

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.364 OF 2001

- 1] Bharat s/o. Kisan Karhale,
Age 21 years, Occ. Agri.,
r/o. Muddeshwadgaon, Tq.
Gangapur, Dist. Aurangabad
- 2] Gangubai w/o. Kisan Karhale,
Age 38 years, Occ. Agri.,
r/o. Muddeshwadgaon, Tq.
Gangapur, Dist. Aurangabad
- 3] Radhaji s/o. Deorao Karhale,
Age 55 years, Occ. Agri.,
r/o. Muddeshwadgaon, Tq.
Gangapur, Dist. Aurangabad

(Appeal abated as regards
appellant nos.2 and 3)

..Appellants

Versus

- 1] The State of Maharashtra
- 2] The Police Inspector,
Police Station Gangapur,
Tq. Gangapur, Dist. Aurangabad ..Respondents

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Mrs.P.V.Langhe, advocate for appellants

Mr.V.P.Kadam, APP for respondents - State

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CORAM : M.T. JOSHI, J.

DATE : SEPTEMBER 14, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the conviction of present appellant from the offences punishable under Section 498-A read with 34 of Indian Penal Code and consequential sentence of rigorous imprisonment for six months and to pay fine of Rs.500/- each, present appeal is preferred by the appellants/accused.

3] In fact, present appellants were also tried for the offences punishable under 306 and 406 read with 34 of Indian Penal Code. Learned Sessions Judge, however, has acquitted the appellants from those offences.

4] The prosecution case would reveal that deceased Jyoti, daughter of PW 1 – Dada, was married to present appellant no.1 – Bharat on 19th

April, 1999. She died on 4th June, 1999 i.e. within six weeks from the date of marriage and in the circumstances, FIR came to be filed on 5th June, 1999 by PW 1 – Dada.

. It was alleged in the FIR that after the marriage on 19th April, 1999, the deceased resided with her in-laws i.e. present appellant for four days. Thereafter, she was brought to her parental home for about 10 to 11 days and returned to the appellant's house. Within above four days of cohabitation, according to the deceased, present appellant no.1 used to give her trouble on the ground that different sweetmeat was prepared in the marriage i.e. instead of Bundi, Sheera was prepared.

. Thereafter, the complainant came to know from the maternal uncle of the deceased, that deceased came to reside at his house for two days at Shingi and she was ill at that time. In the

circumstances, the complainant went to visit the deceased at her matrimonial home at Muddeshwadgaon as she was ill. He brought her to his house despite objection from the appellants. On the way to home, it was found that the deceased had forgotten her purse and she again returned to her matrimonial home to collect the purse. At that time, appellant no.1 threatened her that if she would go away, she should not return back.

. After return to parental home, deceased used to complain about illicit relation between appellant nos.2 and 3 and that appellant no.2 – mother-in-law used to trouble her by saying that she should not eat particular food. Further the appellants used to starve her. In the circumstances, till 4th June, 1999, the deceased resided at her parental home at Tembhapuri.

. Thereafter, a message was given to the present appellants to come to Tembhapuri on next Saturday

to have lunch on the occasion of Dhonda festival. However, they did not come to his house. In the circumstances, the complainant gave a message through one of the relatives of the appellants, that they should not come for celebration of said festival as they used to give trouble to the deceased. Despite this, appellant nos.1 and 2 came to the house of the complainant. At that time, certain gifts were offered to them by the complainant. Appellant no.1, however, told that an amount of Rs.5,000/- and television set be presented to them. The complainant told the appellants about his poor financial condition and sent back deceased Jyoti with them on 4th June, 1999.

. In the circumstances, the message of death of deceased had reached the complainant. He therefore filed the complaint on 5th June, 1999 alleging therein that present appellants might have killed deceased by administering her certain poison. On

the basis of the complaint, the offence came to be registered.

5] During investigation, the post mortem examination notes were collected. The evidence of PW 3 – Dr. Aparna Deshpande coupled with notes of post mortem examination (Exhibit 14), would reveal that the cause of death could not be found and therefore, viscera was sent to the Chemical Analyser. The Chemical Analyser's report would show that tests of viscera did not reveal any poison. The post moretm also does not show that any internal organ was congested.

6] Before learned Sessions Judge, besides PW 1 – Dada – complainant, his wife PW 2 – Jijabai was examined to prove that the deceased Jyoti used to make complaints of illtreatment at the hands of the appellants. Learned Sessions Judge came to the conclusion that the deceased Jyoti has not met with a homicidal death much less suicide. He,

however, came to the conclusion that the present appellants subjected the deceased – Jyoti to cruelty and therefore, conviction, as detailed supra came to be recorded against the appellants.

7] During pendency of present appeal, appellant nos.2 and 3 have died. Therefore, present appeal has abated as regards appellant nos.2 and 3 and survived as regards appellant no.1 only.

8] Learned counsel for the appellant took me through the contents of the FIR. According to her, the evidence of PW 1 – Dada and PW 2 – Jijabai would show that there are contradictions as well as omissions. The evidence on record would show that in fact, the deceased was suffering from certain epilepsy coupled with stomachache. The deceased has died in young age while residing with present appellants and therefore, only on suspicion, the complaint came to be filed against the appellants. She submits that learned Sessions

Judge has, however, overlooked the weakness in the prosecution case and ultimately, convicted the appellants. She, therefore, submits that the appellant no.1 may be acquitted by setting aside the reasons of learned Sessions Judge.

9] Learned A.P.P. opposes the appeal. He submits that just within a period of six weeks from the date of marriage, the deceased has died. She had complaints about illtreatment at the hands of the appellants. Therefore, he submits that the appeal may be dismissed.

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

A] Whether the prosecution has proved that from 19th April, 1999 till 4th June, 1999, present appellant no.1 in furtherance of common intention with the deceased appellants, has subjected deceased Jyoti to cruelty over various reasons as alleged ?

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

R E A S O N S

11] The complaint at Exhibit 9 would show that the deceased has died within six weeks from her marriage, which took place on 19th April, 1999. Her death occurred on 4th June, 1999. The evidence on record would show that just within four days of marriage, the deceased had returned to her parental home and stayed there for about 10 to 11 days. Thus, if we include these 15 days and even the recitals in the complaint that after the episode of visiting the home of material uncle, the deceased had resided at her parental home, the period of stay would be again less than four weeks.

12] The statements of PW 1 – Dada and PW 2 – Jijabai would show that the deceased was suffering from stomachache. Further, according to PW 1 – Dada, when he visited at the house of the maternal uncle of the deceased, the maternal uncle reported him that since the deceased was feeling giddiness, she had returned to her matrimonial home.

13] Learned counsel for the appellants pointed towards the contradictions in the evidence. She submitted that in the statement of PW 1 – Dada, the alleged trouble at the hands of appellant no.1 over the complaint of preparing sweetmeats in the marriage, is missing. The additional statement from the appellants, as deposed by PW 1 – Dada, was that the deceased Jyoti was suffering from epilepsy and therefore, she was brought to the house of the complainant.

14] Further, While the complainant has deposed

that with permission from appellant no.1, he had taken the deceased to his home when he came to know regarding her stomachache etc., in the FIR at Exhibit 9, he has alleged that at that time, appellant no.1 and appellant no.2 were not ready to send her with him and a warning was also given that if the deceased would go to her parental home, she should not return back to her matrimonial home. The case of the prosecution itself is that despite PW 1 – Dada had categorically asked appellant nos.1 and 2 for not visiting his house for Dhonda festival, they, on their own, had attended the same.

15] Considering all these facts on record, in my view, a reasonable doubt has arisen regarding the prosecution case. Besides this, learned counsel for the appellants, has relied on the ratio laid down in the case of *Jaihind s/o. Sitaram Khale Vs. State of Maharashtra, 2010 ALL M.R. (Cri) 2264*, wherein, a well established principal, that once

it is found that the statements made by the deceased were not made regarding the facts leading to her death, same would not be admissible as evidence, is underlined. In that view of the matter, the appeal deserves to be allowed.

16] Hence, the order :-

A] The appeal is abated as regards appellant nos.2 and 3.

B] The appeal is hereby allowed as regards appellant no.1.

C] The impugned judgment and order dated 20th August, 2001 passed in Sessions Case No.447 of 1999 by learned IInd Addl. Adhoc Sessions Judge, Aurangabad convicting and sentencing the appellant no.1 – Bharat for the offence punishable under Section 498-A read with 34 of Indian Penal Code, is hereby set aside.

. Instead, he is acquitted from the said offences.

D] His bonds shall stand cancelled.

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

[M.T. JOSHI, J.]

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