

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 362 OF 2001

Santosh S/o Anandrao Ghushinge,
Age : 27 years, Occu.: Agriculture,
R/o. Loni (Bk.), Tq. Vaijapur,
Dist. Aurangabad .. Appellant

VERSUS

The State of Maharashtra .. Respondent

Mr. N.K. Tungar, Advocate (appointed) for the appellant
Mr. R.V. Dasalkar, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 21/01/2016

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of conviction for the offences punishable under section 498-A and 304-B of the Indian Penal Code by the learned 1st Adhoc Additional Sessions Judge cum Special Judge, Aurangabad in Sessions Case No. 139 of 2000 on 31/08/2001, the present appeal is preferred by the original accused no.1. Rest of the accused i.e. his relatives were acquitted by the learned Additional Sessions Judge from the offences.

. The appellant was sentenced to suffer rigorous imprisonment for a period of 1 year on the count of the offence punishable under section 498-A of the Indian Penal Code and for rigorous imprisonment for a period of 7 years on the count of offence punishable under section 304-B of the Indian Penal Code.

3. The prosecution case in short is as under:-

. That deceased Sulbha was married to the present appellant on 10/7/1996. She was resident of Virgaon. After marriage, she started residing with the present appellant in his joint family at village Loni (Bk.), Tq. Vaijapur. After about 2 months, the brother of the deceased i.e. PW1 - Sanjay had invited the deceased, the appellant and acquitted accused - Bhagirthibai, mother-in-law for a lunch due to Dhonda festival. At that time, as per the custom, clothes were also gifted to those guests. At that time, however, the mother-in-law remarked that even the father-in-law of the deceased ought to have been invited and ought to have been gifted clothes. At that time, the complainant PW1 - Sanjay told that since his family was from a poor class, he was

unable to provide all these gifts. Thereafter, the deceased returned to her matrimonial home.

. Thereafter, in the month of Ashadh, when the complainant visited the house of the accused persons to bring deceased Sulbha to his house, she told him that all the family members used to beat and abuse her and were insisting for an amount of Rs.10,000/- be brought as dowry. According to the complainant, even food was denied to the deceased. At that time, the present appellant raised a quarrel with the complainant and even warned that in future he should not visit his house without the amount of Rs.10,000/-. The complainant was not allowed to take the deceased with him.

. Besides this, on several occasions, deceased had narrated similar ill-treatments, as and when she had an occasion to visit the house of the complainant.

. Lastly, on 05/11/1999, the complainant visited village Loni to bring deceased Sulbha to his house for Deewali festival. At that time, the present appellant again made a demand of Rs.10,000/- and again warned them that without the money, she should not visit the house.

However, deceased Sulbha was sent with the complainant. At that time, she repeated the complaint of ill-treatment over demand of Rs.10,000/-.

. According to the prosecution, lastly on 15/11/1999, when the complainant reached deceased Sulbha to the house of the appellant, the wife of her brother-in-law asked deceased, as to whether, she had brought a gas cylinder and blouse piece for her mother-in-law. The acquitted accused no.5 had also quarreled with deceased Sulbha. Complainant returned to his house by leaving deceased Sulbha with the accused persons.

. In the situation, on 16/11/1999, the deceased died. The accidental death case was registered. The medical evidence as well as the chemical analysis report showed that the deceased has died due to the organo phosphorous poison.

. The complaint was filed, on the basis of which, the then P.S.I., Police Station, Vaijapur Mr. Munde conducted the investigation. He recorded statements of the witnesses, collected post-mortem examination report. Upon his transfer, next of the Investigating Officer Mr.

Gautam, the P.S.I. sent viscera and other property to the Chemical Analyzer, Aurangabad and filed the chargesheet in the Court.

4. According to the appellant and the co-accused, no ill-treatment was given to the deceased while she resided with them. According to them, the death has occurred accidentally while the deceased was spraying insecticide in the field.

5. The prosecution has examined the complainant - PW1 - Sanjay, his brother - Laxmiknat and his mother - Krushnabai to prove the fact of ill-treatment given to the deceased. Besides them, both the Investigating Officer and the Medical Officer Dr. Sangram were examined.

6. The learned Special Judge, Aurangabad concluded that the first incident of questioning the complainant and his relatives, as to why the father-in-law was not called for the lunch for Dhonda festival and as to why the clothes were not gifted to him, also would not be an act of cruelty.

7. As regards the act of making a demand of gas cylinder and blouse piece, it was also observed that it would also not be an act of cruelty concerning the acquitted accused also.

