

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No.52 OF 2013

Vinod Ramesh Thorve

... Appellant

Vs.

The State of Maharashtra

... Respondent

Mr.M.K. Kocharekar i/b Sandip Babar for the Appellant

Ms.M.H. Mhatre, APP, for the Respondent – State

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ.**

DATE: OCTOBER 30, 2018

JUDGMENT (PER MRS.BHATKAR, J.):

1. This appeal is preferred by the appellant/accused, who is a convict in Sessions Case No.165 of 2009 for the offences of murder and cruelty. By the impugned judgment and order dated 16.8.2011 passed by the learned Additional Sessions Judge, Pune, the appellant was sentenced under section 302 of the Indian Penal Code to suffer imprisonment for life and so also under section 498A of the Indian Penal Code to suffer R.I. for 3 years with fine.

2. Roopali, the wife of the appellant/accused No.1, died on 7.11.2008. The appellant is held guilty for murder of his wife Roopali who was killed on 7.11.2008.

3. One Gorakhnath Narayan Gangawane, the father of Roopali, is the informant. It is his case that his daughter Roopali got married with the appellant/accused approximately in the year 2006. However, the appellant/accused and his mother Shobha Ramesh Thorve both started demanding money from Roopali. Roopali on her visit to maiden home had told about the harassment at the hands of the appellant/accused. He gave Rs.20,000/- to the appellant and also requested that they should not harass his daughter. However, thereafter, Roopali used to complain that her mother in law abused and beat her. Her harassment had never stopped. The demand for money by the appellant and his mother continued thereafter. The appellant stopped working and so, the appellant alongwith two daughters, Roopali and his mother started residing in their village. The appellant and his mother both demanded Rs.1 lakh for constructing house which could not be fulfilled by PW1 Gorakhnath. On 30.10.2008, he was informed by his sister, PW5

Mangala Nagare, that she witnessed the appellant and his mother assaulting Roopali with kicks and fist blows out of the house. Then, on 6.11.2008, Gorakhnath received a message that his daughter Roopali was serious and so they should come to Pune. So, he went to Pune and found that she was admitted in Sassoon hospital and she had expired. He saw the dead body of Roopali and noticed injuries of beating and abrasions all over her body. So, the informant asked what happened and at that time, the appellant told that out of family dispute, he killed Roopali. The FIR (exh. 60) was registered at C.R. No.160 of 2008 under section 302, 498 r/w section 34 of the IPC, against the appellant and his mother. Inquest Panchanama was conducted by the Investigating Officer i.e., PW6 Narayan Bajirao Nanavare. Then, the death certificate (exh. 44) was collected, after post-mortem by the Investigating Officer (PW6). Spot panchanama was prepared on the same day, i.e., exh. 62. Then, the clothes of the Respondent were also seized under Panchanama (exh. 63). The clothes of the accused were seized under Panchanama (exh. 64). He recorded the statements of the witnesses and thereafter sent the articles to C.A. and after receiving C.A. report, which are exhibits 66 and 68, he prepared the chargesheet and filed it before the Court. The

case was committed to the Court of Sessions. The learned Additional Sessions Judge framed charge against the appellant and his mother and pleaded not guilty and adopted defence of denial.

4. The learned Judge after considering the evidence of prosecution and the defence of the appellant, convicted the appellant and his mother under the offence of cruelty under section 498A of the Indian Penal Code and under section 302 of the Indian Penal Code.

5. Mr.Kocharekar, the learned Counsel, submitted that the evidence in this case is short and insufficient to hold that the applicant/accused is guilty for the offence of murder of his wife. There is no eye witness to the incident. No witness has deposed stating direct involvement of the applicant/accused in the commission of offence. The learned Judge should have appreciated the defence that the deceased could have gone to answer nature's call in the early morning in the hilly area and in darkness might have succumbed to the injuries due to accidental fall which resulted into death. There is no evidence disclosing the presence of the appellant on the spot at the time of the incident.

