

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.909 OF 2001

The State of Maharashtra	]	 Appellant
<i>Versus</i>		
1. Appasaheb Shatrughna Mohite	]	
Age : 24 Yrs.	]	
R/of Malegaon, Tal. Barshi, Dist. Solapur.	]	
	]	
2. Chaya Shatrughna Mohite	]	
Age : 33 Yrs.	]	
R/o. Malegaon, Tal. Barshi, Dist. Solapur.	]	
	]	
3. Shatrughna Mahipati Mohite	]	
Age : 45 Yrs.	]	
R/of Malegao, Tal. Barshi, Dist. Solapur.	]	
	]	
4. Balaji Sukhadeo Yadav	]	
Age : 26 Yrs.	]	
R/of Ambejavalge, Tal. & Dist. Osmanabad.	]	 Respondents

Mrs. A.S. Pai, A.P.P., for the Appellant/State.

Mr. V.V. Purwant a/w. Mr. Sachin Deokar for
the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 3RD DECEMBER 2015.

ORAL JUDGMENT :

1. The Appellant/State has preferred this Criminal Appeal challenging the acquittal of the Respondents for the offences punishable under

Sections 498A and 306 r/w. 34 of IPC, as recorded by the 1st Ad-Hoc Assistant Sessions Judge, Solapur, vide his Judgment and Order dated 21st August, 2001 in Sessions Case No.55 of 2000.

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

The marriage of Satyabhama, since deceased and daughter of PW-2 Vithal Doke, was performed with Respondent No.1 Appasaheb on 27th May, 1998. After the marriage, she was residing along with Respondent No.1 and his parents / Respondent Nos.2 and 3. Respondent No.4 is the maternal uncle of Respondent No.1, who was residing separately. It is alleged that since seven to eight months after the marriage, Respondents were ill-treating and harassing the Deceased to meet their demand of cash amount of Rs.15,000/-. Deceased has informed about this harassment to her parents. However, they had convinced and persuaded her to resume co-habitation with Respondent No.1. Ultimately, on 12th December, 1999, they received information that Satyabhama has succumbed to death due to fall in the Well. They reached the village, saw her dead body, conducted funeral rites on the dead body and on the next day i.e. 13th December, 1999, PW-2 Vithal Doke lodged complaint against the Respondents vide Exhibit-18.

3. On his complaint, C.R. No.69 of 1999 was registered by PW-6 API Gajendra Mansawale. During the course of investigation, he has recorded statements of the witnesses, seized one chit produced by the father of the Deceased and also obtained specimen handwriting of Respondent No.1. Both these documents were sent to Handwriting Expert. The Scene of Offence Panchanama was already drawn in A.D. No.36 of 1999, which was recorded on the basis of information received about her death. Further to completion of investigation, PW-6 API Mansawale has filed Charge-Sheet in the Court against the Respondents for the offences punishable under Sections 498A and 306 r/w. 34 of IPC.

4. On committal of the case to the Sessions Court, the Trial Court framed charge against the Respondents vide Exhibit-2. The Respondents pleaded not guilty and claimed trial. In support of its case, the prosecution examined in all six witnesses, including the parents of the Deceased and one neighbour. On appreciation of their evidence, the Trial Court was pleased to hold that the prosecution has failed to prove its case against the Respondents on both the counts beyond reasonable doubt. Accordingly, the Trial Court acquitted the Respondents, as aforesaid.

5. This Judgment of the Trial Court is challenged in this Appeal by learned A.P.P., whereas, supported by learned counsel for the Respondents.

6. As per the facts on record, the marriage of Satyabhama, the daughter of PW-2 Vithal Doke, was performed with Respondent No.1 on 27th May, 1998 and, within two years thereafter, on 12th December, 1999, her dead body was found in the Well. Thus, her death has taken place within seven years from the date of her marriage. Now it was for the prosecution to prove that the cause of her death was suicide and she was constrained to commit the said suicide on account of the cruelty and the willful conduct meted out to her at the hands of the Respondents, as contemplated under Section 498A of IPC. Then only the presumption, as laid down under Section 113A of Evidence Act, can be drawn to implicate or involve the Respondents in the cause of her death.

7. To prove its case against the Respondents, the prosecution has mainly relied on the evidence of her parents PW-2 Vithal Doke and PW-3 Rukminibai Doke. As per their evidence, after the marriage, Satyabhama started residing in the house of the Respondents. At the time of Padwa festival, PW-2 Vithal Doke went to bring her to his house. He was

accompanied by Sushila, the wife of his brother. Both of them, when reached to the house of Satyabhama, they noticed two burn injuries on her left arm and it was informed by Satyabhama that Respondent No.1 has caused those two burns on account of falling of the milk on the ground. Thereafter, when PW-2 Vithal Doke took Satyabhama to the house of the Respondents, after the Padwa festival, he requested the Respondents not to cause any ill-treatment to her. Then, again he brought her at the time of Adhik month, when, for the first time, Satyabhama told them that there was ill-treatment to her in the form of abusing and beating for fulfilling the demand of cash amount of Rs.15,000/- to Rs.20,000/- for business purpose.

8. As per the evidence of PW-2 Vithal Doke, at the time of Diwali, Satyabhama again told to Sushila about the harassment and ill-treatment on the same count. Then, PW-2 Vithal Doke himself went to the house of the Respondents and again the incident of demand and threatening took place. Despite that, PW-2 Vithal Doke kept his daughter in the house of the Respondents and then in the month of December, the incident had taken place.

9. PW-3 Rukminibai is not an eye-witness to this subsequent incident,

that took place at the time of Diwali. Her knowledge is merely on the basis of the complaint of ill-treatment made by Satyabhama to her and that too in respect of the demand of Rs.15,000/-.

10. The material evidence, in order to prove the alleged demand of Rs.15,000/- to Rs.20,000/- was of Sushila. She was not only present when PW-2 Vithal Doke had gone to the house of the Respondents at the time of Padwa festival, but even evidence of PW-3 Rukminibai proves that she came to know about the demand from Sushila. The prosecution has, however, not examined her. As a result, the only evidence that remains on record is that of the parents of Deceased Satyabhama.

11. Though the prosecution has examined PW-4 Bhagwat Doke, the neighbour, and he has deposed about the demand and ill-treatment, he has admitted that he has not, in any way, tried to convince the Respondents to behave properly with Satyabhama. He also cannot say as to how many times Satyabhama had visited the house of her parents and made such complaint of ill-treatment.

12. In the light of this evidence making allegations of general nature and non-examination of Sushila, who was the material witness for

prosecution, in my considered opinion, the prosecution has failed to prove even the charge under Section 498A of IPC beyond reasonable doubt against the Respondents.

13. Further, even as regards the charge under Section 306 of IPC, the Postmortem Notes (Exhibit-11), which are admitted in evidence, reveal that the cause of her death was "*asphyxia due to drowning*". The Doctor who has conducted the postmortem is not examined. Another Doctor PW-1 Varsha Mane is examined. There is also the Scene of Offence Panchanama and other evidence proving that the cause of drowning may be on account of the slip of leg also, as the Spot Panchanama shows that the area surrounding the Well was very slippery. The complaint is lodged not immediately on recovery of dead body from the Well, but only after the funeral rites were performed.

14. The alleged chit or the letters written by Respondent No.1 to PW-2 Vithal Doke making the demand of the cash amount are also not produced on record. Though the specimen handwriting of Respondent No.1 was obtained and sent to the Handwriting Expert, as deposed by PW-6 API Mansawale, the report of Handwriting Expert is also not produced on record.

15. Thus, the evidence on record in this case being meager and insufficient, it has to be held that the Judgment of the Trial Court acquitting the Respondents does not call for any interference. Otherwise also, this being an Appeal against the acquittal, only if the findings recorded by the Trial Court are perverse, the Appellate Court can make interference in the said findings. When two views are reasonably possible, merely because the Appellate Court comes to a different view from the view taken by the Trial Court, the Appellate Court is not justified in substituting its own view in the place of the view taken by the Trial Court. The view taken by the Trial Court, in the present case, being borne out from the evidence on record and also being a probable view, the Appeal needs to be dismissed and, accordingly, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]