8. Statements of brother Laxmikant and mother - Krushnabai before the Court were discarded by the learned Special Judge on the count that those statements were vague regarding the date, time or year of the demand of the ill-treatment.

9. Thereupon, the learned Special Judge appreciated the statement of complainant PW1 - Sanjay. During investigation, by way of supplementary statement, according to the prosecution, the complainant has produced before the Investigating Officer photocopy of the document showing a letter purported to have been send by the appellant to the complainant. While in the witness box, in the examination-in-chief, he produced the original letter at Exhibit 15. Besides that, the document showing that an amount of Rs.10,000/- was transferred by the complainant to the appellant was also pressed into service.

10. The learned Special Judge, though has observed that the statement of the complainant/PW1 was vague and has certain contradiction, it was concluded that the same inspires confidence. Further, relying on the contents of the letter at Exhibit 15 and the fact that an amount of Rs.10,000/- was transferred to the appellant by the complainant, the conviction and sentences, as detailed supra came to be recorded.

11. Mr. K.N. Tungar, learned Advocate appointed for the appellant took me through the record. He submits that the learned Special Judge has failed to appreciate that the letter at Exhibit 15 was a concocted document. It was placed for the first time while the complainant was in the witness box. Even though, the appellant suggested that the said letter is not in his hand writing, the learned trial Court failed to consider the chicanery regarding dates in the said letter.

. He further submits that while it is the prosecution case that the complainant was unable to satisfy the unlawful demand of Rs.10,000/-, suddenly

during evidence, it was brought that the said amount of Rs.10,000/- was sent by money transfer. In the circumstances, he submits that the appeal be allowed.

12. On the other hand, learned A.P.P. submits that the statement of the complainant coupled with the corroborative evidence i.e. letter at Exhibit 15 and the money transfer would go to show that the present appellant has treated the deceased with cruelty for an unlawful demand and hence, he submits that no interference in the impugned judgment and order of the learned Special Judge is warranted.

13. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that the present appellant subjected deceased Sulbha to cruelty during her co-habitation with him for an unlawful demand of Rs.10,000/- ?

II) Whether the prosecution has further proved that the death of the deceased was a dowry death ?

My findings to both the above points are in the negative. The Appeal is therefore allowed and the appellant is acquitted of all the offences for the reasons to follow.

R E A S O N S

14. It is required to be kept in mind that the learned Special Judge has rightly discarded the testimony of Laxmikanth and his mother Krushnabai, as the statements made by them regarding the ill-treatment and the complaint were vague. Similar however was the case regarding the oral statement of complainant - Sanjay.

15. The learned Special Judge has also noted that during cross-examination, complainant Sanjay had admitted that he would not be able to tell even approximately as to how many times, he had been to the house of the accused. Certain contradictions in his deposition were also noted. However, it was found that the letter at Exhibit 15 would itself speak that the present appellant has threatened to give ill-treatment to the deceased.

16. Complainant Sanjay during cross-examination has admitted that Exhibit 15 would show that it was posted on 27/05/1998 and was delivered on 26/05/1998. The learned Special Judge without taking into consideration these anomalies, has observed that the complainant could not have anticipated death of deceased - Sulbha about 1-1/2 years prior that is when the letter was sent.

. Salient feature, of which the learned Special Judge lost sight, is that the letter is not proved beyond reasonable doubt. It was pressed into service only during examination-in-chief of the complainant. It was never examined by any examiner of document. The appellant has denied that he has written the said letter and this material was enough for discarding the said evidence.

17. Same is the case regarding the evidence of money transfer, as against even the prosecution case that, though there was an unlawful demand of Rs.10,000/-, it was never satisfied. During evidence, it was tried to suggest that the money was transferred to the appellant.

18. Considering all these facts on record, in my view, the learned Special Judge ought to have also extended benefit of reasonable doubt to the present appellant. In the circumstances, the following order:-

19. Criminal Appeal is hereby allowed.

20. Impugned judgment and order of the learned 1st Adhoc Additional Sessions Judge cum Special Judge, Aurangabad dated 31/08/2001 passed in Sessions Case No. 139 of 2000, convicting the appellant for the offences punishable under section 498-A, 304-B of the Indian Penal Code is hereby set aside.

. Instead, the appellant is acquitted of the said offences.

21. Fine amount deposited by the appellant be refunded to him after a period of sixty (60) days from the date of this judgment.

22. Bail bonds of the appellant shall stand cancelled.

23. Fees of Mr. N.K. Tungar, learned Advocate appointed for the appellant, being quantified at Rs.20,000/- (Rs. Twenty Thousand) be paid to him from the appropriate funds by the High Court Legal Services Sub Committee at Aurangabad.

24. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

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