



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

CRIMINAL APPEAL NO.499 OF 2019

Gorakshnath s/o Yadav Gite,
Age 39 years, Occ. Agri.,
R/o Wadgaon Gupta
Tq. & Dist. Ahmednagar

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad

... RESPONDENT

.....
Mr. V.R. Dhorde, Advocate for appellant
Mrs. U.S. Bhosle, Addl. P.P. for respondent
.....

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

DATE : 30th JANUARY, 2024

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

This appeal takes exception to a judgment and order of conviction for the offence punishable under Section 302 of the Indian Penal Code and consequential sentence of life imprisonment, passed on 9/4/2019 by learned Additional Sessions Judge, Ahmednagar in Sessions Case, No.181/2016. The convict (appellant) is therefore in appeal.

FACTS :-

2. The appellant was married Renuka (deceased) in the year 2011. The couple was blessed with a baby boy. The appellant, his parents, brother and sister treated Renuka well for some days of marriage. He, thereafter started harassing and ill-treating Renuka. Renuka had one younger sister. The appellant and his family members wanted the parents of Renuka to give her younger sister's hand to the appellant's younger brother. They were, however, opposed to the said proposal. The appellant and his family members, therefore, started harassing and ill-treating Renuka.

3. P.W.1 Laxman, brother of deceased Renuka was informed by Gopinath on 9/2/2016 that the appellant consumed poisonous substance and therefore, was admitted to Civil Hospital, Ahmednagar. He, therefore, rushed to the hospital. He met the appellant's younger brother there. When he enquired about Renuka (deceased), nobody told him about her for about an hour. He then was informed that she too consumed a poison and died thereof. He learnt that Renuka's body was taken for post mortem. He, therefore, went to post mortem room to find injuries on her person. He (P.W.1 Laxman) suspected something amiss. After post mortem was conducted, the dead body of Renuka was given to his custody. The last rites were performed on the mortal remains of Renuka. P.W.1 Laxman thereafter lodged First Information

Report (F.I.R.) against the appellant, his parents, brother and sister as well. It was alleged that, all of them had harassed and ill-treated Renuka and committed her murder. A crime, therefore, was registered for offence punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code. Upon investigation, all of them were proceeded against by filing of a charge sheet. The learned Judicial Magistrate, First Class committed the case to the Court of Sessions. The learned Additional Sessions Judge (Trial Court) framed the Charge (Exh.32). The appellant and co-accused pleaded not guilty. Their defence was of false implication.

4. The prosecution examined 5 witnesses and tendered in evidence number of documents.

5. On appreciation of the evidence, the Trial Court convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.5000/-, in default to suffer R.I. for six months. The learned Additional Sessions Judge acquitted others of the offences they were charged with. State did not prefer appeal against acquittal.

6. Learned counsel for the appellant would submit that, the post mortem report (Exh.86) indicates the cause of death of deceased Renuka was not certain. It is for the prosecution to prove

the offence beyond reasonable doubt. Renuka was not keeping well. She fell from raised platform and suffered injuries thereby and succumbed to those injuries. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the deceased was residing with the appellant at her matrimonial home. The Medical Officer who conducted the post mortem opined the deceased died of injuries. The appellant owe an explanation as to how the deceased suffered injuries and succumbed thereto. In his examination under Section 313 of the Code of Criminal Procedure, he did not offer any explanation. His silence goes a long way to infer the appellant and none other to be responsible for the death of his wife. According to the learned A.P.P., no interference with the impugned order is, therefore, warranted.

8. Considered the submissions advanced. The case is based on circumstantial evidence. P.W.1 Laxman and P.W.2 Meerabai, brother and mother of the deceased Renuka respectively, testified in one voice. It is in their evidence that, Renuka married appellant in the year 2011. She was treated well for the first year of marriage. The appellant thereafter started suspecting her character. He would harass and ill-treat her, physically and mentally as well. She (Renuka) used to relate her woes to them on phone and personally as well whenever she used

to visit her parental house. It is further in their evidence that, on 9/2/2016, a phone call was received, informing appellant to have consumed a poison. They, therefore, rushed to the Civil Hospital, Ahmednagar. When they made enquiry about Renuka with her in-laws, they were informed nothing for about an hour. They were thereafter informed that she too had consumed poison and died thereof. They, therefore, went to the post mortem room, wherein Renuka's dead body was taken. They noticed injuries on her person.

9. Although both these witnesses were subjected to a searching cross-examination, nothing useful for the appellant could be brought on record. The post mortem report (Exh.86) indicates the cause of death as, "multiple injuries with left side rib fracture and lung contusion and left sided hemothorax". P.W.3 Dr. Nitin had conducted the post mortem. He noticed following injuries on the person of Renuka. Except injury Nos.1 and 3, other injuries were old one. Although he had initially given probable cause of death after preserving viscera, he later on concluded that the deceased died as a result of injury No.1 and 3. He gave his opinion after having perused C.A. report (Exh.104) indicating no poisonous substance was noticed in viscera.

10. During cross-examination of P.W.1 Laxman, it was suggested on behalf of learned counsel for the appellant that the

appellant and deceased were residing together at village Vilad. The evidence of P.W.5 Vaibhav Aghav, Advocate indicates that, about a year before Renuka breathed her last, she had filed application under Section 12 of the Protection of Women from Domestic Violence Act and Section 125 of the Code of Criminal Procedure against the appellant. The matter was compromised. She resumed cohabitation. The same suggests all was not well between the couple. The deceased did not have happy married life. She suffered injuries, whereby she breathed her last at her matrimonial home shared with her by the appellant alone. In these circumstances, the appellant owed an explanation as to how did Renuka suffered such injuries. It was even suggested to the doctor that injury No.3 was possible with a hard and blunt object. The internal injuries indicate the deceased to have suffered rib fracture. Moreover, her head might have been banged against a wall. When the deceased died within hours of the receipt of such injuries, the same indicates the appellant at least to have had knowledge that the deceased would succumb to such injuries.

11. The Apex Court, in case of **Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681**, in paragraph No.22, observed thus :

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show

that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

12. It is reiterated that the appellant kept mum when the deceased was in his custody, he owed an explanation as to how did she suffer fatal injuries. His keeping silence and the fact that the deceased died with homicidal death while in the custody of the appellant, no other inference than that the appellant to have caused death of his wife has to be drawn.

13. The question is, whether it is an offence of murder punishable under Section 302 of the Indian Penal Code. The evidence indicates that, no weapon was used in the crime in question. There were two injuries which proved to be fatal. Had the appellant really intended to finish of his wife, he would have used any kind of weapon, like knife or any hard iron substance which is readily available at home. In the facts and circumstances of the case, we find it to be a case of culpable homicide not amounting to murder, punishable under Section 304 Part II of the Indian Penal Code. For all these reasons, the appeal partly succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The judgment and order of conviction and sentence dated 9/4/2019, passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.181/2016 for the offence punishable under Section 302 of the Indian Penal Code is hereby set aside. Instead, the appellant is convicted for offence punishable under Section 304 Part II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for eight years and to pay fine of Rs.5000/- (Rupees five thousand), in default, to suffer R.I. for six months.
- (iii) The appellant shall be entitled for set off as per rules.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-