

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

**CRIMINAL APPEAL NO.424 OF 2016
WITH CRIMINAL APPLICATION NO.282/2023
IN APPEAL/424/2016**

Shrirang Kashiram Bedade
Age: 28 years, Occu.: Business,
R/o. Wadwal, Tq.Chakur, Dist.Latur.

..Appellant
[Orig. Accused No.1]

VERSUS

State of Maharashtra

..Respondent

...
Advocate for Appellant : Mr.Satej S. Jadhav
APP for Respondent : Mrs.V. S. Choudhari
...

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

DATE : 13 JULY, 2023.

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

1. By way of present appeal, convict is taking exception to the judgment and order passed by the learned Additional Sessions Judge, Kandhar, Link Court, Mukhed in Sessions Case No.35 of 2014, by which he has been held guilty for commission of offence under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life.

PROSECUTION CASE IN TRIAL COURT

2. Deceased Bhagyashri was married to appellant. After six months or so,

appellant put up a demand of Rs.1,00,000/- for setting up hotel business. Getting annoyed on account of non-fulfillment, appellant dropped deceased Bhagyashri at her matrimonial place. He allegedly threatened that if demand is not met, he would kill Bhagyashri and he would also perform second marriage in which he would receive more amount. According to prosecution, deceased was subjected to cruelty. When deceased was with her grandparents at Ratoli, appellant reached there, took deceased Bhagyashri on Motorcycle on the pretext of taking her to Pune for starting new life. On the way, it is the case of prosecution that, he strangled her and hence the charge.

Crime was investigated and appellant and in-laws were chargesheeted and tried by learned trial Judge, who permitted the State to adduce evidence and after appreciating the same, reached to a finding that prosecution failed to establish charge under Sections 498-A, 304-B, 302 of the Indian Penal Code (IPC) and acquitted in-laws, however, appellant Shrirang alone was held guilty for offence punishable under Section 302 of the IPC only and thereby sentenced to suffer imprisonment for life, which is now precisely taken exception to by filing the present appeal.

SUBMISSIONS

On behalf of Appellant :

3. Criticizing the judgment under challenge, learned Advocate for the appellant would submit that it is apparently false implication. That there was

no iota of evidence either oral or documentary in support of the allegations levelled by prosecution. He pointed out that admittedly case is based on circumstantial evidence, however, none of the circumstances put-forth are proved firmly, cogently and beyond reasonable doubt. He would point out that only interested witnesses are examined and no independent witness is examined. According to him, prosecution own evidence suggest that deceased Bhagashri was with her family members and when there was no trustworthy and independent evidence about accused visiting there and taking deceased, as is alleged, the implication itself was faulty. According to him, false and fabricated story is put to use to involve the appellant only out of annoyance. That when there was no reliable evidence about appellant taking deceased on motorcycle, it was not open for prosecution to charge him and further learned trial Court ought not to have accepted the case of prosecution to fasten guilt. Learned Advocate while concluding submitted that evidence on record has not been correctly appreciated, more particularly, in the light of legal requirements and therefore, the impugned judgment is patently illegal and perverse and so cannot be allowed to be sustained. Hence, he prayed for allowing the appeal.

On behalf of APP :

4. In answer to above, learned APP would submit that there is ample evidence about cruelty and demand. Family members have deposed to that

extent. That appellant had taken deceased on his Motorcycle and in the same night deceased was found to have died due to strangulation and deceased being in the company of appellant husband, guilt has been rightly fastened against him. That learned trial Court has committed no error in convicting the appellant, hence, according to learned APP, there is no merits in the appeal and the same be dismissed.

5. In view of above submissions, this being First Appellate Court and in view of legal requirement of re-appreciation, re-analyzing and re-evaluation of entire evidence, we undertake the said exercise.

6. Here it seems that in support of its case, prosecution has adduced evidence of in all nine witnesses. After recording statement of accused under Section 313 of the Code of Criminal Procedure, accused has adduced evidence of **DW1** Pralhad Bhalke and **DW2** Shrirang Badade (accused himself) respectively. Here in all eight persons were put to trial i.e. appellant husband and in-laws. As stated above, learned trial Judge has acquitted in-laws from all the charges and has sentenced only the appellant that too only under Section 302 of the IPC. Therefore, we are required to confine ourselves to the charge under Section 302 of IPC.

