

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Appeal No.426 Of 2000.

Hari Shenfadu Savande

Age : 30 Years., Occ.: Labourer.

R/o.: Savakheda, Taluka - Yawal.

District – Jalgaon.

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Appellant.

Versus

The State of Maharashtra.

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Respondent.

Appearance =>

None present for the Appellant.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 17th APRIL, 2015.

ORAL JUDGMENT :-

The Appellant is before this court, in view of his conviction dated 2nd November, 2000 passed by the learned IInd Additional Sessions Judge, Jalgaon, District – Jalgaon in Sessions Case No.304 Of 1995; whereby the appellant-accused was convicted for the offence punishable under Section 498(A) of the Indian Penal Code and directed to suffer rigorous imprisonment for three years and to pay fine amount of Rs.100/- and in default of payment of fine, to suffer simple imprisonment for 7 days. His further conviction is for the offence punishable under Section 306 of the Indian Penal Code and he was directed to suffer on that count, rigorous imprisonment for five years and to pay fine amount of Rs.200/- and in default of payment of fine, to suffer Simple Imprisonment for 10 days.

[2] The appellant alongwith others were charged by the learned trial court that, accused No.1 being the husband of deceased Kusum and other accused being the relative of the husband i.e. in-laws, brother-in-law and sister-in-law, since the marriage of accused No.1 with Kusum till 26th January, 1995, in furtherance of their common intention subjected Kusum to cruelty and harassed her with a view to coerce her to meet unlawful demand of Rs.20,000/- They were also charged that on 27th January, 1995 at 5/30 a.m. at village Savakheda, Taluka – Yawal, District – Jalgaon they in furtherance of their common intention abetted the commission of suicide by Kusum and, thereby, they committed an offences punishable under Section/s 498(A), 306 read with 34 of the Indian Penal Code.

Except the appellant, all other co-accused, who were charged with the present appellant for the offences punishable under Section/s 498(A), 306 read with 34 of the Indian Penal Code, were acquitted by the learned trial court.

[3] The prosecution case, as it was unfolded during the course of trial is as under :-

Gangadher Shankar Rane (PW No.4), Police-Head-Constable, Police Station, Jilha-Peth, Jalgaon was on duty on 27th January, 1995. On the said day, Police Station Officer of the said Police Station issued memorandum to him to record the statement of a lady, who is admitted in the Civil Hospital, Jalgaon.

In obedience of said directions, he rushed to the hospital. He met to the Medical Officer. He apprised to him that he wish to record the statement of lady - Kusum and requested him to examine the said patient. The patient was examined by Dr. Madhukar Kisan Kolhe (PW No.8) and it was informed to PW No.4 - Gangadhar Rane that patient is in a position to give her statement.

[4] Accordingly, PW No.4 – Gangadher recorded the statement of Kusum. In her statement, she disclosed that she got married with the appellant about three years back. Inmates of her house were ill treating her and since the date of her marriage they were saying to her that she should not stay with them. On 26th January, 1995 at 7/30 p.m. her in-laws, husband and brother-in-law abused her on the same ground and her husband beat her by pipe. Getting annoyed to that, she put herself on fire on 27th January, 1995. The statement of Kusum is at Exhibit – 32.

[5] After recording her statement, PW No.4 Gangadhar Rane rushed to the Police Station. Since the incident had taken place within the jurisdiction of Yawal Police Station, he registered the Crime under 'zero' number for the offences punishable under Section 498(A) read with 34 of the Indian Penal Code. Then under forwarding letter Exhibit – 33 he sent the said statement of injured to Yawal Police Station.

[6] After receipt of statement of injured from Jilha Peth Police Station, Jalgaon, to Yawal Police Station, CR No.13/1994 was registered for the offence punishable under Section 498(A) read with 34 of the Indian Penal Code.

[7] A.S.I. Shri. Pawar took investigation. The investigation was thereafter taken up by PW No.5 - Pandharinath Narayan Pachpute, Police Inspector. He visited the spot of occurrence and recorded the statement of witnesses. He also recorded the statement of witnesses who are neighbours. He also recorded the statement of parents and brother of Kusum. On 1st February, 1995 the accused were arrested and on 4th February, 1995 he received the message that Kusum has expired. Therefore, he deputed one Police Constable for obtaining the papers like inquest panchnama, post-mortem report and other papers from Jilha Peth Police Station, Jalgaon. He then added Section 306 of the Indian Penal Code and also recorded the supplementary statements of the

witnesses. After completion of usual investigation, he submitted the charge-sheet in the court of law.

[8] The learned Magistrate committed the case to the Court of Sessions, since offence punishable under Section 306 of the Indian Penal Code is exclusively triable by the Court of Sessions.

[9] As observed in the foregoing paragraph, Charge was framed against the appellant and other accused persons on 30th October, 1999. They abjured their guilt and claim for their trial.

In order to bring home their guilt, the prosecution has examined in all eight witnesses. Three witnesses were also examined as Court witnesses during the trial. The documents were relied upon such as post-mortem report, dying declaration Exhibit – 32 etc.

[10] On appreciation of the prosecution case, as observed in opening paragraph of the judgment, it is only the appellant was convicted by the learned trial court.

[11] None present for the Appellant. I have heard Mr. A.S. Shinde, learned Additional Public Prosecutor for the Respondent - State. With his able assistance, I have gone through the notes of evidence, all proved documents and entire Record & Proceedings.

[12] According to the prosecution, deceased – Kusum was required to cut short her life due to the ill-treatment was meted out to her.

To prove its case, the prosecution has examined PW No.1 – Kamal Motiram Kolhe, PW No.2 – Nirmalabai Bhanudas Badgujar and PW No.3 –

Shobhabai Hiranman Patil. These three ladies are resident of village Savakheda, Taluka – Yawal i.e. matrimonial house of deceased Kusum. These witnesses are neighbours of deceased Kusum. None out of these three independent witnesses, supported the prosecution in respect of ill treatment alleged to have been caused to Kusum by the appellant and his family members. They were declared hostile. Thus, there is no support to the prosecution case from the independent witness to prove the ill treatment caused to Kusum.

[13] Exhibit – 23 is inquest panchnama. Panchas found burn injuries on her dead body. Exhibit – 25 is post-mortem report. It shows 95% burn injuries. Medical Officer, who performed the post-mortem gave probable cause of death as “shock due to septicemia due to 95% burn.”

Thus, it is clear that Kusum died due to unnatural death. It is not case of the prosecution that the appellant has set ablaze deceased – Kusum; rather as per the prosecution case, in view of Exhibit – 32 dying declaration of Kusum, she has committed suicide.

In that view the matter, the court is required to ascertain as to whether Kusum was pushed to such extent by the appellant by committing ill treatment to her.

[14] Gangadhar Rane (PW No.4) was directed by his superior officer to go to the Civil Hospital and to record the statement of Kusum. According to his evidence, he had been to the Civil Hospital, where he met to Dr. Madhukar Kolhe (PW No.8). He asked to Medical Officer – Dr. Madhukar Kolhe as to whether Kusum is in a condition to give her statement. Evidence PW No.4 Gangadhar deposed that, upon getting the nod from Dr. Kolhe (PW No.8) he recorded the statement of Kusum. His evidence is totally silent that prior to recording of statement of Kusum, he obtained endorsement from Dr. Kolhe (PW

No.8) to the effect that patient is in a fit condition to give her statement. On the contrary, following is appearing in the examination-in-chief itself of PW No.4 – Gangadhar :-

“ I also put my signature on the same and obtained the endorsement of the Medical Officer after completion of the statement.”

[15] Further Dr. Kolhe (PW No.8) was candid in admitting the following :-

“ There was only one paper with the police on which I put my endorsement. The police officer had not asked me to put the endorsement in writing about condition, before recording her statement.”

[16] Exhibit – 32 dying declaration of Kusum is also not having endorsement from the Doctor at the beginning that patient is fit to give her statement. Thus, it is clear that there is no corroborative piece of evidence in the nature of contemporary document to show that prior to recording of statement of Kusum, Dr. Kolhe (PW No.8) had examined Kusum and found her to be fit to give her statement, except his claim in his evidence that he examined Kusum and found her fit to give the statement.

[17] While scrutinizing the original record, the vernacular version of PW No.4 Gangadhar, the scribe shows that, claim of Dr. Kolhe (PW No.8) that police officer has not asked him to put endorsement in writing about her condition before recording her statement is seriously contradicted. The relevant vernacular portion from the evidence of scribe reads as under :-

“ डॉक्टरांनी जबाब घेण्यापूर्वी लेखी शेरा मागुन देखील दिला नाही.”

Upon Perusal of Exhibit – 32, it appears that it does not mention the time in respect of commencement of recording the statement and the time when

the writing was over. Further the Doctor has also not put the time when he gave the endorsement. In view of the above, the court should not readily accept the statement Exhibit – 32.

[18] Worth to note, the medical papers of Kusum is on record. Those are at Exhibit – 60. On 27th January, 1995 at 8/45 a.m. there is noting :-

“ Patient is irritable. Pulse not palpable. B.P. not recordable.”

Dr. Kolhe (PW No.8), who has proved Exhibit – 60. In his evidence before the court has stated as under :-

“Patient was irritable meant restless, pulse not palpable, Blood pressure not recordable. The skin was cold. These symptoms indicate that her condition was serious.”

In view of the aforesaid noting as found on Exhibit - 60 and in the light of the evidence of Dr. Kolhe (PW No.8) who at the relevant time, attended Kusum clearly show that condition of Kusum was serious. In that backdrop, non mentioning of the endorsement at the beginning of Exhibit – 32 by Dr. Kolhe (PW No.8) that patient was fit and was able to give her statement, creates serious doubt about authenticity and genuineness of the said document itself. Resultantly, said document i.e. Exhibit – 32 cannot be used against the present appellant.

[19] While going through the record and notes of evidence, it has also come to my notice that after eight days of her admission, Kusum died. Dying declaration was recorded on 27th January, 1995.

[20] PW No.5 Pandharinath Pachpute, Investigating Officer took the investigation on 28th January, 1995. In spite of this, till the death of Kusum, he never visited the Civil Hospital to take any further statement of Kusum nor any steps were taken up by him for recording the statement of Kusum by Executive Magistrate. In fact, he has admitted aforesaid fact in his evidence.

[21] PW No.6 Deoram Suka Kumbhar and PW No.7 Madhukar Deoram Kumbhar are the father and brother, respectively of deceased Kusum. According to PW No.6 Deoram after the marriage, Kusum used to visit to her parental house occasionally. However, during those visits, she used to make complaints of beating, against her husband, mother-in-law and sister-in-law. His evidence further discloses that about one month prior to her death, Kusum was brought to his home by his son and that time also she reiterated the same complaint.

[22] Evidence of PW No.6 Deoram does not disclose any specific allegation against present appellant. Allegations were general against the husband as well as other accused persons, who are already acquitted by the learned trial court. Not only that, his evidence would disclose that Kusum returned to her matrimonial house with her father-in-law.

If really, Kusum was subjected to cruelty by her parents-in-law, on account of dowry, her father-in-law would not have visited the house of PW No.6 Deoram to take Kusum; nor Kusum could readily agree to leave her parental house.

[23] According to me, PW No.6 Deoram is not witness to the truth for the following :-

On 1st June, 2000 examination-in-chief of PW No.6 Deoram was commenced. On the said date, from the witness-box he has deposed as below. Vernacular portion of his examination-in-chief dated 1st June, 2000 reads as under :-

“आम्ही सर्व जळगांव येथील दवाखान्यात आलो होतो. ती ६ दिवस जिवंत होती. दवाखान्यात आम्ही तिचे जवळच राहीलो. ती बोलू शकत होती. ती कशी जळाली याविषयी तिने आम्हाला काही सांगितले नाही.”

On 1st June, 2000 after recording the above evidence; since the court time was over, examination-in-chief of PW No.6 Deoram was deferred. Then his examination-in chief was commenced on 22nd June, 2000 i.e. after a period of 21 days. After 21 days, PW No.6 Deoram has stated as under :-

“While in the hospital Kusum told me that her husband was demanding Rs.20,000/-, her in-laws were and husband's brother were ill-treating her. Her husband had beaten her with a pipe. She had, therefore, put herself on fire by pouring kerosene on her person. Kusum succumbed to the burns on 4/2/95 in the hospital. We held her last rites at Jalgaon.”

Thus, it is clear that version of PW No.6 Deoram made before the court on 22nd June, 2000, is after thought. That shows that he has no respect to his own statement, which he has made on 1st June, 2000. In that view of the matter, it is unsafe to accept the testimony of this witness.

[24] Further in the cross-examination, PW No.6 Deoram states that, Kusum never had talk with him in the hospital. His son had told him about the above allegations in the hospital and his son told him about the allegations made by him in the examination in chief and he narrated the same as was learn by his

son. In view of the above, according to me, this witness cannot be believed and his statement has to be discarded.

[25] Madhukar Kumbhar PW No.7, who is brother of deceased also claims that oral dying declaration was made to him by Kusum about the demand of Rs.20,000/- and her beating on earlier date by her husband and for that she has committed suicide.

[26] All the claims made from the witness-box in respect of previous visit of Kusum to her parental house, demand of Rs.20,000/-, putting the deceased on starvation, are the omission and were made for the first time, in the court. This is the only evidence about the ill-treatment.

[27] Once the dying declaration is discarded, looking to the quality of the evidence of father and brother of deceased, it will be hazardous to reach to the conclusion that the appellant was responsible for the ill treatment to deceased and she was abetted by the appellant to commit the suicide. Resultantly, I pass the following order :-

ORDER

(i) Criminal Appeal is allowed.

(ii) The Judgment and Order dated 2nd November, 2000 passed by the learned IInd Additional Sessions Judge, Jalgaon, District – Jalgaon in Sessions Case No.304 Of 1995; whereby convicting the appellant-accused - Hari Shenfadu Savande for the offences punishable under Section/s 498(A), 306 of the Indian Penal Code is hereby quashed and set aside.

(iii) His bail bonds shall stands cancelled.

(iv) Fine amount paid by the appellant-accused, if any, be refunded to him.

Criminal Appeal allowed.

(V.M. DESHPANDE, J.)