

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 280 OF 2012

- 1] Shakti Madhukar Rathod,
age 28 years, occ. Mobile Shopkeeper,
- 2] Vimalbai Madhukar Rathod,
age 55 years, occ. Household,

Both R/o Dattanagar, Mandvi,
Tq. Kinwat, District Nanded

...APPELLANTS
[Orig. Accused Nos. 1 & 3]

VERSUS

- 1] The State of Maharashtra **...RESPONDENT**

Mr. Joydeep Chatterjee, Advocate for the Appellants
Mr. B.L.Dhas, APP for Respondent

**CORAM : A.B.CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATED : 31st August, 2015

ORAL JUDGMENT [Per Indira K. Jain, J.]

- 1] This appeal is preferred by the appellants-original Accused
Nos. 1 and 3 against the judgment and order, dated 12.3.2012,

passed by the learned Additional Sessions Judge-3, Nanded in Sessions Case No. 95 of 2011. By the said judgment and order, the learned Additional Sessions Judge convicted the appellants under Sections 498(A), 304(B) and 302 r/w 34 of the Indian Penal Code and sentenced them as under : -

<u>Conviction under Section</u>	<u>Sentenced to</u>
498 (A) r/w 34 of I.P.C.	R.I. for 3 years and fine of Rs.500/-, in default R.I. for 3 months each
304 (B) r/w 34 of I.P.C.	R.I. for 7 years each
302 r/w 34 of I.P.C.	Imprisonment for life and fine of Rs.1,000/-, in default R.I. for six months each

2] For the sake of convenience, we shall refer the appellants in their original status as accused as they were referred before the trial court.

3] The prosecution case, briefly stated, is as under : -

i) Complainant Kisan Dagdu Aade was resident of Krishna Nagar, Taluka Arni, District Yeotmal. Sunita was his daughter. She was married to accused Shakti on 9.5.2008. After marriage, she started residing at Mandvi, Taluka Kinwat, District Nanded at her in-laws. Vimalbai, accused no.3 is mother of Shakti.

ii) According to prosecution, at the time of marriage of Sunita Rs.80,000/- and one tola gold was given to accused Shakti. After one year of marriage, Rs.70,000/- were given to accused Shakti on demand for running a mobile shop. It is alleged that accused Shakti started harassing Sunita on further demand of Rs.50,000/-.

iii) Before 15 days of the incident, Sunita along with accused Shakti visited the house of her father to attend kumkum ceremony of her younger sister. That time, she disclosed to her father that she was illtreated on demand of Rs.50,000/- by the husband, mother-in-law, brother-in-law and his wife. Her father pacified the accused and expressed his inability to fulfill the demand. Then Sunita went back to her in-laws with accused Shakti.

iv) Incident occurred on 26.3.2011. Before three days of incident, accused beat Sunita. On 25.3.2011 she informed her uncle Ramesh Dagdu Aade about the beating. Her father Kisan asked his brother Govind to visit the house of accused and persuade them. Govind Aade made inquiry with Sunita. He

came to know that she was being harassed for Rs.50,000/-. He asked the accused not to harass her and he would bring Rs.50,000/- on the next day. At about 3.00 p.m. Govind returned back to his village.

v) On 26.3.2011 Jitesh @ Jitendra, brother of Shakti informed Ramesh about the death of Sunita. On receiving the information, her father and others rushed to village Mandvi. They saw dead body of Sunita lying in the house of accused. The dead body was taken to the hospital and intimation of death was given to police.

vi) Kisan Aade lodged first information report to Mandvi police station alleging therein that accused committed murder of his daughter for non-fulfillment of demand of money and she was often harassed, as their illegal demand was not fulfilled. On the basis of first information report, Crime No. 12 of 2011 came to be registered against Shakti, his mother, brother and brother's wife.

vii) A.P.I. Namdeo Rithe took over investigation. Inquest panchanama of the dead body was drawn at Rural Hospital, Mandvi. As father of deceased moved

an application to send the dead body at Yavatmal or Arni for postmortem, dead body was sent to Government Medical College, Yavatmal for postmortem.

viii) On 27.3.2011, postmortem was performed. The Medical Officers noticed multiple injuries on the dead body and opined cause of death due to smothering.

ix) The investigating agency then drew spot panchanama. Statements of several witnesses were recorded. Accused were arrested. The ornaments and clothes of the deceased were seized. A stick and anklet chain were recovered at the instance of accused Shakti and Vimalbai, respectively. The clothes of accused were also seized. The seized articles were forwarded to Chemical Analyser. On completion of investigation, charge sheet was filed before the Judicial Magistrate, First Class, Kinwat, who, in turn, committed the case for trial to the court of Sessions.

4] Charge came to be framed against the appellants and two acquitted accused as per Exh.5. Appellants pleaded not guilty to the

charge and claimed to be tried.

The factum of relationship is not in dispute. Regarding alleged commission of offences, defence of accused was of total denial and false implication.

5] Prosecution examined in all seven witnesses. After going through the evidence adduced in the case, the learned Additional Sessions Judge convicted and sentenced the appellants as stated in para 1 above. Hence, this appeal.

6] We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Additional Sessions Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that appellant no.1 Shakti used to illtreat the deceased on demand of money and on non-fulfillment of demand caused her death.

So far as appellant no.2 Vimalbai is concerned, we are of the opinion that, prosecution could not prove the guilt to the hilt and

she deserves to be acquitted.

7] There is no eye witness to the incident and conviction is mainly based on circumstantial evidence. PW1 Kisan Aade and PW3 Govind Aade are the star witnesses on the alleged cruelty to deceased Sunita. Both the witnesses have categorically stated that Sunita was harassed by accused Shakti on demand of money. It is apparent from their testimonies that before 15 days of incident, accused Shakti and Sunita came to the house of PW 1 Kisan to attend kumkum ceremony of younger sister of Sunita.

PW 1 Kisan stated that on 25.3.2011, his brother Ramesh received phone call from Sunita and she informed him that since last three days she was beaten by the accused on demand of Rs.50,000/-. True, prosecution has not examined Ramesh Aade. At the same time, defence could not elicit anything contrary in cross-examination of Kisan Aade to disbelieve his testimony.

PW 3 Govind Aade visited the place of accused just before the incident. Govind was asked by Kisan to go and persuade the accused not to harass Sunita. Govind accordingly went and pacified the accused. He told them that he would bring Rs.50,000/- and Sunita should not be harassed.

8] Commenting upon the evidence of PW 3 Govind Aade, learned counsel for appellants vehemently submitted that they are highly interested witnesses and in the absence of independent corroboration, no reliance can be placed on their testimonies.

9] We find that on demand of Rs.50,000/- and illtreatment to Sunita on non-fulfillment of demand, evidence of father and uncle of Sunita is consistent throughout and there is no reason to doubt the same.

10] Further it is pertinent to note that, marriage took place in 2008 and Sunita died within three years of marriage in 2011. Accused Shakti has not denied that before 15 days of marriage, he and Sunita visited the house of father of Sunita to attend kumkum ceremony of younger sister of Sunita. It is also not seriously in dispute that Govind Aade visited the house of accused just prior to incident. Merely because PW 1 Kisan is father and PW 3 Govind is uncle of Sunita, their evidence cannot be looked with suspicion. As stated above, nothing substantial could be brought in their cross-examination, and thus trial court has rightly relied upon the testimonies of these two important witnesses.

11] This takes us further to the cause and mode of death of Sunita. Needless to state that to attract offence under Section 304(B) of the Indian Penal Code, prosecution has to prove beyond reasonable doubt that death in question was within seven years of marriage and it was unnatural and further to bring home the guilt of accused under Section 302 of the Indian Penal Code that it was a homicidal death. Means, prosecution has to overrule the possibility of accidental, suicidal and natural death.

12] PW 6 Dr. Raviprakash Meshram performed postmortem on the dead body of Sunita on 27.3.2011 at Government Medical College, Yavatmal. Dr. Gadge and Dr. Barmate were with Dr. Meshram at the time of conducting autopsy. Postmortem report is proved at Exh.40. On the basis of internal and external examination of the dead body, Medical Officers found that death of Sunita was caused due to smothering. As many as 14 external injuries were found as mentioned in column 17 of the postmortem report. Accused have not seriously challenged the cause of death as smothering. However, a futile attempt was made on behalf of appellants to submit that smothering may be suicidal, accidental or homicidal.

13] In view of the evidence of PW 3 Dr. Meshram and the findings recorded in the postmortem report (Exh.40), we are unable to accept the submission made on behalf of appellants that in the present case smothering may be suicidal or accidental.

14] In respect to authorship of the accused in causing death of Sunita, with the assistance of the learned counsel for parties, we have gone through the evidence on record.

So far as appellant no.2 Vimalbai is concerned, we do not find her involvement either in causing illtreatment to Sunita on demand of money or in causing her death. We find that there is no satisfactory evidence to prove offences under Sections 498(A), 302 and 304 (B) of the Indian Penal Code against Vimalbai.

The case of appellant no.1 in the totality of the circumstances is entirely different. On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that appellant Shakti was illtreating Sunita for non-fulfillment of illegal demand of money and as demand was not fulfilled, he committed the murder.

15] We thus find no merit in the appeal preferred by appellant Shakti. In the above premise, appeal deserves to be partly allowed.

Hence following order : -

ORDER

- (i) Criminal Appeal No. 280 of 2012 is partly allowed.
- (ii) The judgment and order, dated 12th March, 2012, passed by Additional Sessions Judge-3, Nanded, convicting the appellant no.1-Shakti Madhukar Rathod, for the offences punishable under Sections 498(A), 304(B), 302 r/w 34 of the Indian Penal Code and sentencing him to imprisonment for life and fine is confirmed and consequently, the appeal filed by appellant no.1-Shakti Madhukar Rathod is dismissed.
- (iii) Appeal filed by appellant no.2-Vimalbai Madhukar Rathod is allowed. The judgment and order, dated 12th March, 2012, passed by Additional Sessions Judge-3, Nanded, convicting and sentencing the appellant no.2-Vimalbai Madhukar Rathod, for the offences punishable under Sections 498(A), 304(B), 302 r/w 34 of the Indian Penal Code is set aside. Appellant no.2-Vimalbai Madhukar Rathod is acquitted of the offences punishable under Sections 498(A), 304(B), 302 r/w 34 of the Indian Penal Code. She be set at liberty, if not required in any other offence. Fine, if any paid, be refunded to her.

[INDIRA K. JAIN, J.]

[A.B.CHAUDHARI, J.]