SUM AND SUBSTANCE OF EVIDENCE ON BEHALF OF PROSECUTION

7. **PW1** Balaji is brother of deceased. At Exh.41 he gave evidence that his sister was married to the appellant. She was treated well by her husband and in-laws for six months but thereafter, when his sister came for Diwali festival, at that time, appellant also came and he demanded Rs.1,00,000/- for setting up a hotel. When inability was expressed, he left his sister in house and went alone. That after eight days when this witness went alongwith his sister to drop her at place of appellant, he again asked whether amount has brought and if not she should be taken back. At that time, according to this witness, appellant also said that if he commits murder of Bhagyashri and perform second marriage, he would get Rs.2,00,000/-. He further stated that thereafter, ill-treatment was aggravated and brother-in-law of Bhagyashri had evil eye on her. That this witness took his sister back to matrimonial home i.e. at Ratoli. There she stayed for eight days. According to him, on 17-07-2014 his deceased sister got a phone call from appellant informing that they are going to Pune and going to settle there and appellant came at around 10:30 p.m., had tea and took his sister out on Motorcycle but did not return that night. In the next morning, information was received about murder of his sister and her dead body lying in Khandgaon Shivar. Therefore, he filed report Exh.42.

8. **PW2** Girjabai is the mother of deceased and she also stated about demand of Rs.1,00,000/-. She stated that in the backdrop of such demand, there was cruelty. She has given nature of ill-treatment inflicted by in-laws. That inspite of understanding, when ill-treatment did not stop, Bhagyashri was brought to her matrimonial house. That appellant made telephone call asking Bhagyashri to accompany him as they were to go to Pune and accordingly appellant came to Ratoli and took her on Motorcycle and proceeded towards Mukhed. Next day, she learnt from her son **PW1** Balaji that appellant committed murder of her daughter.

9. **PW3** Manmath, maternal uncle of deceased. He also stated about demand of Rs.1,00,000/- and about cruelty and so when demand was not met, PW1 Balaji bringing her to matrimonial house. She stayed with maternal uncle at Ratoli, appellant came there on 17-07-2014 and took deceased saying that they are going to Pune. On 18-07-2014 at 10:00 a.m., PW1 Balaji informed this witness about murder of Bhagyashri by appellant.

10. **PW4** Datta, another maternal uncle of deceased gave evidence that deceased had come to reside at their house before death. That at around 06:00 p.m. on 17-07-2014 Bhagyashri received a phone call from appellant. That appellant came to house of this witness at 10:30 p.m. and took Bhagyashri at 10:45 p.m. That he learnt from villagers on 18-07-014 that

appellant had committed murder of Bhagyashri in the field of Dr.Brahmanand Patil at Khandgaon Shivar.

11. **PW5** Dr.Pratap is the Autopsy Doctor, who opined that death was due to asphyxia due to ligature strangulation. **PW6** Shivsamb is the Panch to memorandum of disclosure regarding handing over Motorcycle at Exh.55 and its seizure panchnama at Exh.56. **PW7** Madhav is the carrier. **PW8** Khuba Chavan (API) is the Investigating Officer. **PW9** Milind Kondwadkar is the Nodal Officer of Mobile Company.

ANALYSIS

12. We have already given a brief account of prosecution evidence in aforesaid paragraphs. PW1 Balaji - brother, PW2 Girjabai - mother, PW3 Manmath and PW4 Datta - maternal uncles of deceased are examined by prosecution. Now let us see whether their testimonies are reliable and sufficient enough to uphold the conviction awarded by the learned trial Judge. During appeal, there is no serious challenge on the issue of finding reached to about death of Bhagyashri to be homicidal one.

On sifting testimonies of brother, mother and maternal uncles of deceased, it is emerging that according to them deceased was brought from matrimonial house to Ratoli i.e. her maternal uncle's place. According to prosecution, though she was brought at her maternal place, her maternal

uncle Namdev took her to his house at Ratoli. However, Namdev has not been examined for the best reasons known to them. PW1 Balaji, who is resident of Chitmogra village, claims that he too went to Ratoli on 17-07-2014 and on insistence of his grandfather, he stayed there itself. According to him, around 8 p.m. Bhagyshri received a phone call from accused informing that he is coming to pick her up and that they would both go the Pune to live fresh life by settling there and at around 10:30 p.m. appellant reached their on Motorcycle. It is pertinent to note that when it is case of prosecution that appellant allegedly telephoned deceased, then it was expected of prosecution to obtain CDR to prove that there was alleged conversation between appellant and deceased. But it seems that this aspect has not been demonstrated and proved.

Further according to PW1 Balaji, after taking tea, appellant allegedly took deceased for talk to a open plot but they never returned. According to him, on the next morning around 8:00 a.m. he received a phone call informing about murder of Bhagyashri. We find conduct of informant unnatural. If according to him, deceased and appellant merely left for talk and they were to go to Pune next day, and if at all they did not return during the entire night, this witness ought to have taken steps to go out in search of both of them. But surprisingly no such step has been taken. Even his cross demonstrates that he is unable to state from whom he received phone call about murder of Bhagyashri. No family members of Namdev is also examined to show that

appellant was in the house of Namdev that night at Ratoli. In our opinion PW1 Balaji is also a visitor and he did not reside with Namdev. Therefore, his evidence cannot be straightaway accepted. Brother, mother and maternal uncles of deceased though speak about deceased at that time staying at Ratoli, it seems that they do not have personal knowledge. PW4 Datta also seems to have hearsay information and that too on the next day. Therefore, in the light of such evidence on record, in our opinion, testimonies of above discussed witnesses about appellant reaching at Ratoli to pick up deceased that night, has not been cogently proved.

CONCLUSION

13. Here prosecution has come with a case of appellant strangulating deceased with nylon rope. The deceased was found in the vicinity of Khandgaon Shivar. But when prosecution had not firmly established that appellant took deceased from Ratoli, and when it is not further shown that he was the only person in the company of deceased, it is unsafe to form opinion about appellant to be the author of ligature strangulation. Unless primary burden of establishing case against appellant is discharged, it is not open for the prosecution to invoke Section 106 of the Indian Evidence Act.

14. Here defence has taken a stand that deceased maintained affair with one Dnyaneshwar. There are suggestions to witnesses in that regard. That

apart FIR to that extent lodged is not only also brought on record but the Police personnel, who noted the FIR, has also been examined. Therefore, here appellant has attempted to probabilize his defence. Resultantly possibility of some other person to be involved in the strangulation crops up. Law is fairly settled that appellant is merely expected to probabilize his defence and he need not to prove it with same degree of burden which falls on prosecution. Here as stated above, defence has probabilized his stand and the same cannot be lightly overlooked and brushed aside.

15. When case is based on circumstantial evidence, it is settled law that all circumstances relied by prosecution are expected to be proved beyond reasonable doubt. It is cardinal principle of Criminal Jurisprudence that unless proved otherwise, accused person is presumed to be innocent. His innocence has to be ruled out by the prosecution by adducing legal acceptable evidence. Here except a case about appellant taking deceased with him on Motorcycle that night, of which we are also entertaining doubt, there is no other credible evidence.

16. We have gone through the judgment passed by the learned trial judge. The aspects which we have noticed on re-appreciation and re-analysis do not seem to have considered by the learned trial judge. The answers given by witnesses, more particularly, informant and other relatives of deceased in cross

are not properly appreciated and as such the conclusion reached at by the learned trial Judge is not convincing. For above reasons, we find it a fit case to interfere. Hence, we proceed to pass following order :

ORDER

- (I) Criminal Appeal stands allowed.
- (II) Conviction awarded to the appellant – Shrirang Kashiram Bedade, by the learned Additional Sessions Judge, Kandhar, Link Court, Mukhed, District Nanded in Sessions Case No.35 of 2014 under Section 302 of the Indian Penal Code on 30th May 2016, stands quashed and set aside.
- (III) 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) It is clarified that there is no change as regards the order regarding disposal of Muddemal.
- (VII) In view of disposal of the appeal itself, Criminal Application No.282 of 2023 does not survive and it is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)