

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

CRIMINAL APPEAL NO. 39 OF 2021

Uddhav s/o Deepa Rathod, ... **Appellant**
Age 50 years, Occu: Labour
R/o Bhautanda, Tq.

VERSUS

1. The State of Maharashtra,
Through Police Station,
Parli-V, Dist. Beed
2. Dilip s/o Ramkisan Chavan ... **Respondents**
Age 30 years, Occu: Agri
R/o Kauthali Tanda
Tq. Parli-V, Dist. Beed

Mr. Shrinivas A. Ambad, Advocate for the appellant,
Mr. A. M. Phule, APP for respondent-State

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 14.03.2023

JUDGMENT (Per Y. G. Khobragade, J.):

1. Heard at length the learned counsel for the appellant/
informant and learned APP at the stage of admission.
2. The present criminal appeal under section 372 of Criminal
Procedure Code is filed by the appellant/informant against judgment and
order dated 23.09.2020 passed by the learned Additional Sessions Judge,
Ambajogai, Dist. Beed in Sessions Case No. 89 of 2018. The respondent
No.2/accused has been acquitted for the offences punishable under

sections 302 and 498-A of the Indian Penal Code in Crime No. 131 of 2010 registered with Parli-V Rural Police Station.

3. In short, the prosecution case is that the informant-appellant lodged a report with Parli-V Rural Police Station on 04.07.2018. He is father of deceased Sunita and marriage of his daughter Sunita was solemnized with respondent no.2-accused five years prior to the incident. It is alleged that, his married daughter was properly treated for some days, however, subsequently the respondent-accused raised demand of motorcycle and started harassing her. The appellant/informant gave understanding to the accused. Deceased and the accused are blessed with two daughters. Accused is a tractor driver. Informant had talked with his daughter on mobile, three days prior to incident. Thereafter a day prior to the incident, his wife Kaushalyabai had talk on mobile with Sunita around 8.30 p.m. Deceased told her mother that her husband-accused is demanding motorcycle. At that time, the informant promised that he would give motorcycle after arranging the money. However, on 04.07.2018, at about 4.00 a.m., he received phone call from mobile No.8668357500 and the said person informed him that in previous night, between 8.00 p.m. to 11.00 p.m., there was quarrel between Sunita and respondent No.2-accused and Sunita died during quarrel. Therefore, the informant, alongwith his brother Subhash Deepa Rathod and other relatives visited the matrimonial house of his daughter at village Bhautanda Tq. Sonpeth Dist. Parbhani but the house was closed. Thereafter, on enquiry from the villagers, he came to know that after the quarrel in previous night, between Sunita and respondent no.2 accused, Sunita has sustained injuries and she was taken to Government Hospital at Parli. Thereafter, he alongwith others, visited the

Government Hospital, Parli and on enquiry, he came to know that in previous night, at about 1.30 p.m., the accused and his relatives admitted his daughter Sunita in the Hospital but upon admission, she was declared dead. Thereafter, the informant visited the room in which dead body of his daughter was lying and noticed that red colour sari, blouse were on the person of his daughter and there were ligature marks on right side of her neck and bruises on her face. The appellant/informant further alleged that his son-in-law/accused strangled Sunita with his hands on account of non-fulfillment of demand of motorcycle and committed murder. On the basis of said report, Crime No. 131 of 2018 came to be registered with Parli-V Police Station against the accused for the offences punishable under section 302, 498-A of IPC.

4. Investigating Officer PSI L.R. Kamble (PW6) conducted investigation and executed inquest panchanama and referred dead body for postmortem. Thereafter, investigating officer drawn spot panchanama in presence of witnesses and recorded statement of witnesses under section 161 of the Cr.P.C. So also, statement of PW-2 Balasaheb Bhaurao Chavan was recorded under section 164 of the Cr.P.C. Necessary samples of viscera of deceased was collected and referred for chemical examination. During the course of investigation, PW-6- Kamble collected postmortem report Exh.37 and viscera report/ C.A. report Exh. 40 and on completion of investigation, charge sheet came to be filed.

5. After compliance of section 207 of Cr.P.C., the learned Judicial Magistrate, passed order under section 209 of Cr.P.C. and committed the trial to the Court of Sessions.

6. On 01.07.2019, the learned trial court framed charge at Exh.6 for the offence punishable under section 302 and 498-A of IPC. The plea

of the accused recorded at Exh.7. The accused pleaded not guilty and claimed for trial. The defence of the accused depicts about alibi that at the relevant time, he was not present in his house as he and his family members had been for sugarcane cutting and when he reached at his house, at that time door of his house was locked.

7. The learned trial court passed the impugned judgment and order on 23.09.2020, holding that the prosecution failed to establish how and in which manner death of Sunita was caused due to compression of neck and the prosecution failed to prove the alleged harassment to the deceased at the hands of the accused. It was held that there is no evidence available on record to establish unlawful demand by the accused.

8. The learned counsel appearing for the appellant/informant submitted that on 03.07.2018, at about 8.00 to 11.00 p.m., respondent No.2 accused had beaten the deceased Sunita on account of non-fulfillment of demand of motorcycle and pressed neck of deceased during the course of quarrel and committed her murder. Though the prosecution examined material witnesses, however, the learned trial court failed to consider testimony of the witnesses that the deceased Sunita was subjected to harassment at the hands of the accused for non-fulfillment of demand of motorcycle and there were quarrel between the deceased Sunita and respondent No.2 accused who intentionally committed murder of deceased Sunita. So also, the learned trial court erroneously gave weightage to the defence set out by respondent no.2/accused which is based on assumption and presumption. Therefore, the impugned judgment and order of acquittal of respondent no.2

/accused is illegal, perverse and bad in law and liable to be quashed and set aside.

9. Learned counsel appearing for the appellant/informant further canvassed that the learned trial court failed to consider the legal position that respondent no.2/accused is husband of deceased Sunita and the incident of murder was occurred on 04.07.2018 in between 08.00 p.m. to 11.00 p.m. in the house of accused/respondent No.2 and in said mid-night, respondent no.2/accused, with his relatives, brought the deceased at Government Hospital, Parli. Though the respondent No.2/accused raised plea of alibi but respondent no.2/ accused failed to discharge his burden as per section 106 of the Evidence Act to prove that he was not present at his house at the time of incident. Therefore, it appears that except the accused/respondent No.2, nobody is the author of injuries caused to the deceased. However, the learned trial court failed to appreciate the circumstantial evidence available on record and passed the impugned judgment and order of acquittal, which is illegal, bad in law and prayed to quash and set aside the same.

10. Having regard to the submissions canvassed on behalf of the learned counsel appearing for the appellant informant, we have gone through the record. It would be worthwhile to mention here that on 04.07.2018, the informant/appellant (PW-1) lodged FIR Exh.17 with Parli-V Rural Police Station alleging that he had received phone call from Mobile No. 8668357500 in the morning on the same day and the caller informed him about the quarrel between Sunita and respondent No.2/accused between 08.00 p.m. to 11.00 p.m. and during the course of quarrel, Sunita died. Thereafter, the informant, alongwith his brother and other relatives, visited the matrimonial house of his daughter at

village Bhautanda but at that time, they found that house door of his daughter was closed. He came to know from the villagers about taking his daughter by the accused/respondent No.2 and his relatives to Rural Hospital at Parli but prior to admission his daughter was declared dead.

11. Informant PW1 deposed at Exh.16 that after marriage, his daughter was properly treated for initial days by respondent no.2/accused and they are blessed with two daughters. The accused subsequently raised demand of motorcycle to his daughter and started harassing her. The informant and his brother visited the accused at Kauthali Tanda and had assured the accused to provide motorcycle soon after he arranged the money. However, behaviour of the accused did not change and he continued to harass Sunita. On year prior to the incident also he had received a phone call of his daughter Sunita informing about assault by the accused/respondent no.2 on account of demand of motorcycle. PW-1 further deposed that his wife had told Sunita that the informant would come on next day and she should not worry. Then PW-1 received the call about death of Sunita. PW-1 has undergone the cross examination. In cross examination PW-1 stated that father, mother and grandmother of accused used to go for sugarcane cutting work and his daughter was also accompanying them. He had no knowledge whether his daughter was quarreling with her husband on petty issue and whether Sunita used to run towards the well, many times. He claimed ignorance about the accused having motorcycle after two years of his marriage.

