

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 368 OF 2003

The State of Maharashtra
Through Police Station Officer
Police Station, Ambajogai,
Tq. Ambajogai, Dist. Beed

.. APPELLANT
(Orig. Complainant)

VS.

- 1] Narhari Baburao Shep
Age 50 years, Occu.: Agri.,
R/o Shepwadi, Tq. Ambajogai,
Dist. Beed
- 2] Ashok Narhari Shep, age 22 years,
Occu. & R/o as above
- 3] Sambhaji Narhari Shep, age 24 years,
Occu. & R/o as above
- 4] Gangabai Narhari Shep,
Age 40 years, Occu.: Household,
R/o As above

.. RESPONDENTS
(Orig. Accused)

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

CORAM : M.T. JOSHI, J.
DATE : 15/09/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by recording of the acquittal from
the offences punishable under section 498-A, 306 r/w.

section 34 of the Indian Penal Code of the present respondents by the learned II Adhoc Additional Sessions Judge, Ambajogai, in Sessions Case No. 61 of 2001, the present appeal is preferred by the State.

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

. That the deceased was married to present respondent no.2 - Ashok on 27/3/2000. After the marriage, she started co-habiting with him and the rest of the family members i.e. the present respondents at Shepwadi.

. At the time of first Panchami festival, when the father of the deceased PW3 - Vithal went to bring her back, the respondents refused to sent her. They behaved with him in rude manner. He therefore returned to his house all alone. Thereafter, however, respondent no.1 i.e. father of respondent no.2 brought deceased Jyoti to her parental house. At that time, deceased Jyoti disclosed to her parental relatives that she was subjected to harassment and cruelty by all the respondents by making unlawful demand of Rs.25,000/- for purchase of an auto-rickshaw. The respondent no. 1 came

to their house after the festival. At that time, the brother and the father of the deceased i.e. PW2 - Namdeo and PW3 - Vithal questioned respondent no.1 regarding the said demand. They also asked the respondent no.1 to stop such harassment. Respondent no.1 answered that he was unaware of any such harassment on account of any demand. He however assured them that he would convince his family members and took the deceased with him.

. Later-on, the father i.e. PW3 - Vitthal again went to the house of deceased - Jyoti for bringing her back for Diwali festival. At that time also, the respondents did not send deceased - Jyoti to her parental house. After 2-3 days respondent no. 1 brought her to the complainant's house. At that time also, complaints were made by Jyoti that there was no change in the behaviour of the respondents. She disclosed that all the respondents used to abuse and beat her on account of petty grounds and also on account of unlawful demand of the money.

. After Diwali festival, the respondent no.1 came to the parental house of Jyoti to take her back again. He was questioned by the family members of deceased -

Jyoti. Respondent no.1 even tendered apology and stated that in future, there would not be any ill-treatment and, therefore, deceased - Jyoti was again sent back for co-habitation. After some days, PW5 - Veemalbai i.e. sister of Jyoti went to meet Jyoti. At that time also, deceased - Jyoti disclosed her the fact of harassment at the hands of the respondents. Therefore, Veemalbai narrated the complaint to her brother PW2 - Namdeo.

. In the circumstances, on 18/11/2000, deceased - Jyoti died due to the drowning in the well while residing in the respondents' house. Therefore, the complaint came to be filed by her brother PW2 - Namdeo.

. PW7 - P.S.I. Mr. S.V. Kasbe carried the investigation in the case. He recorded the statements of these relevant witnesses. He also caused to draw spot panchanama, inquest panchanama and sent the dead body to S.R.T.R. hospital, Ambajogai for post-mortem, during the enquiry into the accidental death case. Thereafter, he filed chargesheet in the trial Court.

. The fact that the deceased died due to drowning, was an admitted fact. The respondents,

however, denied the allegations that the deceased died due to commission of the suicide. In order to prove the prosecution case regarding the ill-treatment, the material witnesses are PW2 - the brother of the deceased i.e. complainant Namdeo, PW3 - Vitthal the father, PW4 - Panchabai - mother and PW5 - Veemalbai - the sister of the deceased.

4. The learned Additional Sessions Judge appreciated the evidence of these witnesses and found that those statements are not reliable and, therefore, by extending benefit of doubt, the respondents were acquitted.

5. The learned A.P.P. submits that the evidence on record would clearly show that the present respondents have subjected the deceased to cruelty on account of unlawful demand of Rs.25,000/- for purchase of auto-rickshaw. The learned Additional Sessions Judge however found fault with their statements by appreciating the inconsequential contradictions and omissions. He therefore submits that the Appeal be allowed.

6. On the other hand, Mr. A.M. Gaikwad, learned counsel for the respondents submitted that the learned Sessions Court has appreciated each and every material on record. A possible and reasonable view has been taken and, therefore, in the present Appeal against acquittal, no interference is warranted.

7. On the basis of this material, following points arise for my determination :

I) Whether the prosecution has proved that the present respondents in furtherance of their common intention have subjected the deceased - Jyoti to cruelty for fulfillment of their unlawful demand during her co-habitation with them ?

II) Whether the prosecution has further proved that the present respondents have abetted the commission of suicide of deceased - Jyoti ?

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

R E A S O N S

8. PW2 - Namdeo brother of the deceased in his immediate statement i.e. FIR, has alleged that for unlawful demand, the deceased was subjected to cruelty. In his examination-in-chief, however, he added more details of not providing hair oil or putting the deceased to starvation as another mode of instances of cruelty. He even failed to disclose in the FIR that at the time of Panchami festival, deceased - Jyoti disclosed him that the respondents were subjecting her to cruelty over the demand of Rs.25,000/-. In the FIR it is simply averred that the respondents made a demand of Rs.25,000/- for purchase of auto-rickshaw.

9. The learned Additional Sessions Judge has also taken into consideration the statement of this witness that at the time of recording inquest panchanama and the panchanama of spot of occurrence, he had disclosed to the Police Officer about these facts by raising doubts and he even asked PW7 P.S.I. Kasbe to record his complaint in writing but the P.S.I. did not record the same. Naturally, PW7 PSI Kasbe controverted these

statements. He deposed that at that time, none of the relatives of the deceased made any complaint to him. In these circumstances, the learned Additional Sessions Judge has found that the FIR is belated.

10. Coming to the evidence of PW3 - Vitthal, father of the deceased, the learned Additional Sessions Judge has catalogued number of omissions made by the said witness in the witness box. There was contradiction between the statement of PW3 - Vitthal and PW5- Veemalbai, as to when for the first time, they came to know of the harassment meted to the deceased.

11. Statement of PW4 - Panchabai, mother of the deceased would show that she has been to the house of Jyoti for Mahalaxmi festival and at that time also, Jyoti disclosed her about the harassment, which in turn was narrated to PW2 - Namdeo and PW3 - Vithal. They are however silent regarding this fact.

12. As regards PW5 - Veemalbai, though she deposed that she visited the house of the deceased and the respondents, she was unable to tell the approximate distance between the bus stand and the house of the

respondents. She failed to answer, as to in which month, she visited the house of the deceased - Jyoti.

13. In view of these facts, the learned Additional Sessions Judge has extended reasonable benefit of doubt to the respondents. In the present appeal against the acquittal, therefore, there are no compelling reasons to interfere in the impugned judgment and order of the learned Additional Sessions Judge. In the result, the following order:-

14. Criminal Appeal is hereby dismissed.

15. Bail bonds, if any, of the present respondents shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/