

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

CRIMINAL REVISION APPLICATION NO. 277 OF 2002

Gangadhar S/o Ganpat Bhalerao

Age : Major, Occ. : Agril.,

R/o : Maldad, Tq. : Sangamner,

Dist. : Ahmadnagar.

..... APPLICANT/
[ORIGINAL COMPLAINANT]

V E R S U S

1. The State of Maharashtra
2. Bhaurao S/o Ramji Wakchaure
Age : 52 Yrs., Occ. Agril.,
R/o : Gurav Zap, Akole,
Tq. Akole, Dist. : Ahmadnagar.
3. Sanjay S/o Bhaurao Wakchaure
Age : 24 Yrs., Occ. Agril.,
R/o : Gurav Zap, Akole,
Tq. : Akole, Dist. : Ahmadnagar.
4. Umabai W/o Bhaurao Wakchaure
Age : 47 Yrs., Occ. Agril.,
R/o : Gurav Zap, Akole,
Tq. Akole, Dist. Ahmadnagar.
5. Ranjana W/o Jalindar Dolas
Age : 22 Yrs., Occ. Agril.,
R/o : Gurav Zap, Akole,
Tq. Akole, Dist. Ahmadnagar.

6. Jalindar S/o Dagadu Dolas
Age : 26 Yrs., Occ. Agril.,
R/o : Gurav Zap, Akole,
Tq. : Akole, Dist. : Ahmadnagar.
7. Sandeep S/o Bhaurao Wakchaure
Age : 20 Yrs., Occ. Agril.,
R/o : Gurav Zap, Akole, **RESPONDENTS NO. 2 TO 7/**
Tq. : Akole, Dist. : Ahmadnagar. **[ORIGINAL ACCUSED]**
[Dismissed as against R – 5 to 7
as per Order dated 10/11/2003].

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Mr. N.B.Suryawanshi, Advocate for Applicant.

Mr. D.R.Kale, A.P.P. for R – 1 State.

Mr. R.D.Bhalerao, Advocate for R – 2 to 7.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 5th FEBRUARY, 2015

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JUDGMENT :

1. First informant Gangadhar S/o Ganpat Bhalerao has approached to this Court since he is aggrieved by the Judgment and Order of acquittal dated 11/07/2002 passed by the learned Ad-hoc Additional Sessions Judge, Sangamner, district Ahmadnagar in Sessions Case No. 81/2000, by which

the learned Judge of the trial Court acquitted the accused persons for the offence punishable u/s 498-A, 302 read with 34 of the Indian Penal Code.

In brief, the prosecution case can be narrated as under.

2. Daughter of first informant by name Rekha was married on 12/05/1995 with accused No. 2 Sanjay. Accused No. 1 Bhaurao and accused No. 3 Umabai are the parents of accused No. 2 Sanjay, whereas accused No. 4 Ranjana is married sister of Sanjay and accused No. 5 Jalindar is her husband. Accused No. 6 Sandip is brother of accused No. 2 Sanjay.

After marriage, Rekha started cohabiting with accused No. 2 Sanjay at Akole. She was subjected to the atrocities at the hands of the accused for fulfillment of their illegal demand of ₹ 25,000/- [Rupees Twenty Five Thousand only] for construction of their house. When Gangadhar visited Akole, this fact was disclosed to him by Rekha. She further disclosed that in the last night, she was beaten by her husband Sanjay and her mother-in-law Umabai. Gangadhar made a request to them not to give illtreatment to his

daughter. However, they did not speak to him properly, therefore, he brought his daughter to his house at Maldad. After 3 days, Rekha's father-in-law i.e. accused No. 1 Bhausahab came to Maldad and took Rekha to Akole with him.

About 3 months prior to the death of Rekha, one of the relatives of first informant informed him that Rekha and her husband Sanjay started residing separately from remaining accused at village Panduri and she is sick. On getting such information, first informant visited Panduri to see Rekha. That time, it was informed to him by Rekha that if an amount of ₹ 25,000/- were paid to the accused, they would not have compelled her and her husband Sanjay to reside at Panduri and to do labour work there. She disclosed that she and her husband were sent to Panduri by remaining accused after beating her. It is further stated that, that time, her husband Sanjay was not at Panduri but he was at Bombay and her father-in-law was at Panduri. Therefore, the first informant requested him to take her to Akole. Thereafter, Rekha came to Maldad for 'Rakhi' festival. That time also, she disclosed that she was beaten at Akole by accused persons on the point of domestic work. Rekha resided for 8

days at Maldad on that occasion. Her husband Sanjay came to Maldad and took her to Akole.

3. On 19/09/1996, brother of first informant viz. Nivrutti informed him that Reka was burnt in the early morning and she is taken to civil hospital at Nashik for treatment. Upon getting such information, the first informant, his wife and other relatives immediately visited civil hospital, Nashik. They found that she was in completely burnt condition and was unable to speak. It was disclosed to them that she was badly harassed by accused persons and she and her husband were expelled from the house by the remaining accused. It was further disclosed to them that her mother-in-law, sister-in-law and husband of sister-in-law came to her house, picked up quarrel for whole night and in the early morning her mother-in-law burnt her by pouring kerosene on her person.

Rekha was in hospital for 2 days. Ultimately, she died on 23/09/1996. Funeral took place on 24/09/1996 and thereafter the report was lodged vide Crime No. 68/1996.

In so far as cruelty is concerned, the prosecution examined close relations of deceased Rekha viz. her father,

mother and her uncle.

Merely because, close relations are witnesses, their evidence should not be discarded.

The specific assertion was made in the First Information Report [hereinafter referred as 'F.I.R.' for brevity] against the accused persons that Rekha was subjected to cruelty for ₹ 25,000/-. According to the prosecution, this demand of ₹ 25,000/- was for the construction of house.

In that behalf, the learned trial Court has recorded reasons that, on perusal of the extract of Namuna No. 8 of Gram Panchayat, Akole, House No. 176 was standing in the name of Umabai i.e. accused No. 3, the mother-in-law of deceased Rekha. Therefore, the learned trial Court recorded finding that the demand of ₹ 25,000/- for construction of house can not be accepted. The learned trial Court found that accused No. 4 Ranjana is married sister of accused No. 2 Sanjay. Her husband Jalindar is accused No. 5. First informant Gangadhar has admitted that the marriage of Ranjana took place prior to the marriage of Rekha. The learned trial Court found that there is no evidence to show that Ranjana and Jalindar were residing at the house of

parents of Ranjana at Akole.

The aforesaid reasoning given by Court below for acquittal for the offence punishable u/s 498-A of the Indian Penal Code can not be faulted.

4. In so far as the offence u/s 302 of the Indian Penal Code is concerned, the case is based on dying declaration. The prosecution has relied upon Exh. 25, which was recorded by P.W. 2 Shivaji Gangadhar Pawar, Special Judicial Magistrate. The defence has also examined one defence witness viz. Sk. Nisar Abdul Munir, who was Police Station Officer at Police Station Akole in the night between 20/09/1996 and 21/09/1996. He has proved dying declaration of Rekha, which he has scribed. It is at Exh. 54.

Exh. 25 shows that on 21/09/1996 at 5.00 a.m., her mother-in-law Umabai poured kerosene and set her ablazed. She was doused by her husband. It is further disclosed in the said dying declaration that she and her husband Sanjay were driven out of their house by her mother-in-law, brother-in-law, sister-in-law and her husband. It further disclosed that in the night, her mother-in-law came to her house and picked up quarrel and in the morning she

poured kerosene and set her ablazed.

Thus, it is clear from the said dying declaration that she attributed role only to her mother-in-law Umabai. She has not attributed any overt act against any other accused person.

5. Dr. Rajesh Rambhau Koshire has proved the medical papers of Rekha when she was admitted in the burn ward at civil hospital, Nashik. The said medical papers specifically shows that Rekha was referred at Nashik hospital by Primary Health Centre, Akole by showing cause as accidental burns.

6. The defence witness Sk. Nisar Abdul Munir was Police Station Officer at Police Station, Akole in the night between 20/09/1996 and 21/09/1996. On 21/09/1996, he received memo from Cottage hospital, Akole at 6.15 a.m. for taking further action, as one Rekha was burnt and admitted in the hospital. He took station diary entry and proceeded to Cottage hospital, Akole. On getting certification from Doctor, he recorded her dying declaration [Exh.54], which clearly shows that on 21/09/1996 in the morning at 5.30 a.m. when

Rekha was burning stove, that time, she received accidental burn.

7. Thus, on record, there are 2 dying declarations, one attributes burn injuries due to accident and another, Rekha attributes overt act to her mother-in-law Umabai.

In this context, it will be useful to refer to the evidence of P.W. 5 Ranu Keshav Choudhari, apart from the fact that he is panch to Spot-cum-Seizure panchanama [Exh.31]. He was owner of the house, wherein incident has occurred.

His evidence would reveal that he let out the house to accused No. 2 Sanjay prior to 15 days of the incident. From his evidence, it is clear that if any abnormal happens in the house of Sanjay, it can be heard at his house. His evidence would reveal that in the night on 20/09/1996, he was present in his house. He has specifically denied the presence of other accused in the house, where-at deceased Rekha and her husband accused Sanjay were residing.

His evidence would further reveal that he heard shouting at 5.00 a.m. and, therefore, he immediately came out of his house and noticed that Rekha was burnt and she

was shouting. He found that accused Sanjay was trying to extinguish the fire by his hands and Sanjay requested him to give call to his parents at his house. The house where-at the parents of accused Sanjay were residing, is situated at the distance of 700–800 Meters, is the version of this independent witness. He thereafter visited their house that time. They were sleeping. They woke up due to the call given by this witness and then they came to his house. They took Rekha to the hospital.

From the evidence of this independent witness, it is absolutely clear that other accused persons were not present in the house where the incident has occurred. Even Exh. 25 does not disclose about presence of other accused persons except the presence of Umabai. In the light of specific evidence of the independent witness Ranu Choudhary that Umabai was also not present, it would be hazardous to accept the version made in Exh. 25, especially when there is another available version of Rekha on record in the nature of Exh. 54. Therefore, necessarily the dying declaration [Exh. 25] is required to be discarded.

8. In so far as the oral dying declarations are

concerned, from the evidence of P.W. 1 Gangadhar, it is clear that on getting information they immediately rushed to Sangamner, where he met his brother Nivrutti at Govt. Rest House. His evidence would further reveal that, that time, Rekha was brought in one Ambulance from Akole in front of Sangamner Rest house by accused Sanjay, his mother, his brother and other accused. That time, it was revealed to him by accused persons that she has to be shifted to the civil hospital at Nashik. His evidence would reveal that his wife Ramabai had gone to Nashik in the said Ambulance from Sangamner. It is his claim that at Nashik, Rekha disclosed to him that Umabai poured kerosene and burnt her.

What is important to note is that, though such an important fact was disclosed to him, the said fact was not reported immediately to police in spite of the fact that police chowki is situated at the entrance gate of the hospital at Nashik. He was present at civil hospital, Nashik from the date of admission of Rekha in the said hospital till her death, which occurred on 23/09/1996 i.e. for 2 days he was with her in the hospital. Not only that, he was also accompanied by his other relatives. In this back-drop, the brother of first informant viz. Nivrutti has stated in his evidence as under,

“ It is true that one police constable had come to Maldad in the search of Bhalerao at that day, and had told my brother Gangadhar Bhalerao that he was called by the police at Akole police station. Hence my brother visited there and I also visited at police station, Akole with him and then my statement was recorded on 24/09/1996 ”.

The F.I.R. is also lodged on 24/09/1996. Thus, it is clear that the sequence clearly shows that when the first informant Gangadhar and his other relatives were present with Rekha, from the date of her admission in the said hospital till her death and though the oral dying declaration was made to them as alleged by them in spite of the fact that even in presence of police, they did not disclose anything to them. Not only that, after the funeral, they returned to house and only on 24/09/1996 when the police had been to his house, on the call of police, he went to police station, Akole and lodged report and disclosed about the oral dying declaration. Thus, the sequence really creates doubt as to whether really oral dying declaration was made to this witness.

9. The aforesaid evaluation clearly shows that no error was committed by the learned trial Court while acquitting the accused persons. It appears that the Judgment and Order of acquittal is based on the available material. The view taken by the learned trial Court in acquitting the accused is permissible in light of the prosecution evidence. No perversity is crept in the Judgment of the learned trial Court.

10. Hence, the present Criminal Revision Application is dismissed.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 277.2002 - [J]
