



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

CRIMINAL APPEAL NO. 148 OF 2023

Bapurao s/o Khandu Navsare,
Age : 36 years, Occu. Agriculture,
R/o. Village Navsarwadi,
Taluka Karjat, Dist. Ahmednagar.

...Appellant

Versus

The State of Maharashtra

...Respondent

.....
Shri. Rajendrraa Deshmukkh, Sr. Advocate a/w Shri. Vishal A. Chavan
and Shri. Akash Halnawar i/b Shri. Devang R. Deshmukkh – Advocate
for the Appellant
Smt. Kalpalata Patil Bharaswadkar – Addl. PP for the Respondent/State
.....

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

DATE OF RESERVING THE JUDGMENT : 23.01.2025
DATE OF PRONOUNCING THE JUDGMENT : 10.02.2025

JUDGMENT [*Per* Neeraj P. Dhote, J.]

1. By this Criminal Appeal under Section 374(2) of the Code of Criminal Procedure [hereinafter referred to as 'Cr.P.C.'], the Appellant has challenged his conviction and sentence recorded by the learned Additional Sessions Judge, Shrigonda; in Sessions Case No. 121 of 2019, by the Judgment and Order dated 15.12.2022. The operative Order reads thus : -

“ORDER

- (1) *Accused Bapurao Khandu Navsare is hereby convicted as per provisions of Section 235(2) of Code of Criminal Procedure, for the offence punishable under Section 302 of Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- (Rs. Five Thousands only) in default to suffer simple imprisonment for 6 (six) months.*
- (2) *Accused Bapurao Khandu Navsare is further convicted as per Section 235(2) of Code of Criminal Procedure, for the offence punishable under Section 201 of Indian Penal Code, and he is sentenced to suffer rigorous imprisonment for 3 (three) years and to pay fine of Rs.2,000/- (Rs. Two Thousands only) in default to suffer simple imprisonment for two months.*
- (3) *Accused Bapurao Khandu Navsare is further convicted as per Section 235 (2) of the Code of Criminal Procedure, for the offence punishable under Section 498-A of Indian Penal Code, and he is sentenced to suffer rigorous imprisonment for 2 (two) years and to pay fine of Rs.2,000/- (Rs. Two Thousands only) in default to suffer simple imprisonment for 2 (two) months.*
- (4) to (10)

2. The Prosecution’s case, as revealed from the Police Report, is as under:

2.1. The Appellant and Rupali [hereinafter referred to as ‘Deceased’] got married eleven [11] years ago from the date of incident. After marriage, Deceased went to her matrimonial home. From the wedlock, they had two Sons. Initially, the Appellant was working as a Driver, however, one [1] year prior to the incident, he gave up the said

work and started agricultural work. From three [3] years prior to the incident, Deceased was being harassed by the Appellant. Two [2] months prior to the incident, the Appellant erected the poultry shed in his agricultural field. He was asking Deceased to get Rs.1.5 lakh from her parents for starting poultry business. On 18.01.2017, Deceased telephonically asked her brother Sandeep Kalbhor, the Informant, to provide financial help of Rs.50,000/- for bringing Chicks. Appellant asked the Informant to give bearer cheque of Rs.50,000/- and accordingly, it was handed over to the Appellant, however, the harassment to the Deceased continued. Deceased and the Appellant used to sleep in the said poultry shed in the night.

2.2. On 31.01.2017 around 10:00 am, the maternal cousin came to the house of Informant and informed him that Deceased was no more. The Parents and Brother of Deceased reached her matrimonial home at Navsarwadi. They noticed her dead body in the house. There were marks over the neck. The people gathered over there informed that Deceased hanged herself in the poultry shed and her body was brought home. Police arrived and referred the body for post-mortem. The cause of death was revealed as "*Death due to constriction of neck due to ligature*". On 01.02.2017, the dead body was handed over to the relatives and the last rites were performed. On 02.02.2017, the Informant lodged Report with Karjat Police Station against the Appellant that his sister was being harassed and the Appellant

committed her Murder and hanged the body to show that, it was the Suicide. The Report was taken and Crime No. 39 of 2017 came to be registered against the Appellant for the offence punishable under Sections 302, 498A, 323, 504, 506 of the I.P.C.

