

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

Criminal Appeal No. 242 of 2014

Vithal s/o. Laxman Khandare,
Age : 52 years,
Occupation : Labour,
R/o. At Post Malegaon,
Taluka : Ardhapur,
District : Nanded,
At present residing at
Panchshil Nagar, L.M. Road,
Borivali (W).

.. Appellant
(Original Victim /
Legal Heir)

versus

1. The State of Maharashtra,
Through Police Station,
Mukramabad,
District : Nanded.
2. Nagnath s/o. Baburao Kamble,
Age : 34 years,
Occupation : Agriculturist.
3. Kerabai w/o. Baburao Kamble,
Age : 53 years,
Occupation : Household,

Respondent nos.2 and 3 are
R/o. Barhali,
Taluka : Mukhed,
District : Nanded.

4. Manisha w/o. Mohan Wankhede,
Age : 28 years,
Occupation : Household,
R/o. Siddharth Nagar, Degloor,
Taluka : Degloor, Dist. : Nanded.

.. Respondents
(No.1 - Original complainant
&
Nos.2 to 4 - Original accused)

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Mr. R.K. Ingole Patil, Advocate, for the appellant.

*Mr. S.S. Tope, Additional Public Prosecutor, for
respondent no.1 - State.*

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CORAM : A.M. BADAR, J.

DATE : 17TH JULY 2015

ORAL JUDGMENT :

1. This is an appeal under Section 372 of the Code of Criminal Procedure, 1973, by Vithal s/o. Laxman Khandare - victim, who is father of deceased Ashwini. challenging the judgment and order dated 3-1-2014, in Sessions Case No. 26/2011, passed by the learned Additional Sessions Judge, Kandhar, Link Court, Mukhed, thereby acquitting respondent nos.2 to 4, of the offences punishable under Sections 498A, 306, read with Section 34 of the Indian Penal Code.

2. Heard the learned Counsel for the appellant. He contended that the acquittal has resulted because of failure on the part of the prosecution to examine material witnesses. He contended that the Medical Officer is not examined by the prosecution and, as such, the learned trial court has acquitted accused persons.

3. Shri Tope, the learned Additional Public Prosecutor for respondent no.1 - State, contended that the State has chosen not to file appeal challenging the acquittal recorded by the learned trial court.

4. With the assistance of the learned Counsel appearing for the parties, we have perused record and proceedings, and particularly, the dying declarations of deceased Ashwini at Exhibit 27 and Exhibit 30, recorded during the course of investigation.

5. Briefly stated, according to the prosecution case, Ashwini (since deceased) married accused no.1 Nagnath in June 2010 and thereafter she went to reside with him at her matrimonial house at village Barhali. It is the case of the prosecution, that after initial proper treatment for 5 - 6 months, accused persons who happens to be husband, mother-in-law and sister-in-law of deceased Ashwini, started giving illtreatment to her by suspecting her character. Resultantly, left with no alternative, Ashwini indulged in self-effacement by immolating herself on 31st March 2011 at her matrimonial house. She succumbed to burn injuries on 3rd April 2011. During the course of her medical treatment, her dying declaration came to be recorded on 31st March 2011, by Police Head Constable of Police Outpost of Police Station Vajirabad, District Nanded. This has resulted in registration of Crime No. 24/2011 under Sections 498A, 323, 504, read with Section 34 of the Indian Penal Code, against accused persons. Thereafter, second dying declaration of Ashwini came to be recorded by the Special Judicial Magistrate at Nanded on the very same day. After death of Ashwini, Section 306 of the IPC was added to the case diary of the crime. Routine investigation followed which resulted in filing charge sheet against accused persons.

6. After framing and explaining charge to accused persons, trial ensued, in which, the prosecution has examined in all four witnesses. PW

1 - Sunanda is mother of deceased Ashwini. PW 2 - Prabhakar Chavan is Police Officer who registered offence against accused persons on the basis of first dying declaration of deceased Ashwini. PW 3 - Datta Navghare is Special Judicial Magistrate who recorded another dying declaration. PW 4 - Narayan Bemde is the Investigation Officer.

7. Considering the nature of charges levelled against accused persons, one will have to examine whether death of Ashwini occurred on 3-4-2011 is suicidal, caused due to sustaining burns. It will also have to be examined, as to whether accused persons or any of them had subjected deceased Ashwini to cruelty and thereby instigated and abetted her to commit suicide.

8. As deceased Ashwini died within 7 years of her marriage with accused no.1 - Nagnath, the prosecution can take aid of provisions of Section 113-A of the Indian Evidence Act, 1872. However, for taking such aid, the prosecution will have to establish firstly, that accused persons or any of them had subjected deceased Ashwini to cruelty. Apart from this, the Court will have to consider all other circumstances with this evidence, in order to determine whether accused persons had abetted commission of suicide by Ashwini on 31-3-2011.

9. Careful perusal of evidence of PW 1 Sunanda - mother of deceased shows that she has disclosed that her deceased daughter used to inform her, that accused persons were harassing her and her husband used to beat her. What was the reason for harassment and beating, is not disclosed by PW 1 Sunanda. The nature and type of harassment is not reflected in her evidence. Her evidence also shows that Ashwini was

taken to the house of her aunt at CIDCO, Nanded, but thereafter she was taken again at her matrimonial house at the instance of accused Nagnath - her husband. PW 1 Sunanda further deposed, that thereafter quarrel took place at the house of accused persons. What was the reason for that quarrel, is not disclosed by PW 1 Sunanda. It is, thus, seen that the evidence of PW 1 Sunanda is too vague and is not sufficient to conclude that accused persons or any of them had subjected deceased Ashwini to cruelty, as defined in Explanation to Section 498A of the IPC.

10. Let us now turn to dying declaration of deceased Ashwini. Her dying declaration at Exhibit 30 is proved by the prosecution by examining PW 3 - Datta Navghare, Special Judicial Magistrate, who had recorded it. This dying declaration was recorded on the day of incident itself. In this dying declaration, deceased Ashwini has allegedly stated that her mother-in-law, husband and sister-in-law used to suspect her character. They used to abuse and insult her and, therefore, she had poured kerosene on her person and set her ablaze. Exhibit 27 is the another dying declaration of deceased Ashwini. It appears to be recorded by Police Head Constable who is not examined by the prosecution. This dying declaration is also on similar line wherein deceased Ashwini has alleged to have stated that accused persons used to suspect her character and they used to beat her. She stated that because of physical and mental harassment, she indulged in self-effacement.

11. Assuming the averments in both these dying declarations to be truthful, let us appreciate whether these averments by deceased Ashwini amounts to cruelty and whether such conduct constitutes abetment as defined by Section 107 of the Indian Penal Code. The term 'cruelty'

means wilful conduct of certain intensity and persistence. The concept of cruelty varies from place to place and individual to individual. Whether the act complained of, were acts of cruelty, has to be determined from the whole facts and relationship between the parties. The expression 'cruelty' postulates such a treatment as to cause reasonable apprehension in the mind of wife, that her living with her husband and inlaw will be harmful and injurious to her life. Considered in this context, averment of the deceased, that accused persons used to suspect her character, used to abuse her and insult her, were not found to be of sufficient gravity by the trial court and therefore it was held that the prosecution has failed to establish that accused persons or any of them had subjected deceased Ashwini to cruelty or abetted and instigated her to commit suicide. In our considered view, such appreciation of evidence and the ultimate conclusion recorded by the learned trial court cannot be said to be unreasonable or perverse. Possible view is taken by the trial court while acquitting accused persons.

12. It is well settled, that even if recording another view by the Appellate Court is possible, it is not permissible to take such view and benefit must go to accused persons. At this juncture, it is apposite to note that in the case of ***Mahendra Singh & another Vs. State of M.P.***, reported in ***1995 Supp (3) Supreme Court Cases 731***, Hon'ble Supreme Court has held on facts, that the ingredients of abetment, as defined under Section 107 of the IPC were not attracted to the statement of deceased therein. In that matter, the dying declaration was to the effect that mother-in-law, husband and sister-in-law of the deceased used to harass her, beat her and abuse her. In addition, it was averred therein by the deceased, that her husband Mahendra Singh wants to marry second time and was having illicit relations. Hon'ble Supreme Court has held therein that accusation of such

type does not constitute abetment to commit suicide or cruelty to a married woman. As such, mere illtreatment, like abuses and alleged beating cannot be construed as abetment for commission of suicide.

13. The allegations in the case at hand reflected for the evidence on record as well as dying declarations of deceased Ashwini are not of such a nature, as would drive a normal person to commit suicide. The allegations found in the dying declarations cannot be said to be of a sufficient gravity or does not amount to serious provocation to drive the deceased to end her life. Evidence on record does not show that accused persons or any of them had intended that the deceased must commit suicide and for achieving such goal, they were subjecting the deceased to cruelty. In the light of this discussion we are of the considered opinion that the learned trial court has taken a plausible and possible view and therefore the impugned judgment of acquittal of respondent nos.2 to 4 / original accused needs no interference.

14. In the result, the Appeal fails and the same is dismissed.

(A.M. BADAR)
JUDGE

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