

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

CRIMINAL APPEAL NO. 615 OF 2002

The State of Maharashtra

... Appellant

V/s

1. Mukesh Bhojraj Puraswami
Aged about 26 yrs.
2. Kamlesh Bhojraj Puraswami
Aged about 22 yrs.
3. Memabai Bhojraj Puraswami
Aged about 56 yrs.
4. Smt. Renu Heramb @ Haresh Puraswami
Aged about 25 yrs.

All R/at : Barrack No. 678
R.No.2, Ulhasnagar : 3,
District : Thane.

... Respondents
(Ori. Accused).

Mr. A.R. Patil, APP for the State-Appellant.

Ms. Siddhi Bhosale h/f Mr. M. S. Mohite, Senior Advocate, for
Respondent Nos. 1 to 4.

**CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.**

DATE: 15th SEPTEMBER, 2020.

JUDGMENT (PER : V. G. BISHT, J.)

This Appeal is filed by the State challenging the judgment and order of acquittal dated 01st April, 2002 passed in Sessions Case No. 18 of 1999 by the 3rd Additional Sessions Judge, Kalyan, District-Thane, for the offences punishable under Sections 302, 177 r/w 34 of the Indian Penal Code (for short “IPC”).

2 The prosecution case in short is that, the informant’s daughter, namely, Jyoti @ Roma (for short “the deceased”) was married to accused Mukesh Bhojraj Puraswami (A-1) in the year 1995. The informant alleges that since after the marriage A-1 used to beat the deceased after consuming liquor and this fact was told to her telephoically, her elder daughter Smt. Kavita Sureshlal Nandwani (PW-3) and other relatives by the deceased.

3 According to the informant, on 20.11.1998 at about 2-00 p.m., the deceased rang her up and informed that the marriage of her brother-in-law, namely, Kamlesh (A-2) has been settled at Murtuzapur, Dist. Akola and the marriage ceremony is to be performed on 13.12.1998. The deceased further informed that A-1 is demanding her ornaments and as she is not obliging him, she is being subjected to beatings and further requested to come immediately.

4 According to prosecution, on 23.11.1998 one Devidas Kaluram Nandwani (PW 5) rang up informant at about 9-30 p.m. and informed that the deceased had fallen from staircases and is no more. The informant accordingly on 24.11.1998 along with her son Arjun (PW 4), daughter Deepa Bhagwandas Sharma and her daughter’s father-in-law namely, Ramchandra Sharma reached Ulhasnagar at about 10.40 p.m.

She saw the dead body of the deceased in the hospital. She also noticed black mark with a weal (व्रण) of half inch on the right side of her neck below ear extending up to jaw on the left side and her tongue also protruding. She then came to know that on 23.11.1998 as the deceased was not parting with her ornaments A-1, brother-in-law Kamlesh (A-2), mother-in-law Memabai (A-3) and sister-in-law Renu @ Sarala Haresh (A-4) killed her by strangulating the deceased by means of a rope and pretended the death of the deceased because of her falling from staircases as a result of entanglement of dupatta in her legs.

5 The informant accordingly lodged the First Information Report (for short "FIR") on the basis of which C.R. No. 223 of 1998 for the offence punishable under Section 302 r/w 34 of IPC came to be registered. Investigation was taken up by PW-10- Ramesh Dinkar Athawale, Investigating Officer. During the course of investigation he prepared inquest panchanama, spot panchanama, recorded the statements of witnesses, recovered a nylon rope at the instance of A-1 and collected viscera sample and send it to Forensic Laboratory. PW-9 Dr.Arjun Jaywant Jagtap conducted autopsy on the body of the deceased and reserved the opinion as to the cause of death till report of viscera was received. However, after the receipt of viscera, as the same did not disclose any poison, he opined that death was due to Asphyxia due to hanging. On completion of the investigation, PW 10-investigating officer, filed the charge-sheet against the appellants/accused under Sections 302, 177 r/w 34 of IPC and committed the case to the Court of Sessions, Kalyan.

