

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.487 OF 2001

- 1] Mahendra s/o. Bhagwan More,
Age 25 years, Occ. Agri.,
r/o. Amalgaon, Tq. Amelner,
Dist. Jalgaon
- 2] Savitribai w/o. Bhagwan More,
Age 60 years, Occ. Household,
r/o. Sindhi Colony, Chalisgaon,
Dist. Jalgaon
- 3] Bhagwan s/o. Manga More,
Age 63 years, Occ. Retired,
r/o. Sindhi Colony, Chalisgaon,
Dist. Jalgaon ..Appellants

Versus

The State of Maharashtra ..Respondent

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Mr.Sanket Kulkarni, advocate for appellants

Mr.N.T.Bhagat, APP for respondent - State

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CORAM : M.T. JOSHI, J.
DATE : DECEMBER 02, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the judgment and order dated 31st October, 2001 passed in Sessions Case No.43 of 1993 by learned Ad-hoc Addl. Sessions Judge, Amalner, thereby recording conviction for the offence punishable under Section 498-A read with 34 of Indian Penal Code and the consequential sentence to suffer rigorous imprisonment for three years and to pay fine of Rs.750/-, original accused have preferred present appeal.

. In fact, the appellants were also tried for the offence punishable under Section 306 of Indian Penal Code, however, they were acquitted of the said offence by learned Addl. Sessions Judge.

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

. That, the deceased – Maya, wife of present appellant no.1 – Mahendra had married to him in the year 1990. Appellant nos.2 and 3 are the parents of appellant no.1. After initial period of one year from the marriage, deceased Maya and

appellant no.1 started residing separately at village Amalgaon away from appellant nos.2 and 3 who were residing at Chalisgaon. Maya died due to receipt of burn injuries on 20th May, 1993. She was taken in the injured condition to Rural Hospital, Amalgaon and thereafter, was transferred to Municipal Hospital, Amalner. However, she succumbed to the injuries on the same day.

. Thereafter, her father filed complaint in the Marwad Police Station. He complained that after initial period of one year from the marriage, appellant no.1 came to his house and made a demand of Rs.3,000/- to Rs.4,000/-. The complainant gave him Rs.1,000/-. Appellant no.2 – mother-in-law of deceased, however used to taunt her saying that she was daughter of a very poor family. Appellant no.3 – father-in-law also used to join in the taunting saying that even facilities of bathroom and latrine were not available in the house of the

father of deceased. The appellants used to beat Maya for gold ornaments. Deceased Maya used to narrate about the said taunting and illtreatment to her relatives as and when she used to come to her father's house. In the situation, on 20th May, 1993, the complainant received an information regarding death of deceased Maya and therefore, the complaint came to be filed with the police.

4] PW 6 – Pundlik Patil, P.S.I. of Marwad Police Station conducted investigation. The dead body of Maya was sent for post mortem. Statements of the witnesses were record. Post Mortem notes were collected and thereafter, the charge sheet came to be filed.

5] During pendency of the trial, the complainant has died. In the circumstances, before learned Addl. Sessions Judge, PW 2 – Chandrakant Wagh, brother of deceased Maya; PW 3 – Narayan Waghmare, uncle; PW 4 – Shashikala Shirsath, sister of

deceased; and PW 5 – Govardhan Sonawane, maternal grand father of deceased Maya, were examined. All of them deposed on the lines of the prosecution case.

6] Learned Addl. Sessions Judge believed the testimonies as trustworthy as regards the complaints of cruelty, made by the deceased. In the circumstances, conviction and sentence came to be recorded against the appellants for the offence punishable under Section 498-A of Indian Penal Code. Learned Addl. Sessions Judge, however, held that the prosecution could not prove that the death of deceased has occurred due to suicide committed by her, and was abetted by the appellants. It was also held that the deceased has died accidentally while she was cooking food in the kitchen. Therefore, the appellants came to be acquitted of the offence punishable under Section 306 of Indian Penal Code.

7] Mr.Kulkarni, learned counsel for the appellants, submitted before me that when learned Addl. Sessions Judge has acquitted the appellants of the offence punishable under Section 306 of Indian Penal Code, the question of subjecting the deceased Maya to cruelty would survive only if the harassment, if any, over the unlawful demand of money, is proved. In support of this submission, he has relied upon the decision in the case of ***Girdhar Shankar Tawade Vs. State of Maharashtra, AIR 2002 SC 2078.***

8] Mr.Kulkarni further submitted that the prosecution case is based on the statements allegedly made by deceased Maya during her lifetime to her relatives. Further, the exaggerations made by deceased are prominent in view of the fact that, PW 4 – Shashikala in her examination-in-chief, has deposed that no such statements were made by deceased to her, but this witness had heard about the complaints of the

deceased from the mouth of the relatives. Mr.Kulkarni submits that as death of the deceased is not connected with the alleged statements of the deceased, in view of the ratio laid down in the case of **Kantilal Martaji Pandor Vs. State of Gujarat and anr., AIR 2013 SC 3055**, the statements made by the deceased to her relatives during her lifetime, would not be a dying declaration and therefore, the same cannot be taken into consideration.

9] Mr.Kulkarni further submitted that the prosecution witnesses have clearly admitted that while the father of deceased i.e. complainant was very poor, comparatively, the family of the appellants is financially sound. In that view of the matter, the prosecution case that the appellants had made any unlawful demand would not stand. Even the prosecution witnesses did not depose about the date, time or period of making the alleged demands, as stated by deceased to

them. Thus the evidence is vague. In the circumstances, he submitted that learned Addl. Sessions Judge ought to have extended benefit of a reasonable doubt to the appellants and acquitted them.

10] On the other hand, learned A.P.P. for respondent – State submitted that learned Addl. Sessions Judge has appreciated the evidence on record. The relatives of the deceased have narrated about the statements made by the deceased to them. Their evidence would also show that they also directly knew about the illtreatment to the deceased. In the circumstances, he submitted that the appeal may be dismissed.

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

A] Whether the prosecution has proved that present appellants, in furtherance of their common intention, have subjected

the deceased Maya to cruelty for fulfillment of the unlawful demand, during her cohabitation with them ?

. 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

12] The prosecution case itself would show that after one year from the date of the marriage, the deceased and appellant no.1 had started residing separately at village Amalgaon away from appellant nos.2 and 3 who were residing at Chalisgaon. Thus, the possibility of having day to day encounter between the deceased and appellant nos.2 and 3 is ruled out.

13] The statements of the prosecution witnesses would show that they have made vague statements regarding the date, time and place of the alleged

cruelty stated by the deceased to them. The deposition of PW 2 - Chandrakant Wagh, brother of deceased, would show that while the complainant and his family members were very poor and even they had no facility of toilet in their house, comparatively, the family members of the appellants were affluent and well educated. The statement of PW 2 - Chandrakant would further show that appellant's family had 15 acres agricultural land. Appellant no. 1's one brother is an Engineer, another is a Doctor and one is an Advocate. In that view of the matter, it is highly doubtful that any unlawful demand, as alleged by the complainant, could have been made the appellants.

14] The statement of PW 4- Shashikala would show that no direct statements were made by the deceased to said witness. Above all, the ratio laid down in the cases of **Girdhar** (cited supra) **and Kantilal** (cited supra), would show that once

the court comes to the conclusion that the death of the deceased is unconnected with the circumstances of any cruelty as detailed by the deceased to anybody, the same would be an inadmissible evidence.

15] In the circumstances, considering the overall material on record, the appellants deserve to be acquitted of the offence punishable under Section 498-A of Indian Penal Code also.

16] Hence, the following order :-

A] The appeal is hereby allowed.

B] The impugned judgment and order dated 31st October, 2001 passed in Sessions Case No.43 of 1993 by learned Ad-hoc Addl. Sessions Judge, Amalner, thereby recording conviction against the appellants for the offence punishable under Section 498-A read with 34 of Indian Penal Code and the consequential sentence, is hereby set aside.

. Instead, the appellants are acquitted of all the offences.

C] Bail bonds of the appellants shall stand cancelled.

D] Fine amount, if any, paid by the appellants be refunded to them after ninety days from the date of this judgment.

[M.T. JOSHI, J.]

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