

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Revision Application No. 280 of 2002

* Bashir s/o Gulab Beg,
Age 43 years,
Occupation : Service,
R/o Takalibhan,
Taluka Shrirampur,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) Mukhtyar s/o Shaikh Chand,
Age 60 years,
Occupation : Labour
R/o Landewadi, under village
Sonai, Taluka Newasa,
District Ahmednagar.
- 2) Khatun w/o Mukhtyar Shaikh,
Age 45 years,
Occupation : Household,
R/o As above.
- 3) Mohammad s/o Mukhtyar Shaikh,
Age 30 years,
Occupation : Service,
R/o As above.
- 4) Rafiqui s/o Mukhtyar Shaikh,
Age 34 years,
Occupation : Service,
R/o As above.
- 5) The State of Maharashtra. **.. Respondents.**

Shri. N.K. Kakade, Advocate, for petitioner.

Shri. R.N. Chavan, Advocate, holding for Shri. Vijay Sharma, Advocate for respondent Nos.1 to 4.

Shri. U.H. Bhogle, Additional Public Prosecutor, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 1st JULY 2015

JUDGMENT:

1) The revision is filed to challenge the judgment and order of Criminal Appeal No.77/1994 which was pending in the Court of learned Additional Sessions Judge Shrirampur, District Ahmednagar. Respondents were convicted and sentenced by learned Assistant Sessions Judge for offence punishable under section 498A, 34 of the Indian penal Code in Sessions Case No.50/1992 and this decision was challenged in Criminal Appeal No.77/1994 by the respondents. The Sessions Court had set aside the judgment and order of conviction given by the Assistant Sessions Judge and all the respondents are acquitted of those offences. Both sides are heard.

2) The crime was registered on the basis of report given by one Bashir Begum for offences punishable under sections 306, 304B, 498-A, 34 of the Indian Penal Code. Deceased Madina was given in marriage to Mehmood Shaikh, respondent No.3. Respondent Nos.1 and 2 are parents of respondent No.3 and respondent No.4 is a brother of respondent No.3. Marriage took place on 17-2-1991 and the incident in question took place on 24-8-1991.

3) It is contended that about one month prior to the date of incident deceased had visited her parents house for Mohrram and on that occasion she had complained that husband and his aforesaid relatives were harassing her by saying that cot was not given as gift and sufficient dowry was not given in the marriage. The mother of the complainant and other relatives had reached the deceased Madina to the matrimonial house about 15 days prior to the date of incident. It is contended that when the mother of the complainant had visited the house of the accused, the accused had said that they wanted Rs.2000/- for making investment in their business

and if the demand is not met with they would finish the deceased by setting fire to her.

4) At about 12.00 noon on 24-8-1991 residents of the locality where the house of the respondents is situated noticed that smoke was coming from the roof of the house and the house was on fire. The door of the house was broke open and fire brigade vehicle was used to extinguish the fire. Madina was shifted to local hospital and from there she was being taken to Government hospital, Ahmednagar but she died on the way. Report came to be given on the same day.

5) During the course of investigation, statements of relatives like mother, neighbour and brother-in-law of the complainant came to be recorded. Spot panchanama came to be prepared. Deceased died due to 95% burn injuries. Charge sheet was filed for aforesaid offences. The accused took defence of total denial. They contended that there was accidental fire in the house and due to that Madina died. No dying declaration was recorded.

6) In the trial Court, complainant, his mother and a neighbour who was residing in the house of the complainant and brother-in-law of the complainant came to be examined as witnesses. The learned Assistant Sessions Judge gave finding that prosecution failed to prove suicide. This finding was not challenged.

7) The aforesaid four witnesses have given evidence that there was harassment to the deceased and such disclosure was made by the deceased to them. The complaint is duly proved in the evidence of PW 1, complainant and the evidence shows that disclosure was made to the complainant that there was harassment to the deceased as accused were feeling that sufficient dowry was not given and cot was not given. The witness deposed that the deceased had disclosed to him that beating was given to her and she was starved by the accused persons. But there was no such mention in the FIR given by PW 1. The other evidence of PW 1 is of hear say nature.

8) The mother of the deceased Rashinbee (PW 2) has given evidence that when deceased had visited the parents house on the occasion of Mohrram she had

disclosed that the mother-in-law was demanding Rs.2000/- and was giving threats that she would be set on fire if the demand was not met with. She has given evidence that when she paid visit to the matrimonial house of Madina, similar threat was given by the accused. Contradiction is brought on the record which is to the effect that before police PW 2 had not stated that Madina had disclosed that there was ill treatment to her on the ground of demand of Rs.2000/-. It is not also the case of PW 1 that Madina had made such disclosure and so he had not made such mention in the FIR.

9) Mohamad Samar PW 3 a person who is residing in the house of the complainant, has given evidence that Madina had disclosed that she was beaten and starved by the accused persons as their demand of cot and dowry amount was not met with. This evidence is very vague in nature. PW 4 Nasir says that deceased was his cousin sister and she had made disclosure that on account of demand of Rs.2000/- the accused were beating her and she was starved. But this disclosure was made two months prior to the date of incident.

10) It can be said that when the FIR was given there was no specific allegation about nature of ill treatment given. Things were exaggerated before the Court. In any case the aforesaid evidence is based on so called disclosure made by Madina to them. In view of Section 32 of the Evidence Act such disclosure can be accepted as evidence provided that there was suicidal or homicidal death. Reliance can be placed on a case reported as **(2001) 10 SCC 736 (Inderpal v. State of M.P.)** As the finding is given that death was not suicidal or homicidal, the aforesaid evidence given by the four witnesses can be of no help for proving the charge under section 498-A, IPC. It is already observed that the evidence was very vague in nature and it is not convincing. The Sessions Court has considered the evidence in proper perspective. Considering the nature of evidence and the aforesaid circumstances this Court holds that it is not possible to interfere in the decision given by the Sessions Court. In the result, the criminal revision application stands dismissed. Rule discharged.

Sd/-
(T.V. NALAWADE, J.)

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