

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.88 OF 2001

Vijay s/o. Vithalrao Chavan,
Age 38 years, occ. Service,
r/o. Loha, Tq. Loha,
Dist. Nanded ..Appellant

Versus

The State of Maharashtra,
through Police Station Loha,
Tq. Loha, Dist. Nanded ..Respondent

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Mr.M.V.Deshpande, advocate for appellant

Mr.R.P.Phatake, APP for respondent - State

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : JULY 27, 2015
JUDGMENT PRONOUNCED ON : AUGUST 06, 2015

JUDGMENT :

Heard both sides.

2] Learned Sessions Judge, Nanded, has convicted
present appellant in Sessions Case No.124 of 1998
for the offence punishable under Section 498-A of

Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months. Hence, the appeal.

. Learned Sessions Judge acquitted the appellant of the offences punishable under Section 304-B and 306 of Indian Penal Code.

3] The case of prosecution, in short, is as under:-

. The appellant had married to Smt. Shobha 15 years prior to her death in unnatural circumstances on 5th December, 1997. Thereupon, her father PW 2 – Govind More filed a complaint with the police. It was alleged that after the initial one and half years of happy married life, the appellant was addicted to vice of liquor. He started making demands of money to deceased Shobha

for bringing same from her parents. Over said demand, he always used to illtreat her.

. The case of prosecution would show that at the time of first delivery of child by the deceased, the appellant made demand of Rs.10,000/- and three Tolas of gold. At the time of birth of first child, Shobha was in the house of her parents. At that time, anyhow, the complainant gave an amount of Rs.5,000/- and three Tolas gold to the appellant, when he sent deceased Shobha to the house of the appellant after deliver of the first child. The appellant, however, continued to illtreat her. He always used to send her back to her parental home by beating her. Thereafter, the deceased gave birth to two daughters in the intervening period. Lastly, for the festival of Diwali in 1997, the deceased had visited house of her parents. At that time also, she narrated her parents that the appellant was making demand of

Rs.25,000/- for purchase of new Hero Honda Motorcycle. Even, when the appellant visited the house of the complainant after Diwali festival, at that time, he made demand of either cash or in lieu of cash, a Hero Honda Motorcycle. He also threatened that in case his demand is not met, he would not allow deceased Shobha to return to her parents' home earlier. Thereafter, he left the house of the complainant. Immediately thereafter, brother of deceased reached to the house of the appellant. In the presence of brother himself, the appellant beat the deceased by kicks and fists and just within a week thereafter, Shobha died due to consumption of unknown poison. On the basis of this, the complaint came to be registered.

4] During post mortem examination, the Medical Officer was unable to come to any conclusion regarding cause of death of Shobha. The preserved viscera was, therefore, sent to the Chemical

Analyst. The Chemical Analyst also did not find any poisonous substance.

5] Before learned Sessions Judge, in all, ten witnesses were examined. Out of them, PW 2 – Govind More is father of the deceased. PW 3 – Sulochanabai is mother of deceased. PW 5 – Kalyan is brother and PW 8 – Pandit More is uncle of the deceased. PW 4 – Dadaram Tonge is a villager from the village of the complainant. According to the prosecution, PW 4 – Dadaram has witnessed the incident of making demand of money by the appellant during his visit at the house of the father of deceased during Diwali festival. Rest of the witnesses are the panch witnesses, Medical Officer and Investigating Officer.

6] Learned Sessions Judge found that death of the deceased in unnatural circumstances, is not proved. He, however, came to the conclusion that

the deposition of relative of the deceased i.e. PW 4 – Dadarao has proved, beyond the reasonable doubt, that the appellant used to treat the deceased with cruelty for unlawful demand and therefore, conviction and sentence, as detailed supra, came to be recorded.

7] Mr.Deshpande, learned counsel for the appellant, submitted that the admitted facts on record would show that the appellant's father was Principal in a college during the relevant period. The appellant himself was working as Extension Officer under the Zilla Parishad. They had their own house and two two-wheelers. The delivery of son of the deceased had taken place at the place of posting of the appellant at Nanded. This would belie the case of prosecution that at the time of delivery of the first child, the deceased was taken to her parental home and at that time, any demand was made. He further submitted that learned

Sessions Judge observed that the relatives of the deceased are rustic and illiterate villagers and therefore, though there was vast improvement made by each of them and though PW 2 – Govind, father of the deceased, was proved to be not a direct witness of any of the facts and even he has disowned the FIR at Exhibit 21, learned Sessions Judge has given benefit to the prosecution. In the circumstances, learned counsel for the appellant submitted that the appeal may be allowed.

8] On the other hand, learned A.P.P. submitted that not only the relatives of the deceased, but PW 5 – Kalyan More, an independent villager, had categorically deposed about the illtreatment at the hands of the appellant to the deceased. He further submitted that learned Sessions Judge has rightly appreciated the evidence on the line of the fact that the witnesses are rustic and therefore, appreciated the evidence on record in

correct perspectives. He, therefore, submitted that the appeal may be dismissed.

9] On the basis of this material, following point arises for my determination :-

" Whether the prosecution has proved that deceased Shobha was subjected to cruelty on account of failure to meet the unlawful demand made by present appellant during cohabitation of the deceased with him ?

. My findings to the above point, is in the negative and the appeal is, therefore, allowed for the reasons to follow.

R E A S O N S

10] PW 2 - Govind, father of the deceased, according to learned Sessions Judge, is a rustic and illiterate person. Since learned Sessions

Judge had an occasion to note the demeanor of the said witness, there is no need to deviate from the said reasons. It should, however, be noted that as per the said witness himself, he neither had witnessed any of the incident nor heard about any complaint of illtreatment from the mouth of the deceased, but it was heard by him from the mouth of mother of the deceased. All his statements, therefore, were inadmissible as the same were based on indirect evidence. He even deposed that the FIR at Exhibit 21 was not filed by him though it bears his thumb impression. He disowned the contents of the same. In this state of affair, learned Sessions Judge ought to have taken into consideration that not only prompt filing of the FIR is required, to show the genuineness in the statements made therein, but also the author of the said FIR is required to be ascertained and if any lacuna is there, the benefit ought to have gone to the appellant/accused.

11] PW 1 – Govind shown ignorance regarding the post of father of the appellant. His wife PW 2 – Sulochanabai has, however, deposed that the father of the appellant was Principal in the collage at Loha during the relevant period and she further admitted that the appellant has his own house at Loha. The evidence would further show that the delivery of the first child had taken place at Nanded i.e. place of posting of the appellant, and therefore, the allegations, as per the prosecution case, that the deceased was taken to her parental home for delivery of the first child and at that time, demands of Rs.10,000/- and gold ornaments, were made, would be doubtful.

12] As regards another demand of the appellant of Rs.25,000/- for purchase of a Hero Honda Motorcycle, the admissions from the witnesses would reveal that the parents of the deceased were poor while, economic condition of the appellant

was as detailed supra i.e. his father was Principal in a college and the appellant was working as Extension Officer under Zilla Parishad and they were having own house and two two-wheelers. The tone and tenor of the evidence, however, would show that present appellant was habituated to liquor and it had spoiled his marital life and ultimately, the deceased died in suspicious circumstances.

13] PW 4 – Dadarao is held as an independent witness by learned Sessions Judge. It was argued that he was a chance witness and was from a small village that of parental relatives of the deceased. PW 2 – Govind, father of deceased, however, has shown ignorance about visit of the appellant to his house during said Diwali festival and that, at that time, he had made demand of Rs.25,000/- or a motorcycle. Learned Sessions Judge did not consider this admission by

explaining that as PW 2 – Govind has deposed that he used to be in his field throughout the day and his wife used to manage the family affairs, he was not aware about visit of the appellant at their house for Diwal festival. It would be strange to say that the father-in-law had no knowledge about visit of his son-in-law at his house during Diwali festival. Not only this, the statement of PW 3 – Sulochana, mother of deceased, that the appellant had visited their house during Diwali festival and made demand, is an improvement over her statement recorded by the police. Learned Session Judge has remarked that this omission has not made any effect on the prosecution case.

14] The statement of PW 4 – Dadarao, a villager, that when, by chance, he went to visit the brother of father of the deceased, he found that the appellant was making demand of money and beat his own wife, ought not have been believed by learned

Sessions Judge, for the above reasons.

15] PW 5 - Kalyan, brother of deceased deposed that the appellant used to spend his money on vice of liquor and was in need of money and therefore, he used to beat the deceased under influence of liquor and used to make demand for money. The facts on record, however, would show that the delivery of children took place at the posting place of the appellant. The deposition of Kalyan that earlier a demand of Rs.10,000/- was made, is absent in his earlier statement recorded by the police. Further, it is also found that the allegations that the deceased used to narrate him about the illtreatment at the hands of the appellant, are also missing from the said statement made to the police.

16] PW 8 - Pandit More, uncle of the deceased, is examined only on the issue that the appellant had,

once, promised that he would discontinue his habit of drinking liquor and accordingly, a Karar Chitti Exhibit 31 was executed by him. Not only this Karar Chitti was exhibited on record suddenly during the trial by the said witness, but even his evidence is only limited to said Chit.

17] Considering the material on record, the finding of learned Sessions Judge that, as the prosecution witnesses are illiterate and rustic, the above lacuna should be overlooked, cannot be accepted.

18] A reasonable doubt has, therefore, arisen in the present case benefit of which, must go to the appellant.

19] In the circumstances, the following order :-

A] The appeal is allowed.

B] The judgment and order of learned Sessions Judge, Nanded in Sessions Case No.124 of 1998 convicting and sentencing the appellant for the offence punishable under Section 498-A of Indian Penal Code, is hereby set aside.

C] Instead, the appellant is acquitted of the offence punishable under Section 498-A of Indian Penal Code.

D] Bail bonds of the appellant shall stand cancelled.

E] Muddemal property be disposed of as per the directions issued by learned Sessions Judge in the impugned judgment.

[M.T. JOSHI, J.]