



CORRECTED JUDGMENT
IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.183 OF 2020

Kishor s/o Murlidhar Bachkar,
Age 23 years, Occu. Agri.,
R/o Watapur, Tq. Newasa,
Dist. Ahmednagar.

... **APPELLANT**

VERSUS

The State of Maharashtra
Through In-charge Police station Officer,
Sonai Police Station, Tq. Newasa,
Dist. Ahmednagar
(Copy for respondent to be served
on Public Prosecutor, High Court,
Bench at Aurangabad)

... **RESPONDENT**

.....

Mr. S.V. Kurundkar, Advocate with
Mr. R.N. Chavan, Advocate for appellant
Mrs. Uma S. Bhosle, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.186 OF 2020

- 1) Murlidhar s/o Sabaji Bachkar,
Age 62 years, Occu. Agri.,
R/o Watapur, Tq. Newasa,
Dist. Ahmednagar.
- 2) Tanhabai w/o Murlidhar Bachkar,
Age 57 years, Occu. Agri.
R/o Watapur, Tq. Newasa,
Dist. Ahmednagar.

... **APPELLANTS**

VERSUS

The State of Maharashtra
Through In-charge Police station Officer,
Sonai Police Station, Tq. Newasa,
Dist. Ahmednagar
(Copy for respondent to be served
on Public Prosecutor, High Court,
Bench at Aurangabad)

... **RESPONDENT**

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Mr. S.V. Kurundkar, Advocate with
Mr. R.N. Chavan, Advocate for appellant
Mrs. Uma S. Bhosle, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 30th September, 2024.

Date of pronouncing judgment : 15th October, 2024.

JUDGMENT (PER R.G. AVACHAT, J.) :

The challenge in both these appeals is to a judgment and order of conviction and consequential sentence passed by the Court of Additional Sessions Judge, Newasa, District Ahmednagar on 13/2/2020 in Session Case No.14/2018. Vide impugned order, the appellant Kishor in Criminal Appeal No.183/2020 and the appellants Murlidhar and Tanhabai in Criminal Appeal No.186/2020 have been convicted for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code and sentenced to

undergo rigorous imprisonment for two years and to pay fine of Rs.5000/-, in default to suffer S.I. for three months.

The appellant Kishor has also been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/-, in default to suffer S.I. for 6 months. Both the sentences against the appellant Kishor have been directed to run concurrently.

The appellants have been acquitted of the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, 1961 and Sections 323, 504, 506, 340-B, 201 r/w 34 of the Indian Penal Code.

2. Facts giving rise to the present appeals are as follows :-

Jayshree (deceased) was daughter of P.W.2 Dadabhau. She married appellant Kishor about one and half year before the incident dated 26/8/2017. Jayshree was not treated well at her matrimonial home. All the appellants and one of their relatives (original accused No.4 – since acquitted)

would harass and ill-treat her so as to coerce her to meet unlawful demand of money for purchase of motorbike and/or payment of the loan raised for the purchase of the said motorbike.

3. It is also his case that, by 1.30 a.m. on 26/8/2017, he received a phone call of the father-in-law of Jayshree, informing that she was not making movements. He along with his relations, therefore, rushed to the Government Hospital. Having seen her, he found blouse on her person and full undergarment (*Parkar*) were torn. Her body had turned black. Her neck was swollen. She was unable to speak. She was, therefore, rushed to the Civil Hospital at Ahmednagar. She was even taken to the hospital at Loni. The Medical Officer there told she died of throttling. After the last rites were performed on her body at Watapur, P.W.2 Dadabhau lodged the F.I.R. (Exh.30) with Sonai Police Station.

4. Based on the F.I.R., a crime vide C.R. No.116/2017 was registered for offence punishable under Section 304(B), 498(A), 323, 504, 506 r/w 34 of the Indian Penal Code. Later on Section 302 of the Indian Penal Code was invoked. The

crime was investigated. Appellants were arrested. Statements of persons acquainted with the facts and circumstances of the case were recorded. Crime scene panchanama was drawn. Inquest and autopsy were conducted. On completion of the investigation, a charge sheet was filed.

5. The Trial Court framed the Charge (Exh.16) against the appellants and one Bhanudas Bachkar (since acquitted) for various offences. The appellants pleaded not guilty. Their defence before the Trial Court was that the deceased was not keeping well. She was unable to conceive. She might have met with natural death.

6. To bring home the charge, the prosecution examined 11 witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court convicted the appellants and sentenced them as stated above.

7. Heard. Learned Advocate for the appellants would submit that, it was an arranged marriage. Financial status of the father of deceased Jayshree was not sound. The appellants owned agricultural field and were financially better

than the informant – P.W.2 Dadabhau. He took us through the admissions given by P.W.2 Dadabhau to indicate that it was he who used to borrow money from appellant Kishor on occasions. He then took us through the evidence of P.W.7 Sanjay to indicate that the appellant Kishor had bought a motorbike with the financial assistance of a Society. P.W.7 Sanjay stated that appellant Kishor had paid Rs.16,000/- as down payment and was regular in payment of Equal Monthly Installments (E.M.Is.) of Rs.2444/-. He then adverted our attention to the admission of P.W.2 Dadabhau that his companion narrated the contents of the F.I.R. and he simply signed below the same. According to the learned Advocate, as such, there was no case for conviction of the appellants for the offences punishable under Section 498-A of the Indian Penal Code.

8. So far as regards conviction for the offence punishable under Section 302 of the Indian Penal Code is concerned, he would submit that, the appellant Kishor, having seen his wife not making movements, rushed her to the hospital with the assistance of neighbours. He then adverted our attention to the evidence of P.W.5 Dr. Shilpa to submit that,

both of them had been to P.W.5 Dr. Shilpa to get examined themselves for gyneacological problem and conception as well. Learned Advocate meant to say that the appellants were taking all the care of the deceased Jayshree. It was also brought on record that the appellants Murlidhar and Tanhabai were residing in adjoining, but different room. Learned Advocate, in the alternative, would submit that, it would at the most be an offence punishable under Section 304 Part II of the Indian Penal Code. The appellant has put on record this side of the story in writing while he was examined under Section 313 of the Criminal Procedure Code. He wanted to have coitus with his wife. She refused. She even abused him that, "He was not a man". The wife Jayshree became aggressive. She assaulted him and even caught hold of his neck. With a view to save himself, he too caught hold of her neck. Her neck got pressed. She might have died thereby. The appellant did not have any intention to kill her. He immediately rushed her to the hospital with the assistance of the neighbour P.W.6 Govardhan. Learned Advocate ultimately urged for converting the appellant's conviction from the offence punishable under Section 302 to Section 304 of the Indian Penal Code.

9. The learned A.P.P. would, on the other hand, submit that, the offence took place within the fourwalls of the matrimonial home of deceased Jayshree. In the circumstances, there could be no eye witnesses to the incident. In view of Section 106 of the Evidence Act, it is for the appellant Kishor to explain the circumstances in which Jayshree died. She adverted our attention to the post mortem report to indicate that Jsyshree died of throttling. The appellant could have prevented aggression of deceased, if any, by other means. Killing his wife by throttling goes a long way to indicate his intention was to kill his wife. She took us through the entire evidence on record to ultimately urge for dismissal of the appeals.

10. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us appreciate the evidence on record.

Offence under Section 498-A of the Indian Penal Code -

11. Jayshree was a daughter of P.W.2 Dadabhau. She had married appellant Kishor about one and a half year before she breathed her last on 26/8/2017. P.W.2 Dadabhau

testified that, he incurred the marriage expenses and paid the appellants dowry. According to him, the appellants would not allow Jayshree to talk with him on cell phone. They had removed the Sim Card from her cell phone. Whenever she used to meet him, she would relate her woes. She had related him of being ill-treated to fetch money from him for purchase of motorbike, and/or repayment of the loan raised for purchase of the same. He had, therefore, reasoned with the appellants.

12. Aforesaid is the evidence in respect of the offence punishable under Section 498-A of the Indian Penal Code. For better appreciation, Section 498-A is reproduced below :-

“498-A) Husband or relative of husband of a woman subjecting her to cruelty :- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:- For the purpose of this section, “cruelty” means –

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand

for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

13. In his cross-examination, P.W.2 Dadabhau admitted that, one Dhaygude had accompanied him to the Police Station. It was Dhaygude who related everything to the police. It was reduced into writing. He simply put his signature below the said writing. The same indicates that the contents of the F.I.R. were not narrated by P.W.2 Dadabhau. So far as regards alleged ill-treatment of Jayshree in connection with the unlawful demand for purchase of motorbike is concerned, P.W.2 Dadabhau has given a vital admission to the effect that whenever he used to be in financial need, he would borrow money from appellant Kishor. His own financial condition was poor. The appellant owned agricultural field.

14. Then we have evidence of P.W.7 Sanjay. He was serving with the Samarth Auto, Sonai. It is in his evidence that, appellant Kishor had purchased a motorbike on EMIs of Rs.2444/-. He was regularly making payment thereof when down-payment of Rs.16,000/- was made by him in one go.

15. P.W.5 Dr. Shilpa testified that, Kishor and Jayshree had been to her to get examined themselves as Jayshree did not conceive. Dr. Shilpa was a Gynaecologist. The same indicates that, the appellant Kishor was taking care of his wife.

15. The aforesaid evidence goes a long way to infer that the offence punishable under Section 498-A of the Indian Penal Code could not be brought home. The Trial Court ought not to have convicted the appellants for the said offence. The appellants, therefore, deserve to be acquitted thereof.

Section 302 IPC – Murder :

17. P.W.3 Dr. Mohan Pawar was the Medical Officer, Rural Medical College, Loni. He conducted autopsy on the mortal remains of Jayshree. He noticed following injuries on the person of Jayshree :

- (1) Crescent shaped scratch abrasion present over neck, anterior aspect, 6.9 cms. below the mid of chin and 7.1 cm, above the suprasternal notch, 1.4 cm. in length. Surrounding area over the neck contused over an area of 5.0 x 0.9 cms, more on right side. On cut section bright red coloured ecchymoses seen underneath tissue and neck muscle.

On internal examination, bright red coloured ecchymoses seen over supra-glottis region on both sides.

- (2) Scratch abrasion present over right shoulder, 0.8 cms. in length, present 3.4 cm. above lateral end of right clavicle and 4.5 cms. medial to shoulder tip, reddish in colour.
- (3) Scratch abrasion present over right lower chest, 0.7 cms. in length, present 10.9 cms. below the right nipple and 6 cms. right to midline, reddish in colour.

In his opinion, Jayshree died due to asphyxia due to throttling. The post mortem report finds place at Exh.43.

In his cross-examination, P.W.3 admitted to have not given the exact time of death. He further testified that no samples of nails were collected in order to examine whether any material was there in the nails of the deceased. He admitted that in case of abrasion to any other person by deceased, the tissues are expected to be there in the nails. He went on to admit that the nails were to be sent for chemical examination to ascertain the person who committed throttling. According to him, there were 5 types of asphyxia, one of which was violent sexual asphyxia. The same can be accidental. According to him, the same was irrelevant in the present case.

18. P.W.3 Dr. Mohan being an independent witness, had no reason to be in favour of either prosecution or the

appellants. His evidence undoubtedly indicates Jayshree died of throttling.

19. P.W.4 Dr. Kishor was a Medical Officer working at Newasa. It is in his evidence that, by 5.00 a.m. on 26/8/2017, Jayshree was brought to the hospital by her husband and relations. She was brought dead. He, therefore, directed her to refer to Civil Hospital, Ahmednagar. He gave information to Newasa Police Station.

20. It is further in his evidence that, on the same day he had examined appellant Kishor by 4.30 p.m. and found following injuries on his person :

(1) Scratch mark on right side of the neck around 3 cm. above mid-line of the clavicle bone. It was 0.2 x 0.1 cm. Age of injury was around 48 hours. It was simple injury and probably caused by nails.

(2) Scratch mark over right side of chest on mid-auxiliary line around 6-7 rib area. Size 0.3 x 0.2 cm. Age of injury was around 48 hours. It was simple injury. Probably caused by nails.

He issued injury certificate (Exh.45).

21. P.W.10 Rajkumar is a witness to inquest panchanama (Exh.64). While P.W.1 Maroti Sadavarte is a

witness to the crime scene panchanama (Exh.31). The crime scene is one of the rooms of the house of the appellants. Broken bangle pieces were seized from the bed in the room.

22. P.W.6 Govardhan was neighbour of the appellants. It is in his evidence that, by little past 1.30 midnight, he received a phone call of appellant Kishor, informing that his wife Jayshree was not keeping well. He, therefore, rushed to his residence. Kishor and his parents (appellants) and his grandmother were also there. He thought Jayshree to have suffered heart attack. He did some pumping, but in vain. He, therefore, brought a bullock cart of tyre-wheels. It was toed to tractor and Jayshree was brought to the hospital therein.

23. In the cross-examination, this witness testified that, appellant Kishor was residing away from his parents.

24. P.W.1 Maroti was a witness to various panchanamas. First of such panchanama is Exh.28. It relates to seizure of clothes of the deceased. Then is the panchanama (Exh.28) relating to seizure of clothes of the appellant at the time of his arrest. This witness in his examination-in-chief itself testified that there were abrasions

on the person of appellant Kishor. There were some injuries as well on his neck and ribs. The arrest panchanama of appellant Kishor is at Exh.30. The crime scene panchanama drawn in his presence finds place at Exh.31.

25. P.W.9 Maruti Pawar was driver of the Police vehicle. P.W.10 Rajkumar, Police Officer conducted the inquest while P.W.11 Abdul Kalim was Assistant Sub-Inspector of Police, who did the investigation of the crime. The investigating officer P.W.11 Abdul Kalim admitted that there were injuries on the person of appellant Kishor. He realised that, a scuffle took place between appellant Kishor and his wife and both of them pressed neck of each other. According to him, he initially did not invoke Section 302 of the Indian Penal Code. He, however, denied that the incident took place at the spur of moment.

26. The arrest panchanama of appellant Kishor (Exh.30) indicates that there were injuries on his neck, chest and ribs. At the time of arrest itself, he informed the police officer that he suffered those injuries in a quarrel with his wife (deceased Jayshree). The injuries were caused by her (This is

admissible in his favour). In his examination under Section 313 of the Cr.P.C., he placed on record his say, wherein he stated that, on the fateful night, he asked his wife for sexual favour. She refused. She abused him (that he was not a man). He got annoyed thereby. He attempted to have sex with her against her wish. She, therefore, caught hold of his neck with a tight grip. She was physically well built than him. He, therefore, made attempts to get rescued from her clutches. He started feeling that his breath was going low. His neck came into her hand and got pressed. He made desperate attempts to get rescued from her clutches. In the process, her neck got pressed. She fell unconscious. He, therefore, called his neighbour and rushed his wife to Rural Hospital at Newasa.

27. The appreciation of the evidence indicates that, the incident took place in a room wherein the appellant Kishor and his wife were the only persons. A quarrel ensued between the two. The deceased Jayshree caused injuries on the person of the appellant. Dr.Kishorkumar (P.W.4) who examined him issued certificate in that regard (Exh.45). His arrest panchanama also indicates that there were injuries on his neck and ribs. From day one of his arrest, it was a case of the

appellant that it was his wife who quarreled with him and caused him injuries. He placed on record his say in response to his examination under Section 313 of the Cr.P.C. The same has been referred to hereinabove. The investigating officer too testified that the incident occurred out of a quarrel between the two i.e. appellant and his wife.

28. In view of the aforesaid evidence, the case would fall under Exception 4 of Section 300 of the Indian Penal Code. Although learned Advocate for the appellants relied on the judgment of the Apex Court in case of **Anbazhagan Vs. State Represented by the Inspector of Police (2023 SCC OnLine SC 857)**, the facts thereof were altogether different. Here the appellant killed his wife by throttling. He could have used other means to control her. Killing a wife with throttling indicates his intention was to kill her. The same, however, occurred without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the appellant having taken undue advantage or acted in a cruel or unusual manner. In view of the same, the Trial Court ought not to have convicted the appellant for the offence of murder. Interference with the impugned

order of conviction and consequential sentence is, therefore, warranted.

29. In the result, both the appeals stand disposed of in terms of the following order :

ORDER

(i) The Criminal Appeals are partly allowed.

(ii) Conviction of the appellant Kishor s/o Murlidhar Bachkar in Criminal Appeal No.183/2020 and the appellants Murlidhar s/o Sabaji Bachkar and Tanhabai w/o Murlidhar Bachkar in Criminal Appeal No.186/2020 and consequential sentence recorded by learned Additional Sessions Judge, Newasa, District Ahmednagar on 13/2/2020 in Session Case No.14/2018 for the offence punishable under Section 498-A of the Indian Penal Code is hereby set aside. All the appellants are acquitted thereof. Fine amount, if paid on that count, be refunded to them. Bail bonds of appellants Murlidhar and Tanhabai in Criminal Appeal No.186/2020 are cancelled.

(iii) Conviction of the appellant Kishor s/o Murlidhar Bachkar in Criminal Appeal No.183/2020 for the offence punishable under Section 302 of the Indian Penal Code is hereby set aside. The appellant is acquitted thereof. Instead, the appellant Kishor s/o Murlidhar Bachkar is convicted for the offence punishable under Section 304 Part I of the Indian

Penal Code and sentenced to suffer rigorous imprisonment for nine years and to pay fine of Rs.3000/- (Rupees three thousand), in default to suffer R.I. for two months.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-