

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 204 OF 2001

Sunil s/o Sampat Nade,
Age : 30 years, Occu. Labour,
R/o Misarwadi, CIDCO,
Aurangabad

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. P.C. Mayure, Advocate for appellant
Mr. V.P. Kadam, A.P.P. for respondent-State

[CORAM : M.T. JOSHI, J.]

[RESERVED ON : 5th AUGUST, 2015]
[PRONOUNCED ON : 17th AUGUST, 2015]

JUDGEMENT :

1. Aggrieved by the recording of conviction for the offences punishable under section 498A and 306 of the I.P. Code and consequential sentences to suffer rigorous imprisonment for one year and three years, respectively, with further direction to pay fine, by the learned IIIrd Additional Sessions Judge, Aurangabad, vide judgement and order dated 22nd March, 2001 passed in Sessions Case No. 136/1997, the present appeal is

preferred by the original accused No. 2 i.e. husband of the deceased.

. The rest of the accused i.e. the relatives of the present appellant were acquitted by the learned Sessions Judge.

2. The prosecution case, in short, is as under :-

. That, the present appellant was married to deceased Ashabai about six years previous to her death due to drowning on 14th June, 1996, while residing with the present appellant.

. The complaint in the case at Exhibit-14 was filed by the father of the deceased i.e. PW1 Namdeo. He had claimed in the complaint that after about six months of the happy married life, the present appellant and his relatives started illtreating the deceased in the joint family. The maternal uncle of the deceased was comparatively rich. Therefore, all the family members used to ask the deceased to bring an amount of Rs. 25,000/- to Rs. 30,000/- from him, for the purposes of getting employment for the present appellant. Over the said unlawful demand, they used to abuse and starve the deceased. They used to drive away her from the

matrimonial home. As and when the deceased used to visit her parents, she used to narrate the said illtreatment to them.

. In the situation, as the illtreatment was aggravated, the deceased had given message about one and half month prior to her death to her father and called him at her matrimonial home at Missarwadi in Harsul area of Aurangabad. At that time, the father of the deceased visited her matrimonial home. He tried to give understanding to all the family members, including the present appellant. However, all of them were adamant. They threatened that if the deceased would not be taken back to parental home, she would be set on fire. In his presence itself, the mother-in-law and brother-in-law assaulted the deceased. The father, therefore, thought of filing complaint with the police. However, ultimately, he did not file any complaint at that time. Later about a fortnight of her death, the deceased had returned to her parental home at Chikalthana, Taluka Kannad District Aurangabad with her son. At that time, she resided for a period of about one week. At that time, the deceased was carrying for six to seven months. At that time also, she had told the parents that the

appellant as well as his relatives continued to illtreat her by making the demand of an amount of Rs. 25,00/- to Rs. 30,000/- from her maternal uncle and therefore, had driven her away from the matrimonial home. The father, however, anyhow prevailed over his daughter and sent her back to her matrimonial home at Missarwadi. On the very same day, the appellant visited the father's house and made enquiry regarding the deceased. Her father told the appellant that the deceased had returned in the same morning to the house of the appellant. The appellant stayed at the house of the father of the deceased for two days and thereafter, he returned to his home.

. In the situation, on 14th June, 1996, the father received the information that his daughter Ashabai had died due to drowning in a well at Missarwadi. Upon his visiting the Government Hospital and finding the deadbody of the deceased there-at, the complaint came to be filed on the same day with the Police Station, CIDCO, Aurangabad.

3. Prior to the filing of the said complaint, on the same day, the present appellant had filed accidental death report (Exhibit-21) with the same police station

at 3 p.m. By the said report, he communicated that on the day of the incident, at about 10 a.m. in the morning, he instructed deceased Ashabai to spray fertilizer in one field while he would go for cultivation of another field. That time, however, the deceased told him that she would not go for the work. Therefore, verbal quarrel took place between them. The appellant thereafter went for cultivation of the another field. He had seen that the deceased was proceeding from the house with a jug in her hand. He, therefore, thought that she was going for latrine. However, since for a considerable period she did not return, he proceeded towards the direction of the well in the nearby field. In the said well, he found the deadbody and the saree of the deceased. He, therefore, opined that the deceased might have committed suicide and hence, the accidental death report was filed.

4. PW7 PSI Dattatraya Kotwal had conducted the investigation in accidental death case as well as in the crime registered on the basis of the FIR filed by the father of the deceased. He had prepared the panchanama of spot of occurrence and the inquest panchanama. The

deadbody was sent to the Government Hospital. The statements of relevant witnesses were recorded. The viscera preserved by the Medical Officer was sent for chemical analysis. The appellant as well as other accused were arrested. The post-mortem notes were collected. He ultimately filed the chargesheet in the court.

5. Before the learned Sessions Judge, in all seven witnesses were examined. PW1 Namdeo is the father of the deceased and the complainant. PW2 Sumitrabai is his wife i.e. mother of the deceased. PW3 Suryabhan is his brother-in-law i.e. husband of the sister of his wife. The rest of the witnesses are panch witnesses, the Medical Officer, the Assistant Sub Inspector of Police who recorded the accidental death report at Exhibit-21 on the narration of the appellant and the Investigating Officer.

6. The defence of all the accused, including the present appellant, as can be seen from the cross-examination as well their statements recorded under section 313 of the Code of Criminal Procedure, is that in fact, the deceased was born and brought up at Bombay

by her maternal uncle Vasant Jagdhane who was P.S.I. thereat. She, therefore, did not like to work in the agricultural field. She was frustrated due to the fact that the appellant was merely agriculturist. Further, she was hottempered and hence, she had suddenly committed suicide by jumping in the well. In the circumstances, the appellant as well as his family members claimed acquittal.

7. The learned Sessions Judge, however, found the depositions of the relatives of the deceased as convincing. He found that the defence is not probabalized in any manner. It was, however, found that the presumption available under section 113 (A) of the Indian Evidence Act can be attracted only as regards the husband, relying on the ratio laid down in the case of **"Shankar Mangelal Lokhande Vs. State of Maharashtra"**, reported in **2000 (1) B. Cr. C. 375**, and therefore, while rest of the family members of the appellant were acquitted, the present appellant was convicted and sentenced, as detailed supra.

8. Mr. P.C. Mayure, learned counsel for the appellant, made the following submissions before me :-

(i) That, the examination-in-chief of father of the deceased i.e. PW1 Namdeo would show that there are no allegations of illtreatment against the present appellant. His positive evidence would show that when about one and half month prior to the death of the deceased, he had visited the house of the deceased, at that time, another accused i.e. accused No. 4 Suresh and accused No. 5 Kalabai had assaulted the deceased. Further, his cross examination would show that upon hearing the dispute, he did not call anybody for the purpose of settlement. Further, he has admitted in cross-examination that when the present appellant stayed at his house when he had come for looking for the deceased, at that time, the appellant's stay was very happy and thereafter, just within three days, the incident of suicide has occurred.

(ii) Mr. Mayure further submitted that though it was the prosecution case that one Suresh Waghule had given the message about one and half month prior to the death of the deceased, said Suresh Waghule is not examined. The prosecution witnesses have admitted that the present

appellant's family owns six acres of land at Harsul i.e. nearby the city of Aurangabad. On the other hand, the parents of the deceased are admittedly very poor.

(iii) Learned counsel further submitted that PW3 Suryabhan Waghule had, for the first time in the court, disclosed about the alleged illtreatment to the deceased. The conduct of the appellant in filing the accidental death report would itself show his innocence.

. In the circumstances, Mr. Mayure submitted that the learned Sessions Judge ought to have extended benefit of doubt to the present appellant. He, therefore, prayed that the appellant be acquitted.

9. On the other hand, Mr. V.P. Kadam, learned A.P.P. submits that the testimony of the relatives of the deceased is trustworthy. All the suggestions regarding the allegations that the deceased was residing at Bombay with her maternal uncle and therefore, she did not like the family of the appellant or the agricultural work, are denied by the prosecution witnesses. There is nothing on record to show that the deceased on her own did not want to reside with the appellant. In the circumstances, learned A.P.P. submitted that the appeal

be dismissed.

10. On the basis of above material on record and the submissions advanced on behalf of both the sides, the following points arise for my determination :-

- (I) Whether the prosecution has proved that for a period of six months, till the death of the deceased, the present appellant has subjected the deceased to cruelty at his house at Misarwadi ?
- (II) Whether the prosecution has proved that the deceased has met with suicidal death ?
- (III) Whether the prosecution has proved that the present appellant, by subjecting the deceased to cruelty, has abetted the commission of the suicide of the deceased ?

My findings to all the above three points are in the affirmative. The appeal is, therefore, dismissed for the reasons to follow :-

R E A S O N S

11. It is an admitted fact that the maternal uncle of the deceased, namely, Vasant Jagdhane was working as Police Sub Inspector at Mumbai, during the relevant time. The prosecution case, as has come from the mouth of all the three relatives of the deceased, is that the present appellant always wanted that said Vasant Jagdhane should pay an amount of Rs. 25,000/- to Rs. 30,000/- to the appellant so that he can secure job for himself. It is no doubt true that the appellant and his family members own six acres of land at Misarwadi, near Harsual. It is, however, admittedly, a joint family property consisting of father and another brother of the appellant. Therefore, mere fact that the appellant's family is having six acres of land would not belie the prosecution case.

12. The appellant suggested to the prosecution witnesses that the deceased was born and brought up at Bombay by her maternal uncle and therefore, she was frustrated for having made to cohabit with an agriculturist. All the prosecution witnesses, however,

denied the suggestion and it was proved that the deceased was even illiterate. In that view of the matter, there is nothing on record to suggest that the deceased was born or brought up at Bombay and was residing at Bombay with his uncle, who was then working as P.S.I. thereat.

13. The statement of PW1 Namdeo would show that all the accused used to illtreat her. When about a week prior to the death of the deceased, the present appellant had visited his house to look for the deceased, at that time, his stay was happy. The statement of the father in this regard, however, would show that he had looked after the appellant being his son-in-law during the said stay and the appellant stayed happily for two days. If the custom of treating the son-in-law as a VIP in the rural folk is considered, there is nothing uncommon if the appellant remained happily due to the good treatment given to him at that time. It would not indicate that there was no illtreatment at all to the deceased at his house.

14. PW3 Suryabhan Waghule had admitted in cross-examination that at the time of recording his statement

by the police, he did not specifically state that after one month of the earlier incident, the appellant had come. Only this time-period is absent. This witness, however, is resident of Harsul wehreunder Misarwadi, the village of the present appellant, is situated. His evidence would show that when about one month prior to the death of the deceased, the present appellant had visited village Harsul to meet his grandfather, who was residing in the neighbourhood of the witness, at that time, the witness gave understanding to the appellant regarding the illtreatment. The fact that the grandfather of the appellant resided in his neighbourhood at Harsul is not any way challenged in the cross-examination. On the other hand, it was suggested that besides the grandfather, there are many relatives of the appellant residing at the said village Harsul and the witness is also the common relative of PW1 Namdeo as well as the appellant.

15. Mr. P.C. Mayure, learned counsel for the appellant, relied on the following authorities :-

- (a) ***Bhagwan Das Vs. Kartar Singh and others***
AIR 2007 S.C. 2045
- (b) ***Rajababu and another Vs. State of M.P.***
2008 ALL MR (Cri) 2894 (S.C.)
- (c) ***Gangula Mohan Reddy Vs. State of A.P.***
2010 ALL MR (Cri) 615 (S.C.)
- (d) ***Anand Kumar Vs. State of M.P.***
AIR 2009 S.C. 2155
- (e) ***Unreported judgement of this High Court***
dt. 20.09.2010, passed in Criminal Appeal
No. 265/2008
- (f) ***State of Maharashtra Vs. Tukaram Nivrati***
Mane and another
2004 ALL MR (Cri.) 1220
- (g) ***Ravindra Pyarelal Bidlan and others Vs.***
The State of Maharashtra
1993 CRI.L.J. 3019
- (h) ***Ganesh Y. Bhutekar Vs. State of Maharashtra***
2005 CRI.L.J. 1221
- (i) ***Cyriac s/o Devassai and another Vs.***
Sub-Inspector of Police, Kaduthuruthy & Anr.
2006 ALL MR (Cri) Journal 27
- (j) ***Sitabai @ Sevantabai Honaji Wanje and another***
Vs. State of Maharashtra
2008 (1) Bom.C.R. (Cri.) 953
- (k) ***Sanju alias Sanjay Singh Sengar Vs.***
State of M.P.
AIR 2002 S.C. 1998

16. There is no dispute regarding the principles enunciated in the authorities, cited supra. However, the

same are not applicable in the facts and circumstances of the present case. In that view of the matter, the reasoning forwarded by the learned Sessions Judge, who had an occasion to note the demeanor of the witnesses, needs no interference.

17. In the result, the appeal is dismissed. The bail bonds of the present appellant shall stand cancelled. The learned Sessions Judge to take steps for securing presence of the appellant for serving the sentence awarded to him.

Sd/-
[M.T. JOSHI]
JUDGE

npj/criapl204-2001