

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

Criminal Appeal No. 295 of 2006

The State of Maharashtra
Through Police Station
Umri, Taluka Umri,
District Nanded
At the instance of Narayan
Madhavrao Kokalwar,
R/o Pathrad, Taluka Umri,
District Nanded.

.. Appellant.

Versus

Nirmalabai w/o Sahebrao Dasarwad,
Age 26 years, Occupation : Household,
R/o Bhayegaon, Taluka Umri,
District Nanded.

.. Respondent.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
appellant.

Shri. S.S. Gangakhedkar, Advocate, for respondent.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 14 JUNE 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) The appeal is filed by the State to challenge the judgment and order of Sessions Case No.50/2004 which was pending in the Court of learned Ad-hoc Additional

Sessions Judge Nanded. The trial Court has acquitted the respondent of the offence punishable under section 302 of Indian Penal Code. Both the sides are heard.

2) The respondent is the wife of Sahebrao, who is resident of Bhayegaon, Tahsil Umri, District Nanded. Deceased Sunita was his second wife. According to him, at the relevant time, both his wives were cohabiting with him. The incident in question took place on 26-11-2003 in the noon time. It is the case of the State that deceased Sunita and respondent Nirmala had gone to the field to collect grass for their cow and the field was belonging to one Gangaram Kadam. At about 2.00 p.m. only Nirmala returned to home and she informed that she had quarrel with Sunita. Even after one hour Sunita did not return and so Sahebrao made more inquiry with Nirmala. Then Nirmala admitted that she had killed Sunita and the dead body was lying in the field of Gangaram Kadam. Sahebrao rushed to the field and there he saw the dead body of Sunita.

3) Sahebrao then took respondent to Police Patil and to him also the respondent disclosed the incident by giving confession. Police Patil informed on phone to Umri Police Station about the incident. Police came to the village in the evening. Nirmala was kept in the village by police. The dead body was referred for post mortem examination. The post mortem report shows that the death took place due to asphyxia due to strangulation.

4) Intimation was given about the death by Sahebrao to her parents. Narayan, father of the deceased, is resident of Pathrad, District Nanded. He gave report on 27-11-2003 against the respondent on the basis of information collected by him. On 27-11-2003 respondent came to be arrested. During investigation statement was given by respondent to the police and on the basis of the statement, ligature material, rope, came to be recovered. The rope was sent to C.A. office. Statements of witnesses of the village of the husband and the relatives of the deceased on parents' side came to be recorded. Charge sheet came to be filed for offence punishable under section 302, IPC, against the respondent.

5) Charge was framed for the aforesaid offence. Respondent pleaded not guilty. The prosecution examined in all 10 witnesses for proving the offence. The evidence is circumstantial in nature and it is mainly in the form of the evidence of the husband of the respondent, evidence of Police Patil and evidence of one Madhav, resident of Bhayegaon on extra judicial confession. No blood was detected on the rope shown to be recovered on the basis of statement given by the present respondent.

6) The defence did not dispute that Sunita died homicidal death. The post mortem report shows that there was ligature mark around the neck of the width of 2 cm and there was some mark over temporal region but it was superficial injury. The stomach contained 110 ml semi digested food. The post mortem report shows that there was smell like of poison to this food. The doctor has given evidence that strangulation must have taken place when the deceased was lying on the ground and there must be struggle before strangulation. His evidence shows that to cause the death sufficient pressure must have been applied. Surprisingly nothing was asked to him about the

mention of column No.21 of the post mortem report at Exhibit 29, that the stomach contents had smell of poison like substance. There is C.A. report but the C.A. report does not show that viscera was sent to C.A. office. In any case the defence is not disputing that it is a homicide and so this Court is also ignoring the other things.

7) The circumstantial evidence is of the nature of last seen and of nature of extra judicial confession. The husband has tried to say that on that day in the morning both the deceased and the respondent had left the home together for the field for collecting fodder. He has given evidence that at 2.00 p.m. only respondent returned home and she informed that she had a quarrel with the deceased. He has given evidence that as Sunita did not return home, even after one hour of the return of the respondent, he made more inquiry with the respondent and then respondent admitted that she had murdered Sunita and the dead body was lying in the field of Gangaram where they had gone to fetch grass, fodder. He has given evidence that he then went to the field and confirmed that Sunita was murdered and then he took the

respondent to Police Patil. His evidence shows that before evening he had taken the respondent to Police Patil and the respondent had confessed the crime before the Police Patil also. He has given evidence that the Police Patil then informed Police Station Umri on phone.

8) Police Patil (PW 4) has given evidence that on that day husband of the deceased had brought Nirmala to his house at 4.30 p.m. and on inquiry she said that she had committed murder of Sunita. He has given evidence that he confirmed that Sunita was dead and then he informed about the incident to Police Station Umri. He has given evidence that police came to the village at 8.00 p.m. and he was in the company of the police from that time.

9) Madhav (PW 3) has given evidence that on that day at 6.30 p.m. husband of the deceased informed him that respondent had committed murder of Sunita by strangulation. He has given evidence that Nirmala was taken to his house and in his house he again made inquiry with Nirmala and she admitted the guilt. He has given

evidence that Nirmala was handed over to Police Head Constable Kendre. His evidence shows that Nirmala was kept in his house on that night as per instructions of Head Constable Kendre and in the morning she was taken away by police.

10) The evidence given before the Court shows that for the first time Nirmala was shown to be arrested on 27-11-2003 at 16.00 hours. This circumstance creates serious doubt about the aforesaid version of the three witnesses. If Nirmala had made extra judicial confession on 26-11-2003 itself and police had reached the village at 7 to 8 p.m. of the same day, in ordinary course Nirmala ought to have been arrested on the same day. Though there is evidence that the Police Patil gave information regarding the incident on phone to Umri Police Station, no record of Umri Police Station is produced to show the nature of information received from Police Patil. The evidence is sufficient to show that on 26-11-2003 itself police reached the village and so there must have been some specific information given to police. That information is withheld from Court and that circumstance

also creates serious doubt about the version of the aforesaid three witnesses and the entire case of the prosecution. In ordinary course, on the basis of the information given by Police Patil crime could have been registered if the husband was not ready to give F.I.R. To them allegedly extra judicial confessions were made by respondent but their report was not taken on 26-11-2003.

11) Narayan (PW 1) father of the deceased, gave report on 27-11-2003 and the crime came to be registered at 11.00 a.m. His report was on the basis of information collected by him, of hear say. In the cross examination, Narayan admitted that before giving of the report he had suspicion that some other person who must have been in the company of the respondent must have committed murder of Sunita. His evidence shows that he had no opportunity to see the dead body. In his evidence there is no word that he heard about extra judicial confession allegedly given by Nirmala. Thus, there is virtually no substantive evidence from this witness against the respondent about the incident which took place on 26-11-2003 and his evidence is mainly on motive.

12) The defence has come with the case that due to dispute, on 26-11-2003 Nirmala was not cohabiting with PW 7 and she was brought from other place on 27-11-2003 and she is falsely implicated. There are aforesaid circumstances against the prosecution and so such possibility cannot be ruled out. In the arrest panchanama dated 27-11-2003 there is no mention of any injury found on the person of Nirmala. Both the wives of PW 7 were young and it does not look probable that the second wife of PW 7 did not offer any resistance to the respondent if respondent was attempting to murder her by strangulation. Absence of injury on the person of the respondent creates more doubt. Similarly no blood was detected on the ligature material which is shown to be recovered on the basis of statement given by the respondent.

13) The evidence and the record show that from prior to the second marriage of PW 7 there was dispute between the respondent and PW 7. The evidence on record shows that even maintenance proceeding was started. These circumstances are certainly against the

case of the prosecution. They create probability that there was dispute but the evidence is not convincing to establish the case of the prosecution that on 26-11-2003 the respondent was cohabiting with PW 7 and she had opportunity to finish the deceased. The evidence of the doctor, who conducted post mortem examination, shows that the deceased was probably lying on the ground when she was strangled. Much force was used for strangulation. This medical evidence also creates doubt about version of the prosecution that the respondent caused strangulation.

14) The prosecution did not examine Kendre, Police Head Constable, who first reached the village. He could have stated something about the information given to him by the Police Patil or PW 7. Non examination of Kendre in this case has created more doubt. The omissions in respect to the previous statement of the husband (PW 7) are duly proved in the evidence of the investigating officer and they are on material points like extra judicial confession and the leaving of the deceased and the respondent together for the field of Gangaram. Some

more portions like “A” and “B” from the previous statement which are denied by PW 7 are also proved at Exhibits 42 and 43 in the evidence of the investigating officer (PW 10). Those portions show that in the past he had informed that after leaving of the first wife as she was sick he had married second wife. Thus there are material omissions and contradictions in the evidence of PW 7 and they have created reasonable doubt about his version. Thus, there are other possibilities in the present matter and the prosecution has failed to prove the offence beyond all reasonable doubt. This Court holds that the view taken by the trial Court is a possible view and interference is not possible in the decision given by the trial Court. In the result, the appeal stands dismissed.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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