2.3. During the investigation, the *panchanamas* were drawn and the statements of witnesses were recorded. The Appellant came to be arrested. The clothes of the Deceased and the Appellant came to be seized. The opinion of Doctor came to be sought. The post-mortem report came to be collected and the seized articles were referred for Chemical Analysis. On completion of the investigation, the Appellant came to be Charge-Sheeted. On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 302, 498A, 201, 323, 504, 506 of the IPC, vide Exh. 7. The Appellant denied the Charge and claimed to be tried. To prove the Charge, Prosecution examined in all eight [8] witnesses and brought on record the relevant documents. On closure of Prosecution's evidence, the Appellant's statement under Section 313(1)(b) of the Cr.P.C. came to be recorded by the learned Trial Court. The Appellant denied the evidence and case of Prosecution and stated that his wife hanged herself in poultry shed and he was falsely implicated. On appreciating the evidence on record and hearing both the sides, the learned Trial Court convicted and sentenced the Appellant as referred above in paragraph no. 1.

3. Heard both the sides. Scrutinized the evidence available on record.

4. It is submitted by the learned Advocate for the Appellant that the marriage between the Appellant and Deceased was 11 year old at the time of incident. Initially, the Accidental Death Report [ADR] was lodged stating that the Deceased hanged herself, however, after two days, the Report came to be lodged that the Appellant committed Murder of his wife. The medical evidence do not support the Prosecution's case for Homicidal Death. The medical evidence suggests Death by hanging, which is indicative of suicide. The dead body which was hanging in the poultry shed was removed by the villagers. The evidence on record do not establish the essential ingredients for the offence punishable under Section 498A of the IPC. The learned Trial Court did not appreciate the evidence on record properly. The evidence on record falls short of establishing the offence for which the Appellant has been convicted, and therefore, the Appeal be allowed.

5. It is submitted by the learned APP that the Medical Officer, who initially examined the dead body, was suspecting the death to be the Homicidal, and to have clear opinion, she referred the dead body to Pune. According to the said Medical Officer, Homicidal Death was not

ruled out. The evidence in the nature of spot *panchanama* shows that the height of roof and the distance between the two sack bags found on the spot of incident shows that hanging was not possible. The evidence of the witnesses show that, due to non-fulfillment of the monetary demand of the Appellant, he committed the Murder of his wife. The evidence brought on record established the Charge against the Appellant and the learned Trial Court has rightly convicted and sentenced the Appellant, and therefore, no interference is called for in the Appeal and the same be dismissed.

6. The Prosecution's case is based on circumstantial evidence. The law in respect of circumstantial evidence is well settled right from the Judgment in **Hanumant vs. The State of Madhya Pradesh, MANU/SC/0037/1952** and **Sharad Birdhi Chand Sarda vs. State of Maharashtra, MANU/SC/0111/1984**. The circumstances are required to be conclusively proved to form a complete chain which would unerringly point towards the involvement of the Accused in the crime.

7. To prove the Homicidal Death of Appellant's wife, the medical evidence is crucial. The evidence of PW7 – Dr. Sucheta Vinay Yadav shows that she was the Medical Officer at the Sub-District Hospital, Karjat, Ahmednagar. On 31.01.2017, dead body of Rupali Bapurao Navsare was brought to the hospital for post-mortem. She

noticed ligature mark on the neck of Dead Body and she felt that hanging by a '*Odhani*' was not possible. She suspected that hanging might have taken place with a big rope. She examined the dead body. She found multiple abrasions below the ligature mark. As she was Suspicious about the cause of death, she referred the dead body to the Sassoon General Hospital, Pune for the post mortem. According to her, possibility of Homicidal Death was not ruled out. According to her, in Suicidal cases, abrasions are generally not found. According to her, the ligature mark having width 2.5 cm in case of suicide by '*Odhani*' was least possible. She deposed in her cross-examination that, for exact opinion, she referred the dead body to Pune. She agreed with the propositions or opinions given in the Medical Jurisprudence books authored by Modi, Parikh and Reddy. Her opinion was based on abrasions which were appearing on lower margin of ligature. She did not measure the length of abrasions appearing on the throat. It has come in her cross-examination that if any person tries to throttle self and remains unsuccessful, injuries may appear on the neck. In the next breath, she volunteered that injuries above ligature mark will not appear in such case. She did not take measurement of any injury. She accepted that there was mention in her report that the ligature mark went up to Mastoid. It has further come in her cross-examination that she was deposing for the first time that ligature mark went up to Mastoid. The evidence of this Medical Officer fall short of establishing the Homicidal

Death. It is clear that as she was not certain about the cause of death, she referred the Dead Body to the Sassoon General Hospital, Pune, for opinion.

8. There is evidence of PW6 – Dr. Ajay Aniruddha Taware, which shows that, since 2006, he was working in Sassoon General Hospital, Pune. He had the qualification of M.D. Forensic Medicine and experience of performing more than 5000 post mortems. On 31.01.2017, dead body of Rupali Bapurao Navsare (Deceased) was brought by Karjat Police Station for post-mortem along with Inquest and requisition form. Later on, a letter was received by him from the Superintendent of Karjat Hospital that there was no forensic expert available, and therefore, the dead body was referred to Pune. He, along with Dr. Khurana and Dr. Shelke performed post-mortem on 01.02.2017 and found the following injuries:

“Total neck circumference – 31 c.m.

Weight of the dead body = 43.68 kgs.

- (1) Ligature mark present over anterior aspect of neck above the level of thyroid cartilage running upwards, backwards and laterally on both sides of neck of size 20 cm X 2.5 cm, irregular, dry, hard and parchmented with 3.5 cm x 1.5 cm linear extension on lower side of ligature mark on right lateral aspect from mid line below main mark.

Dimensions -

4.5 cm below chin

7.5 cm above suprasternal notch

1 cm below right angle of mandible

4 cm below left angle of mandible

4 cm below left mastoid, 136 cm from right heel.

Ligature mark ending below right angle of mandible and on left side merging in hairline on posterior aspect of neck, 6 cm below and behind left mastoid.

On dissection of neck, skin under ligature mark dry, hard, glistening.

No hemorrhages in underlying soft tissues and muscles.

No fracture of hyoid, thyroid cartilages.

- (2) Abrasion present over anterior aspect of neck, 0.5 cm left lateral to mid line 0.5 cm below ligature mark of size 1 cm x 1 cm, triangular, convex downwards, red.
- (3) Abrasion over mid line of neck, 2 cm below ligature mark, 0.5 cm x 0.5 cm, red.
- (4) Abrasion over right antero lateral aspect of neck 5 cm right lateral to mid line, 1 cm below ligature mark of size 0.5 x 0.3 cm, red.”

8.1. The further evidence of PW6 – Dr. Ajay Aniruddha Taware shows that, all the above referred injuries were *ante-mortem* and the cause of death was ‘*due to constriction of neck due to ligature*’. The post-mortem report was prepared, which was at Exh.44. He further deposed that ligature was possible due to hanging.

8.2. He agreed with the propositions given in the book ‘Medical Jurisprudence’ authored by Modi & Parikh regarding hanging. He reiterated that the hyoid bone was intact and it was mentioned in the post-mortem report. The copy of the text from the Medical Jurisprudence and Toxicology (Law Practice & Procedure) by Dr. K. S. Narayan Reddy was confronted to him and brought on record. In the said literature, it is mentioned that hyoid bone fracture was strongly suggestive of throttling.

9. Evaluation of the above referred medical evidence shows that, there is no conclusive finding that the death was Homicidal. The cause of death was “*constriction of neck due to ligature*”. The hyoid bone and thyroid cartilages were not fractured. True it is, that the evidence of PW1 – Sandeep Maruti Kalbhor, PW3 – Parigabai Maruti Kalbhor and PW5 – Parasram Nivruitti Kalbhor, who were the brother, mother and uncle, respectively of the Deceased, shows that when they went to the Matrimonial House of the Deceased after learning about the death, they noticed injuries on the throat of the Deceased. However, the Medical Evidence becomes crucial on the point of nature of Death. It has come in the evidence of PW8 – Pramod Rangnath Bhingare, who investigated the Crime, that nail clippings of the Deceased were not taken and not sent to the Chemical Analyzer. The evidence available is far from establishing that, the death of Appellant’s wife was Homicidal.

10. According to PW1 – Sandeep Maruti Kalbhor, PW3 – Parigabai Maruti Kalbhor and PW5 – Parasram Nivruitti Kalbhor, the Deceased was being harassed by the Appellant. One of the Charge and conviction is for the offence punishable under Section 498A of the IPC. Admittedly, the marriage of the Appellant and Deceased was eleven [11] years old at the time of her death. They were having two sons from the wedlock, who were residing with them. They were not examined. The evidence of PW8 – Pramod Rangnath Bhingare shows that, statement of

the children of Deceased were not recorded. It is settled position under the law that, every harassment or ill-treatment do not lead to the offence punishable under Section 498A of the IPC. The ill-treatment or harassment contemplated under Section 498A of the IPC is required to be of such an extent, which would drive the woman to commit suicide. The evidence of these three (3) witnesses nowhere shows that they themselves have witnessed the harassment or illtreatment to the Deceased. Their evidence in respect of harassment is vague and general. The evidence of PW3 – Parigabai Maruti Kalbhor in respect of beating to the Deceased by the Appellant on account of money and that her son i.e. PW1 – Sandeep Maruti Kalbhor gave a cheque of Rs. 50,000/- to the Appellant, which he took from one Gopalghare, without mentioning the name of Payee, at the instance of the Appellant, was an omission in her previous statement.

11. Though PW1 – Sandeep Maruti Kalbhor deposed of Appellant demanding Rs. 1,50,000/- from the family members of the Deceased and he gave Rs. 50,000/- by way of a cheque, his evidence shows that the cheque was issued by one Dattatraya Bhimrao Gopalghare and he gave it to the accused. There is no evidence that the said amount was deposited in the account of the Appellant. On the contrary, the evidence of PW3 – Parigabai Maruti Kalbhor shows that, the Appellant got the cheque encashed in the name of one Tanpure.

There is no evidence of the said persons by name, Gopalghare and Tanpure. The evidence of PW5 – Parasram Nivruitti Kalbhor in respect of demand of money by the Appellant was hearsay. What can be seen from the evidence of PW5 – Parasram Nivruitti Kalbhor is that, the Appellant knew at the time of marriage, which was performed in the Group Marriage Ceremony, that the financial condition of the parents of the Deceased was poor and he consented to marry her. It has come in the evidence of PW1 – Sandeep Maruti Kalbhor that the poultry shed was constructed by the Appellant. From this evidence on record, the evidence of these three witnesses that the Deceased was being harassed for financial help is required to be seen with doubt.

12. It is clear from the evidence on record that PW5 – Parasram Nivruitti Kalbhor lodged report with the concerned Police Station that the Deceased was found hanging in the poultry shed. In the cross-examination, PW8 – Pramod Rangnath Bhingare deposed that, PW5 – Parasram Nivruitti Kalbhor gave report to the Police that the Deceased committed suicide by hanging with the help of '*Odhan*' (Stole) and the said report was at Exh. 69. The evidence of PW5 – Parasram Nivruitti Kalbhor shows that Police had come on the spot of incident and the Police from Karjat Police Station accompanied them to Pune and on the way, he (PW5 – Parasram Nivruitti Kalbhor), PW1 – Sandeep Maruti Kalbhor and others decided to lodge Report against the Appellant.

Admittedly, the report, which formed the basis of registration of Crime against the Appellant, was lodged after two (2) days from the death of Appellant's wife. The said report was lodged by PW1 – Sandeep Maruti Kalbhor. His evidence shows that, on 31.01.2017, the Police had come on the spot and they inquired with him, his parents and other relatives. His evidence shows that, the Appellant and his family members accompanied them to the Rural Hospital, Karjat and Sassoon Hospital at Pune. His evidence further shows that, on 01.02.2017, for the whole day, they were in the company of the Police. Suggestion is given in the cross-examination that they decided to lodge the report after knowing the cause of Death.

13. The other evidence is that of PW2 – Satish Ankush Jare, who was the spot panch. The spot *panchnama* is at Exh. 18. His evidence shows that two gunny bags containing bird food were found at the spot of incident. There is evidence of PW4 – Eknath Rambhau Khaire, who was Panch to the Inquest at Exh. 34. His evidence shows that he was residing at village Padali and PW1 – Sandeep Maruti Kalbhor and PW3 – Parigabai Maruti Kalbhor, who were brother and mother of Deceased, respectively, were residing at village Bankhada. Though he deposed of Deceased telling about the harassment whenever she visited her parental house and deposed of demand of money by the Appellant from the parents of the Deceased, his evidence do not show

that he was the eye-witness to the same. The evidence in respect of the harassment and demand of money was hearsay. The report of Chemical Analysis at Exh. 72 in respect of articles sent to the Chemical Analyzer do not show Blood on the clothes of the Appellant.

14. On re-appreciation of evidence on record as discussed above, the Prosecution failed to establish the Charge against the Appellant. There is no Charge of abetment of suicide. Secondly, the evidence available on record do not establish the abetment of suicide by the Appellant. It is true that medical evidence is an opinion evidence, however, it becomes crucial to decide whether the death was Homicidal or otherwise. With the evidence available on record, it is not possible to maintain the conviction of the Appellant recorded by the learned Trial Court and the consequent sentence. The evidence on record is not conclusive in establishing the Charge. The Appeal, thus, succeeds. Hence, the following order :

ORDER

- [1] Criminal Appeal is allowed.
- [2] The conviction of the Appellant for the offence punishable under Sections 302, 201, 498A of the Indian Penal Code and the consequent sentence recorded by the learned Additional Sessions Judge, Shrigonda; in Sessions Case No. 121 of 2019, by the Judgment and Order dated 15.12.2022, is quashed and set aside.

- [3] The Appellant is acquitted of the offence punishable under Sections 302, 201, 498A of the Indian Penal Code.
- [4] The Appellant be released forthwith, if not required in any other case.
- [5] Fine amount, if paid, be refunded to the Appellant.
- [6] R&P be sent back to the trial Court.

[NEERAJ P DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde