

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4884 OF 2013

The State of Maharashtra,
through PSI Rahata Police,
Tq. Rahata, Dist.Ahmednagar ..Applicant

Versus

Sunil Minanath Kalwaghe,
and others ..Respondents

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Mr.V.P.Kadam, APP for applicant – State

Mr.V.D.Hon, Senior counsel i/b. Mr.A.V.Hon,
advocate for respondent nos.1 to 5

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CORAM : M.T. JOSHI, J.

DATE : JUNE 19, 2015

PER COURT :

Heard both sides.

2] Aggrieved by acquittal of the present respondents from the offences punishable under Section 306, 498-A, 323, 504 and 506 read with 34 of Indian Penal Code, present application for

grant of leave to file appeal, is preferred by the State.

3] The prosecution case, in short, is as under :-

. That deceased Sharda, daughter of PW 1 - Raosaheb Bansod was married to respondent no.1 - Sunil on 5th May, 2002. Thereafter, she started residing in the joint family of respondent no.1 and his relatives i.e. rest of the respondents. After marriage, the deceased was treated well for a period of six months. Thereafter, the respondents started nagging her. She used to tell about the same to the complainant whenever she used to visit her parental home. The parental relatives of the deceased, however, used to give understanding to her and sent back her to the matrimonial home. Five years had passed in such a state of affair. Deceased Sharda had not conceived during that period.

4] In the situation in the year 2007, deceased – Sharda complained her father i.e. PW 1 – complainant that as she did not beget any child, all the respondents told her that she may reside with them provided that she should bring Rs.5 Lakhs for purchase of a truck and over said demand, respondent no.1 used to beat her while, other respondents used to nag her. She further told that she was unable to bear with said illtreatment. In the situation, PW 1 – Raosaheb, complainant and his relatives gave understanding to the respondents and returned back the deceased. About one and half months prior to the death of the deceased in April, 2009, deceased Sharda was again returned back at the house of one Appasaheb Shejul, who is a relative of the complainant. At that time also, deceased had repeated the same complaint. However, deceased was again sent to her matrimonial home. About two months earlier to her death, the deceased had come to her parental

house, however, PW 1 – Raosaheb with his relatives had been to the respondents' house and gave understanding to the respondents and returned back the deceased to the matrimonial home.

5] In the situation, on 22nd March, 2009, son of PW 1 – Raosaheb received a phone call from respondent no.1 making demand of Rs.5 Lakhs. Thereafter, on 26th March, 2009, parents of the deceased received information about admission of Sharda in the hospital at Shirdi. PW 1 – Raosaheb and his relatives visited the deceased in the hospital. They found marks of beating over her body. Ultimately, the deceased had become unconscious and on 3rd April, 2009, she died and therefore, the F.I.R was filed by the complainant on 4th April, 2009.

6] Crime was registered by the Investigating Officer and investigation was completed. Inquest

panchnama and the panchnama of the spot of occurrence were recorded. Post mortem notes were collected. Viscera collected by the Medical Officer was sent to the Chemical Analyst. Statements of the witnesses were recorded and charge sheet was filed.

7] Before learned Addl. Sessions Judge, statements of, in all, six witnesses were recorded. PW 1 – Raosaheb is the complainant i.e. father of the deceased. PW 2 – Rajendra deposed about the information received to him from PW 1 – Raosaheb regarding the illtreatment given to the deceased by the respondents. In his cross-examination, it has come on record that PW 1 – Raosaheb was his nephew, though, said fact was not recorded in the statement made to the police. PW 3 – Bhanudas is cousin grand-father of deceased – Sharda. PW 4 – Dr. Gokul is the Medical Officer, who has conducted post mortem examination over the

dead body of the deceased and passed memorandum of the same at Exhibit 18. PW 5 - Murlidhar Kasar, API and PW 6 - Ashok, PSI conducted the investigation in the case.

8] According to the defence, in fact, respondent no.1 had separated himself from his family members and started residing with the deceased separately, long back. He was comparatively in sound financial condition, than the family of PW 1 - Raosaheb. There was no need for him to ask for money. According to him, in fact, PW 1 - Raosaheb had, once, made a demand of amount of Rs.80,000/- from him. According to the defence, the deceased was not able to beget and therefore, she was depressed and in the situation, due to untimely death, only on suspicion, the complaint came to be filed.

9] Learned Addl. Sessions Judge held that the prosecution has failed to prove the offences

levelled against the respondents beyond reasonable doubt and therefore, acquittal came to be recorded.

10] Learned APP for the applicant – State submits that learned Addl. Sessions Judge did not advert to the oral testimony of the prosecution witnesses, more particularly, the witnesses who deposed about the complaints of illtreatment made by the deceased to them. He submits that learned Addl. Sessions has wrongly recorded acquittal against the respondents and therefore, present application may be allowed and leave to file the appeal may be granted.

11] On the other hand, Mr.Hon, learned Senior Counsel for the respondents, submits that the documentary evidence itself would show that PW 1 – Raosaheb had made a demand of Rs.80,000/- to respondent no.1. Admittedly, respondent no.1 was

residing away from rest of the respondents and deceased was not, at all, able to beget any child for seven years. However, as the deceased was in depressed mood, as she was not able to beget any child, her untimely death has occurred.

