

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.623 OF 1994

1) DATTATRAYA HAVANNA VANJARE)
2) SUSHILA DATTATRAYA VANJARE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.M.R.Deshpande, Advocate for the Appellant.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 7th JULY 2015.

JUDGMENT :

1 Renuka – the second wife of appellant no.1 Dattatraya
– died an unnatural death, by consuming an insecticide.
Appellant no.2 – Sushila – is the first wife of appellant no.1
Dattatraya. Renuka was the real sister of appellant no.2 Sushila.
After Renuka's death, her father – Nagappa – lodged a report with
the police alleging that Renuka was being treated with cruelty by

the appellants, and that, Renuka had committed suicide due to the torture caused to her by the appellants. On this report, which was treated as First Information Report (FIR), a case in respect of offences punishable under Sections 498A and 304B of Indian Penal Code (IPC) read with Section 34 thereof, was registered. After investigation, the police filed a charge-sheet against the appellants, alleging commission of offences punishable under Section 498A and Section 304B of IPC read with Section 34 thereof. It, however, appears that, the charge of an offence punishable under Section 306 of IPC also came to be framed against the appellants. After holding a trial, the Additional Sessions Judge, Solapur, held the appellants guilty of offence punishable under Sections 498A IPC read with Section 34 IPC and offence punishable under Sections 306 read with Section 34 IPC. He sentenced them to suffer Rigorous Imprisonment for 1 year each and to pay a fine of Rs.500/- each, with respect to the first mentioned offence, and Rigorous Imprisonment for 4 years each and to pay a fine of Rs.1000/- each, with respect to the second mentioned offence. The Additional Sessions Judge found the

appellants not guilty of an offence punishable under Section 304B IPC read with Section 34 thereof, and acquitted them of the said offence.

The appellants are aggrieved by the judgment and order convicting the sentencing them, and have, therefore, approached this court by filing the present appeal, challenging the same.

2 I have heard Mr.M.R.Deshpande, the learned counsel for the appellants. I have heard Mrs.M.R.Tidke, the learned APP for the State. I have gone through the entire evidence adduced during the trial. I have carefully gone through the impugned judgment.

3 The facts are, rather unusual, in as much as, it appears that though appellant no.1 was married to appellant no.2, the parents of appellant no.2 gave appellant no.2's younger sister – Renuka – also, in marriage to appellant no.1. When Renuka died, an allegation was leveled against not only the appellant no.1, but

also the appellant no.2, that Renuka was being treated with cruelty, and was being harassed for demand of dowry; and that, Renuka had committed suicide because of the ill-treatment and harassment caused to her by both the appellants.

4 The defence of the appellants was to the effect that, Renuka was never ill-treated or harassed by any of them. According to the appellants, Renuka was suffering from convulsive disorder, and that, she was treated medically, but had not shown any improvement. Thus, it is suggested that, due to mental disorder and ailment, Renuka might have committed suicide, and that the appellants were not responsible for the same.

5 The prosecution examined eleven witnesses during the trial. The first witness – Pirasi Vanjare – is the one, who had, after having seen the dead body of Renuka, reported the matter to the Police Patil, and he, then, along with the Police Patil, had gone to the Police station. A report (Exhibit 19) was lodged by him about the death of Renuka and investigation under Section 174 of the

Code of Criminal Procedure (Code hereinafter) was undertaken on that basis.

6 In his cross-examination, it was revealed that there was about 10 to 15 years age gap between appellant no.2 and Renuka. This witness also admitted in the cross-examination that Renuka was suffering from convulsive disorder, and that, she was getting such attacks frequently. Renuka had delivered a child and the delivery had taken place in the house of the appellants itself, and this has also been revealed in the cross-examination of this witness. As a matter of fact, except that Renuka had some ailment and was suffering from convulsive disorder frequently, the other things are not in dispute.

7 The witnesses – Amin Kasim Shaikh (PW2) and Tukaram Gambhire (PW3) – who are the panchas in respect of the spot panchnama, did not support the prosecution case and were declared as hostile. Even otherwise, nothing turns on their evidence.

8 Nagnath Gaikwad (PW4) is also a panch, in whose presence, the clothes on the dead body of Renuka were seized under a panchnama. Nothing turns on his evidence either.

9 The fifth witness – Dr.Ashok Kanki – is the one who conducted postmortem examination on the dead body of Renuka. Initially, he was unable to opine as to the probable cause of death, and had preserved viscera for examination by a Chemical Analyzer. But after the report from the Chemical Analyzer was received, he opined the death to have been caused due to Endosulfan poisoning.

10 The sixth witness – Nagappa Kore – First Informant – is the father of Renuka. His evidence, the evidence of Laxmi Kamble (PW7) – sister of Renuka – (and obviously also of appellant no.2) and the evidence of Bhimsha Kore (PW10) – brother of Renuka and also of appellant no.2, is important in the context of the allegation of cruelty. The same, therefore, may be considered together.

11 Nagappa has stated that appellant no.2 was given in marriage to appellant no.1 about fifteen years before. That, a son and two daughters were born to the appellants. According to him, appellant no.2, thereafter got herself operated for family planning, but thereafter, her son died. About two to three years thereafter, appellant no.1 and two or three members from his family came to Nagappa and asked him to give Renuka to appellant no.1 in marriage. That, Nagappa accepted the proposal of appellant no.1 and gave Renuka in marriage to him, after giving to him some cash and gold. Nagappa further narrates that after marriage of Renuka, she went to reside with appellant no.1 and appellant no.2, and that, *all of them lived happily for about a year*. Renuka then delivered a female child. Since Renuka had delivered a female child, the appellants started beating Renuka. That, the appellants used to beat Renuka and used to insist that she should bring money and gold from Nagappa. This was told to Nagappa by Renuka, when she had come to his *vasti* on two occasions. It was suggested to him in the cross-examination that Renuka was suffering from convulsive disorder, and that, therefore, could not

be married. The witness denied the same and volunteered to state that there were many proposals from the village for Renuka. He admitted that the birth of the daughter of Renuka was celebrated by the appellants, and that, his wife and son had gone to attend the ceremony. He expressed his ignorance as to whether appellant no.1 took Renuka to Dr.Patri and Dr.Shivanand Jeure for taking treatment, and further, whether Renuka was taken by the appellants to Ibrahim Saheb Baba. He denied the suggestion that he had demanded an amount of Rs.15,000/- from appellant no.1 and his father for procuring a job for his son Bansidha. He volunteered to add that he had that much amount and he gave Bansidha that amount for obtaining the job. The evidence of Laxmi Kamble (PW7) is also similar. Laxmi also denied that Renuka was suffering from convulsive disorder or any ailment.

12 The evidence of Bhimsha Kore (PW10) – brother of Renuka – is also similar. According to him, Renuka had come to house twice or thrice, and that, at that time, had told him about the ill-treatment at the hands of the appellants. The suggestion

about Renuka suffering from convulsive disorder or suffering from ailments was denied by him.

13 Thus, the evidence of these three witnesses is undoubtedly consistent. They all say that Renuka was being treated with cruelty by the appellants, and that, Renuka had told this to them. All of them also denied categorically the suggestion that Renuka was suffering from convulsive disorder or some other ailment, and that, therefore, there was some difficulty in getting her married.

14 The question is, however, whether reliance can safely be placed on their evidence.

15 Before proceeding further, it may be observed that, that Renuka died by consuming a poisonous substance, cannot be – and has not been – disputed. A suggestion was given by the learned counsel for the appellants that the consumption of the poisonous substance by Renuka, which is Endosulfan, could be

accidental, as the same is an insecticide, and is commonly available in the house of farmers. It was suggested that, since Renuka was under medication, the possibility of her having consumed the insecticide, mistaking it for the medicine, cannot be ruled out. However, there is no material to support such a theory, and no such material was attempted to be obtained from the cross-examination of the witnesses. I am, therefore, not impressed by this contention, and proceed on the basis that Renuka had, in all probability, committed suicide by consuming poison.

16 Coming to the reliability of the evidence of Nagappa, Laxmi Kamble and Bhimsha, it needs to be kept in mind that the evidence of these witnesses cannot be accepted or believed as true, merely because they all speak in the same voice. All are related to Renuka and have made these allegations against the appellants for the first time, after the death of Renuka. It is obvious that the unnatural and untimely death of a newly wedded woman arouses a suspicion against her husband and in-laws, and there would be a tendency to hold them responsible for the

tragedy. It would be easy for the near relatives of the victim, in such a case, to invent stories, which would lead to the conclusion that they are responsible for the death of the victim. The evidence of such relatives, in such circumstances, therefore, needs to be carefully scrutinized, and the mere consistency *inter se* in their evidence, should not make the court believe the same to be true, unless the evidence is in consonance with the probabilities and fits in with the rest of the evidence and circumstances of the case. The entire facts of the case must be properly viewed.

17 A peculiarity of this case is that, Nagappa had got his unmarried young daughter Renuka married to appellant no.1, who was much older than Renuka, and a married person. He had married the real sister of Renuka – appellant no.2 Sushila – and three children had been born to the appellants from the wedlock. Under these circumstances, ordinarily, a father is not expected to get his unmarried young daughter, married to the elderly husband of his elder daughter, after they had cohabited with each other for

a number of years, and to whom, three children had been born. This itself, is rather, unusual. Though neither Nagappa, nor Laxmi, nor Bhimsha, seem to be having any objection for such marriage of Renuka with appellant no.1, and it is not their case, that faced with some difficulties or problems, they had no better alternative than getting Renuka married to appellant no.1, such possibility needs to be considered in the light of the suggestion of the defence.