12. Though prosecution examined other witnesses but none of them is eye witness to the incident and case of prosecution is based on circumstantial evidence. The prosecution examined PW-5 Dr. Vikas

Sugriv Morale at Exh. 36 who conducted postmortem on dead body of Sunita and issued postmortem report Exh. 37. During the course of postmortem, he found following injuries.

- (1) Abraded contusion on chin of size (2x1) cm, reddish in colour irregular in shape.
- (2) Cresentric abrasions on neck right side below angle of mandible of size (0.5x0.2) cm, each equidiste separated by 2 cm distance, reddish colour obliquely placed one below another four in number.
- (3) Contusion on bilateral hypochon region of size (3x2)cm on right side (3.5x1.5)cm on lft, reddish in colour irregular in shape.
- (4) Contusion on thigh midshaft bilateral of size (5x3) cm on right side (3x2) cm on lft, anteriolaterally reddish in colour, irregular in shape.

As per opinion of the Medical Officer, death of deceased Sunita was caused due to compression of neck. In cross examination, PW-5 Dr. Vikas admitted that as per Modi's jurisprudence, strangulation is of six kinds and how to identify strangulation and hanging is defined. As per Modi's Jurisprudence, strangulation can be identified by fracture of hyoid bone and in case of strangulation, the hand nails of deceased can be preserved for sending it for chemical analysis.

13. Though the cause of death of deceased was due to compression of neck, PW-1 himself admitted that at the time of incident, accused, alongwith his family members had gone for sugarcane cutting and when PW-1 alongwith his relatives visited the spot of incident the house of the accused was locked.

14. The prosecution examined PW-2 Balasaheb Chavan who is neighbour of the accused at Exh. 21/C. PW-2 Balasaheb deposed that at about 11.30 p.m., he heard shouting from the house of accused, hence,

he went there and found gathering of about 50 villagers and dead body of Sunita lying on road and grandmother of accused was near to the dead body. He has not stated about presence of accused there. It would be appropriate to mention here that as per evidence of PW-1, on 04.07.2018, at about 4.00 a.m. he received phone call from Mobile No. 8668357500 and the caller informed him about quarrel between the accused and his daughter Sunita and then her death. However, the I.O. has not collected C.D.R. of informant's and caller's mobile. Further, the house i.e. the place of incident is not situated in isolation and PW-2 deposed about gathering about 50 villagers at the spot but the prosecution has not examined any independent witness to bring home the guilt of the accused for the offence punishable under sections 302 and 498-A. of the IPC. Therefore, the prosecution failed to establish the presence of the accused at the time of incident.

15. As per section 106 of the Evidence Act, the prosecution must discharge initial burden of establishing prima facie guilt of the accused beyond reasonable doubt. The chain of circumstantial evidence is not complete to connect the accused with the crime. After considering oral as well a documentary evidence available on record, the learned trial court passed the impugned order and acquitted the accused of the offences punishable under section 302 and 498-A of IPC.

16. On perusal of the record, it further appears that Investigating Officer recorded statement of various witnesses under section 161 of the Cr.P.C. and some witnesses had stated that, when they visited the Government hospital, at that time, the accused had given confession to them. However, said confession made by the accused to those persons

cannot be said to be proved without substantial evidence i.e. without examining them.

17. After going through the impugned judgment and order, it can be seen that the trial court considered the available evidence on record and held that the death of the deceased Sunita is homicidal but the prosecution failed to prove guilt of the accused. The learned trial judge was justified in arriving at the said conclusion.

18. In view of the above discussion, we do not find merit in the present appeal, hence, it is dismissed at the stage of admission.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan