

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1442 OF 2014

The State of Maharashtra.

Applicant/s

Versus

1] Dattatraya Vitthal Khomne, Age 50 years

2] Indubai Dattattraya Khomne, Age 45 years.

3] Anita Sahebrao Khomne, Age 21 years.

All R/o. Ghargaon, Tq. Shrigonda,
Dist. Ahmednagar.

Respondent/s

Mr. S.G. Nandedkar, APP for the applicant.

Mr. Y.V. Kakade, Advocate for respondent Nos. 1 to 3.

**CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE OF RESERVING THE ORDER : 23RD JANUARY, 2015.
DATE OF PRONOUNCEMENT OF ORDER : 29TH JANUARY, 2015.**

ORDER [PER A.M. BADAR, J):-

1] This is an application under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") filed by the applicant State seeking leave to appeal for challenging the judgment and order dated 31.12.2013, passed by the learned Additional Sessions Judge, Ahmednagar, in Sessions Case No. 246 of 2012, between the parties, thereby acquitting respondents/accused of the offences punishable under Sections 498-A, 302 r/w. 34 of the Indian Penal Code, 1860 (for short, "the IPC").

2] Facts leading to the prosecution of the respondents/accused are thus :-

Respondent No.1 is father in law, Respondent No.2 Indubai is mother in law and respondent No.3 Anita is the sister in law of deceased Vaishali Narendra Khomne . She married Narendra, son of respondent Nos. 1 and 2, on 20.6.2011 and thereafter started residing with her husband Narendra and respondents/accused jointly at Phirangali Mala, Ghargaon, Taluka Shrigonda, District Ahmednagar. According to prosecution, Vaishali was subjected to harassment and cruelty at the hands of respondents/accused. They used to ask her to bring amount of Rs. 1 Lakh for purchasing cows and pick up van. On her failure to do so, they used to harass her. Because of behaviour of respondents, about a month prior to the incident, Vaishali Khomne went to her parental house. On 7.6.2012, she was brought back to her matrimonial house by Kondiba Thorat and Maroti Jadhav, who used to act as Mediators in family dispute between her in-laws and deceased Vaishali. Thereafter, Vaishali and her husband decided to reside separately from respondents and, therefore, they requested respondents/accused for partition of joint family property. According to prosecution, on 9.6.2012 Narendra and his parents were taking necessary steps for partition of ancestral land. In that process, Narendra and his brother Sahebrao went towards the field. At about 11.00 a.m. of that day Narendra heard shouts of his wife Vaishali and as such rushed back to the house. He saw his mother Indubai-respondent No.2 and Sister Anita-respondent No.3 holding his wife Vaishali and his father Dattatray respondent

No.1, forcibly administering insecticide to Vaishali.

3] After witnessing this incident, Narendra immediately rushed Vaishali to the hospital of Dr. Umesh Hande at Ahmednagar and thereafter she was admitted to the hospital of Dr. Sunil Jadhav. At that hospital, her dying declaration came to be recorded by the Special Executive Magistrate. Accordingly, Crime No. I-73 of 2012 came to be registered at Belwandi Police Station. On 20.6.2012, Vaishali Narendra Khomne died. Her dead body was then sent for Post Mortem examination after recording inquest memorandum. On completion of routine investigation, accused /respondents were charge sheeted for the offence punishable under Section 302, 498-A r/w. 34 of IPC. On committal of the case, the learned trial court was pleased to frame charges for the offences punishable under Sections 498-A and 302 r/w. 34 of IPC against respondents/accused. Upon explaining the charges to them respondents/accused pleaded not guilty and claimed trial. In order to bring home the guilt to respondents/accused, the prosecution has examined as many as 14 witnesses. After hearing parties, the learned trial court was pleased come to the conclusion that the prosecution has failed to establish beyond reasonable doubt that respondents/accused subjected deceased Vaishali Khomne to cruelty and thereafter committed her murder.

