

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 317 OF 1995

The State of Maharashtra.

...Appellant
(Orig. Complainant)

versus

1. Raosaheb s/o Jaiwantrao Garbade,
Age: 26 years,
Occupation Service,
R/o Nagewadi,
Tq. & Dist. Jalana.
2. Rangnath s/o Chokhaji Gade,
Age: 30 years, Occ: Service,
R/o Karmad, Tq. & Dist. Jalna.
3. Kantabai w/o Rangnath Gade,
Age: 32 years, Occ: Labourer,
R/o Karmad, Tq. & Dist. Jalna.
4. Yenubai w/o Jaiwantrao Garbade,
Age: 40 years, Occ: Labourer,
R/o Nagewadi, Tq. & Dist. Jalna.

...Respondents
(Ori. Accused.)

.....
Mr. S. G. Karlekar, A. P. P. for appellant/State.
Mr. Joydeep Chatterji, Advocate for respondents.

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**CORAM : S.S. SHINDE &
N.W.SAMBRE, JJ.**

DATE : 28TH NOVEMBER, 2014

JUDGMENT : (PER N.W. SAMBRE, J.)

. The present appeal is by the State in view of the acquittal of the respondents-accused for an offence punishable under Section 302 and 498-A read with Section 34 of the Indian Penal Code.

2. The case of prosecution is that the complainant Padmakar reported to the police that his sister Rekha, who was married to Raosaheb died of burn injuries on 17/08/1992 at her maternal house. It is claimed that at the time of marriage, dowry of Rs.1500/- plus golden ring was demanded and dowry of Rs.1500/- was paid, whereas the golden ring was promised to be presented at the time of Diwali festival. As the demand for dowry was not fulfilled, it is claimed by the prosecution that Rekha was subjected to harassment and illtreatment by accused Nos. 1 to 4.

3. It is also claimed that on the occasion of festival, when Rekha visited her parental house, she has reported about illtreatment for not fulfilling the alleged demand.

4. Other two sisters of Rekha namely Lata and Ranjana were residing in the same locality.

5. Upon complaint, an offence in question came to be registered and the Investigating Officer conducted spot panchnama and seized kerosene can along with match box etc. The seized articles were referred for chemical analysis.

6. Learned Sessions Judge, Jalna while trying the Sessions

Case No. 43 of 1993 against the respondents-accused has framed the charge on 02/03/1995 for an offence punishable under Section 302 and 498-A read with Section 34 of the Indian Penal Code.

7. As the accused persons denied the charge, trial was set into motion.

8. In support of the prosecution case, the complainant Padmakar, brother of deceased Rekha was examined at Exhibit-24, PW-2 Nana Narwade, who poured water on the body of Rekha to extinguish the fire was examined at Exhibit-26, PW-3 Kundlik Borde, father of Rekha at Exhibit-27, PW-4 Latabai Narwade at Exhibit-34, PW-5 Sham Jadhav so as to prove spot panchnama at Exhibit-35, PW-6 Dr. Bhadre at Exhibit-42 so as to prove the death certificate and P.M. report, PW-7 Kamal Avhad at Exhibit-44, PW-8 Arun Rangnath Bharaskar at Exhibit-45 and PW-9 Shankar Dhivare at Exhibit-46.

9. The complainant Padmakar, who was examined at Exhibit-24 proved the complaint by entering into witness box and was subjected to cross examination. He deposed that he received information about the incident from brother-in-law of his sister Ranjana.

10. So as to establish the case of homicidal death of Rekha, the prosecution has relied upon the inquest panchnama at Exhibit-29, spot panchnama and seizure panchnama at Exhibit-30, P. M. notes at Exhibit-31 and autopsy opinion at Exhibit-43.

11. It is required to be noted from the evidence of Dr. Bhadre, who was examined at Exhibit-42 initially at the time of autopsy, opinion about the cause of death was reserved and viscera was preserved. After receipt of C.A. report, Doctor arrived at conclusion that the deceased Rekha died because of 97% burn injuries.

12. The complainant Padmakar though deposed in favour of prosecution that the accused persons have set Rekha on fire, evidence of PW-2 Nana, who reached at the spot and poured water so as to extinguish the fire stating therein that he has poured water on Rekha and he had seen Rekha burning, if to be accepted, the explanation as to his place of residence and his presence on the spot immediately after the incident is not explained and as such, same creates serious doubt about genuineness of his testimony. Said Nana has deposed that he reached on the spot at 1-00 p.m., whereas the incident occurred in between 11-00 to 11-30 a.m. cannot be lost sight

of. In fact, the presence of this witness on the spot as claimed by him raises serious doubt as his wife informed him at about 1-00 a.m. about the incident when he was at Jalna Railway Station and thereafter he reached the spot. He in his cross examination stated about the house of Ranjana-other sister of Rekha on the other side of the Road/Lane to that of house of Rekha. It is also required to be noted that the place where the incident took place is surrounded by thick locality as is apparent from the evidence and if Rekha was set on fire, of course, same could have been taken note of by adjoining residents.

13. In view of the evidence that is placed on record by PW-1 Padmakar and PW-2 Nana appears to be completely improbable. So far as the evidence of Kundlik, father of Rekha is concerned, he deposed that he came to know about the incident through Sahdeo Gudge at about 4-00 to 5-00 p.m. when Rekha was shifted to hospital. In his evidence, he has stated that after funeral was over, he met PW-2 Nana at his place and during discussion Nana narrated him the incident in question.

14. He further stated that it was Nana, who narrated him that all the accused were present when the body was burning. Nana deposed about payment of dowry of Rs.1500/- and promised to

present golden ring at the time of Diwali festival. If the evidence of Padmakar and Kundlik, brother and father of deceased Rekha respectively is examined, it is required to be noted that in their version, they have stated that dowry amount of Rs.1500/- was paid and golden ring was to be presented at the time of Diwali festival. As such, the cause for harassment as is sought to be put forth and impress upon is about demand of dowry which is not established by the prosecution by leading cogent evidence. The cause narrated appears to be unbelievable. The narration about visit of other daughters at the place of Kundlik on the occasion on Nagpanchami in his evidence and non mention about the same in his statement to police is required to be treated as omission. The narration by Rekha at the time of Nagpanchnami about demand of dowry is also an omission brought on record.

15. PW-4 Lata, who is real sister of Rekha, deposed in support of payment of dowry of Rs.1500/- and agreement about golden ring. She claimed that she reached the spot as her mother in law received intimation about death of Rekha, however, she reached the spot quite late. The overall conduct of this witness of not responding to message about the event of burn injuries of Rekha by visiting the spot immediately and her narration about illtreatment because of non-fulfillment of demand of dowry is required to be

disbelieved as the incident in question took place prior to Diwali festival. It is the version of all the witnesses that balance demand of dowry i.e. half tola gold ring was to be met at the time of Diwali Festival. The death of Rekha by burn injuries occurred prior to Diwali, though within five months of her marriage. Her conduct of visiting the spot at quite late in time appears to be unnatural, as she being real sister was expected to respond to the intimation about alleged incident forthwith. It is established from record that her mother-in-law has received the information about the incident quite early in point of time.

16. Exhibit-36 spot panchnama though speaks about presence of kerosene can in the kitchen which is a small room where the incident took place, however, it is required to be noted that the witness PW-5 Sham who was examined in support thereof was unable to pin point the details of the spot and the articles seized. PW-9 Shankar, who was Police Station Officer and PSI Arun Bharaskar, who investigated the crime, in their evidence though stated about recording of statement of the witnesses, however, it is required to be noted that statements of none of the witnesses adjoining the house of Rekha were recorded. The investigation of the crime in question, as such, raises serious doubt as it is brought on record through suggestion to the complainant Padmakar that he was residing with

his father-in-law who was working in the office of Superintendent of Police, Jalna. The evidence brought on record does not establish in an independent manner, that Rekha was subjected to illtreatment on the count of non-fulfillment of demand of dowry. It is also required to be noted that the spot panchnama does not discloses complete details viz., dimension of room, house number etc.

17. The case in hand depicts that the same is of indirect evidence as neither any eye witness nor any direct evidence in the form of dying declaration or otherwise is available on record.

18. It was expected of the prosecution to prove the case beyond reasonable doubt by establishing the entire chain of events in the form of circumstantial evidence and appropriate support can be drawn from the judgment of the Apex Court in the matter of ***Sharad Birdhi Chand Sarda vs. State of Maharashtra*** reported in **1984 (4) SCC 116**. The Apex Court in the said judgment has given following parameters so as to draw a conclusion as regards spelt of the accused in a case of prosecution which based on circumstantial evidence.

- (I) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (ii) The facts so established should be consistent with the

hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of a conclusive nature and tendency.

(iv) they should exclude every possible hypothesis except the one to be proved.

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. If we examine the entire evidence brought on record, it is required to be noted that the prosecution has failed to establish the entire case, which is based on circumstantial evidence beyond reasonable doubt establishing the guilt of accused in the commission of crime in question.

20. In view of above, having regard to the appreciation of evidence by the trial Court and the judgment of acquittal delivered, the view taken by learned trial Court by acquitting the accused-respondents appears to be probable view, as the prosecution has failed to establish the case beyond reasonable doubt.

21. For the reasons stated herein above, in our opinion, no interference is called for. As such, the appeal fails, stands dismissed.

Sd/-
[**N.W. SAMBRE, J.]**

sd/-
[**S.S. SHINDE, J.]**

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