

(2016) 08 BOM CK 0092
In the Bombay High Court
Case No : Criminal Appeal No. 435 of 2014

Sachin s/o Vyankatrao Thosare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 203, 302

Citation : (2016) 3 AIRBomRCri 649 : (2017) ALLMRCri 256 : (2017) 2 MhLJCri 372

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. R.M. Daga with Ms. F.N. Haidari, Advocates, for the Appellant;
Mr. N.B. Jawade, Addl. Public Prosecutor, for the State

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.(Oral)—The appellant and acquitted accused persons faced a charge in Sessions Trial No. 332 of 2012 for the offence punishable under Sections 498-A, 302 and 304-B read with Section 34 of the Indian Penal Code. The additional charge was also framed for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code against them. Similarly, the appellant alone was further charged for the offence punishable under Section 203 of the Indian Penal Code.

2. The learned Additional Sessions Judge-7, Nagpur vide judgment dated 18th of July, 2014, in Sessions Trial No. 332 of 2012 though acquitted the other accused persons and the appellant for the offence punishable under Section 498-A of the Indian Penal Code, the appellant was convicted for the offence punishable under Sections 302, 201 and 203 of the Indian Penal Code.

The appellant was directed to suffer imprisonment for life and to pay a fine of and in default of payment of fine to undergo further rigorous imprisonment for six months for the conviction under Section 302 of the Indian Penal Code. He

was also convicted for the offence punishable under Section 201 read with Section 511 of the Indian Penal Code and for that he was directed to suffer rigorous imprisonment for two years and to pay a fine of and in default of payment of fine to undergo rigorous imprisonment for one month. He was also convicted for the offence punishable under Section 203 of the Indian Penal Code and for that he was directed to suffer rigorous imprisonment for six months and to pay a fine of and in default of payment of fine to suffer rigorous imprisonment for eight days. Being aggrieved by such conviction and sentence, the appellant has preferred the present appeal.

3. The acquitted accused are the appellant's parents, brother-in-law and sister. They were accused nos.2 to 5 before the Trial Court.

4. The prosecution case is as under :- Deceased is Vidya. Her marriage with the appellant took place on 7th of April, 2012. Her matrimonial life lasted only for nine days. After her marriage she went to her matrimonial house situated at village Chacher. On 8th of April, 2012 there was a marriage reception at the house of the appellant which was attended by relatives of Vidya and after the function was over, they returned to their village. On 9th of April, 2012 there was religious ceremony known as "Katha" at the house of parents of deceased Vidya and therefore, the appellant and deceased had been to village Narsala, the parental village of Vidya. After the said function was over they came to village Chacher. The distance between villages Narsala and Chacher is 10 kms. On 13th of April, 2012 at Chacher there was marriage of niece of the appellant. PW 1 Sheelabai Rameshji Chakole, the mother of deceased, Anita Chakole (PW 5), sister of deceased and her one relative Yashodabai Kirpan had attended the said marriage. At the request of the deceased, Anita Chakole and Yashodabai stayed at Chacher.

However, Sheelabai (PW 1) proceeded to Narsala. On 16th of April, 2012 at about 6 a.m. appellant made a phone call to PW 1 Sheelabai and informed her about the death of Vidya. He also informed the villagers and other relatives of the deceased that death occurred due to heart attack. Immediately, Sheelabai Chakole (PW 1) and her relatives proceeded for Chacher. On reaching to the house of the appellant they noticed that the dead body of Vidya was kept in the hall and all the accused persons were making hurry for funeral. When the last bath was being given to the deceased, that time, the appellant was keeping his hands around the neck of deceased and was hiding her neck. Thereafter, the relatives of the deceased noticed ligature marks around the neck of the deceased. They suspected the unnatural death and therefore, immediately, Ambadas Chakole (PW 6), uncle of deceased, went to the Police Station Ramtek and gave the intimation and also disclosed that ligature marks were noticed on her neck. The report is at Exh.44. It was registered as A.D.No.16 of 2012.

5. Kishor Gawai (PW 11), Police Inspector, who was attached to the Police Station Ramtek proceeded along with the police staff and the photographer to village Chacher. On reaching to the house of the appellant, he noticed that the dead

body of Vidya was kept under the pendol in front of the house of the appellant. He prepared the spot panchanama of the house of the appellant. The house of the appellant consists of four rooms, including one big hall, two rooms and a kitchen. The spot panchanama is at Exh.14. He also conducted inquest over the dead body as per inquest panchanama (Exh.53). Photographer Santosh Hatwar (PW 10) also took photographs of the dead body. Investigating Officer noticed injuries on both elbows and ligature marks around the neck. Thereafter, he sent dead body to Ramtek Sub-District Hospital for postmortem. However, on the said day postmortem could not be conducted for want of Medical Officer.

Therefore, the body was referred to Mayo Hospital. In the meanwhile, Sheelabai (PW 1) lodged her report (Exh.18). On the basis of the said report an offence was registered vide C.R.No.49 of 2012 for the offence punishable under Sections 304 (B) and 201 of the Indian Penal Code against the appellant. The Printed FIR is at Exh.19. After the registration of the offence the appellant was arrested. After completion of other usual investigation charge-sheet was filed against the accused persons. The learned Judicial Magistrate, Ramtek committed the case to the Court of Sessions as offence was exclusively triable by the Court of Session. The learned Sessions Judge, Nagpur framed Charge against the accused persons. They denied the Charge and claimed for their trial. The prosecution examined in all twelve witnesses to prove the Charge. After a full fledged trial, the impugned judgment was passed.

6. We have heard Shri R.M. Daga, learned counsel for the appellant and Shri N.B. Jawade, Additional Public Prosecutor for the State. From the line of the cross-examination of the prosecution witnesses and also from the statement recorded under Section 313 of the Code of Criminal Procedure, according to the appellant, he is falsely implicated in the Crime.

According the learned counsel for the appellant, suicide by Vidya is not completely ruled out and therefore, benefit of doubt should be extended in favour of the appellant.

7. The first point that the Court is required to address is, whether the death of Vidya was suicidal or homicidal one ?.

8. Inquest was conducted on 16th of April, 2012 itself at the house of the appellant by the Investigating Officer (PW 11) in presence of panch witness Dnyaneshwar Nakade (PW 7) and other panch. What was observed by the panchas and Investigating Officer was reduced into writing in the inquest panchanama (Exh.53). The relevant portion is produced herein below:-

"izsrkps ckjdkbZus fujh{k.k dsys vlrk xG;k Hkksorh o ekusHkksorh ykylj dkGiV >kysyk fnlr vkgs0 R;koj nksjkps oz.k fnlr vkgs0 laiw.kZ xG;k Hkksorhps oz.k gs ekstys vlrk 12 bapkps vkgs0 rlsp MkO;k Hkxkps ekusiklwu oj xkykoj oz.k vkgs 2AA bapkoj xkykoj vkgs0 mtO;k ekusoj vlrsY;k oz.kkph 2 ls0eh0 vkgs0

izsrkps nksUgh gkrkps <+ksijkoj ?kklY;kus ?klkV;kps fu"kkku fnlr vkgs0 rlsp

MkO;k <+ksijk iklwu oj ?klkV;kps fu"kkku fnlr vkgs0"

9. Dr. Pravin Tayade (PW 8) is an Assistant Professor in Forensic Medicine Department, Mayo Hospital, Nagpur. He has conducted around 4500 postmortems over the dead bodies. On 17th of April, 2012 when he was on postmortem duty at the said hospital, dead body of Vidya was brought to him. He noticed following surface wounds and injuries:-

"Ligature marks present over neck at the level of thyroid cartilages running obliquely upwards and backwards towards left angle mandible completely encircling the neck of total length 35 cms., maximum breadth of ligature marks 1.5 cms. over nape of neck, situated 6 cms. below tip of chin, 10 cms. Above suprasternal notch, 4 cms. below left mastoid process, 8 cms. below right mastoid process and 9 cms. below occipital protuberance over posterior aspect of neck. Knot impression present over left angle of mandible of size 9 x 4 square cms. Ligature marks is dark brown in colour parchment like hard. On dissection underlying subcutaneous soft tissues pale and glistening."