18 The learned trial Judge has disbelieved the version of the witnesses with respect to the demand of dowry. In my opinion, he was right in doing so. Appellant no.1, when, had not demanded any dowry or amount from Nagappa, inspite of being the husband of appellant no.2, would demand such dowry when he marries Renuka, is not likely, unless, by marrying Renuka, he was obliging her parents. His marriage with appellant no.2 was his first marriage, his marriage with Renuka being a second marriage, and that too within the lifetime of the appellant no.2, was obviously, a sort of adjustment. It was Renuka's first marriage

and appellant no.1's second marriage, which, in law, was not even valid. In spite of such being the position, appellant no.1, who had not demanded dowry at any time from Nagappa, in spite of wedding his daughter – appellant no.2, was unlikely to demand any dowry or would harass Renuka for non-fulfillment of such demand, unless the circumstances relating to the appellant no.1's marriage with Renuka were such that they placed the appellant no.1 in an advantageous or dominating position – which is possible, if Renuka was suffering from the ailment as suggested by the defence.

19 The cause behind Renuka's harassment, as mentioned by Nagappa, Laxmi and Bhimsha, is also not one. The causes given by them are two. Apart from the demand of dowry, it was stated that the harassment started after Renuka had delivered a baby girl. It is claimed that appellant no.1 had married Renuka with a desire to have a male child, which could not have been begotten to appellant no.2, in view of the surgery performed on her, and that, since Renuka gave birth to a female child, her

harassment started. This also does not appeal to reason or logic for two reasons. In the first place, there is evidence that the birth of such female child was celebrated by the appellants. There is nothing to show that this birth was disliked by them. Secondly, Renuka was only of about 18 years, and the possibility of her giving birth to a male child subsequently, was not ruled out at all. It is, therefore, not logical to hold that after giving birth to a female child only, both the appellants got agitated with Renuka so much, that they started ill-treating her, and that too, to such an extent, so as to drive her to commit suicide. Incidentally, the evidence indicates that for a period of one year, Renuka was living happily with the appellants.

20 No independent witnesses were examined to support the theory of cruelty. Infact, Pirasi Vanjare (PW1) clearly admitted that Renuka was suffering from convulsive disorder. His evidence also shows that he knew Renuka since her childhood and he also knew appellant no.2 from her childhood. He is the neighbour of the appellants and is also related to Nagappa, as the brother of

Nagappa's wife – Taramati. Thus, he cannot be said to be partial in favour of the appellants, and could be treated as an independent witness. The other persons residing in the neighbourhood of the appellants were not examined as witnesses. These persons had means of knowing the facts, but for the reasons best known to the prosecution, none of them was examined.

21 A perusal of the impugned judgment shows that the learned Judge believed the theory of ill-treatment by reasoning that 'if she had no ill-treatment at the hands of accused persons, there was no reason for her to consume *poison* and end her life.' It is not possible to agree with the learned Judge. No suicide note had been left by Renuka. The reasons for a person to commit suicide may be very many. Depression is the main cause behind suicides, and this depression could be caused due to a number of factors, including mental or physical illness. Simply because Renuka was believed to have committed suicide, the conclusion that 'she would not have done so, but for the ill-treatment at the hands of the appellants', cannot be drawn. The learned Judge

also observed as follows :

“The death of Renuka occurred in the custody of accused persons and the accused persons are under obligation to give atleast a plausible explanation for the cause of death of Renuka under Section 313 of Cr.P.C.”

Having said so, the learned Judge himself has discussed the explanation given by the appellants, viz., that she was suffering from convulsive disorder. The learned Judge, however, observed that, it was very easy for the defence to have examined the doctors in their defence, but since the doctors were not examined, the fact that Renuka was suffering from any ailment could not be accepted. The approach of the learned Judge in this regard was not proper. The question was not whether the accused had proved their defence satisfactorily, but the question was, whether the explanation given by the accused, was plausible, and / or whether it made it unsafe to place implicit reliance on the evidence of Nagappa, Laxmi and Bhimsha.

22 The learned Judge failed to view the evidence properly. He did not realize the significance of the fact that the father of Renuka – who was hardly of 18 years and unmarried – got her married to the appellant no.1, who was much older, already married and having three children. The suggestion given by the appellants that Renuka was suffering from some ailments, and that, there were difficulties in getting her married, and that, therefore, she was got married to appellant no.1, where there would be a possibility of she being looked after properly – by reason of her own elder sister being in the same house – should have been viewed in the context of this unnatural and unusual behaviour of Nagappa, in getting Renuka married to appellant no.1.

23 This was a case, where there was no evidence of any independent witness about the cruel treatment given to Renuka. Pirasi Vanjare, infact, supported the theory of the appellants. He was not declared as hostile by the prosecution and no attempts to contradict his version, that, Renuka was suffering from serious

ailments, and that, she was not being treated with cruelty, were made. The evidence that the birth of the female child of Renuka was celebrated by the appellants, casts a doubt on the theory of the appellants being unhappy by that birth, and starting torture of Renuka by that reason thereafter.

24 This was a case where there was indeed a doubt about the guilt of the appellants. The appellants, therefore, should have been acquitted.

25 The impugned judgment, being not in accordance with law, needs to be interfered with.

26 The Appeal is allowed.
The impugned judgment and order of conviction and the sentences imposed upon the appellants are set aside.
The appellants are acquitted.
Their bail bonds are discharged.
Fine, if paid, be refunded to them.

(ABHAY M. THIPSAY, J.)