



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

CRIMINAL APPEAL NO.457 OF 2018

Ramesh Bhanudas Shelke,
Age-41 years, Occupation:Agriculture,
R/o-Hippalgaon, Tq-Shirur-Anantpal,
District-Latur.

**...APPELLANT
(Ori. Accused No.1)**

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Sachin S. Panale Advocate for Appellant (**appointed**).
Ms. Uma S. Bhosale, A.P.P. for Respondent - State.
...

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

DATE : 6th DECEMBER, 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed by original accused No. 1 challenging his conviction by learned Additional Sessions Judge, Nilanga, District-Latur in Sessions Case No.05 of 2016 on 14th May 2018, whereby he came to be convicted for the offence

punishable under Section 302 of the Indian Penal Code. It will not be out of place to mention here that in all five accused persons faced the trial for the offence punishable under Section 302 and Section 498-A of the Indian Penal Code. Accused No.1 came to be acquitted of the offence punishable under Section 498-A of the Indian Penal Code, whereas accused Nos. 2 to 5 came to be acquitted of the offence punishable under Section 302, 498-A of the Indian Penal Code by the same Judgment.

2. PW-7 Chandrakant Sheshsrao Khadade lodged report with Shirur-Anantpal Police Station on 1st September 2015. It was informed in the First Information Report (for short "the FIR") that his sister Savita got married to accused No.1 Ramesh in 2006. Accused persons started harassing her when she had not begotten issue for about three to four years after the marriage. She was kept starved and harassed on account that she should bring money for purchasing four wheeler vehicle. Savita used to inform the harassment to the informant and other relatives. However, due to poor financial condition the amount could not be given. The harassment then got intensified. Savita had then lodged a report with Women's Grievance Redressal Cell. Accused

No.1 assured that he would look after Savita properly and therefore, he took Savita for cohabitation after about seven to eight months. Thereafter again Savita informed that she is being harassed by her in-laws and husband. Informant had gone to the matrimonial home of Savita on 29th August 2015 for Rakhi Pournima festival, whereupon Savita again conveyed about the ill-treatment to her. Informant persuaded her and came back to his house. But on 1st September 2015, his relative Shivaji Kompale from Latur gave information to him that around 9.00 a.m. Savita has been assaulted and murdered by the appellant. Informant went to the matrimonial home of Savita around 10.30 to 11.00 a.m. He found Savita in dead condition in the house, however, there was no evidence. He has then lodged report with Police Station, on the basis of which offence came to be registered vide Crime No. 69 of 2015.

3. The Police had conducted inquest panchnama and sent the dead body for postmortem. Thereafter the panchnama of the spot was got executed and other panchnamas of seizure of the clothes of the deceased and after the arrest of the accused, the arrest panchnamas were got executed. Statements of witnesses

were got recorded and after completion of the investigation, charge-sheet came to be filed.

4. After committal of the case, charge was framed. All the accused had pleaded not guilty. Prosecution has then examined in all eleven witnesses to bring home the guilt of the accused. After hearing both sides and taking into consideration the evidence on record, the learned trial Judge has pronounced the Judgment as aforesaid i.e. convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and thereby sentencing him to suffer imprisonment for life and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for six months, which is under challenge in this Appeal.

5. The appellant was earlier represented by an Advocate, however by order dated 31st October 2023 the said Advocate came to be discharged. Then learned Advocate Mr. Sachin Panale has been appointed to represent the appellant, i.e. legal has been provided to the appellant.

6. It has been vehemently submitted on behalf of the

appellant that the learned trial Judge has not appreciated the evidence properly. The appellant is not disputing that deceased Savita was found murdered in the house but only on that count the learned trial Judge has invoked Section 106 of the Indian Evidence Act. In fact, if we consider the findings of the trial Court, then it has acquitted all the accused of the offence punishable under Section 498-A of the Indian Penal Code. That means there was no harassment or subjecting deceased to cruelty by the accused. The case of the prosecution was then based on circumstantial evidence as regards offence under Section 302 of the Indian Penal Code is concerned. Under the said circumstance, the prosecution ought to have established *mens rea* as against accused No.1 – appellant. The incident has taken place in 2015 whereas the marriage had taken place in 2006. The marriage was solemnized nearly ten years ago and again at the cost of repetition it can be said that the earlier complaint by Savita to Women's Grievance Redressal Forum was not considered by the trial Court as there is acquittal for the offence under Section 498-A of the Indian Penal Code. Therefore, when the intention to commit murder has not been proved beyond reasonable doubt, so also it is not coming on

