

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1557 OF 2018**

1. Chetan Dashrath Gade
Age 28 years, Occ.- Agriculturist

2. Akshay Dashrath Gade
Age 24 years, Occu. - Agriculturist
Both R/o. Shinvad Shivar,
Tal. Dindori, Dist. : Nashik.
(Presently detained at Nashik Road
Central Prison, Nashik.

... Appellant (Orig. Accused
Nos.1 and 3)

V/s.

1. The State of Maharashtra

... Respondent/ Orig.
Complainant

Mr. V.B. Shivarkar, Advocate for the Appellant.

Ms. P.P. Shinde, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

JUDGMENT RESERVED ON : 5th FEBRUARY 2021

JUDGMENT PRONOUNCED ON : 15th MARCH 2021

JUDGMENT : (Per Sadhana S. Jadhav, J.)

1. The present appeal seeks to challenge the impugned judgment and order dated 30th November 2018 passed by the Additional Sessions Judge, Nashik in Sessions Case No.355 of 2015 thereby convicting the appellants for the offences punishable under

sections 302, 201 r/w 34 of Indian Penal Code and sentencing them to suffer life imprisonment and to pay fine of Rs.1,000/- each, in default, to suffer two months simple imprisonment.

2. The case of the prosecution is as under :

. That, Rupali – daughter of Babasaheb Kumbharkar (P.W.1) got married to the present appellant no.1- accused no.1 on 24th April 2012. That, she was living in her matrimonial home along with her husband, her in-laws and the appellant no.2 – accused no.3 (younger brother of accused no.1). In November 2012, she had conceived pregnancy. Unfortunately, on 28th June 2013, there was intrauterine death of the fetus due to lack of blood supply as has been disclosed by P.W.3 – Dr. Sunil Jadhav. In March 2015, she had given birth to a baby boy in a private hospital at Pimpalgaon, Baswant.

3. On 23rd August 2015, father of the deceased Rupali i.e. P.W.1 had called upon her father-in-law Dashrath and intimated to him that he would come to Shindvad to fetch Rupali to her maternal house on the occasion of Raksha Bandhan. However, at about 1.30 pm, accused no.3/appellant no.2 – Akshay informed P.W.1 that his sister-in-law i.e. Rupali is no more. At about 2.50 pm, the father of the

appellant – Dashrath Gade approached Vani Police Station and informed that he had been to Khambala to participate in the 10th day rituals of his relatives. At about 11.00 am, his elder son Chetan had informed him that his wife Rupali had attempted suicide by hanging in their residential house but he suspected that she had not died and therefore, he is taking her to the Doctor. Dashrath Gade had then reached Vani Hospital and he was informed that Rupali had died. On the basis of his report, A.D. No.38/2015 is registered at Vani Police Station. The said report is marked at Exh.152.

4. One of the relatives of P.W.1 Mr. Pawar who is resident of the same village informed P.W.1 that Rupali had committed suicide. The parents and relatives of Rupali had gone to the residence of Rupali and upon inquiry, they had learnt that she was taken to Primary Health Centre at Vani Government Hospital. They had been to the Hospital and they had seen that there was a fresh injury mark on the right side of her cheek and there was a ligature mark on her neck. Due to disclosure made by Rupali to her mother on the earlier occasions that she was being harassed and ill-treated for failure to fetch one Tola Gold from her parents. P.W.1 approached Vani Police Station and

lodged a report on the basis of which Crime No.99 of 2015 was registered at Vani Police Station at about 22.30. At the trial, prosecution examined as many as 11 witnesses to bring home the guilt of the accused.

5. According to P.W.1, the accused were demanding Rs. 1 Lakh for purchase of a pick-up vehicle and that Rupali was being harassed on that count. According to P.W.1, in the second week of January, he had handed over Rs.1 Lakh to the father-in-law of Rupali when he had been to fetch Rupali. From the tenor of the cross-examination, it appears that P.W.1 had verified the economic condition of the appellants prior to the marriage and only on realizing that their economic condition was sound they had got Rupali married to the appellant no.1. It is also elicited in the cross-examination that they had a wine-yard in their agricultural land. That, they were possessing Swift Car. P.W.1 has also admitted that his economic condition was equally good. The suggestion extended to P.W.1 shows that according to the accused, Rupali had committed suicide. P.W.1 has deposed in consonance with the FIR. It is testified before the Court by P.W.1 that when they saw the dead body at Vani Hospital, P.W.1 had noticed that the earrings of her left ear, anklet of right leg and toe rings in both legs

were missing. It is admitted in the cross-examination that P.W.1 and his relatives were present at the time of drawing inquest panchanama. It is specifically denied that chit was found inside the blouse of his daughter at the time of drawing inquest panchanama.

