

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 140 OF 2004

The State of Maharashtra,
through Police Station,
Hatta, District Hingoli

APPELLANT

VERSUS

1. Vaijanath s/o Nivrutti Kamble,
Age : 28 years, Occu. Service,
R/o Javalabazar at present
Pokhari, Tq. Loha, Dist. Nanded

2. Nivrutti s/o Baliram Kamble,
Age : 50 years, Occu. Agri.,
R/o Lohgaon, Tq. and District
Parbhani

3. Sopan s/o Baliram Kamble,
Age : 35 years, Occu. Service,
R/o Malegaon, Tq. Loha,
District Nanded

4. Inderabai w/o Baliram Kamble,
Age : 45 years, Occu. Household,
R/o Pokhari, Tq. Loha,
District Nanded

5. Kiranbai w/o Bapurao Bhendegaonkar,

RESPONDENTS

(Appeal abated as against respondent
No. 5 as per Court's order dated
17.02.2006)

AND

CRIMINAL REVISION APPLICATION NO. 47 OF 2004

Sakharam s/o Vitthalrao Bhawe,
Age : 57 years, Occu. Labour,
R/o CIDCO, Tq. and Dist. Nanded

PETITIONER
(ORI.COMPLAINANT)

VERSUS

1. The State of Maharashtra
2. Vaijanath s/o Nivrutti Kamble,
Age : 28 years, Occu. Service,
R/o Javalabazar at present
Pokhari, Tq. Loha, Dist. Nanded
3. Nivrutti s/o Baliram Kamble,
Age : 50 years, Occu. Agri.,
R/o Lohgaon, Tq. & Dist. Parbhani
4. Sopan s/o Baliram Kamble,
Age : 35 years, Occu. Service,
R/o Malegaon, Tq. Loha
5. Inderabai w/o Baliram Kamble,
Age : 45 years, Occu. Household,
R/o Pokhari, Tq. Loha
6. Kiranbai w/o Bapurao Bhendegaonkar

RESPONDENTS

**(Revision Application abated as against
respondent No.6 as per Court's order
dated 17.02.2006)**

Mr. S.D. Ghayal, A.P.P. for the appellant/State in
Criminal Appeal No. 140/2004 and for respondent No.
1/State in Criminal Revision Application No. 47/2004
Mr. S.B. Ghute, Advocate for the petitioner in
Criminal Revision Application No. 47/2004
Mr. V.G. Sakolkar, Advocate for the respondents
in Criminal Appeal No. 140/2004 and for respondents
No. 2 to 4 in Criminal Revision Application No. 47/2004

**CORAM : M.T. JOSHI, J.
DATE : 30/11/2015**

ORAL JUDGEMENT :

1. Heard both sides.

2. Aggrieved by the acquittal of present respondents from the offences punishable under section 498A and 306 read with section 34 of Indian Penal Code, by the learned Ad-hoc Additional Sessions Judge, Parbhani vide a judgement and order dated 1st November, 2003 passed in Sessions Trial No. 67/2002, the State has preferred the present appeal. Similarly, aggrieved by the very same order, the original complainant i.e. father of the deceased has filed the present Revision Application.

3. The prosecution case, in short, is as under :

. That, deceased – Sheela daughter of PW1 – Sakharam Bhave was married to present respondent no.1 – Vaijanath on 27th May, 2001. She died due to poisoning on 9th January, 2002 while residing at the matrimonial home at Pokhri. In the circumstances, on 3rd January, 2002, her father i.e. PW1-Sakharam filed the complainant. According to him, after initial happy married life of

two months, all the present respondents i.e. the husband as well as his relatives started ill-treating the deceased, on the ground that no dowry was paid in the marriage. Further, they wanted that a colour T.V. Set, a wooden laminated cot, mattress etc. should be provided to them. On that count, there used to be physical as well as mental ill-treatment to the deceased at the hands of the present respondents. As and when the deceased used to visit her parents and relatives at Nanded, she used to narrate the said ill-treatment. They used to convince her and used to take her back to the matrimonial home. Respondent no. 1 used to serve as Turner with one Co-operative Sugar Factory at Jawla Bazar. He used to keep the deceased for about fifteen days with him and for fifteen days at the matrimonial home with the other respondents. After Diwali Festival, the complainant has provided a steel cot and mattress etc. However, he was unable to provide a wooden laminated cot and a colour T.V. In the circumstances, when deceased — Sheela was residing with her husband i.e. respondent no. 1 — Vaijanath at Jawla Bazar, at that time, respondent no. 2 i.e. his father went there

and took away personal ornaments of the deceased as the demand was not fully complied with. In the circumstances, on 9th January, 2002, the complainant received a phone call from the deceased asking him to immediately visit her. In the noon, when he went to the quarter of respondent no. 1, he found that the deceased was already taken to the hospital and later on found that she had died. Therefore, the complaint came to be filed.

. On the basis of the said complaint. PW5 – A.P.I. Sopan More – the Investigating Officer conducted the investigation. In the accidental death case report, he had already sent the dead body for autopsy where under PW2 – Dr. Ramkrishna Gaul had carried post mortem examination and sent the viscera to the Chemical Analyzer. The Chemical Analyzer's report showed that the deceased has died due to consumption of oregano-chloro insecticide. The investigating officer carried further investigation and more particularly recorded the statements of PW3 – Kamal Bhave – the mother and PW4– Shankar – the sister's husband of the deceased.

4. The learned Sessions Judge acquitted the respondents by giving benefit of doubt. Hence the present appeal as well as the present Revision Application.

5. The learned A.P.P. and learned counsel for the revision-petitioner submitted that within just seven months of the marriage, the deceased has died. The consistent statement of PW1- Sakharam, PW3- Kamal and PW4- Shankar would show that the deceased was initially ill-treated over demand of the articles. Out of those articles, the complainant was unable to fulfill the demand of colour T.V. Set and laminated wooden cot. In the circumstances, he submitted that appeal be allowed.

6. On the other hand, Mr. V.G. Sakolkar, learned counsel for the respondents in both appeal and revision application submitted that the delay in filing of the F.I.R. was rightly found by the learned Sessions Judge as unreasonable. Further, there was vast contradiction and inconsistencies in the statements of the relatives of the deceased. Further, as per the prosecution case, though the dispute between the deceased and the

respondents was tried to be mediated by certain mediators, those mediators were not examined. In the circumstances, Mr. Sakolkar submitted that in the present appeal against acquittal, no interference in the reasoning forwarded by the learned Sessions Judge is warranted.

. As regards the revision application also, Mr. Sakolkar submitted that all the evidence on record has been appreciated by the learned Sessions Judge and, therefore, for the similar reasons, the revision application also deserves to be dismissed.

7. On the basis of above material and the submissions advanced on behalf of both the sides, the following point arise for my determination.

(I) Whether the prosecution has proved that for a period of five months from the date of marriage of the deceased with respondent no. 1 till her death on 9th January, 2002, the present respondents, in furtherance of their common

intention, had treated the deceased with cruelty over unlawful demand of articles?

(II) Whether the prosecution has further proved that on 9th January, 2002 the deceased has committed suicide and the present respondents, in furtherance of their common intention, had abetted the said commission of suicide, by giving cruel treatment to the deceased?

My findings to the above point nos. (I) and (II) are in the negative. The appeal as well as revision application are therefore dismissed for the reasons to follow:

R E A S O N S

8. The complainant PW1 – Sakharam came to know about death of the deceased on 9th January, 2002. the F.I.R. was, however, filed on 13th January, 2002. The explanation regarding belated filing of the F.I.R. is not given in the F.I.R. During deposition, however, the complainant PW1- Sakharam made a statement that upon seeing the dead body, he became ill and was, therefore,

admitted to a hospital and after regaining health, he filed the complaint. The learned Sessions Judge has taken into consideration the admission from the side of the prosecution witness i.e. one of the daughter of complainant PW1 – Sakharam, namely Jayshri who is M.A.M. Phil. The brother-in-law of the deceased i.e. PW4 – Shankar, as per the prosecution case, was knowing all the facts. Still, the complaint was not filed and, therefore, a doubt was raised regarding the genuineness of the complaint filed belatedly.

9. The learned Sessions Judge has also found inconsistencies in the prosecution evidence. According to the parents of the deceased i.e. PW1 – Sakharam and PW3 – Kamal, deceased had come to their house for the first time after marriage on Panchami festival and on second time for Diwali festival. The son-in-law i.e. PW4 – Shankar who resides in the same village, however, deposed otherwise and PW3 – Kamal added that the deceased had also visited at the time of Ashadi festival. Thus, there is discrepancy in the prosecution case even regarding short period of seven months.

. Further discrepancy pointed out by the learned Sessions Judge, was regarding taking the articles to the village of the respondents at Pokhri. The prosecution witness further admitted that the named mediators i.e. Taterao and Chudaman Kamble had attempted to mediate in the dispute. These mediators, however, were not examined.

. The learned Sessions Judge has also taken into consideration the possibility of independent witnesses, as according to the prosecution the deceased was being ill-treated while residing with the respondent no. 1 at his official quarter.

10. Upon hearing both sides, in my view, the learned Sessions Judge has extended reasonable benefit of doubt to the present respondents and has acquitted them on the basis of material produced before him. In the present appeal against acquittal, no interference in the reasoning forwarded by the learned Sessions Judge is, therefore, warranted. For the similar reasons the revision application also fails. Hence the following order:-

11. The Criminal Appeal as well as Criminal Revision Application are hereby dismissed. The bail bonds of the respondents/original accused, if any, shall stand cancelled.

Sd/-
[M.T. JOSHI]
JUDGE

npj/criapl140-2004