
(2020) 12 BOM CK 0014
In the Bombay High Court
Case No : Criminal Appeal No. 890 Of 2015

Shobha Gurunath Mali And Ors

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 08-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 498(A)
Evidence Act, 1872 — Section 106

Citation : (2020) 12 BOM CK 0014

Hon'ble Judges : Sadhana S. Jadhav, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Rajiv Patil, Onkar Warange, Nilima Sarvgod, Prajakta P. Shinde

Final Decision : Disposed Of

Judgement

Sadhana S. Jadhav, J

1. The appellants herein are convicted for the offence punishable under section 302 r/w 34 of the Indian Penal Code and sentenced to suffer Life

Imprisonment by the 2nd Additional Sessions Judge, Thane in Sessions Case No.22 of 2013 vide judgment and order dated 24th August 2015. Being

aggrieved by the said judgment, the appellants have filed the present appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

(i) The marriage of Machhindra â?" appellant no.2 â?" original accused no.2 was solemnised with Reshma on 4th March 2009. In 2010, the couple

was blessed with a baby girl named as Tanishka at Ammi Hospital, Bhiwandi. That the occupation of the family was mainly trading in fish. Accused

no.2 used to bring fish from Sasoon Dock, Colaba and Reshma and her mother-in-law were selling fish in the local market at Mankoli, Bhiwandi.

(ii) On 6th September 2012, Umesh â?" brother of Reshma received a telephonic call from his friend Sachin Mali that Reshma has been admitted in

the hospital as she had accidentally fallen from the staircase and had sustained injury to her head. To verify the said information, he had called upon

accused no.2 Machhindra who did not receive the call. He therefore, called upon his sister Reshma, the said call was received by her mother-in-law

Shobha i.e. accused no.1 and she confirmed the news that Reshma had fallen from the staircase and had sustained injury to her head and therefore,

was taken to the hospital but to no avail. She was declared dead on admission. The parents and relatives had seen that Reshma had no injury to her

head and the story given by accused no.1 was doubtful hence, they lodged a report with the police on 7th September 2012 at 4.00 am on the basis of

which A.D. No.113 of 2012 was registered.

(iii) On the same day, brother of deceased, PW1 Umesh lodged a report at the police station alleging therein that Reshma was subjected to

harassment and ill-treatment at the hands of accused nos.1, 2 and all other relatives who were residing in the same household, on account of failure on

the part of her parents to fulfill the demand of the accused and that Reshma has died a homicidal death in her matrimonial home. On the basis of the

said report Crime No. 305 of 2012 was registered against the accused at Narpoli Police Station, Bhiwandi for the offences punishable under sections

302, 498A r/w 34 of Indian Penal Code. At the trial, prosecution examined as many as 12 witness to bring home the guilt of the accused.

(iv) The case rests on the evidence of Umesh â?" PW1 - brother of deceased Reshma, PW3 â?" Sumitra Dhumale - Mother of Reshma to whom

Reshma had disclosed about harassment and ill-treatment meted out to her, PW4 â?" Jitendra Dhumale - Cousin of Reshma, PW7 â?" Dyandeep

Patil, PW8 â?" Dr. Jayashree Mhaske who has proved the post-mortem notes which is at Exh.51, PW 10 â?" Manoj Keni an independent witness and

PW12 â?" Vilas Sanap - Investigating Officer. 3. PW1 â?" Umesh Dhumale is the brother of deceased Reshma and the first informant in the present

case. He has proved the contents of the A.D. Report bearing No.113 of 2012 as he had reported to the Police Station. The said A.D. Report is at

Exh.22 and the FIR is at Exh.23.

4. According to PW1, at the time of marriage of Reshma, the parents had given

some gold ornaments to her. That she along with her mother-in-law was selling fish. That the accused were demanding money from his sister and since she refused to request her parents to shell out money she was being abused and assaulted. The same was disclosed to him during his visit to his sister's house. He had expressed his helplessness to his sister on account of stringent economic conditions. He has also deposed that the maternity hospital bills were paid by his father which he could pay only after borrowing money as hand loan. That when Reshma attended the marriage of their younger sister Sushma she had no ornaments on her person and upon enquiry had disclosed that the said ornaments were snatched by the accused on account of non-fulfillment of the demand. That the accused persons had refused to attend the marriage. To save his sister from ill-treatment, he along with Kalpesh Patil had been to the house of the accused and had paid Rs.10,000/- with a request that they shall not harass Reshma any further. That his maternal cousin Dyandeep had also extended financial assistance to accused no.2 on two to three occasions.

5. It is elicited in the cross-examination that the allegations levelled against the accused in Exh.23 do not find place in Exh.22 and moreover, he had not stated the exact amount which was being demanded by the accused. It is also admitted in the cross-examination that accused no.1 and deceased Reshma used to earn about Rs.4,000/- to 5,000/- per day, by selling fish. That accused no.2 used to purchase fish from Sasoon Dock, Colaba and used to carry the same in his own van. That the accused was the owner of one Van and one Auto rickshaw. PW1 has expressed his inability to produce the maternity hospital bills before the Court.

6. PW1 has given the topography of the house. PW1 has denied the suggestion that accused no.2 had disclosed that Reshma has committed suicide by hanging in the bedroom. It is also denied that PW1, the Sarpanch and the relatives of Reshma had threatened A2 that they would involve him in a serious offence.

7. PW2 - Vimal Chikane is the panch for inquest panchanama which is at Exh.26. According to her, there were marks of strangulation on the neck of the deceased, saree was not disarrayed, instead the border of the saree was neatly pinned, there were nail marks on the wrist and signs of fist blows on the chest. It was suggested to PW2 that when she visited the hospital to see

Reshma she was informed that Reshma had hanged herself to the ceiling fan in the bedroom.

8. PW3 - Sumitra Dhumale is the mother of the deceased. She has supported PW1 in all details and has stated that her daughter had disclosed to her the manner in which she was harassed and ill-treated by all the accused on account of her failure to fetch money from her parents. As far as the death of her daughter is concerned, according to her, upon hearing the news of her death she had visited the house of the accused along with PW1, she found that her daughter was laid on a mat and was surrounded by all the accused, she had no injury to head but she had blackish mark on her neck, abrasion on her right hand. Upon inquiry, the accused no.1 had disclosed the story about an accidental fall from the staircase and that Reshma had got strangulated by her saree. She had confronted accused no.1 that it was a blatant lie as the saree was not disarrayed and the border of the saree was pinned properly. The accused had requested them not to lodge the Police complaint. In the cross-examination she has admitted that the marital life of Reshma and Machhindra was sailing smoothly, that their economic condition was good. She has denied the suggestion that the accused no.2 was telling all the persons, gathered around, that Reshma had hanged herself to a ceiling fan in the bedroom.

9. According to PW4 - Jitendra, the accused had coerced the parents of Reshma to pay the maternity bills of Ammi Maternity Hospital although they could not afford and hence, they had to take hand loan. The accused had threatened to abandon Reshma and her child if the maternity bills were not paid. His evidence is consistent with the evidence of PW1 and PW3 as far as the harassment and ill-treatment to Reshma is concerned.

10. PW5 - Yashwant Patil is the panch for the scene of offence which is at Exh.42. The scene of offence panchanama clearly indicates that bedroom is measuring 7 x 5 feet. That they did not find any incriminating article in the said room and therefore, nothing was seized from the said bedroom.

PW5 has categorically stated in the cross-examination that the panchanama of the scene of offence was prepared on the next day in the morning. He has denied to have seen blades of the fan in the bent condition. He has denied to have seen any scarf or stole hanging to the fan. That he and Ganesh Patil had signed the panchanama at night as well as in the morning.

11. PW7 - Dnyandeep Patil happens to be cousin of deceased Reshma and PW1. His evidence is consistent with the evidence of PW1, PW3 and

PW4. The suggestion that accused no.2 had disclosed that Reshma had committed suicide by hanging but according to him, accused no.1 was

persistently telling that Reshma had died due to accidental fall while descending the staircase.

12. PW8 - Dr. Jayashree Mhaske was attached to IGM Hospital, Bhiwandi. She has performed autopsy on the dead body of Reshma. She had

noticed the following injuries on the person of Reshma :-

â??(1) Dark brown parchment like contusion marked on left triangle of neck laterally 2 x 1 cm.

(2) There are two contusion marks on right triangle of neck, one below another respectively of size 1] 2.5 x 1 cm. 2] 2 x 1 cm.

(3) Abrasion over right wrist of size 1 x 1 cm.

(4) Contusion over right hypochondrium â?" 4 x 3 cm.â??

13. She has clearly opined that the injury nos.1 and 2 are grievous in nature and are caused by throttling by hand or cloth whereas injury nos.3 and 4

are the struggle marks of the deceased. On internal examination, she had also noticed fracture of T3, T4 and tracheal ring and there was also sub-

gluteal oedema with petechial haemorrhage present and there was presence of sub-laryngeal haematoma. Stomach was empty and therefore,

according to her, the cause of death was â??asphyxia due to compression of neckâ??.

14. That, she has clearly distinguished the nature of injuries in a case of asphyxia due to throttling, compression of neck and hanging. She has

categorically stated that in the present case, the deceased has sustained ante mortem injuries whereas, in a case of asphyxia due to hanging, there

would be post mortem injuries.

15. PW9 - Vasant Dhumale happens to be the father of Reshma. He has supported PW1, PW3 and PW4 in all material particulars. He has also

admitted in the cross-examination that when he had been to the house of accused, at that time, A2 was telling all the persons gathered, that Reshma

had committed suicide by hanging.

16. PW10 - Manoj Keni is acquainted with the accused. According to him, he had seen the accused taking Reshma to Khamkar Hospital in his Maruti

Eco Car. All the accused were present in the car and upon inquiry, had informed him that Reshma had fallen from the staircase as her saree had got

entangled. The witness is declared hostile. Similarly, Suvarna Keni - PW11, neighbour of the accused is declared hostile.

17. PW12 - Vilas Sanap is the investigating officer. He was attached to Narpoli Police Station. Investigation was handed over to him on 7th

September 2008. He has deposed about the steps taken by him in the course of investigation and according to him, A.D. Inquiry was made by PSI

Desai. According to him, it had transpired in the course of investigation that accused no.2 had told all witnesses including the family members that the

deceased had hanged herself to the fan in the bedroom.

18. The A.D. Report clearly spells narration given by accused no.1 to PW1 that Reshma had slipped from the staircase, sustained injury to her head

and that she had succumbed to the said injury. It is also stated in the A.D. Report itself that there were dark ligature marks surrounding her leg and

injury mark on the ribs coupled with abrasions to her wrists but there was no injury to her head as was stated by accused no.1. It is specifically stated

that accused no.1 had requested PW1 not to lodge police report. This would clearly show that PW1 and his mother had suspected foul play even at

the stage of lodging A.D. Report. The FIR lends assurance to the contents of A.D. Report only with the addition of narration of demand of dowry at

the hands of the accused.

19. The learned senior counsel for the accused has vehemently submitted that it is a case of circumstantial evidence. The accused have been

acquitted of the charges under section 498A r/w 34 of IPC for want of evidence.

20. The learned senior counsel has emphasized upon the admissions of witnesses that:-

(i) The economic condition of the accused was strong;

(ii) Even according to the mother of the deceased i.e. PW3, the marital relations between the deceased and accused no.2 were smooth sailing;

(iii) That the deceased and her mother-in-law were selling fish at the highway and earning about Rs.4,000 to Rs.5,000/- per day;

(iv) That the witnesses have not specifically stated about the amount which was allegedly demanded by the accused;

(v) That the witnesses have not placed on record any documentary evidence to

show that the amount of Rs.10,000/- was paid to accused no.2 or that the hospital bills were paid by the prosecution witnesses;

(vi) That the accused had immediately disclosed to the witnesses and the villagers that Reshma had committed suicide by hanging to the fan in the bedroom;

21. According to the learned senior counsel, the accused have discharged onus under section 106 of Indian Evidence Act by saying that Reshma had committed suicide by hanging for the reasons best known to her.

22. It is the specific defence of both the accused that the deceased was hot tempered and addicted to beer. That on one occasion she had consumed phenol, she was never ill-treated nor there was any reason to demand money from the prosecution witnesses as the financial condition of the accused was strong. That the monthly income of accused no.2 was about Rs.70,000/- to 80,000/-. It is further submitted that the accused are entitled to be acquitted by extending to them the benefit of doubt.

23. Per contra, the learned APP has submitted that the defence of the accused nos.1 and 2 is inconsistent with each other. The defence of accused no.2 that Reshma committed suicide by hanging is neither substantiated nor corroborated by medical evidence. The defence of accused no.1 is falsified by the scene of offence panchanama at Exh.42 as well as the condition of the apparel of the deceased at the time of death. There was no object on the staircase to which her saree could have got entangled. Similarly, the condition of the bedroom at the time of conducting the scene of offence panchanama also does not show any signs of hanging by the deceased. It is submitted that Reshma had died a homicidal death in her matrimonial house within 7 years of marriage and that the house was occupied by all three accused and therefore, the conviction recorded by the learned Sessions Judge calls for no interference.

24. Upon considering the rival submissions and the evidence adduced by the prosecution, the proved facts in the present case are as follows :-

- (i) that Reshma was married to accused no.2 on 4th March 2009;
- (ii) the deceased and accused no.1, 2 and accused no.3 were living in a shared household;
- (iii) on 6th September 2012, she had died in her matrimonial house due to

compression of neck;

(iv) the accused no.1 had disclosed to PW1, PW3 and PW5 that Reshma had died due to head injury in an accidental fall from the staircase;

(v) the accused no.2 had disclosed the cause of death as suicide by hanging in the bedroom.

The defence of both the accused is neither corroborated nor substantiated. Harassment and ill-treatment meted out to deceased is not proved and

therefore, the accused are acquitted of the offence punishable under section 498A r/w 34 of IPC.

25. It is vehemently submitted by the learned senior counsel for the accused that the acquittal of the accused under section 498A r/w 34 would clearly

establish that there was no motive for the accused to cause the homicidal death of the deceased.

26. Motive is not sine qua non for causing murder. Motive which induces a man to do any particular act is known to him and him alone. Motive cannot

be assumed. It is the action that is apparent and the act of an accused can be proved by direct evidence or circumstantial evidence. The present case

rests on circumstantial evidence coupled with the explanation offered by both the accused. The circumstances are discussed above.

27. The false explanation offered by the accused no.2 is closer to the cause of death as opined by PW8. It appears that the accused no.1 may have no

knowledge about the cause of death or that she has made a frail attempt to save her son i.e. accused no.2 and, therefore, a story was concocted

which belies the circumstantial evidence and the fact that Reshma had died a homicidal death by compression of neck. The Supreme Court in the case

of Godabarish Mishra v. Kuntala Mishra and Anr. reported in (1996) 11 SCC 264, in similar facts and circumstances, has held as follows :-

â??It has been deposed by the lady doctors (PWs.6 and 7) that the deceased was lying on a cot with a sheet covering her. PW.6 has categorically

stated that the sheet was covering the body of the deceased from head to toe. On removing the sheet, she had noticed that the deceased was wearing

saree, blouse and petticoat and she did not notice that such wearing apparel was disarrayed or disorganised. It is not the case of the accused that after

finding her daughter-in-law dead, she had organised the dress of the deceased and then covered the dead body with a sheet. If a person had

committed suicide, she would not be found lying properly dressed in a normal composure. There would be some movement of the body with

consequential change in the matter of placement of various limbs of the body on the bed.

â?¡â?¡...

