

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 349 OF 2003

The State of Maharashtra
 through Police Station Officer
 Police Station Georai, Taluka
 Georai, District Beed

APPELLANT

VERSUS

1. Ram Baburao Rathod,
 Age : 25 years, Occu. Agri.,
 R/o Belgaon-Tanda, Taluka
 Georai, District Beed
2. Vijay s/o Sitaram Rathod,
 Age : 25 years, Occu. Agri.
 R/o as above
3. Vimalbai Babu Rathod,
 Age : 40 years, Occu. Agri.
 R/o as above
4. Baban s/o Mithu Rathod,
 Age : 48 years, Occu. Agri.
 R/o as above
5. Babu s/o Mithu Rathod,
 Age : 45 years, Occu. Agri.
 R/o as above

RESPONDENTS

Mr. V.P. Kadam, A.P.P. for the appellant/State
 Mr. M.P. Tripathi, Advocate for the respondents

[CORAM : M.T. JOSHI, J.]

DATE : 2nd September, 2015

ORAL JUDGEMENT :

1. Aggrieved by the acquittal of the present respondents from the offences punishable under section 498A, 306 read with section 34 of the Indian Penal Code,

by the learned Adhoc Additional Sessions Judge, Beed, vide judgement and order dated 23rd January, 2003 passed in Sessions Case No. 21 of 2002, the State has filed the present appeal.

2. Deceased Vimal had died due to the poisoning while residing at the house of her husband - the present respondents on 26th August, 2001. In the circumstances, her father PW2 Kacharu filed FIR at Exhibit-38. In the FIR, he alleged that the deceased was married to the present respondent No. 1 about two years prior to her death. After marriage, the deceased started residing in the joint family of all the respondents. The rest of the respondents are the relatives of respondent No. 1.

. After about two to three months, all the respondents started making demand of an amount of Rs. 50,000/- for purchase of auto-rickshaw for respondent No. 1. Over the said demand, they always used to illtreat and starve the deceased. When the deceased had come to the complainant's house for panchami festival, at that time, she had narrated the illtreatment. The complainant, after the festival, took the deceased to the present respondents for cohabitation purpose. At

that time, as the complainant could not bring the amount, even he was assaulted by the respondents causing injuries to his nose. Lateron, the deceased had even sent a message through brother-in-law of the complainant, namely, PW4 Shankar. Thereafter, the deceased was brought to the house of the complainant. At that time, a complaint for the offence punishable under section 498A of the I.P. Code was filed with the police station.

. Thereafter, settlement took place between the parties on 17th July, 2001 in the court. There was resumption in the cohabitation. Next date was fixed on 17th August, 2001. However, on that day, respondent No. 1 did not attend the court. He had also not brought deceased Vimal. Therefore, on 18th August, 2001, the complainant alongwith his brother i.e. PW3 Jagannath visited the house of the respondents. At that time, all the respondents questioned them as to why they dragged the respondents in the court. They also challenged that they would see as to how the deceased would be allowed to cohabit and would do something foul regarding the deceased. Ultimately, both of them returned to their house. In the circumstances, on 26th August, 2001, the

deceased died due to poisoning and the complaint came to be filed.

3. During investigation, the statements of uncle i.e. PW3 Jagannath and the brother-in-law of the complainant, namely, PW4 Shankar were recorded. Further exercise i.e. preparation of panchanama of spot of occurrence, collection of post-mortem notes, sending viscera to the chemical analyzer was carried by the Investigating Officer.

. The defence has admitted the panchanama of spot of occurrence (Exhibit-29), the inquest panchanama (Exhibit-32) as well as post-mortem report at Exhibit-34, which show that the deceased has died due to consumption of poisoning. The prosecution relied on the versions of the witnesses i.e. PW2 Kachru, his brother PW3 Jagannath and his brother-in-law PW4 Shankar, whose names were also referred in the complaint.

. All these witnesses deposed on the line of the prosecution i.e. regarding the demand of the money, illtreatment to the deceased, her narration of the same

to some of the relatives and regarding the court proceeding, etc.

4. The learned Sessions Judge has, however, found that there is material variance between the statements of these witnesses and also between the allegations made in the FIR and the oral testimonies. Therefore, by extending benefit of doubt, all the respondents were acquitted. Hence, the present appeal by the State.

5. The learned A.P.P. submitted that the record would show that the deceased was subjected to cruelty by the present respondents for unlawful demand of Rs. 50,000/-. Further, on 17th August, 2001, when the couple resumed cohabitation upon reconciliation through the court, on the next date, the couple did not return to the court and immediately thereafter, the death of deceased Vimal in an un-natural circumstances has occurred, as detailed supra. He, therefore, submitted that the learned Sessions Judge ought not to have given much weightage to the minor contradiction. Hence, he submitted that the appeal be allowed and the respondents be convicted.

6. On the other hand, Mr. Tripathi, learned counsel for the respondents, submitted that the evidence on record would show that complainant PW2 Kachru, in fact, was not the author of the complaint. Further, the admissions of the witnesses would show that the respondents even were not residing jointly. Further, there was variance in the contents of the oral statements made before the learned Sessions Judge. He, therefore, supported the reasoning forwarded by the learned Sessions Judge and prayed that the appeal be dismissed.

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

(I) Whether the prosecution has proved that during the cohabitation of deceased Vimal with the present respondents at Belgaon-Tanda, Taluka Georai, the present respondents, in furtherance of their common intention, subjected the deceased to cruelty over an unlawful demand of Rs. 50,000/- ?

(II) Whether the prosecution has further proved that deceased Vimal met with suicidal death and the present respondents have abetted the commission of the suicide ?

My findings to both the above points are in the negative. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

8. The statements made by the prosecution witnesses and admissions given by them during cross-examination, jointly would show that PW2 Kachru is not author of the complaint as it was dictated to the police by PW3 Jagannath, his brother. Further, all the respondents are not residing together, as the respondents No. 2 and 4 are residing separately from the family.

9. Besides this, while in the FIR, it is alleged that on 18th August, 2001 when all these prosecution witnesses went to the house of the respondents to make enquiry as to why the deceased and respondent No. 1 did

not turn up to the court to report about the resumption of cohabitation, at that time, all the present respondents challenged them and threatened that they would make something foul regarding the deceased.

. As against this, PW2 complainant Kachru, the father of the deceased has deposed in the cross-examination that on that day, when he went to make enquiry with the deceased and respondent No. 1 as to why they did not turn up to the court, both of them told him that they were staying happily together and therefore, he returned to his house.

10. The evidence would further show that PW3 Jagannath and PW4 Shankar were facing prosecution on the basis of the complaint filed by respondent No. 1 and the same was also compromised which had taken place between the deceased and the respondents.

. In that view of the matter, the learned Sessions Judge has taken reasonable and probable view of the material before him. In the present appeal against acquittal, therefore, there is no need to interfere. In the result, the appeal fails. Hence, the following order.

11. The appeal is hereby dismissed. The bail bonds of the respondents, if any shall stand cancelled. The disposal of the property involved in the offence be carried on the line of the directions issued by the learned Sessions Judge, vide the impugned order.

[M.T. JOSHI]
JUDGE

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