As per the case of the prosecution, the deceased had gone to drink liquor. The chain of circumstances involving the applicant/accused is not complete. He further submitted that the evidence of the father of the deceased (PW1) ought not to have been accepted especially on the point of extra-judicial confession because he is an interested witness. He pointed out in the cross-examination that the Doctor has admitted that if a person falls from hill and comes in contact with stones while tumbling down, he injury No.9 to 10 and the internal injury is shown in postmortem report are possible due to impact of stones. This ought to have been accepted by the trial Court. The motive relied on by the prosecution is not proved. If the deceased was harassed and abused physically, she did not lodge a single complaint against the applicant/accused and his mother. So, this charge of cruelty against the applicant/accused are baseless without any material proof, the oral evidence of the interested witnesses on the point of demand of money for house should have been discarded. There is no evidence of last seen together against the applicant/accused. Thus, the judgment and order passed by the learned trial Judge of conviction on 18.8.2011 is to be set aside.

6. Learned Prosecutor while supporting the judgment of the trial Court has relied on the evidence of all witnesses especially the father PW1 Gorakhnath Gangawane and for the purpose of corroboration of evidence of PW5 Mangala Nagare, was pointed out and read over. The learned Prosecutor has submitted that both the witnesses have stated that the deceased Roopali was tortured by her mother in law and the husband. There was continuous demand of money. She was ill-treated when the demand was not fulfilled by the father PW1. He further submitted that on 6.11.2008, the father, who is a resident of Wanjarwadi, Taluka Karjat, District Raigad, received a message that his daughter Roopali was serious and was admitted Sassoon hospital and, therefore, he immediately rushed to Sassoon hospital, Pune. On the way, he came to know that his daughter Roopali had expired. The learned Prosecutor submitted that the accused Vinod has made extra-judicial confession that he killed Roopali. The learned Prosecutor has submitted that the prosecution also further relied on the evidence of Mangala who had deposed that on 30.10.2008, she has witnessed the applicant/accused and his mother assaulting Roopali and they drove her out. He further pointed out that the evidence of PW1 and PW5 is corroborated

with the evidence of Dr.Ajay Tawre PW4, who has conducted the postmortem and has opined that the death was due to asphyxia due to throttling with head injury. The learned Prosecutor has submitted that the prosecution has proved that the applicant/accused has committed murder of the deceased on the basis of circumstantial evidence which is sufficient to hold him guilty. Hence, the appeal be dismissed.

7. It is a short case of six witnesses. The prosecution has examined PW1 Gorakhnath Gangawane, PW2 Sanjay Gangawane, PW3 Avinash and PW5 Mangala Nagare on the point of cruelty and motive. They are the near relatives of the deceased Roopali. PW1 Gorakhnath has stated that he is the father of Roopali, Sanjay was her uncle and Mangala was the paternal aunt of Roopali. They have stated that prior to 2½ years i.e., 6.11.2018, Roopali got married to the accused and started residing with the accused at Thane. Initially for six months, she stayed happily. However, thereafter, the mother in law and the appellant/accused husband started harassing her. They ill-treated her; demanded money of Rs.30,000/- for giving deposit for the house on rent. The appellant/accused earlier was having business

of two auto-rickshaws and running vegetable shop, however, he suffered loss in the business and started ill treating the deceased. Thereafter, they demanded Rs.30,000/-. So, the father has deposed that he borrowed Rs.20,000/- from his brother and gave Rs.30,000/- to Roopali. However, the demand increased when the accused sold his rickshaws and shifted from Thane to village Disali. The accused started assaulting Roopali and demanded Rs.1 lakh from Roopali for constructing new house at their native place. He has stated that on 30.10.2008, his eldest sister Mangala Nagare i.e., PW5, contacted him on phone and told that she had been to Disali for some rituals and at that time, she witnessed that the appellant/accused had dragged Roopali out of the house and assaulted her with fists and kick blows. PW2 Sanjay Gangawne has stated that he has contributed to raise a fund of Rs.20,000/- to give it to the accused and he was aware that the accused continued to beat Roopali. PW5 Mangala in her evidence has deposed that on 30.10.2008, she had to village Disali for some rituals. The house of her relatives and the house of the accused are opposite to each other and at that time, she saw the accused and his mother were driving out Roopali out of the house and were beating her. She intervened and thereafter, she

phoned her brother and informed him about the incident. Thus, these witnesses corroborate each other on the point of demand and cruelty and the previous incident of 30.10.2008. The contention of the learned Counsel for the appellant/accused that all the three are interested witnesses and therefore, their evidence is doubtful, cannot be accepted. Generally, matrimonial disputes like demand or assault is not discussed by a woman in public but the woman is bound to tell her grief and about the ill-treatment to her father or mother or near relatives. Thus, the evidence of the relatives cannot be discarded in such cases on the ground that they are interested witnesses.

8. On the point of murder, there is no eye witness. However, PW1 Gorakhnath has stated that on 6.11.2008, Sanjay Gangawane i.e., PW2, the uncle of accused, Vinod, contacted him at night between 11pm and 1.30pm and informed that his daughter Roopali was serious and asked him to come immediately to Pune. So, PW1 Gorakhnath went to PW2 Sanjay, his brother, and alongwith their wives and relatives went to Pune and on the way, he was informed that Roopali was admitted in Sassoon hospital and has expired there. When he went to the hospital, he saw the

dead body of Roopali and on her neck, back, stomach, there were injuries of beating and abrasions. His nephew Avinash Gangavane (PW3) was with him. He asked the appellant/accused Vinod as to what happened and at that time, the appellant told that out of family disputes, he killed Roopali. Then, in the hospital itself, at 6.30 am, he lodged a complaint on 7.11.2008. The FIR is marked exhibit 23 dated 7.11.2008. PW2 Sanjay has corroborated the evidence of PW1 on the point of getting telephonic information about the death of Roopali. PW2 has deposed that PW3 Avinash asked Vinod as to what happened and at that time, he was told that he was bickering over the dinner and due to that, he killed Roopali by pressing her neck.

9. The evidence of PW3 Avinash discloses that on 6.11.2018 at 10pm, he received phone call from Sanjay, the uncle of Vinod that Roopali was serious and so, he asked him to come to Sahyadri hospital and so, he alongwith his wife went to Sahyadri hospital. At that time, the accused Vinod, Sanjay and Bharti brought Roopali to Sahyadri in a jeep. On examination in the hospital, the Doctor told that Roopali was dead and therefore, he asked him to take her to Sassoon hospital. At that time, PW3 Avinash asked Vinod as to

what happened and the accused answered that at about 4pm, there was a quarrel on account of dinner and, therefore, he assaulted Roopali. They all went to Sassoon hospital. He has stated in his evidence that he had seen the dead body of Roopali and he noticed several signs of beating on her body. PW5 Mangala has stated that on 6.11.2008, she received information from her brother at 11pm that Roopali had died in Sassoon hospital and she went to Sassoon hospital. She saw the dead body of Roopali and noticed many injury marks on her entire body – broadly on the neck, back, stomach, face. The accused was present and she asked him as to why he did so. The accused at that time, answered that on the reason of dinner, there was quarrel and, therefore, he has assaulted Roopali.

10. The learned Defence Counsel has relied on the admission given by PW1 Gorakhnath in para 11 of his evidence. In the cross-examination, PW1 gave admission that neither in his presence Avinash asked the accused Vinod as to what happened nor the accused Vinod told him in his presence that he killed (“maarle” in Marathi) Roopali due to domestic dispute.

11. While criticising this admission, the FIR which is the first

document prepared immediately after the incident by PW1, is to be seen. In the FIR, PW1 Gorakhnath has given all the details about the ill-treatment given by the appellant and the mother in law. He has stated that on 6.11.2008, he received a message from PW2 Sanjay that Roopali was serious and so, he started alongwith his brother and relatives to Pune. When he saw the dead body of Roopali, he found the injuries on her neck, stomach and all over the body. At that time, his nephew PW3 Avinash told him that he had asked the accused what happened and at the time, he answered that there was bickering on account of dinner and therefore, he killed her. Thus, the prosecution is successful in bringing on record that the accused did not give extra-judicial confession of killing Roopali in the presence of PW1 or PW2, but he confessed before Avinash. No weightage would have been given to the evidence of PW1 and PW2 on the point of extra-judicial confession of the accused otherwise if Avinash would not have been examined and would not have confirmed the fact of extra-judicial confession given by the appellant Vinod to him. In the absence of deposition of Avinash on this point, the evidence of PW1 and PW2 about extra-judicial confession would have been treated hearsay. However, the prosecution has diligently examined

