

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.144 OF 2019

Suresh @ Suryakant Maruti Gore)
Aged : 39 years,)
Presently lodged at Kolhapur Central Prison,)
Kalmaba, Kolhapur -7 .) Appellant
Vs.
State of Maharashtra)
At the instance of Satara Taluka Police Station)
in respect of C.R.No.203/2016 u/s. 302 and)
498-A IPC.) Respondents

WITH
INTERIM APPLICATION NO.347 OF 2020
AND
CRIMINAL APPLICATION NO.1318 OF 2018
IN
CRIMINAL APPEAL NO.144 OF 2019

Mr. Kedar Patil for Appellant / Applicant.

Mr. S. S. Hulke, APP for Respondent-State.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : APRIL 18, 2022

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

. The appellant has challenged the judgment and order dated 02.05.2017 passed by the learned Additional Sessions Judge, Satara in Sessions Case No.119 of 2016. By the impugned judgment and order, the appellant was convicted for commission of the offence punishable under

Section 302 of the Indian Penal Code (for commission of murder of his wife Sandhya) and was sentenced to suffer rigorous imprisonment for life with a fine of Rs.1,000/-, and in default of payment of fine, to suffer further RI for one month. The appellant was also charged under Section 498-A of IPC and from that charge, he was acquitted. The appellant was given benefit of set-off under Section 428 of Cr.P.C.

2. The prosecution case is that the appellant was married to Sandhya about 13 to 14 years before the incident. On 20.05.2016, the appellant had left with the deceased on his two-wheeler. According to the father of the deceased Sandhya, she was missing. Her brother and others searched for her, but she was not found. Her dead body was seen floating in the canal on 21.05.2016. The *Police Patil* of the area gave information to the police and after that on 21.05.2016, itself Sandhya's father lodged the FIR against the appellant. The appellant was arrested, the investigation was carried out, the post-mortem examination was performed and at the conclusion of the investigation, the charge-sheet was filed. The case was committed to the court of sessions.

3. During the course of the trial, the prosecution has examined eight witnesses. The important witnesses were - father of the deceased (P.W.1), daughter of the deceased (P.W.2) and son of the deceased (P.W.5). There was one more witness, P.W.7 - Niranjan Jadhav, who had claimed to have seen a couple fighting near the canal. There is evidence of the doctor (P.W.3), who had conducted the post-mortem examination. A *panch* (P.W.4) was examined to show that the appellant had pointed out the place of the

incident i.e., the canal. The Police Patil and the Investigating Officer were also examined as P.W.6 and P.W.8 respectively.

4. We have heard Mr. Kedar Patil, learned counsel for the appellant and Mr. S. S.Hulke, learned APP for the respondent - State.

5. Mr. Patil, learned counsel for the appellant submitted that the prosecution evidence itself shows that the deceased was taking psychiatric treatment and she was mentally disturbed. She was in the habit of leaving home without informing anybody; she would go missing and would not return the entire night; she did have suicidal tendencies. The evidence of the father and the son of the deceased is not reliable. The daughter was declared hostile, and therefore, there is hardly any evidence against the appellant.

6. Mr. Hulke, learned APP, on the other hand, relied on the very same evidence to contend that the prosecution has sufficiently proved its case beyond reasonable doubt. He also relied on the evidence of P.W.7, who had seen the deceased and the appellant quarreling near the canal on the date of the incident.

7. We have considered the submissions, and with the assistance of learned counsel for the parties have perused the entire record.

8. As mentioned earlier, P.W.1 - Kumar Anantrao Suryawanshi, father of the deceased, is an important witness. He has stated that the deceased

