

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

CRIMINAL APPEAL NO. 73 OF 2002

Gautam Govindrao Shinde,
Age : 29 yrs., Occu : Service,
R/o. Police Colony, Balepir,
Beed, District : Beed. ... Appellant

VERSUS

The State of Maharashtra
through Police Station Officer,
Police Station Beed City, Beed. ... Respondent

.....
Mr R. V. Hange, Advocate for the appellant
Mr R. V. Dasalkar, APP for respondent/State
.....

WITH
CRIMINAL APPEAL NO. 312 OF 2002

The Station of Maharashtra
Through Police Station Officer,
Police Station, Beed City. ... Appellant

VERSUS

Gautam S/o. Govindrao Shinde,
Age : 28 years, Occu : Service,
R/o. Police Colony, Balepeer,
Beed, Tq. & Dist. Beed. ... Respondent
(Orig. Accused)

.....
Mr R. V. Dasalkar, APP for the appellant
Mr R. V. Hange, Advocate for respondent/State
.....

**CORAM : T. V. NALAWADE &
A. M. DHAVAL, JJ.**

DATE OF RESERVING THE JUDGMENT : 15.11.2017.
DATE OF PRONOUNCING THE JUDGMENT : 09.02.2018.

JUDGMENT (PER A.M. DHAVALA, J.) :

1. Both these appeals are against the judgment in Sessions Case No. 63/2001 delivered by the Addl. Sessions Judge, Beed, on 02.02.2002 whereby the accused was convicted only u/s 498A IPC and was sentenced to suffer RI for one year and six months and to pay fine of Rs. 1500/-, in default, RI for six months and was acquitted u/s 302 of IPC. The aggrieved accused has preferred Cri. Appeal No.73/2002 against conviction while the aggrieved State has filed Cri. Appeal No. 312/2002 against acquittal.

2. The facts relevant for deciding these appeals may be stated as under :

On 15.03.2001 at 09:45 a.m. the accused Gautam then aged 28 years serving as a Police Constable in Police Band lodged report at Beed town Police Station. As per his report Exh. 44, he was residing with his wife Anita and one son and one daughter in house No. 139, O Line, Balepir at Beed. On 14.03.2001, he returned from his duties from Ambejogai to his house at 07:30 p.m. Then at 08:30 pm., he went to attend a Haldi programme of a daughter of his colleague Head Constable – Bhise and returned at 10:45 p.m. His wife, who was sleeping, got annoyed and asked him why he came

late and slapped herself and dashed her skull against wall. He told her she could do whatever she wanted to do. He slept with his children on a cot while his wife was sleeping on the floor. On the next day morning at 05:30 a.m. he saw that his wife was not sleeping in the said room. He saw from window that she had latched the front room both from front side as well as from back side and hanged herself. He gave call to her but she did not respond. He narrated the incident to his aunt Vithabai and then went to the Police Station and lodged report. On the basis of the said report, Station Diary Entry No. 75/2001 and Accidental Death Inquiry 10/2001 were registered. At 08:30 p.m. deceased Anita's father Kaluji (PW4) lodged FIR Exh. 29. As per FIR, he was a teacher working as a Kendrapramukh at Pachegaon. He had one son and five daughters. Deceased Anita was his daughter no. 4. In 1993, she was given in marriage to accused Gautam at Gondi, Tq. Ambad, Dist. Jalna. Anita was blessed with one daughter Priti and one son Shubham, aged 5 & 3 yrs., respectively, at the time of incident. Gautam was serving in Police Department at Beed. At the time of marriage, agreed dowry in the form of gold ring of one tola, Rs. 10,000/- cash, clothes and utensils were presented. After the marriage, the accused Gautam developed habit of consumption of liquor and he used to assault and ill-treat Anita under the influence of liquor. Anita whenever used to visit her

maternal house, used to report about such ill-treatment. PW4-Kaluji, father of deceased Anita persuaded the accused to behave properly. At the time of earlier Shivratri, Anita had been to him and stayed with him for two days. That time, she had told him that the accused used to consume liquor and used to assault her but she told him that she would cohabit with him so that her matrimonial relations should not be disturbed. About two days thereafter, the accused took Anita to Beed for cohabitation. About one year before the incident, when Anita had been to him, the accused followed her and under the influence of liquor assaulted her with a stick and on the same day, he brought his two children to Beed but after two days, he wrote a chit (Exh. 28) and sent it along with his aunt Vithabai wherein he promised that he would treat Anita well and would not harass her and he would be responsible if anything happens to her life. Hence, Anita was sent along with Vithabai for cohabitation. On 15.03.2001, at 08:00 a.m. he received message from PW7 Constable Sasane that, Anita had committed suicide by hanging. Hence, he and his family members went to the house of the accused. They saw that Anita's dead body was hanging along one nylon rope of a swing and she was in sitting posture nearer to the floor. He immediately felt that his son-in-law must have killed her by strangulation and then made a show that she has committed suicide. Hence, he lodged FIR.

3. On the basis of the said FIR, crime was registered at C.R. No. 72/01 u/s 302, 201, 498A IPC and it was investigated into by PW10 SDPO Pathak. On the same day, spot panchanama was drawn which revealed that, the room where the dead body was seen was latched from inside both to the front door and to the back door. The said room is referred as “जाळीची रुम” (room with a mesh). The front was having a wall of 3 ft. height and the upper part was made of a wooden strips fitted in cross direction. The entry was made from the back door by bending the latch. The panchanama shows that, there were big gap to the front door wooden strips from which one could insert hand for latching the door from inside. The room was having height of 8 ft. 8 inches where the swing was tied. The dead body was in sitting position hardly few inches above the ground. After drawing inquest panchanama and spot panchanama, the body was sent for post-mortem. PW6 Dr. Syed conducted the post-mortem and he gave opinion that there was a complete ligature mark around the neck and there were other symptoms indicating that deceased Anita met with death due to asphyxia due to strangulation. During investigation, the statements of some witnesses were recorded. PW8 Vilas had taken 24 photographs of the spot particularly of the dead body. The chit Exh. 28 was seized. The investigation revealed that the accused had

earlier made attempts to strangle his wife and his neighbours PW2 Babasaheb and PW3 Shaila had rescued Anita twice. After completion of investigation, the charge-sheet was submitted in the court.

4. In due course, the case was committed to the court of sessions. The ld. Sessions Judge, Beed framed charge at Exh. 8 u/s 302, 498A IPC (but not u/s 201 IPC). The prosecution examined 10 witnesses. The defence of the accused is that Anita was hot tempered and she has committed suicide while he was sleeping and he came to know about it only when he woke up in the morning. The ld. Addl. Sessions Judge held the accused guilty for offence u/s 498A IPC but held not guilty u/s 302 IPC. The accused was accordingly convicted and sentenced for offence u/s 498A IPC and acquitted for offence u/s 302 IPC. Hence these two appeals one against conviction and other against acquittal.

5. Heard Shri. R. V. Dasalkar, learned APP for State and Shri. R. V. Hange, learned counsel for the accused.

6. Ld. APP Shri. R. V. Dasalkar has taken us through the evidence on record. He pointed out that there is cogent, consistent and reliable evidence of PW2 & PW3 about the habit of accused of

consuming liquor and assaulting his wife under the influence of liquor. They have also deposed that, earlier on two occasions, the accused had tried to kill his wife and they had rescued her. There is also evidence of PW4 Kaluji, father of Anita, disclosing the narrations by deceased Anita to him about the ill-treatment received by her at the hands of her husband. He has also proved Chit Exh. 28 in which the accused had promised to behave properly and had assured that there would be no ill-treatment to Anita and in case anything would happen to her, he would be responsible. He relied on the medical evidence of Dr. Syed, which shows that it was not a case of suicide by hanging but it was a case of strangulation. There was a ligature mark around the entire neck which would not be caused in case of hanging. He referred to the spot panchanama Exh. 22 duly proved with all the details by PW8 Vilas, the photographs Exh. 41 to 41/23 proved by PW8 Vilas. He argued that the accused has committed murder and has created a scene that deceased Anita committed suicide. The latched doors of the room where Anita died could be opened from outside. The ld. Sessions Judge has not properly appreciated these material facts. It is a clear case of custodial death and the explanation of the accused is falsified. There cannot be suicide by a lady in sitting position. Therefore, the accused should be held guilty u/s 302/34 IPC and should be sentenced accordingly.

7. Per contra, ld. Advocate for the accused Shri. R. V. Hange has relied on the fact that both front and back doors of the room were latched and entry was required to be made by bending the latch. He also invited our attention to the fact that Medical Officer has given several admissions which indicate that it can be a case of suicide by hanging. He pointed out that evidence of PW2 & PW3 on material aspects is inconsistent with their previous statements and with each other. The evidence of PW4 Kaluji, father of Anita, is also not reliable. The conduct of the accused in immediately reporting the matter to PW7 and then to father of Anita and then to Police is consistent with his innocence. He supported the finding of ld. trial Judge on the point of acquittal u/s 302 IPC but argued that there was no material to convict the accused u/s 498A IPC. Hence, he argued that his appeal be allowed and State appeal be dismissed.

8. The points for our consideration with our findings thereon are as follows :

Sr.No.	Point	Finding
1	Whether the accused has subjected his wife to cruelty?	Not proved. Offence u/s 323 IPC only proved.
2	(a) Whether deceased Anita met with a homicidal death? (b) Whether the accused has committed murder of Anita?	Not proved. Not proved.

3	What order?	The Appeal No. 73/2002 is allowed and Appeal No. 312/2002 is dismissed.
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REASONS

9. The chronological events and the evidence on respective points may be stated as follows :

In 1993, Anita r/o. Ahirwadi, Tq. Georai, Dist. Beed, daughter of PW4 Kaluji, married to accused Gautam r/o Gondi, Tq. Ambad, Dist. Jalna. After 1½ years, Anita gave birth to a daughter later named as Priti. Further 1½ years thereafter, Anita gave birth to a son named Shubham. Gautam was serving as a Constable and was member of Police Band Paty at Beed. The FIR shows that, Priti daughter of Anita was aged 5 years and son Shubham was aged 3 years in 2001. These facts are deposed by PW4 Kaluji, father of Anita. Those are not disputed.

During cohabitation period :

10. PW4 has deposed that, the accused was not addicted at the time of marriage but later on he started consuming liquor and was assaulting Anita with stick. Whenever she was coming to her house, she was telling him about the ill-treatment. He and his wife had tried to persuade the accused to properly treat Anita. It seems that, from

1993 to 1999 there was no serious dispute. The first incident is deposed to have taken place in February-2000. That time, Anita had been to her maternal house for 2-3 days. The accused came there by consuming liquor and assaulted her with stick. PW4 has deposed this fact consistent with his FIR. The FIR and Marathi version of PW4 shows that, accused took away his two children and that time Anita had not accompanied him but in English version, it is wrongly stated that Anita had gone along with him. It is well settled that, when there is difference in Marathi and English version, Marathi version prevails.

11. Thereafter, on 27.02.2000, the accused sent one chit through Vithabai to Kaluji (PW4) which is at Exh. 28. PW4 Kaluji has identified it as a chit signed by the accused. The ld. trial Judge wrongly disbelieved this chit on assumption that Anita had gone to her matrimonial house and there was no necessity to write such chit but the Marathi version as well as the FIR shows that Anita had not gone there. This chit shows that, the accused wrote that if he had committed any mistake he apologised for the same. He gave in writing that he would not give ill-treatment of any type to Anita and if anything happened to her he would be responsible for the same and Anita should be sent to her matrimonial house as Shubham and Guddi were awaiting for her arrival. The ld trial Judge held that this

chit has not been proved to be in the handwriting of the accused. In cross-examination, PW4 Kaluji admitted that before Chit Exh. 28, he had not received any letter from the accused but he had seen handwriting of the accused whenever he had sent letters to his friends. He could not tell to whom such letters were written. He has denied that the letter was not in the handwriting of the accused. The death of Anita took place on 15.03.2001 and on the very next day on 16.03.2001, this letter was produced by PW4 Kaluji before the Police. Its production is proved by PW5 Shailendra Shinde, but he happens to be closely related to PW4 Kaluji. It is tried to be brought on record that this incident was not narrated in the FIR but the FIR shows that this incident was narrated the omission is only with respect to the specific month and year. In the FIR, it is stated that the incident took place one year back whereas; in the evidence it has been specifically shown to have taken place in February-2001, which is also about one year back. The FIR discloses that such chit was written by the accused. However, this chit was not received by PW4 by post. He was not acquainted with handwriting of the accused. Vithabai who allegedly brought this chit is not examined. Hence, we agree with the finding that the chit is not proved to be written by the accused.

12. PW4 Kaluji has stated that, at the time of Shivratri just before the incident of death of Anita, Anita came to him and stayed

with him for 2-3 days at the time of Shivratri. That time, Anita returned along with the accused. No incident is reported at that time.

13. PW2 Babasaheb is neighbour of the accused and PW3 Shaila is his wife. PW2 is a Police Constable. PW3 is his wife. The accused was their neighbour for five years. The behaviour of the accused was well for three years and thereafter according to PW2 & PW3, the accused started assaulting his wife. Whenever they used to hear the shouts of Anita, they used to go to rescue her. They stated that, first such incident took place in rainy season of the earlier year. That time, the accused had tried to throttle the neck of his wife and they had intervened. The second such incident had taken place at the time of last Dasara at 10:30 p.m. That time again there was quarrel between the accused and his wife and when they heard the shouts from his house, they rushed there. The accused was assaulting his wife and was trying to strangle her by means of a saree but he and his wife intervened and rescued her. The accused was threatening to kill her. Then on 15.03.2001, they learnt about death of Anita and found that Anita was in sitting posture with a rope of swing around her neck. They stated that Anita was not visiting their house nor they were visiting Anita's house casually except for intervening in the quarrels. These incidents were not reported by

them to police or relatives of Anita. They stated that, these quarrels took place on account of addiction of the accused and there was no other reason. They felt that, Anita should be cautioned that there was danger to her life, still they did not ask her to go to the police and lodge the FIR.

14. PW3 Shaila has admitted that, at the time of first incident she had personally not seen the accused throttling Anita. She also stated that, at that time, her husband had gone to his duty. It is contrary to the evidence of PW2 who had stated that he had also gone along with PW3 Shaila to rescue Anita. In light of this evidence, this incident cannot be believed. PW2 admitted that, Anita was not coming to their house. If PW2 and PW3 had rescued her, she would have certainly gone to them for shelter. He admitted that, he did not talk about the said incident with Anita or the accused. He did not ask the accused why he was beating Anita.

15. PW2 and PW3 have also deposed about the second attempt by the accused to throttle Anita at the time of Dasara. PW2 stated that, on that day at 10:30 p.m. he heard shouts from the house of accused. He went along with his wife and saw that accused was beating to Anita and had strangulated her throat by means of Saree.

He rescued the wife of the accused and the accused was threatening his wife. Again this incident was not disclosed to the police or maternal relatives of Anita. Anita had not gone to the police station to lodge report nor had she gone to her maternal house for her safety. He did not enquire the reason for the quarrel with Anita or the accused. PW3 Shaila has also deposed about this incident but she stated that she came to know about the incident. She had not personally seen the incident. Anita did not tell him that the accused tried to throttle her nor she made enquiry with Anita. She merely stated that, there was saree around the neck of Anita. Considering the subsequent conduct of Anita, PW2 & PW3 and the discrepancy in their evidence *inter se* both these incidents of attempted throttling in rainy season and Dasara cannot be believed.

16. It is material here to note that, there was no charge framed against the accused for earlier attempts.

17. Regarding the ill-treatment, there is consistent evidence to show that the accused was consuming liquor which can be accepted. There is also evidence that, the accused used to beat Anita under the influence of liquor. There is evidence that, the accused had assaulted Anita at the house of her father by means of stick and, therefore, Anita did not resume cohabitation and thereafter accused wrote chit and

offered apology and thereafter Anita had resumed cohabitation and assured to treat her properly. The evidence however shows that the ill-treatment was not coupled with the dowry demands and was not for compelling her to meet with the dowry demands. There is no specific medical evidence to show that, the ill-treatment was of such a grave nature that Anita would have committed suicide. The evidence however shows that, one contusion of 1 cm x 5 cm was found on the scapula region on the dead body. There are multiple patchy abrasions over papletical fosa over the calf of left side posteriorly and near inguinal region. These abrasions might have been caused during the scuffle but the contusion on the back must have been caused by blow of some elongated object. The accused has not given explanation for this injury which was caused to Anita in a house where she was with the accused only. The learned trial Judge did not consider that there were no dowry demands nor the ill-treatment was grave enough to drive Anita to commit suicide. Considering the above evidence, we find that the offence u/s 498A IPC has not been proved but offence u/s 323 IPC is proved against the accused.

18. The next material aspect is about nature of death whether it is homicidal or suicidal.

19. Then the material evidence is of Medical Officer PW6 Dr. Syed Mushir and the photographs Exh. 41 to 41/23 taken by PW8 Photographer Constable Vilas. PW6 Dr. Syed has conducted PM on 15.03.2001 at 12:30 to 01:30 p.m. He found following external injuries.

1. Evidence of two ligature marks around neck. Ligature no.1 - Transversely placed, surrounding total neck at the level of thyroid cartilage, length 32 cms. breadth anteriorly 3 cms. and posteriorly 1 cm.
2. Ligature mark no. 2- Placed overlapping to injury no. 1 in the anterior aspect of neck and extending upwards on both lateral sides towards the mastoid process, length 23 cms. breadth 1 cm.
3. Multiple patchy abrasions over popliteal fossa skin in area of 5 x 5 cms.
4. Multiple patchy abrasion over the calf left side posteriorly over skin in area of 2 x 2 cms.
5. Multiple patchy abrasions near inguinal region in area 3 x 3 cms.
6. Contusion in left scapular region 1 x 5 cm. transversely.

20. On dissection of the neck, he noticed as follows :

1. Subcutaneous place corresponding to injury no.1 shows evidence of ecchymosis evidence of contusion of neck muscles.
 2. Subcutaneous place corresponding to injury no.2 do not show evidence of ecchymosis. Muscle tissue is of normal texture.
 3. No evidence of fracture of hyoid bone.
 4. No evidence of Cervical Vertebra Fracture.
 5. Evidence of fracture thyroid cartilage and laryngeal rings.
 6. Evidence of congestion of tracheal and laryngeal mucosa.
21. He noticed following internal symptoms which are probably same in case of hanging as well as strangulation. Congestion right lung and on cut section found evidence of copious frothy fluid with blood stained. Same finding was also noticed in left lung. Right chamber of heart filled with dark coloured blood. Large vessels filled with dark coloured blood. Abdominal walls were normal and congestion was found at buccal cavity and pharynx. Tongue was inside mouth.
22. He noticed mucosa containing watery yellowish fluid in the stomach with partly digested food in small intestines.

23. From the evidence on record and the arguments advanced, we find following facts indicative that it might be suicide.

- (i) The dead body was seen hanging in partial suspension in a room which was latched from inside both to the front door and back door.
- (ii) There was oozing of saliva noted in the inquest panchanama and dried crust of oozed fluid below the left angle of mouth noted in the PM notes.
- (iii) The accused has reported the matter immediately to his friend PW7 Mr. Sunil Sasane, who has communicated the news to the father of Anita who arrived on the spot immediately. PW7 has stated that, the accused came to him weeping while giving the information.

24. Following is the material evidence indicating that it was a homicide.

- (i) The complete ligature mark totally surrounding the neck of length of 32 cm at the level of thyroid cartilage. Such complete ligature mark is normally found only in cases of strangulation. Besides, two overlapping ligature marks were found.
- (ii) Evidence of fracture of thyroid cartilage and laryngeal rings and congestion of trachea and laryngeal mucosa.

(iii) Opinion of Dr. Syed (PW6) that, the death was due to asphyxia due to strangulation. He stated that, in case of suicide, he refers it as death by hanging. He denied that, it could be a suicidal death.

(iv) Hanging by partial suspension.

25. As far as the closed condition of the room is concerned, evidence of PW1 Vilas is material. He is a spot panch. His evidence shows that, the front room having wooden strips fixed them to criss-cross manner was the front wall of the room and the room was latched from inside. However, his evidence shows that, there was a hole sufficient enough to insert a hand and open or close the latch of the front door. He was cross-examined to show that, his evidence in this regard is improvement but this fact is mentioned in the panchanama and it is also visible in photograph 41/21. The accused being a Police Constable, it is possible that he could have killed his wife and could have made a show that she has committed a suicide and could have come out and latched the front door from inside by standing outside the door. Therefore, the latching of both the doors from inside is not indicative that it must be a suicide. Though normally person hangs by complete suspension, Medical Officer has admitted & Modi's jurisprudence shows that suicides by partial suspension are also committed. Therefore, finding of Anita's dead

body in sitting posture while hanging is not indicative of homicide only.

26. However, the oozing of saliva noted in the inquest panchanama and PM notes is clear indication of suicide. In Modi's jurisprudence, 25th Edition by Justice Kannan, Page 497, it is observed that, dribbling of saliva is a sure sign of hanging. The ligature mark can be both circular and oblique. If the ligature is pressed around the neck more than once, there may be evidence of skin waggis whenever it is carved between the ligature. PW6 Dr. Syed Mushir has admitted this fact. We find that, the ligature was a double layer rope of swing. The photos disclose that, one part of the ligature was encircled around the neck and other was going upwards from both sides of neck for suspension. When one ligature rope was encircling the neck entirely and the other part of the rope was used for hanging the neck, this type of marks are possible. There are two ligature marks. The width of rope is 1 cm but the ligature is of 1 cm to 3 cm showing overlapping of two layers of rope. The ligature marks are transverse in direction. In the peculiar facts of this case, the ligature mark entirely surrounding the neck about 32 cms. and existence of 2 overlapping ligature marks is not positive indication of strangulation alone. The existence of 2 ligature marks does not rule out possibility of suicide. The medical evidence that, the second

ligature mark was post-mortem cannot be accepted. Dr. Syed (PW6) has admitted that, his opinion was based upon the fact that there was no subcutaneous tissue damage in respect of second ligature mark and therefore he opined that, it was post-mortem. but, he admitted that both the ligature marks being overlapping, it was difficult to differentiate the damage to subcutaneous tissues caused by two ligatures.

27. We also find that, the accused had no strong motive to commit murder of his wife. On the contrary, if he was consuming liquor and was assaulting his wife, the wife had a reason to commit suicide. Therefore, though this is a case of custodial death, the circumstances found on record indicate a reasonable possibility of suicide. There is no quality medical evidence of an expert who could distinguish and rule out possibility of suicide. In the circumstances, the accused deserves to get benefit of doubt. The learned trial Judge has just held that as ligature mark of injury no. 1 was anteriorly 3 cm and posteriorly 1 cm in width, the manual strangulation was ruled out. We do not agree with the reasons given by him but we find that the view taken by the ld. trial Judge in respect of murder is reasonable and probable view. We cannot interfere with the same. Hence, we pass the following order.

ORDER

- (i) Criminal Appeal No. 312/2002 against the acquittal for offence u/s 302 IPC is dismissed.
- (ii) Criminal Appeal No. 73/2002 against conviction u/s 498A IPC is partly allowed. The accused is acquitted of offence u/s 498A IPC but is convicted u/s 323 IPC. He is sentenced to suffer RI for six months and to pay fine of Rs. 500/-, in default, to undergo further RI for 10 days.
- (iii) He was in Jail from 15.03.2001 to 02.02.2002. He shall be entitled for set off against the substantive sentence.
- (iv) Part of the fine amount in excess of the fine imposed be refunded to the appellant.

[A. M. DHAVALA]
JUDGE

[T. V. NALAWADE]
JUDGE