

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

CRIMINAL APPEAL NO.351 OF 2012

1. Santosh Shahadu Sorate,	
2. Sachin Shaahdu Sorate,	
3. Vatsalabai Shahadu Sorate, &	
4. Shantabai Fakirchand Nagpure.	 Appellants
Versus	
The State of Maharashtra	... Respondent

.....
WITH
INTERIM APPLICATION NO.1438 OF 2020
IN
CRIMINAL APPEAL NO.351 OF 2012

Sachin Shahadu Sorate (Nagpure)	 Applicant
Versus	
The State of Maharashtra	 Respondent
....	

Mr. Murtaza Najmi, Advocate i/b. Ms. Jayashri Raje Mahadik-Chavan,
for the Appellants in Criminal Appeal No.351/2012 & for the applicant
in Interim Application No.1438/2020.
Ms. S.V. Sonavane, APP for the Respondent–State.

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**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

RESERVED ON : 15th SEPTEMBER, 2021

PRONOUNCED ON : 30th SEPTEMBER, 2021

JUDGMENT : [*PER SARANG V. KOTWAL, J.*]

1 The appellants have challenged the judgment and order
dated 8.2.2012 passed by the Additional Sessions Judge-2, Niphad

in Sessions Case No.27/2009 convicting and sentencing all the appellants. They were convicted for commission of the offence punishable under Section 302 read with 34 of the Indian Penal Code and were sentenced to suffer RI for life and to pay a fine of Rs.3,000/- each; and in default to suffer RI for three months. The appellants were convicted for commission of the offence punishable under Section 201 of the Indian Penal Code and were sentenced to suffer RI for three years and to pay a fine of Rs.1000/- each; and in default to suffer RI for two months. The sentences were directed to run concurrently and they were given set off for the period spent as under-trial prisoners. All the appellants were acquitted from the charges of commission of the offence punishable under Section 498-A and 306 read with 34 of the Indian Penal Code.

2 The charge was framed under different heads against all the appellants. The first charge was under Section 498-A read with 34 of the Indian Penal Code. The second charge was under Section 306 read with 34 of the Indian Penal Code. Alternatively, they were also charged under Section 302 read with 34 of the Indian Penal Code. The third charge was under Section 201 read with 34 of the

Indian Penal Code.

3 The prosecution evidence was ambiguous on various important aspects. In support of its case, the prosecution examined only five witnesses. PW-1 Rajendra Parate and PW-2 Ramrao Sonkusale were the relatives of the deceased Sheetal. The appellant No.1 was her husband. The appellant No.2 was her brother-in-law. The appellant No.3 was her mother-in-law and the appellant No.4 was a relative of other appellants. PW-3 Sunil Jadhav was a pancha for the spot panchnama, but, he did not support the prosecution case. He was declared hostile. PW-4 Dr. Sagar Lokhnde was the Medical Officer who had conducted postmortem examination. PW-5 API Rajendra Patil was the investigating officer who had investigated C.R. No.23/2009 registered at Yeola City police station.

4 The prosecution case, in brief, is as follows:

. Initially, an Accidental Death case No.12/2009 was registered at Yeola police station in respect of death of Sheetal. Inquest panchnama and spot panchnama were carried out. The spot was shown by father-in-law of the deceased i.e. father of the

appellant No.1. Thereafter, FIR was lodged on the complaint made by PW-1 Rajendra Parate. It is alleged that a *Saree*, which was used in the offence, was recovered at the instance of appellant No.1 husband. Investigation was carried out and the charge-sheet was filed. The case was committed to the Court of Sessions.

5 The prosecution evidence is as follows:

. PW-1 Rajendra Parate was the brother of the deceased. He has deposed that the deceased had got married with appellant No.1 Santosh on 7.12.2008. He has stated that after her marriage the deceased started residing at Yeola in a joint family. All the appellants were staying together. On one occasion, the maternal uncle of the deceased had gone to bring her to her parental house as per the custom, but, the accused did not send her. According to him, whenever the deceased had a telephonic talk with him, she used to inform that the accused were ill-treating her. She told him that she would come to her parental house on 3.3.2009 and tell them the details. On 4.3.2009 however this witness received a phone call from Yeola police station informing that the deceased had died because of strangulation of her neck. On 5.3.2009, the

informant along with his other relatives went to Yeola. He saw the dead body. He noticed a ligature mark on the neck and then he lodged his FIR. The FIR is produced on record at Exhibit-26. The cross-examination of this witness is mainly about the background of the accused and of the deceased and their initial talks of marriage. He denied the suggestion that the deceased was not willing to marry appellant No.1. He admitted that when he came to Yeola after the incident, he directly went to Yeola police station, but, did not tell anything about Sheetal to police.

6 PW-2 Ramrao Sonkusale was the maternal uncle of the deceased. His evidence is on similar lines. He has deposed that the deceased had told them that the accused were not fair persons and that the deceased's family had committed a mistake by getting her married with appellant No.1. The deceased had told them that she would give all the details once she met them at their place. However, before that, the incident took place. He stated that he was not aware as to whether the deceased was not willing to marry the appellant No.1.

7 PW-3 Sunil Jadhav was a spot pancha, but, he was

declared hostile. He has stated that he was called for the panchnama on 4.3.2009. He has stated that the police showed him the broken door and the latches lying at the spot. The spot panchnama was brought on record at Exhibit-29. He denied the suggestion that on 5.3.2009 again he was called for panchnama in connection with seizure of a *saree* at the instance of appellant No.1.

8 The spot panchnama Exhibit-29 mentions that the spot was shown by Shahadu Fakir. He was father of appellants No.1 & 2 and husband of appellant No.3. The spot panchnama merely describes the details of the house which consisted of two rooms and a bath room. It was conducted from 3:00 p.m. to 3:45 p.m. on 4.3.2009. The panchnama specifically mentions that nothing suspicious was found and, therefore, nothing was seized.

9 PW-4 Dr. Sagar Lokhande had carried out the postmortem examination. His deposition as well as postmortem notes mention following important aspects :

“2. Surface wounds and injuries :- Ligature marks seen over neck below the level of lower border of thyroid cartilage partially encircling

the neck. The ligature mark of right side of neck is more prominent than left side of the neck. Ligature mark on right side of neck is 9 cm in length and 1 cm in width. It is curved shape extending horizontally 4 cm below the angle of mandible. It is hard to feel reddish in brown in colour and margins are ecymosed base is grooved. Ligature mark on left side of the neck is 10 cm in length and 1 cm in width extending from lower border of thyroid cartilages horizontally anteroposterially backward, 7 cm below the left angle of mandible, it is reddish brown in colour, hard to feel and margins are ecymosed.

3. It reveals from dissection of neck that the ligature mark on sub-cutaneous tissues under the ligature mark are congested, ecymosed muscles of neck. Blood vessels of neck are congested, fiber of platysma muscles are torn on right side. Tracheal cartilage are compressed and congested. Lower border of thyroid cartilage and left lobe of thyroid is congested.
4. At the relevant time no fracture of hyoid and thyroid cartilage detected. The injuries were ante mortem injuries.”

10 This witness i.e. PW-4 has given an opinion that the cause of death was death due to cardio respiratory failure due to asphyxia due to strangulation. He confirmed his opinion even after receiving the CA report. According to him, the death was

homicidal. The postmortem notes are produced on record at Exhibit-35. According to him, the injury with ligature mark was possible by soft *saree*, piece of clothes etc.. His cross-examination as to whether it could be a case of homicide or suicide was important which reads thus :

“6. I agree with the preposition that in case of hanging fracture of thyroid cartilage is less common but in case of strangulation by ligature fracture is more common. Likewise in case of larynx and trachea, in case of hanging fracture is rare and in case of strangulation fracture may be found. In case of strangulation blood from the nose, mouth, ears is common. In case of hanging, blood from the nose, mouth and ears is not common. In case of hanging involuntary discharge of faeces and urine less common. In case of strangulation it is more common. In case of hanging, the tongue is not always protruded. In case of strangulation it is more common.”

11 The CA report of the *saree* recovered in this case showed it had blood stains of about 1.5 cm, but, there was neither skin nor saliva detected on it. The blood group could not be determined.

12 PW-5 API Rajendra Patil was the investigating officer. He

has deposed that during the investigation of A.D. case No.12/2009, he prepared inquest panchnama and spot panchnama. On the next day, he received FIR which was registered vide C.R. No.23/2009. He had himself recorded the FIR. On 9.3.2009, at the instance of the present appellant No.1 a *saree* was recovered. The panchnama is produced on record at Exhibit-40. The *saree* was recovered from his house. It was concealed below the iron cupboard. He had arrested all the accused and had filed the charge-sheet.

