

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 865 OF 2014

Raju Ramaji More
C/9324, Nashik Road Central Prison .. Appellant
Vs.
The State of Maharashtra .. Respondent

Mrs.Sonia Miskin, for the Appellant.
Mrs.G.P. Mulekar, APP for State.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

15th JANUARY, 2018

ORAL JUDGMENT (SMT. V.K.TAHILRAMANI ACTING C.J.) :

1. The appellant - original accused No.1 has preferred this Appeal against the judgment and order dated 19/03/2014 passed by the learned Additional Sessions Judge, Mangaon, District - Raigad in Sessions Case No. 25 of 2012. By the said judgment and order, the Sessions Judge convicted the appellant for the offences punishable under Sections 302 and 201 of the IPC. For the offence under Section 302, the appellant was sentenced for life imprisonment and fine of Rs. 5,000/- IDRI for

2 years. For the offence under Section 201 of IPC, the appellant was sentenced for RI for 3 years and fine of Rs.1,000 IDRI for one month.

The prosecution's case briefly stated is as under :

2. The marriage of the appellant with Vandana took place on 07/05/2007. After the marriage, Vandana came to reside in her matrimonial house at Kathetali in Poladpur Taluka. Vandana was the daughter of P.W.3 – Dnyanoba Ganpat Kadam. Dnyanoba was residing with his family at Kambesharwadi which was about 8 k.m. away from Kathetali. About one year after the marriage, the appellant started abusing and assaulting Vandana. Vandana disclosed about the ill-treatment to her father. Dnyanoba then along with relatives went to the house of the appellant. The appellant apologized and assured that he will behave properly. However, in 2009 again the appellant started ill-treating Vandana. A meeting was held during which the appellant again assured that he will behave properly. On 13/05/2012, the appellant assaulted Vandana, hence, Vandana

lodged complaint against her husband i.e. appellant with the police. The police called Dnyanoba. In the police station, the appellant gave assurance of good behavior. The police sent Vandana to the hospital at Poladpur as she was beaten up. Medical treatment was given to Vandana. Again the matter was settled and Vandana started residing with the appellant i.e. her husband. It is the prosecution's case that in the night between 17/05/2012 and 18/05/2012, the appellant strangled Vandana and caused her death and thereafter to cause disappearance of evidence, he hung the body of Vandana from the beam in his house with the help of nylon rope. In the morning of 18/05/2012, Dnyanoba was informed that his daughter has hanged herself. Dnyanoba stated that his daughter would not hang herself. Dnyanoba thereafter went to the house of appellant. At that time, he saw that dead body of his daughter was hanging and her feet were touching the ground. One ladder was found by the side of the wall. Dnyanoba again stated his daughter would not commit suicide. Thereupon the appellant was called and the appellant stated

that as his wife Vandana was consuming Gutkha - Goa and she used to beg food from the neighbours, he committed her murder by throttling with the rope and thereafter hung her body from the beam. Dnyanoba lodged FIR. Thereafter, investigation commenced. After completing of investigation, the charge-sheet came to be filed.

3. Charge came to be framed under Sections 302, 201 & 498-A read with 34 of IPC against the appellant - original accused No.1 and his mother who was the original accused No.2. They pleaded not guilty to the said charge and the defence of the appellant was that of total denial and false implication. After going through the evidence adduced in this case, learned Sessions Judge acquitted original accused No.2 of all charges, however, convicted and sentenced the original accused No.1 - appellant as stated in paragraph 1 above. Hence, this Appeal.

4. We have heard the learned Counsel for the appellant

and learned APP for the State. We have carefully considered their submissions, judgment and order passed by the learned Sessions Judge and the evidence in this case and for the below mentioned reasons, we are of the opinion that the appellant committed an offence under Sections 302 and 201 of IPC.

