

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.330 OF 2001

- 1] Samadhan Tukaram Tayade,
age : 28 years, Occu.:Agriculture,
r/o. Naygaon, Taluka Edlabad,
District Jalgaon
- 2] Tukaram Sitaram Tayade,
age : 50 years, Occu.: Agriculture,
R/o. Naygaon, Taluka Edlabad,
District Jalgaon
- 3] Jaubai w/o tukaram Tayade,
age : 48 years, Occu.: Household,
R/o. Naygaon, Taluka Edlabad,
District Jalgaon
- 4] Kalpanabai w/o Hari Chavan
age : 30 years, Occu.: Household,
R/o. Naygaon, Taluka Edlabad,
District Jalgaon

(Appeal abated as against
appellant nos.1 and 2, as per
order dated 24.11.2015)

..APPELLANTS

VERSUS

The State of Maharashtra

..RESPONDENT

--

Mr.Mobin H. Shaikh, Advocate for appellants

Mr.N.T. Bhagat, A.P.P. for respondent/State

--

CORAM : M.T. JOSHI, J.

DATE : JANUARY 12, 2016

ORAL JUDGMENT :

Heard both sides.

2] Present surviving appellant nos.3 and 4 with deceased appellant no.1 were convicted by the impugned judgment and order dated 20th July, 2001, passed by learned 2nd Additional Sessions Judge, Jalgaon in Sessions Case No.208 of 1997 for the offences punishable under Section 498-A, 306 and 323 of Indian Penal Code. They were directed to suffer rigorous imprisonment for three years and to pay fine of Rs.300/- on each count for the offences punishable under Section 498-A and 306 of the Indian Penal Code; and to suffer simple imprisonment for three months for the offence punishable under section 323 of Indian Penal Code.

. Deceased - appellant no. 2, however, was convicted for the offence punishable under Section 498-A of Indian Penal Code and sentenced to suffer

rigorous imprisonment for a period of three years and to pay fine of Rs.300/-. He was also convicted for the offence punishable under Section 323 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of three months. He was further convicted for the offence punishable under Section 306 of Indian Penal Code and sentenced to suffer rigorous imprisonment for five and years and to pay fine of Rs.500/-.

. Aggrieved by the sentences, present appeal is preferred. During the pendency of the appeal, appellant no.1 i.e. husband and appellant no.2 i.e. father-in-law of the deceased, have died. The appeal, therefore, survived only to the extent of appellant no.3 i.e. mother-in-law and appellant no.4 i.e. sister-in-law of the deceased.

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

. That deceased - Ashabai has died due to the burn injuries suffered by her on 8th June,

1997. Her statement was recorded by PW 9 - ASI Sapkal in presence of PW 11-Dr.Ashutosh Jape at exhibit-44.

. The dying declaration would show the deceased Ashabai has married to appellant no.1 about 2 years prior to the incident in question. There was, however, illtreatment to her on the count that all the in-laws did not like her household work. Therefore, they used to abuse and beat her. Additionally, deceased-appellant no.2 i.e. father-in-law used to make sexual advances against her to have sexual intercourse. She had, therefore, complained of the same to her husband, mother-in-law and sister-in-law i.e. deceased-appellant no.1 and present appellant no.3 and 4. They, however, retorted saying that she made false allegations and on that count, illtreatment and beating was continued.

. In the circumstances, on 8th June, 1997, when she was ill-treated and physically assaulted,

she poured kerosene on her person. In the said incident, appellant no.4 provided a match stick to her. In the circumstances, deceased Ashabai set herself on fire.

. Investigation in the case was conducted. Post mortem notes were collected. Panchanama of the spot of occurrence was drawn. Statements of the witnesses more particularly, the relatives of the deceased Ashabai, were recorded.

. Before the learned Additional Sessions Judge, besides the statement of deceased Ashabai, the prosecution has relied on the statements of PW 1 to PW 3 i.e. mother, father and sister of father of the deceased. Learned Additional Sessions Judge found that the prosecution case was proved beyond reasonable doubt and, therefore, the appellants came to be convicted, as detailed supra.

4] Learned counsel for the appellants submitted before me that the learned Additional

Sessions Judge has failed to consider the contradictory evidence placed by the prosecution itself, on record. He submitted that admittedly, during the lifetime of the deceased Ashabai, PW 2 - Yuvraj Chavan, father of the deceased, had filed an application before the learned Judicial Magistrate First Class, Edlabad under section 97 of the Code of Criminal Procedure to get a search warrant for recovery of his daughter Ashabai. The statements made in the said application are contradictory to the dying declaration as well as the oral dying declaration said to have been made by the deceased Ashabai to PW 1 - Chindhabai, mother of Ashabai. In the circumstances, he submits that the learned Addl. Sessions Judge ought to have extended benefit of doubt in the present case.

5] On the other hand, learned A.P.P. for the respondent - State submitted that the dying declaration of the deceased Ashabai as well as the

statements of the witnesses, would show that the father-in-law i.e. deceased appellant no.2 used to make sexual advances to her and when she made complaint of the same to rest of the in-laws, they started illtreating her along with deceased appellant no.2. He therefore submits that no fault can be found in the reasons of the learned Addl. Sessions Judge.

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

A] Whether the prosecution has proved that the present appellants along with deceased appellant nos.1 and 2, in furtherance of their common intention, illtreated deceased Ashabai during her cohabitation with them ?

B] Whether the prosecution has further proved that the deceased Ashabai has committed suicide and present appellants along with deceased appellant nos.1 and 2, have abetted commission of the same ?

. My findings to the above points are in the negative. The appeal is, therefore, allowed and the appellant nos.3 and 4 are acquitted of the offences for the reasons to follow.

R E A S O N S

7] The immediate dying declaration of the deceased Ashabai recorded by the police would show that initially, the illtreatment was on the ground that the appellants did not like the domestic work carried by deceased Ashabai. Next of the complainants is against deceased-appellant no.2 that he used to make sexual advances against deceased Ashabai and when said fact was brought to the notice of other appellants, they retorted by saying that the deceased Ashabai made false allegations and therefore, the illtreatment and beating was continued to the deceased Ashabai on this count by the appellants.

8] The deposition of PW 1 to PW 3 would show that during cohabitation of the deceased Ashabai, only once, she had visited her parent's home i.e. for Akaji festival. PW 1 – Chindhabai, mother of the deceased has deposed that when the deceased Ashabai came for Akhaji festival, at that time, she had made complaint of sexual advances made by deceased-appellant no.2 and illtreatment by other in-laws on that count. Thereafter, after about one month, when this witness and her husband i.e. PW 2 went to meet deceased Ashabai, at that time, deceased-appellant nos.1 and 2 had closed the door and told that unless an amount of Rs.2,000/- is paid, deceased - Ashabai would not be allowed to meet them and therefore, an application was filed by the father of deceased Ashabai before learned Judicial Magistrate F.C.

. The cross-examination of this witness would show that the dying declaration of deceased Ashabai was recorded in her presence. This

witness confirmed that the visit of deceased Ashabai at the time of Akhaji festival was the first and last visit to her parental home. She further deposed in her cross-examination that at the time of the said visit, deceased Ashabai had told that she was happy in her house. Thus, this statement is contradictory to the statement of this witness in the examination-in-chief.

9] PW 2 – Yuvraj, father of deceased Ashabai, has also confirmed that deceased Ashabai had visited his house only once i.e. for Akhaji festival and there was no other occasion to meet her. He deposed that after about one month of said visit, he along with his wife PW 1 – Chindhabai went to meet deceased Ashabai. At that time, an amount of Rs.2,000/- was demanded by the appellants. Therefore, he had filed an application before learned Judicial Magistrate F.C. for getting a warrant to search Ashabai.

10] A copy of the application made before learned Judicial Magistrate F.C. for search warrant, was proved at Exhibit 30. It would show that neither there were any allegations of illtreatment on the ground of sexual advances made by deceased appellant no.2 nor about the demand of Rs.2,000/- made by the appellants. The statements in the said application filed by PW 2 – Yuvraj is that , when deceased Ashabai was carrying for five months, deceased-appellant no.1 had forced some chemical in her throat, which resulted in abortion and she was in serious condition and for that purpose, her search was asked.

11] What could be gathered from all this material is that while the narration in the dying declaration said to have been made by deceased Ashabai, has failed to show that there was any demand of money or there was any forcible administration of chemical, the evidence of PW 1 and PW 2 speaks about the demand of Rs.2,000/- as

a cause for filing of the application before learned Judicial Magistrate F.C. for getting the search warrant. In that very application, none of the above allegations find place and allegations of forcible administration of chemical by deceased-appellant no.1, as a cause for asking search warrant, were made. These allegations however, are conspicuously absent in the present case. Immediately within 24 hours after filing of the application, the deceased has died.

12] If all these contradictory statements would have been appreciated by learned Addl. Sessions Judge, then he would have definitely extended benefit of reasonable doubt and acquitted the appellants.

13] Hence, the following order :-

A] The impugned judgment and order dated 20th July, 2001 passed by learned 2nd Addl. Sessions Judge, Jalgaon in Sessions Case No.208 of 1997

convicting and sentencing appellant nos.3 and 4, as detailed supra, is hereby quashed and set aside.

. Instead, the appellants 3 and 4 are acquitted of all the offences.

B] Bail bonds of these appellants shall stand cancelled.

Authenticated copy

P.A. to Hon'ble Judge