12] On the basis of this material, following points arise for my determination:-

I. Whether the prosecution has proved that deceased Sharda has died in unnatural circumstances while residing with the present respondents ?

II. Whether the prosecution has proved that during cohabitation, all the respondents, in furtherance of their common intention, subjected the deceased Sharda to cruelty over unlawful demand of

money ?

III. Whether the prosecution has proved that all the respondents, in furtherance of their common intention, has voluntarily caused hurt to deceased Sharda?

IV. Whether the prosecution has proved that all the respondents in further of their common intention, intentionally insulted deceased Sharda and thereby gave her provocation to break public peace ?

V. Whether the prosecution has proved that all the respondents, in furtherance of their common intention, have caused criminal intimidation to deceased Sharda ?

VI. Whether the prosecution has proved that the respondents have abetted commission of suicide by deceased Sharda ?

. My findings to the above points are in the negative and hence, leave to file the appeal is refused and the application is rejected, for the reasons to follow.

R E A S O N S

13] The post mortem notes at Exhibit 52 coupled with the oral statement of PW 4 - Dr.Gokul would show that old scab admeasuring 6 cm. x 4 cm. was present on the iliac bone of the deceased. Externally, no other injuries were found. Internally, however, thorax, lungs, abdomen, stomach, liver, spleen and kidney of the deceased were found congested. Viscera was

preserved. The Medical Officer, therefore, reserved his opinion and awaited the C.A. report. The C.A. report, however, was negative about any poisonous substance.

14] Though the deceased was about 25 years old and died while residing with the respondents, the evidence does not show that she died due to any poisonous substance, as alleged by the prosecution. In that view of the matter, it cannot be said that the deceased has committed suicide or she died in unnatural circumstances. No doubt as the deceased was residing with the respondents, they were required to show as to, in what circumstance, the deceased was admitted in the hospital. The deceased was admitted in the hospital for three days, yet, as there is no evidence that the deceased has died due to certain poisonous substance as alleged by the prosecution,

I am unable to confirm that the deceased had died due to unnatural cause.

15] PW 1 – Raosaheb, father of the deceased, has deposed on the line of the prosecution case. In his cross-examination, he admitted that the respondents were possessing 35 acres of land from which, respondent no.1 was separated and was allotted 9 acres of land. He was cultivating said land personally and was raising crops like onion, sugarcane, gram and wheat. Remaining respondents were also residing separately and cultivating their lands separately. Further, respondent no.1 – Sunil has also built a house of three rooms in the land given to him on partition and he was residing separately with deceased Sharda in that house. Respondent no.5 – Rajendra, besides having agricultural land with him, was also working as an Accountant with one

dairy. All the lands were, admittedly, fertile and within the irrigated zone. As against this, PW 1 — Raosaheb was having only four acres non-irrigated land and had no capacity to earn substantially though, according to him, the respondents had demanded an amount of Rs.5 Lakhs from him.

16] During cross-examination, a letter was confronted to PW 1 — Raosaheb. He initially did not accept that he has sent the said letter, however, later he admitted that address on envelope was in his handwriting and also admitted his signature over the letter in the envelope. Said letter is placed at Exhibit 73. At first, he denied the contents of the letter but later on admitted the signature and contents in similar handwriting. The letter at Exhibit 73 was, thus, proved to be signed by PW 1 — Raosaheb. It was sent on 23rd July, 2012. Vide said letter, PW 1 —

Raosaheb had made a demand of Rs.80,000/- to respondent no.1, as the son of PW 1 wanted to purchase 4 Gunthas land.

17] PW 2 – Rajendra, in the examination-in-chief, deposed that he learnt from PW 1 – Raosaheb about the illtreatment given to the deceased. This is not only the hearsay evidence, but during the cross-examination, it was brought on record that he was nephew of PW 1 – Raosaheb, but he tried to hide said relationship from the court.

18] PW 3 – Bhanudas is cousin grand-father of deceased – Shrada. He deposed that when he made inquiry with the deceased, she narrated about the illtreatment, as detailed supra. According to him, when he went for mediation between the parties, the respondents were ready to accept the deceased, however, lateron she was returned back to parental home. His material statement in

examination-in-chief, that he went to the house of PW 1 – Raosaheb and made inquiry to deceased or that deceased told him about illtreatment, are new statements made by him during the examination-in-chief than the statements recorded by the police.

19] Learned Addl. Sessions Judge has taken into consideration all these facts and opined that the untimely death of the deceased Sharda might have occurred as she was not begetting any child.

20] Thus, it is clear that that PW 1 – Raosaheb himself, earlier, had demanded an amount of Rs.80,000/- to respondent no.1 by reiterating that respondent was earning substantial income from his agricultural land. Further, it is an admitted fact that respondent no.1 was residing separately from other respondents along with deceased Sharda in a separate house. The admitted fact further would show that the family of PW 1 – Raosaheb was

very poor i.e. having four acres non-irrigated land, comparing to the economic condition of the respondents, as detailed supra.

21] Considering the evidence on record and overall facts on record, in my view, grant of leave to file appeal, would be an exercise in futility. The application is, therefore, dismissed.

[M.T. JOSHI, J.]

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