

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 566 OF 2012

1. Limbaji s/o. Shravan Thoke,
Age-35 years, Occ: Labour,
2. Shravan s/o. Tanaji Thoke,
Age-65 years, Occ: Labour,
3. Muktabai w/o. Shravan Thoke,
Age-60 years, Occ: Labour,
All R/o. Chondi (Bk.), Tal-Shenggaon,
Dist. Hingoli.

... APPELLANTS

VERSUS

The State of Maharashtra,
Through the Officer Incharge of
Police Station Goregaon, Tal- Shenggaon,
Dist. Hingoli.

... RESPONDENT

...

Mr. V. B. Sargar, Advocate i/b Mr. B. R. Kedar, for the Appellants.

Mr. K. S. Patil, APP for the Respondent / State.

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CORAM : **A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE : 01st September, 2015.

JUDGMENT: (Per Indira K. Jain, J.)

1 This is an appeal preferred by original Accused Nos.1 to 3 against the judgment and order dated 16th August, 2012, passed by the Additional Sessions Judge, Hingoli, in Sessions Case No.55 of 2008. By the said judgment and order, learned Additional Sessions Judge, convicted Appellants under Sections 498-A, 302 read with 34 of the Indian Penal Code. For the offence punishable under Section 498-A, the Trial Court sentenced each of the Appellants to rigorous imprisonment for two years and a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for two months. For the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, each of the Appellants was sentenced to imprisonment for life and fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for two months. Both the sentences were directed to run concurrently.

2 For the sake of convenience, we shall refer the Appellants in their original status as accused as they were referred during trial.

3 The prosecution case in brief, is as under:

- i. Complainant Lattuji Chandrabhan Bhagat was resident of village Shivni (Dalilpur), Taluka Mangrulpeer, District Washim. The family of Lattuji was consisting of wife Devkabai, two sons and two daughters. Sheela was younger daughter.
- ii. Sheela was married to Accused No.1 Limbaji in April, 2005. Accused No.1 was residing with his father Accused No.2 and mother Accused No.3, at village Chondi (Bk), Taluka Sengaon, District Hingoli. After marriage, Sheela started residing with her in-laws. Initially for three months, she was treated well.
- iii. The prosecution case is that after three months, Sheela had been to her maternal place. That time, she disclosed to her parents that Accused were demanding Rs.25,000/- to purchase an auto-rickshaw. The parents convinced her and she was

sent back to her matrimonial home.

- iv. During Diwali festival Sheela came to her father's house. That time, she disclosed about demand of Rs.25,000/- and informed her parents that she was ill-treated and beaten for non-fulfillment of demand. Complainant Lattuji tried to pacify Accused No.1 that his financial condition was not sound and he was not able to give him Rs.25,000/-. Thereafter, Sheela stayed for about four months with her parents.
- v. Then Accused No.1 had been to Mumbai for work. Accused No.2 father in-law of Sheela visited the house of her father and insisted to give them Rs.25,000/- for purchasing an auto-rickshaw. Complainant expressed his inability to give the amount as demanded.
- vi. Before one month of death of Sheela, Accused No.1 had been to the house of Complainant. He

made demand of Rs.25,000/- and threatened that in case demand is not fulfilled, he would kill Sheela. After Complainant convinced Accused No.1, Sheela was sent back to her matrimonial home with Accused No.1.

vii. On 16th May, 2006, at around 03:00 pm, Complainant received message from Police Station Asegaon, Taluka Washim regarding death of Sheela due to burns. They were informed to proceed to Police Station Goregaon where the dead body of Sheela was sent. On receiving message, Complainant alongwith wife, son, cousin brother and other relatives rushed to Police Station Goregaon. They saw severe burns on the dead body. Lattuji came to know through relatives that incident took place at 04:00 am. He then lodged report to Police Station, Goregaon.

viii. On receiving report, Crime No.31 of 2006 was registered against Accused persons. Before crime

could be registered, accidental death was reported to Police Station. AD No.61 of 2006 was recorded. During inquiry of AD, spot panchanama and inquest panchanama came to be drawn. The dead body was referred to Primary Health Center, Goregaon.

- ix. After crime was registered, P.I. Atmaram Sujlod took over investigation. Statements of several witnesses were recorded. Articles recovered during scene of occurrence panchanama and the cloths under seizure panchanama were forwarded to chemical analyser Aurangabad. On completion of investigation, charge-sheet was filed before Judicial Magistrate First Class, Shenggaon, who in turn committed the case for trial to the Court of Sessions.

4 Charge came to be framed against Accused – Appellants at Exhibit 6. Appellants pleaded not guilty to the charge and claimed to be tried. The factum of relationship is not

in dispute. Regarding alleged commission of offence, defence of accused was of total denial and false implication.

5 Prosecution examined in all ten witnesses. After going through the evidence adduced in the case, learned Additional Sessions Judge convicted and sentenced the Appellants as stated in paragraph No.1 above. Hence, this appeal.

6 We have heard the learned counsel for parties. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, judgment delivered by the learned Additional Sessions Judge and the evidence on record for the below mentioned reasons, we are of the opinion that Appellant No.1 Limbaji was ill-treating Sheela on demand of money and on non-fulfillment of demand, committed her murder.

So far as Appellant No.2 Shravan and Appellant No.3 Muktabai are concerned, we are of the opinion that the prosecution could not prove the guilt of Accused Nos.2 and 3 beyond reasonable doubt and they deserve acquittal.

7 There is no eye witness to the incident. Prosecution case is based on circumstantial evidence. PW-1 Lattuji (father of victim), PW-2 Devkabai (mother of victim), PW-8 Nandu Bhagat (brother of victim) are the witnesses on alleged demand of Rs.25,000/-, and ill-treatment to Sheela thereof. On going through their evidence, it is apparent that Accused No.1 made demand of Rs.25,000/- for purchasing an auto-rickshaw. Sheela was beaten and ill-treated as demand was not fulfilled by her father. These witnesses have deposed that Sheela disclosed about ill-treatment to them whenever she visited the house of her parents. Nothing substantial could be elicited in piercing cross-examination of the father, mother and brother of Sheela to disbelieve their testimonies. From their evidence, we find that prosecution has succeeded in proving the charge under Section 498-A of the Indian Penal Code against Accused No.1.

8 So far as Accused Nos.2 and 3 are concerned, allegations are vague. No specific instances have been quoted by the prosecution witnesses. In the absence of convincing and cogent evidence, we find it risky to accept the prosecution case regarding

cruelty to Sheela at the hands of Accused Nos.2 and 3.

9 This takes us further to the principal question regarding cause and mode of death of Sheela. PW- 9 Dr. Uday Tukaram Helkar was the medical officer Sakhara, Taluka Sengaon, District Hingoli. He performed postmortem with the assistance of Dr. Kore. Medical Officers noticed 99% superficial to deep burns on the dead body. All injuries were anti-mortem. PW-9 Uday Helkar opined cause of death as shock due to burns. The medical evidence brought on record through the evidence of Dr. Uday Helkar, is not at all shaken in the cross-examination.

10 In addition to medical evidence, we find on record spot panchanama (Exhibit 34) proved by PW-7 Shivaji Sakharam Bhakre and inquest panchanama (Exhibit 30) by PW-5 Surrayabee Shaikh. The factual position of the spot shown in spot panchanama and the condition of dead body shown in inquest panchanama lead to a positive conclusion that the deceased died due to severe burn injuries.

11 So far as mode of death is concerned, as we have

mentioned above prosecution case exclusively rests on circumstantial evidence.

12 The most important circumstance against Accused No.1 is that he was with deceased in the room when incident occurred. Accused Nos.2 and 3 were sleeping outside the house. Incident took place in the wee hours of the day at 04:00 am. That time, PW-3 Vithal and PW-4 Shriram, who arrived at the spot saw the door of house of accused latched from outside. They also saw accused standing there. Accused did not disclose presence of Sheela inside the house. When witness inquired from the accused about Sheela, he did not tell anything to them. Accused did not even attempt to save the life of his wife, who was burning inside the house. He was standing as silent spectator. This circumstance is indicative of the fact that Accused No.1 is responsible to cause her death.

13 Needless to state that Accused No.1 was in know of the happening inside the room. It was for him to offer explanation regarding manner of occurrence of incident. He failed to explain the same and his unnatural conduct of coming out of the house

and standing there without making any attempt to save the life of wife is self speaking to show that death of Sheela was neither accidental nor suicidal but it was homicidal.

14 From the evidence of PW-5 Surrayabee, it can be seen that she was returning after answering nature's call and saw burning house of Accused. She saw Accused standing in front of the house. On seeing the house burning, she raised cries. She inquired about presence of Sheela. Accused informed that Sheela was inside. Then crowd gathered there had broken the wall, entered the house and saw Sheela completely burnt. This is a strong circumstance against Accused No.1, who was inside the house at the time of occurrence of incident. As the facts were specially within his knowledge, it was obligatory on him under Section 106 of the Evidence Act to explain the manner of occurrence of incident. In this background we find that the defence raised by Accused is palpably false and unacceptable.

15 In the light of the above and in view of the clinching circumstances brought against Accused No.1, we find no merit in the appeal preferred by Appellant No.1 Limbaji. So far as

Appellant No.2 Shravan and Appellant No.3 Muktabai are concerned, we are of the opinion that there is no sufficient evidence to prove beyond reasonable doubt that they were ill-treating Sheela for non-fulfillment of demand of money and committed her murder.

16 In this premise, we are inclined to partly allow the appeal. Hence, the following order:

ORDER

- (A) Criminal Appeal No.566 of 2012 is partly allowed.
- (B) The Judgment and order dated 16th August 2012 passed by the Additional Sessions Judge, Hingoli in Session Trial No.55 of 2008 convicting the Appellant No.1/ Accused No.1 – Limbaji s/o Shravan Thoke for offences punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code and sentencing him, for the offence

punishable under Section 498-A of Indian Penal Code, to suffer Rigorous imprisonment for two years and to pay fine of Rs.1,000/- (Rs. One Thousand), in default to suffer Rigorous Imprisonment for two months, and sentencing him, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, to suffer life imprisonment and to pay a fine of Rs.1,000/- (Rs. One Thousand), in default to suffer Rigorous imprisonment for two months, is hereby confirmed and consequently, his Appeal is dismissed.

- (C) The benefit of provisions under Section 428 of the Code of Criminal Procedure be given to the Appellant No.1.
- (D) The Judgment and order dated 16th August 2012 passed by the Additional Sessions Judge, Hingoli in Session Trial No.55 of 2008

convicting the Appellant No.2/ Accused No.2 – Shravan s/o Tanaji Thoke and Appellant No.3/ Accused No.3 – Muktabai w/o Shravan Thoke, for offences punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code and sentencing them, for the offence punishable under Section 498-A of Indian Penal Code, to suffer Rigorous imprisonment for two years and to pay fine of Rs.1,000/- (Rs. One Thousand), in default to suffer Rigorous Imprisonment for two months, and sentencing them, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, to suffer life imprisonment and to pay a fine of Rs.1,000/- (Rs. One Thousand), in default to suffer Rigorous imprisonment for two months, is set aside. Consequently, Appellant No.2 – Shravan s/o Tanaji Thoke and Appellant No.3 – Muktabai w/o Shravan Thoke are acquitted

of the offences punishable under Sections 498-A and 302 read with 34 of the Indian Penal Code. Their bail bonds shall stand cancelled. The fine amount, if any, paid, be refunded to the Appellant Nos.2 and 3.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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