6 To substantiate the charge against the appellants/accused, the

prosecution has examined as many as 11 witnesses and exhibited number of documents. The appellants/accused were questioned under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") about the incriminating evidence and circumstances and the appellants/accused denied all of them and pleaded that the witnesses being the relatives of the deceased have deposed falsely against them. They further pleaded that the deceased was a T.B. patient and was getting treatment of Dr. Dodwani and Central Hospital, Ulhasnagar Camp No. 3. The doctor had advised to keep the child of deceased away from her and themselves also including the clothes of deceased, pots and utensils. The deceased was loosing her temper on petty grounds and even attempted to commit suicide by cutting her wrist with a blade prior to the incident in question. According to them, she committed suicide as she was suffering from T.B. and as her marriage was performed against her wish, she was not happy.

7 Mr. Patil, learned APP, submitted that the learned Trial Court miserably failed to take into consideration the evidence of material witnesses, viz, mother and siblings of the deceased. So also the evidence of autopsy surgeon was totally overlooked which clearly pointed out that it was a case of homicidal death. The judgment and order of acquittal being perverse and contrary to the law, the same deserves to be set aside, argued learned APP.

8 Ms. Bhosale, learned counsel for the respondents/accused, on the other hand, supported the impugned judgment and order of acquittal and further submitted that there being no merit in the Appeal, same is liable to be dismissed.

9 Before looking into the testimonies of material witnesses, viz. PW-1, PW-3 and PW-4, we propose to refer to Postmortem Report conducted by PW-9 Dr.Arjun Jaywant Jagtap (Exh. 51).

10 PW-9 testifies in his evidence that on 25.11.1998 he was attending his duty in Central Hospital, Ulhasnagar, Camp No. 4. On 24.11.1998, at about 11.45 p.m., the deceased was brought by one S.S. Gurav for autopsy. He accordingly conducted autopsy with the assistance of Dr. H.A. Tidke and found surface wounds and injuries as follows:

“Ligature mark seen around neck about ½ inch wide, purple red in colour. Lower on right side, upper on left side. From right to left, hair line behind to left side, upto to sterno mastoid, oblique deep, depressed, more on right.

Other injuries :

Fracture thyroid bone.

The injuries were ante-mortem.

Thorax :

Larix, trachia and bronchi congested, blood stained.

Additional remarks :

Dark thin blood oozed on cut section of neck.

Buckle cavity teeth, tongue and;

Pharynx :

Tongue bitten between teeth and lightly protruded.

11 His evidence then shows that the viscera was preserve, cause of death was reserved till the receipt of opinion of viscera from Chemical Analyzer. It is his further evidence that on 15.03.1999, he received opinion from the office of Chemical Analyzer and found that no poison

was detected in viscera. According to him, the cause of death of deceased was Asphyxia. But he cannot definitely say whether it was homicidal or suicidal.

12 If cross-examination of this material witness is anything to go by then we feel that all is not well with this witness for reasons to follow. The examination-in-chief of this witness is indicative of the fact that even after receiving the reports of viscera which admittedly showed no poison having been found, this witness was of the opinion that the cause of death of the deceased was Asphyxia. But then he qualified his own statement by stating that he cannot say with certainty whether the death of the deceased was homicidal or suicidal.

13 It appears from his cross-examination that on 26.11.1998 police had forwarded a letter to this witness in respect of death of the deceased with certain queries and according to him, on the very day i.e. on 26.11.1998 he replied the queries. It is very much pertinent to note here that this correspondence between the investigating machinery and this witness was not brought in the examination-in-chief of this witness for the obvious reasons. We say so because the answer to the queries raised by police are quiet self explanatory in their nature. The queries answered by this witness is brought in the cross-examination by the defence at Exh. 59, which reads as under;

“ To,
The PI,
Central Police Station,
Ulhasnagar -3.

Sub : Your letter No. 100/98, Accidental death
of Mrs. Roma Mukesh Puraswani.

Ref : Your letter dt. 28.11.98.

Sir,

Following answer are given for your further
necessary action.

- i) The ligature mark around neck is due to hanging.
 - ii) The said ligature mark cannot be due fall on saw
stained case Railing.
 - iii) The said ligature mark is more probably due to
suicidal cause/form.
 - iv) There are no blood stain on the body of the Mrs.
Roma Mukesh Puraswani.
- The clothes are blood stained, on Rt. Side, i.e. kurta and
braseere.
- v) The said ligature is due to hanging.”

14 From the answer so given by this witness to the queries of police, it is more than clear that a ligature mark found around neck of the deceased was due to hanging, ligature mark was more probably due to suicidal cause or form and the said ligature is due to hanging. Then immediately next to this document is the opinion as to the cause of death (Exh. 59/3) at page 148 of the paper book and this witness opined that the death was Asphyxia due to hanging.

15 These two material documents viz. Exh. 59 and Exh. 59/3 essentially impel us to question the sincerity of this witness. He himself has contradicted vitally and we are here to say that Exh. 59 and Exh. 59/3 take away the wind out of the prosecution's sail as to its murder

theory.

16 The cross-examination of this witness further shows that this witness agreed and admitted to the propositions that in case of homicidal strangulation, the marks of struggle and resistance may present and then on going through the Postmortem report stated that he did not observe marks of struggle on the dead body. In view of this, for now, the possibility of homicidal strangulation may be ruled out.

17 From the above, it is more than clear that the cause of death of the deceased was Asphyxia due to hanging. Before putting our stamp of approval to this finding, we are open to the evidence of material witnesses led by prosecution and in all earnest would like to go through it before returning any conclusive finding as to the homicidal or suicidal death of the deceased.

18 PW 1 Sushiladevi Kisanchand Bhat, informant and the mother of the deceased, stated in her evidence (Exh. 36) that the deceased got married to A-1 in the year 1995. The deceased telephoned her three days prior to the incident in question and informed that the marriage of her brother-in-law Kamlesh (A-2) was to be performed after 13 days and the family members are forcibly taking her jewellery and ornaments. They were raising quarrels and beating her even.

19 It is her further evidence that the deceased had been to her house twice after her marriage and on each visit used to tell that her family members and husband were not giving her proper treatment, raising quarrels while A-1 used to beat her after consuming liquor and thus all

of them were subjecting her to cruelty.

20 She further stated that on the day of incident at about 9.30 pm, Shri. Nandwani (PW-5), who is father-in-law of her daughter, telephoned and informed about the death of the deceased as the latter had fallen from a ladder and requested her to come there at the earliest. On the next day of the incident, she along with her son Arjun (PW-4), her daughter Deepa and one Ramchandra (father-in-law of Deepa) reached Ulhasnagar at about 10-30 pm. She saw the deceased and noticed blackish red mark across her neck and the tongue had come out from her mouth. She then lodged the report with the police and proved it at Exh. 37.

21 As far as substantive evidence of the informant-mother is concerned, it corroborates the contents of FIR to the extent that she was told by the the deceased that A-1 after consuming liquor used to beat her. Neither FIR nor the evidence shows the reasons behind that. Be that as it may, however, the fact remains that the remaining evidence of informant-mother is not absolutely reliable inasmuch as the same does not form the part and parcel of her own complaint.

22 To begin with, it is very much clear from her substantive evidence that all the accused were in habit of picking up quarrels with the deceased and were not treating the deceased properly after the marriage. We do not find such accusations, except to the extent of A-1, in the FIR. According to the evidence, the accused were subjecting her to cruelty. Section 498A of IPC provides that if a married woman is subjected to cruelty by husband or his relative, the offender is liable to

be punished for the sentence indicated in the section what would constitute an offence under Section 498A of the IPC has been defined under the explanation. As per first definition contained in clause (a)-it means a willful conduct which is of such a nature as is likely to drive the victim woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). The other definition of cruelty is in clause (b) and is attracted when a woman is harassed with a view to coercing her or any of her relation to meet any unlawful demand for any property or valuable security or is on account of failure to meet such demand.

23 It is not at all the case of the prosecution that the alleged cruelty perpetuated by the accused or their conduct, as the case may be, was of such a nature which was likely to drive the deceased to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). Similarly, it is also not the case that the deceased was harassed with a view to meet any unlawful demand for any property or valuable security from the parents or relatives of the deceased. Suffice to say the alleged harassment does not fall squarely under the definition of 'cruelty' so given in the explanation to Section 498A of the IPC. We find no good reason to the applicability of Section 498A of the IPC in the present facts and circumstances of the case.

24 Reverting back to the evidence of the informant-mother, it appears to us that all the accused were trying forcibly to take the jewellery and ornaments from the deceased whereas the FIR shows that it was only A-1, who was insisting to part with her jewellery and ornaments and when she refused to budge, she was subjected to thrashing by A-1.

25 One more important aspect which deserves our consideration is about lodging of FIR by informant-mother. Admittedly, the deceased died on 23.11.1998 in the night hours. It is also not disputed that on the next day which is apparent from her evidence, at about 10.30 p.m., the informant along with her son, daughter and one Ramchandra reached Ulhasnagar at about 10.30 pm and after noticing the dead body of the deceased and black red mark across her neck, she lodged complaint with the police. There is no confusion from her evidence that the complaint was lodged by her on the same day i.e. on 24.11.1998 whereas, it appears that the FIR (Exh. 37) on record came to be lodged on 25.11.1998 at about 7.20 pm. Disquietingly enough, the discrepancy between her oral evidence and the FIR on record is nowhere explained by the prosecution. There is no explanation where the first complaint which came to be lodged on 24.11.1998 is gone. Needless to say, the FIR produced at the trial (Exh. 37) does not appear to be earliest information given by PW-1-informant to the police. In this circumstance, the accused are entitled to benefit of doubt.

26 PW-3 Smt. Kavita Sureshlal Nandwani, the elder sister of the deceased, stated in her evidence (Exh. 39) that she used to meet the deceased after the interval of 15 days after her marriage. The deceased always used to complain that her mother-in-law Smt. Memabai (A-3) was in habit of always raising quarrels with her and her husband (A-1) used to beat her after consuming liquor. It is her further evidence that 12 days prior to the incident she had met the deceased and was told of her subjecting to the cruelty by A-1 to A-4. She was further told that A-1 to A-4 are pressing and demanding her jewellery and ornaments but she was not willing to handover her jewellery and ornaments. Lastly, she

stated that on 23.11.1998 at about 1-00 p.m., the deceased telephoned her and told that A-1 to A-4 were beating her as she refused to deliver them her jewellery and ornaments. The deceased even asked her to visit her residence atleast for a night so that she can state her the entire affairs.

27 The evidence of this material witness can be conveniently decided into two parts. The first part of her evidence shows that the deceased always used to complain that A-3 was in habit of picking up quarrels, which is not at all the case of the prosecution as is already noted by us while discussing the evidence of informant-mother. Moreover, this piece of evidence has come on record by way of omission inasmuch as nothing of this sort was stated by this witness during the course of recording of her statement by the investigating officer. When she was confronted in her cross-examination, she insisted that during the course of recording of her statement before the police she had stated that A-3 used to raise quarrels with deceased. However, this omission is duly proved by PW-10, investigating officer at para 9 of his cross-examination wherein he stated that this witness had not stated before him that A-3 was in habit of picking up quarrels with deceased.

28 Her evidence then further shows that 12 days prior to the incident, the deceased had met her and complained of cruelty. This is a sort of an omnibus statement and does not give an insight to understand the nature and the reason of the cruelty. The evidence then further shows that all the accused were pressing and demanding the jewellery and ornaments from her but she was not willing to handover the same. Similar evidence is adduced by informant-mother as noted above and at

the cost of repetition, we point out that this is not a case of prosecution that all the accused used to press the demand and asked the deceased to part with her jewellery and ornaments. This kind of accusation are made only against A-1 in the FIR.

29 The second part of her evidence shows that on the day of incident i.e. on 23.11.1998, at about 1.00 pm, the deceased had telephoned her and told of being beaten at the hands of A-1 to A-4 as she had refused to deliver her jewellery and ornaments. Again, this material piece of evidence has come by way of omission on record and this omission is duly proved by PW 10-investigating officer in his cross-examination at para 9 by stating that this witness had not stated before him that deceased had told her about beating by A-1 to A-4 as she had refused to deliver her ornaments and jewellery.

30 The last important witness is PW-4 Arjundas Kisanchand Bhat, brother of the deceased. It is his evidence (Exh. 43) that the deceased was subjected to beating by A-1 after consuming liquor. He was also told by the deceased that her mother-in-law (A-3), brother-in-law (A-2) and her sister-in-law (A-4) were subjecting her to cruelty. Again, we point it out here that it is not such a case of prosecution that A-2 to A-4 were subjecting the deceased to cruelty. Moreover, whatever this witness has stated regarding the cruelty, it has come on record by way of omission and this omission is duly proved by PW 10- investigating officer in his cross-examination at para 9 by stating that this witness had not stated before him that A-2 to A-4 subjected the deceased to cruelty and beating.

31 Although PW-8 Deepak Shrichand Bhatia, a neighbour (Exh. 49) has been treated hostile by the prosecution but from his cross-examination we gather that this witness supports the stand taken by the accused/appellants in their statement recorded under Section 313 of the Cr.PC. This witness admitted that the deceased was getting treatment for Tuberculosis and treating doctor had advised that the deceased be kept away from the children. The doctor had further advised to keep pots and utensils of deceased separate. He further admitted that the deceased turned eccentric and sensitive apart from being hot tempered. Thus, the evidence of this witness reflects the mental status of the deceased at the relevant time.

32 Coming to the aspect of certain discovery, according to prosecution, a rope at the instance of A-1 came to be recovered with the help which he and other accused allegedly strangled the deceased. PW-6 Ramu Ballanna Gaura (Exh. 46) whose services were availed as a panch witness for the purposes of recording of discovery statement and the seizure panchanama of a rope consequent to the alleged discovery statement given by A-1 is treated hostile by the prosecution without any gain. Knowing that this panch witness has not supported the prosecution, for the reasons best known to it, it did not rope in another panch witness who along with PW 6 had acted for the purpose. It appears that all was then left to PW 10-investigating officer to elaborate on this aspect.

33 PW 10- investigating officer stated in his evidence (Exh.55) that on 28.11.1998 A-1 was in his custody and disclosed and volunteered to produce one rope. Therefore, information disclosed by him was reduced

into writing in presence of two panchas. Thereafter, he, A-1, panchas went to house of A-1. The accused entered his house and produced one rope hidden in the box of his bed. It was seized by drawing panchanama in presence of panchas.

34 Before adverting to the aforesaid evidence and its admissibility, we may with profit refer here the decision given in the case of **State of Punjab V/s Gurnam Kaur and others**¹ wherein the Hon'ble Apex Court held that by reason of statement made by an accused some facts have been discovered, the same would be admissible against the person who had made the statement in terms of Section 27 of the Evidence Act.

35 In **Aftab Ahemed Ansari V/s State of Uattaranchal**² the Hon'ble Apex Court after referring to earlier decision in **Pulukuri Kottaya V/s King Emperor**³ held that when the accused was ready to show the place where he had concealed the clothes of deceased, the same was clearly admissible under Section 27 of the Evidence Act because the same related distinctly to the discovery of the clothes of the deceased from very place.

36 In **Bhagwandas V/s State (NCT) of Delhi**⁴, the Hon'ble Apex Court held that when the accused had given a statement that related to discovery of an electric wire by which the crime was committed, the said discovery statement is admissible as evidence.

37 In the case at hand, quiet surprisingly PW 10- investigating officer,

1 2009 (11 SCC 225)

2 AIR 2010 SC 773

3 AIR 47 PC 67

4 AIR 2011 SC 1863

first of all, nowhere says the precise nature of the statement given by A-1 whilst in custody. It is not at all his evidence that not only the accused had given the statement that related to discovery of certain fact but in fact, pursuant to the statement of such a nature, the accused led them to the place from where the object in the commission of offence was produced in respect of which he had earlier given the statement. The investigating officer rather remained complacent by stating that accused volunteered to produce one rope. It is not his specific evidence that the accused volunteered to produce the rope used in the commission of offence and which concealed at a particular place that he would show it and accordingly produced it (the rope).

38 Tested on the anvil of the aforesaid principle, the factum of recovery is not proved beyond reasonable doubt by the prosecution.

39 Assuming for the sake of argument that there is total compliance of Section 27 of the Evidence Act, but then equally important aspect is that the rope was never shown to PW-9 autopsy surgeon, who conducted an autopsy on the dead body of the deceased. There is no evidence to show that PW-9 after having seen the rope in question opined that rope might have been used in the commission of offence. Thus, either way, the alleged discovery does not in any manner further the case of prosecution. We are thus of the view that the alleged recovery does not in any manner helps prosecution.

40 In the aforesaid premise, we conclude that the learned Trial Court has taken into consideration all the material aspects of the case. The prosecution has not been able to make out good grounds for

interference at the hands of this Court. The impugned order being in accordance with law and being neither perverse nor illegal, the Appeal is liable to be dismissed. Hence, the Appeal is dismissed accordingly.

41 Bail bonds, if any, shall stand cancelled.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)