

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 481 OF 2001

Dr.Rajesh Aananda Deore,
Age 26 years, occ. Doctor,
r/o. 124 of Shivparvati
Colony, Deopur, Dist.Dhule ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.R.R.Mantri, advocate for appellant

Mrs.B.B.Gunjel, APP for respondent – State

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WITH

CRIMINAL REVISION APPLICATION NO.44 OF 2002

Asaram s/o. Baliram Mali,
Age 46 years, occu.Agri.,
r/o. Village Ner, Tq. and
Dist.Dhule ..Applicant

Versus

1] The State of Maharashtra

2] Dr. Rajesh Ananda Deore,
Age : 26 years,
Occ. Medical Practitioner,
r/o. 124, Shiv-Parvati
Colony, Deopur, Dhule
Dist. Dhule

3] Smt.Lilabai w/o. Ananda Deore,
Age : 50 years, occ. Household,
r/o. 124, Shiv-Parvati Colony,
Deopur, Dhule, Dist.Dhule ..Respondents

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Mr.C.R.Deshpande, advocate for applicant

Mrs.B.B.Gunjel, APP for respondent no.1 – State

Mr.R.R.Mantri, advocate for respondent nos.2 and 3

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CORAM : M.T. JOSHI, J.

DATE : JULY 27, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording of conviction vide judgment and order dated 9th November, 2001 passed by learned First Ad-hoc Addl. Sessions Judge, Dhule in Sessions Case No.33 of 2001 for the offences punishable under Section 498-A and 306 of Indian Penal Code and consequently, sentencing him to suffer rigorous imprisonment for two years and five years, respectively, on each count, and to

pay fine amount, original accused no.1 - Rajesh Deore has preferred present appeal.

3] The appellant has been acquitted of the offence punishable under Section 304-B of Indian Penal Code and his mother i.e. original accused no.2 - Smt. Leelabai has been acquitted of all the charges leveled against her, by learned Addl. Sessions Judge.

4] Aggrieved by judgment and order of acquittal passed by the learned Additional Sessions Judge, Dhule, as referred hereinabove, from the offence punishable under Section 304-B of Indian Penal Code of present appellant and his mother from all the offences, Criminal Revision Application No.44 of 2002 is filed by the original complainant - Asaram s/o. Baliram Mali. During pendency of the Criminal Revision Application, however, original accused no.2 - Leelabai has died and the Revision

Application, therefore, survives only as regards applicant no.1.

5] Mr.C.R.Deshpande, learned counsel for the applicant in Revision Application, submits that during pendency of the Criminal Revision Application, settlement has been arrived at between the parties. He files on record a purshis of the complainant i.e. father of the deceased to that effect. The purshis dated 27th June, 2015 is accepted on record and marked as "X" for the purpose of identification.

. The purshis would show that the complainant has no more grievance against the appellant and therefore, he requested that a proper decision may be taken in the matter.

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

. That, deceased Manisha, wife of present appellant, was married to him on 9th May, 1998. After marriage, both of them started residing together. Thereafter, the couple was blessed with one son, who was one and half years old at the time of death of the deceased in the month of January, 2001. On 26th January, 2001, PW 3 – Asaram, father of the deceased received a message that his daughter was admitted to Civil Hospital, Dhule, for burn injuries. Therefore, he reached the Civil Hospital. He found that before he reached there, statement of Manisha was recorded under pressure, that she had accidentally suffered the burn injuries. Deceased Manisha, however, upon inquiry told him that due to ill-treatment of the appellant and his mother i.e. original accused no.2, she had poured kerosene on her person and set herself on fire. Therefore, PW 3 – Asaram filed an application with the police station (Exhibit 28) with a request to re-record statement

of the deceased. Accordingly, next dying declaration of the deceased was recorded. Statement of PW 3 – Asaram was also recorded. Along with the statement, PW 3 – Asaram also supplied a letter-cum-chit written by the appellant to him wherein, admissions regarding ill-treatment are given. Thereafter, supplementary statement of the deceased was also recorded. The deceased died on 31st January, 2001 due to septicemic shock following 92% burn injuries.

. Thereafter, necessary investigation was carried. The chit was sent to handwriting expert along with the specimen handwriting and signature of the appellant. The chit was placed at Exhibit 39. The post mortem note was collected. Panchnama was recorded and the charge sheet was filed.

7] The charge framed by learned Additional Sessions Judge at Exhibit 4/C shows that the appellant and his mother were charged that they used to treat deceased Manisha cruelly on account of her unchastity and that she was not a good looking lady and was from village and therefore, she committed suicide and therefore, both the accused have committed offences punishable under Section 498-A, 306 and 304-B of Indian Penal Code.

8] Before learned Addl. Sessions Judge, in all, six witnesses were examined. PW 1 – is Executive Magistrate. PW 3 – Asaram is father of deceased. PW 5 – Ramchandra Mali is a villager from the village of Asaram. Learned Addl. Sessions Judge relied over the chit at Exhibit 39, which would show that the appellant even used to beat the deceased. In the circumstances, conviction, as detailed supra, came to be recorded.

9] Mr. Mantri, learned counsel for the appellant submits that there is vast difference between the two dying declarations recorded by the same Executive Magistrate. Further, the chit at Exhibit 39 would not show that the deceased was treated cruelly by the appellant, which would drive her to commit suicide. In the circumstances, he submits that there is vast variance between the allegations and even learned Addl. Sessions Judge has misdirected the trial by framing charge on the count of ill-treatment due to unchastity of the deceased. He, therefore, submits that the appeal may be allowed.

10] On the other hand, learned APP supports the prosecution case.

11] On the basis of this material, following points arise for my determination :-

I] Whether the prosecution has proved that the deceased has met with a suicidal death on 27th January, 2001 ?

II] Whether the prosecution has proved that from the date of marriage till 26th January, 2001, present appellant has treated the deceased cruelly of such a nature, which would drive the deceased to commit suicide ?

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

R E A S O N S

12] The first dying declaration at Exhibit 19 would show that while the deceased was preparing tea in the house, she, accidentally, suffered burn

injuries as her saree caught fire on the gas stove. Thereupon, present appellant as well as her own uncle namely, Jagannath brought the deceased to the hospital. The copy of the said dying declaration placed on record by the Executive Magistrate i.e. PW 1, during his examination, is to the same effect except that Jagannath is termed as her cousin father-in-law instead of her own uncle.

13] Be that as it may. On the application of PW 3 – Asaram, father of deceased, the next of the dying declaration at Exhibit 21 was recorded on the next day i.e. 27th January, 2001. In this dying declaration, the deceased allegedly made a statement that there always used to be quarrel between her, her husband and her mother-in-law. She had trouble from them. In the circumstances, on 26th January, 2001, at about 4:00 p.m., she insisted for going to the marriage of her cousin

sister i.e. daughter of her maternal aunt. Upon that, a dispute arose between them. Therefore, in anger, she set herself on fire. Thereupon, the appellant put off the fire and he along with her maternal father-in-law namely, Jagannath Mali admitted her to the Civil Hospital.

14] The recital in the chit at Exhibit 39, would show that present appellant was very much angry due to various improper conducts of the deceased in the house. According to the appellant, he even tried to use various ways such as, counseling her, threatening her and beating her to make improvements in her behavior, but she used to threat him about her leaving the home or killing herself. It was further alleged in the chit that over a time, the deceased even used to throw their one year old child on the mattress. In the same chit, the appellant has also underlined that when his sister had come to their house, at that time,

the deceased had treated the sister well, however, thereafter, she started insulting the appellant. In the circumstances, the appellant had asked his father-in-law to bring as many relatives he want for re-conciliation and he himself alone would participate in the conciliation. Ultimately, he communicated that in case the deceased did not want to cohabit with him, he was ready to reimburse the amount of Rs.61,000/-, which was expended by the father of deceased on her marriage, and he was even ready to pay maintenance to the deceased, as may be ordered by the court.

15] Learned Additional Sessions Judge relied over the oral statement of father of deceased i.e. PW 4 – Ramchandra Mali and the chit at Exhibit 39, and came to the conclusion that during cohabitation, the deceased was treated cruelly by present appellant only. He further found that there was abetment to commit the suicide. In the

circumstances, conviction and sentence, as detailed supra, came to be recorded against the appellant.

16] The contents of each dying declaration coupled with the chit at Exhibit 39, would show that each of these documents, cuts the theory put forth in other document. While first dying declaration at Exhibit 19 recorded immediately after the incident, would show that it was an accident at which point of time, even her uncle (or cousin father-in-law) was present, even if is ignored, still, the second dying declaration at Exhibit 21 would show that there used to be general quarrels between the deceased and the appellant and deceased and mother of the appellant. Said dying declaration would further show that she was being troubled and on the day of the incident also there was a quarrel between the appellant and the deceased on the issue of attending marriage of

relative of the deceased and therefore, she herself set her on fire. It is to be borne in mind that this second dying declaration was recorded after the father of the deceased complained to the police that the earlier dying declaration of the deceased was recorded under pressure of the accused.

17] The third statement recorded by police at Exhibit 31 is somewhat in detail. In the said dying declaration, the deceased has stated that she was being ill-treated and tortured by the accused as she was from village and was not that much educated and was not a good looking lady.

18] The chit at Exhibit 39, however, tells a totally different story as detailed earlier. Had there been allegation or suspicion over the chastity of the deceased, the appellant would not have failed to underline or mention the same in

the said chit sent to his father-in-law i.e. PW 3 — Asaram Mali. Throughout the earlier dying declaration of the deceased, there is no whisper about the said allegation. It appears that learned Addl. Sessions Judge has swayed away with the tone and tenor of the chit at Exhibit 39 and corroboration of the chit from the mouth of father of deceased and convicted the appellant for the offences punishable under Section 498-A and 306 of Indian Penal Code.

19] The prosecution case is vague as to what type of cruelty was given to the deceased. It is not the prosecution case that any unlawful demand was made and therefore, as per the definition of 'cruelty' given under Section 498-A of Indian Penal Code, the cruelty should be of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the

woman. In view of this material, in my view, learned Addl. Sessions Judge ought to have extended benefit of doubt to the present appellant also.

20] In the result, the following order :-

A] Criminal Appeal No. 481 of 2001 is allowed.

B] The judgment and order dated 9th November, 2001 passed in Sessions Case No.33 of 2001 by learned First Ad-hoc Addl. Sessions Judge, Dhule, convicting and sentencing the appellant for the offences punishable under Section 498-A and 306 of Indian Penal Code, is hereby set aside.

. Instead, the appellant is acquitted of the offences punishable under Section 498-A and 306 of Indian Penal Code.

C] Bail bonds of the appellant shall stand cancelled.

D] Fine amount deposited by the appellant, if any, be refunded to the appellant after a period of sixty (60) days from the date of this judgment.

E] The muddemal property be disposed of as per the order passed by learned Additional Sessions Judge.

21] In view of the purshis dated 27th June, 2015 filed by the complainant – Asaram Baliram Mali, Criminal Revision Application No. 44 of 2002 is hereby disposed of.

[M.T. JOSHI, J.]