

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.154 OF 2016

Babarao s/o Vithal Karhale,
Age-65 years, Occu:Agri.,
R/o-Narsi Namdeo, Tq-Sengaon,
Dist-Hingoli.

...APPELLANT
(Orig. Complainant)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Narsi Namdeo, Tq-Sengaon,
Dist-Hingoli,
- 2) Sarangdhar s/o Limbahi Shinde,
Age-31 years, Occu:Agri.,
R/o-Kesapur, Tq-Sengaon,
Dist-Hingoli,
- 3) Limbaji s/o Munjali Shinde,
Age-66 years, Occu:Agri.,
R/o-As Above,
- 4) Pandurang s/o Limbaji Shinde,
Age-28 years, Occu:Agri.,
R/o-As Above,
- 5) Deobai w/o Limbaji Shinde,
Age-61 years, Occu:Agri.,
R/o-As Above,
- 6) Gitabai w/o Trimbak Shinde,
Age-25 years, Occu:Agri.,
R/o-As above.

...RESPONDENTS

...
 Mr.Pawankumar S. Agrawal Advocate for Appellant.
 Mr.R.V. Dasalkar, A.P.P. for Respondent No.1.
 ...

CORAM: A.I.S. CHEEMA, J.

DATE : 11TH AUGUST, 2016

ORAL ORDER :

1. Heard counsel for the Appellant - original complainant and learned A.P.P. for State. Considered the Appeal tendered. The original record has been called and with the assistance of counsel for the Appellant and the A.P.P., the same has been examined.

2. It is stated by the learned counsel that Victim Gokarna was married to Respondent No.1 in 2006. She died on 11th July 2008. It is stated that before death she was being ill-treated for the demand of money for purchase of motorcycle and the victim had been complaining to her parents. It is stated that on 11th July 2008 the complainant received phone call at about 3.00 p.m. that the

victim is not well and is being taken to the hospital of one Dr. Nakade at Hingoli. The complainant and his family members went to the hospital. However, the victim died at about 8.00 p.m. The F.I.R. was filed that she died due to consumption of poison and that she had consumed insecticide due to ill-treatment.

3. According to the learned counsel for Appellant the trial Court did not properly appreciate the evidence of PW-1 Babarao, the father, PW-4 Gangaprasad, the brother as well as evidence of PW-6 Tukaram. According to him, evidence of brother shows that when they had gone to the hospital, mouth of the victim was frothing and it was smelling as if she has consumed the poison. The counsel submitted that at the time of trial, Dr. Nakade had not been called as witness although his statement must have been recorded by the police. It is stated that the Appeal needs to be admitted.

4. Going through the record, what appears is that when the post-mortem was done, provisional opinion was recorded vide Exhibit 61 that the victim died due to Asphyxia due to unknown chemical poison. The doctors recorded that however they have preserved viscera for chemical analysis. Now, the C.A. Report Exhibit 57 from the record of the trial Court does not show any poison in general and specific chemical testing of the viscera which were contents of stomach, small intestine, brain, and pieces of lung, liver, spleen, kidney and heart. Thus, the chemical analysis did not reveal poison.

5. It has been submitted by the learned counsel that it was for the accused persons to show that the victim died a natural death as she became ill at the residence of the accused persons within seven years of the marriage and suddenly died.

6. According to the learned counsel, there is evidence of the brother that the victim was not suffering from any ailment earlier.

7. What appears in this matter is that the State could not establish that the victim died due to any poison or other reason which could be treated as suicide. Burden cannot be put on the accused to prove that it was natural death. As the record does not show that the death was due to poison, suicide or culpable homicide cannot be simply presumed only because in the F.I.R. Exhibit 38 complainant claimed that the victim committed suicide, or provisional opinion was of poisoning.

8. Looking to the observations of the Hon'ble Supreme Court in **Bhairon Singh vs. State of M.P., reported in A.I.R. 2009 S.C. 2603**, if homicide or suicide is not established, the

grievances allegedly made by the victim before her death to her relatives could not be treated to be statements admissible under Section 32 of the Evidence Act. Thus those statements could not be the basis for calculating ill-treatment. In the present matter, the trial Court has considered the evidence of the prosecution witnesses regarding ill-treatment. The evidence was brought that the complainant and others had gone to the place of accused to explain that they should treat the victim properly and that they have said that money to buy motorcycle would be given and that the accused had agreed to do so. Such evidence, minus what the victim had reported to her parents when she went to meet them, would not be sufficient to hold ill-treatment established and to interfere in the Judgment of the acquittal. Going through the Judgment of the trial Court, the view taken of evidence in the matter is a possible view. I do not find that it is a fit case to interfere in the acquittal.

9. The admission of the Appeal is declined.
The Appeal is disposed of, accordingly.

[A.I.S.CHEEMA, J.]

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