This is the entire prosecution case.

13 The defence of the appellants is of total denial. According to the appellants; because of the anger, false case was lodged.

14 Learned counsel for the appellants submitted that the evidence against the appellants is not sufficient to prove the prosecution case beyond reasonable doubt. The father-in-law of the deceased who was also residing with other appellants; is not made an accused. There is no distinguishing feature as far as he is concerned. The prosecution has simply chosen other accused and made them accused for no particular reason.

15 He relied on the judgment of the Hon'ble Supreme Court

in the case of **Nagendra Shah Vs. State of Bihar**¹ to contend that the case being similar the appellants deserve benefit of doubt. He also relied on the cross-examination of the medical officer and some commentary from Modi's Medical Jurisprudence to contend that even homicidal death is not proved.

16 On the other hand, learned APP submitted that it was incumbent on the appellants to have explained the death of the deceased as burden was on them under Section 106 of the Indian Evidence Act. In support of her contention, learned APP relied on the judgment of the Hon'ble Supreme Court in the case of **Jayantilal Verma Vs. State of M.P (Now Chhattisgarh)**².

17 Learned APP also relied on the judgment of the Hon'ble Supreme Court in the case of Trimukh Vs. State of Maharashtra, as reported in 2006(10) SCC 681 in support of her similar contentions. In that case there was ill-treatment caused to the deceased which was an important circumstance. This most important circumstance is lacking in this case.

1 Passed on 14.9.2021 in Criminal Appeal No.1903/2019 (Hon'ble Supreme Court)

2 Passed on 19.11.2020 in Criminal Appeal No.590/2015 (Hon'ble Supreme Court)

18 As far as the contentions of the appellants regarding the postmortem notes are concerned, learned counsel for the appellants has relied on the cross-examination of the doctor and on commentary from Modi's Medical Jurisprudence. The medical evidence in this case shows that the ligature mark around the neck was not complete. It is described as partially encircling the neck. In case of strangulation it was expected to be continuous around the neck. The hyoid bone was not fractured which was expected in the case of strangulation. On the other hand, the margins of the ligature were ecymosed, which suggested case of strangulation. Thus, as per commentary from Modi's Medical Jurisprudence, there are some indications that it could be a case of hanging, but, there are also some indications that it could be a case of strangulation. However, at this stage, the medical opinion given by the doctor that, it is a case of homicide cannot be overlooked, though some doubt is created. In any case, the appellants are acquitted of the charges of commission of offence punishable under Section 306 read with 34 of the Indian Penal Code and it is held that there is no evidence of abetment of commission of suicide.

19 The crucial question remains as to who could be held to be responsible for the commission of this offence. In this particular case, the prosecution case is cryptic. It does not show how the investigation actually started and where exactly the dead body was found. The spot was shown by the father-in-law of the deceased, but, there is no substantive evidence of any witness showing that the dead body was inside that house. The prosecution has not examined any neighbours or any other witness from that place to show that the deceased had died inside that house. The spot panchnama does not mention any peculiar fact about the house. Only description of the house is mentioned.

20 The prosecution has not explained the time when the incident had occurred. No witness from the locality or the neighborhood was examined to explain this aspect either. Therefore, there is nothing to show that the offence was committed at odd hours or it was committed at the time when all the inmates of the house were expected to be inside the house. The prosecution has not led any evidence to show that all or any of the appellants were inside the house when the incident had taken place. Very

significantly the father-in-law of the deceased who was also one of the residents of the same house was not made an accused and no distinction whatsoever is made by the prosecution in his case and the case of the present appellants. Only the vague evidence which the prosecution wants to rely on; is the evidence of PW-1 Rajendra Parate and PW-2 Ramrao Sonkusale, who deposed that all the appellants were residents of the same house as they were residing together.

21 The motive for commission of this offence is also not established. The appellants are acquitted from the charges of offence punishable under Section 498-A of the Indian Penal Code. There is nothing to show that on what ground the deceased was harassed. The only vague allegations are made that the deceased had told PW-1 Rajendra Parate and PW-2 Ramrao Sonkusale that they had made a mistake in marrying her with appellant No.1. But, that does not establish any reason or motive for commission of murder, against any of the appellants.

22 The recovery of *saree* from the same house is also quite suspicious. The spot panchnama was carried out on 4.3.2009. All

the rooms were examined. Subsequently, on 9.3.2009 from the same house a *saree* was recovered at the instance of the appellant No.1 from below a cupboard. This was not mentioned in the spot panchnama of the same place. Therefore, this recovery is doubtful.

23 The only question needs to be considered seriously is about the absence of explanation offered by the appellants. In that connection, **Nagendra Sah's** case (supra) relied on by learned counsel for the appellant assumes importance. In that case also the in-laws of the deceased were very much staying in the same premises where the appellant in that case and the deceased were staying. Paragraphs-17 and 21 of that judgment are important, which read thus :

“17. In this case, as mentioned above, neither the prosecution witnesses have deposed to that effect nor any other material has been placed on record to show that the relationship between the Appellant and the deceased was strained in any manner. Moreover, the Appellant was not the only person residing in the house where the incident took place and it is brought on record that the parents of the Appellant were also present on the date of the incident in the house. The fact that other members of the family of the Appellant were

present shows that there could be another hypothesis which cannot be altogether excluded. Therefore, it can be said that the facts established do not Rule out the existence of any other hypothesis. The facts established cannot be said to be consistent only with one hypothesis of the guilt of the Appellant.

- 21.** When a case is resting on circumstantial evidence, if the Accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the Accused to discharge the burden Under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the Accused.”

24 In the present case also not only the appellants, but, even the father-in-law was resident of the same house. In this case also there could be another hypothesis which could not be altogether excluded. In this case before us the prosecution has failed to travel the distance beyond the hypothesis of “the accused may have committed the offence” and “the accused must have committed the

offence”.

25 As explained in this **Nagendra Sah’s** case (supra), first it was the duty of the prosecution to explain the basic facts and then only Section 106 of the Indian Evidence Act could be used against the accused. When the chain of the circumstances itself was not established, falsity or absence of defence was no ground to convict the accused.

26 As far as the case of **Jayantilal Verma** (supra), relied on by learned APP is concerned, it makes a reference to the other family members and it was observed that since no explanation was given as to how the wife could have received the injuries it was held to be strong circumstance indicating that the husband was responsible for commission of the offence of murder when the death was caused by strangulation. It was also observed that the appellant therein was under obligation to give a plausible explanation regarding cause of death in the statement recorded under Section 313 of Cr.P.C.. However, in that case there were severe allegations of ill-treatment suffered by the deceased in that case. In the present case that important evidence is not proved by

the prosecution. In fact all the appellants are acquitted from the charges of offence punishable under Section 498-A of the Indian Penal Code. There is nothing on record to suggest that the deceased was harassed by any of the appellants. The motive is not established at all. In the context of the case, it was an important circumstance which was required to be proved by the prosecution. The case has to be looked in the background that the father-in-law is not made an accused. There is absolutely no distinguishing feature between the father-in-law of the deceased and any of the appellants. Therefore, it cannot be presumed that any of the appellants or all of them had committed the offence punishable under Section 302 read with 34 of the Indian Penal Code.

27 The prosecution has not led sufficiently cogent evidence in this case. None of the neighbours or people from the locality are examined. There is no evidence to show that any of the appellants was in the house when the incident had taken place. There is nothing to show that the incident had taken place at odd hours when all the appellants were expected to be inside the house. There is no evidence to show as to how the investigation started.

There is a reference to a accidental death report which was investigated first. At that time, inquest panchnama and spot panchnama were carried out, but, nothing is brought on record to show who had shifted the deceased or her dead body to any hospital and how the police were informed. All these links were important to complete the chain of circumstances. Therefore, the Court is left to enter into the realm of inferences and conjectures. This is not permissible in a criminal trial. The prosecution has miserably failed to prove its case beyond reasonable doubt. The prosecution has not proved the only hypothesis of commission of murder by the appellants. The other possibilities are not completely ruled out. Therefore, the benefit of doubt will have to be given to the appellants in this case. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. The judgment and order dated 8.2.2012 passed by the Additional Sessions Judge-2, Niphad in Sessions Case No.27/2009 is set aside.

- iii. The appellants are acquitted from all the charges, for which they were convicted and sentenced.
- iv. The fine amount, if paid, be refunded to the appellants.
- v. The appellants be released from jail in connection with Sessions Case No.27/2009 on the file of Additional Sessions Judge-2, Niphad, if not required in any other case.
- vi. Criminal Appeal is disposed of in aforesaid terms. In view of disposal of Criminal Appeal, Interim Application No.1438/2020 also stands disposed of.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)

Deshmane (PS)