

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1015 OF 2013

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| 1. Vaijinath Kisan Ambure,
Age – 28 years,
Occupation – Agriculturist, | } | ...Appellants
(Orig. Accused) |
| 2. Sunita Kisan Ambure,
Age – 45 years,
Occupation – Household, | | |
| Both R/o – Bardi,
Tq. Pandharpur,
Dist. Solapur. | | |

Versus

The State of Maharashtra	}	...Respondent
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Mr. Aniket U. Nikam a/w Mr. Piyush Toshnival, Mr. Aashish Satpute, & Mr. Amit Icham for Appellants.

Mr. H. J. Dedhia, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.

DATE : JULY 06, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Pandharpur, in Sessions Case No. 28/2011, dated 24th July, 2013, whereby Appellants herein (Original Accused) were convicted for the offence punishable

under Sections 498-A & 302 read with Section 34 of the Indian Penal Code, 1860 (for short "IPC"), and sentenced to suffer imprisonment for life, preferred the present Appeal.

2. The case of prosecution, in brief, can be summarized as under:

Urmila (hereinafter referred to as 'deceased') wife of Appellant No. 1, daughter-in-law of Appellant N. 2 and daughter of Shrimant Sambhaji Pachpund (PW 5) was subjected to unnatural death. The case of the prosecution was unfolded through the FIR lodged at the instance of Shrimant Pachpund (PW 5) on 17th February, 2011 at Karkamb Police Station and subsequently through the evidence collected during the course of investigation.

3. Shrimant Pachpund (PW 5) stated in his report that he is resident of village Angar, Tq. Mohol. Then it is stated in the report that his family consists of his wife Rekha, son Samadhan, younger daughter Jayshree and elder daughter Urmila. Agriculture is the source of his livelihood. Marriage of deceased was solemnized in the year 2006 with Appellant No. 1 by following

necessary rituals. For the initial period of six months deceased was treated well. Then couple was blessed with a boy child. After the delivery of child, deceased went back to her matrimonial home and was subjected to ill-treatment at the hands of her mother-in-law and husband. Deceased told her parents that said ill-treatment was on account of black magic (करणी). In her visit to her parental home on one occasion deceased told her parents that her parents-in-law are insisting upon her to reside separately with her husband by construction of a room. The parents-in-law were demanding money for construction of the room. When Shrimant (PW 5) expressed his inability for giving the amount demanded by parents-in-law of deceased, deceased started weeping and told her parents that if the amount is not given to parents-in-law, she would be further subjected to harassment and ill-treatment. Shrimant (PW 5) then made arrangements by obtaining hand loan and raised an amount of Rs. 15,000/-. Then complainant gave this amount of Rs. 15,000/- to deceased. In spite of this, deceased was abused and ill-treated on account of money.

4. After some time couple was blessed with another issue i.e., boy child. Again Appellant No. 1 & 2 started abusing and ill-treating deceased for demand of money. On 16th February, 2011 on account of death in the family deceased came to her matrimonial home along with her husband and mother-in-law to attend the last rites. At that time again deceased demanded money from her father. Her father informed her that due to financial constraints he may not be in a position to give her money. After last rites were performed, mother-in-law and husband of deceased started asking as to whether she got money. On her denial both of them started abusing her and picked up quarrel. Then Shrimant (PW 5) pacified them and sent them back.

5. On the next day at about 10.30 pm Appellant informed Shrimant (PW 5) about the death of deceased. Shrimant (PW 5) along with his wife and son and some relatives proceeded to village Bardi. At about 04.30 pm they reached Karkamb police station. On an inquiry it was informed to them that Appellant reported the death of deceased to police authorities. Shrimant (PW 5) and other family members reached the spot where the dead

body of deceased was kept. They found injury marks over the body of deceased at different places such as, face, neck, back, thigh. Suspecting foul play in the death of deceased, report was lodged at the instance of Shrimant (PW 5) Karkamb Police Station against the son-in-law – Vaijinath and mother-in-law.

6. On receipt of report crime was registered. Investigating agency was set in motion. Necessary formalities of the investigation were completed. Charge-sheet was filed in the Court of JMFC, Pandharpur. As the offences were exclusively triable by the Court of Sessions, the matter was committed to the Court of Sessions.

7. Accused pleaded not guilty and faced the trial. As many as 14 witnesses were examined. Following points were framed by the learned Sessions Court :

1. Does prosecution prove that death of Urmila was homicidal ?
2. Does prosecution prove that during the period from 2006 to February 2011, at village Bardi, Tq. Pandharpur, accused in furtherance of their common intention, subjected deceased Urmila to cruelty on account of demand of

amount and on other grounds ?

3. Does prosecution prove that on 16-2-2011 accused in furtherance of their common intention, committed murder of Urmila by beating her by means of stick and by throttling her neck ?

Learned Sessions Judge recorded the findings in affirmative.

8. On appreciation of evidence, learned Additional Sessions Judge, convicted the accused for the above referred offences Hence, this present Appeal.

9. With the assistance of both the learned Counsel appearing for respective parties, we have gone through the evidence and material placed on record.

10. Learned Counsel for the Appellant vehemently submitted that the case of prosecution stands only on circumstantial evidence. Even if the witnesses are cited by the prosecution as eye witnesses, they reached on the spot after the alleged incident was over and the witnesses have not seen the actual incident. It is also submitted by learned Counsel for Appellants that even considering the material against the accused as it is,

the material brought before the Court by prosecution falls too short to prove its case beyond reasonable doubt against the accused for commission of offence under Section 302 of IPC. Learned Counsel for the Appellants submitted that the medical evidence is not at all supporting the case of prosecution. In support of his submissions, learned Counsel for Appellants, placed heavy reliance on the judgments in the matter of : Sou. Ranjana @ Changuna Prakash Sonawane and Others Vs. State of Maharashtra¹, Gargi Vs. State of Haryana², & Sujit Biswas Vs. State of Assam³.

11. *Per contra*, learned APP vehemently submitted that the evidence brought on record by the prosecution is trustworthy and reliable and the statement of witnesses are immediately recorded. It is also submitted by learned APP that apart from the family members of deceased, the other witnesses are independent and they have supported the case of prosecution fully. It is also submitted by learned APP that the evidence in the form of recovery of weapon from the accused clearly established the fact that the

1 Criminal Appeal No. 1480 of 2011 (Bombay High Court)

2 (2019) 9 SCC 738

3 (2013) 12 SCC 406

accused persons are the author of the crime. Learned APP then submitted that as the learned Trial Judge committed no error in appreciating the evidence and recorded the judgment and order of conviction to the Appellants. Thus, learned APP prayed that the Appeal sans merit and same be dismissed.

12. In order to bring home guilt of Appellants, prosecution has examined as many as 14 witnesses. Now we may refer to the evidence brought before the Court below.

13. On perusal of evidence of Shrimant (PW 5), we find that there is an important omission in his evidence in respect of payment of amount to the Appellants. Firstly, it is interesting to note that in the report the the alleged amount paid by Shrimant (PW 5) is referred to as Rs. 15,000/-, secondly, in his evidence before the Court a reference is made to an amount of Rs. 10,000/- and the said reference is by way of an omission. There is also an important omission about the mark of pressing the neck. Then there is material omission in so far as receiving a phone call from deceased and disclosure by deceased to Shrimant

(PW 5) that accused were demanding money from her and and ill-treating her.

14. Now we may refer to testimony of Dr. Prabha Sakhare (PW 1). Dr. Prabha was working as medical officer at PHC, Karkamb at the relevant time. On 17th February, 2022 body of deceased was sent to PW 1 for postmortem examination along with copy of inquest panchnama. Accordingly, Dr. Prabha conducted the postmortem from 11.15 to 01.00 hours. Dr. Prabha noted as many as 34 injuries. They were as follows:

- 1) Abrased contusion on right maxillary region
5 x 2.5 cm.
- 2) Abrased contusion on right upper eyelid 2.5
cm x 2 cm.
- 3) Abrased contusion lateral to right upper
eyebrow 1.5 cm x 1.5 cm
- 4) Abrased contusion near right angle of mouth
1 x 0.5 cm.
- 5) Small multiple abrasion on right ear
lobale.
- 6) Abrasion on forehead left side near upper
eyebrow 1 x 0.5 cm
- 7) Abrasion on left temporal region 1 x 0.5
cm.
- 8) Abrased contusion on left maxillary region
1 x 3.5 cm.

- 9) Small multiple abrasion on left cheek.
- 10) Small multiple abrasion on left temporal region.
- 11) Linear abrasion on right side of neck 2 cm. In length oblique in direction.
- 12) Just below the above injury, abrasion 1 cm in length oblique in direction.
- 13) On left side of neck at the level of hyoid bone just lateral to midline contusion 2 x 0.5 cm.
- 14) Contusion medial to right scapula 3 x 1 cm. Vertical in direction.
- 15) Contusion on right upper part of scapular region on back 17 x 3 cm. Oblique in direction.
- 16) 2 cm below the above injury no. 15 contusion of 12 x 3 cm. Oblique in direction.
- 17) 2 cm below the above injury no. 18 contusion of 12 x 3 cm. Oblique in direction.
- 18) On lateral surface of right shoulder contusion of 8 x 2 cm.
- 19) On left scapular region contusion 5 x 5 cm.
- 20) Back side of thoracic region contusion of 1 x 0.5 cm.
- 21) On left gluteal region region contusion 25 x 2 cm. Transverse in direction.
- 22) Contusion on lateral upper part of left thigh 7.5 x 8 cm.

- 23) 1 cm below the injury no. 22 abressed contusion of 17 x 8.5 cm. Transverse in direction.
- 24) Contusion on lower part of right thigh about 10 x 14 cm anterior and 10 cm x 8 cm posterior.
- 25) Lower 1/3 of left thigh contusion of 3 x 7 cm. Transverse in direction and crossing above injury contusion 11 x 1 cm vertically.
- 26) Contusion upper part of right knee 3 x 2 cm.
- 27) On anterior surface of right thigh abraded contusion 5 x 6 cm. Transverse in direction.
- 28) Contusion on right gluteal region two in numbers.
 - i) 10x5x1 cm. 2) 13x3 cm. Both are transverse in direction.
- 29) Contusion on proximal 1/3 of right thigh on posterior aspect 6 x 6.5 cm.
- 30) Contusion 8 x 3 cm. On middle 1/3rd of right thigh.
- 31) 2 cm below and crossing the injury no. 30 abraded contusion 7.5 x 3 cm. Transverse in direction.
- 32) Linear on right elbow 3 to 3.5 cm in length.
- 33) Abrasion on proximal 1/3 of right forearm on dorsal surface 3.5 x 1 cm.

34) Linear on dorsal surface on left forearm 2 cm in length.

15. In her examination-in-chief Dr. Prabha stated as follows:

In Col. No. 18 I have mentioned that there was fracture of hyoid bone i.e., front portion of the neck. All injuries were ante-mortem. The fracture can be possible due to pressing the neck. Injury no. 9, 10 and 11 can be possible at the time of pressing neck. Injury no. 1 to 8 and 12 to 34 can be possible due to beating by means of hard and blunt object. Chappal and stick can be said as hard and blunt object.

Internal injuries are mentioned in Col. no. 20-C i.e. nuchal ligament in congested. In my opinion cause of death was asphyxia due to throttling. Accordingly, I prepared P.M. Notes. It is now shown to me. All entries are in my hand writing. It bears my signature. They are true and correct. It also bear signature of my colleague Shri. Shinde B.R. I know signature of Shri. Shinde. P.M. Report is marked as Exh. 17.

16. In the cross-examination PW 1 stated that Asphyxia means blockage of air passage. The death could

be instantaneous. It is further stated that hyoid bone is in the region of larynx and trachea bone. It is true, hyoid bone cannot be visible from outside. However, PW 1 admits that in column no. 20 fracture to hyoid bone is not mentioned by her. Then witness volunteers that it is not mentioned because fracture to hyoid bone can also be noted by palpation and it is already mentioned in column no. 18. The witness further admits that it is true that fracture to hyoid bone is internal injury. It is true that histo pathology has to be done in order to ascertain whether the fracture was ante mortem or postmortem. She has not done histo pathology in this case. The cause of death in postmortem report is shown as asphyxia due to throttling.

17. Now we may refer to the other set of witnesses. Tanaji Chavan (PW 2) is the panch witness. This witness in examination-in-chief stated that on 17-2-2011 Karkamb police called him on the wasti of Vaijinath Ambure. Dead body of wife of Vaijinath Ambure was present there. Vaijinath and his mother were present there. Dead body was lying in the door. He saw

it. There were injuries on the body of deceased. One other women was present there. Spot panchnama was drawn by police. Then this witness put signature on that panchnama.

In the cross-examination, this witness stated that after listening death of deceased he went there. He had received phone. Shrimant is his distant relative. Therefore, he was informed. Shakuntala Pachpund is sister-in-law of Shrimant. He further stated that it is not true when he went there police told him that his signature was required. It is true that panchnama was going on when he went there. Police told him that his signature was required, therefore, he put his signature.

18. Bharat Nivrutti Vanjari (PW 3) is examined on the point of recovery of articles i.e., stick and chappal.

19. Balbhim Vishwanath Shinde (PW 4) is examined on the point of seizure of clothes. This witness turned hostile. However, is of no use to the prosecution.

20. Pradip Vitthal Deshmukh (PW 6) is the medical

practitioner at village Karkamb, Tq. Pandharpur since 2005. In examination-in-chief this witness deposed that accused Vaijinath and his mother came to his hospital at 08.15 pm with deceased. She was brought in the car. She was unconscious. She was unable to take breath. Her face was swollen. The physical condition of deceased was serious. Then he referred the deceased to Dr. Karande, Pandharpur.

In cross-examination this witness admitted that he did not maintain any document to show accused nos. 1 and 2 came to his hospital with deceased. He further admitted that he did not give any letter to accused to take deceased to Dr. Karande. He cannot tell number of Indica Car.

21. Uttam Nagnath Bhosale (PW 7) is the retired ASI and this witness done part investigation.

22. Nagnath Sambhaji Pachpund (PW 8) and Parmeshwar Dnyanoba Chavan (PW 9), these witnesses are examined on the point of demand of money and ill-treatment and harassment caused at the hands of accused persons.

23. Dr. Bharat Ramchandra Shinde (PW 10) is the medical officer who has conducted the postmortem with Dr. Prabha (PW 1).

24. Balu Govind Ambure (PW 11) has turned hostile. Thus, evidence of this witness is of no help to the case of prosecution.

25. Rajendra Rangnath Takane (PW 12) was working as a API at the relevant time. This witness done part investigation such as, drawing panchnamas, recording statement of witnesses, etc. Omission in the statement of witnesses are proved by this witness.

26. Dr. Sunil Rama Karande (PW 13) is another medical officer. In examination-in-chief this witness stated that since 10 to 12 years he is working as a physician and private medical practitioner at Pandharpur. He further deposed that deceased was brought to the hospital on 16.02.2011. She was examined by the houseman and was declared dead. Then he advised the relatives to go for the postmortem examination. He did not examine personally deceased. On 26-4-2011 he received letter from Karkamb Police station requesting

him to give an opinion about cause of death of deceased.

In cross-examination, this witness has denied the suggestion that deceased did not brought to his hospital on 16-2-2011 and was not examined by any of his houseman.

27. Sachin Kailas Bhosale (PW 14) is examined on the point of taking muddemal articles to C.A. and obtaining his report. In the cross-examination this witness admitted that his statement was not recorded by police. He further admitted that he cannot tell in whose possession muddemal was present during 09.03.2011 to 16.03.2011.

28. Considering the above referred evidence of Dr. Prabha (PW 1), we are of the opinion, that the prosecution was successful in proving its case that deceased Urmila died homicidal death.

29. Now we may consider the other important aspect of the matter i.e., as to the authorship of the crime and whether the Court below was justified in holding the accused guilty for commission of offence under

Section 302 of IPC. Considering the evidence of above referred witnesses and the circumstantial evidence, it can safely be said that neither any person was present and witnessed to the alleged commission of offence nor any material supports the theory of prosecution that the Appellants are the author of crime. In our opinion, thus, the prosecution was unsuccessful in establishing the factum of presence of accused persons.

30. In so far as the alleged demand of money is concerned, the evidence is inadequate to show that Appellants demanded money from deceased. There is very significant statement of Shrimant Pachpund (PW 5) — Complainant came on record by way of an omission. On one hand, this witness stated that he paid an amount of Rs. 10,000/- to deceased and deceased took that amount and went to village Bardi and on the other, this witness clearly denied that he did not tell police in his complaint that he paid Rs. 10,000/- to deceased and in turn, deceased paid it to Appellant. Thus, it can safely be said that the alleged demand is not proved. The witnesses also not stated in their testimony that in their presence money is handed over to deceased.

Thus, the evidence falls short on both counts, firstly, there was a demand of money and secondly, on account of non-payment of money, deceased was subjected to ill-treatment and harassment as the prosecution miserably failed to bring any evidence. Thus, charge against the Appellants for commission of offences under Sections 498-A is not at all proved.

31. As stated above, the prosecution has not proved the presence of accused person at the time of commission of offence. The statements of the neighbourers are also not consistent. The prosecution has also relied on the alleged recovery, however, the recovery of stick and chappals is under dark clouds. It is important to note that PW 14 in his testimony in clear words stated that his statement was not recorded by police. He further admitted that he cannot tell in whose possession muddemal was present during 09.03.2011 to 16.03.2011 and the articles were sent for C.A. after 16.03.2011. Therefore, it has not brought on record whether the said articles were properly sealed or otherwise.

32. It is admitted fact of the matter that there

are no eye witnesses and the prosecution case is entirely based upon the circumstantial evidence. There cannot be any dispute that prosecution case can be based upon circumstantial evidence, but the important circumstance is that the Appellants committed the alleged offence, was not proved by the prosecution. The prosecution ought to have proved that alleged incriminating material i.e., stick and chappals were used by the Appellants for commission of offence and secondly, by use of these incriminating articles the death of the deceased was possible. On both these counts, the prosecution again miserably failed. Neither the factum of recovery of stick and chappals is established by the cogent evidence nor the factum that the death of the deceased was due to use of stick and chappals.

33. Interestingly the medical evidence as per the postmortem the cause of death is asphyxia. Thus, merely because the postmortem report shows that there was more than 30 injuries and most of them were abrasions. It cannot be held that the Appellants were authors of the crimes. Therefore, the fact remains that the link in

the chain of circumstance is the presence of Appellants at the time commission of offence was not established.

34. In so far as the conclusion drawn by the Court below, is wholly unsupported by the evidence and no medical evidence can be suggestive that pair of chappal was incriminating material to cause death. Surprisingly, the conclusions drawn by the Court below are without their being any support from the prosecution evidence. The theory of death being caused by pair of chappal in absence of any evidence either medical or otherwise makes only a imaginative theory and no conviction can be based upon such an imaginative theory.

35. Considering the above referred aspects, we are of the opinion, that the prosecution has failed to establish the accusations against the Appellants. Hence, we pass the following order:

:O R D E R:

1. The impugned judgment and order dated 24th July, 2013 of conviction passed in Sessions Case No. 28 of 2011 by the Additional Sessions Judge, Pandhapur, District Solapur is hereby quashed and set

aside.

2. Both the Appellants stand acquitted of the offence punishable under Sections 498A and 302 read with 34 of the Indian Penal Code, 1860.
3. They be released from prison forthwith, if not required in any other case. Registry to take necessary steps forthwith.
4. The Appellants shall execute P.R. Bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) each and one surety of like amount in terms of Section 437-A of the CrPC, before the concerned Trial Court at Pandharpur.
5. The record and proceedings be sent back to the trial Court as per procedure.

(SHRIKANT D. KULKARNI,J.)

(PRASANNA B. VARALE,J.)