

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 439 OF 2018

Radhakisan @ Radhakrushna s/o Anna Bankar
Age 31 years, occ. Labour
R/o Rajwada, Werul, Tq. Khultabad
Dist. Aurangabad

Appellant

Versus

The State of Maharashtra

Respondent

Mr. N. S. Ghanekar, Advocate for the appellant.
Mr. S. P. Deshmukh, APP for the State.

CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.
RESERVED ON : 29th NOVEMBER, 2022.
PRONOUNCED ON : 6th DECEMBER, 2022.

JUDGMENT : (PER R. M. JOSHI, J.)

1. This appeal is preferred by accused Radhakisan on being convicted by learned trial Court in Sessions Case No. 291/2010 for the offences punishable under Sections 302 and 498A of the Indian Penal Code.

2. The present appellant and his parents were arrayed in this prosecution holding them responsible for death of deceased Vandana. Except the appellant, both co-accused were acquitted by

the trial Court and against said order, no appeal is preferred by the State.

3. On 2nd June, 2010, Balu Divekar gave report to the police stating that his daughter Vandana was married to accused Radhakishan prior to two years and after marriage for about a month, she was properly treated by her inlaws. It is alleged that thereafter accused used to abuse and beat her for not performing day to day work properly. It is further contended by the informant that accused were demanding Rs. 20,000/- for purchasing camera and Vandana was harassed for not fulfilling the said demand. On 1st June, 2010, his nephew called him to the matrimonial home of Vandana where he found Vandana dead and her dead body was kept in the house of accused. He suspected that his daughter is killed by the accused and lodged report to police accordingly. On the basis of said report, offence came to be registered vide Crime No. 74/2010 with Khultabad Police Station.

4. During the course of investigation, spot panchanama was drawn in the presence of panch witness and inquest was conducted on the dead body. The corpse was sent initially to Primary Health

Center, Khultabad for conducting autopsy and thereafter the same was forwarded to Government Medical College and Hospital, Aurangabad. The Medical Officer therein opined cause of death as “strangulation”. Statements of witnesses were recorded. On conclusion of investigation, charge-sheet was filed and on committal thereof, case was registered being Sessions Case No. 291/2010.

5. Prosecution examined in all eight witnesses in order to bring home guilt of the accused. The trial is culminated in the conviction of present appellant and acquittal of co-accused.

6. Heard learned counsel for the appellant and learned APP. Carefully considered the evidence on record and case laws filed by both the sides.

7. Pertinently, Balu Divekar (PW 2), father of the deceased, has not supported the prosecution. According to him, the marriage was performed prior to two years and thereafter deceased started cohabiting with her husband and inlaws at Werul. He denied that accused made any demand of Rs. 20,000/- from Vandana for purchasing camera.

8. Appasaheb Divekar (PW 3) who is the cousin brother of deceased claims that Vandana had complained him about she being harassed by accused No. 1 by demanding Rs.20,000/- for purchase of camera. In this regard, Kalpana Divekar (PW 4), mother of the deceased, in her evidence has stated that all accused were demanding Rs.20,000/- for the aforesaid cause. In her cross-examination however, she has candidly admitted that in fact, they had obtained an amount of Rs.10,000/- as handloan from accused No. 1 and the said amount had remained to be repaid to him before occurrence of the incident. She has also accepted the fact that her financial condition is not sound and in the marriage of deceased, accused No. 1 had given ornaments to her. These admissions of mother of deceased rules out the possibility of deceased being harassed for not meeting the demand of Rs.20,000/- for purchase of camera. Considering evidence of parents of deceased, no importance can be attached to evidence of cousin of deceased. Therefore, the offence charged against accused No. 1/appellant herein punishable under Section 498A of the Indian Penal Code, must fail.

9. The present case is based on circumstantial evidence and the burden lies on the prosecution to prove that deceased died

homicidal death and all the circumstances unerringly indicate that accused/appellant is preparator of crime in question, leaving no scope for the offence being committed by anyone else.

10. Dr. Mahesh Jambure (PW 5) who conducted post mortem on the dead body of deceased Vandana on 2nd June, 2010 along with Dr. Varma, Dr. Bhalerao and Dr. Tasgaonkar noticed ten surface injuries on the dead body. It is opined by him that the cause of death is strangulation. In the cross-examination however, it is admitted that in inquest panchanama (Exhibit 38) only two external injuries are recorded and that no attempt was made to get the reinquest done. He accepted that the Medical Officers instructed the Investigating Officer to arrange visit to the scene of the incident immediately, which indicates that even Medical Officer could not opine cause of death on the basis of autopsy and perusal of spot and circumstances appearing therein were needed to be observed. There is however no evidence on record to show that infact Medical Officers paid visit to the spot before giving opinion about cause of death. This assumes utmost relevance in view of the fact that initially the dead body was sent to Primary Health Center, Khultabad, and along with letter (Exhibit 38) the dead body was sent to Government

medical College, Aurangabad, with a remark that the Medical Officer is unable to opine the cause of death for absence of external injuries. From the said correspondence made by the Medical Officer, Primary Health Center, Khultabad, and in view of the inconsistency injuries noted in the inquest panchanama and noticed at the time of autopsy a serious doubt is created not only as to the actual injuries appearing on the person of the deceased but also about the opinion of cause of death. It therefore cannot be said with certainty as to how deceased must have died.

11. Balu Divekar (PW 2) had found on his visit to the house of the deceased that her dead body was kept in the living room. Spot panchanama also indicates about the said place however, careful perusal of the spot panchanama (Exhibit 48) shows that two spots of incident are mentioned therein; one is the place where a saree and rope were found which is near custard apple tree and the second is the spot where dead body was kept. The presence of dead body inside house gets explained from the testimony of Dr. Patni (PW 7). He claims that on 1st June, 2010, Bankar had brought their daughter-in-law at about 6.00 am to his dispensary which is situated in his own house. He found the patient to be pulseless. It is

thus clear that the dead body was removed from the spot of incident and after it was brought back home it was kept in the living room. It leaves no room for doubt that living room is not the spot of incident and the spot of incident is near a tree which is outside four walls of the house of the accused.

12. Prosecution seems to have been banking upon the evidence of Dr. Patni in order to connect accused with the death of deceased. According to this witness, husband and inlaws of the deceased had brought her to him. In the cross-examination, however, he was not able to give the names and details of the persons who had brought the said lady to him. Furthermore, no entry is taken about the said fact in his record. The evidence of Dr. Patni, therefore, only establishes the fact that the deceased was brought to him in the morning at 6.00 am on 1st June, 2010 but not that accused brought her. Even if, it is accepted for sake of arguments that the accused were persons who brought her to Dr. Patni, the said conduct of the accused would be contrary to their intention to kill deceased as it can be seen that they attempted to provide medical treatment to her and which indicates their innocence.

13. It is the contention of learned APP that the death is caused in the house of the deceased and therefore, the burden is on the accused to show the circumstances in which the deceased died. To support the said contention, he placed reliance on the case of Trimukh Maroti Kirkan vs. State of Maharashtra reported in **2007(1) AIR Bom R 357**. Learned advocate for the accused countered the said argument with the help of judgment of the Hon'ble Supreme Court in the case of Satye Singh and another vs. State of Uttarakhand reported in **2022 LiveLaw (SC) 169**.

14. No doubt, in case the deceased is in exclusive custody of the accused, then on establishing the fact of homicidal death of the deceased, there would be burden on the accused to explain the circumstances in which the deceased died. In order to attract the said provision, at the first instance, it must be established that death of deceased is homicidal and that deceased was in exclusive custody of accused and the fact relating to death was within the exclusive knowledge of the accused. In the instant case, appellant/accused was not the only person staying with the deceased but his parents too were sharing the same dwelling house. Since charge is framed against all the accused for killing the deceased pursuant to their

common intention, it is case of prosecution that accused No. 1 was not alone residing with deceased. Once such charge is framed, it is now not open for the prosecution to attribute any exclusive knowledge of the appellant/accused in respect of the circumstances in which the deceased died. Even otherwise, unless prosecution discharges the initial burden of proving guilt of the accused beyond reasonable doubt, accused cannot be called upon to explain any circumstances with aid of Section 106 of the Evidence Act. In the instant case, when co-accused who were also sharing residence with deceased are acquitted by trial Court and that part of judgment has attained finality, appellant/accused only because he is husband of deceased cannot alone be called upon to explain death of deceased nor can be convicted on same evidence on the basis of which co-accused are acquitted.

15. Considering the facts on record, it cannot be held conclusively that deceased died homicidal death and for want of establishing any motive for the accused to kill deceased, guilt of accused cannot be held to have been proved beyond reasonable doubt and his conviction cannot sustain. Hence the following order :-

ORDER

- i) Appeal is allowed.
- ii) Impugned judgment to the extent of conviction of appellant Radhakisan @ Radhakrushna s/o Anna Bankar is set aside. He is acquitted of the offence punishable under Sections 302 and 498A of the Indian Penal Code.
- iii) Appellant be released forthwith if not required in any other crime.
- iv) Refund of fine paid, if any.
- v) His bail bonds stand cancelled.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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