According to the Autopsy Surgeon, the injuries were antemortem. He proved the postmortem report (Exh.56). According to the Autopsy Surgeon, the injury no.1 mentioned in Col.No.17 of the postmortem report was sufficient in the ordinary course of nature to cause death. According to him, deceased died of constriction around the neck. According to the doctor, it was a homicidal death and it was due to strangulation. His evidence shows that the ligature marks must have been produced by rope and rope (Article P/1), which was shown to him, according to him, can cause the ligature marks.

The learned counsel for the appellant has questioned the postmortem report on the ground that the doctor has not mentioned about the abrasions which are noticed in the inquest panchanama. It is to be noted here that the inquest was conducted immediately whereas the postmortem was conducted after lapse of one day. Doctor in his cross-examination has stated that decomposition starts after 24 hours of the death while in Summer season it starts early. The dead body was received by him on 17th of April, 2012 at 11.30 a.m. It is brought on record by way of cross-examination that the process of decomposition had already started when doctor received the dead body for postmortem. In that view of the matter, it is quite possible that due to decomposition those abrasions which were noticed by the panch witnesses and the Investigating Officer might not have been noticed while conducting the postmortem.

When Dr. Tayade was under cross-examination, it was suggested to him that deceased die due to hanging, however, the said was flatly denied by the Autopsy Surgeon. Autopsy Surgeon has also pointed in his evidence that it is not necessary in each and every case that vertical nail marks of the deceased will find place over the neck in an attempt to release the ligature. According to the doctor it depends on the situation of the deceased, power of resistance and other circumstance like posture, etc. His evidence shows that there may or may not be

nail marks even on the person of the assailant. It also depends upon the condition, power of resistance of the victim and other circumstance. According to him, hyoid bone may remain intact in hanging as well as in strangulation.

It is to be noted here that in order to contrast the opinion of PW 8 Dr. Tayade, the defence has examined DW 1 Dr. Dipti. She has admitted that if the victim is in sleeping condition and she is overpowered then the ligature marks as noticed in the present case can be found. She has also admitted as true that hyoid bone may or may not be fractured in strangulation as it depends upon the pressure applied on the neck, posture of victim and type of ligature.

It is his submission that since the ligature mark running obliquely upwards and backwards, therefore it suggests hanging. However, when this was put to Dr. Tayade when he was cross-examined, the same was denied by him. Further, nothing was brought to his notice to point out that his such opinion is contrary to the Medical Jurisprudence.

The learned counsel for the appellant tried to buttress his point that it is a suicide on the basis of certain passages from the Book of learned author Modi. It is to be noted here that doctor who has conducted postmortem has a rich experience in the said field. When the Autopsy Surgeon was under cross-examination he ought to have confronted with the opinion of the learned author Modi to solicit his views. In absence of such things being done, there is no foundation available for the learned counsel for the appellant to submit that one could safely reach to the conclusion that it was a suicidal death.

In view of the clinching evidence of Dr. Tayade (PW 8) which is also supported by the defence witness Dr. Dipti, we see no reason to disturb the finding of fact recorded by the learned judge of the Court below that the nature of the death of Vidya was homicidal one.

10. According to the prosecution, the appellant is the author for the homicidal death of deceased.

11. Admittedly, the marriage of deceased was performed on 7th of April, 2012 and the death occurred on 16th of April, 2012. Thus, the matrimonial life of the deceased was in existence only for nine days.

