

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.326 OF 2001

- 1] Bharat Gangaram Desle (Patil),
Age 27 years, occ. Labourer,
- 2] Gangaram Chindha Desle,
Age 62 years, Occ. Agri./Labourer,
- 3] Sow. Kamalabai Gangaram Desle,
Age 57 years, occ. Labourer,

All resident of village Wadjai,
Tq. and Dist. Dhule

..Appellants

Versus

The State of Maharashtra

..Respondent

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Mr.Vinesh Solshe, advocate i/b. Mr.Mahesh Patil,
advocate for appellants

Mr.S.R.Palnitkar, APP for respondent – State

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CORAM : M.T. JOSHI, J.

DATE : AUGUST 12, 2015

ORAL JUDGMENT :

Heard both sides.

- 2] The appellants/accused, who are convicted and
sentenced by learned Addl. Sessions Judge, Dhule

in Sessions Case No.124 of 1999 for the offence punishable under Section 498-A read with 34 of Indian Penal Code, have preferred present appeal.

. Appellant no.1 was directed to suffer rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months. Appellant nos.2 and 3 were directed to suffer rigorous imprisonment for three months and to pay a fine of Rs.2,000/- each, in default, to suffer rigorous imprisonment for 15 days.

3] Appellant no.1 – Bharat is husband; appellant no.2 – Gangaram is father-in-law; while, appellant no.3 – Kamalabai is mother-in-law of deceased – Sunita. Original accused no.2 – Sharad i.e. brother-in-law of deceased, was acquitted by learned Addl. Sessions Judge for all the offences.

4] The complaint was filed by the father of deceased namely, Bhimrao Patil. Marriage between appellant no.1 and deceased had taken place two and half years prior to her death on 27th September, 1999. According to the FIR, the father of deceased had given an amount of Rs.21,000/- as dowry to the appellants/accused. For initial period of cohabitation, the deceased was treated nicely, however, thereafter, when the deceased returned to her parental home for a festival, she informed that all the appellants/accused used to demand ring, cupboard, mattresses and cot. However, the father of the deceased was unable to provide the same due to his poor financial position. It is alleged that in the alternative of those articles, the accused demanded money and since the demand was not fulfilled, they subjected the deceased to cruelty. In the circumstances, the deceased died due to poisoning and therefore,

the complaint was filed on the basis of which, the crime came to be registered.

5] The Investigating Officer conducted investigation, drawn panchnama of the spot of occurrence, inquest panchnama and seized clothes of the deceased. The post mortem notes were collected from the Medical Officer. Viscera was sent to the Chemical Analyst. Upon receipt of the C.A. report, the Medical Officer gave final report. Statements of necessary witnesses were recorded and thereafter, charge sheet came to be filed.

6] Defence of the accused including that of appellants was of total denial. It was claimed by them that death of the deceased was accidental and there was no illtreatment to her.

7] Before learned Addl. Sessions Judge, in all, nine witnesses were examined. PW 3 – Bhimrao is father of the deceased. PW 4 – Dinkar is the mediator in the marriage.

8] Learned Addl. Sessions Judge, upon appreciation of the entire evidence, basically relied over the report at Exhibit 28, which was filed by the deceased during her cohabitation with present appellant on 5th September, 1999. Said report would show that there was no demand of any dowry or valuables. According to the deceased, all the appellants used to illtreat her as she was not ready to go for any labour work. Accordingly, appellant no.1 – Bharat, husband, used to beat her on that count. As and when the deceased used to make complaint of this illtreatment to her maternal uncle, who was residing in the same village, the appellants used to threaten the

deceased that in case, she would make any complaint, they would kill her.

. In view of this statement, learned Addl. Sessions Judge found that the case of unlawful demand is not proved. Further, since the prosecution failed to prove the case of murder so also, abetment to commit suicide, the conviction and sentence for the offence punishable under Section 498-A of Indian Penal Code came to be recorded against the appellants/accused.

9] Mr.Solshe, learned counsel for the appellants, submits that the evidence on record would clearly show that there was no demand of any valuables. Even PW 5 – Kailas Patil, neighbor of present appellants, examined by the prosecution, would show that there was no demand of any valuables. The evidence would further show that the appellants are menial labours. Even at the

insistence of the deceased, the deceased and the appellant no.1 – husband, had started residing separately. Even, in order to pacify her she was once kept at her parents' house. If, on some occasions, the appellants had pressed the deceased to join them for doing menial work for earning wages, the same cannot be termed as cruelty.

10] On the other hand, learned APP supports the prosecution case. He submits that the earlier complaint Exhibit 28, filed by the deceased itself, would prove that there was illtreatment to her.

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

Whether the prosecution has proved that the appellants, during cohabitation, subjected deceased – Sunita with cruelty in furtherance of their common intention?

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

R E A S O N S

12] The contents of the report at Exhibit 28 filed by the deceased during her lifetime, which are already adverted to, would show that there was insistence from the side of the appellants, that the deceased should also join them for labour work to earn livelihood.

. PW 3 - Bhimrao Patil, father of deceased, during cross-examination, has admitted that the appellants did not have any agricultural land. Appellant no.1 was serving with some yarn factory. Original accused no.1 (who has been already acquitted by learned Addl. Sessions Judge) was

working as a labour with some building contractor while, present appellant nos.2 and 3 i.e. father-in-law and mother-in-law of the deceased, were doing agricultural labour work.

13] Learned counsel for the appellants points towards the admissions of witnesses, that the appellant no.1 was residing separately with deceased – Sunita from the joint family for some period on the suggestion of deceased Sunita. Further, the evidence of the witnesses would show that once, appellant no.2 – Gangaram had dropped deceased Sunita at the house of her parents as the deceased was aggrieved and in order to calm her down, appellant no.2- Gangaram wanted that she should stay with her parents.

14] If all these admissions are taken into consideration, it cannot be said that the prosecution has proved, beyond the reasonable

doubt, that the appellants, in furtherance of their common intention, have subjected the deceased to cruelty to such an extent that any woman would have driven herself to commit suicide.

15] In that view of the matter, the appeal deserves to be allowed and the appellants deserve to be acquitted.

16] Hence, the following order :-

a] The appeal is allowed.

b] The impugned judgment and order dated 17th July, 2001 passed in Sessions Case No.124 of 1999 by learned Addl. Sessions Judge, Dhule, convicting and sentencing the appellants/accused for the offence punishable under Section 498-A of Indian Penal Code, is hereby set aside.

. Instead, the appellants are acquitted of the said offence.

c] Bail bonds of the appellants shall stand cancelled.

d] Fine amount, if already deposited, be refunded to them.

e] Muddemal property be disposed as per the order passed by learned Addl. Sessions Judge.

[M.T. JOSHI, J.]

kbp