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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 534 OF 2002.

The State of Maharashtra]... Appellant.

V/s.

1. Santosh Chandrakant Khair	]
Age about 22 years	]
	]
2. Sanjay Chandrakant Khair	]
age about 19 years	]
	]
3. Arun Sadashiv Khair	] <u>Respondents</u>
age about 33 years	] Original
	] Accused
4. Smt. Smita Chandrakant Khair	] Nos
age about 45 years	] 1 to 5.
	]
5. Ms. Sapna Chandrakant Khair	]
age: 21 years,	]
	]
all are residing at: Mandaki,Tal.Chiplun	]
District: Ratnagiri	]

Mr. H. J. Dedia, APP for the appellant State.

Mrs. Gauri Jadhav, for the Respondent Nos 1 to 5.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th DECEMBER, 2015.

ORAL JUDGMENT : [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. The State has preferred this appeal, challenging acquittal of respondents, for the offences punishable under Section 498A and 306 read with 34 of the Indian Penal Code, as recorded by the Additional Sessions Judge, Ratnagiri, vide his judgment and order dated 7th November, 2001, in Sessions Case No.70 of 1999.

2. Brief facts of the appeal can be stated as follows :-

The marriage of Archana @ Shubhada with respondent No.1 had taken place on 8th May, 1997. After the marriage, she was residing alongwith respondent No.1 her husband and respondent Nos 2 to 5, his relatives. It is alleged that at the time of Rakhi festival, it was informed by Archana to her mother that respondents were demanding amount of Rs.20,000/- as dowry and on that ground subjecting her to harassment and illtreatment. An attempt was made therefore to convince the respondents not to make such demand and to treat her properly. However, on 7th September, 1998 dead body of Archana was found in a well. The information about the same was given by her father-in-law

Chandrakant Khair at Savarde out post.

3. On the said information Exh.35, P.W.2 Head Constable -Shridhankar, registered A.D.No.62 of 1998. Thereafter he visited the village Mandaki, took out the dead body from the well, made inquest panchnama Exh.28 and sent the dead body for postmortem. As per postmortem report Exh.31, the cause of death was founde to be asphyxia due to drowning. On the same day, P.W.2 Head Constable Shridhankar prepared scene of offence panchnama Exh.29 and handed over further enquiry to P.W. 3 P.S.I. Waghate. P.W.3 PSI Waghate, while on duty on 8th September, 1998 recorded complaint of Ajay Sawant, the brother of deceased Archana. On his complaint Exh.26, he registered C.R.No.157 of 1998. During the course of investigation, he recorded statements of witnesses, arrested respondents and further to completion of investigation, filed chargesheet in the court against them.

4. On committal of the case to the Sessions Court, the trial Court framed charge against respondents vide Exh.16. Respondents pleaded not guilty and claimed trial, raising the defence of denial and false implication.

5. In support of its case, prosecution examined three witnesses viz, P.W.1 Anita, the mother of the deceased; P.W.2 Head Constable Shridhankar who conducted enquiry in A.D.No.62 of 1998 and lastly P.W.3 Investigating Officer PSI Waghate.

6. On appreciation of their evidence, the trial Court found that prosecution has failed to prove both the charges levelled against respondents and accordingly acquitted them. This judgment of the trial Court is challenged in this appeal by learned APP; whereas supported by learned counsel for respondents.

7. In this case, as per admitted facts on record, the marriage of Archana, daughter of P.W.1 Anita, with respondent No.1 had taken place on 8th May, 1997 and she has succumbed to death on 7th September, 1998 i.e. within two years from the date of marriage. The postmortem report Exh.32 proves that the cause of her death was asphyxia due to drowning. Learned APP submits that deceased has committed suicide due to harassment and cruelty at the hands of respondents and on that aspect there is sufficient evidence on record against respondents.

8. However, in my considered opinion, mere proof of death of a married woman within 7 years from the date of her marriage is not sufficient to attract either charge under Section 498A or 306 of IPC. To prove these offences, prosecution has first to establish that the cause of her death was suicide. In the instant case, the evidence on record does not lead to an irresistible inference that the cause of Archana's death was suicide and suicide alone. The spot panchnama Exh.29 is self speaking to prove that near the well from which dead body of Archana was recovered, police found her slipper and clothes in the bucket with washing soap. They further found one plastic can and nylon rope used for fetching water from the well, lying in the well itself. The presence of these articles, near the well and inside the well raises the possibility of accidental death and rules out the case of suicide. Otherwise the presence of plastic can used for fetching water and presence of bucket with washing soap and clothes cannot be explained. The postmortem report also does not reveal any external or internal injuries on her body. Therefore, in the instant case, the trial Court was justified in holding that the prosecution has failed to prove that the cause of Archana's death was suicide as the possibility of accidental death looms large on the face of

evidence on record.

9. Even as regards charge under Section 498A IPC, the only evidence adduced by prosecution is that of her mother, P.W.1 Anita. Archana's brother Ajay, who had lodged complaint in this case has died 2 to 3 months before his evidence could be recorded and hence contents of the complaint are also not properly proved. No doubt P. W. 1 Anita has deposed that Archana had made complaint to her about harassment at the hands of respondents and she has tried to convince respondents to behave properly with her. However, her evidence is not corroborated or supported from any other source, especially when such corroborating evidence was available in the present case. Because according to her evidence, at the time of Rakhi Pournima, when respondents demanded cash of Rs.20,000/-, she went to the house of one Shantaram to bring him to house of respondents to give understanding to them. The evidence of Shanataram was, therefore, significant for prosecution to corroborate the evidence of P.W.1 Anita. However, he is not examined by the prosecution. Her evidence further reveals that on 29th May, 1998, she had been to the house of respondents with one Raghunath to give understanding to them and at that time respondents assured that they

would not illtreat Archana. Raghunath is, however, not examined by prosecution to corroborate the evidence of P.W.1 Anita on this material aspect. Her evidence on this aspect is also not free from omissions. It is elicited in her cross examination that in her statement recorded by police officer she has not stated that her daughter Archana told her that she ate medicinal leaves as she was fade up with the harassment by respondents. She has also not stated before the police that respondent No.4 informed her about this factum.

10. The allegations levelled by P.W.1 Anita against respondents are also of general and omnibus nature. No specific allegation is made against any of the respondents. Vague allegation of demand of Rs.20,000/- by the respondents is made and said allegation is not at all supported and corroborated with any other material evidence on record. The story of demand of cash amount also does not appear to be probable considering that the marriage was solemnized at the house of respondents as they were fully aware that P.W.1 was poor and the father of the deceased was not alive.

11. In my considered opinion, therefore it has to be held that the

trial Court has appreciated the entire evidence on record in its proper perspective and having regard to the fact that the evidence on record is very meager to attract offences charged against respondents, the trial Court has acquitted respondents. Hence as the view taken by the trial Court is borne out from the evidence on record and is a probable and a reasonable view of the matter, no interference is warranted in the impugned judgment and order of the trial Court. Hence the appeal stands dismissed. Bail Bonds of the respondents stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment.