



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

CRIMINAL APPEAL NO. 650 OF 2022

Balasaheb Bhikaji Pilgar
Age: 35 years, Occu.: Agri.,
R/o Ashwi Bk, Tq. Sangamner,
Dist. Ahmednagar

..APPELLANT

VERSUS

State of Maharashtra
Through Police Inspector,
Ashwi Police Station, Ahmednagar
Tq. & Dist. Ahmednagar

..RESPONDENT

....
Ms. S.G. Sonawane, Advocate for appellant
Dr. K.B. Patil Bharaswadkar, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 26th AUGUST, 2024
PRONOUNCED ON : 19th SEPTEMBER, 2024

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

1. The challenge in this appeal is to a judgment of conviction and consequential sentence passed by Additional Sessions Judge, Sangamner ('trial Court') in Sessions Case, No. 78 of 2016 on 03rd August, 2022. Vide the impugned judgment and order, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/- with default stipulation.

2. The case of the prosecution in brief is as follows :-

The appellant belongs to shepherd community. Varsha (deceased) was his wife. She belonged to scheduled caste. Both, Balasaheb and Varsha had previously been married with someone else. Both of them fell in love with each other. They eloped and got married. The couple was blessed with a baby girl. They would reside at the appellant's house at village Ashwi (Bk.), Tq. Sangamner, Dist. Ahmednagar. Varsha died on the night on 30th July, 2016 due to electrocution (electric shock). She was pregnant. The appellant, his brother and their mother would harass and ill-treat her. The brother and mother of the appellant would feel to have been defamed due to the inter-caste marriage as the victim to have belonged to scheduled caste. She conceived. All of them would insist her to undergo abortion. They would, therefore, ill-treat her.

3. Varsha was first rushed to Pravara Rural Medical Hospital, Loni. The medical officer there declared her brought dead. Then mortal remains were subjected to the postmortem examination. The postmortem report (Exh.100) indicates she died of smothering associated with electrocution. After her funeral took place, her father – Bhausahab (since deceased) lodged the First Information Report ('F.I.R.') (Exh.116) alleging the appellant, his brother and their mother to have had harassed and ill-treated the deceased. The appellant was alleged to have committed murder of his wife.

4. Pursuant to the F.I.R. (Exh.116), lodged by the father of the deceased, crime vide C.R. No. 54 of 2016 was registered and investigated

as well. On completion of investigation, the appellant, his brother and their mother were proceeded against by filing the charge-sheet.

5. The prosecution framed charge (Exh.31) for offence punishable under Section 498-A read with Section 34 of the I.P.C. against the trio. The appellant alone was charged with the offence of committing murder of his wife.

6. The prosecution, to bring home the charge, examined ten witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court acquitted all the three of the offence punishable under Section 498-A read with Section 34 of the I.P.C. The charge for murder of Varsha was held to have been proved against the appellant. He was, therefore, accordingly convicted and consequently sentenced as stated above.

7. Learned counsel for the appellant would submit that the case is based on circumstantial evidence. PW 9 – Kamble, Investigating Officer, did not place on record report of electrical inspector. The injuries on the hand of the deceased would indicate she suffered electric shock, accidentally. The burden to prove the charge is on the prosecution. The appellant has been acquitted of the charge under Section 498-A read with Section 34 of the I.P.C. The alleged motive for commission of offence, therefore, vanished more so, when there is no appeal against acquittal. According to learned

counsel, the injuries on the lips of the deceased were as a result of an attempt to open up her mouth as she suffered clench. She ultimately urged for allowing the appeal.

8. Learned A.P.P. would, on the other hand, submit that the deceased met with homicidal death at her matrimonial home. The appellant owes explanation as to how the deceased suffered injuries noticed by the medical officer on her person. The appellant came with a false defence of a leopard to have come to their vicinity and the deceased while switching on the electric supply suffered electric shock. Learned A.P.P. took us through the evidence on record to ultimately submit that no interference with the impugned order of conviction and consequential sentence is warranted.

9. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein. Let us advert thereto and appreciate the same.

10. The appellant belongs to shepherd community. He was previously married. Varsha (deceased) belongs to scheduled caste. She too was previously married. Acquaintance between her and the appellant was developed, resulting into emotional relationship. Both of them got married with each other without fanfare. Family members of Varsha were opposed to her relationship with the appellant. The couple was blessed with a baby girl.

11. The evidence on record indicates that the appellant alongwith Varsha and their daughter would reside together separately from his brother and mother as well. Though the prosecution examined ten witnesses, since the incident is taken place at the matrimonial house of the deceased, there is little relevance to the evidence of relations of the deceased. PW1 – Sindhubai is the mother of the deceased. According to her, Varsha would relate her about ill-treatment, whenever she used to call her on phone. Her evidence, however indicate that after her daughter (Varsha) got married with the appellant, she had no occasion to meet her even once.

12. PW 2 – Jalindar is a co-brother of the appellant. He would reside at village Derdemadhi, Tq. Kopergaon. It is in his evidence that his sister-in-law – Varsha had come to his residence two and half years before the incident. She had related him about the ill-treatment given to her by the appellant. On the following day, the appellant had come to his residence. He (Jalindar) had called his father-in-law (informant). Both of them reasoned with the appellant and sent Varsha back with him to her matrimonial home.