record as to with which weapon the alleged head injuries have been caused to Savita and the weapon has not been discovered, the learned trial Judge ought not to have come to the conclusion that the offence of murder has been proved beyond reasonable doubt. It is admitted by the prosecution witnesses, especially the informant that appellant is a driver by profession. He was having four wheeler vehicle even prior to the marriage and he used to do the business of giving the vehicle on hire basis to the tourists and he himself used to drive the same, there appears to be no necessity for him to purchase another vehicle. Appellant had examined DW-1 Shirish Patil, who in his examination-in-chief, has specifically stated that he had hired the Jeep of the appellant for going to Pune and Tirupati. He had been to Tirupati in May 2015 and on 30th August 2015 at Pune. DW-1 Shirish Patil has categorically stated that on 29th August 2015 his both daughters had been to Latur for Rakhi Pournima festival and on the next day i.e. 30th August 2015 he has been, with his wife and daughters, to Pune. They have started from Murud at about 3.30 p.m. and reached Pune at about 9.30 p.m. On 31st August 2015, wife of DW-1 Shirish stayed with daughters for arranging the domestic articles and he has been to his nephew for handing

over his articles. Accused No.1 – appellant had made his Jeep stationary outside the room and then DW-1 Shirish along with his wife returned to Murud from Pune on 1st September 2015 at about 4.30 a.m. in the Jeep of accused No.1. His testimony has been unnecessarily disbelieved by the learned trial Judge when the plea of alibi has been specifically proved by the appellant. The conviction awarded to the appellant is therefore, illegal and cannot be allowed to sustain. The learned Advocate for the appellant has also specifically stated that PW-2 Madhukar and PW-3 Ujawala, both have turned hostile but the learned trial Judge has believed only the relatives of the deceased and therefore, the Appeal deserves to be allowed.

7. Per contra, the learned APP strongly supported the reasons given by the learned trial Judge while convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code. It was submitted on behalf of the prosecution that for plea of alibi the testimony of DW-1 Shirish was not sufficient. He was not having any documentary evidence to support whatever he has stated in his examination-in-chief. PW-1 Dinanath Kamble was the police patil of the village, who came to know around

8.30 a.m. that quarrel was going on in the house of Bhanudas i.e. father of the appellant. He immediately went to the house of the accused and saw that the latch was put to the door of the house of the accused from the outside. Therefore, he himself removed it, along with the neighbours he went inside the house and saw that Savita was lying on the floor. He was accompanied by four to five neighbours. However, now neighbours have turned hostile, but their hostility will not affect. From the inquest panchnama and the testimony of autopsy surgeon PW-8 Dr. Balaji Devangre, it is certain that there were multiple injuries on the person of the deceased and therefore, the probable cause of death is 'head injury with multiple wounds over body'. Here death is homicidal in nature. As regards previous complaint also, prosecution has examined PW-10 API Varsha Dandime and the complaint has been produced on record. PW-7 Chandrakant, who is brother of the deceased has proved the FIR Exhibit-19 and therefore, the conviction awarded to the accused – appellant is perfectly legal and does not require any interference.

8. Here, from the testimony of the autopsy surgeon PW-8 Dr. Balaji Devangre, who found eight external injuries and

corresponding internal injuries i.e. big haematoma over the occipital area at the base of brain with vault fracture, it can be certainly said that it has been proved by the prosecution that death of Savita was homicidal in nature. In his cross-examination PW-8 Dr. Balaji has stated that the injury shown to the head is impossible in such case even if the person falls directly on the head. It appears that by suggesting the said question, it was in the mind of the accused – appellant to create a possibility that Savita might have fallen from the staircase. However, the spot panchnama does not show that there was any staircase nearby, rather the roof of the matrimonial house of Savita is made up of iron sheets. Even though final cause death certificate has not been given, yet autopsy report Exhibit-99 was sufficient to prove that death of Savita was homicidal in nature.

9. Though the prosecution has brought on record that Savita had sustained multiple wounds including the injury to the head, it is not made clear, as to by which means the injuries would have been caused. Injury Nos. 2 to 8 are contusions. It appears that the prosecution intended to say that Savita's body, especially head was banged on the wall by pushing Savita

forcibly to the wall. However, the spot panchnama is not supporting the prosecution. The spot panchnama does not say that there were signs to show that such banging or pushing to the wall had occurred several times. There is no seizure of any weapon in this case. Therefore, prosecution ought to have unfolded, as to how the murder would have been committed. It cannot be expected that the prosecution would leave it as mystery. Therefore, on this aspect the evidence adduced by the prosecution is lacking.

10. All the accused persons including the appellant have been acquitted of the offence punishable under Section 498-A of the Indian Penal Code. Neither the relatives of the deceased Savita nor the prosecution has challenged the said acquittal. That means, it has become final. When the trial Court itself had come to the conclusion that the prosecution was not able to prove that Savita was subjected to cruelty, and the case is based upon the circumstantial evidence, then it was incumbent on the prosecution to prove the *mens rea* or intention on the part of the appellant to commit murder of his wife. At this stage itself we would like to take note of the fact that PW-7 Chandrakant, PW-5

Ashok Malwade (maternal uncle of deceased Savita), PW-6 Tatyrao Khandade (cousin of deceased Savita) were admittedly not present on the previous day of the incident. There is no eye witness to the incident, but testimony of PW-1 Dinanath Kamble, police patil of the village, would suggest that some neighbors of accused informed him that quarrel was going on in the house of Savita. In his examination-in-chief itself he has stated that neighbour of Bhanudas told him that around 7.00 to 7.30 a.m. accused – appellant, his father Bhanudas and Savita were present in the house and the quarrel was going on between them. Those neighbours were able to listen the noise of quarrel. In the cross-examination PW-1 Dinanath has specifically stated that he will not be able to name the said neighbour who gave him that information. Therefore, whatever PW-1 Dinanath has said as to what was seen and heard by the neighbours, for that purpose his testimony is hear-say in nature. If he would have named those neighbours then they could have been examined to support the prosecution story and also his testimony. Those neighbours would have been the best witnesses in this case. However, due to non-revelation of the name of the said neighbours, they could not be examined. PW-1 Dinanath has not

taken name of either PW-2 Madhukar or PW-3 Ujawala or PW-9 Manchala as the person or persons who had heard the quarrel and then seen accused No.1 and his father leaving the house by latching the door from the outside. Under the said circumstance, the hostility of these three witnesses cannot be considered as an act of relieving the prosecution from examining that neighbour who had informed the incident to PW-1 Dinanath around 8.30 a.m. of 1st September 2015. The prosecution therefore, has not examined the best witness in this case.

11. PW-2 Madhukar, PW-3 Ujawala and PW-9 Manchala have turned hostile. In the cross-examination they have admitted that they had seen the dead body of Savita in her house but claimed ignorance about her murder by the accused. PW-2 Madhukar appears to be related to the accused, so also PW-9 Manchala has deposed that accused No.1 is her nephew. However, as aforesaid, PW-1 Dinanath is not taking the names of these three witnesses to be the person or persons who had heard the quarrel from the house of accused and informed him about the same.

12. The case of the prosecution, as aforesaid, is based on

circumstantial evidence and therefore, the prosecution was supposed to prove the golden principles of circumstantial evidence laid down in ***Sharad Birdhichand Sarda vs. State of Maharashtra*** reported in **(1984) 4 SCC 116** by the Hon'ble Apex Court; which are as follows:-

" (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade vs. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri. L.J. 1783] where the observations were made : [SCC para 19, p.807 : SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. "

13. Herein this case, neither the best witnesses have been examined nor the *mens rea* has been proved. When the prosecution had come with the case that even the other accused persons have taken part in commission of the murder, especially accused No.2 Bhanudas and then other accused persons are acquitted of the offence punishable under Section 302 of the Indian Penal Code, then it is doubtful as to whether only accused No.1 i.e. present appellant could have committed the murder single-handedly. This aspect ought to have been considered by the learned trial Judge. It had come on record that accused No.4 Surekha and accused No.5 Sunita are the sisters of accused No.1. They are residing at their respective matrimonial homes. Unless their presence in the house of accused Nos. 1 to 3 would have been proved just prior to the incident, charge for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code should not have been framed. A proper examination of the record i.e. charge-sheet and other material is therefore, necessary at the time of framing of charge. The charge framed without application of mind would sometimes be fatal to the prosecution case and may affect the merits of the case.

14. Merely because the appellant was the husband of deceased Savita and she was found murdered in her house, we cannot presume, by invoking Section 106 of the Indian Evidence Act that the murder might have been committed by the husband. We cannot shift the burden on the shoulders of the accused No.1 on the strength of provisions under Section 106 of the Indian Evidence Act. It should be proved before the said doctrine is invoked that the wife was in the company of the husband prior to the incident. Here, the prosecution has not attempted to examine such witness to prove that accused No.1 was in the village and that too was at home when the alleged incident took place. It has not been brought on record through autopsy surgeon PW-8 Dr. Balaji, as to what was the probable time of death. Unless the said probable time of death would have been proved, we cannot discard the testimony of DW-1 Shirish. The appellant had taken the defence that he was not at home or even in the village when the alleged incident took place. As aforesaid, DW-1 Shirish has given the details, as to where the appellant – accused No.1 was around the time of death of Suman. Testimony of DW-1 Shirish cannot be just discarded as

he has no documentary evidence to support his contention. Even if for the sake of arguments it is accepted that his testimony is not sufficient to prove the plea of alibi, yet the question of supporting the proof of alibi would come only after the prosecution establishes its case beyond reasonable doubt. Unless presence of appellant would have been proved, the question of plea of alibi cannot be touched.

15. The testimony of panchas would be sufficient to prove the panchnamas, but on the basis of those panchnamas only we cannot arrive at a finding that accused No.1 – appellant is the only author of the crime. At the cost of repetition, it can be said that though there were differences between accused No.1 and deceased prior to the incident, the prosecution itself has led the evidence to show that those differences existed but due to successful mediation a compromise had arrived at and Savita had resumed cohabitation. If Savita had resumed cohabitation then why the ill-treatment would have been continued. It has also come on record that Savita had not begotten issue even after about ten years of the marriage, but it is to be noted that her relatives themselves have stated that upon the medical

check up, it was found that there was biological problem in the appellant – accused No.1 and not that of the deceased. Then it is hard to believe that Savita would have been harassed for not able to conceive. Even if we consider Article 'A' in collective Exhibit-108, which was the complaint filed by Savita with the Women's Grievance Redressal Forum, she had come with the different story saying that she was treated properly for about six months but thereafter the accused persons started harassing her for bringing Rs.5,00,000/- for purchasing a Jeep. There is absolutely no statement in the entire complaint that the harassment was on account of not able to conceive. Therefore, the FIR Exhibit-19 travels beyond the said Article 'A' from collective Exhibit-108.

16. To sum up, it can be certainly said that the prosecution had failed to prove that deceased Savita was in the company of the appellant at the night time or in the early morning hours of 1st September 2015, so that Section 106 of the Indian Evidence Act can be pressed into service. The prosecution has not examined material witnesses who had allegedly heard the quarrels between accused Nos.1 and 2 and deceased Savita and then

seen accused Nos.1 and 2 going away by latching the door of the house from the outside and then informing it to PW-1 Dinanath. The chain of circumstances has not been proved beyond reasonable doubt and whatever the segments of the chain have been proved, those are not pin-pointedly establishing that the appellant is the culprit. An intention to kill has not been proved and therefore, it cannot be said that the basic ingredients of the offence have been proved beyond reasonable doubt, though it can be certainly said that the death of Savita was homicidal in nature. The Appeal, therefore, deserves to be allowed by setting aside the impugned order. Hence we proceed to pass following order:-

ORDER

- I. The appeal stands allowed.
- II. The conviction awarded to the appellant Ramesh Bhanudas Shelke in Sessions Case No. 05 of 2016 by learned Additional Sessions Judge, Nilanga, District Latur, on 14.05.2018 for the offence punishable under Section 302 of the Indian Penal Code is hereby quashed and set aside.
- III. The appellant stands acquitted of the offence

punishable under Section 302 of the Indian Penal Code.

IV. The appellant be set at liberty, if not required in any other case.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI. We clarify that there is no change as regards the order of disposal of *muddemal*.

VII. Fees of the appointed Advocate is quantified at Rs.10,000/- (Rupees Ten Thousand only), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC23