

# SUPREME COURT OF INDIA

Sahebrao Mohan Berad

Vs.

State of Maharashtra

Crl.A.No.289 of 2005

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

18.03.2011

## JUDGMENT

### **Chandramauli Kr.Prasad, J.,**

1. Deceased Laxmibai was married to the appellant about three years prior to the occurrence. She was residing with the appellant and his parents. In the early hours of 26th June, 1984, her dead body was found in a well close to their residence. A report in regard to the incident was given to the police disclosing that she met with an accidental death due to drowning. During the investigation it was found that the deceased met with the homicidal death and accordingly police submitted charge-sheet under Section 302/34 and 201 of the Indian Penal Code against the appellant and his parents and ultimately they were committed to the court of Sessions to face trial for the aforesaid offences.

2. Trial Court acquitted all of them of all the charges.

3. On appeal by the State of Maharashtra, the Division Bench constituting N.V. Dabholkar and B.H. Marlapalle, JJ. differed in their conclusion. Dabholkar, J. dismissed the appeal and affirmed the order of acquittal and while rendering opinion came to the conclusion that the death was not homicidal and further the circumstance relied on by the prosecution did not lead to one and the only conclusion that the appellant had committed the murder of his wife. In this connection Dabholkar, J. has observed as follows:

"The trial court has held that the prosecution has failed to prove the death to be homicidal. In this context, only few admissions by the Medical Officer Dr. (Mrs.) Sunanda Pande need to be narrated verbatim. Earlier to these admissions, she has stated in her chief-examination that she had given the opinion of strangulation on the basis of injury referred in column 20 i.e. Larynx, Trachea and Bronchi contain frothy discharge, Trachea congested and shows petechial hemorrhage in mucose, extravasations of blood in subcutaneous tissues of neck and in muscles. As against this, she has admitted that "Larynx and Trachea contained frothy discharge. This is a sign of drowning. In drowning, the lung is always edematous. This is also a sign of

drowning". She has further admitted that "In case of drowning, there is whitish discharge from nose. The whitish discharge as mentioned in column 13 is a sign of drowning". It may be stated here that in column 13, she has recorded presence of whitish discharge through right nostril. She stated that "In the post mortem notes there are 3 to 4 signs of drowning" and further stated that "In case of strangulation, we can not find any sign of drowning internally".

In view of existence of signs of drowning, it cannot be said that Ld. Judge has taken unreasonable view in recording a finding the prosecution has failed to prove the death to be homicidal i.e. death to be by strangulation, with the aid of a rolling pin."

4. Marlapalle, J., however, allowed the appeal, set aside the order of acquittal and held that the circumstances led to the one and on the only conclusion that the appellant had committed the murder of his wife. However, both the Hon'ble Judges maintained the acquittal of the appellant's mother, accused Tulsabai. No decision on merit so far as the involvement of the appellants father Mohan Kisan Berad was rendered as he died during the pendency of the appeal before the High Court. While recording the finding that the deceased met with homicidal death Marlapalle. J. observed as follows:

"He opined before us that in the case at hand the death was due to drowning but it was clear from the postmortem notes that the deceased was first strangled, made unconscious and then thrown in the well. He, therefore, reiterated that it was for these reasons that there was no water found in the lungs. He referred to the injuries on the neck of the deceased noted in column No.20 of the postmortem notes and confirmed the said injuries were by way of strangulation and they could have made Laxmibai unconscious and in that state she thrown in the well. In short, he confirmed the opinion that the death of Laxmibai was homicidal and not accidental."

5. As the Judges constituting the Bench differed in their opinion regarding the guilt of the appellant and the cause of death, the appeal was referred for decision to third Hon'ble Judge. Accordingly, the appeal was placed for consideration before P.B. Gaikwad, J. He agreed with the conclusion of the Marlapalle, J. and came to the conclusion that the circumstances proved beyond all reasonable doubt lead to one and on the only conclusion towards the guilt of the appellant and further the deceased died a homicidal death. For coming to the aforesaid conclusion Gaikwad, J. held that a false report was given by PW.1, Kashinath, the uncle of the appellant at the instance of the father of the appellant alleging accidental death of the deceased. Another circumstance relied on was that during the night between 25th of June, 1984 and 26th of June, 1984 the deceased Laxmibai was in the company of the appellant and residing with him. Recovery of rolling pin by which the deceased was strangled at the instance of the appellant was another circumstance relied on to convict the appellant. Failure of the appellant, who is none other than her husband and living together even in the night of occurrence to explain the circumstances under which Laxmibai met with the homicidal death was also taken into consideration to establish the guilt of the appellant. As regards the cause of death Gaikwad, J. held that Laxmibai died due to strangulation and it was a homicidal death. In this connection he observed as follows:

"The Doctor, after considering the findings as regards external and internal injuries given opinion as regards cause of death as "death due to strangulation". If the evidence of PW.7 is read together with the evidence of post mortem report and the symptom; noticed by her on external and internal examination, I find that the said evidence is satisfactory and convincing so far as opinion about cause of death is concerned."

6. Accordingly, the order of the trial court acquitting the appellant of both the charges was set aside and he was held guilty for offence punishable under Section 302 and 201 of the Indian Penal Code and sentenced to suffer imprisonment for life and rigorous imprisonment for three years respectively.

7. That is how the appellant is before us in the present appeal.

8. Main plank of the submission of Mr. Arun R. Pednekar, learned Counsel appearing on behalf of the appellant is that the deceased Laxmibai met with an accidental death due to drowning and, therefore, the conviction of the appellant under Section 302 and 201 of the Indian Penal Code is bad in law. He points out that PW.7, Dr.(Mrs.) Sunanda Pande, during the postmortem examination, has not found any external injury on the person of the deceased. Presence of frothy discharge in the larynx and trachea and whitish discharge from right nostril in the postmortem examination of the deceased clearly go to show that the deceased met with an accidental death due to drowning.

9. Ms. Asha Gopalan Nair, learned Counsel representing the respondent-State, however, submits that PW.7, Dr.(Mrs.) Sunanda who conducted the postmortem examination in unequivocal terms stated that the deceased died due to strangulation and there is no reason to disbelieve her evidence. She points out that the evidence of PW.7, Dr. Sunanda and the postmortem report and the fact found by her on external and internal examination of the dead body clearly go to suggest that the deceased met with a homicidal death.

10. We have bestowed our consideration to the rival submission and we do not find any substance in the submission of Mr. Pednekar. PW.7, Dr. Sunanda had performed postmortem over the dead body of Laxmibai on 26th June, 1984 between 2 P.M. and 3 P.M. Her assertion that she had experience of conducting the postmortem examination has not been questioned by the appellant. She had found heamotoma on the neck and in her opinion the death was possible by pressing the rolling pin on the neck. The rolling pin recovered at the instance of the appellant was shown to her and she gave opinion that the death can be caused by pressing the same on neck.

11. This Doctor though had found frothy discharge in the larynx and trachea and whitish discharge from the right nostril, still on consideration of the finding as regards the external and internal injuries came to the definite opinion that the death was due to strangulation. She had specifically denied the suggestion that the deceased met with an accidental death due to

drowning. In the face of the same we find it difficult to hold that the deceased met with an accidental death. True it is that few signs of drowning were found on the dead body in the post mortem examination and the doctor though cognizant of the same came to the definite conclusion that the deceased died of strangulation. In our opinion, the doctor who examined the deceased and conducted the post-mortem is the only competent person to opine the nature of injuries and the cause of death. It is only in a case, where the opinion is inherently defective, the Court will discard its evidence. Reference in this connection can be made to a decision of this Court in the case of *Mafabhai Nagarbhai Raval vs. State of Gujarat*<sup>1</sup> in which it has been held as follows :

"3..... It is needless to say that the doctor who has examined the deceased and conducted the post- mortem is the only competent witness to speak about the nature of injuries and the cause of death. Unless there is something inherently defective the court cannot substitute its opinion for that of the doctor."

12. We have not found the death of the deceased to be accidental. Further, the circumstances referred to above clearly go to point out towards the guilt of the appellant.

13. We are of the opinion that the High Court is right in coming to the conclusion that the circumstances proved clearly points out towards the guilt of the appellant and further deceased met with a homicidal death.

14. Appellant is on bail, his bail bonds are cancelled and he is directed to surrender forthwith to serve out the sentence.

15. In the result, we do not find any merit in this appeal and the same is dismissed accordingly.

<sup>1</sup>(1992) 4 SCC 0069