

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

CRIMINAL APPEAL NO. 551 OF 2002

The State of Maharashtra
through Police Station,
Osmanagar, Taluka Loha,
District Nanded

..Appellant

Versus

1. Govind s/o Ramrao Jadhav,
Age 20 years, Occu. Agri.,
R/o Sugaon, Taluka Loha,
District Nanded
2. Ramrao s/o Deorao Jadhav,
Age 65 years, Occu. And
R/o as above
3. Babu @ Deorao s/o Ramrao
Jadhav, Age 24 years,
Occu. Agriculturist,
R/o Sugaon, Taluka Loha
District Nanded
4. Sow. Sulochanabai w/o Ramrao
Jadhav, Age 55 years, Occu
Household, r/o as above

.. Respondents

Mr R.V. Dasalkar, A.P.P. for appellant
Mr A.M. Gaikwad, Advocate for respondents

**CORAM : T.V. NALAWADE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 5.12.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 9.1.2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. This appeal is by the State against judgment of acquittal passed by learned II Joint Additional Sessions Judge, Nanded in Sessions Case No.18/2001 on 10.6.2002. By the impugned judgment, the husband, brother-in-law and parents-in-law of deceased bride who suffered

unnatural death within short period after her marriage were acquitted of offences punishable under Sections 498-A and 302 read with Sec.34 of Indian Penal Code.

2. The facts relevant for deciding this appeal may be stated as follows:

On 21.10.2000 at 3.45 p.m., F.I.R. Exh.34 was lodged at Osmannagar police station, Taluka Loha, District Nanded by P.W.1 Mohan, uncle of the deceased Saptacula. As per F.I.R., deceased was daughter of P.W.1 Mohan's sister Rajabai resident of Kamlaj, Taluka Loha. She was given in marriage to accused no.3 Babu (A-3) about three years before the incident. The marriage was performed at Kamlaj. Accused no.2 Ramrao and Accused no.4 Sulochana are parents and accused no.1 Govinda is brother of accused no.3 Babu. At the time of marriage, as per agreement, Saptacula's father P.W.3 Govinda had given dowry in the form of Rs.25,000/- cash with one tola gold and household articles. However, the marriage took place one year late from the agreed date. Saptacula thereafter started co-habiting with her husband at Sugaon and she was treated well for a period of one year, but thereafter they started ill-treating her. They started demanding Rs.10,000/- and one tola gold on account of delay in marriage. Her husband, parents-in-law and brother-in-law used to assault her and physically and mentally ill-treat her. Her maternal relatives including P.W.1 Mohan tried to persuade her in-laws. Still, Saptacula was assaulted on account of not meeting the demands of the accused persons for additional Rs.10,000/- and one tola gold and about six months before the incident, she was driven out. She then

resided at her maternal house for about six months. Then, there was meeting of her maternal relatives and in-laws and as per the settlement, Saptafula was sent back to her matrimonial house for co-habitation. Saptafula had been to her maternal house for celebration of *Nag-panchami* festival and at that time, she complained about the ill-treatment by her husband and in-laws with demand of dowry. Still, her maternal relatives persuaded her to resume co-habitation after *Nag-panchami* was over. On 21.10.2000 at 11.00 a.m., when P.W.1 Mohan was at Ijali village, he received message from one person at Kamlaj that Saptafula had died at Sugaon. His sister Rajabai and her relatives had also arrived there and they came to Sugaon. They found dead body of Saptafula in the house and nobody else was in the house. They noticed several injuries on the chest, ribs, neck and legs. Injuries indicated that she might have died due to dragging by tying with a rope resulting into peeling of her skin and causing bleeding injuries. Saptafula was aged 20 years. He then went to police station and lodged the F.I.R.

3. On the basis of the F.I.R., crime was registered at C.R.No.79/2000 under Sections 498-A, 302 read with Sec.34 of Indian Penal Code and was investigated into by P.W.7 P.S.I. Kubade. He drew inquest panchnama Exh.36, spot panchnama Exh.37 and sent the dead body for post mortem. He also seized clothes of the deceased under panchnama Exh.38. He recorded statements of material witnesses and arrested the accused no.1 Govind on the same day. The remaining accused were arrested on 23rd October 2000. He forwarded the seized articles to the office of Chemical Analyst and

after completion of investigation, the charge-sheet was submitted in the Court of Judicial Magistrate, First Class. The prosecution relied on the opinion of the Medical Officer that deceased met with homicidal death by suffocation due to throttling.