6. Unfortunately, P.W.7 – Shaila Kumbharkar, mother of the deceased in the interest of her grandson has resiled from her earlier statement and is declared hostile. She has admitted before the Court that there was a compromise between the accused and P.W.1 and P.W.7 since the accused had agreed to transfer 1½ Acre land in favour of Ram, the one and half year old son of the deceased Rupali viz. Ram who was in the custody of his grant parents at Patoda. It is extremely unfortunate that a young woman, and a mother of a one and half year child has died in her matrimonial house and yet the mother of the deceased has turned hostile. However, the admission that a compromise is arrived at in the interest of the minor speaks volumes for itself.

7. Prosecution has examined P.W.3 – Dr. Sunil Jadhav to prove that Rupali had delivered a dead fetus on 28th June 2013 which was an intrauterine death of the fetus due to lack of blood supply to the

uterus.

8. PW.6 - Dr. Amol Jadhav has deposed before the Court that he had examined a female, seated on the rear seat of the vehicle of the appellant no.2. On 23rd August 2015, at about 12.45 noon, appellant no.2 - accused no.3 had hastily visited the clinic of Dr. Amol Jadhav which he was running in the name of Dr. Jadhav Accident Hospital and Maternity Hospital at Pimpalgaon Baswant and had hastily requested him to examine a patient. The certificate is at Exh.81. That, on examination, he had found her dead as her pupils were dilated, pulse was not recordable, he had also seen a scar on her neck and therefore, advised the appellant to take her to Civil Hospital. He had identified the appellant no.2 as the person at whose request he had examined the patient. The appellants had instead, visited Radhakrishna Clinic run by PW.9 – Dr. Swapnil Mahajan.

9. Dr. Swapnil Mahajan – P.W.9 has testified before the Court that upon examination of Rupali, he found that the eye-lids were dilated, pulse was not recordable. He had then done ECG but could not find electrical connectivity. Hence, he along with Dr. Aher, declared the patient dead.

10. PW.5 – Dr. Rajendra Bagul had conducted autopsy on the dead body of Rupali on 23rd August 2015 between 8.30 pm to 9.00 pm.

The observations at the time of performing autopsy were as follows :-

“3. In respect of surface wounds and injuries three ligature marks were existing.

1. Ligature mark completely encircling the neck at the little/ upwards at the level of thyroid cartilage which was 42 cm around, 1 cm in width 7 cm from the chin.

2. Ligature mark little obliquely upward 3 cm in length, extending to the right, meeting to 1st and 3rd line.

3. 16 cm in length above thyroid cartilage 5 cm below the chin. Bruise mark on left side of mandible – first about 1 cm, second 3 cm imprint mark of ligature.

4. All the injuries mentioned in column No.17 were ante-mortem injuries. There was no injuries to the scalp, no skull fracture, brain was normal.

5. In case of thorax, there was fracture of hyoid bone. Fracture of trachea. Right and left lungs were congested. Heart was normal. Left chamber is empty. Right chamber contain blood.

6. There was little 50 ml to 70 ml semi digested food (mostly liquid). Intestine, Liver Pancreas, spleen kidney were congested. Organs of generations were normal. Viscera was preserved. No fracture of cervical vertebra.”

11. PW.5 – Dr. Bagul had observed that there was sub-conjunctival hemorrhage. Nails were cyanosed. According to him, the cause of death was “asphyxia due to strangulation”. All the injuries

were ante-mortem. There was fracture of trachea. There were no marks of starvation. It is elicited in the cross-examination of P.W.5 that the features in case of strangulation and hanging are almost similar. That bruise marks is not a separate injury but is corresponding to the injuries mentioned in column no.17. P.W.5 was shown article 'D' i.e. rope with which Rupali had allegedly hanged herself and the observation of P.W.5 are as follows :-

“Now article produced along with Exh.38 Sr. No.5 shown to me. With the help of this rope, the injuries mentioned in column No.17 of Exh.99 PM notes are possible. The said article is marked as article-D.”

12. P.W.2 – Anita Borgude is a panch for inquest panchanama which is at Exh.76 and she has proved the contents of the inquest panchanama. The recitals of the inquest panchanama show that there was a ligature mark on her neck admeasuring 42 cm x 1 cm. There were abrasions on her chin. There were marks of clotting of blood and also marks on her wrist. The observation of P.W.1 are corroborated by the inquest panchanama which shows that the anklet in the right leg, earrings in her left ear and both the toe rings were missing. In the inquest panchanama, there is a reference to finding a chit in the blouse of the deceased wherein it is stated that she has committed suicide by

hanging and does not hold any person responsible for the same. In fact, it can be seen from the evidence of P.W.1 that in the course of investigation, Police had taken the sample of handwriting of Rupali. What was given to the Police is the admission form which Rupali had submitted to the college on 23rd June 2010. In all probabilities, because of the compromise arrived at between the accused and parents of the deceased, a transcript of the actual handwriting of Rupali was not given to the Police and the whole exercise is futile. We also cannot exercise powers under section 73 of the Evidence Act as the material for comparison is insufficient, moreover, the signature on the admission form is in the maiden name.

13. PW.10 – Investigating Officer – Milind Khodave was attached to Vani Police Station and was entrusted with the investigation in C.R. No.99 of 2015. He had received A.D. Report, spot panchanama, inquest panchanama, advance cause death certificate and hand sketch map. He had seized a chit which was allegedly found on the person of the deceased at the time of inquest panchanama. He had also seized one rope which was prepared of four twine strings together. He had arrested all the accused and recorded the statements

of the witnesses, he had recorded the statement of P.W.3 – Dr. Sunil Jadhav, P.W.5 - Dr. Rajendra Bagul, P.W.9 – Dr. Swapnil Mahajan and P.W.10 – Mr. Milind Khodave. In the cross-examination, he has candidly denied the *plea of alibi* taken by the present appellants by denying the suggestion that it had transpired in the investigation that the appellants were working in their land at the time of incident. In the present case, strangely enough the prosecution has examined both the Doctors who are signatories to the post-mortem notes. It appears from the record that the Investigating Officer had also sought opinion of Dr. Gore in respect of the cause of death as mentioned in the post-mortem notes. He has testified in the cross-examination as follows:-

“It is true that I have not given the observations of strangulation in PM last column, according to me, I had given the observations in column Nos.17, 18, 19. It is true in the column No.18, the bruise mark and imprint mark are mentioned according to me, which is one and the same.

...

... according to me, they are three in numbers. It is true in hanging, there used to come ligature marks on the neck. Upward ligature marks are sign of hanging. The ligature marks mentioned in column No.17 (1) and (2) are going upwards.

... There may be the signs of hanging if we read 1, 2, 3 ligature marks mentioned in column No.17.”

14. The learned counsel for the appellants submits that the case against the accused is based on circumstantial evidence and the

prosecution has failed to establish the chain of circumstances to prove the guilt of the accused. It is submitted that there is no eye-witness to the incident. The fact that the accused are acquitted of the charge under sections 498A and 304B of Indian Penal Code would further establish that the deceased was not meted with any harassment or ill-treatment at the hands of the accused persons. That, therefore, there was no motive on the part of the accused to kill Rupali. Implicit reliance is being placed on Exh.71 which is a suicidal note, the contents of which, according to the learned counsel proves that Rupali had committed suicide and did not hold anyone liable for the same. Hence, the learned counsel prays for acquittal of the appellants. The learned counsel for the appellant has placed reliance upon the judgment of Division Bench of this Court in the case of ***Motiram Marotrao Bhongade vs. The State of Maharashtra***¹, in which the accused was acquitted for the want of cogent and convincing medical evidence. The Division Bench of **A.P Lavande and P. D. Kode, JJ.**, has observed as follows :-

“she candidly admitted that she did not carry out post mortem in respect of hanging matter. She admitted that ligature mark as found in the present case would be of hanging. She also admitted that in the post mortem report,

1. (2010) 3 Mh.L.J. (Cri) 503

earlier, hanging was written while giving opinion, but subsequently she found that it was strangulation and therefore, the strangulation was written.”

The facts of the said case are not relevant for the purpose of appreciation of the facts in the present case. Every judgment in a criminal case is based on the facts of that particular case and hence, we are of the opinion that the said judgment cannot be relied upon in the present case.

15. Per contra, the learned APP submits that the suicide note is forged and planted by the accused. That the medical evidence clearly establishes that the deceased was put to death by strangulation and that the accused has not discharged onus cast upon him under section 106 of the Indian Penal Code.

16. Upon examination of the evidence adduced by the prosecution and upon hearing the submissions advanced by the respective counsel, the following facts can be inferred :-

- 1) The recitals of A.D. Report lodged by the father of the accused would show that on 23rd August 2015 at about 11.00 am, the accused had informed him telephonically that Rupali had hanged herself and that she is being taken

to the Hospital.

- 2) P.W.6 - Dr. Amol Jadhav had examined Rupali and noticed a scar on the neck, her pupils were dilated and pulse unrecordable, he had therefore, advised them to take her to the Civil Hospital instead, the appellants choose to take her to Radhakrishna Hospital.
- 3) P.W.9 – Dr. Swapnil Mahajan had not only examined Rupali clinically but had also done Electro-Cardiogram test and was reassured that the patient had expired. It is pertinent to note that while performing ECG no chit was found in the blouse of the deceased. It is, therefore, established that the said chit at Exh.61 is planted subsequently, just before the inquest panchanama was recorded.
- 4) The spot panchanama at Exh.77 shows that the deceased had purportedly committed suicide in an open shed abutting the house of the accused which does not inspire the confidence of the Court. That, there were injury marks on the wrist of the deceased, there were bruises on her cheek which would show that she was subjected to violence before she was strangled.

17. The absence of one earring, anklet and toe rings further substantiates the indictment that the victim had struggled to rescue herself from the clutches of the assailant.

18. The medical evidence also further fortifies the finding of homicidal death. The fracture of larynx and trachea are clear indications of death by strangulation. The ligature mark is only slanting upward and not exactly below the cartilage.

19. In the case of *Javed Abdul Razzaq Shaikh vs. The State of Maharashtra*², the cause of death was shown as “asphyxia due to strangulation” and the defence of the accused was that of “hanging”. There was also fracture of the larynx and trachea as in the present case. The Medical Officer in that case had opined that in the case of throttling by hand fracture of larynx and trachea cannot occur. It occurs in strangulation only. The Apex Court, in the said case, has observed thus :-

“It is no doubt true that in the case of hanging, fracture of the larynx and trachea is very rare and that too it may be found in judicial hanging. On the other hand, fracture on the larynx, trachea and hyoid bone indicates strangulation.”

20. It necessarily needs to be held that the chain of

² (2019) 10 SCC 778

circumstances coupled with the false explanation offered by the accused is inconsistent with the innocence of the appellant/accused no.1. An offence under section 302 of IPC against accused no.1 is proved by the prosecution beyond reasonable doubt. The Supreme Court, in the case of *Deonandan Mishra vs. The State of Bihar*³, has held as follows :-

“It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”

21. As a matter of fact, the protection and welfare of wife is the sole responsibility of her husband. She enters into matrimonial abode with a faith and trust in her husband and it is his duty to protect her. However, dowry deaths, suicides at matrimonial abode defy the said duties cast upon the husband. Appellant no.1 has failed

3. 1955 AIR 801

in his duty to protect his wife instead, he has eliminated her and has deprived the infant son of his mother's love. In addition, he has hampered the investigation by winning over the mother of the deceased by offering 1½ Acre of land which the child was even otherwise entitled to as a legal heir.

22. As far as the appellant no.2/orig. accused no.3 is concerned, he appears to be the younger brother of the appellant no.1/orig. accused no.1. On the basis of the evidence of P.W.9, it can be said that he was aiding and assisting his brother after the incident had occurred. He had taken his brother and the deceased to the clinic of P.W.9 and thereafter to Radhakrishna Clinic of P.W.6. P.W.6 in his substantive evidence has identified the appellant/orig. accused no.1 as the person who had accompanied the patient – Rupali. This has to be read in consonance with the fact that the phone call was made to the father Dashrath by the appellant no.1/ orig. accused no.1 informing him that Rupali had attempted to commit suicide in the residential house. Appellant no.2/orig. accused no.3 had only informed P.W.1 and P.W.7 that “Rupali is no more”. All these aspects would show that the appellant no.2/ orig. accused no.3 has made all efforts to cause disappearance of evidence and therefore, he deserves to be convicted

for the offence punishable under section 201 of IPC. Section 201 reads as under :-

“201.Causing disappearance of evidence of offence, or giving false information to screen offender.— Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years’ imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.”

In view of the above discussion, we are of the opinion that the conviction of the appellant no.2/accused no.3 for the offence punishable under section 302 r/w 34 of Indian Penal Code deserves to be quashed and set aside. Hence, we pass the following order :-

ORDER

- (i) Appeal is partly allowed;
- (ii) The conviction and sentence imposed upon the appellant no.2 - orig. accused no.3 for the offence punishable under section 302 of the IPC vide judgment and order dated 30th November 2018 in Sessions Case No.355 of 2015 is hereby quashed and set aside;
- (iii) Orig.Accused No.3 – appellant no.2 is convicted for an offence punishable under section 201 of IPC and is sentenced to suffer RI for three years;
- (iv) Sentence of fine is maintained;
- (v) The conviction and sentence of the accused no.1/ appellant no.1 for the offence punishable under section 302 of the IPC is maintained;
- (vi) The appellant no.2 / orig. accused no.3 is entitled to the set off for the period already undergone during the period of trial and pendency of the appeal;
- (vii) The appeal stands disposed of.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)