It is an admitted position that deceased was in her bedroom at the time of her death. PW 5 Anita is the sister of the deceased. She along with her mother and one Yashodabai had been to the house of the appellant to attend the marriage of his niece on 13th of April, 2012. On the instance of Vidya, she stayed with her. Her evidence shows that on 15th of April, 2012 there was a programme of "Katha" in the house of the brother of the appellant. The dinner was attended by said prosecution witness along with appellant and deceased. Her evidence shows that she and acquitted accused were sleeping in "Chhapari" in the house of the appellant while deceased went inside the bed-room. On 16th of April, 2012 when Anita woke up, she heard noise of crying and therefore she rushed to the room of

her sister to notice that the appellant and other accused persons were present there and her sister was lying on the bed. From the evidence of PW 5 Anita it is crystal clear that Vidya went to her bed room in the night of 15th of April, 2012 and she was found to be dead in the morning of 16th of April, 2012 in her bed-room.

12. Sheelabai (PW 1), Dinesh Chakole (PW 3), Asmita Bhole (PW 4) and Namdeo Talmale (PW 9) in their evidence state that, on getting the information about the death, when they reached to the house of the appellant that time the appellant was keeping his hands around the neck of the deceased and a scarf was also tied around her neck and when ladies tried to keep appellant away from Vidya, he was not ready to go away. The learned judge, in our view, has rightly accepted their evidence since the omissions appearing in their evidence are of narration. The act of the appellant hiding ligature marks shows his unnatural conduct and it is also inconsistent with his defence. The learned Judge, in our view, has rightly observed that if the appellant was claiming that Vidya has committed suicide he would not have tried to hide the injuries.

13. During recording of the statement of the appellant under Section 313 of the Code of Criminal Procedure, the appellant to the question No. 54 has answered as under :-

"In the evening I had gone to the field for filling bags of chilli. I returned home at about 5.00 a.m. I found the back door of my house opened and the dead body of my wife hanging to the hook of the ceiling. I was frightened and made hue and cry. I thought deceased was alive and therefore, I untied the rope tied around the neck of deceased. I saw two rounds of rope around her neck. After untying the knot I got the deceased laid on the cot. Vidya was already dead. I made phone call to the parents of Vidya. On receiving my phone call her parents relatives and some villagers came to my house. When I told the parents of deceased that I was going to lodge report with police whereupon they said that they would be defamed if report was lodged. Deceased Vidya was saying to me that she was getting boar at my house. She was saying that she was not willing to marry and since the marriage of her sister was settled, she was required to perform marriage. She was also saying that she was forced to marry with me to save money. She was also saying that I was not as per her liking. I have been falsely implicated in this case."

It is to be noted that after noticing the dead body in hanging condition it would have been his reaction to make hue and cry to awake Anita (PW 5) and Yashodabai, one of the relatives of the deceased, who were stayed in the house. But nothing sort has been done. If the evidence of PW 5 Anita is scrutinised then it only reveals that she heard noise of weeping of acquitted accused.

14. There was no reason for the appellant to give false information that Vidya died due to heart-attack. Evidence of PW 3 Dinesh Chakole shows that when he made enquiry with the appellant that time it was disclosed to him by the

appellant that Vidya died due to heart attack. Evidence of this prosecution witness has remained unshaken.

15. Death occurred inside the house of the appellant. He failed to intimate the fact of her unnatural death to the police. Though an explanation is sought to be given by the appellant that he was prevented by the relatives of the deceased to do so, it cannot be accepted for the reason that no sooner the mother of the deceased and her other relatives noticed the ligature marks, PW 6 Ambadas Chakole, uncle of the deceased, immediately gave intimation to the Police.

16. The deceased was in the custody of the appellant. In that view of the matter, it would be useful to refer the observations of Their Lordships of the Apex Court in the case of Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681 as under :-

"If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape.

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

17. In the present case, looking to the spot of incident which is the bed-room of the appellant shows that no stool or ladder or any other articles was found while conducting panchanama which could enable the deceased to tie the rope to the hook and hang herself. In absence of any plausible explanation from the appellant, in our view, the provisions of Section 106 of the Evidence Act apply to this case in its full force. In our view, the learned Judge of the Court below has rightly appreciated the evidence of the prosecution and correctly reached to the conclusion warranting no interference from this Court. Hence, we pass the following order.

ORDER

18. The appeal is dismissed.