

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

CRIMINAL APPEAL NO. 29 OF 2003

Udhav s/o Yadavrao Bhosale,
Age : 31 years, Occ: Service,
R/o Tandalwadi, Tq. & Dist. ... **Appellant**
Beed. At present Shahunagar, (Ori. Accused)
Beed, Tq. & Dist. Beed.
(At present in jail)

VERSUS

The State of Maharashtra,
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay Bench at
Aurangabad. ... **Respondent**

...

Mr. R. N. Dhorde, for the Appellant.

Mr. M. M. Nerlikar, APP for Respondent – State.

...

**CORAM : T. V. NALAWADE AND
K. L. WADANE, JJ.**

DATE: : 11th June, 2018

JUDGMENT (Per K. L. Wadane, J.):

1. Present appellant who is accused in Sessions Case No.73/2001 is convicted by Additional Sessions Judge Beed for the offence punishable under Section 302 of Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.2000/- in default of payment of fine to suffer further

imprisonment for six months. The appellant is also convicted for the offence punishable under Section 201 of the Indian Penal Code and sentenced to undergo imprisonment for two years and to pay a fine of Rs.1000/-. Being aggrieved by the order of conviction and sentenced the accused has preferred this criminal appeal.

2. The brief facts of the case may be stated as follows:

i) PW-2 Sanjay Phand brother of the deceased Meerabai lodged a complaint to the police station Beed (city) stating that his sister Meerabai(since deceased) was married to the accused on 09.02.2000 and it was a registered marriage. His maternal uncle Shivaji Khose took active part in the settlement of marriage. After about one month Meerabai came to the house at Khamgaon and disclosed that the accused is already married with one Nandabai having two sons and two daughters from said Nandabai. Therefore, the dispute was started between the appellant and the deceased. The accused was insisting Meerabai to reside at village Tandalwadi,

whereas Meerabai was insisting to reside at Beed.

ii) During the Stay of Meerabai with the accused at Beed he was beating her on petty reasons and thereby he was ill-treating. Due to such harassment, Meerabai alone left the house of the accused and went to Khamgaon and disclosed about the ill-treatment. Subsequently, accused came to Khamgaon and assured that he will not ill-treat Meerabai.

iii) Before two months of the death of Meerabai, she informed her parents on telephone that the accused was demanding Rs.40,000/- for construction of a house and for repairing of jeep.

iv) On 22.03.2001 at about 9.30 a.m. the accused informed on telephone to the parents and her brother that Meerabai committed suicide by hanging herself, when the accused went to answer the nature's call. After receipt of this information the informant Sanjay his brother, mother and sister immediately rushed to the hospital at Beed and came to know that this accused committed

murder of Meerabai by strangulation and made a show of hanging.

3. On the basis of the information given by the PW-2 offences came to be registered against the accused. Learned Sessions Judge has framed the charge against the accused punishable under Section 498 A, 302, and 201 of Indian Penal Code. Contents of the charges were read over to the accused – appellant to which he denied and claimed to be tried. Defence of the accused is that the deceased committed suicide by hanging herself to the ceiling fan when he went outside the house for answering the nature's call. In order to establish the guilt of the accused the prosecution has examined almost 9 witnesses.

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|----|------|------------|---|
| 1) | PW-1 | at Exh. 18 | Jeevan Tukaram Puri, neighbour. |
| 2) | PW-2 | at Exh. 19 | Sanjay babanrao Fand, brother of deceased |
| 3) | PW-3 | at Exh. 21 | Sulochanabai Babanrao Phand mother of the deceased. |
| 4) | PW-4 | at Exh. 22 | Kishor Babubhai Ruparel, Master of the PW-2. |
| 5) | PW-5 | at Exh. 23 | Sunita Jeevan Puri wife of PW-1 and neighbor. |

- 6) PW-6 at Exh. 26 Dr. Shriram Chavan.
- 7) PW-7 at Exh. 30 Shridhar Laxmanrao Pawar, Panch witness of the spot panchanama.
- 8) PW-8 at Exh. 34 Arjun Dagdurao Bhagat, Photographer
- 9) PW-9 at Exh. 37 Rajkumar Prabhakar Shere PSI investigating officer.

4) Beside the oral evidence of the aforesaid witness prosecution has also relied upon the contents of the Postmortem Report Exh. 27 and report/information given by the accused to the police station vide Exh. 28.

