

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 365 OF 2001

- 1] Ramprabhu S/o Shivmurthi Vayvhare,
Age : 28 years, Occu.: Labourer,
R/o Sirsala, Tq. Parli, Dist. Beed
- 2] Sow. Shantabai W/o Shivmurthi Vayvahare,
Age : 47 years, Occu.: Household,
R/o Sirsala, Tq. Parli,
Dist. Beed
- 3] Vanmala D/o Shivmurthi Vayvhare,
Age : 28 years, Occu.: Household,
R/o Sirsala, Tq. Parli, Dist. Beed .. APPELLANTS

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Police Station, Sirsala,
Tq. Parli Vaijnath,
District : Beed .. RESPONDENT

Mr. H.M. Salve, Advocate for the appellants
Mr. P.N. Muley, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 28/08/2015
PRONOUNCED ON : 10/09/2015

JUDGMENT :

Heard both sides.

2. All the present appellants were convicted by
the learned 2nd Additional Sessions Judge, Ambajogai in

Sessions Case No. 11 of 1999 vide judgment and order dated 30/8/2001, for the offences punishable under section 498-A r/w. section 34 of the Indian Penal Code. They were sentenced to suffer rigorous imprisonment for a period of 2 years and to pay a fine of Rs.1000/-. All of them were acquitted from the offences punishable under section 306 r/w. section 34 of the Indian Penal Code. Aggrieved by the conviction and sentences, the present appeal is preferred.

3. The prosecution case in brief is as under:-

. That deceased Savita, daughter of Vishwanath Haribhau Sontakke from Sailu was married to the appellant no.1 – Ramprabhu resident of Sirsala about two years prior to her untimely death due to burning on 19/3/1998 while residing at the house of the appellants. On 19/3/1998, the deceased suffered 95% burn injuries in the morning at about 8.00 am. She was firstly taken to the Primary Health Center at Sirsala. The Medical Officer there gave a primary treatment and referred her to the S.R.T.R. Medical College Hospital, Ambejogai. Police Head Constable, who was incharge of the Outpost

at the Medical College thereafter recorded the statement of the deceased upon examination by the Medical Officer thereat. However, on the very same day at 6:30 pm, the deceased died. The message was given to her parental relatives. In the circumstances, they came to Ambejogai and the father of the deceased lodged his complaint with Ambejogai Police Station.

. It was alleged in the FIR that after one year of the happy married life, all the present appellants cruelly treated the deceased for unlawful demand of Rs.10,000/- required for purchase of a grinding machine. About 15 days prior to her death, the deceased had been to her parents house and at that time also, she has narrated the same. It was further alleged that, during the cohabitation the deceased was ill-treated and that was the cause of abortion of the foetus which was borne by the deceased. The allegations therefor were made that the present appellants had in-fact murdered the deceased. On the basis of this report, the offence was registered and the case papers were transferred to Sirsala Police Station.

. The regular investigation was started. During investigation, inter-alia, the statement of the mother, the uncle of the deceased were recorded. Besides this, it was also gathered by the Investigating Officer that no sooner the deceased suffered burn injuries, the staff of his own Police Station, Shirsala had rushed to the spot as the spot is within the vicinity of Sirsala Police Station. Therefore, he has recorded the statement of those members of the staff, including PW1 – Police Constable Shaikh Fariyoddin and PW10, the sweeper – Baliram Kirwale. The necessary papers were collected from PW7 Dr. Shaikh Harashad, Medical Officer of Primary Health Center, Sirsala. The panchanama of the spot of occurrence was recorded. Post mortem notes were collected. The Chemical Analyzer's report was called and ultimately, the chargesheet came to be filed.

. The appellants had admitted that the deceased has died due to the burn injuries while residing at their house. The post-mortem examination note at Exhibit 42 shows that the deceased had suffered 95% superficial to deep burns and, therefore, the death has

occurred due to primary shock.

4. Before the learned Additional Sessions Judge, we have the statement of 3 relatives i.e. PW3 – Kamalbai Sontakke, PW6 – Vishwanath Sontakke, the parents of the deceased and PW5 Sukhdeo Sontakke, the uncle of the deceased. Besides these witnesses, as already pointed out PW1 and PW10 were examined to show that immediately after the incident, the deceased had made a statement to these witnesses that she has committed suicide due to harassment at the hands of the present appellants. PW4 Dr. Vijayendra Nagori from Sailu, who had occasion to treat the deceased during her period of abortion of the foetus, was also examined.

5. The prosecution papers showed that immediately upon admission of the deceased at Ambejogai hospital, the Duty Head Constable has recorded the statement of the deceased after her examination from the Medical Officer. The said dying declaration however showed that the deceased had suffered burn injuries due to accident. The prosecution did not attempt to prove the dying

declaration. In the circumstances, the concerned Police Head Constable - Ramkrishna Bansode was examined by the defence as DW1. Further, the Medical Officer Dr. Harish Umrajkar was examined as DW2. Both of them proved the said dying declaration at Exhibit 61.

6. The learned Additional Sessions Judge however found that the medical history given by PW7 - the Medical Officer at Sirsala would show that the deceased was in the state of shock. Further, in view of the learned Additional Sessions Judge, the enquiry made by these defence witnesses was perfunctory. The learned Additional Sessions Judge did not believe that DW2 - Dr. Harish Umrajkar, the Medical Officer at Ambejogai had satisfactorily examined the deceased to find that she was physically and mentally fit to give the proper statement. Therefore, no reliance was put on the dying declaration at Exhibit 61. On the other hand, the statements of the relatives, of the Officials of the Police Station, Sirsala, as corroborated by private Medical Practitioner at Sailu i.e. PW4 was believed.

7. The learned Additional Sessions Judge however concluded that there is no evidence to show that there was nexus between the incidents of cruelty and the death of the deceased due to burning. Further, in view of the learned Additional Sessions Judge, it was not found that the present appellants have abetted the commission of suicide. In the circumstances, while they were acquitted of the offence punishable under section 306 of the Indian Penal Code, they were convicted for the offence punishable under section 498-A r/w. section 34 of the Indian Penal Code, as detailed supra.

8. Mr. H.M. Salve, learned counsel for the appellants submitted before me that the reasoning of the learned Additional Sessions Judge that the deceased could not have made the dying declaration as proved by the defence, as she was in the state of shock as deposed to by the Medical Officer at Sirsala, would also apply with same vigor to the statements of PW1 and PW10 i.e. the Police Constable and the Sweeper of the Police Station, who had deposed that at Sirsala, immediately

upon finding that one lady has suffered burn injuries, they rushed to the spot and, thereat, the deceased made statement to them. He further submits that the statement of the Medical Officer at Sirsala would show that immediately upon rushing of the deceased to the Primary Health Center, thereat, he found the deceased in the state of shock and, therefore, he made arrangement for removing her to the Government Hospital at Ambejogai. In this state-of-affair, he submits that there could not have been any oral dying declaration by the deceased to these two witnesses.

9. As regards the relatives of the deceased, learned counsel for the appellants submitted that the exaggeration made by them is obvious right from the filing of the FIR at Exhibit 29 itself. In the FIR, it was alleged that when the deceased was pregnant, she was being beaten and that was the cause of abortion. On the other hand, the Doctor, who had treated the deceased during the said period i.e. PW4 Dr. Vijendra Nagori is silent on this aspect. He did not depose that when the deceased was brought to his clinic for treatment, she

gave any history of being physically assaulted or mentally tortured by the present appellants and the same was the cause of abortion. The said Doctor has deposed that such kind of premature delivery is possible on account of causing the mental torture or physical violence. During cross-examination, however, he explained that there are number of reasons for such miscarriage.

10. Learned counsel for the appellants further submitted that in the FIR, bold and bald allegations are made that present appellants have committed the murder while the investigation further showed that it was a case of suicide and, therefore, the offence punishable under section 306 of the Indian Penal Code was ultimately registered by the Investigating Officer at Police Station, Sirsala.

11. Learned counsel for the appellants further submitted that none of the relatives have given the details of day, date, time or month of the alleged incident of ill-treatment or the reporting of the same

from deceased Savita to them. He further points towards the fact that admittedly, the appellants were having a grinding machine and, therefore, the cause of ill-treatment i.e. unlawful demand of Rs.10000/- for purchase of a grinding machine would not stand. He further points towards the improvements made by these witnesses and submits that when the learned Additional Sessions Judge did not believe that the deceased has committed suicide due to the ill-treatment, these statements also could not have been relied by the learned Additional Sessions Judge. In the circumstances, he submitted that the appeal be allowed.

12. On the other hand, learned A.P.P. submits that the fact that the deceased was being ill-treated by the present appellants is made out not only by the interested relatives but also by the independent witnesses like PW1 – the Police Constable and PW10 – the Sweeper of Police Station, Sirsala, who had no axe to grind against the present appellants. In the circumstances, he submits that the appeal be dismissed.

13. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that the present appellants being the husband and the relatives of the husband of the deceased – Savita, had subjected her to cruelty for an unlawful demand of Rs.10,000/- during her cohabitation with them at Sirsala ?

My finding to the said point is in the negative. The appeal is therefore allowed for the reasons to follow.

R E A S O N S

14. PW7 Dr. Shaikh Harashad, the Medical Officer of Primary Health Center, Sirsala has deposed that when the deceased was brought to his health center, he had suffered 90 – 95% burn injuries and she was in the state of shock. The learned Additional Sessions Judge has believed this deposition to come to the conclusion that the deceased could not have thereafter made the

statement to the Duty Head Constable at Government Hospital, Ambejogai, as proved by defence witnesses.

15. If the deceased was in the state of shock, then naturally, she would not be able to make either the oral dying declaration or recorded the dying declaration to anybody much less PW1 - the Police Head Constable and PW10 - the Sweeper of Police Station, Sirsala. It is to be noted that immediately after the incident, the deceased was removed to the Primary Health Center, Sirsala. Thereafter, she was shifted to Government Hospital at Ambejogai and she died in the evening. It is the prosecution case that in-fact, the oral statement was made by the deceased to one Police Head Constable - Tidke in presence of PW1 and PW10. Police Head Constable - Tidke was reported by the learned A.P.P. as having expired before the trial could begin. The prosecution case thus would show that the three employees of the Police Station, Sirsala had immediately collected at the spot and heard the statement of the deceased. However, none of them reported the matter to the Police Station or even entry in the Police Station

diary in this respect was not made. Their statements were recorded by the Investigating Officer after the investigation was transferred from Ambejogai to Sirsala. Besides this, their statements would show that the deceased made a statement in their presence that she set herself on fire due to the "harassment at the instance of her in-laws i.e. the mother-in-law and the sister of the husband and husband". Thus, according to these witness merely harassment was complained by the deceased to them. Considering all these facts on record, the learned Additional Sessions Judge ought not to have placed reliance on the statements of these witnesses too.

16. This takes me to the statement of the relatives of the deceased. Their statements would show that none of them were able to give details of day, date or month of the alleged ill-treatment as reported to them. The statement of the complainant - PW6 - Vishwanath, the father would show that on number of occasions, after a period of one year from the marriage, the deceased had complained about the ill-treatment at the hands of these

appellants as against the contents of the FIR at Exhibit 29, that about 15 days prior to the death of the deceased, the said complaint was made. The FIR is silent regarding the earlier complaints. Further, it is an admitted fact that the appellant is in the business of dealing edible oil and there was already a grinding machine with him though it was explained by the prosecution witness that it was not in order. However, it is an admitted fact that the father of the appellant was having a flour mill, as against the economical condition of the parental relatives of the deceased i.e. being merely wage earning labours. The case of unlawful demand of Rs.10,000/- therefore does not fit in the circumstances.

17. The exaggeration made by the parental relatives is prominent as found in the FIR. It was alleged that due to the ill-treatment at the hands of the appellant, the miscarriage was carried, in absence of giving any such history to the Doctor, who has treated her. In all these circumstances, the learned Additional Sessions Judge ought to have extended reasonable benefit

of doubt to the present appellants and to acquit them also from the offences punishable under section 498-A r/w. section 34 of the Indian Penal Code. In the result, the following order:-

18. Criminal Appeal is hereby allowed.

19. The conviction of the present appellants recorded vide the impugned judgment for the offences punishable under section 498-A r/w. section 34 of the Indian Penal Code and consequential sentences, is hereby set aside.

20. Bail bonds of the appellants shall stand cancelled.

21. The disposal of the property be carried as per the directions issued by the learned Additional Sessions Judge.

[M.T. JOSHI]
JUDGE

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