

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 621 OF 1998**

Sanjay @ Sanjeev Hanmant Nikam
Age 27 years, Occ. Service
R/o. Urul (Polachiwadi), Taluka Patan
Dist. Satara

..Appellant

Vs.

The State of Maharashtra
(to be served through the
learned Public Prosecutor
High Court (A.S.), Bombay)

..Respondent

Mr. H.S. Venegaonkar a/w. Mr. Saurabh Kshirsagar for the
Appellant.

Mrs. M.M. Deshmukh, APP for the Respondent - State

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

RESERVED ON : 20.07.2021.

PRONOUNCED ON : 09.02.2022.

JUDGMENT (PER: N.R. BORKAR, J.)

1] This appeal takes an exception to the judgment and order dated 13.07.1998 passed by Additional Sessions Judge, Satara in Sessions Case No. 190 of 1995. By the impugned judgment and order, the appellant who was accused before

the trial court, has been convicted for the offence punishable under section 302 of the Indian Penal Code (for short 'IPC') and sentenced to suffer R.I. for Life. The appellant has also been convicted for the offence punishable under section 498-A of the IPC and sentenced to suffer R.I. for one year.

2] The deceased Monika was the wife of accused. The marriage of deceased was solemnized with the accused on 21.6.1991. The accused at the relevant time was serving in Indian Army at Danapur, Patna in State of Bihar.

3] According to the prosecution, after marriage, the deceased was treated well for two years and thereafter, the accused used to beat the deceased under the influence of liquor and used to suspect her character.

4] The incident took place on 14.7.1995. According to the prosecution few days prior to the incident the deceased, due to harassment of the accused was brought to her parents' house. In May, 1995, the accused came to his native place on leave. According to the prosecution, the message was sent to

the parents of the deceased to send the deceased for cohabitation with the accused. According to the prosecution after much reluctance the deceased was sent to the house of accused for cohabitation at his native village Urul. According to the prosecution, on the day of incident, the accused committed murder of deceased by smothering her.

5] The report in relation to the incident was lodged. On the basis of said report, the crime was registered against the accused for the offences punishable under sections 302 and 498-A of the IPC. On completion of investigation, the charge-sheet was filed against the accused.

6] The accused was charged and tried for the aforesaid offences. As stated earlier, the trial Court, by the impugned judgement and order, convicted the accused for the charges framed against him.

7] We have heard learned counsel for the appellant/accused and the learned APP for the respondent -State.

8] The learned counsel for the appellant submits that the trial court has erred in appreciating the evidence on record in its correct perspective and arrived at wrong conclusion. It is submitted that the trial court has erred in holding that the death of deceased was homicidal. It is further submitted that the evidence in relation to alleged harassment to the deceased is also not convincing. It is submitted that thus the impugned judgment and order of the trial court needs to be set aside and the accused needs to be acquitted of the charges framed against him.

9] On the other hand, the learned APP for the respondent/ State submits that the trial court on the basis of evidence on record was justified in holding that the death of deceased was homicidal. It is submitted that the trial court on the basis of evidence on record was also justified in convicting the accused for the offences alleged against him. It is submitted that appeal, thus, needs to be dismissed.

10] According to the prosecution, the murder of deceased was committed by the smothering her and it is the accused

who smothered her. To connect the accused with the alleged incident, the prosecution has examined PW-6 Atmaram B. Nangare, the father of the deceased.

11] PW-6 has stated in his evidence that after marriage deceased Monika was treated well for one year and thereafter, the accused used to beat her under the influence of liquor. The deceased used to tell him about said harassment to her whenever, she used to come to his house.

12] PW-6 has further stated that on 4.12.1993, the deceased came to his house for delivery. She was at his house upto March 1994. According to him, the accused thereafter took the deceased with him to Patna for cohabitation. According to PW-6, the accused was harassing the deceased at his house at Patna and thus the deceased had written a letter to him. He has stated that similar letter was written to his elder brother Dhondiram (PW-5). Thereafter, they called the father of accused to their village Marul. The brother-in-law of the accused (husband of sister of accused) namely Mohan Patil was also called.

13] According to PW-6, he disclosed to the father of accused that the life of his daughter is in danger and thus, they will have to go to Patna. The father of accused told them that it is not possible for him to go to Patna because of his old age, however, he will send Mohan Patil (brother-in-law of the accused) to Patna. PW-6 has stated that accordingly, Mohan Patil and his elder brother Dhonidram (PW-5) were sent to Patna and after 8 days, the deceased was brought to his house.

14] According to PW-6, about 8 days thereafter the accused came to his house and assured him that he would not ill-treat the deceased and requested him to send the deceased with him to Patna. He told to the accused that he will not send the deceased to Patna and according to him, the deceased also refused to go to Patna along with the accused. According to PW-6, the accused got annoyed and walked away from their house.

15] According to PW-6, in the month of May 1995, the accused came to his native place, i.e., village Urul on leave.

The father of accused requested him to send the deceased to village Urul. According to PW-6, the deceased was thus sent to village Urul for cohabitation. According to PW-6, during his visit to the house of accused, his daughter was telling him that there is danger to her life in the house of accused and the accused would kill her.

16] PW-6 has stated that on 14.7.1995, he was informed that Monika has expired and her dead body is lying in the hospital of Dr. Vanarase at Malharpeth. Accordingly, he along with his wife, his brother Dhondiram (PW-5), son of Dhondiram viz. Dr.Raghunath and some more persons from his village went to the hospital of Dr. Vanarase. He saw the dead body of his daughter was lying on the stretcher in the hospital of Dr.Vanarase. According to PW-6, froth was oozing from the nose as well as from the mouth of the deceased. After seeing the dead body, he realized that the death of deceased is not natural. Therefore, he carried the dead body of deceased to Patan for postmortem examination.

17] According to PW-6, his elder brother (PW-5) went to Patan Police Station and intimated to the police. According to him, the Medical Officer told him that the deceased died due to suffocation. Thereafter, he along with other family members came to Umbraj Police Station and lodged the complaint.

18] In the cross-examination, PW-6 has admitted that his daughter Monika was reluctant to go to Patna as it is far away from their village. He has further admitted that when the deceased went to Patna with the accused, at that time instructions were given to her to send letter the moment she reaches to Patna, however, he did not receive any letter from his daughter at that time. He has further admitted that he did ask the cause of death of the deceased to Dr.Vanarase, however, he told him that it is not possible for him to give opinion about the death of deceased.

19] PW-6 has further admitted that no talk took place between him and the father of the accused in relation to the harassment to his daughter. He has further admitted that he did not state to the police at the time of recording his

statement, that he called the father of accused to his house and told him that the life of deceased is in danger, and she need to be brought back from Patna.

20] According to PW-6, his elder brother Dhondiram (PW-5) was sent to Patna after receipt of alleged letter written by the deceased mentioning therein harassment to her at the hands of the accused. It would be therefore, appropriate at this stage to refer to the evidence of PW-5 Dhondiram Nangare.

21] According to PW-5, after receipt of letter written by the deceased, he and the brother-in-law of the accused namely, Mohan Patil went to Patna. They reached Patna on 11.1.1995 at about 10.30 p.m. According to PW-5, the deceased told him in plain words that it is very difficult for her to live with the accused because he may kill her at any time.

22] According to PW-5, they stayed at the house of accused at Patna for two days and in the evening, he asked the accused to send Monika with them, as her father is serious and he wanted to see her. According to PW-5, the accused was

reluctant to send the deceased with them. However, on 13.1.1994, they left the house of accused in his absence, along with deceased and her son and came to their village.

23] In the cross-examination, PW-5 has admitted that on the first day, they went for sight seeing and that time, the accused was with them. He has further admitted that on the first day, he did not disclose to the accused that the father of deceased is serious. He has further admitted that on third day, when they came to the house of accused after sight seeing, he disclosed to the accused that he had come to take the deceased to her parents' house. PW-5 has further admitted that the accused accompanied them upto railway station, Danapur, Patna.

