PW 9), father of the deceased. Tulsabai (PW 8) has tried to say that there was one more incident in which disclosure was made and that was in Jaigaon and the disclosure was made to her husband. The father has tried to say that there was such incident, but he has not given evidence that he had informed about such disclosure to any of relatives including his wife. His evidence also does not show that he or any of his relatives had convinced the accused persons or they had questioned them as to why they had made such demand and as to why they were giving illtreatment to the deceased. In the cross examination, Ashruba (PW 9) has admitted that Hanwatrao, his relative, who gave news about the incident

and family of Sadashiv, accused No. 4 of the present matter were living in a big building, Wada situated in the village at the relevant time. An attempt is made to show that false information was given by Hanwatrao that Urmila died due to heart attack. If Hanwatrao was related to complainant's side and he had opportunity to see the conduct of accused persons, in ordinary course, the prosecution ought to have been examined Hanwatrao to give such evidence. Hanwatrao is not examined in the present matter and no explanation is given in that regard.

18) It is admitted by Ashruba (PW 9) that accused No. 1 Rambhau is illiterate, but his brother accused No. 2 Ashok is literate and Ashok was living at Parli for education purpose. It is also not disputed that Ashok got married on 27.6.2004. Nothing is said specifically about the residence of Ashok by the complainant and that is already mentioned. This circumstance shows that vague allegations were made against the husband of the deceased and relatives of the husband of the deceased.

19) Ashruba (PW 9) has admitted that in those days people were plucking cotton. The spot panchanama and other evidence show that there were many bags filled with cotton in the aforesaid shed. This circumstance cannot be ignored as accused

No. 1 and the defence witness have come with the case that on the previous day and on the night, they had plucked cotton and they had done the work of filling bags with the cotton. Thus, probability is created that from previous day and also on the previous night, there were many persons working in the field of accused and at the early hours of the day of incident also, there were many persons. The Trial Court has drawn some inference against accused No. 1 Rambhau on the basis of defence evidence that only he had an opportunity to commit the murder. Such inference could not have been drawn. The prosecution evidence or the defence evidence cannot be read that way. It was not the case of prosecution that all the accused were living together in the farm house. During substantive evidence, they have admitted that accused had a big house in the village. In the spot panchanama, there is nothing to show that even family of accused No. 1 was living there. There is no mention about the kids of accused No. 1. In view of these circumstances and when the Trial Court held that other accused cannot be convicted for both the offences, separate and different inference was not possible against accused No. 1.

20) It is brought on the record that all the witnesses, who were used as panch witnesses in the present matter were brought

by the complainant from his village. They are relatives of complainant side. The Trial Court has held that they are related to accused side also and so, the circumstance of relation of panch witnesses with the complainant's side cannot be used to discard their evidence. This circumstance need not be used for discarding the evidence. But, the fact remains that the investigating agency used only the witnesses given by the complainant's side. No independent material was collected by the investigating agency. One rope is shown to be recovered on the basis of statement given by accused No. 1 on 19.1.2005. It is already observed that the rope having length of 13 ft. is shown to be recovered, but in Muddemal property, rope having length of 18 ft. was produced and that can be seen from the documents filed as Muddemal Yadi along with chargesheet. It is already observed that this rope was not sent to C.A. Office to ascertain as to whether it was used for strangulation or hanging. If the rope was really used in the incident, the traces of blood or skin could have been found on the rope. That is avoided by the investigating agency. These circumstances show that investigating agency did not act fairly and it did everything as per the desire of the complainant's side.

21) The conduct of the accused was not consistent with the guilt and the aforesaid circumstances show that they did not

conceal everything. The news was immediately given to the relatives of the deceased. It is true that A.D. report was not given and there is no such record produced and the panchanamas were prepared only after registration of the crime. In this regard also sufficient observations are made. If accused No. 1 was there, he was illiterate and he had done the thing which he felt as needful or proper like sending the information to the parents of the deceased. It cannot be said that villagers did not know about the incident. Hanwatrao who was living in the village gave news to the family of the complainant. The evidence shows that the jeep was sent for the relatives on parent's side of deceased for coming to the place of accused. All these circumstances show that the accused were not afraid as they were not concealing or hiding anything. In the F.I.R. itself, there was no mention about the exact time when the demand was made and the evidence is given by some witnesses that demand was made one year back and some witnesses have said that demand was disclosed at the time of Diwali festival. It is already observed that at no time, inquiry was made by the first informant or parents of the deceased with the accused about such demand or illtreatment. In spite of these circumstances, the Trial Court has believed these witnesses and has held that there was illegal demand and there was illtreatment on the count of said demand. This Court holds that the evidence

given on 'cruelty' as mentioned in section 498-A of IPC is not sufficient and also not convincing. Thus, it is not possible to convict the accused No. 1 Rambhau for offence punishable under section 498-A of IPC. There can be many reasons for woman to commit suicide and the reason of simple quarrel can be also there. Though the defence has suggested that due to pregnancy, the deceased had probably become over sensitive and doctor has given few admissions in that regard, not much can be made out of that circumstance. The deceased was having two issues. The possibility is there that they were working in the field for longer time and some incident had taken place. There is probability that the husband was involved in the incident, but there is no probability that he had taken steps like to finish the deceased or he had abetted suicide. Such inference on the basis of aforesaid material is not possible in the present matter.

22) The learned counsel for original complainant placed reliance on some observations made by this Court in the cases reported as **2016 ALL MR (Cri) 2478 [Sachin Ramchandra Arwade Vs. The State of Maharashtra]** and **2015 ALL MR (Cri) 3095 [Vishwajeet Pralhad Devnath Vs. The State of Maharashtra]**. In those cases, this Court has discussed the evidence given in those cases and provisions of sections 6 and

106 of the Evidence Act. In the present matter, entire material which is available is discussed and it is difficult to hold that provision of sections 106 can be used against accused persons. The material already available has created a probability that it is a case of suicide. The learned counsel for appellant placed reliance on the case reported as **2007 (2) Supreme 546 [Manjunath Chennabasapa Madalli Vs. State of Karnataka]**. In that case, the Apex Court held that only on the basis of circumstances that it was unnatural death and provision of section 498-A of IPC is applicable, inference of murder was not possible. The facts and circumstances of each and every case always different. Criminal cases are required to be decided on the material available in those cases. This Court has no hesitation to observe that the evidence is not sufficient and it is also not convincing to convict even the husband for both the offences. In the result, following order is made :-

ORDER

(I) Criminal Appeal No. 18/2007 is allowed. The judgment and order of the Trial Court, convicting and sentencing the appellant Rambhau s/o. Sadashiv Game for the offences punishable under sections 302 and 498-A of IPC is hereby set aside. The appellant Rambhau s/o. Sadashiv Game is acquitted of both the offences. His bail bonds to continue for further period of

six months in view of provisions of section 437-A of Cr.P.C. Fine amount, if any, deposited by the appellant, be refunded to him.

(II) Criminal Revision Application No. 67/2007 stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

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