

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPEAL NO.251 OF 2018***

Kishor Popat Deore  
age 25 years, Indian Inhabitant  
residing at Tal.Satana No.4 & 5  
at present residing at Satana  
Dist. Nashik

...Appellant  
(Orig. Accused No.1)

Versus

The State of Maharashtra  
(at the instance of Jaikheda Police  
Station vide C.R. No.28 of 2016)

...Respondent

Mr. Vikas B. Shivarkar, for the Appellant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &  
MANJUSHA DESHPANDE, JJ.***

***DATE : 19<sup>th</sup> APRIL 2024***

***ORAL JUDGMENT (Per Revati Mohite Dere, J.) :***

1. By this appeal, the appellant has impugned the Judgment and Order dated 20<sup>th</sup> February 2018, passed by the learned District Judge-3 & Additional Sessions Judge, Malegaon, in Sessions Case No.104 of 2016, convicting and sentencing him, as under:-

- for the offence punishable under Section 302 of the Indian Penal Code to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for three months;
- for the offence punishable under Section 201 of the Indian Penal Code to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for three months.
- Both the aforesaid sentences were directed to run concurrently.
- The appellant vide the same judgment and order was however acquitted of the offences punishable under Sections 498A, 304B, 323, 504, 506 r/w 34 of the Indian Penal Code ('IPC').

2. The prosecution case in a nutshell, is that the appellant used to ill-treat his wife 'Mohini' (daughter of PW1-Hansraj Shamrao Shinde) and would demand money to be brought from the father for purchase of a two wheeler. It is the prosecution case that the

appellant brought Mohini to the hospital on 22<sup>nd</sup> March 2016 and informed the nurse that Mohini had consumed poison. Mohini was declared dead on arrival. According to PW5-Shital Yadavrao Sonwane (nurse), she informed PW12-Balu Ratan Mali (Police Naik) about Mohini being brought by the appellant on 22<sup>nd</sup> March 2016 at 9:15 p.m. and of the appellant informing her, that Mohini had consumed poison. PW5-Shital, informed PW12 that Mohini was declared dead on arrival. When the postmortem was conducted, the doctor opined that Mohini died due to 'Asphyxia due to combined effect of Manual strangulation and smothering which are sufficient to cause death in ordinary course of nature individually and collectively'. Viscera and other samples were preserved for further analysis. Pursuant thereto, an FIR was registered at the instance of PW1-Hansraj (father of Mohini) with Jaikheda Police Station, Nashik on 24<sup>th</sup> March 2016. The said FIR was registered as against five persons i.e. the appellant, his parents who were living in the same house and two others i.e. the uncle and aunt of the appellant, who were also living in the same village.

During the course of investigation, the police recorded the statements of the witnesses and after investigation filed charge-sheet as against the appellant and four others, in the Court of the learned Judicial Magistrate First Class, at Satana. Since the offences were triable by the Court of Sessions, the case was committed to the Court of Sessions for trial.

Charge was framed against all the accused including the appellant for the offences punishable under Sections 498A, 304B, 302, 323, 201, 504, 506 r/w 34 of the IPC.

All the accused including the appellant pleaded not guilty to the charge and claimed to be tried.

The prosecution, in support of its case, examined as many as fourteen witnesses i.e. PW1-Hansraj Shinde, father of Mohini (hostile); PW2-Hiraman Dadaji Wagh, panch to the inquest panchanama (hostile); PW3-Bhika Dadaji Shinde, panch to the inquest

panchanama (hostile); PW4-Gayatri Hansraj Shinde, sister of Mohini (hostile); PW5-Shital Yadavrao Sonwane, the nurse of the Rural Hospital, Satana, where the deceased was admitted; PW6-Ramesh Nimbaji Jagtap, panch to the spot panchanama (hostile); PW7-Rakesh Pundlik Mahajan, the person who collected the vomit of the victim (hostile); PW8-Jayesh Hansraj Shinde, brother of the deceased (hostile); PW9-Dr. Anand Vilas Pawar, the doctor who conducted postmortem on the deceased; PW10-Kamalbai Baraku Ahire, panch to inquest panchanama (hostile); PW11-Tushar Pandurang More, panch to the seizure of clothes of the deceased (hostile); PW12-Balu Ratan Mali, Police Naik; PW13-Rajendra Narayan Holkar, Investigating Officer and PW14-Daulat Dashrath Koshare, Police Naik, who recorded the FIR. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. The appellant did not examine any witness in his defence.

The defence of the appellant was that of total denial and false implication.

The learned District Judge-3 and Additional Sessions Judge, after considering the evidence on record, acquitted four accused i.e. the parents of the appellant and the appellant's uncle and aunt of all the offences with which they were charged and convicted the appellant as stated aforesaid in paragraph 1 of this judgment. Hence, this appeal.

3. Learned counsel for the appellant submitted that the prosecution had failed to prove any motive for the appellant to commit the murder of Mohini, inasmuch as, the father, brother and sister of the deceased had turned hostile. He submitted that infact, their evidence would show that the deceased was not happy with the marriage i.e. her early marriage. He further submitted that the prosecution has also miserably failed to prove that the deceased died due to combined effect of Manual strangulation and smothering, considering the fact, that the prosecution had not ruled out the possibility of the deceased committing suicide by consuming

insecticide i.e. Organophosphorus insecticide Dichlorvos (Nuvan). He further submitted that the fact, that the deceased committed suicide cannot be ruled out considering the C.A Report of the vomit, i.e. finding of insecticide and also having regard to the postmortem report, which reveals finding of a yellowish greenish coloured substance in the stomach of the deceased, as noted by the doctor conducting the postmortem. He submitted that the trial Court has essentially convicted the appellant having regard to Section 106 of the Evidence Act, only because the appellant brought Mohini to the hospital and disclosed that she had consumed poison. He submitted that infact, the said disclosure made by the appellant is consistent with the finding of the same, in the vomit i.e. the CA report and contents in the abdomen. He submitted that the learned Judge had failed to consider that the prosecution had failed to discharge its burden of proving its case beyond reasonable doubt against the appellant and instead had placed reliance on Section 106 of the Evidence Act, for convicting the appellant. He submitted that the even the presumption under Section 113B of the Evidence Act would not apply considering

that all the witnesses i.e. the relatives of Mohini had turned hostile and as such the prosecution was unable to prove its case.

4. Learned APP supported the impugned Judgment and Order of conviction and sentence passed by the trial Court and submitted that no interference was warranted in the same.

5. At the outset, we may note that the appellant has been acquitted of the offences punishable under Sections 498A, 304B, 323, 504, 506 r/w 34 of the IPC. It is also pertinent to note that the appellant who was staying with his parents in the house in which the incident took place have been acquitted of all the offences. Thus, the appellant alone, has been convicted for the offence punishable under Section 302 of the IPC.

6. The question that arises for consideration in the aforesaid appeal is, whether the prosecution has proved beyond reasonable doubt, that Mohini died due to manual strangulation and smothering

only, considering the other evidence that has come on record.

7. Although, it is the prosecution case and the evidence of PW9-Dr. Pawar that Mohini died due to combined effect of manual strangulation and smothering, we find that the prosecution has not been able to rule out the possibility of the deceased committing suicide, by consuming insecticide, having regard to the evidence that has also come on record and which evidence has been ignored by PW9-Dr. Pawar. It is pertinent to note that PW9-Dr. Pawar who performed the postmortem on the deceased has in his evidence stated that there was blood tinged, pinkish frothy fluid oozing through mouth and nostrils nails, lips, tongue cyanosed; and that he found four reddish contusions, on her neck, one below the other placed horizontally; on dissection PW9 found that contusions were present in the neck muscles with heamatoma in tissues. PW9-Dr. Pawar has also noted that he did not find any fracture of the hyoid bone. PW9 also noted that the stomach contained yellowish greenish fluid, and found abnormal smell, both of which were noted in the postmortem report.

The viscera was sent for analysis, however, before the analysis could be received, it appears that the doctor opined the cause of death to be 'Asphyxia due to combined effect of manual strangulation and smothering which are sufficient to cause death in ordinary course of nature individually and collectively. Viscera and other samples are preserved for further analysis.' It is also pertinent to note that in the inquest panchanama which was prepared there was history of consumption of some unknown poisonous substance/pesticide. Although, PW9-Dr. Pawar in his evidence has stated that the viscera report was shown to him, and that it did not reveal any poison, it is pertinent to note, that the viscera which was sent to the Forensic Expert, showed detection of Organophosphorus insecticide Dichlorvos (Nuvan). The same insecticide was also detected in the vomit as well as, on the clothes of the deceased which were sent to the Chemical Analyzer. The said insecticide which was found in the vomit and on the clothes of the deceased, is a chemical which is used to kill insects. Thus, the evidence on record also shows that the deceased had consumed the said insecticide and the same is also consistent with

the disclosure made by the appellant to PW5-Shital, the nurse, that Mohini had consumed poison.

8. Keeping in mind the aforesaid evidence that has come on record, it cannot be said with certainty that the deceased's death was due to 'combined effect of manual strangulation and smothering.' The prosecution has failed to show why and how insecticide was found on the clothes of the deceased and how insecticide was found in the vomit of the deceased which was collected during the course of investigation. Thus, we find that the prosecution has failed to prove beyond reasonable doubt that the deceased died due to manual strangulation and smothering, having regard to the evidence on record also with respect to finding of insecticide in the vomit, on the clothes of the deceased as well as in the viscera.

9. It is also pertinent to note that all the witnesses with respect to motive i.e. relatives of deceased-Mohini i.e. PW1-Hansraj (father of Mohini); PW4-Gayatri (sister of Mohini) and PW8-Jayesh

(brother of Mohini), have all turned hostile and have not supported the prosecution case. Infact, the evidence of PW1-Hansraj would show that he too had received a message that deceased had consumed poison. It appears from the cross-examination of PW1-Hansraj that deceased-Mohini wanted to continue her education and was reluctant to marry early and that as she did not want to marry early, she was frustrated.

10. Be that as it may, the fact remains that all the witnesses vis-a-vis motive have turned hostile and have not supported the prosecution case. Thus, the trial Court also acquitted all the accused including the appellant of the offences under Sections 498A, 304B, 323, 504, 506 r/w 34 of the IPC. The conviction of the appellant is essentially based on Section 106 of the Evidence Act i.e. the appellant had failed to discharge the burden cast on him under Section 106. It is well settled that before Section 106 can be invoked, it is the duty of the prosecution to prove its case beyond reasonable doubt, after which the burden would shift on the appellant. The presumption under Section

113B will not apply since the appellant has been acquitted of the offences punishable under Sections 498A, 304B of the Indian Penal Code. As has come in the evidence, Mohini was staying with the appellant and appellant's parents and merely because the appellant brought Mohini to the hospital will not make the appellant liable in the absence of some evidence to the contrary. As noted earlier, the disclosure made by the appellant to PW5-Shital is consistent with finding of vomit at the spot, the contents found in the stomach, as recorded in the postmortem report as well as finding of insecticide in the vomit, and viscera. It is not even the prosecution case, that the appellant administered insecticide to the deceased.

11. Considering what is noted herein-above, we find that the prosecution has failed to prove that the cause of death of deceased was due to manual strangulation and smothering and not due to consumption of insecticide. The prosecution has not ruled out the possibility of deceased committing suicide, by consuming insecticide, and as such the appellant deserves to be given benefit of doubt.

12. Having regard to what is stated aforesaid, we pass the following order:-

**ORDER**

- i) The Appeal is allowed;
- ii) The Judgment and Order dated 20<sup>th</sup> February 2018, passed by the learned District Judge-3 & Additional Sessions Judge, Malegaon in Sessions Case No.104 of 2016, convicting and sentencing the appellant, is quashed and set aside;
- iii) The appellant is acquitted of the offence, with which he is charged. The appellant is set at liberty forthwith, if not required in any other case. Fine amount, if paid, be refunded to the appellant.

13. Appeal is allowed and accordingly disposed of.

. All concerned to act on the authenticated copy of this judgment.

***MANJUSHA DESHPANDE, J.***

***REVATI MOHITE DERE, J.***