4. In due course, the case was committed to the Court of Sessions. Learned Additional Sessions Judge framed charge under Section 498-A and Section 302 read with Sec.34 of the Indian Penal Code at Exh.15. The prosecution examined seven witnesses as follows :

(A) P.W.3 Govinda, father, P.W.1 Mohan maternal uncle and the informant (Exh.34), P.W.4 Kamalbai paternal aunt, P.W.5 Raosaheb, a neighbour.

(B) P.W.6 Medical Officer, Dr. Vitthal Paratwagh (Post mortem Exh.45 and provisional death certificate Exh.46)

(C) Panch to the inquest, spot and seizure of clothes panchnamas Exh.36, 37, 38, P.W.2 Tukaram

(D) P.W.7 Investigating Officer P.S.I. Kubade.

5. The cross-examination of the witnesses disclosed two fold defences. One defence is that deceased Saptacula died due to Tetanus. The other defence shows that some outsider murdered her and committed theft of her necklace. Accused no.1 Govind has stated in his statement under Section 313 of Cr.P.C. that he was alone at the house. He took a defence of total denial and stated that Saptacula's body was swollen and at the time of removing the clothes, her skin was peeled off. Hence, there were injuries on her person. P.W.2

Tukaram, P.W.3 Govinda, P.W.4 Kamalbai have taken a defence that they were not at the home. They had gone to village Ladla. P.W.2 Tukaram, father-in-law has claimed that Saptafula and her husband were residing separately from him and he was not aware how she died. Accused no.3 Babu, husband has also stated that Saptafula was residing with her maternal relatives for six months and had returned to him on the date of incident. He was not at home. His younger brother was at home. He had not known how she had expired. P.W.4 Kamalbai has also claimed that she was out of station and she had not known when Saptafula came and how she expired.

6. The learned Additional Sessions Judge disbelieved the prosecution witnesses to hold that cruelty to Saptafula by her husband and in-laws was not proved. He took pains to refer to medical jurisprudence by Modi extensively to heavily criticised the Medical Officer and disbelieved his evidence regarding homicidal death. Therefore, all the accused were acquitted of all the charges. Hence this appeal.

7. Learned A.P.P. Mr R.V. Dasalkar has taken us through the evidence on record and argued that it is a clear case of homicide inside the matrimonial home and, therefore, it was a custodial death. Burden was on the accused to prove as to how Saptafula died but they have not discharged the burden to explain about the injuries on the body of Saptafula as she was throttled/strangled to death. There is reliable evidence to show that she was subjected to dowry demands and ill-treatment and Saptafula was constrained to stay at her

maternal house for a period of around six months. Saptafula had returned and resumed co-habitation after mediation and assurance given by accused no.2 Ramrao that she would be treated well. He submitted that the learned trial Judge erred in disbelieving the evidence of Medical Officer by referring to Modi's medical jurisprudence, which was not shown to the Medical Officer. He, therefore, submitted that the order of acquittal should be set aside and all the accused should be convicted under Section 498-A and 302 read with Sec.34 of Indian Penal Code.

8. Per contra, Mr A.M. Gaikwad, learned Advocate for the respondents strongly supported the judgment of trial Court. He argued that there is no reliable evidence about dowry demands and ill-treatment. The marriage had taken place three years back and Saptafula was treated well by her in-laws. He argued in detail about the medical evidence and the discrepancies noted in the evidence of Medical Officer. He relied on treatises from Parikh's jurisprudence to submit that there was no symptoms of asphyxia due to throttling or strangulation were found and, therefore, the opinion given by Medical Officer cannot be relied upon. Learned Additional Sessions Judge has discussed in detail as to why the evidence of Medical Officer was unreliable. He, therefore, argued that the homicide itself was not proved and therefore, the acquittal of the accused was reasonable and probable view and the same cannot be interfered with in the appeal.

