

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**75 CRIMINAL APPEAL NO.521 OF 2016
WITH
CRIMINAL APPLICATION NO.1898 OF 2022**

Prakash s/o Narayan Koli
Age 55 Years, Occu.: Agriculture,
R/o At & Post: Taka, Tal: Ausa,
District: Latur .. Appellant

Versus

The State of Maharashtra,
Through: Police Inspector,
Police Station: Bhada, Taluka: Ausa,
District: Latur .. Respondent

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Advocate for Appellant: Mr. Abhaykumar D. Ostwal
APP for Respondent: Mr. K. S. Patil

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

DATE: 27th JUNE, 2022

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

1. The Appellant has challenged the Judgment and Order dated 03.09.2015 passed by the Additional Sessions Judge, Latur in Sessions Case No.113 of 2013. By the impugned Judgment and Order the Appellant was convicted for commission of offence punishable under Section 302 of IPC and was sentenced to suffer rigorous imprisonment for

life and to pay a fine of Rs.1,000/- in default to suffer S.I. for one month. He was also convicted for offence punishable under Section 201 of IPC and was sentenced to suffer rigorous imprisonment for two years and fine of Rs.1,000/- in default to suffer S.I. for one month. The Appellant was acquitted from the charges under Section 120-B and 34 of IPC.

2. The Appellant was the original Accused No.1. Apart from the Appellant there were 5 other accused. Accused No.4 and 6 were discharged. Accused No.2, 3 and 5 faced the trial alongwith the Appellant. They were acquitted of all the charges. The Appellant was given set off under Section 428 of the Code of Criminal Procedure, 1973.

3. Heard Mr. Abhaykumar D. Ostwal for the Appellant and Mr. K. S. Patil, APP for the Respondent – State.

4. The prosecution case is that, the Appellant was having illicit relations with the deceased Sarubai. He was insisting that she stayed with him at Taka. She was not complying with his wish and therefore, he committed her murder. The prosecution case was that he first pushed her in a well and then he himself climbed down into the well and strangled her. He alongwith other accused pulled the dead body out of that dry well and kept it over the Bandh. He, thereafter, informed the Police Patil who in turn informed the Police. Based on this information Accidental Death Report was lodged and initial part of investigation was carried out. Subsequently, the son of the deceased lodged the F.I.R. expressing suspicion against the Appellant and therefore the F.I.R. was lodged, the Appellant was arrested, the investigation was carried out, the charge-sheet was filed against all the accused. They faced trial after committal. At the end of the trial the Appellant was convicted and others were acquitted as mentioned earlier.

5. During trial the prosecution examined 10 witnesses; as below-

PW - 1 Pravin Gore was the first informant.

PW - 2 Vitthal Magar was a Pancha for Spot Panchanama. He did not support the prosecution case.

PW - 3 Anil Gore was Pancha for Panchanama recorded under Section 27 of the Indian Evidence Act, 1872 but he did not support the prosecution case.

PW - 4 Mangal Angatkar was sister of the deceased but she did not support the prosecution case.

PW - 5 Farid Shaikh was the PSO who had taken down the Station Diary entry based on the information of the Police Patil.

PW - 6 Yuvraj Gade was PSO who had registered the Accidental Death Report No. 17/2013.

PW - 7 Dr. Bibhishan Jadhav was in the team that had conducted the postmortem.

PW - 8 Uttam Pujari was the Investigating Officer.

PW – 9 Shaikh Usman Chand was another Investigating Officer. He conducted investigation from 02.06.2013 onwards.

PW – 10 Dr. Satish Bawne was another Doctor who was part of the team that had conducted the postmortem examination.

Apart from this evidence, C.A. Reports were produced on record, however, the C.A. Reports revealed nothing against the present Appellant. The clothes of the Appellant did not show presence of blood. The Appellant was arrested on 05.06.2013.

