

(2001) 01 BOM CK 0011

In the Bombay High Court

Case No : Criminal Appeal No. 861 of 1985

Mahadeo Ganpati Sutar and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235

Evidence Act, 1872 — Section 27, 45, 8, 9

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2001) ALLMR(Cri) 2274 : (2001) 5 BomCR 610 : (2001) CriLJ 1375 : (2001) 2 DMC 202

Hon'ble Judges : Vishnu Sahai, J;Pratibha Upasani, J

Bench : Division Bench

Advocate : S.V. Marvadi and A.P. Munderggi, for accused Nos. 1 and 2, for the Appellant; A.S. Gadkari, Assistant Public Prosecutor, for the Respondent

Judgement

Pratibha Upasani, J.—This criminal appeal is filed by the appellants/original accused Nos. 1 and 2, namely, Mahadeo Ganpati Sutar and Shrimati Sakhubai Ganpati Sutar, being aggrieved by the judgment and order dated 31-10-1985, passed by the Sessions Judge, Kolhapur in Sessions Case No. 69 of 1984. By the impugned judgment and order the learned Sessions Judge, Kolhapur convicted accused No. 1 Mahadeo for offences punishable u/s 498-A r/w section 34 and sections 302 and 201 of the Indian Penal Code. He accordingly sentenced him to suffer R.I. for three years and a fine of Rs. 1,000/-, in default to suffer R.I. for six months u/s 498-A r/w section 34 of the Indian Penal Code. Accused No. 1 was further convicted and sentenced to suffer imprisonment for life and a fine of Rs. 1,000/- in default to suffer R.I. for one year u/s 302 of the Indian Penal Code. Accused No. 1 was further convicted u/s 201 of the Indian Penal Code and was sentenced to suffer R.I. for one year and a fine of Rs. 100/-, in default to suffer R.I. for one month.

2. The learned Sessions Judge vide the impugned judgment and order also convicted accused No. 2 Sakhubai u/s 498-A r/w section 34 of the Indian Penal

Code and sentenced her to suffer R.I. for three years and a fine of Rs. 1,000/-, in default to suffer R.I. for six months.

3. The prosecution story can be briefly narrated as follows :

Accused No. 1 Mahadeo is the son of accused No. 2 Sakhubai. The allegation against both the mother and the son was that in furtherance of their common intention, they subjected the deceased Sou. Suman, who was the wife of accused No. 1 and daughter-in-law of accused No. 2, to cruelty and that on 11-7-1984 between 8-00 a.m. and 11.00 a.m. accused No. 1 Mahadeo in furtherance of the common intention with accused No. 2 Sakhubai committed Suman's murder. It was also the charge against accused No. 1 that he had committed the murder of his wife Suman by throttling her to death and thereafter he threw her dead body in the well of Ghorpade.

4. The prosecution story further is that her father Subhana Santu Sutar (P.W. 13) were resident of village Mumewadi. When deceased Suman became of a marriageable age, the accused and their near relation one Bandu Govind Sutar (P.W. 4) had gone to Mumewadi to see the deceased Suman. The parents of accused No. 1 did not approve of deceased Suman. They also demanded a dowry of Rs. 1,000/-, gold ring and a wrist watch. The father of Suman, Subhana, told them that their demand was beyond his capacity. Ultimately, however, the marriage was fixed and P.W. 13 Subhana Sutar agreed to give dowry of Rs. 501/-, clothes and a wrist watch to accused No. 1. Thus the marriage between accused No. 1 and deceased Suman was settled and took place at Hamidwada. After the marriage Suman started residing in the house of the accused. However, both the accused started ill-treating her on account of dowry. They used to abuse and neglect her. One Suman Bandu Sutar (P.W. 12) and her husband Bandu Sutar (P.W. 4) were residing just in the adjoining room where the accused used to stay. There was just a wall between these two houses. P.W. 12 Suman saw the ill-treatment received by deceased Suman at the hands of the accused and took deceased Suman to her parents place at Mumewadi. She told the father of deceased Suman that both the accused were demanding dowry and that they were ill-treating his daughter and were assaulting her. She also told him that just because her husband Bandu Sutar took part in the settlement of the marriage between accused No. 1 and the said Suman, the parents of Suman should not rely upon them and that they should think before sending Suman back to the house of the accused. Thereafter, deceased Suman stayed with her parents for a period of 8 to 9 months.

