

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

CRIMINAL APPEAL NO. 450 OF 2015

1. Lalasaheb S/o Mesaji Bansode,
Age 75 years, R/o Lokhandi Sawargaon,
Tq. Ambajogai, District Beed.
 2. Sagarbai W/o Lalasaheb Bansode,
Age 70 years, R/o as above.
 3. Pradip S/o Lalasaheb Bansode,
Age 27 years, R/o as above.
- ... Appellants
(Orig. Accused Nos. 1 to 3)

Versus

The State of Maharashtra,
Through Police Station Officer,
Ambajogai Rural Police Station,
Tal. Ambajogai, District Beed.

... Respondent
(Orig. Complainant)

...

Mr. Nilesh S. Ghanekar, Advocate for the Appellants.
Mr. R. V. Dasalkar, APP for the Respondent-State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

Date : 19.01.2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. By invoking the provisions under Section 374 of the Code of Criminal Procedure (Cr.P.C.), the appellants herein are taking exception to the judgment

and order of conviction passed by learned Additional Sessions Judge, Ambajogai in Sessions Case No. 94 of 2013, thereby convicting the appellants for commission of offence punishable under Section 302 r/w 34 of IPC and sentencing them to suffer imprisonment for life and to pay fine of Rs.2,000/- each, in default to suffer simple imprisonment for further two months.

Prosecution case in trial court

2. PW 2 Dilip Jogdand set law in motion by approaching Ambajogai Rural Police Station on 13.08.2013 informing that his daughter Kalpana was married to Pradip (accused no.3) on 10.05.2010. After marriage, his daughter went to reside with her husband Pradip, father-in-law Lalasaheb and mother-in-law Sagarbai. For initial period of six months everything was smooth but thereafter, husband and in-laws started demanding Rs.5,00,000/- for purchasing tractor. It was duly informed by his daughter to him. There are allegations of being beaten by using stick, iron rod and wood. There were threats to kill her. Deceased had filed application before Women's Dispute Redressal Forum, but consequently, the matter was settled and compromised. Thereafter, his daughter again went to co-habit with her husband and in-laws. However, in spite of giving undertaking, ill-treatment continued. Therefore, Kalpana was brought back for five months and then she again went to co-habit with husband. After a month and ten days, accused strangled his daughter. Hence he lodged report which gave rise to registration of crime no. 96 of 2013

with Ambajogai Rural Police Station, District Beed, for commission of offence punishable under Sections 302, 304-B, 498-A, 323 r/w 34 of the Indian Penal Code (IPC).

3. The above crime was registered and after investigation was completed, charge sheet was filed. Case came to be committed for trial before learned Additional Sessions Judge, Ambajogai, who after appreciating oral and documentary evidence on record, recorded finding that all accused are responsible for death of Kalpana and thereby they were held guilty and stood convicted for above said offences.

4. All three appellants have now taken exception to the above judgment and order of conviction by preferring the instant appeal on various grounds raised in the appeal memo.

SUBMISSIONS

APPELLANTS :

5. In support of relief, learned Advocate for the appellants would submit that there was weak evidence before the trial court to hold accused persons guilty. It is pointed out that at the threshold, there is no evidence to show that parents-in-law i.e. accused nos. 1 and 2 resided with deceased and accused no.3 husband. There is no reliable and trustworthy evidence about alleged episode of strangulation. That, investigating machinery has not recorded

statements of immediate neighbours. According to him, in absence of any evidence of involvement of all three accused in strangulation, learned trial court ought not to have held all of them guilty. He pointed out that there is no supporting medical evidence in this regard. Taking us through the evidence of the witnesses, he pointed out that it cannot be said for sure that there is involvement of parents-in-law also. Inviting our attention to the testimony of PW5 Kalawati, it is submitted that it seems that prosecution is heavily relying on the testimony of said witness. But according to him it is doubtful whether she was in a position to see as to who all were present in the house and who all strangled deceased. According to him, this witness is a got up witness.

6. Learned Advocate for the appellants further submits that when there was no direct eye witness and case being entirely based on circumstantial evidence, prosecution was duty bound to prove each and every circumstance beyond reasonable doubt. According to him, here the chain of circumstances is not getting completed and therefore guilt ought not to have been recorded.

7. Learned Advocate for the appellants further submits that it has come in the evidence that accused persons had two houses i.e. one in the village and other in the farm. There is no reliable evidence that all three accused were present at the alleged spot and therefore, guilt of all three accused ought not to have been recorded. Lastly, he submits that there being no independent,

reliable and trustworthy evidence from independent corners and there being no sufficient corroboration, learned trial court ought not to have held accused persons guilty and hence he prays to set aside the judgment and order of conviction by allowing the appeal.

PROSECUTION :

8. In answer to above, learned APP for the State would submit that admittedly deceased was residing with accused persons. That, merely after six months of marriage there was ill-treatment to deceased on account of demand of Rs.5,00,000/- for purchasing tractor. That, for non-fulfillment of the same, deceased was subjected to cruelty and it was promptly informed by her to her father who deposed to that extent in the witness box. He submits that complaint was filed with Women's Dispute Redressal Forum. Affidavit was also executed in the backdrop of compromise and therefore, it is submitted that, there is ample evidence about ill-treatment meted out to deceased in the backdrop of demand. Taking us through the evidence of PW5 Kalawati, it is submitted that this is an independent witness whom deceased had confided about beating and threats issued by her husband and in-laws. Such information was regularly informed when she used to meet PW5 Kalawati at the common water tap and on the day of incident also, deceased while crying, had informed about being beaten and shortly after few hours, this witness had also heard noise coming from the house of accused persons and shortly

thereafter, deceased was taken in the hospital and that accused persons are solely responsible for the homicidal death of Kalpana. The investigating machinery had led evidence on crucial intimidating material. Taking the same into consideration, learned trial court has rightly appreciated the evidence and recorded guilt. No error has been pointed out in the said conviction. There being no merit in the case, he submits that the appeal be dismissed.

ANALYSIS

9. Being first appellate court, this Court is expected to re-evaluate, re-examine and re-appreciate the entire oral and documentary evidence that had surfaced before the trial court.

10. It seems that there is no dispute on the following aspects :

- (i) Deceased was married to accused no.3.
- (ii) Secondly, on the date of incident, Kalpana died in the house of accused.
- (iii) Thirdly, death to be due to strangulation and hence it to be homicidal is not disputed.

11. Though prosecution has taken support of in all eight witnesses, it is revealed that crucial evidence is of parents of deceased (PW2 Dilip and PW4

Chandrakala), brother of deceased (PW3 Vijay), PW5 Kalawati and and PW7 Dr. Rishikesh Deshpande (autopsy doctor). Rest of the witnesses are PW1 Aulia - pancha to the spot panchanama, PW6 Smt Sagar Pawar, ASI, who received complaint from deceased while posted at Women's Dispute Redressal Forum and PW8 PI. Ramesh Munde i.e. the Investigating Officer.

12. It seems to be the case of prosecution that after marriage of Kalpana with accused no.3 Pradip on 10.05.2010, she came to reside with husband and parents-in-law at Lokhandi Sawargaon. According to informant **PW2 Dilip** i.e. father of deceased, for six months after marriage, his daughter was treated well by accused persons. Then he alleged that accused persons started beating his daughter and demanding Rs.5,00,000/- for purchasing tractor. They used to beat her with stick, iron rod and wood. His daughter also lodged complaint with Women's Dispute Redressal Forum. Finally, the matter was compromised and his daughter went back to cohabit with accused. On receipt of information, he seems to have visited hospital and there he learnt that his daughter was dead. He claims that at hospital he came across injury marks on her neck, forehead and forehead. There he met one Anjana and one Kalawati who told him about his daughter narrating to them regarding beating by the accused and therefore, he lodged complaint. Exhibit 41.

13. **PW3 Vijay** and **PW4 Chandrakala**, brother and mother of deceased respectively, are also lending support to the aspect of demand of Rs.5,00,000/- for purchasing tractor and in such backdrop, deceased Kalpana being abused and beaten and about complaint being lodged to Women's Dispute Redressal Forum. Both these witnesses speak about receiving information on 13.08.2013 about Kalpana being admitted in hospital.

14. The star witness of prosecution is **PW5 Kalawati**. On carefully going through her evidence, we are of considered opinion that testimony of this witness is crucial for both, prosecution as well as defence.

15. According to this witness **PW5 Kalawati**, she passes over the house of accused to bring water from the bore well. In witness box she has stated that deceased used to tell her that accused persons were ill-treating her, beating her and asking her to bring Rs.5,00,000/- for purchasing tractor. This witness claims that she gave understanding to deceased and further states that she had also requested accused no.2 not to behave with deceased in such manner and rather to cohabit properly. But, she further states that, there was no change in the behaviour of accused. Regarding the incident, it is her testimony that on that day, deceased met her at about 10.00 a.m. while she was at the bore well for fetching water. There were other women also present and there deceased allegedly told them that accused were beating her and she was weeping while

telling so. This witness gave understanding to her and went to her house with water pot. In paragraph no.3 of her examination-in-chief, she states that in the noon time all accused were beating the deceased. Hearing the noise, she stopped near the house of the accused while going on the bore well. She states that accused Lalasaheb drove her saying that she need not interfere in their family matter. She further states that after some time when she again went to the house of accused to see what happened, she found the house of the accused locked. She states that she learnt that Kalpana was dead and taken to the hospital and so she went to S.R.T.R. Medical College and Hospital and saw her dead body and further claims to have come across injury marks on her neck.

16. Defence seems to have cross-examined this witness **PW5 Kalawati** on the point of her parental place and whether she knew the parents of victim. She stated that she was knowing the parents of deceased since she had started attending court and that they were talking regarding evidence. She was asked about geographical position of the house of accused, the surrounding circumstances and neighbours' houses. Then she was questioned about stay of accused husband and deceased at Pune. She was asked whether there was water tap in her own house, to which she answered in affirmative. She further volunteered that said water tap opens once in a week only and therefore they have to go fetching water from the hand pump. She answered that they are

required to go four to five times in a day to carry a pot of water. Then she is questioned whether she was present at the engagement ceremony of deceased, marriage of deceased and whether she knew anything about the farm and farmhouse of the accused. She answered that she had no occasion to personally talk to the accused. Again in cross-examination she reaffirmed that deceased was telling them at the hand pump about ill-treatment meted out to her and beating to her. She denied about recording of her statement by police. Then she was questioned about quarrel between herself and one Attam Bansode who is nephew of accused, to which she answered in affirmative and then she was asked whether she herself and her husband were convicted in a case.

17. The prosecution is heavily relying on the above evidence. It is to be noted that there is no dispute that this lady **PW5 Kalawati** was not a resident of the locality. This witness has stated about deceased meeting her at water hand pump and narrating about beating, abuses and ill-treatment on account of demand of Rs.5,00,000/-. It is pertinent to note that evidence of this witness, particularly in paragraph no. 2 regarding this witness meeting deceased at 10.00 a.m. and deceased complaining about ill-treatment and beating and oral account in paragraph no. 3 about this witness hearing noise from the house of accused and accused Lalasaheb asking her to go away, has not at all been touched by the defence counsel. There is no cross-examination

worth namesake also on the contents of paragraph nos. 2 and 3 of the testimony of PW5 Kalawati. Infact, she was the crucial witness who had deposed more particularly about events that took place on the alleged day. Therefore, the conclusion that can be drawn is that there is no serious challenge to the evidence about actual occurrence. Even before us when we inquired with the learned Advocate for the appellants as to what he has to say about the testimony of PW5 Kalawati and her evidence in paragraph nos. 2 and 3, he was unable to satisfy us and he fairly and candidly admitted that there was no cross-examination at all to the above evidence of PW5 Kalawati in trial court.

Therefore, in our opinion, testimony of PW5 Kalawati, who is an independent witness and whose has deposed about hearing from deceased, about ill-treatment mated out to her by accused persons and incident taking place in the house, has virtually remained unchallenged and undisturbed.

18. As stated above, learned Advocate for the appellants was fair enough in submitting that defence has not questioned the mode of death i.e. homicidal. Therefore, there is no hesitation at all to hold that there is trustworthy, reliable, independent evidence regarding the incident taking place in the house which was undisputedly occupied by accused nos. 1, 2 and 3. Though it has come on record that there were two houses, defence has not brought

anything on record to show that accused nos. 1 and 2 were not occupants of the house and it is only accused no.3 husband and deceased who resided there. As stated above, testimony of PW5 Kalawati confirms presence of father-in-law Lalasaheb i.e. accused no.1. Therefore, taking such material into consideration, deceased having met unnatural death in the house which was occupied by husband and parents-in-law, no other inference can be drawn. In the light of above discussion, finding sufficient material regarding involvement of all three accused, we refrain from disturbing the findings reached at by the trial court. There is no perversity in the finding arrived at by the learned trial court. No patent error or illegality has been brought to our notice in the appeal. Resultantly, there being no merits in the same, we proceed to pass the following order.

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)