

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPEAL NO. 587 OF 2008

State of Maharashtra
Through Police Station Officer
Police Station, Warora
Dist. Chandrapur.

..Appellant

versus

Youraj s/o Dayal Meshram
Aged about 26 years , occu: Labour
R/o Chaitanya Colony
Majri Colliery
Tahsil Warora, Dist. Chandrapur.

..Respondent

....

Mr. M.J. Khan, APP for the appellant -State
Mr. R.D.Wakode, Advocate (*amicus curiae*) for Respondent

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CORAM: SUNIL B.SHUKRE AND
G.A. SANAP, JJ.

DATED : 10th June, 2022.

ORAL JUDGMENT: (PER SUNIL B. SHUKRE, J.)

Heard Mr. M.J.Khan, learned Additional Public
Prosecutor for the appellant-State and Mr.R.D.Wakode, learned
amicus curiae for the Respondent-accused.

2. The State of Maharashtra has filed this Appeal questioning the legality and correctness of the judgment dated 30 May,2008 delivered by learned *Ad-hoc* Sessions Judge-1, Chandrapur in Sessions Case No.125/2007, thereby acquitting the Respondent-accused of the offences punishable under Sections 302 201 and 202 of the Indian Penal Code.

3. The Respondent-accused was prosecuted by the State on the charge that on 16 July 2007 between 11.00 am and 1.15 pm at Chaitanya Colony, Majri Colliery, Warora, committed murder of his wife Seema at his house and this murder was committed by the Respondent intentionally or knowingly, throttling his deceased wife.

4. The case of the prosecution was entirely based upon circumstantial evidence in which the prosecution has examined in all eleven witnesses. In this case, the information regarding death of his wife was given by the Respondent himself on 16th July 2007 at 1.45 pm. He informed the Police that on that day at about 11.10 am, he along with his friend, Kishor Welekar, went outside the house for purchasing some vegetables and when he returned home at about 1.15 pm., he saw that door of his house as just closed and it was not latched or locked and, therefore, pushing it open, he went inside the house only to see that his wife was lying dead in the bedroom and she looked to be completely burnt. He also informed

that at that time there was smoke in the house. Upon his report, an AD enquiry was registered and after due enquiry, the Inquiry officer found some incriminating circumstances against the Respondent and accordingly on 18th July, 2007 he registered the offence of murder and destruction of evidence punishable under sections 302 and 201 of the IPC against the Respondent. After due investigation charge sheet was filed and, as stated earlier, the Respondent was put on trial for the afore-stated offences.

5. After considering the evidence brought on record and arguments of the State and the learned counsel for the Respondent-accused, the trial Court found that the prosecution failed to establish its case against the Respondent beyond any manner of doubt and, therefore, gave benefit of doubt to the Respondent and accordingly acquitted him of the offences for which he was tried.

6. Upon considering the rival arguments and evidence available on record, we find that the view taken by the trial Court is possible and it is well-settled law that when two views are possible - one favouring the accused and the other going against him, it is the view which goes in favour of the accused has to be adopted. It is further well-settled law that when other view is possible which appeals to the Appellate Court more than the view taken by the trial Court, it is not open for the Appellate Court to substitute its own view for the view taken by the trial Court just because it thinks that

its view is more appropriate in the circumstances, unless it is shown that the view taken by the trial Court is perverse or is based upon non-consideration of the relevant evidence or consideration of some extraneous material or is a view which is impossible to be taken in the facts and circumstances of the case. This is not the case here and, therefore, we find that this is not a fit case warranting interference with the conclusion drawn by the trial Court.

7. Our afore-stated conclusion, we may mention, is based upon the consideration of entire prosecution evidence, in particular, the evidence of PW2-Kishor Welekar, who appears to be the only witness who had an occasion to see as to whether or not the deceased-wife of the Respondent was really in the custody of the Respondent i.e. husband of the deceased at the time of the incident. The custody of the deceased being with the Respondent at the time of the incident, was the most relevant fact for the prosecution to prove in this case, the case being entirely based upon circumstantial evidence. If the prosecution had proved the fact that at the relevant time the Respondent had exclusive custody of the deceased-wife then the burden would have fallen upon the Respondent to explain as to the manner and the circumstances in which his deceased-wife died. The *post-mortem* report which has been proved by PW11- Dr. Santosh Mulewar, leaves no manner of doubt in our mind that death of wife of the Respondent, Seema, was homicidal in nature. On internal examination of the dead body of the deceased-Seema

it was noticed that there was fracture of hyoid bone and that there both the lungs were congested and that all the organs were congested. It was also noticed by PW 11-Dr.Satish Mulewar, who conducted the post-mortem examination that the carbon particles were not present in the trachea. PW11-Dr.Santosh Mulewar opined that the probable cause of death of Seema was asphyxia due to pressure over neck probably due to throttling. As per the CA report, no poison was detected in the viscera which confirmed the opinion of the Doctor that the probable cause of death was asphyxia due to pressure over neck of the deceased produced by throttling. This opinion undoubtedly points only towards one reason as being behind unnatural death of Seema, and that reason is of homicidal death. The absence of carbon particles in trachea is also indicative of the fact that deceased-Seema did not die due to burn injuries, that the burn injuries were post mortem in nature and the smoke in the house which was noticed by the Respondent when he entered the house in the afternoon on 16th July 2007 was only for the purpose of masking the real reason behind the death of Seema. These circumstances raise the question as to who could have killed Seema and if any presumption of her being killed by Respondent is to be drawn, it is necessary that the fact that at the relevant time, the Respondent was having the exclusive custody of deceased-Seema was proved by the prosecution beyond any manner of doubt, but that could not be proved by the prosecution.

8. PW 2-Kishor Welekar, as stated earlier, is the only witness who could have thrown some light on the afore-stated crucial aspect of the case but his evidence is quite scanty in this regard and it cannot be ascertained from the evidence with reasonable certainty that the Respondent was with deceased-Seema in the house for at least 10 to 15 minutes just prior to the death of Seema and that at that time there was no one inside the house. On the contrary, it is the stand of the Respondent that when he left his house in the morning of 16 July 2007, deceased-Seema was in the house and that nobody else was present in the house and that when he returned to the house in the afternoon, he saw his wife Seema as lying dead in the bedroom, surrounded by cloud of smoke.

9. PW2 Kishor stated that on the fateful day he had visited the house of the accused and he was served with tea by Seema and thereafter he left the house and proceeded on his motorcycle to some place and after some time he received a call from the Respondent informing him that the Respondent would come to the spot where PW 2 Kishor was repairing his motorcycle. He has further stated that as told by the Respondent, the Respondent did arrive at the spot where he was standing along with his motorcycle and they proceeded to some place and then PW 2 Kishor dropped the Respondent at his house. PW2-Kishor has further stated that when he was about to leave the house of the Respondent on the motorcycle, the Respondent came outside the

house and informed him that there was smoke inside the house. He has further stated that on being so informed, he parked his motorcycle and following the Respondent he too entered the house and noticed smoke being present in the first room and then he also saw Seema as lying in the inner room with burn injuries.

10. Such evidence of PW2-Kishor does not give an assurance to us that Respondent was with Seema inside his house all alone for a reasonable period of 10 to 15 minutes which would have provided him sufficient opportunity to eliminate deceased Seema, but such an indication in a firm manner is not forthcoming from the evidence of PW2. If this is so, we do not think that the view taken by the trial Court could be said to be perverse or impossible one warranting interference at the hands of this Court.

11. For the reasons afore-stated, we find no merit in the Appeal. The same is dismissed.

12. We record our appreciation for the effective assistance rendered to us by Mr.Khan, learned APP and Mr. Wakode, learned *amicus curiae*.

[G.A. SANAP,J.]

[SUNIL B. SHUKRE, J.]

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