Avinash, who has stated that he asked Vinod at Sahyadri hospital as he saw the dead body of Roopali as to what happened and at that time, the appellant told him that there was a quarrel earlier on the night and so, he assaulted her. Similarly, PW5 Mangala has independently deposed that when she saw injury marks on the entire body of Roopali. She asked the accused Vinod as to why he did so. At that time, he told her something that on account of quarrel on dinner, he assaulted Roopali. The conviction cannot be based solely on the extra-judicial confession. However, these witnesses corroborate each other on the point of motive and previous conduct of the accused. Similarly, all these witnesses have noticed many injury marks on the body of Roopali. At this stage, we would like to discuss the evidence of PW4 Medical Officer, Dr.Ajay Aniruddha Tavare, who is an independent witness. PW4 Dr.Ajay Tavare alongwith Dr.Vetal conducted the postmortem on 7.11.2008 between 10am to 11am. He noticed 18 injuries on her body. They were all in the nature of crescentic abrasions and lacerations. The abrasions were found on her mouth, neck, chest, elbow, forearms, scapular region, shoulder, buttocks, knee and he noted that all injuries were fresh and antemortem. On internal examination, he found there was haematoma in the scalp and

haemorrhages seen over brain matter. Also, neck haematoma in the strap muscles of the neck were seen. He has opined that this is a violent form of death and it is a homicidal death. Injury No.1 and 9 to 18 are possible during the struggle and resistance and injury Nos.2 to 8 are due to throttling and at the time of throttling, the head is struck on a hard substance. He has opined that cause of death was asphyxia due to throttling with head injury. Though, the Doctor has given admission in the cross-examination that if person falls from the hill and comes in contact with stone, in a revolving down position, the injury Nos.9 to 18 and internal injury shown in the postmortem are possible due to impact of stones. However, he has denied the suggestion that his opinion that the death was due to asphyxia due to throttling with head injury is false. His admission that such death is possible is not of any use to the defence in view of the entire evidence of the Doctor and if the overall evidence is taken alongwith notes of postmortem. The Investigating Officer PW6 Narayan Bajirao Nanvare has stated that he was a PSI at Paud police station on that day. He went to Sassoon hospital and thereafter, he recorded FIR (exh. 23). He registered offence at C.R. No.160 of 2008 under sections 498A, 302 r/w section 34 of the Indian Penal Code on the basis of the

FIR. Then, on the same day, he visited the house of the accused, drew panchanama. He also said that after collecting the evidence, he filed chargesheet. In fact, the panchanama of spot of offence is material because it does not throw much light. Thus, the evidence of four witnesses i.e., PW1, PW2, PW3 and PW5 and so also, the Doctor is consistent on the point of motive, assault, antemortem injuries, death of Roopali and subsequent extra-judicial confession by the 4 accused. Had Roopali suffered accidental death, then, the accused himself would have immediately informed the father and relatives of Roopali. He himself would have given the complaint to the police about the accidental death of Roopali and would have shown the spot from where she had fallen. However, nothing of such nature was done by the accused after the death of Roopali. Thus, in view of this post death conduct of the accused, we have no hesitation to accept the evidence of the witnesses on the point of extra-judicial confession. It is, therefore, an important and clinching evidence against the accused and thus, it completes the chain of the circumstances, which are sufficiently established by the prosecution through oral and circumstantial evidence. The evidence of all the witnesses are found very natural in view of the time sequence. Hence, we are of the opinion that the prosecution

has proved its case against the applicant/accused and no interference is required in the sentence of conviction.

12. The appeal is thus dismissed.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)