Sandhya got married with the appellant about 15 to 16 years before the incident. They had one daughter from that wedlock who was aged about 12 to 13 years at the time of the incident. Before marrying the appellant, Sandhya was married to one Shekhar Sathe and they had a son namely, Guruprasad (who was examined as P.W.5 in this case). P.W.1 has further stated that he was residing with his wife and Guruprasad at Shukrawar Peth, Satara. P.W.1's sons were residing separately. He has stated that initially for about two years, Sandhya and the appellant lived happily. It was a love marriage. The appellant was earlier working with P.W.1. Subsequently, Sandhya started complaining to P.W.1 that the appellant was ill-treating her. P.W.1 used to convince both of them and then they would continue residing together. On 18.05.2016, Sandhya and the appellant had come to his house at 11:00 p.m. According to P.W.1, their daughter Siddhita had also come along with the deceased and the appellant. On 19.05.2016, there was a quarrel between the appellant and the deceased. P.W.1 had left the house to attend to his work. When he returned home, that time Sandhya was not at home. The appellant also did not know her whereabouts. Sandhya was missing for the entire night. The appellant tried to search for her. He had searched for Sandhya at Jakatwadi but she was not found. On the next day i.e., on 20.05.2016, Sandhya returned home at about 8:00 a.m. on her own. P.W.1 then phoned the appellant and told him about Sandhya's return. The appellant came to Satara and started questioning Sandhya. There was a quarrel between them. According to P.W.1, at that time, the appellant threatened Sandhya. After some time, the appellant and Sandhya left on the appellant's two-wheeler at about 9:30 a.m. In the afternoon, at about 3:00 p.m., the appellant phoned P.W.1 and came to his shop. He told

P.W.1 that Sandhya was missing again. The appellant himself suggested that they should go to Shahupuri Police Station and lodge a complaint about Sandhya's missing. P.W.1 and the appellant went to Shahupuri Police Station. The appellant told the police that he had left Sandhya in Radhika Chowk but police did not take down their complaint. Both of them then left from the police station. It is his case that the appellant told him that he had taken Sandhya near the canal and then he had pushed her in the canal. After telling this, he went away. P.W.1 informed his sons about the same. His sons along with their friends went to the canal and searched for her till late in the night but she was not found. On 21.05.2016, again the search was carried out by his elder son Raju and his friends. At about 10:00 a.m., P.W.1 received a phone call that Sandhya's dead body was found in the canal. They went there. P.W.1 identified her body. He performed the funeral and then at about 11:35 p.m., he lodged the FIR, which is produced on record at Exhibit-9.

8.1. In his cross-examination, he has admitted that on 17.12.2013, there was a quarrel between Sandhya and her neighbour and since then she was under a mental shock. After that, she had started taking treatment from a psychiatrist. P.W.1 has admitted that the appellant used to provide medical treatment to Sandhya regularly. He has further admitted that Sandhya some times used to get disturbed and used to leave the house without informing anybody. She used to stay out during the nights also. In the further cross-examination, P.W.1 has accepted many omissions from his F.I.R. given to the police. He had not stated in the FIR that the appellant had told the police that he had left Sandhya in Radhika Chowk. P.W.1 had not stated in

the FIR that the appellant had told P.W.1 that he had pushed Sandhya in the canal and that police had called them in the morning to search for Sandhya.

9. The FIR itself makes no reference to the alleged extra judicial confession. FIR makes no reference to the search carried out by P.W.1's sons and their friends.

10. P.W.2 - Siddhita Gore is the daughter of the deceased and the appellant. She had turned hostile. In her examination-in-chief, she has not deposed against the appellant except that there used to be frequent quarrels between her parents. However, in the cross-examination conducted by the APP, she gave admissions in favour of the prosecution referring to her statement to the police where she had stated that the appellant had told her that he had killed the deceased. In her examination-in-chief, she has stated that when the appellant and the deceased had gone to Satara, she had stayed back with her paternal uncle. She had admitted that when police recorded her statement, she was with her grandparents.

11. P.W.5 - Guruprasad, who is the son of the deceased from her first marriage, has narrated the story similar to the version of P.W.1. He has stated that P.W.1 had telephonically told him that the appellant had pushed Sandhya in the canal. However, this particular statement was not made by him before the police and therefore, it amounts to an important omission. His statement was recorded by the police on 23.05.2016.

12. P.W.7 - Niranjan Jadhav claims to have seen a couple fighting near the canal. He has stated that on 22.05.2016, he read news item about

husband killing his wife by pushing her in a canal. He went to the police station and told them about what he had seen. Police showed him the photograph of the deceased Sandhya. He identified her and told the police about the fight between the appellant and Sandhya. Though this evidence appears to be in favour of the prosecution, in his cross-examination, this evidence is totally destroyed. He has accepted that he was P.W.5 Guruprasad's friend. He was knowing Guruprasad's parents since beginning. He was also searching for Sandhya since 20.05.2016. He has categorically admitted that Guruprasad and his maternal uncle had decided what should be stated to the police by him. He accepted that at the instance of Guruprasad, he told the police that he had seen the appellant and the deceased quarreling near the canal. He was knowing the deceased and was also searching for her. Then if he had seen the appellant fighting with Sandhya near the canal, he would have immediately told about it to the police as soon as her body was discovered. He is not a reliable witness. After his damaging answers, the prosecution cross examined him.

13. P.W.4 - Vishwambhar Karande was a *panch* in whose presence the appellant had allegedly made a statement showing his willingness to point out the spot of the incident. However, since nothing is discovered at that spot; this evidence is of no significance. The police already knew about the spot as the body was found at the same spot, i.e. the canal.

14. P.W.6 - Chandrakant Barge was a *police patil* of village Chinchaner Vandan. He had learned about the dead body floating in Kanher Canal within his jurisdiction. He went there and saw the dead body and then

informed Satara Police Station about it. Importantly, he has not spoken a word about the extensive search carried out to find the body as deposed by P.W.1 and P.W.5. His report to the Satara Police Station is produced on record at exhibit-29.

15 P.W.8 - PSI Smita Navghare was the Investigating Officer, who carried out the investigation by recording statements and carrying out *panchnamas*. P.W.3 - Dr. Jyoti Jadhav had conducted the post-mortem examination. She had reserved her final opinion regarding cause of death till receipt of viscera report. She deposed that the findings were suggestive of drowning. The prosecution case itself is that the deceased had died because of drowning. The question therefore, is whether the appellant is responsible for Sandhya's death by pushing her in the canal.

16. As mentioned earlier, the evidence of P.W.1 is important. From his deposition, as pointed out earlier, there are important omissions particularly in respect of the extra-judicial confession and about the extensive search. These are not minor issues. Both these aspects were not stated by him in the FIR, which was lodged in the night of 21.05.2016. This shows that P.W.1 is not a reliable witness and he was deposing out of anger against the appellant. He is the main witness who deposed about the appellant quarreling with the deceased on that particular day. If his evidence is found to be unreliable then there is no material to show that the appellant and the deceased were together in the morning when the deceased was lastly seen. The evidence also shows that deceased was taking psychiatric treatment and on a few occasions in the past, she had gone missing and was not found

during night time also. Thus, the defence has put forth case of the accused within preponderance of probability that the deceased because of her disturbed state of mind could have jumped in the canal herself. This can be gathered from the attending circumstances and her history.

17. As far as P.W.2 is concerned, she is declared hostile and most of her admissions are brought on record by the prosecution through her cross-examination. Again there is no consistency between her version and P.W.1's version as to whether this witness (P.W.2) was staying with P.W.1 on that fateful day. In any case, as she is declared hostile and there are many infirmities in her evidence, we are not inclined to place much reliance on her evidence.

18. As far as evidence of P.W.5 - son of the deceased is concerned, though he has deposed on the same line as deposed by the evidence of P.W.1; P.W.7's evidence shows that P.W.5 had taken active part in creating evidence against the appellant in the form of police statement of P.W.7. P.W.7 has accepted that at P.W.5's instance they had decided to refer to a quarrel between the appellant and the deceased. Thus, there is a clear attempt on the part of P.W.5 to implicate the appellant falsely.

19. The other evidence in the form of depositions of P.W.4, P.W.6 and P.W.8 do not show the appellant's involvement in the offence. Thus, sufficient doubt is created against the prosecution case. The benefit of doubt must therefore go to the appellant.

20. Considering this discussion, the appellant deserves to be acquitted.

Hence the following order :-

:ORDER:

1. The Appeal is allowed.
2. The impugned judgment and order dated 02.05.2017 passed by the learned Additional Sessions Judge, Satara in Sessions Case No.119 of 2016 is quashed and set aside.
3. Appellant – Suresh alias Suryakant Maruti Gore is acquitted of the offences for which he was convicted.
4. Since the appellant is in jail, he shall be released forthwith, if not required in any other case.
5. The appellant shall execute a bail bond to the satisfaction of the trial Court within a period of six weeks from today under the provisions of Section 436-A of the Cr.P.C.
6. The Appeal stands disposed of accordingly.
7. In view of disposal of the Appeal, all connected interim applications do not survive and the same shall stand disposed of accordingly.
8. The learned advocate appointed for the appellant be paid his professional fees in accordance with the Rules.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)