

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 137 OF 2015

Ashok @ Revannath s/o. Muktaji Barkade,
Age – 28 years, Occ-Agriculture,
R/o- Tamaswadi, Tq. Newasa,
Dist. Ahmednagar.

... APPELLANT

VERSUS

1. The State of Maharashtra,
Through A.P.I. Newasa Police Station,
Tq. Newasa, Dist. Ahmednagar.

2. Maruti Waman Thorat,
Age: Major, Occu: Agril.
R/o. Vilad Pimpri, Tal. Nagar,
Dist. Ahmednagar.

... RESPONDENTS

...
Mr. Joydeep Chatterji, Advocate for Appellant.

Mr. R. V. Dasalkar, APP for Respondent No.1.

Mr. Z. H. Farooqui, h/f Mr. N. V. Gaware, Advocate for Respondent No.2.

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CORAM : **SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.**

DATE : 15th June, 2022.

ORAL JUDGMENT: (Per Sarang V. Kotwal, J.)

. The appellant has challenged the judgment and order dated 6th February, 2015 passed by the District Judge-1 and Additional Sessions Judge, Newasa in Sessions Case No.67 of 2014. By the impugned judgment and order, the appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay fine of Rs.25,000/- and in default to suffer simple imprisonment for six months. The appellant was not separately sentenced for commission of offence punishable under Section 498-A of the Indian Penal Code, though he was convicted under that section also. Out of the fine amount, Rs.25,000/- was directed to be given to the complainant as compensation under Section 357(1) of the Code of Criminal Procedure. The appellant was given set off under Section 428 of the Code of Criminal Procedure.

2 Alongwith the appellant, his parents also faced the trial. All of them were charged for commission of offence punishable under Sections 302 and 498-A read with 34 of the Indian Penal Code. The other accused i.e. parents of the appellant were acquitted of all the charges.

3 We have heard Mr. Joydeep Chatterji, learned counsel for the appellant, Mr. R. V. Dasalkar, learned APP for the State and Advocate Mr. Z. H. Farooqui, holding for Mr. N. V. Gaware, learned counsel for the respondent No.2.

4 The prosecution case is about suspicious death of the appellant's wife Jyoti on 8th January, 2012. The prosecution case is that it was a homicidal death. According to the prosecution case, because of the demand made by the appellant, which was not fulfilled, Jyoti was harassed and ultimately eliminated by the appellant. It is the prosecution case that, the appellant administered poison 'Thimet' to the deceased forcibly and then hanged her on a Neem tree in an agricultural field and tried to make it appear as if the deceased had committed suicide. The appellant was not available when the FIR was lodged by the father of the deceased. After the investigation was carried out, during its course, the appellant was arrested on 9th January, 2012. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.

5 During trial, the prosecution examined eight witnesses as follows:

- i) PW-1 Maruti Waman Thorat was father of the deceased and the first informant.
- ii) PW-2 Sopan Bhikaji Hodgar was maternal uncle of the deceased.
- iii) PW-3 Kavita Giru Karande was a friend of the deceased.
- iv) PW-4 Sanjay Motilal Achpale was a Panch for inquest Panchanama.
- v) PW-5 Appasaheb Gorakshnath Dinde was a Panch for spot *Panchanama*.
- vi) PW-6 Dr. Ashok Madhavrao Karale the medical officer, who had conducted the postmortem examination.
- vii) PW-7 API, Sandesh Narhari Chakor had conducted investigation on 8th January, 2012.
- viii) PW-8 PSI, Shashikant Joshi had conducted investigation and had recorded statements of witnesses.

6 The defence of the appellant was of total denial.

7 After recording the evidence and statements of the accused under Section 313 of the Code of Criminal Procedure and after hearing the parties, the learned Judge passed the impugned judgment and order convicting and sentencing the appellant.

8 PW-1 Maruti Thorat, as mentioned earlier, was the father of the deceased Jyoti. He has deposed that, Jyoti was married to the appellant on 3rd May, 2009. After the marriage, for about 5 to 7 months, she was treated properly. But, thereafter, the accused started demanding Rs.50,000/- for installing bore-well and electric motor. This allegation is made against all the accused including the two acquitted accused. It is not specifically made only against the present appellant. He has further deposed that the accused started harassing Jyoti for not fulfilling that demand. She used to tell the informant and others about the harassment caused to her when she used to visit their house. PW-1 had tried to convince the accused to treat her properly. However, there was no improvement. In the meantime, she gave birth to her son. On 8th January, 2012, the informant received a phone call from the appellant, who told the informant that Jyoti was suffering from some illness. The informant was called immediately to the appellant's village Tamaswadi. The informant and his wife went there. The deceased was not found in the house. She was found in the field hanging to a Neem tree. The Neem tree was surrounded by sugarcane crop. She was seen in standing position. There was some poisonous smell from her mouth. The appellant's uncle Vijay reported the matter to the police station. PW-1 has categorically deposed that accused Nos.1 and 2 i.e. the

appellant and his father had administered poison to Jyoti causing her death. He has further deposed that the accused hanged her to a Neem tree to make it appear as a case of suicide. The first informant, on these allegations lodged his FIR on 9th January, 2012. The FIR is produced on record at Exhibit-23. The informant himself had arranged a photographer for taking photographs of the deceased at the spot. Those photograph are produced on record as articles A-1 to A-16. He identified those photographs.

In the cross-examination, he has admitted that nothing suspicious was found near the place where the deceased was found hanging. According to the first informant, the appellant as well as his father-accused No.2 (Muktaji Barkade) were absconding. The appellant was not present even for the funeral. Some contradictions and omissions from his FIR were put to him in the cross-examination. However, they are not significant. He admitted that the accused owned a land at Tamaswadi. He categorically admitted that there was a bore-well and an electric motor in the field of the accused.

9 PW-2 Sopan Hodgar was maternal uncle of the deceased. He has repeated the same allegations made by the PW-1. He has added that the deceased used to say that the accused would kill her if the amount was not paid. He had also accompanied the informant to

village Tamaswadi when the incident occurred. In the cross-examination, he has stated that his statement was recorded on 29th April, 2014. He has also admitted that the parents of the appellant were present at the time of inquest *Panchanama*, which was made in the presence of this witness. He has also admitted that PW-1 had told him about the harassment caused to the deceased. He could not explain the omissions from his statement that Jyoti was informing him about the harassment caused to her by the accused.

10 PW-3 Kavita Karande was a friend of the deceased. She has stated that the accused started harassing Jyoti for money for installing electric motor and bore-well. Jyoti used to tell her about it. This witness advised Jyoti to inform about the harassment to Jyoti's mother, father and even to the present appellant. On such advice, Jyoti told her that the appellant was under control of his parents. This witness has further stated that when Jyoti had come to her parents' house at the time of Diwali, she was not ready to return back to the house of the accused because of the harassment. But her father and uncle had taken her back to the house of the accused. In her cross-examination, this witness has accepted omissions from her police statement. She has accepted that she had told the police that Jyoti did not want to return back to the house of the accused because of

constant harassment, but this portion was not found in her police statement.

11 PW-4 Sanjay Achpale was a Panch for inquest *Panchanama*. However, the injuries are described in detail in the postmortem notes.

12 PW-5 Appasaheb Dinde was a Panch for spot *Panchanama*. The spot *Panchanama* is produced on record at Exhibit-30. The spot *Panchanama* shows that agricultural field of the accused was at about 625 feet from the tree where the deceased was found hanging. The bottle of poison was found in the field of the accused.

13 PW-6 Dr. Ashok Karale had conducted postmortem examination. He has stated that he had found one injury by way of imprint/depressed groove of size 8 inches X 1/2 inch, over anterior aspect of neck extending from left retro-auricular to right retro-auricular. The groove was hard and blackened. The opinion expressed by him provisionally was "death occurred due to cardio respiratory arrest, due to asphyxia due to hanging". However, final opinion was reserved as viscera was sent to chemical analyser. After

receipt of CA report, final opinion was given as “cardio respiratory arrest, due to asphyxia due to thimet poisoning”. He has opined that before death Jyoti was hanged. The doctor has further opined that in an suicide attempt, feet of the person would not touch the ground. According to this doctor, to make it appear as suicide, somebody may have hanged the deceased subsequently. The *Postmortem* notes are produced on record at Exhibit-34.

14 The CA report shows that there was thimet found on the clothes of the deceased as well as in the viscera. Therefore, there is no dispute that she had consumed thimet and it contributed to her death. Whether she was forced to consume it, would be an important question.

15 PW-7 API, Sandesh Narhari Chakor had identified the photographs. He had conducted the spot *Panchanama*.

16 PW-8 PSI, Shashikant Joshi had recorded statements of witnesses and the contradictions in the statements of the witnesses are proved through his evidence.

17 Learned Trial Judge, in his judgment, enumerated the following circumstances:

- i) Motive;
- ii) False information given by the appellant;
- iii) Making it appear as a case of suicide by hanging only to misguide;
- iv) Recovery of poison bottle ;
- v) Homicidal death;
- vi) The appellant absconding; and
- vii) Possession of poison with the appellant.

18 The learned Judge acquitted the other two accused on the ground that there was no sufficient material on record to prove that the accused Nos.2 and 3 i.e. parents of the appellant had shared common intention with the appellant for committing murder of Jyoti. Learned Judge emphasised on the appellant's absconding to distinguish his case from that of his parents.

19 Learned counsel for the appellant submitted that the prosecution case is not proved beyond reasonable doubt. The opinion sought by the police from the medical officer helps the

appellant. He submitted that assuming the deceased had committed suicide, the appellant cannot be held responsible under Section 306 of the Indian Penal Code. Learned counsel for the appellant relied on the judgment of the Honourable Supreme Court in the case of *Paramjeet Singh alias Pamma Vs. State of Uttarakhand*, reported in, *(2010) 10 Supreme Court Cases 439*, wherein it was observed that abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by police, cannot be said to be unnatural. Thus, mere abscondence by accused after commission of crime and remaining untraceable for few days, by itself cannot establish his guilt. Abscondence, by itself, is not conclusive proof of either guilt or of guilty conscience.

20 Learned counsel for the appellant submitted that touching the feet to the ground is not by itself sufficient to rule out the possibility of suicidal hanging.

21 Learned APP, on the other hand, submitted that the bottle of poison was found atleast 625 feet away from the tree on which Jyoti was found hanging. Considering the quantity of poison consumed by her, it was not possible for her to walk from that place to the tree where she could have hanged herself. Therefore, obviously it

was done by somebody else and the evidence suggests that it was done by the appellant. It was submitted that the motive and other circumstances against the appellant are duly proved by the prosecution for completing the chain of circumstantial evidence against him and therefore, the conclusion of guilt is properly recorded. It should not be interfered with.

22 We have considered these submissions. The evidence in this case regarding harassment is given by PW-1, PW-2 and PW-3. This evidence is against all the accused and yet on the basis of the same evidence, two other accused are acquitted by the learned Judge. There is absolutely no distinction as far as those allegations are concerned between the role of the appellant and the role of other two accused. The State has not challenged their acquittal. All the three witnesses have stated that the accused were demanding Rs.50,000/- for installing electric motor and bore-well in their field and on that ground the deceased was harassed. The evidence of PW-1 shows that in fact there was a bore-well and electric motor in the field of the appellant. Therefore, the demand on that count itself is doubtful.

23 PW-2 has admitted that there is omission from his

statement that the deceased herself had informed him about the harassment. His statement is recorded after two years of the incident. Therefore, even otherwise the evidence of PW-2 is not believable. As far as the evidence of PW-3 is concerned, significantly she had advised the deceased to complain to the appellant himself about the harassment caused to her. This shows that the grievance of the deceased was against the parents of the appellant and not against the appellant. PW-3 has in fact stated that Jyoti told her that the appellant was under control of his parents. Jyoti's grievance was therefore, against the appellant's parents. Cumulative effect of evidence of P.W. 1, 2 and 3 create doubt about commission of offence under Section 498-A against the appellant. Therefore, considering these circumstances, in our opinion, even the allegations of committing offence under Section 498-A of the Indian Penal Code are not proved beyond reasonable doubt by the prosecution against the appellant. Therefore, these circumstances cannot be used against the appellant.

24 As far as the circumstance of the appellant's non-availability till his arrest is concerned, the observations of the Honourable Supreme Court made in the case ***Paramjeet Singh alias Pamma Vs. State of Uttarakhand*** (supra) are applicable in this case.

25 The learned Trial Judge has committed an error by observing that the poison was found with the appellant. We find no such evidence on record. This observation, therefore, is erroneous. Moreover, the postmortem notes show that there was no other injury except on the neck caused by *Dupatta* from which she was hanged. Thus, there is nothing to suggest that poison was administered forcibly to her or that there was some struggle on her part resisting the same. Similarly, there is nothing in the spot *Panchanama* to show that the deceased was dragged from the spot where bottle was found upto Neem tree where she was found hanging. Thus, it is even doubtful whether the poison was administered forcibly or whether she was forcibly hanged on the tree. In this context, the questions sent by the police officers to the expert for opinion of the expert are important. These documents are produced by the prosecution at Exhibits 47 and 48. The questions and the response to those questions are as follows:

Sr. No.	Question	Answer
1	Whether it can be observed that the deceased was administered poison forcibly ?	Nothing definite can be opined about it.
2	Whether there were any kind of injuries caused while forcing her to consume poison ?	No.

Sr. No.	Question	Answer
3	Whether there were any other injuries caused because of forcibly administering poison ?	No such injuries were found.
4	Whether after consuming poison, the deceased could have hanged herself ?	It may or may not be possible.
5	Whether the marks on the neck indicate suicide or homicide ?	Definite opinion cannot be given.
6	Whether after consuming poison, she could walk 625 feet and hang herself ?	It may or may not be possible.

26 These answers are given by the same medical officer, who had conducted the postmortem examination. These answers definitely create sufficient doubt against the prosecution case.

27 Even assuming that it is a case of murder, there is absolutely nothing to connect the appellant with the theory of commission of murder by the appellant. There are no other circumstances. We have discussed all the circumstances, which emerged from the prosecution case. As discussed earlier, even allegations of commission of offence under Section 498-A of the Indian Penal Code are not duly proved because of the weak evidence as discussed earlier. In this view of the matter, the appeal will have to

be allowed by giving benefit of doubt to the appellant. Hence, the following order:

ORDER

- I. Criminal Appeal is allowed.
- II. The judgment and order dated 6th February, 2015 passed by the learned District Judge-1 and Additional Sessions Judge, Newasa in Sessions Case No.67 of 2014, is set aside.
- III. The appellant is acquitted of all the charges.
- IV. Fine amount, if deposited, shall be refunded back to the appellant.
- V. The appellant shall be released forthwith, if he is not required in connection with any other case.
- VI. The appeal is accordingly disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

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