

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 682 OF 1992

The State of Maharashtra

Appellant
(Orig. complainant)

Versus

- | | | |
|-------------------------------|-----------------|--|
| 1. Laxman Narsinhrao Ganti, |) | |
| aged about 20 years |) | |
| 2. Narsinhrao Narayan Ganti |) | |
| aged about 54 years, |) | |
| 3. Rajlaxmi Narsinhrao Ganti, |) | |
| aged about 50 years, |) | |
| all are residing at Sector |) | |
| No. 8, N.L.6/13/14, Nerul. |).. Respondents | |
| | (Orig. Accused) | |

Mr. P.S.Hingorani, APP, for the appellant – State.

Mr.Indrajeet Kulkarni,Advocate for the respondents

CORAM: A.S.OKA AND

SHRIHARI P.DAVARE,JJ.

JUDGMENT RESERVED ON 20th June, 2012.

JUDGMENT PRONOUNCED ON : 4th July ,2012

JUDGMENT : (PERT DAVARE, J.)

1. Heard respective learned Counsel for the parties.

2. Challenge in this Appeal is to the judgment and order of acquittal dated 30th June, 1992 rendered by the learned VIII Addl. Sessions Judge, Thane, in Sessions Case No.271 of 1991 thereby acquitting the respondent Nos. 1 to 3 (original accused Nos. 1 to 3) (hereinafter referred to as per the original status as “accused”) for the offences punishable under Sections 498A, 304B and 302 read with Section 34 of Indian Penal Code.

3. The prosecution case, in nutshell, is as follows :-

The marriage between the victim Lalita with accused No.1 Laxman was solemnized at Tirupati on 10.12.1990 and the accused No.2 Narsinhrao and accused No.3 Rajlaxmi are the parents of accused No.1. After the marriage, Lalita went to reside at her matrimonial home with accused Nos. 1 to 3. The marriage between the deceased Lalita and the accused No.1 took place out of the friendship of their fathers and since they were residing in the same area i.e. Bombay Central area. The accused No.1 was without job, and therefore, he used to demand money from the brothers and parents of Lalita through Lalita. It is alleged that all the accused insisted the parents of Lalita to sell their flat and deposit the amount of Rs.25,000/- in her name and satisfy their demands and they also used to

harass her due to non-fulfillment thereof. They also used to demand VCR from her. On many occasions, Lalita phoned to her friend Smt. Shetty and disclosed her the demands made by the accused and harassment sustained by her due to non-fulfillment thereof. After accused No.2 retired, accused Nos. 1 to 3 shifted to Nerul, but they did not furnish the changed address of Nerul to the parents of Lalita.

According to the prosecution, the accused Nos. 1 to 3 subjected the deceased Lalita to cruelty due to non-fulfillment of their unlawful demands and on 10.12.1990, they caused her death by causing bodily injuries otherwise than under normal circumstances. It is alternatively alleged that accused No.1 committed murder of his wife Smt. Lalita by pressing her neck by hands. It is further the prosecution case that after Smt. Lalita died on 10.12.1990 at 6.30 p.m. and her relatives i.e. brothers and parents came to Nerul immediately and thereafter in the night time PW-1 Shri Vijayshastri, brother of victim, lodged the complaint at Ex.12 on 12.12.1990 alleging that the accused harassed his sister on account of unlawful demands and caused her murder. It is to be noted that the accused No.2 himself made the report to the police station on 10.12.1990 at about 3.45 p.m. about the death of Smt. Lalita and A.D. was registered at

Sr.No. 69/90 Ex.27 on the basis of the said report by PW-8 PSI Kadam who was attached to Turbhe Police Station at the relevant time. He visited the house of the accused immediately and found that the neck of Lalita was swollen and that she was already dead and her face had become yellow at that time. Thereafter, he called PW-2 Dr.Trilochansingh who examined her and opined that she might have consumed poison. Therefore, PW-8 PSI Kadam drew the inquest panchnama and referred the body to the Civil Hospital for post-mortem. Accordingly, PW-7 Dr. Ashok Joshi, who was attached to Civil Hospital at the relevant time, performed the post-mortem on the said dead body of victim Lalita on 11.12.1990 and forwarded the P.M. notes which are produced at Ex.25. According to him, the probable cause of death was due to asphyxia due to strangulation and viscera was preserved for chemical analysis which was sent to C.A. Office, but its report was in the negative.

4. Thereafter, PW-8 PSI Kadam visited the spot of incident and drew the panchnama of scene of offence. He also recorded statements of Dr. Trilochansingh and other witnesses and offence was registered under C.R. No.387/90 under Section 302 read with Section 34, under Section 498A and 304B of IPC. Thereafter, he arrested the accused and also

recorded statements of the neighbours and relatives of the accused. Accordingly, after completion of investigation, he filed the charge-sheet against the accused before the learned J.M.F.C., Thane, on 11.3.1991 and the learned JMFC, committed the said case to the Court of Sessions, Thane on 18.4.1991 since it was exclusivity triable by the said Court. Accordingly, the learned Addl. Sessions Judge framed the charge against the accused Nos. 1 to 3 on 6.2.1992 for the offences punishable under Sections 498A, 304B read with Sec. 34 of the Indian Penal Code, and alternatively, the charge was framed against the accused No.1 only for the offence punishable under Section 302 of IPC. However, accused Nos. 1 to 3 pleaded not guilty to the said charges and claimed to be tried. To substantiate the charges levelled against the accused, the prosecution examined as many as eight witnesses. The defence of the accused is that the neighbours tortured or harassed deceased Lalita. The accused No.1 stated that when Smt. Lalita became unconscious, he was not in the house and that Smt. Vaishali Mhatre, who has got shop in front of their house in Nerul, saw him when he was out of his house with his dog, and Lalita closed the door herself when he left the house with his dog. He further stated that his parents had gone out of the house at that time. Thereafter, when his parents returned, he went along with them to his house and when he knocked the door, Lalita did not open it.

Thereafter, his mother opened the door with the latch key and when they entered into the house and they noticed that Lalita was unconscious. Then accused No.1 took help of one Shri Farukh and went to Dr. Athade. Thereafter, he came and tried for artificial respiration and he was also advised to take her to Nursing home and at that time he felt that it was a case of poisoning. Thereafter, he took her to Dr. Singh's Nursing Home, but she was declared dead. However, the accused neither examined themselves on oath in defence nor examined any defence witnesses. After considering the ocular, documentary and medical evidence, the learned trial Court acquitted the accused Nos. 1 to 3 for the aforesaid offences by the judgment and order dated 30.6.1992. Being aggrieved and dissatisfied by the said judgment and order of acquittal, the Appellant-State has preferred the present Appeal assailing the same and prayed for quashment thereof and consequent conviction of the accused for which they were charged. He also pointed out that despite of efforts made by him, he could not establish contact with the accused.

5. The learned APP canvassed that the testimony of PW-4 Usha Shetty, who was a neighbour of the accused residing in Jogeshwari area is eloquent since deceased Lalita was her friend for last 10 years prior to her

death and she was aware that the accused used to harass Lalita physically and mentally as she disclosed the same to her. Moreover, said PW-4 Usha Shetty was having phone and Smt. Lalita after return to Nerul, telephoned her and stated to her about the quarrels and harassment sustained by her at the hands of the accused. Moreover, she also stated that 5 to 7 days prior to the death, there was unlawful demand by the accused to Smt. Lalita and due to non-fulfillment thereof she was subjected to mental and physical cruelty i.e. soon before her death as contemplated under Section 304B of IPC. He further submitted that 5 days prior to her death, Lalita phoned PW-4 Usha Shetty and complained that her husband and in-laws made demand of VCR from her on the marriage anniversary day and due to non-fulfillment of the said demand, she was subjected to such a cruelty and bodily injuries which led her to death otherwise than the normal circumstances. He also pointed out that the testimony of PW-2 Dr. Trilochansingh is also material who examined the victim first in point of time and diagnosed that poisonous substance might have been consumed by her, and the accused Nos. 1 to 3 left the dead body of deceased in hospital for substantial period and thereafter at the request of PW-2 Dr. Trilochansingh, it was removed. He further submitted that testimonies of PW-1 Vijayshastri i.e. complainant who is brother of victim and PW-5

Satyalaxmi sister of victim and Satyayatidevi mother of victim also corroborate with each other and connect the accused with the crime. He also canvassed that the medical evidence such as testimony of PW-7 Dr. Ashok Joshi and P.M. notes clarify that the victim met with homicidal death. He further canvassed that alternative charge is framed against accused No.1 for the offence punishable under Section 302 of IPC and since the death of victim Lalita occurred while she was in custody of accused No.1, on 10.12.1990 and hence the death of victim Lalita is a custodial death in the custody of accused No.1 but he did not put forth any explanation therefor since it was within his special knowledge and the said inaction on the part of accused No.1 connects him with the crime. Accordingly, the learned APP urged that present appeal be allowed and the acquittal recorded against accused Nos. 1 to 3 be set aside. Alternatively, he submitted that at least present appeal be allowed partly.

6. Per contra, the learned Counsel for the accused countered the said arguments and opposed the present appeal vehemently and submitted that the evidence adduced/produced by the prosecution to sustain the charges levelled against the accused is short for connecting the accused with the crime. He further submitted that there is no cogent and incriminating

evidence against the accused for the offences punishable under Sections 498A and 304B of IPC and even alternatively, there is no incriminating evidence against the accused for the offence punishable under Sec. 302 of IPC. He further submitted that the testimony of PW-7 Dr. Ashok Joshi reveals that there is suspicion about the death of Lalita whether it was a homicide death or suicidal death and the possibility of committing suicide by Lalita cannot be ruled out. He further submitted that the testimonies of PW-1 Vijayshashtri, PW-5 Satyalaxmi and PW-6 Satyayatidevi i.e. brother, sister and mother of the complainant respectively are the testimonies of interested witnesses i.e. relatives of the victim, and therefore, the said testimonies cannot be relied upon to base the conviction against the accused. As regards testimony of PW-4 Usha Shetty, he submitted that her testimony is hearsay evidence and same cannot be construed as trustworthy testimony. Moreover, it is submitted that the prosecution failed to bring the guilt at home against the accused Nos. 1 to 3 in respect of charges levelled against them and even the alternative charge framed against the accused No.1 could not be established by incriminating and legal evidence, and hence, submitted that the learned trial Court has given the benefit of doubt to the accused and acquitted them rightly. It is further submitted that after scrutinizing and analyzing the evidence on record, the view adopted by the

learned trial Court while acquitting the accused Nos. 1 to 3 is a possible view and same is not perverse and even the reasoning given therefor is not erroneous, and hence, no interference therein is called for in the present appeal, and consequently, urged that the present appeal be dismissed.

7. We have perused the ocular documentary and medical evidence adduced/produced by the prosecution carefully and also considered the submissions advanced by the learned Counsel for the parties anxiously.

8. At the outset, PW-7 Dr. Ashok Joshi has testified that he performed the post-mortem on the dead body of Lalita on 11.10.1990 at Civil Hospital, Thane and noted the following injuries :-

“Surface injuries :

1. *Ligature mark over neck well defined at the level of thyrocartilage and encircling the neck horizontally and completely. The marks slightly depressed, 1/2” in breadth, reddish brown, parchment like with multiple small abrasions and ecchymosis around edges of the ligature mark, skin underneath the ligature mark is abraded at places. There was ecchymosis of the subcutaneous tissue underlying the ligature mark, extravasation of blood in the adjacent muscles of neck present with lacerations at places. Internal walls of cavities congested.*

2. *Abrasion over lower lip 1/2 x 1/2” irregular reddish,*

3. *Abrasion on the leftside mental region 1/2” x 1/2” reddish*

irregular.

4. *Contusion over middle 1/3rd of right clavicular region 1-1/2" x 1/2" red with subcutaneous haemorrhage.*
5. *Contusion over sternul region of chest 4-1/2" x 1/2" reddish brown with subcutaneous haemorrhage irregular.*

Above injuries are antimortem.

Internal injuries :

Injuries under the scalp – nil. No evidence Co1 No.20 Thorax-Wall, ribs cartilage, plura nil. Fracture of right thyroid alar cartilage veticle in direction, no evidence of fracture of hyoid bone, laryngeal and tracheal nuchal ligament congested with frothy nuchal within it. Principle bronchitis shows frothy blood stained nuchal. Right lung grossly congested, cut section showed petechiae with exudation of dark fluid blood, left lung showed the same i.e. grossly congested, same as right lung Pericardium nil. Ear with weight right side full, left empty, large vessels, anegorged, dental cavity, teeth and tongue swollen, bluish tongue, stomach and its content 200 CC of semi digested food material present, nuchal memory normal, no abnormal smell, no specific smell, liver congested, spleen with weight congested, kidney is congested, bladder-empty, organs of generation normal in size-empty, bottle No.1 contains stomach with its contents, loop of small intestine with its contents, bottle No.2 – pieces of liver, spleen, kidney heart and lungs. Opinion as to probable cause of death asphyxia due to strangulation. However, viscera is preserved for analysis."

He also received the report in respect of viscera from C.A.Office disclosing that there was no poisoning and the said report is produced at Ex.24. He further stated that injuries on the neck of the dead body are possible by the rope, handkerchief, saree or some other piece of cloth. The congestion in the lungs is possible due to strangulation. Frothy nucus within right principla broncoitis possible due to strangulation. In his opinion, death might have occurred 24 hours prior to post-mortem.

9. He was cross-examined by the learned Counsel for the accused extensively and he stated that the case was sent to him along with inquest panchnama and in the inquest panchnama it was stated that death was due to poisoning. He also stated that he accepts Dr. Modi's Book on Medical Jurisprudence as authority, and further stated that :

“I agree with the propositon on page 473 of 12th edition of Dr. Modi's Jurisprudence namely

“It must be borne in mind that the presence of wounds or deceases or decease sufficiency for account death does not conraindicate the use of poison. It is therefore, necessary to preserve the viscera and urine in all cases of suspected poisoning, even if there

are no positive mortem signs of poisoning.”

I also agree with the proposition on page 472 that

“In cases where positive signs of poisoning are not manifest, the medical officer should not give a definite opinion regarding the cause of death, but should suggest that the viscera be forwarded to C.A. For analysis. He must carry out in all cases of suspected poisoning, a thorough examination of the body, both external and internal, as well as histological examination of different viscera whenever necessary. He must immediately record all his findings in writing.”

I now see the page 475. There is a proposition

“It is positive that a person may die from the effects of poison and yet none may be found in body after death if the whole of the poison has disappeared from the lung by evacuation or has been removed from the stomach and intestines by vomiting and purgine and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels. Certain vegetable poison may not be detected in viscera as they no reliable case. While some organic poison, especially the alkaloids and glucosides may by oxidation during life or by putrefaction after death be split up into other substance which have no characteristic reaction sufficient for their identification.”

I agree with this proposition.

I also agree with the proposition on page 475 namely

“Modi Saw Cases in which there were definite sings of death from poisoning although the C.A. Failed to detect the poison in the viscera preserved for chemical analysis. It has therefore, been wisely held by chrestison that in cases where a poison has not been detected on chemical analysis, the judge, in deciding a charge of poisoning should weigh in evidence the simptoms, post mortem appearances and moral evidence.”

There was fracture of one cartiledge on the right side to the neck. But here was no fracture to the left cartiledge. If the neck if pressed or strangulated by hands only, then the finger and thumb marks must be on the neck. It is correct that in case of self inflicted strangulation it will not last till the death, but the grip of hands will be loosen after that person becomes unconscious. The external injury Nos. 2 to 5 are minor in nature. If the body is shifted from place to place then the injury Nos. 2 to 5 are possible due to friction.”

10. He further stated that he sent sample bottles to the C.A. Office through police and from the C.A. Report, it is clear that he handed over those bottles to the police on 11th inst. But the police sent the same through police constable to C.A. On 19th inst. He further stated that it is not mentioned in the report the date of examination by the C.,A. He also accepted that he gave the probable cause of death based on his findings in the post mortem. He further stated that he sent the bottles of viscera to C.A. to detect whether there was poisoning. As per his opinion, it was death by strangulation. He also stated that he agreed with the proposition on page 477, namely, “If a medical practitioner in private practice is convinced that the patient upon him he is

attending is suffering from homicidal poison he is now u/s. 39 Cr.P.C. to communicate the fact to the nearest police officer or Magistrate, otherwise non-compliance is punishable u/s. 176 of I.P.C.” He also produced P.M. notes at Ex.25 and cause of death is asphyxia secondary to strangulation. However, viscera is preserved for chemical analysis.

11. In the instant case, the question posed before us is whether death of victim Lalita was caused by strangulation and whether strangulation was suicidal, homicidal or accidental or was caused by hanging. The literature in that respect in Calcutta Medical Journal (CMJ), Sep 1925, 66 clarifies as under :-

“(i) Whether Death Was Caused By Strangulation ?

No inference should be drawn simply from a ligature mark, for it may be indistinct or absent, if a soft ligature like silk is used, and may be produced by the application of a ligature to the neck even after death. Similar marks may be produced by a collar or neckband worn loosely round the neck when it compresses the tissues, which are swollen and distended by putrefaction. Irregularities in the fingernail marks may pinpoint a killer.

The natural folds of the skin, especially of a stout person, rarely produce marks on the neck, which may look like those found after strangulation.

Abrasions and fingernail marks may be produced on the neck by a person gasping for air in an intoxicated condition or in an epileptic or a hysterical fit.

To arrive at a conclusion that death was due to strangulation, it is necessary, therefore, to note the effects of violence in the underlying

tissues in addition to the ligature mark or bruise marks caused by the fingers or by the foot, knee, etc. and other appearances of death from asphyxia. At the same time, the possibility of other causes of suboxi or asphyxial death should be excluded.

(ii) Whether the Strangulation was Suicidal, Homicidal or Accidental ?

Suicidal strangulation is not very common, though sometimes cases are met with. In these cases, some contrivance is always made to keep the ligature tight after insensibility supervenes. This is done by twisting a cord several times round the neck and then tying a knot, which is usually single and in front or at the side or back of the neck, by twisting a cord tightly by means of a stick, stone or some other solid material, or by tightening the ends of a cord by tying them to the hands or feet or to a peg in a wall or to the leg of bed. In such cases, injuries to the deep structures of the neck and marks of violence on other parts of the body are, as a rule, absent.

It is not possible for anyone to continue a firm grasp of the throat after unconsciousness supervenes, hence throttling by the fingers cannot possibly be suicidal.

Binnar records the case of a woman, aged forty years, who committed suicide by throttling. She was suffering from melancholia and was found dead, crouched in her bed with both hands compressing her throat; the elbows were

supported on the knees, and the back leaned against the wall; there were marks of her fingernails on both sides of the throat.

Homicidal strangulation is the commonest of the three forms. Usually, there is a single turn of a ligature round the neck with one or more knots. Sometimes there may be more turns, in which case more ligature marks will be found on the neck. In addition to the ligature marks or finger marks, there is a probability of evidence of a struggle, marks of violence on the other parts of the body, and evidence of sexual interference in females. Cases of 'palmar strangulation' by forcibly closing the throat by both palms held at right angle over each other, are also reported.

A person may be first rendered helpless by being bound or rendered unconscious by blows on the head or by intoxicating drugs, and then strangled by a small amount of compression. In some, strangulation and suffocation by closure of the mouth and nostrils may both be attempted. Strangulation by ligature is sometimes resorted to in the crime of infanticide.

In the case of King-Emperor v Dhani Ram, charged under s 302, IPC with the murder of Ganeshi, it was brought out in evidence that Dhani Ram, the accused, took hold of rough piece of wood, about 3-1/2" long and 2" or more in diameter, and struck Ganeshi with it. Ganeshi fell down. He then, put the wood across

the neck of Ganeshi and stood on it until he died of strangulation.

Mrs. Sukhdevi and Angun, were convicted under s 302, IPC of the offence of having committed murder by causing the death of Pancham, husband of Mrs Sukhdevi. At the trial, Angun confessed that he went to Mrs. Sukhdevi's house, with whom he was carrying on an intrigue, when he found Pancham lying drunk in the courtyard. They took him into the room (kotari) and Mrs. Sukhdevi sat on his chest and held both his hands, while he pressed the throat with a brick.

Sometimes, a ligature is passed round the neck and over the body, and then tied to the hands and feet to simulate suicidal strangulation. In such cases, the manner of tying should be examined carefully to see if it could have been done by a suicide. A ligature is occasionally placed round the neck after throttling to simulate suicide, but on removal of the ligature, finger marks on the throat accompanied by injuries to the deeper structures will be visible, thus suggesting murder.

Lastly, it must be borne in mind that strangulation may be committed without any noise or disturbance; even if other persons are in close vicinity, they may not be aware of the act. This may happen in garroting, where a victim is suddenly overpowered from behind, by using a rope, dhoti or the hands.

Homicidal strangulation is sometimes feigned by an

individual, who wishes to bring a false charge against his enemy, or wishes to exculpate himself after he has embezzled some money entrusted to his charge. Hysterical women sometimes feign it without any obvious motive whatsoever.

Accidental strangulation is rare, but it may occur when an article of clothing, a neck band, a cord or a chain is tightly drawn round the neck all of a sudden, as occasionally seen in mill workers who are caught by moving belts. This may occur in an epileptic or an intoxicated person who may be helpless in extricating himself from such tight encirclement of the neck. It may also occur when a string used in suspending a weight on the back, slips from across the forehead and compress the neck. This is easy to conjecture, if the body has not been disturbed after death.. If sudden pressure is applied to a person's throat by hands, it may result in sudden death by cardiac inhibition. Children may also be accidentally strangled by a window blind cord or a string encircling the neck too tightly during play. The distinguishing feature of accidental death of an infant by umbilical cord, which may occur in utero is that it is not so much damaged as seen in a homicidal strangulation by it.

Bhaskar and Sharif have reported a rare case of accidental strangulation, of a twenty year old woman while travelling in a rickshaw.

Differences Between Hanging and Strangulation

The differences between hanging and strangulation are given below in tabulated form;

<i>Hanging</i>	<i>Strangulation</i>
1 Mostly suicidal 2 Face – Usually pale and petechiae rare. 3 Saliva – Dribbling out of the mouth down on the chin and chest. 4 Neck – Stretched and elongated in fresh bodies. 5 External signs of asphyxia, usually not well marked.	1. Mostly homicidal 2. Face – Congested, livid and marked with petechiae. 3. Saliva – No such dribbling. 4. Neck – Not so. 5. External signs of asphyxia, very well marked (minimal
6 Bleeding from the nose, mouth and ears very rare. 7 Ligature mark – Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	<i>if death due to vasovagal and caroti sinus effect)</i> 6. Bleeding from the nose, mouth and ears may be found. 7. Ligature mark – Horizontal of transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
8. Abrasions and ecchymoses round about the edges of the ligature mark, rare. 9 Subcutaneous tissues under the mark – White, hard and glistening.	8. Abrasions and ecchymoses round about the edges of the ligature mark, common. 9. Subcutaneous tissues under the mark – Ecchymosed.
10 Injury to the muscles of the neck – Rare.	10. Injury to the muscles of the neck – Common.
11 Carotid arteries, internal coats ruptured in violent cases of a long drop.	11. Carotid arteries, internal coat ordinarily ruptured.

- 12 *Fracture of the larynx and trachea – Very rare and that too in judicial hanging.*
- 13 *Fracture - dislocation of the cervical vertebrae – Common*
- 14 *Scratches, abrasions and bruises on the face, neck and other parts of the body – usually not present.*
- 15 *No evidence of sexual assault.*
- 16 *Emphysematous bullae on the surface of the lungs – Not present.*

- 12. *Fracture of the larynx and trachea – Often found also hyoid bone.*
- 13 *Fracture dislocation of the cervical vertebrae – Rare.*
- 14 *Scratches, abrasions, fingernail marks and bruises on the face neck and other parts of the body – Usually present.*
- 15 *Sometimes evidence of sexual assault.*
- 16 *Emphysematous bullae on the surface of the lungs – May be present.”*

Keeping in mind the approach and thumb rules and coming to the present case, more particularly, medical evidence therein, wherein it is categorically stated that there was external injury on the dead body i.e. surface injuries No.1 **Ligature mark over neck well defined at the level of thyroid cartilage and encircling the neck horizontally and completely** (emphasis supplied) and there was fracture of right thyroid alar cartilage verticle in direction, laryngeal and tracheal nodule congested with frothy nodule within it. Right lung grossly congested which led to no other conclusion than the deceased Lalita met with homicidal death i.e. asphyxia due to strangulation, and hence, the possibility of the suicidal or accidental strangulation and hanging is ruled out.

12. The testimony of PW-2 Dr. Trilochansingh reveals that he examined the dead body of deceased Lalita in the first point of time and

observed that the face of Smt. Lalita was swollen and it was congested. Some bluish discolouration was there on the neck and therefore, prima facie, he opined that the probable cause of her death was due to poisoning. However, it is amply clear that C.A. Report of viscera is negative in that respect and that the said possibility is ruled out. However, the testimony of the said witness Dr. Trilochansingh reflects the conduct of the accused that they insisted upon him to issue a death certificate after bringing the dead body of victim Lalita to his Hospital at Nerul, but he asked them to take the dead body to their home and inform the police. However, instead of taking dead body, the accused told him that they would return after some time and thereafter they vanished leaving the dead body in his hospital. Hence, PW-2 Dr. Trilochansingh waited for them for two hours and thereafter made enquiries about the accused and went to their residence/s under tension on scooter where the accused were discussing something and he told them angrily to shift the dead body, and thereafter, the accused shifted the dead body from his hospital and kept it on a raised platform and it was there till 10 p.m. and thereafter they took the dead body from there. Thus the conduct of the accused persons is self-explicit.

13. That takes us to the testimony of PW-4 Usha Shetty, who was friend of deceased Lalita since last 10 years and she stated there used to be quarrel between Smt. Lalita and her husband and she used to phone from Nerul

and therefore she knew about the said quarrels. She also stated that whenever she used to phone her, she used to inquire about her first and thereafter the victim used to complain to her that there was harassment to her in the house of her by husband and in-laws. She used to tell her that her husband used to harass her due to non-fulfillment of demands of money. After her talk with victim, she used to request her to call her brother Shri Vijayshastri and her mother and thereafter she used to talk with them. She further stated that she received the last phone from Nerul in respect of Smt. Lalita which was made by one Mr. pai and informed her that Smt. Lalita while fetching water fell on the ground and died. He also stated that five days prior to her death, Smt. Lalita phoned her and complained that her husband and in-laws were demanding VCR from her on the marriage anniversary day. However, in the cross-examination, she stated that she cannot give the exact date and month thereof. She used to receive phone calls from Smt. Lalita and she also did not know whether Smt. Lalita's mother or brother brought any money to the accused after receiving her phones. She further stated that she never advised the brother and mother of Smt. Lalita to go to the house of the accused and pacify them. She further stated that she thought that it was the family problem and it was usual in every family. She further stated that five to six days prior to her death, she phoned the victim and told that there was instant

demand for VCR from her husband and in-laws.

14. The testimonies of PW-1 Vijayshastri i.e. brother of the victim and complainant and PW-5 Satyalaxmi i.e. sister of victim and PW-6 Satyavatidevi mother of victim are on the similar footing in respect of unlawful demands made by the accused to victim and subjecting her to physical and mental cruelty due to non-fulfillment thereof. However, the testimony of PW-6 Satyavatidevi suffers from vital omissions. Moreover, their testimonies do not take prosecution case further ahead in constructive manner to connect the accused Nos. 1 to 3 with the alleged crimes. So also, there is no eye-witness to the occurrence of the incident. Besides, the Investigating Officer PSI Kadam has stated that he recorded statements of neighbours Patel, Vaishali Mhatre i.e. milk vendor in Sector 15 where the accused was residing who saw the accused No.1 while going out of the house. He also recorded statements of the relatives of the deceased, but the prosecution has not examined the said material witnesses for the reasons best known to it which hampers the case of the prosecution.

15. Accordingly, having the comprehensive view of the matter, we are of the considered opinion that after scrutinizing and assessing the evidence on record, the view adopted by the learned trial Court while acquitting the

accused Nos. 1 to 3 for the offences punishable under section 498A read with section 34 as also for the offence punishable under Section 304B of IPC is a possible view and same does not appear to be perverse and also the reasoning given therefor does not appear to be erroneous, and hence, the same deserves to be upheld.

16. However, insofar as the alternate charge levelled against the accused No.1 for the offence punishable under Section 302 of IPC for committing murder of his wife Lalita is concerned, even according to defence of the accused No.1, he was the last person to leave his house as his parents had already left the place. His defence is that one Vaishali Mhatre a shop owner saw him coming out of the house with his dog and Lalita herself closed door. However, no defence witness has been examined to substantiate this defence. The learned trial Court has completely ignored the provision of Section 106 of the Evidence Act and this is a fit case where the said provision deserves to be invoked since the victim Lalita was under the custody of accused No.1 at the relevant time on 10.12.1990 and the death of deceased Lalita took place in his custody, and hence, it is required to be construed as custodial death in the exclusive and special knowledge of accused No.1, and therefore, the burden is cast upon him to give explanation in that respect.

Admittedly, the medical evidence which has been discussed hereinabove, reflects that the victim Lalita met with homicidal death i.e. asphyxia due to strangulation and the material evidence discussed hereinabove crowns the authorship thereof upon Accused No.1, and therefore, the prosecution has discharged the initial burden of establishing prima facie the guilt of the accused No.1 beyond any reasonable doubt under the said alternative charge against accused No.1 for the offence punishable under Section 302 of IPC. Hence, in the said backdrop, since the death of victim Lalita occurred in the custody of accused No.1 amounting to custodial death which was within special knowledge of accused No.1 as it has come in evidence that Accused Nos. 2 and 3 were out of the home, the accused No.1 is expected to give explanation in respect of the said death of victim, but he failed in discharging the said burden. Moreover, we have already discussed the conduct of the accused No.1 as reflected from testimony of PW-2. Hence, we are of the considered view that accused No.1 is guilty for the said alternative charge framed against him and is guilty for the offence punishable under Section 302 of IPC for committing murder of his wife Lalita. In our considered opinion, on appreciation of evidence the only possible conclusion is of the guilt of the accused No.1. Hence, to that extent the approach of the learned Judge is perverse.

17. In the circumstances, the present Appeal deserves to be allowed partly and the acquittal of the accused Nos. 1 to 3 for the offences punishable under Sections 498A and 304B read with Section 34 of IPC deserves to be upheld, whereas the acquittal recorded against accused No.1 in respect of the offence punishable under Section 302 of IPC deserves to be quashed and set aside and the accused No.1 is required to be convicted therefor and the minimum sentence thereunder i.e. imprisonment for life and reasonable fine is required to be imposed upon him.

18. In the result, the present Appeal is partly allowed and the acquittal recorded against accused Nos. 1 to 3 for the offences punishable under Sections 498A and 304B read with Section 34 of IPC is confirmed and upheld. However, the acquittal recorded against accused No.1 for the offence punishable under Section 302 of IPC stands quashed and set aside and he is convicted for the offence punishable under Section 302 of IPC and is sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/-, in default of payment of fine to suffer further R.I. for three months.

The Bail Bond of accused No.1 stands cancelled and he is

directed to surrender before the learned Additional Sessions Judge, Thane, within a period of twelve weeks from today. If the accused No.1 surrenders as per the said directions, the learned Addl. Sessions Judge, Thane, shall send him to jail to undergo the aforesaid sentence. However, if the accused No.1 fails to surrender within the prescribed period as mentioned hereinabove, the learned Addl. Sessions Judge, Thane, shall issue Arrest Warrant against him to comply with the aforesaid directions. Rest of the directions in the impugned judgment and order stand confirmed and maintained.

19. Registry to send a copy of the aforesaid judgment to the concerned Court forthwith.

(SHRIHARI P.DAVARE,J.)

(A.S.OKA,J.)

Ibrahim

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 682 OF 1992

The State of Maharashtra

Appellant
(Orig. complainant)

Versus

- | | | | |
|----|----------------------------|-----------------|--|
| 1. | Laxman Narsinhrao Ganti, |) | |
| | aged about 20 years |) | |
| 2. | Narsinhrao Narayan Ganti |) | |
| | aged about 54 years, |) | |
| 3. | Rajlaxmi Narsinhrao Ganti, |) | |
| | aged about 50 years, |) | |
| | all are residing at Sector |) | |
| | No. 8, N.L.6/13/14, Nerul. |).. Respondents | |
| | | (Orig. Accused) | |

Mr. P.S.Hingorani, APP, for the appellant – State.

Mr.Indrajeet Kulkarni,Advocate for the respondents

**CORAM: A.S.OKA AND
SHRIHARI P.DAVARE,JJ.**

DATE : 4th July, 2012

OPERATIVE PART OF THE JUDGMENT : (PERT DAVARE, J.)

For the reasons stated in the Judgment separately, we pass the following order :-

1. The present Appeal is partly allowed and the acquittal recorded against accused Nos.1 to 3 for the offences punishable under Sections 498A

and 304B read with Section 34 of IPC is confirmed and upheld. However, the acquittal recorded against accused No.1 for the offence punishable under Section 302 of IPC stands quashed and set aside and he is convicted for the offence punishable under Section 302 of IPC and is sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/-, in default of payment of fine to suffer further R.I. for three months.

The Bail Bond of accused No.1 stands cancelled and he is directed to surrender before the learned Additional Sessions Judge, Thane, within a period of twelve weeks from today. If the accused No.1 surrenders as per the said directions, the learned Addl. Sessions Judge, Thane, shall send him to jail to undergo the aforesaid sentence. However, if the accused No.1 fails to surrender within the prescribed period as mentioned hereinabove, the learned Addl. Sessions Judge, Thane, shall issue Arrest Warrant against him to comply with the aforesaid directions. Rest of the directions in the impugned judgment and order stand confirmed and maintained.

2. Registry to send a copy of the aforesaid judgment to the concerned Court forthwith.

(SHRIHARI P.DAVARE,J.)

(A.S.OKA,J.)