4] We have heard the learned APP for the State who vehemently argued that the evidence of PW-3 Narendra Dattatray Khomne, read with dying declaration of deceased Vaishali Khomne is sufficient to come to the conclusion that the prosecution has proved the offence punishable under

Section 302 of IPC against respondents/accused. According to learned APP, ill-treatment to deceased Vaishali Khomne or coercing her on failure to bring money from her parents is also established on record through evidence of her father and as such, the view taken by the learned trial court is totally perverse.

5] As against this, the learned counsel appearing for the respondents/accused supported the impugned judgment and order.

6] With the assistance of learned counsel for the parties, we have gone through the entire record and proceedings of the learned trial court and have examined the deposition of witnesses as well as documentary evidence.

7] At the outset, let us examine, whether the prosecution has proved that the deceased Vaishali Narendra Khomne died homicidal death on 20.6.2012 because of forcible administration of poison to her by accused/respondents on 9.6.2012. After death of Vaishali Khomne at the hospital of Dr. Sunil Jadhav after recording inquest memorandum, her dead body was sent for autopsy. Dr. Ashokkumar Karale, PW-6, Medical Officer, Civil Hospital, Ahmednagar, conducted post mortem examination on dead body of Vaishali on 20.6.2012. His evidence shows that during autopsy, he collected viscera including pieces of stomach with contents, pieces of small and large intestines with contents, pieces of liver, spleen and kidneys, heart

and lungs from dead body of Vaishali Khomne. While conducting post mortem examination, he had taken notes thereof and that post mortem report is at exhibit 72. In the witness box itself, PW-6, Dr. Ashore Karale perused reports of chemical analysis of viscera and pathology report at Exhibit-A, and then gave his opinion that Vaishali died to cardio-respiratory arrest due to asphyxia, due to broncho-pneumonia with acute distress syndrome due to undetected poison. The learned trial court was pleased to disbelieve this evidence of Autopsy Surgeon and come to the conclusion that the prosecution has failed to prove that Vaishali died to homicidal death.

8] We have carefully examined evidence of Dr. Ashok Karale PW-6, as well as documentary evidence placed on record. Exhibit 23 is the report of Chemical Analysis of Viscera of dead body of Vaishali Khomne. Upon chemical analysis of the pieces of liver, spleen kidney and stomach of dead body, the Chemical Analyst was not able to detect any poison in it. Perusal of Post Mortem report at Exhibit 72 shows that upon examining the stomach of the dead body and its contents, PW-6 Dr. Ashok Karale could not notice any abnormality in it. The pathology report at Article A shows that on examination of pieces of lungs of the dead body, the pathologist came to the conclusion that deceased Vaishali was suffering from Broncho Pneumonia with acute respiratory distress syndrome. At this juncture, it needs to be mentioned here that on conducting autopsy, PW-6 Dr. Ashok Karale had reserved his opinion regarding cause of death. Obviously because he could

not assess it at that point of time. During the course of investigation, pathology report as well as C.A. Report were never sent to PW-6 Dr. Karale for final opinion regarding cause of death of Vaishali Khomne. While in the witness box, on perusal of these documents, without giving any reasons thereof, PW-6 Dr. Karale straightway came to the conclusion that death of Vaishali was caused due to cardio-respiratory arrest, due to asphyxia, due to broncho pneumonia with acute respiratory distress syndrome. No overbearing importance can be given to such opinion which is bereft of any reason.

9] In the backdrop of non detection of any poison in the viscera from dead body of deceased Vaishali, inability of Dr. Ashok Karale to give opinion about cause of death while conducting autopsy and histo-pathology report showing that deceased Vaishali was suffering broncho pneumonia with acute respiratory distress syndrome, one fails to understand as to on what basis, PW-6 Dr. Karale came to the conclusion that deceased Vaishali died due to undetected poison. Evidence of PW-6 Dr. Ashok Karale does not rule out possibility of death of Vaishali Khomne due to Broncho Pneumonia with acute respiratory distress Syndrome. There is nothing on record to come to the conclusion that Broncho Pneumonia was caused to deceased Vaishali because of administration of some toxic substance. Prosecution has not taken any steps to collect stomach wash of deceased Vaishali Khomne though she was alive from the date of incident i.e. 9.6.2012 to 20.6.2012 i.e. for about 12 days for sending the same for chemical analysis in order to ascertain whether she was suffering from poisoning. Exhibit 74 is the report

of Chemical analysis of Saree worn by deceased Vaishali Khomne, no poison was detected on chemical examination of said saree. In the wake of this scanty evidence adduced by the prosecution, we find no infirmity with the finding of the learned Trial Court based on the evidence on record that the prosecution has failed to prove that deceased Vaishali died homicidal death on 20.6.2012. When the prosecution has failed to establish homicidal death of deceased Vaishali Khomne, respondents/accused can not be held guilty of commission of her murder.

10] It was on 19.6.2012 that the prosecution is alleged to have recorded dying declaration (Exhibit-86) of Vaishali Khomne through PW-9 Navnath Date, Special Executive Magistrate at the hospital of Dr. Sunil Jadhav (PW-8). Evidence of PW-9 Navnath Date and PW-8 Dr. Sunil Jadhav shows that initially PW-8 Dr. Jadhav examined Vaishali and came to the conclusion that she was in a fit mental condition to give her statement. Thereafter, PW-9 Navnath Date recorded her statement. Then, PW-8 Dr. Sunil Jadhav again examined Vaishali and gave endorsement that she was in a fit condition during recording of her statement. Dying declaration of Vaishali recorded by PW-9 Navnath Date Special Executive Magistrate is at Exhibit-86. It is in printed proforma. Question no.4 of this printed proforma and the answer allegedly given thereto by deceased Vaishali upon free translation in English reads thus :-

4] Without fear tell, how you sustained burns, consumed poison and how incident happened ?

Answer : Husband and mother in law were not pulling well. Husband, mother in law, brother in law, sister in law, were feeling that, I should behave as per their wish. Mother in law, father in law have taken ornaments weighing (2) two Tolas (20 grams of gold). Then there was quarrel. It is said that partition should be done or else you should not stay here. Partition was decided by them. Stayed at parental house for one month. On return, false document was written and they administered poison to me.

11] This is how the material portion of dying declaration at Exhibit-86, when freely translated in English reads. Careful perusal of this alleged statement of deceased Vaishali shows that there was some dispute in family and it was decided to partition the ancestral property. Persons referred in the dying declaration at Exhibit-86 are husband, mother in law, brother in law, sister in law, as well as father in law. There is no specific mention as to who has allegedly administered medicine to deceased Vaishali. This dying declaration is as vague as it could be. It could even be interpreted to mean that, even her husband and brother in law had administered poisonous substance to her, apart from her rest of the in-laws. When the dying declaration is susceptible to various interpretations, it is totally unsafe to rely on the same.

12] It is well settled that great caution is required to be exercised

in considering the weight to be given to the dying declaration of deceased. Requirement of administering oath and cross examination of the declared is dispensed with as the declarant is on death bed and because of solemn and serene occasion law accept veracity of statement of a dying person. Since accused persons have no power of cross examination of such declarant, the court is duty bound to insist that the dying declaration should be of such nature as to inspire full confidence of the Court in its truth-fullness and correctness. The Court is also required to come to the conclusion that such statement is not result of either tutoring or prompting or product of imagination of declarant. It is required to be decided that the declarant was in a fit mental condition while giving such statement. In the case in hand deceased Vaishali's alleged statement is too vague to come to the exact conclusion as to who had actually administered poison to her leave apart the fact that, her death is not proved to be homicidal caused due to poisoning. As such, implicit reliance can not be placed on her alleged dying declaration recorded by PW-9 Navnath Date.

13] Let us examine the surrounding circumstances in order to ascertain truth-fullness in the alleged dying declaration at Exhibit-86. It is the case of the prosecution that none else than husband of deceased had witnessed accused/respondents administering poison to her. According to prosecution case Narendra Khomne husband of deceased Vaishali was not having good relations with his own parents and brothers. The incident of alleged forcible administration of poison to deceased Vaishali on 9.6.2012

was allegedly witnessed by her husband PW-4 Narendra. However, he has chosen not to lodge report of this incident to police. On 10.6.2012 itself Vaishali Khomne was admitted to hospital of Dr. Sunil Jadhav (PW-8) at Ahmednagar. Papers of her medical treatment are at Exhibit-79. These papers show that Vaishali was admitted to this hospital due to consumption of Oregano-Phosphorous compound. As seen from case papers, after consumption of Oregano-Phosphorous compound vomiting and pain started. Her talk became irrelevant and as such she was initial taken to hospital of Dr. Umesh Hande and thereafter to hospital of Dr. Sunil Jadhav (PW-8). Papers of medical treatment of deceased Vaishali at Exhibit-79 further show that she was admitted to hospital by her own maternal uncle. These papers are containing a note signed by her relatives, they don't know which poisonous substance was consumed by deceased Vaishali and empty bottle of that poisonous substance is also stated to be not found. Therefore, as per this note, relatives of deceased Vaishali gave consent that she be treated for Oregano-Phosphorous poisoning. This contemporaneous document containing history given none else but by maternal uncle deceased Vaishali indicates consumption of poisonous substance by Vaishali rather than administering the same forcibly by her in laws. This circumstances seriously cast a shadow of doubt on the vague dying declaration of deceased Vaishali and a lurking doubt arose as to whether she herself had consumed some poisonous substance.

incident in question has come up with two different versions about the same. Evidence of record shows that Narendra has stated before Police that he saw respondent no.2 Indubai, and respondent no.3 Anita were holding Vaishali and respondent no.1 Dattatraya administered poison to her. This contradiction in his version is brought on record. Before the trial court, PW-4 Narendra has given complete go by and given different version about the incident by making improvement. It has come in his evidence before the Court that he saw accused no.2 Indubai holding the bottle in her hand and respondent accused no.1 Dattatraya as well as respondent no.3 accused Anita were present near Vaishali. As per version of PW-4 Narendra, Vaishali told him accused person had administered poison to her. It is thus seen that, testimony of PW-4 Narendra is suffering from material contradiction and as such is totally unsafe to rely upon. Apart from this, conduct of this witness in not at all lodging the report of the incident makes his version totally doubtful.

15] Considering this nature of evidence adduced by the prosecution we are of the view that the learned trial Court has taken a plausible view of the matter by holding that the prosecution has failed to established that respondent/accused committed murder of deceased Vaishali Khomne by intentionally and knowingly causing her death.

16] So far as offence of cruelty is concerned, no trustworthy evidence is coming on record on this aspect also. PW-4 Narendra has stated

in this regard that his parents were demanding Rs.1 lacks from parents of deceased Vaishali for purchasing pick-up van. Similar is the evidence of PW-7 Padmabai mother of deceased Vaishali. However, both these witnesses have not spelt out any instances of coercing or harassment to deceased Vaishali at the hands of respondents/accused persons. In absence of specific instances of harassment or ill-treatment it can not be said that, prosecution has made out offence punishable U/s 498-A read with 34 of the IPC against respondents/accused. Therefore, no fault could be found with the impugned judgment and order of the learned Trial Court in this regard also.

17] Examining the matter from each and every possible angle, we find that no infirmity can be found with the plausible view taken by the trial Court in acquitting the respondent/accused of the offences alleged against them and as such there is no alternative but to reject the application and therefore the order :-

Application is rejected.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-