It may also indicated here that both in Modi's book on medical jurisprudence and Taylor's book on medical jurisprudence, it has been categorically

stated that for committing suicide by self strangulation, the aid of a contrivance to maintain force till death is got to be taken, otherwise, it is not

possible to maintain the force required. The absence of such contrivance clearly rules out any possibility of suicide by self strangulation. In the

aforesaid fact, excepting the accused no other person had any opportunity whatsoever to cause the murder of the deceased. The circumstantial

evidence in this case are absolutely clinching in establishing the complicity of the accused in committing the murder of the deceased.â??

28. The defence of the accused no.2, which is given by way of suggestions to the witnesses needs to be appreciated. According to accused no.2 the

deceased has committed suicide in the bedroom by hanging. The bedroom was occupied by none other than accused no.2 and Reshma. The said

defence is falsified as the accused has not specified as to who had noticed Reshma hanging, the material with which she had hanged herself, the time

when the accused learnt about it and name of the persons who had lowered her from the ceiling fan or whether she was breathing when she was

taken to the hospital. The Apex Court in the case of Trimukh Maruti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681 has held that:

â??where an accused is alleged to have committed murder of his wife and the prosecution has succeeded in leading to show that shortly before the

commission of crime they were seen together and offence takes place in the dwelling home where the husband also normally resided, it has been

consistently held that if the accused does not offer any explanation how the wife received injury or offers an explanation which is found to be false. It

is a strong circumstance which indicates that he is responsible for commission of the crime.â??

29. What falls for determination is whether accused no.1, 2 and 3 shared a common intention to cause the homicidal death of Reshma. It would have

to be answered in the negative on the basis of the circumstances brought on record by the prosecution to prove the homicidal death of Reshma

coupled with the explanation offered by accused no.2 which would clearly establish that his wife Reshma had died due to compression of neck and

therefore, he concocted the story of death due to hanging with an intention to mislead the witnesses and the Court to believe it to be true. The accused

no.1 had attempted to cause disappearance of evidence by offering a false explanation. In the facts of the case, the accused no.1 deserves to be

convicted for an offence punishable under section 201 of IPC. Section 201 of IPC reads as follows and sentenced accordingly:-

â??S. 201. Causing disappearance of evidence of offence, or giving false information to screen offender.â??Whoever, knowing or having

reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of

screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be

false;

if a capital offence.â??shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.â??and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to

ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten yearsâ?? imprisonment.â??and if the offence is punishable with imprisonment for any term not extending to ten

years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest

term of the imprisonment provided for the offence, or with fine, or with both.â??

30. In the present case, all these circumstances are established beyond reasonable doubt against the accused no.2 as the facts on record are

inconsistent with the innocence of the accused and almost incapable of any plausible explanation by the accused no.2 and hence, the only hypothesis

that can be drawn is that the guilt of accused no.2 is established beyond

reasonable doubt as the prosecution has succeeded in establishing the circumstances from which the said conclusion is being drawn as fully â?? Provedâ??.

31. In view of the above discussion and the judgments of the Honâ??ble Apex Court, the conviction of accused no.2 for offence punishable under section 302 deserves to be upheld whereas the accused nos.1 and 3 are liable to be punished under section 201 of IPC.

33. The accused no.1 i.e. appellant no.1 was an under-trial prisoner and was enlarged on bail during the pendency of appeal by virtue of an order dated 15th September 2015 passed by this Court in Criminal Application No.1110 of 2015. She is 65 years old and hence, she deserves to be sentenced for the period already undergone. The accused no.3 is in custody and deserves to be released forthwith as he has undergone the punishment contemplated for offence punishable under section 201 of IPC.

33. Hence, we pass the following order:-

ORDER

- (i) Appeal is partly allowed;
- (ii) The conviction and sentence of the accused no.2 for the offence punishable under section 302 of IPC is upheld;
- (iii) Accused nos.1 and 3 stand acquitted of the offence punishable under section 302 r/w 34 of IPC;
- (iv) Accused nos.1 and 3 are convicted for the offence punishable under section 201 of IPC and are sentenced to the period already undergone;
- (v) Accused nos.1 is on bail. Her bail bond stand cancelled;
- (vi) Accused no.3 be released forthwith if not required in any other offence;
- (vii) Appeal is disposed of accordingly;

34. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.