13. We are conscious of the fact that since the case is based on circumstantial evidence, each and every circumstances relied on by the prosecution need to be proved independently. The circumstances should form a chain completing in itself suggesting involvement of the appellant in the crime in question and rule out involvement of anyone else.

14. Admittedly, on the night of 30th July, 2016, the appellant and two others had rushed Varsha to Pravara Rural Medical Hospital, Loni. PW 6 – Dr. Sachi was on duty as the Chief Medical Officer at Casualty Department. Her evidence indicates that the appellant had given the history that his wife suffered electric shock in his poultry farm on 30th July, 2016 by 01:45 a.m.

15. PW 7 – Dr. Sanjay conducted autopsy on the mortal remains of Varsha. On examination of her body, he found following injuries :-

- “1. Crescent shaped nail-scratch abrasion present just over upper lip midpart, of size 1.5 cms.*
- 2. Bruising present over lining of both lips, cheeks and soft tissues of teeth and jaws.*
- 3. Contusion present just below left angle of mouth of size 1 cm. in diameter.*
- 4. Contusion present just below lower lip, midpart diameter. 2 cm. in*
- 5. Contusion seen over right elbow medial aspect, 2.2 x 1 cm. transverse.*
- 6. Contusion seen over Right arm lower part medial aspect 2.2 x 1 cm. vertical*
- 7. Entry wound of electrocution, 2 in number seen over right index finger, palmar aspect midpart between 1 and 2nd nodes of size 3 x 2.2 cm. and between 2nd and 3rd node of size 3. 2.4 cms adjacent to one another, associated with charring and yellowing of skin. However, no ecchymoses or effusion of blood seen on cutsection.*
- 8. Circular shaped charring seen over base of right little finger.”*

In his opinion, injury nos. 7 and 8 were postmortem. All the injuries in column no.17 were unnatural. Those were possible by fall on hard and blunt object. According to him, injury no.7 was also not possible accidentally. Same is the case about injury no.8. In his opinion, the deceased died of smothering associated with electrocution. Although viscera was preserved,

nothing poisonous was noticed therein. PW 7 – Dr. Sanjay was, therefore, firmed on his opinion.

16. He was subjected to a searching cross-examination. He admitted that relatives of the deceased had given history of electric shock. In our view, the same was given by none other than either appellant or in-laws of the deceased. No oozing of blood was noticed. The eyes were not protruded. Nail beds were cynosised. He was confronted with the contents from the book of Medical Jurisprudence of Dr. K.C. Parikh. To most of the suggestions he did not agree because those pertain to a particular case report. According to him, hypoxia may be caused for number of reasons including electrocution. He strongly denied the suggestion that the cause of death i.e. smothering mentioned by him was medically not correct.

17. PW 3 – Prakash is the driver of the vehicle in which deceased – Varsha was rushed to the hospital. He is a local person. He appears to have been won over since according to him all was well between the appellant and his wife. He also testified that leopard used to visit their village, occasionally. According to him, while he enquired with the appellant, he informed him that a leopard had come to their *vasti* on the previous night. Varsha, therefore, while switching on the light suffered electric shock. This version stands negatived by the postmortem report which reads the deceased died of smothering associated with electrocution.

18. PW 5 – Dattatraya had accompanied the informant (father of the deceased). His evidence indicates that he noticed one electric tester, a nose stud, pieces of bangles in the room of the appellant. The police seized all those articles under the panchanama.

19. PW 9 – Yogesh was the Assistant Police Inspector with Ashwi Police Station. He was entrusted with the investigation of the crime. PW 10 – Tatyarao was the Police Head Constable attached with Ashwi Police Station. He did enquiry into the unnatural death of Varsha. His evidence indicates he had paid visit to the premises wherein the appellant was residing. It was a room admeasuring 15 x 12 ft. He noticed an electric tester, one nose stud and bangle pieces in the room of the appellant. He seized all those articles. His evidence also indicates that in the very room there was an electric switch board of four buttons. One of the buttons had turned black due to burns. He noticed two electric wires to have been connected in the switch board.

20. The aforesaid evidence goes a long way to conclude that Varsha met with homicidal death (due to smothering) in the house of the appellant. The appellant was admittedly in her company at the relevant time. He came with a false defence, firstly informing PW 6 - Dr. Sachi, Medical Officer at Pravara Rural Medical Hospital, Loni that his wife suffered shock in a poultry farm. Same is evident from the medico-legal case register (Exh.98), wherein the history of the case given by the appellant has been written down. Then he came with a second false story of there have been a leopard in the village

and Varsha, therefore, tried to switch on the electric bulb and in the said process suffered shock. The appellant failed to explain the injuries on the person of the deceased. Needless to mention, a false defence gives a missing link and reinforces the prosecution case. The deceased to have met with a homicidal death and the appellant to have come with a false defence goes a long way to conclude that it was the appellant and none else, who committed the murder of his wife. In our view, the trial Court did commit no error in convicting the appellant for the offence of murder and consequently sentenced the appellant to imprisonment for life. As such, the appeal is sans merit. The same, therefore, deserves to be dismissed.

21. In view of above, criminal appeal stands dismissed.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)