24] The admission in the evidence of PW-5 that the accused accompanied them upto the railway station belies his version in examination-in-chief that on 13.1.1994, they left the house of accused in his absence as he was reluctant to send the deceased with them. According to PW-5, they stayed at the house of accused for two days and even went for sight seeing.

If really there would have been harassment to the deceased, PW-5 would not have gone for sight seeing with the accused and would not have stayed at the house of accused for two days.

25] Coming back to the evidence of PW-6, the father of deceased, he has admitted that in his statement to police he has not stated that he called the father of the accused to his house and disclosed to him that life of his daughter is in danger, and she needs to be brought back from Patna. He has further admitted that the deceased was reluctant to go to Patna as it is far away from their village. Admittedly, PW-6 has lodged the report only after coming to know the alleged cause of death. He has admitted that no talk took place between him and the father of the accused in relation to alleged harassment to the deceased. Considering these facts and circumstances, it is difficult to accept the evidence of PW-5 and PW-6 in relation to the alleged harassment.

26] To prove the fact that the deceased died due to smothering, the prosecution has examined PW-8 Dr.Chandrkant K. Yadav, the Autopsy Surgeon.

27] According to PW-8, during postmortem examination, he had noticed multiple scratches on the right cheek of the deceased. Lower one third part of the nose was filled up. Skin pilled of from lower 1/3 of nose upto the lower lip. Left pinna of ear was elimetus and congested and fracture of nasal septum. According to him, all the injuries were ante-mortem. The condition of lung was severely congested. Larynx and trachea contains froth and were congested. According to him, the death was caused due to asphyxia due to suffocation.

28] PW-8 has admitted in his cross-examination that Dr.Raghunath Nangare (son of PW-5) was junior to him when they were studying in Medical College. He has admitted that right from his college days, Dr. Raghunath Nangare is his friend. He has further admitted that while conducting postmortem, Dr.Raghunath Nangare was present there.

29] PW-8 has admitted that in case of death by suffocation the following would be usual symptoms.

- (i) eyes will be open;
- (ii) there will be injuries around face and the nose;
- (iii) tongue may be in between teeth, cynosed,

elimaters;

- (iv) there may be injury to the lower lip;
- (v) there may be injury to the hills due to struggle; and
- (vi) there may be injury to the back or dependent part.

30] PW-8 has admitted that when he examined the deceased he did not notice struggle mark on body especially on hills, back, buttock and nails. He did not notice any pressure marks on the stomach, chest and legs of the deceased. He has stated that he did not preserve viscera in the present case. He has further admitted that the scratches which were on the cheeks of the deceased were visible by naked eyes.

31] The evidence of PW-8 is not consistent with inquest panchanama at Exhibit-22. According to the inquest panchanama, there were no external injuries on the person of the deceased including on the face of the deceased. According to inquest panchanama, the eyes of the deceased were closed. PW-8 has specifically admitted that in case of death by suffocation, the eyes will be open. It is also not understood as to why the viscera was not preserved. There was no reason for Dr. Raghunath who is the son of PW-5 to be there with PW-8 while he was conducting postmortem examination.

Considering overall facts and circumstances, it is difficult to hold that the death of deceased was homicidal. The trial Court was, therefore, not justified in convicting the appellant/accused on the basis of evidence of PW-5, PW-6 and PW-8. In the result, the following order is passed.

ORDER

A] Criminal Appeal is allowed.

B] The impugned judgment and order dated 13.07.1998 passed by the Additional Sessions Judge, Satara in Sessions Case No.190 of 1995 convicting the appellant/accused for the offences punishable under sections 302 and 498-A of IPC is set aside and he is acquitted of the said offences.

C] His bail bonds shall stand cancelled.

D] The fine, if any, paid by the appellant/accused, be refunded to him.

[N.R.BORKAR, J.]

[PRASANNA B. VARALE, J.]