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

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| <p>(I) Whether accused no.3 husband Babu and accused nos.1 Govind, accused no.2 Ramrao and accused no.4 Sulochanabai as in-laws subjected Saptafula to cruelty and dowry demands and thereby committed offence under Section 498-A read with Sec.34 of Indian Penal Code ?</p> | <p>..In the negative</p> |
| <p>(II) Whether Saptafula met with homicidal death and if yes, whether accused nos.1 to 4 in furtherance of their common intention committed murder/ dowry death of Saptafula ?</p> | <p>..In the affirmative</p> |
| <p>(III) What order ?</p> | <p>.. The appeal is allowed.
All the accused are convicted u/s 302/ 34 of I.P.C. and convicted to imprisonment for life and fine of Rs.1,000/- i/d
R.I. for 20 days</p> |

- REASONS -

10. The evidence on all three points is intermingled. If it is the homicidal death, then it becomes custodial death and depending upon

the presence of the accused in the house, the allegations of dowry demands and ill-treatment is the main motive for commission of the crime and, therefore, all the points are required to be decided together.

11. P.W.1 Mohan is maternal uncle of Saptafula. P.W.3 Govinda is her father. P.W.4 Kamalbai is paternal aunt and P.W.5 Raosaheb is a mediator. Their evidence shows that deceased Saptafula was resident of Kamlaj, Taluka Mudkhed. While, the accused are residents of Sugaon, Taluka Loha. Saptafula was given in marriage to accused no.3 Babu about three years before the incident on 21.10.2000. At the time of death, Saptafula was aged twenty years. P.W.1 Mohan alone has stated that at the time of marriage, dowry of Rs.25,000/- was paid. Thereafter, the accused treated Saptafula well for a period of one year.

12. P.W.1 Mohan, P.W.3 Govinda, P.W.4 Kamalbai and P.W.5 Raosaheb residents of Halda, Taluka Kandhar stated that they learnt about dowry demand of Rs.10,000/- by all the accused from Saptafula and ill-treatment on account of not meeting the demand. P.W.1 Mohan stated that this demand of dowry and ill-treatment was on account of non-performance of marriage within one year. Besides, there was demand of one tola gold. As the said demand was not met, Saptafula was driven out of the house and she had to stay with her parents. P.W.1 Mohan has not stated that Saptafula had personally told him about these events. Even as per evidence of P.W.3 Govinda, Saptafula had narrated these incidents to her mother. He did not state that Saptafula was driven out of the house by the accused, but stated

that he came to know about ill-treatment. He went to her house and brought her back. He admitted that Saptafula had given information to her mother and grandmother and P.W.4 Kamalbai has also not stated that Saptafula personally told her about the ill-treatment and dowry demands by the accused. Similarly, P.W.5 Raosaheb has no personal knowledge. Nevertheless, it is in the evidence that Saptafula, due to differences with the accused was residing at her maternal house. Then, there was a meeting for mediation. According to P.W.1 Mohan, Saptafula's father, his brother Kisan and Raosaheb had gone to the accused for persuading them and thereafter, Saptafula resumed co-habitation. P.W.3 Govinda, father of Saptafula stated that accused no.1 Govind came to their house and settlement took place at his house due to assurance given by accused no.2 Ramrao that Saptafula would be treated well and thereafter, he took decision to send Saptafula to her matrimonial house. P.W.4 Kamalbai has also stated that the accused came to her and in the meeting, it was decided that Saptafula would resume co-habitation. That time, her father assured that she would be treated well. He will give one tola gold to the accused and the matter was settled. P.W.5 Raosaheb stated that he, Vyankat, Kondiba and Kisan had gone to the parents of Saptafula. Accused no.2 Ramrao was with them. Then, the matter was settled and Saptafula was sent back for co-habitation. That time, P.W.3 Govinda had assured to present one tola gold if Saptafula would be treated well by the accused and then Saptafula resumed co-habitation. The cross-examination of P.W.1 Mohan shows that after Saptafula's marriage, he had never gone to the accused. He has not stated before the police that parents of Saptafula and other ladies had

gone to the accused for persuasion. He has also not stated that his brother had gone for bringing Saptafula. His evidence that Saptafula was threatened of her life if she would not meet the demand is also by way of material omission. He deposes that he lodged F.I.R. only after coming to know that Saptafula died of throttling.

13. Cross-examination of P.W.3 Govinda (father) reveals that his brother used to fetch Saptafula from her matrimonial house and accused no.2 Ramrao used to come to his house for taking back Saptafula for co-habitation on several occasions during three years. It seems there is cross-examination that Saptafula had not attend puberty at the time of marriage and at the time of attaining puberty, a customary ceremony was performed. His relatives were sent to the house of the accused and the sweets were distributed. His relatives stayed there for one day. It was three months, before the death of Saptafula. During next three months till the death of Saptafula, P.W.3 Govinda had not gone to her house. He never expected that Saptafula would die.

14. Evidence of P.W.4 Kamalbai shows that her husband Kondiba had brought Saptafula to her maternal house for *Nag-panchami* festival and Saptafula had again made complaint of ill-treatment. P.W.5 Raosaheb has deposed about the mediation. He admitted that his wife and Saptafula's mother were real sister.

15. The evidence of maternal relatives of Saptafula about dowry demands and ill-treatment on that count is not very convincing, but it is certain that there were differences between Saptafula and her

husband and in-laws and, therefore, Saptafula stayed at her maternal house for some months and she had returned to her matrimonial place about six months before the incident. The evidence shows that before *Nag-panchami* she has resumed co-habitation and had been to her matrimonial house for *Nag-panchami* and again had gone to her matrimonial house. There is no evidence to show that Saptafula had returned to her matrimonial house one day before the incident. The evidence shows that Saptafula due to differences resided at her maternal house and few months before her death, she resumed co-habitation after settlement in a meeting.

16. We find no reliable evidence to hold the accused guilty for offence punishable under Section 498-A of the Indian Penal Code.

17. The evidence of P.W.1 Mohan, P.W.3 Govinda, P.W.4 Kamalbai and P.W.5 Raosaheb shows that on 21.10.2000 at about 10.00 a.m., P.W.3 Govinda received message that Saptafula had expired. Then, he and his relatives including P.W.1, P.W.3 and P.W.4 visited Sugaon. P.W.3 Govinda stated that they reached Sugaon at about 3.30 p.m. The evidence shows that they were informed that Saptafula died of tetanus but they have found injuries on her chest, neck and other parts of the body. P.W.1 Mohan stated that there were blood stains, but no injury on the private part of the Saptafula, but it is difficult to believe that P.W.1 Mohan could have seen the private part of Saptafula. P.W.3 Govinda vaguely stated that he had seen marks of assault on the body of Saptafula. P.W.4 Kamalbai, paternal aunt has also vaguely deposed about the injuries seen on her person. P.W.5

Raosaheb has stated that he had seen assault on abdomen, chest and back of the deceased Saptafula.

18. P.W.2 Tukaram and P.W.7 P.S.I. Kubade are the panch witnesses to the inquest panchnama Exh.36 drawn at 4.30 p.m. on 21.10.2000. P.W.2 Tukaram has stated that there was mark of rope along the waist ring and the neck of deceased Saptafula. There were also injuries on her person. Accordingly, panchnama Exh.36 was drawn and he has signed it. P.W.7 P.S.I. Kubade has not deposed about details of inquest panchnama that he deposed about drawing of the panchnama.

19. It must be mentioned here that the panchnamas drawn are not substantive piece of evidence. The evidence of the witnesses to the panchnama is a substantive piece of evidence and the contents of panchnama can be used for corroboration only.

20. Evidence of P.W.6 Dr. Vitthal Paratwagh is most material. He is B.A.M.S. and was attached to Primary Health Center, Kapsi, Taluka Loha on 21.10.2000. Dead body of Saptafula was brought on that day along with request letter for post mortem. He conducted post mortem and found the following injuries :

- 1) Injury over bilateral side of the neck, grievous around the neck. The direction of the injury was on front to back and the time was within 24 hours, the colour of the injury was reddish blackish.
- 2) Multiple injuries as abrasion over the chest
- 3) Special injury over the lumbar as ring but deep at front

side. It was reddish blackish in colour, front in direction within 24 hours

4) Throat cartilages were compressed and dislocated and hyoid bone was dislocated.

He deposed that those were ante mortem and the probable cause of death was suffocation due to throttling resulting into respiratory arrest. His post mortem report is at Exh.45. He stated that these injuries were possible due to tetanus. He stated that injury nos.1 and 4 were possible due to compression of neck and injury nos.2 and 3 were possible due to use of Article 3 rope. He stated that injury nos.1 and 4 were possible due to Article No.2 and injury nos.2 and 3 were possible due to Article no.3. His evidence has been discarded for following reasons :

(I) Though the post mortem was conducted on 21.10.2000, the post mortem notes were signed by him on 27.11.2000.

(II) He stated that he has not recorded the history, but recorded story whereby it was commented that whatever he had seen is his opinion. He was not knowing what is history.

(III) He has used inquest panchnama for post mortem examination. He filled up column no.5 by using post mortem notes (This column is required to be filled up by using the inquest report and police report. There is nothing suspicious about it). He denied that during asphyxia, brain is always congested. He admitted that in case of death due to suffocation heart is congested. He had preserved portion alveoli, which is small tissue of lungs. He stated that he has preserved

oedema when it is not a part of body, but only swelling. (He had immediately corrected himself). Perhaps he meant that he had taken sample of swelling for sending to Chemical Analyst.

(IV) He admitted that in anti mortem injuries, bleeding is very less and there is no clotting. He had not seen any old injury due to beating. He admitted that there was no ligature mark shown in column no.17. He has not recorded as to whether injury no.1 was caused by nails or finger print. He admitted that his opinion regarding use of weapon for causing injury shown in column no.17 is guess work and not upon the nature of injuries. He stated that throttling means compression of front portion of neck, but he was confused whether it was a case of throttling or strangulation. His post mortem notes show that thorax including walls ribs and cartilages were intact. He stated that there was compression of thorax. He explained that intact means there was no fracture. He claimed that the contents of post mortem notes Exh. 45 in clause 20 are correct. His post mortem report shows that larynx, trachea and bronchi were compressed. He admitted that it was necessary to take photographs of dead body in case it was a case of strangulation. He stated that photographs were taken, but those were not produced.

21. The learned Additional Sessions Judge has discussed in detail the evidence of Medical Officer in paragraphs no.13 to 19. The learned Additional Sessions Judge has extensively used medical treatises from medical jurisprudence to disbelieve the Medical Officer. In **Pratap Mishra Vs. State of Orrisa AIR 1977 SC 41**. It is held that :

“ The learned Sessions Judge has taken great pains to refer to various books on Medical Jurisprudence to disbelieve the evidence of P.W.8 on the question that the prosecutrix could not have been raped beyond 22 to 48 hours of the time, when she was produced before Doctor. The learned Sessions Judge tried to demolish the two reasons given by the Doctor on the basis of medical opinions referred to by some authors. In the first place, it is well settled as to when a particular injury was caused and in the instant case as to the exact time when the accused had sexual intercourse. Even in case of opinion that rape might have been committed 24 hours ago, it may be actually 18 to 19 hours as well. In these circumstances, it was not at all necessary either for the Sessions Judge or for the High Court to have made a detailed research on this point which was more or less futile. The High Court has based on decision in **Bhagwandas Vs. State of Rajasthan, AIR 1957 SC 589 and Sunderlal Vs. State of M.P. AIR 1954 SC 28** had deprecated the approach of Judges in drawing strong adverse conclusion by relying upon the particular passages in Medical Books without drawing attention of the Doctor who has examined the victims to such passages. It is evident that the Doctor who has examined the victims is in the best position to depose about the medico-legal aspects of the offence committed on the victim.”

22. The trial Judge who had recorded the medical evidence has ample opportunity to show the medical treatises to the doctor and seek his explanation before disbelieving him with regard to his expert opinion.

23. The evidence on record shows that deceased Saptafula was just aged 20 years. She died in her matrimonial house, where all the accused were residing along with her. The intimation about her death was given to P.W.3 Govinda, her father on 21.10.2000 at 10 a.m. The post mortem notes show that there were little contents found in stomach. Opinion about time of death is, she would have taken her last meal probably pre-of the 24 hours. The post mortem notes show injuries over bilateral side of the neck, grievous in nature caused within 24 hours, reddish black in colour and multiple injuries as abrasion over the chest. There was special injury over the lumber in front side reddish black in colour front direction, caused within 24 hours. Injury no.4 is that there was compression and dislocation of throat cartilages wear, hyoid bone was found dislocated. There was compression of larynx, trachea and bronchi. We admit that the evidence of Medical Officer is not very much satisfactory, but nonetheless he is qualified Medical Officer having degree in medicine and he had performed medical examination. P.W.6 Dr. Paratwagh has stated that no injuries were found inside the skull and brain was found intact. He did not mention whether there was any congestion in the brain or not. His cross-examination shows that in case of asphyxia, there will be congestion in the brain, which he has denied.

24. Learned Sessions Judge should not have given undue importance to the fact that post mortem notes was bearing date 27.11.2000. It is common practice of Medical Officer to take the rough notes at the time of post mortem and thereafter prepare the post mortem report. If there was any doubt, the defence should have

called upon the doctor to produce the rough notes, but that has not been done either by the defence lawyer or by the learned Sessions Judge. P.W.6 Dr. Paratwagh has admitted that there was no ligature mark mentioned in column no.17. His opinion that the injuries could have been caused by handkerchief or rope may be or may not be correct, but his evidence that there was compression and dislocation of throat cartilages and hyoid bone along with compression of larynx, trachea and bronchi is facts noticed by him. It is not his opinion. His cross-examination does not reveal any ground to disbelieve him about the factual matter of compression and dislocation as stated by him. Merely because the photographs were not taken, it cannot be said that the Medical officer has given false report at the instance of one of the parties. It was wrong approach on the part of learned Additional Sessions Judge. It is a matter of fact that 20 years old married girl has met with a death with no previous history. The death took place at her matrimonial house. It can be assumed to be unnatural. The defence has taken contrary circumstance that she met with death due to tetanus. There is no evidence when she had sustained any injury which could have caused tetanus. There is no medical evidence to show that the symptoms found in her body were similar to those caused by tetanus. There is another stand that the death could have been by attack of epilepsy. There is no whisper that Saptafula was suffering from epilepsy. There is no medical history that she has taken treatment for tetanus or epilepsy.

25. Learned Additional Sessions Judge clearly erred in allowing the defence to bring on record some statements of the witnesses in

examination through the cross-examination of Investigating Officer under the garb of the facts disclosed in the investigation. In view of clear bar of Section 162 of Cr.P.C., it was not permissible for the defence to bring on record the facts stated in the statements of some witnesses and even otherwise that would be hit by rule of hearsay evidence. This hearsay evidence shows that Saptafula was having high temperature and the accused were treating her through one Sarsabai and one Maulasab who were not the doctors. The defence in this regard is extremely vague and the accused have not stated anything in the statements recorded under Section 313 of Cr.P.C. about this stand. There is absolutely no evidence to show that Saptafula might have died due to attack of epilepsy or attack of tetanus. The accused did not stop here. They also invented a story about theft of necklace and murder by some outsider. Except the suggestions to that effect there is no material whatsoever to consider this suggestion.

26. There is clear and cogent evidence of Medical Officer regarding compression of neck with dislocation of thyroid cartilages and hyoid bone and compression of larynx, trachea and bronchi. The evidence on record has to be appreciated in the light of the defence raised and it is the duty of trial Judge to find out the truth. In **Jai Kumar Vs. State of M.P., 1999 (5) SCC 1**, the Apex Court has observed :

“ Justice is supreme and justice ought to be beneficial for the society so that the society can be placed in a better-off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter and as such ought to act in a manner so as subserve the

basic requirement of the society. It is the requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day.”

27. When the evidence shows that Saptafula did not die due to old age, there must be some reason for her death. She was residing along with along with the accused and it is certain that the accused must be aware of the cause of her death. The accused made different stories of death i. e. attack of epilepsy, death by attack of tetanus and murder by outsider for robbery of necklace, but the accused have not led any cogent material by way of defence nor extracted any admissions from the witnesses to substantiate any of these defences. Saptafula, aged 20 years who was hell and hearty had no any history could not have died by natural death and there is atleast no record to show that she had met with natural death. In the circumstances, we find no reason to disbelieve the evidence of P.W.6 Dr. Paratwagh, who is an independent person having no personal interest in the matter. Some mistakes committed by him here and there will not make him untrustworthy or incredible witness. From the evidence on record, we are satisfied that Saptafula died due to compression of neck, causing compression of throat cartilages and hide bone and dislocation thereof. We find no reason to defer with the opinion of Medical Officer that she met with a death due to suffocation due to throttling. There are injuries on the neck externally as well as internally supporting the opinion.

28. It is obvious that the injuries sustained by Saptaphule could not have been accidental or self inflicted. We, therefore, hold that it is a case of homicidal death.

29. When the death of a bride has taken place in her matrimonial house and it is proved to be homicidal, it is the responsibility of the inmates of the house as well as the persons, who normally resided in that house to explain how she has met with death. It is clear case of custodial death. We rely on **Trimukh Maroti Kirkan Vs.State of Maharashtra,(2006) 10 SCC 681**, in which after considering the case law on custodial death, it was observed :

“13. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime would come forward to depose against another family members. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents of other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

14. ..where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt

of the accused if the strict principle of circumstantial evidence, as noticed above is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading.

15. ...the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that ... its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

16. ...the prosecution is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and all exactness is a fake...unattainable, the law accepts for it probability as a working substitute in this work-a-day world. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case. Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden. The presumption of innocence is, no doubt, *presumptio juris*; but every day's practice shows that it may be successfully encountered by

the presumption of guilt arising from the recent (unexplained) possession of stolen property. It will only alleviate that burden, to discharge which, very slight evidence may suffice.”

The Apex Court in paragraph no.18 and 20 relied on the judgments of **State of W.B. v. Mir Mohd. Omar (2000) 8 SCC 382** and **Ram Gulam Chaudhary v. State of Bihar (2001) 8 SCC 311** to hold “ The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof on the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.”

30. In the present case we find that the accused have given false explanation that Saptafula might have died of tetanus or due to attack of epilepsy. They have not given any explanation how she had sustained the injuries. Therefore, the onus of explaining the facts within the special knowledge of the accused had not been discharged. The irresistible conclusion that can be drawn is that the accused who were residing of the house or were normally residing in the house must have committed her murder.

31. There is evidence that all the accused were treating Saptafula well for one year and thereafter, they were harassing her. The prosecution examined P.W.1 Mohan (uncle), P.W.3 Govinda (father),

P.W.4 Kamal (aunt) and P.W.5 Raosaheb. To none of these witnesses it was suggested that accused no.1, 2 and 4 were residing separately from accused no.3. On the contrary, it was suggested that whenever Saptacula was going to her maternal house, every time accused no.2 used to go her for fetching her for co-habitation. The evidence nowhere suggests that accused nos.1 to 4 were not residing together.

32. The post mortem notes Exh.45 show that Saptacula was provided no meals and she died about 24 hours thereafter. Her stomach was found empty. Her maternal relatives came to her matrimonial house. The accused were absent. Accused no.1 claimed that he alone was present. The conduct of the accused is also not consistent with their defence. It is no doubt true that it was by the injuries could have been caused by one or two persons and the other two might not have actually participated, but they were very much present there. They are consenting parties. They are not ready to disclose the acts of their family members. In the light of the verdict in **Trimukh Vs. State** (cited supra), in absence of any acceptable explanation by the accused, we hold accused nos.1 to 4 to have shared a common intention and committed murder of Saptacula. The learned Additional Sessions Judge has considered the evidence with a totally wrong approach and came to a wrong conclusion. Hence, the findings recorded by the trial Judge are not sustainable. Hence, the appeal deserves to be allowed and the accused deserved to be held guilty under Section 302 read with Sec.34 of Indian Penal Code.

33. The offence has taken place around 17 years back. We do not find that this will come under the special category of rarest of rare case. Hence, it is unnecessary to give hearing to the accused when we are sentencing the accused for a minimum sentence of imprisonment for life. Hence, the order :

- ORDER -

(I) The appeal is allowed.

(II) The judgment in Sessions Case No.18/2001 on 10.6.2002, delivered by 2nd Additional Sessions Judge, Nanded, acquitting the respondents of the offences punishable under Section 302 read with Sec.34 of Indian Penal Code, is hereby set aside and the accused nos.1 to 4 are convicted for offence punishable under Section 302 read with Sec.34 of Indian Penal Code and each of them is sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- in default to suffer rigorous imprisonment for twenty days each.

(III) The bail bonds of the accused stand forfeited. They shall surrender before the learned trial Judge within fifteen days for undergoing the sentence.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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