5. There is no eye witness in the present case and the case is totally dependent on the circumstantial evidence. First circumstance against the appellant is extra judicial confession made by the appellant in the presence of P.W.2 – Harishchandra Vitthal Pawar, P.W.3 - Dnyanoba Ganpat Kadam and P.W.4 – Ramchandra Narayan More. P.W.3 - Dnyanoba was the father of Vandana. Dnyanoba has stated that deceased Vandana was his daughter. Marriage of Vandana with the appellant took place on 07/05/2007. Thereafter, Vandana started residing with the appellant in the matrimonial house. The appellant treated Vandana properly for one year, thereafter, he started ill-treating Vandana by abusing and beating her. His daughter Vandana disclosed about ill-treatment to him. Then a meeting was called

wherein the appellant apologized and assured that he will behave properly. Again in the year 2009, the appellant started ill-treating Vandana. Again meeting was held in which the appellant assured that he will behave properly. On 13/05/2012, Vandana lodged report against her husband i.e. appellant with the police. The police called Dnyanoba. In the police station, appellant gave assurance that he will behave properly. The police sent Vandana to the hospital at Poladpur as she was beaten up by the appellant. Medical treatment was given to Vandana. Again matter was settled and Vandana started residing with the appellant. On 18/05/2012, Dnyanoba received a phone call from one Captain More asking him to come to the village Kathetali. Hence, he went to the said village. On reaching village Kathetali, Captain More informed Dnyanoba that his daughter has hanged herself. Dnyanoba told him that his daughter would never hang herself. Thereafter Dnyanoba went to the house of the appellant. At that time, Dnyanoba saw dead body of his daughter hanging from the wooden beam and her feet were touching the ground.

Dnyanoba saw ladder by the side of the wall. Dnyanoba said that his daughter will never commit suicide. Sunil More called the appellant. Thereupon the appellant confessed that as his wife Vandana was consuming Gutkha – Goa and used to beg food from the neighbours, he committed her murder by throttling her and thereafter hanged her. Dnyanoba then lodged FIR.

6. P.W.2 Harishchandra stated that he went to the house of the appellant and saw Vandana hanging from a wooden beam. He saw feet of Vandana were touching the ground. He suspected that it was not a case of suicide. Meanwhile, the appellant was called in the meeting. In the presence of P.W.2, the appellant was asked how Vandana died. Thereupon, the appellant confessed that his wife Vandana was consuming Gutkha – Goa and frequent quarrels took place between them and because of that, he strangulated her with the nylon rope and thereafter hanged her.

7. P.W.4 - Ramchandra has stated that the appellant was

ill-treating his wife Vandana and hence, meetings were called and he has attended two such meetings. He went along with P.W.3- Dnyanoba to Kathetali. When they went to house of the appellant, he found that dead body of Vandana was hanging from nylon rope tied to the wooden beam and her feet were touching the ground. They suspected some foul play and thereafter the appellant was called. In their presence, Sunil More asked the appellant what had happened. Whereupon the appellant told them that he committed murder of his wife by strangulating her and thereafter hanged her body from wooden beam with the help of nylon rope.

8. The Supreme Court in the case of **Narayan Singh & ors. Vs. State of M.P 1985 Criminal Law Journal 1862** held that extra judicial confession cannot be brushed aside saying that it is a weak type of evidence.

Accepting the admissibility of extra judicial confession, the Supreme Court in the case of **Sansar Chand Vs. State of**

Rajasthan (2010) 10 Supreme Court Cases 604 has observed

thus:

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju V. State of Mysore - (1970) 2 SCC 105 : 1970 SCC (Cri) 320 : AIR 1971 SC 1871, Mulk Raj Vs. State of U.P - AIR 1959 SC 902 : 1959 Cri. L.J. 1219, Sivakumar Vs. State - (2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470 : AIR 2006 SC 653 (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari Vs. State of Maharashtra (2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320 and Mohd. Azad Vs. State of W.B. - (2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082 : AIR 2009 SC 1307."

In the present case, there is corroboration to the extra judicial confession from the medical evidence.

9. Another circumstance against the appellant is that the witnesses have stated that feet of Vandana were touching the ground. Not only P.W. Nos. 2, 3 & 4 have stated that feet of Vandana were touching the ground but P.W. Nos. 6 & 8 have also stated that the feet of Vandana were touching the ground. P. W. 8 has stated that the investigation in the case was given to him, hence, he went to the spot. He saw the dead body of deceased was found hanging from nylon rope and the feet were found touching the ground. P.W.6 – Vithoba Shankar Gaikawad panch witness to the spot panchanama has stated that spot of the

incident was the room which is on the southern side of the house. There was wooden beam to the roof. The dead body was found hanging from the beam with the help of nylon rope and the feet of the body were found fully touching the ground.

10. We have gone through the photographs. The photograph Article 10 also shows the feet of the deceased were fully touching the ground. In addition, the photograph Article 11 shows that a ladder was against the wall i.e. it was quite a distance from the dead body. In fact, P.W.3 has also stated that one ladder was found by the side of the wall. Thus, it was not possible for the deceased to climb on the ladder which was placed along with the wall and hang herself from the middle of the room. The circumstance in which the body was found clearly shows that it was not a suicidal death but a case of homicidal death.

11. Medical evidence also shows that it is the case of homicidal death. P.W.7 – Dr.Bhagyarekha Patil conducted the

postmortem on the dead body of Vandana on 18/05/2012. Dr.Patil stated that there were two turns of ligature marks of nylon rope on the neck of the deceased. Abrasions and bruises were found around ligature mark. According to Dr.Patil deceased died an asphyxial death due to strangulation. According to Dr.Patil deceased died a homicidal death. Dr.Patil further stated that in case of throttling with the help of nylon rope, the injuries noticed on the dead body are possible. On seeing photograph Article 10 which shows that the feet of the deceased were found touching the ground when she was found hanging, Dr.Patil opined that it would not be a case of death due to hanging. Thus, medical evidence also corroborates prosecution's case.

12. All was not well between the appellant and the deceased Vandana and there used to frequent quarrels between them during which the appellant used to assault his wife Vandana is further seen from the evidence of PW.3 Dnyanoba who was father of Vandana. He has stated that one year after

her marriage, his daughter has complained about ill treatment by the appellant due to which meeting was held and the appellant apologized and stated that he will treat his wife properly. Thereafter, in the year 2009, the appellant again began ill-treating Vandana. Again meeting was held and the appellant promised that he will behave properly. Dnyanoba has stated that on 13/05/2012, Vandana filed a report against her husband i.e. appellant with the police. Police then called Dnyanoba to the police station. In the police station also the appellant gave assurance that he would behave properly. The police then sent Vandana to hospital as she was beaten up. Medical treatment was given to Vandana. Again the matter was settled and Vandana started residing with her husband i.e. appellant. The incident has occurred just two days thereafter. The motive for the appellant to commit crime is also seen from the evidence of P.W.2 – Harishchanda and P.W.3 -Dnyanoba. Harishchandra has stated that the appellant said that his wife was consuming Gutkha - Goa and hence, frequent quarrels took place between them. Hence, he strangulated his wife Vandana

with the nylon rope. Apparently, the deceased was in the habit of consuming Gutkha - Goa and also begging food from the neighbours. This is seen from the evidence of P.W.3 -Dnyanoba who was father of Vandana. Dnyanoba has stated that the appellant confessed before them that as his wife Vandana was consuming Gutkha - Goa and used to beg food from the neighbours, he committed her murder. The evidence of Dnyanoba shows that he has admitted that it is true that he had persuaded his daughter Vandana not to consume Gutkha - Goa and not to beg food. It appears that this was the motive for the appellant to commit murder of his wife.

13. On going through the record, we are of the opinion that the prosecution has proved its case against the appellant beyond all reasonable doubt. Hence, there is no merit in the Appeal. Appeal stands dismissed.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)