5) Considering the evidence on record the learned Sessions Judge has acquitted the accused for the offence punishable under Section 498 – A of Indian Penal Code. However, he is convicted for the offences punishable under Sections 302 and 201 of Indian Penal Code and sentenced as referred above.

6) We have heard the argument of Mr. R. N. Dhorde, the learned senior Counsel appearing for the accused – appellant and Mr. M. M. Nerlikar, the learned APP for the State. According to the prosecution in the

night between 21.03.2001 to 22.03.2001 the accused committed murder of his wife Meerabai by strangulation and he tried to show that Meerabai herself committed suicide and the accused reported the matter to the concerned Police Station vide Exh. 28 dated 22.03.2001 at 8:20 am and thereby informed to the police that on 21.03.2001 he performed his second marriage with Mirabai and both of them were residing at Beed. On 21.03.2001 they took the dinner and slept at about 10:30 pm. On 22.03.2001 both of them awakened and the accused went to answer the nature's call at the time Meerabai closed the door from inside. When the accused returned at that time Meerabai did not open the door therefore, the accused called her still door was not opened so the accused saw from the window that Meerabai hanged herself to the ceiling fan so he informed to the neighbors and then broke open the door and found that the deceased was died.

7. The aforesaid information given by the accused needs a close scrutiny because from the report it appears that after noticing that the Meerabai was hanging it appears that he informed to the neighbors and then broke open the door. Whether such information

given by the accused is true or false can be determined on the basis of the oral evidence of the neighbors i.e. PW-1 and his wife PW-5. From the record it appears these two witnesses and one Arun Lonkar his wife were also gathered at the spot of incident. However, Arun Lonkar and his wife are not examined on behalf of the prosecution. On perusal of the evidence of PW-1 Jeevan it appears that on the day of incident at about 7:30 am he heard the shouts of Udhav Bhosale i.e. accused i.e. therefore he himself and his wife, Arun Lonkar and his wife rushed there. The entrance door of the house of the accused were opened. These witnesses entered in the house and saw that Meerabai was hanging to the ceiling fan. Accused asked him to take his wife on the ground. Accused lifted her and this witness untied the rope. PW - 5 - Sunita another neighbor deposed that about 22.03.2001 at about 7:00 am to 7:30 am the accused Udhav Bhosale standing in the gallery in front of her house. She heard the shouts of accused then her husband got up, then all of them went to the house of accused and saw that the accused was in his house and his wife Meerabai was hanging to the ceiling fan. So what can be gathered from the oral evidence of the above witnesses is that when these witnesses reached at

the house of the accused at that time door of the house was open. Therefore, the version of the accused in the report Exh. 28 that he informed to the neighbors and then broke open the door appears to be absolutely false.

8. From the evidence and circumstances on record it appears that the deceased and the accused were the only persons who were staying in the house and there is no possibility of presence of third person in the house in any manner. This is very close circumstance indicating that the deceased was in the company of the accused in the night.

9. To determine whether the Meerabai has committed suicide by hanging or whether her death was due to strangulation. The evidence of Dr. Shriram Chavan is very material, who deposed that on 22.03.2001 he conducted the postmortem of Meerabai during the period of 4:30 p.m. to 5:40 p.m. along with Dr. Veer on examination of the dead body following external injuries were noted:

1) Ligature mark around the neck. The ligature marks were two in number.

A) of size 2 cms breadth completely around the

neck, transversely placed above the thyroid cartilage;

B) of size 2 cms x 10 cms. on right side neck just below the ligature mark 'A', and in continuation with ligature mark 'A' as well as parallel to ligature mark 'A'.

(2) Contused abrasion on left side of chin of mandible, size 2 cms x 1 cm., transverse in direction, probably caused by hard and blunt object;

(3) contusion with abrasion on right foot below ankle joint on middle side of 3 x 2 cms.

(4) Evidence of fracture of hyoid bone was seen on right side.

On internal examination they noticed fracture of hyoid bone on right side. The external and internal injuries are mentioned in column Nos. 17 and 20 respectively. The doctor opined that all the injuries were ante-mortem. The internal injury showing the fracture of hyoid bone corresponds to external injury No.1.i.e. the ligature mark. The cause of death in the opinion of the doctor is that death due to cardio-respiratory arrest due to asphyxia due to strangulation. Accordingly, he prepared the postmortem report Exh. 27.