5. The prosecution story further is that in the month of April, 1984 deceased Suman, her father Subhana Sutar and one Ganu Raghu Kate (not examined) went to Hamidwada and met Vithal Hari Hasole (P.W. 17), who was the Sarpanch of village Hamidwada. Subhana narrated the entire incident to Vithal about the ill-treatment which his daughter Suman was receiving at the hands of the accused. Vithal then called accused Nos. 1 and 2 and the father of accused No. 1 Ganpati. Vithal then asked accused No. 1 about the ill-treatment which was being given to

Suman. Accused No. 1 tendered his apology and also assured that henceforth he would treat her well. At that time one Dilip Kulkarni (P.W. 10) was present in the office of the Grampanchayat at Hamidwada. Vithal (P.W. 17) called Dilip who wrote a sort of an agreement on a plain paper. Vithal dictated the contents of the said agreement. The contents were to the effect that accused No. 1 would treat Suman well in his house and would not ill-treat her. It has also mentioned therein that in case Suman would run away from his house, he would not entertain her thereafter in his house. Accused No. 1 then signed on this so called agreement. One Jyoti Sutar and Dattu Rama More signed on the said agreement as attesting witnesses. Thereafter, Subhana Sutar took his daughter Suman to the house of the accused.

6. On the day of the incident i.e. 11-7-1984 Suman Sutar (P.W. 12) and her husband Bandu Sutar (P.W. 4) got up from their sleep after hearing shouts of their neighbour Suman. She was shouting as "mother, mother, I am dead". Suman Sutar went to her house to see what had happened. She saw that deceased Suman was crying loudly and was pressing her stomach. On making enquiries, deceased Suman told Suman Sutar (P.W. 12) that accused No. 1 had given a kick blow on her stomach. On making enquiries with accused No. 1, he told Suman Sutar that as the deceased hurled a broom towards the hen, he had slapped her twice. Thereafter, as usual, Bandu Sutar left for his work at about 8.30 a.m. Deceased Suman went towards the tank and brought two pitches of water. Thereafter she took a basket and went for collecting cowdung. Suman Sutar also saw that soon after deceased Suman left, accused No. 1 followed her. While Suman was collecting cowdung towards the side of S.T. pick-up shed, accused No. 1 caught hold of her hands and dragged her towards the well of Ghorpade. Thereafter nothing was heard of Suman till her dead body was found floating in Ghorpade's well.

7. The prosecution story further is that on the very same day i.e., 11-7-1984 at about 11.30. a.m., accused No. 1 came to the house of Bandu Sutar and told him that deceased Suman had gone away somewhere. Prior to that Bandu Sutar had gone to the Government dispensary as his mother was not keeping well. Thereafter he went to attend his work. Before that he told accused No. 1 that he should go and search for Suman. At about 2 or 2.30 p.m. accused No. 1 again came to him and requested that Bandu should go to Mumewadi and see whether Suman had gone there. Accordingly, Bandu and one Manohar Magadum (not examined) went to Mumewadi to see whether Suman had gone to her parents place. However, they learnt that Suman had not come there also. On that day they stayed at Mumewadi only and returned to Hamidwada on the next day morning. Bandu told accused No. 1 that Suman was not at Mumewadi. On Friday i.e., on 14-7-1984 by evening he came to know that Suman's dead body was found floating in Ghorpade's well and he went there and identified Suman's dead body.

8. Police Constable Dilip Jadhav (P.W. 14) who was attached to the police out-

post at Linganur, came to know about the dead body of Suman. Hamidwada is situated at a distance of 3 kms. from Linganur police out-post. Dilip Jadhav then went to Hamidwada and ascertained the fact. Thereafter he returned to Khadakewada and gave message to Police Patil of Murgud. At about 7.00 p.m. Police Head Constable Dhone (P.W. 15) came to Hamidwada and then Suman's dead body was taken out of the well in the morning of the next day. The inquest panchanama was made, so also the panchanama of the well and thereafter Suman's dead body was sent for post-mortem. P.W. 15 Marvadi registered the incident as A.D. No. 13/84. He also recorded statements of some persons. Subsequently, he lodged the F.I.R. and registered the same as C.R. No. 50/84 under sections 302, 201 r/w section 34 of the Indian Penal Code. Thereafter the investigation was taken over by Dy. Superintendent of Police, B.N. Raut (P.W. 16). On 15-7-1984 both the accused came to be arrested. After the routine investigation was completed, charge-sheet came to be filed in the Court of the Judicial Magistrate, First Class, Kagal, who committed the case to the Court of Sessions on 15-9-1984.

9. In the Court of Sessions charge was framed against both the accused u/s 498-A r/w section 34 of the Indian Penal Code, section 302 r/w section 34 of the Indian Penal Code, section 201 r/w section 34 of the Indian Penal Code and in the alternative against accused No. 1 u/s 302 of the Indian Penal Code. Both the accused denied the charges framed against them. Their defence was that of total denial.

10. The learned Sessions Judge, Kolhapur after recording the evidence of 17 prosecution witnesses and after hearing both the sides came to the conclusion that the prosecution has succeeded in establishing beyond reasonable doubt that accused No. 1 was guilty of the offence punishable u/s 498-A r/w section 34 and sections 302 and 201 of the Indian Penal Code. The learned Sessions Judge also came to the conclusion that the prosecution had succeeded in establishing beyond reasonable doubt that accused No. 2 was guilty of the offence punishable u/s 498-A r/w section 34 of the Indian Penal Code. He accordingly sentenced accused No. 1 to suffer R.I. for three years and a fine of Rs. 1,000/-, in default to suffer R.I. for six months u/s 498-A r/w section 34 of the Indian Penal Code. Accused No. 1 was further convicted and sentenced to suffer imprisonment for life and a fine of Rs. 1,000/-, in default to suffer R.I. for one year u/s 302 of the Indian Penal Code. Accused No. 1 was further convicted u/s 201 of the Indian Penal Code and was sentenced to suffer R.I. for one year and a fine of Rs. 100/-, in default to suffer R.I. for one month. The learned Sessions Judge also convicted accused No. 2 Sakhubai u/s 498-A r/w section 34 of the Indian Penal Code and sentenced her to suffer R.I. for three years and a fine of Rs. 1,000/-, in default to suffer R.I. for six months.

11. Being aggrieved by the finding of guilt recorded against them by the learned Sessions Judge and the sentence awarded, the present criminal appeal is filed by the accused.

12. We have heard Mr. Marvadi appearing for the appellants/original accused Nos. 1 and 2 at length. Mr. Marvadi has taken us through the evidence of all the 17 prosecution witnesses, so also through the impugned judgment and order of the learned Sessions Judge, Kolhapur.

13. As per the post-mortem report and in the opinion of the doctor who conducted the post-mortem examination, Suman died because of throttling. From the depositions of Bandu Sutar (P.W. 4) and Sunanda (sic Suman) Sutar (P.W. 5) and so also from the evidence of the father of the deceased it is clear that the accused were unhappy with Suman as she did not bring sufficient dowry from her parents. The couple, Suman and Bandu Sutar were just adjoining neighbours of deceased Suman. In between the house of deceased Suman and the Sutar couple there was only one wall. On the day of the incident in the early morning at 7 or 7.30 a.m. both Suman Sutar and Bandu Sutar had heard cries of unfortunate Suman. In fact they were awakened by her cries only. Both of them came out and made enquiries. Suman was crying loudly and was pressing her stomach. On making enquiries by Bandu and his wife Suman, the deceased told them that accused No. 1 had given kick blow on her stomach. At that time accused No. 2 and her husband Ganpati were also present there. Accused No. 2 gave Suman a filthy abuse. In fact Bandu asked accused No. 1 as to why he had assaulted Suman on which accused No. 1 replied that he had assaulted her because she threw a broom which hit the hen. When Bandu returned to his residence with his wife Suman, he saw that the deceased went towards the well for bringing water. She was carrying two water pitchers and thereafter took a basket and went towards the well. At that time she was wearing a sari of reddish colour with blouse of pink colour. After some time accused No. 1 also followed her. P.W. 12 Suman Sutar has also described the said incident which took place in the morning of 11-7-1984. They have stated not only about the said incident which took place on 11-7-1984 but also about the ill-treatment which was being given to unfortunate Suman at the hands of the accused. Bandu in fact was one of those persons who had acted like intermediary for settling the marriage of accused No. 1 with Suman. He has, therefore, deposed about the dissatisfaction of the parents of accused No. 1 and accused No. 1 himself in so far as the incapacity of the parents of Suman to bring dowry to their satisfaction. This is corroborated by P.W. 13, the father of the deceased. Thus there is sufficient material on record to establish the motive of the accused for bringing home the charges levelled against them. There is also sufficient material on record to show that deceased Suman was last seen in the company of accused No. 1. Suman Sutar and Bandu Sutar are not the only persons who saw accused No. 1 going after Suman when she left her house for collecting cowdung. P.W. 6 Anil Nirmal has also deposed that "I saw that Mahadeo's wife Suman was proceeding ahead with a basket on her head. Mahadeo was following her. When Suman was collecting cowdung which was lying on the road, the accused No. 1 hurriedly came there. They both went towards the pick-up shed where they were talking for some time. Thereafter accused No. 1 caught hold of Suman's hand and took

her towards Ghorpade's well. I saw that accused No. 1 was dragging her by holding her hand. As I was to go to the school hence I returned to my house with cattles.". It is pertinent to note that the deposition of this witness is not shaken in any way in the cross-examination. It is also pertinent to note that especially P.W. 6 Anil is a totally independent witness. Similarly, P.W. 8 Dinkar Patil is also one more independent witness who has corroborated what Suman Sutar and Bandu Sutar and Anil have stated. This is what he says in his deposition ".....I saw that the accused No. 1 was dragging Suman towards Ghorpade's well and he had caught hold of her hand.". There is no reason to disbelieve the evidence of these witnesses as their depositions are consistent, straight-forward and appear to be very much honest.

14. P.W. 5 Sunanda Sutar's evidence is important in as much as Sunanda happens to be the aunt of accused No. 1. Admittedly, accused No. 2 Sakhubai is the cousin sister of Sunanda. She has deposed that on the day of the incident at about 11.00 a.m. accused No. 1 came to her house. He was looking very frightened. He told her that when Suman had gone to bring cowdung, he called her towards Ghorpade's well and that when Suman came there he assaulted her, pressed her neck and killed her. P.W. 5 Sunanda further deposed that accused No. 1 told her that thereafter he threw her body in Ghorpade's well. P.W. 5 further deposed that she told accused No. 1 that he had not done proper and that in case he did not approve of her he ought to have sent her to her parents place.

15. Thus the evidence of P.W. 5 nails accused No. 1 completely. Being a very close relative of both the accused, she would not have nailed them unless the incident was true. Thus there is no reason to disbelieve the extra judicial confession made by accused No. 1 to his own aunt on the very day of the incident. It is pertinent to note that there is no dent in the deposition of this witness also in the cross-examination.

16. The evidence of Vithal (P.W. 17), Dilip Kulkarni (P.W. 10) who wrote the agreement as per the dictation of Vithal, Sarpanch of village Hamidwada corroborates the testimony of other witnesses.

17. The medical evidence supports the prosecution story in toto. Dr. Suhas Sagavkar (P.W. 3), the Medical Officer attached to the Primary Health Centre, Ambavali, Taluka Khed, District Ratnagiri, who conducted the post-mortem of the dead body of Suman has opined that according to him, the deceased died first and thereafter her dead body was thrown into the well. He also stated that there would be fracture of hyoid bone because of pressure of both hands. Similarly, at the same time there would be accumulation of blood near the point of fracture of the hyoid bone. The post-mortem report while describing the condition of the body reveals that the tongue of the deceased was swollen and protruding, that the neck of the deceased was swollen, the muscles were torn and crushed and there was fracture of hyoid bone. After external and internal examination of the dead body, the Medical Officer gave his opinion that the probable cause of death

of the deceased was asphyxia as a result of throttling. Thus the medical evidence supports the case of the prosecution that deceased Suman was done to death by accused No. 1 by throttling her neck and thereafter by throwing her body into the well of Ghorpade. It is also established beyond reasonable doubt that both the accused were harassing deceased Suman as she could not bring sufficient dowry. It has also come in evidence that on the day of the incident accused No. 1 gave a kick blow on the stomach of Suman and she was crying loudly. Thus, though there is no eye-witness as such to the incident when accused No. 1 actually throttled her neck and threw her body into the well, the circumstantial evidence pointing to the guilt of the accused is so strong and clinching that there is no hypothesis than that of guilt of the accused. The chain of circumstances is complete and these circumstances can be enumerated as below :

(i) Initially parents of deceased Suman not approving of her and accused No. 1 and father-in-law demanding dowry of Rs. 2,500/- from the father of Suman.

(ii) The marriage of accused No. 1 with Suman settled only after father of deceased Suman agreed to give Rs. 501/-, clothes and a wrist watch to accused No. 1.

(iii) The incident as narrated by Subhana (P.W. 13) immediately after the marriage of Suman with accused No. 1, at the time of paying respect to the mother-in-law/accused No. 2 when accused No. 2 called deceased Suman a "female dog" and told her that she should not bow down to her (to pay respect to her). (This is narrated by Suman to her father).

(iv) Continuous ill-treatment by both the accused to Suman.

(v) Earlier incident as narrated by Bandu (P.W. 4) about the ill-treatment given by accused Nos. 1 and 2 to Suman on account of dowry and assaulting and abusing her and his deposition that his wife Suman Sutar (P.W. 12) taking Suman (deceased) to her parents place at Mumewadi.

(vi) Deceased Suman staying at her parents place for about 8 to 9 months thereafter.

(viii) Intervention of Vithal, Sarpanch of village Hamidwada at the instance of father of deceased Suman for bringing about a reconciliation.

(viii) The Sarpanch, Vithal, calling accused No. 1, accused No. 1 showing that he was not willing to maintain deceased Suman, thereafter his apology and assurance that he would not ill-treat Suman and would behave properly.

(ix) The said assurance of accused No. 1 reduced into agreement some time in April, 1984 by Dilip Kulkarni (P.W. 10) as per the dictation of Sarpanch Vithal.

(x) The incident of 11-7-1984 of accused No. 1 giving a kick blow on the stomach of deceased Suman because she hurled broom on the hen.

(xi) P.W. 4 Bandu and P.W. 12 Suman being eye-witnesses to that incident and

deposing about it.

(xii) P.W. 13 Subhana deposing about the continuous ill-treatment about not bringing dowry by Suman so also his narration about the incident of 11-7-1984, as told to him by Bandu.

(xiv) Depositions of P.W. 6 Anil and P.W. 8 Dinkar Patil that Suman was last seen in the company of accused No. 1 near the well of Ghorpade, they deposing about the fact that they saw accused No. 1 talking to Suman and then dragging her by her hand towards Ghorpade's well.

(xv) The extra judicial confession made by accused No. 1 to Sunanda (P.W. 5) who happened to be the maternal aunt of accused No. 1.

(xvi) The medical evidence tallying in toto and pointing to the guilt of the accused.

(xvii) The post-mortem and the deposition of Dr. Suhash Sagavkar (P.W. 3) have noted about the injuries on the body of the deceased. They are as follows:

(a) Two blisters were noticed on anterior side of the neck 1" contusion reddish in colour. Fluid was coming out of the contusion.

(b) Swelling on the neck and skin was easily peeled off.

(c) Clotted blood was seen on the anterior side of neck muscle.

(d) Muscles over the neck were torn and crushed.

(e) There was fracture of hyoid bone.

(f) Haemorrhage was seen in trachea and lungs. According to the doctor the fracture of hyoid bone was caused by human beings, during the act of throttling. The age of the injury was about 60 hours or three days.

All the above injuries were ante-mortem.

18. On internal examination it was found that there was fracture of hyoid bone. Larynx, trachea bronchi were greenish and brownish in colour and contents froth. The tongue was protruding outside and both the eyes were open. There was reddish froth out of the nostril. There was also reddish black discharge from the mouth.

19. The Medical Officer who conducted the autopsy of the dead body of Suman deposed that in his opinion the fracture of hyoid bone was sufficient in the ordinary course of nature to cause death. He was also of the opinion that the probable cause of death was asphyxia as a result of throttling. He also opined that according to him the deceased died first and thereafter her dead body must have been thrown in the well.

20. Thus it must be said that the deposition of all the prosecution witnesses is totally in conformity with the medical evidence and establishing beyond

reasonable doubt that the death of Suman was due to throttling and it was accused No. 1 who throttled her neck and thus murdered her. The chain of circumstances is complete and all the circumstances point unerringly to the guilt of the accused. The motive to ill-treat and the subsequent murder of Suman by the accused has been established beyond reasonable doubt, the deceased was seen last in the company of accused No. 1. All the prosecution witnesses have faithfully and honestly narrated the incident and there is no reason to discard their evidence; especially of P.W. 6 Anil and P.W. 8 Dinkar are totally independent witnesses who have no enmity whatsoever with the accused. It is also pertinent to note that the incident took place in the morning of 11-7-1984 is not at all denied by the accused. There are few omissions here and there with respect to time, etc., but they are so insignificant that they are relegated to the background. It must, therefore, be held that the circumstances are so clinching that they unerringly point to the guilt of the accused and the accused alone and exclude any hypothesis of their innocence.

21. Thus after hearing both the sides and after going through the entire evidence on record, we are of the opinion that there is no merit in this appeal. The appeal, therefore, fails. The conviction of both the accused, therefore, will have to be upheld. However, as far as the sentence of appellant No. 2 Sakhubai is concerned, considering her age we are taking a lenient view and are reducing the sentence already undergone by her provided she deposits within three months in the trial Court a sum of Rs. 5,000/-, in addition to the fine already imposed. Hence the following order:

ORDER:

In the result this appeal is partly allowed. Although we maintain the conviction and sentence of appellant Mahadeo Ganpati Sutar for offences punishable under sections 498-A read with section 34 I.P.C., 302 I.P.C. and 201 I.P.C. and the conviction of the appellant Sakhubai Ganpati Sutar for the offence u/s 498-A read with section 34 I.P.C. and the sentence of fine of Rs. 1,000/- and that in its default but we reduce the substantive sentence of 3 years RI imposed thereunder to the period already undergone by her provided she deposits a fine of Rs. 5,000/- within three months from today, in the trial Court, failing which she would undergo the sentence imposed on the said count.

Appellant Mahadeo Ganpati Sutar is on bail and shall be taken in custody forthwith to serve out his sentence.

In case appellant Sakhubai Ganpati Sutar does not deposit the fine within the stipulated time she shall be taken into custody to serve out the sentence. In case she deposits it within the said time her bail bonds shall stand cancelled and sureties discharged.

It would be open to the trial Court to accept the fine on production of a certified copy of our judgment, which in case an application is made by the Counsel for the appellant shall be issued within 6 weeks from today.