6. Learned Counsel for the Appellant submitted that there is absolutely no evidence against the present Appellant. PW – 1 at the most has shown some vague motive against the Appellant but that is not sufficient to conclude that the Appellant had any reason to commit murder of the deceased. He submitted that Panchanama recorded under Section 27 of the Indian Evidence Act, 1872 is totally innocuous as nothing was discovered or

recovered pursuant to the statement given by the Appellant. He further submitted that there is nothing to show that the appellant was the first person who had seen the dead body and therefore it was not obligatory on him to explain that circumstance. He submitted that the Police Patil to whom the Appellant had given information is not examined and therefore the contents of the Accidental Death Report is not proved by the prosecution. There is no evidence brought on record by the prosecution to explain as to why the Police Patil was not examined.

7. Learned APP relied on the sole circumstance of pointing out of that dry well by the present Appellant. He submitted that pursuant to this statement alone the well was seen by the Investigating Agency. Apart from that, he relied on the evidence of PW – 1 to establish motive. He submitted that besides these two circumstances there is no other evidence against the present Appellant. He relied on these two circumstances.

8. Learned Judge on the other hand had given benefit to all other accused. He relied on the circumstance of motive and pointing out of the well, apart from medical evidence to hold that the Appellant was the only person who could have committed this offence.

9. The statement of the Appellant recorded under Section 313 of the Code of Criminal Procedure, 1973 was of total denial.

10. We have considered these submissions in the background of the evidence of this case.

11. PW – 1 Pravin Gore is important for the prosecution. He was son of the deceased. He has deposed that his mother Sarubai was married to one Murlidhar. Earlier Sarubai, Murlidhar, his other wife Godavari, PW – 1, his two sisters were residing together at village Taka. Subsequently, PW-1, Sarubai and PW – 1's two sisters came to reside at village Wagholi. They were residing at village Wagholi for about 8 to 10 years. Murlidhar

and his other wife Godavari were residing at Pune. According to this witness, the Appellant was having illicit relations with Sarubai. He has stated that Sarubai had 2 to 3 acres of land at village Taka and she used to cultivate that land by intermittently visiting village Taka. She used to stay in the house of the Appellant. The Appellant himself was married and was having two sons and two daughters. On 28.05.2013 the Appellant telephonically informed this witness that Sarubai had committed suicide by hanging. PW – 1 and others rushed there. He found that Sarubai's dead body was kept on a Bandh; on Gulkheda to Taka road. There were injuries on her body. The Police came to the spot. They prepared Inquest Panchanama, Spot Panchanama and sent the dead body for postmortem. Sarubai's bag and chappal were lying near the dead body. The Police seized these articles. He admitted that he did not notice the relation between Sarubai and the Appellant as Sarubai never told this fact to him. He had gone to Police Station Bhada and had lodged

this F.I.R. The F.I.R. is produced on record at Exhibit – 53. The offence was registered vide C.R. No.54/2013 at Bhada Police Station.

In the Cross examination he admitted that there were litigations pending between his father and Sarubai since about 4 to 5 years and that the appellant used to support Sarubai in the Court proceedings. He admitted that as he was helping Sarubai in those proceedings; the villagers started saying that Sarubai was having illicit relations with the Appellant. He has also admitted that the F.I.R. Exhibit-53 was already lodged in Bhada Police Station before he arrived and he had only signed it. Thus he did not completely support the prosecution case. The motive therefore has remained vague. It is not proved by the PW – 1. He has based his remarks on the rumours spread in the village. He did not have any personal knowledge of the same. The F.I.R. was not as per his say. Therefore, it is not possible to hold his evidence, as incriminating circumstance against the Appellant.

12. As far as the other Pancha witnesses whom we have referred to, those had turned hostile and their evidence does not have serious impact on the outcome of this case. The other somewhat important witness is sister of the deceased i.e. PW – 4 Mangal Angatkar. She had also turned hostile. Her statement does not help the prosecution case as she did not have any specific knowledge about Sarubai's relations with Appellant. Therefore, what remains is the medical evidence and the evidence of the Police Officers.

13. As far as the medical evidence is concerned, the prosecution has examined PW – 7 Dr. Bibhishan Jadhav and PW – 10 Dr. Satish Bawne. The deceased had suffered 8 external injuries. On external examination it was found that there was fracture of right thumb, both eyes were badly damaged, lower side of mouth had injury (abrasion). There was swelling over left clavicle. There were fractures of trachae, right shoulder and elbow. There were injuries on right forearm and right foot. On internal examination it was

found that there was left chest rib fracture and right chest rib fracture. There was injury to left lung, head injury, injury of scalp covered by blood on temporal side. Brain was congested. The cause of death was mentioned as "due to cardio respiratory arrest due to strangulation with multiple injuries on head and body". In the cross-examination, the Doctor admitted that the injuries mentioned in the postmortem notes were not concerning with strangulation. The head injury could be caused by falling. The external injuries were possible if the person fell in a pit in sliding condition. The evidence of PW – 10 is not different. He has also deposed in the similar manner. He has stated that there was evidence of trachea fracture on external examination but on internal examination there was no evidence of trachea fracture. But it was completely compressed that obstructed the air way. He has further deposed that while removing the body from the well injuries on head and body were possible.

14. Thus it appears that the medical evidence is not very clear but there are certain indications that the deceased was assaulted before her death. There is a strong possibility that it was a case of homicide. There is nothing to suggest that it was a case of suicide or accidental fall in the well. However, the crucial question remains as to who was responsible for these injuries.

15. For that purpose, the prosecution is left with the evidence of the Police Officers alone. There is no other independent witness. The prosecution has relied on the Spot Panchanama and the Panchanama recorded under Section 27 of the Indian Evidence Act, 1872. The Spot Panchanama at Exhibit-59 shows that the spot was shown by PW – 1. There is description of Bandh where dead body was found, however, there were no signs of struggle near the spot. The articles of the deceased were also seized from the spot. There were bus tickets from Taka to AUSA and from AUSA to Gulkheda on 27.05.2013. One Photograph of male

person was found. However there is absolutely no investigation done about that particular photograph. It is not the prosecution case that the said photo was of the Appellant.

16. Exhibit – 70 is the Panchanama which was carried out pursuant to the statement given by the Appellant under Section 27 of the Indian Evidence Act, 1872. Pursuant to that statement the Appellant had shown the well. The panchanama mentions description of the well and the surrounding area. But there was absolutely nothing incriminating found in the well or around the well. Therefore, there is no discovery or recovery from the well and hence the Panchanama Exhibit – 70; as rightly submitted by the learned Counsel for the Appellant; is totally innocuous and in fact is inadmissible.

17. The other circumstance is Exhibit – 60; i.e. the Accidental Death Report given by the Police Patil which mentioned that the Appellant had told him that the deceased was lying in the

field of Prakash Shinde. However, the Police Patil is not examined. Even assuming that these contents can be read in evidence, the same at the most shows that the Appellant had informed the Police Patil that Sarubai's dead body was lying at that particular spot. This particular weak circumstance cannot form basis for conviction of the Appellant.

18. Considering the entire material on record and above discussion, it is a case where the prosecution has miserably failed to prove its case against the Appellant beyond reasonable doubt and, therefore, he deserves to be acquitted. Hence, the following order-

ORDER

[I] The Appeal is allowed.

[II] The Judgment and Order dated 03.09.2015 passed by the Additional Sessions Judge, Latur in Sessions Case No.113 of 2013 is set aside.

[III] The Appellant is acquitted of all the charges.

[IV] The Appellant shall be released forthwith if not required in any other case.

[V] The Appellant shall execute bail bonds to the satisfaction of the Trial Court in consonance with Section 437-A of the Code of Criminal Procedure, 1973 within a period of one (01) month from his release from Jail.

19. Criminal Appeal stands disposed of.

20. Since the Appeal itself is disposed of, nothing survives in Criminal Application No.1898 of 2022. The Criminal Application is also disposed of.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]

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