He further deposed that rigor mortis was present all over the body except the neck region. In view of noticing rigor mortis and the contents of the stomach the doctor opined that the death occurred after four hours after last meal and since death is 12 to 24 hours. He further deposed that he shown the picture of ligature mark in post-mortem report in column No. 17 and according to this witness such ligature mark does not appear in case of hanging. The ligature mark in case of hanging is either 'V' shaped or oblique in direction and not complete around the neck.

10. Thus by considering the evidence of PW 6 Dr. Shriram, another most significant circumstance appearing against the appellant is that the accused himself reported the matter to the police station and thereby informed that on the previous day at about 10.30 p.m. he and deceased Meerabai took dinner and slept. However, as per evidence of PW 6 Dr. Shriram, the death of the deceased Meerabai was occurred after four hours after last meal. This circumstance/evidence shows that the incident or the death of the deceased took place at about 4.30 a.m. Therefore, the defence taken by the accused that at about 7.30 a.m. he went out side for answering natures call, at that time the

deceased Meerabai committed suicide by hanging herself to the ceiling fan, appears to be false and after thought.

11. Thus considering the experts evidence on record it appears that the deceased died due to the strangulation. Mr. R. N. Dhorde the learned senior counsel for the accused by referring the cross-examination of this witness (PW 6 Dr. Shriram) pointed out that this has not mentioned in the postmortem report about complete location of ligature mark around the neck. However, on perusal of the contents of the postmortem report, particularly, the finding and the picture shown against the column No. 17, it appears that this witness has clearly noted the ligature mark around the neck.

12. Mr. Dhorde the learned senior counsel further argued that even as per the evidence of PW-5 Sunita it appears that at the relevant time the accused was seen in the gallery and by referring the contents of the spot panchnama Mr. Dhorde, the learned senior counsel argued that inside one bolt of the tower was broken that indicates that the accused has broke open the door and then entered into the house. The defence taken by the accused is falsified by the oral evidence of PW-1

Jeevan Puri and PW-5 Sunita. Nowhere it is brought on record through the above witness that the accused was broke open the door.

13. Mr. Dhorde the learned senior counsel in support of the defence of the accused and his argument relied upon the following cases:

i) Jose @ Pappachan vs. Sub-Inspector of Police, Koyilandy and Anr. reported in (2016) 10 Supreme Court Cases 519.

ii) Dasari Siva Prasad Reddy, Vs. Public Prosecutor, High Court of A.P., reported in AIR 2004 SCC 4383.

iii) Majendran Langeswaran Vs. State (NCT of Delhi) & Anr., reported in 2013 ALL SCR 2511.

iv) Sohel Mehaboob Shaikh v. State of Maharashtra reported in AIR 2009 SCC 2702.

v) Manjunath Chennabasapa Madalli Vs. State of Karnataka, reported in AIR 2007 SCC 2080.

vi) Mulak Raj & Ors. Vs. State of Haryana reported

in (1996) 7 SCC 308.

vii) Manthuri Laxmi Narsaiah Vs. State of A. P.

reported in 2012 ALL SCR 270.

viii) Narendra Singh & Anr Vs. State of M. P.

reported in AIR 2004 SCC 3249.

ix) Rang Bahadur Singh & Ors. Vs. State of U.P.,

reported in (2000) 3 SCC 454.

x) Harendra Narain Singh & Ors. Vs. State of Bihar

reported in (1991) 3 SCC 609.

14. We have gone through the facts and observations of the above case. Observations of above cited cases are not applicable to the facts of the present case because there is clear cut evidence of a strangulation and that too by the accused No. 1 alone.

15. From the evidence on record it is a clear cut case of strangulation and at the relevant time accused was only in the company of the deceased. No circumstance are brought on record to support the

defence of the accused that the deceased committed suicide by hanging herself. The evidence on record is sufficient to established the offence under Section 302 of Indian Penal Code. It appears from the record that at the first instance accused throttled the deceased and thereafter he tried to show that the deceased has committed suicide by hanging. Therefore, the offence punishable under Section 201 is also established.

16. In view of the above, there is no substance in the appeal, therefore, appeal is dismissed. Appellant to surrender bail bond.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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