

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 363 OF 2001

Sudhakar s/o Kashinath Wani,
Age : 55 years, R/o Neri,
Tq. Pachora, Dist. Jalgaon

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. A.N. Nagargoje, Advocate holding for
Mr. V.J. Dixit, Senior Advocate, for the appellant
Mr. A.R. Kale, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

JUDGEMENT RESERVED ON : 15th JANUARY, 2016
JUDGEMENT PRONOUNCED ON : 11th FEBRUARY, 2016

JUDGEMENT :

1. Aggrieved by the recording of the conviction by the learned IInd Additional Sessions Judge, Jalgaon vide judgement and order dated 5th September, 2001, passed in Sessions Case No.112 of 1995, for the offences punishable under section 498A and 306 of the Indian Penal Code, the present appellant who was original accused no.2 has filed the present appeal.

. The present appellant was directed to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.500/-, in default to suffer simple imprisonment for two months, on each of the count. The sentences were directed to run concurrently.

2. The appellant is the father-in-law of deceased Sangita. All other co-accused i.e. the husband, the brother-in-law and sister-in-law of the deceased were acquitted by the learned Additional Sessions Judge.

3. On 25th November, 1994, deceased Sangita was admitted to Bapuji Rural Hospital, Chalisgaon, District Jalgaon due to suffering of burn injuries. Her statement was recorded by PW4-P.I.Yadavrao Patil of Pachora police station at exhibit-72. According to the said dying declaration, since the date of the marriage of the deceased with original accused no.1 - Milind on 4th April, 1994, she was being illtreated by all her in-laws. Immediately a day preceding the incident of suffering burn injuries by the deceased, in evening, her brother PW1-Sunil Wani had been to her house. At that time, the present appellant questioned as to how a good mattress was provided to said Sunil while a torn

mattress was provided to him by the deceased. Besides this, the present appellant was always blaming the deceased as she being a married lady had come from her parents' house to their house by sitting on a bicycle of one Bhaskar Patil. For certain period, even the deceased and accused no.1 i.e. her husband were residing separately from the joint family. They, however, again started residing together with the family. The appellant, however, always used to taunt the deceased over her behaviour concerning said Bhaskar Patil. He even used to challenge that he would pay all the expenses of the marriage but the deceased should be divorced. The acquitted accused no.4 – Sau. Sangita also used to join in the ill-treatment to the deceased.

. In the circumstances, in the previous night after episode of mattress was over, the deceased and the accused no.1 – Milind slept together in the house. At that time, accused no.1 told her that he did not want her and went away. The deceased was not able to sleep for the night and therefore, in the morning, she poured kerosene on her person and set herself on fire. All the accused put off the fire and brought her to the hospital.

. After this dying declaration was recorded, the deceased has died. Upon her death, on the very same day i.e. on 25th November, 1994, PW1-Sunil Wani filed a complaint at exhibit-64 to the same effect. The Investigating Officer thereafter carried the investigation in the said case. The panchanama of the spot of occurrence was recorded. The post-mortem examination notes were collected. The statements of the relatives were also recorded and the chargesheet came to be filed in the court.

4. Before the learned Sessions Judge, the complainant i.e. the brother of the deceased was examined as prosecution witness no.1. PW2-Gayabai Wani and PW3-Vasant Wani - the parents of the deceased were also examined. PW4-P.I. Yadavrao Patil is the Investigating Officer while PW5-Dr. Anagha Buwa had examined the deceased at the time of recording of her dying declaration.

5. The learned Sessions Judge came to the conclusion that the ill-treatment given by the rest of the accused cannot be called as cruelty which would drive a woman to commit suicide. However, believing the

prosecution case, the learned Sessions Judge observed that the conduct of the present appellant i.e. the father-in-law of the deceased in making allegations against the character of the deceased would amount to cruelty and therefore the present appellant came to be convicted, as detailed supra.

6. Mr. A.N. Nagargoje, learned counsel appearing for the appellant took me through the evidence on record. He would submit that while the learned Sessions Judge himself disbelieved the case of medical examination of the deceased before recording of the dying declaration, the statement of PW1 – Sunil Wani would show that the parental family members of the deceased were all the while with the deceased in Chalisgaon Hospital. Further, the deceased was taken to Civil Hospital at Dhule. He further submitted that due to the sudden death of the deceased just within seven months of the marriage, the present appellant as well as other co-accused were falsely involved by making false allegations against them.

. In the alternative, Mr. Nagargoje submitted that in the set of admitted facts, even a taunt or two

by the appellant and his readiness to repay the marriage expenses but to get divorce for accused no.1 - Milind from the deceased, cannot be called as cruelty or an abetment to commit suicide by the deceased. He, therefore, submitted that the appeal be allowed and the appellant be acquitted of the offences.

. In support of his submissions, Mr. Nagargoje relied on the ratio laid down in the case of "**Ravindra Pyarelal Bidlan and others Vs. State of Maharashtra**", reported in **1993 CRI.L.J. 3019** wherein well established principle that reasonable nexus between cruelty and suicide must be established, has been underlined.

7. On the other hand, learned A.P.P. submitted that it has been amply proved that the present appellant always used to suspect the character of the deceased. As the said cruelty became unbearable to the deceased, she ultimately committed suicide. Thus, no fault can be found in the reasoning forwarded by the learned Additional Sessions Judge. He, therefore, submitted the appeal be dismissed.

8. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination.

(I) Whether the prosecution has proved that on 25th November, 1994, deceased – Sangita has set herself on fire by pouring kerosene on her person, due to which she eventually died on 25th November, 1994?

(II) Whether the prosecution has proved that the present appellant, being father-in-law of the deceased, had treated her with cruelty during her residence with him?

(III) Whether the appellant has abetted commission of suicide by the deceased?

My finding to above point no. (I) is in the affirmative to point nos. (II) and (III) is in the negative. The appeal is therefore allowed and the appellant is acquitted of the offences, for the reasons to follow:

R E A S O N S

9. The appellant and other co-accused have stated that the deceased met with untimely death. They, however, did not explain as to how the deceased suffered the burn injuries. The deceased has suffered burn injuries while residing with them. In the circumstances, the prosecution case that she died due to self burn injuries cannot be faulted with.

10. The cruel treatment to the deceased at the hands of the present appellant i.e. the father-in-law of the deceased, ultimately concluding in the abetment to commission of suicide, is a debatable fact.

11. PW1 Sunil has admitted that Bhaskar Patil, who is resident of his own village, was serving in a bank at Ner-Digar i.e. the native of the present appellant. He had mediated in the marriage between the deceased and accused No. 1 Milind. He always used to visit the house of the accused and many a times, the complainant and his relatives used to pass certain messages which he used to relay to the deceased by visiting her. The distance between these two villages is merely two and half

kilometers. The grievance of the appellant was that the deceased had once reached from her parents' house to his house on a bicycle of Bhaskar Patil. He, therefore, used to say that such a lady was not wanted in his house. Therefore, by showing readiness to even repay the expenses of the marriage to the parents of the deceased, he wanted to seek divorce between the two.

12. It is to be noted that the appellant is an old villager who hails from village Tarkheda, Taluka Pachora. Not only Bhaskar Patil used to regularly visit the house of the deceased, but it was the grievance of the appellant that he had even once brought the deceased from her parents' village to his house on a bicycle which was witnessed by all the villagers. In a custom-bound village, such an incident would be a topic of the village and if, therefore, the appellant had, in a rage, had asked for divorce and showed readiness to repay the marriage expenses, the issue would be as to whether the appellant intended that the deceased should commit suicide due to his conduct.

13. The learned A.P.P. relied on the ratio laid down in the case of **"Vijay Balkrishna Ingle Vs. State of**

Maharashtra", reported in ***2004 (1) BOM.C.R. (CRI) 792.***

In the said case, the deceased was persistently physically assaulted by the accused. He used to accuse her of having illicit relations with his own brother. There was no evidence at all to show that the deceased was really a woman of bad character. In the circumstances, it was held that the torture had provoked the deceased to commit suicide and therefore, the conviction for the offence punishable under sections 306 and 498A of the I.P. Code was upheld.

14. In the present case, the marriage between the deceased and the accused No. 1 had taken place only about six and half months. The present appellant had even allowed the deceased and the accused No. 1 to reside separately from the family. However, due to crunch of funds, the couple again continued to reside with the joint family. A newly married girl was thought of accompanying a person on a bicycle from one village to another village. The said person always used to visit the deceased. In such a case, if certain suspicion is expressed by the present appellant, without any further physical assault or torture, in the given set of facts,

it would be debatable as to whether the appellant intended to treat the deceased with cruelty. Eventually, it would be a debatable question as to whether if the lady in such situation commits suicide with aggregated facts of bickering upon providing old mattress to the appellant and the husband abruptly leaving her in the night, would amount to abetment of suicide by the appellant solely. In that view of the matter, in my view, the learned Sessions Judge ought to have extended benefit of doubt also to the present appellant. In the circumstances, the appeal deserves to be allowed. Hence, the following order.

15. The criminal appeal is hereby allowed. The judgement and order dated 5th September, 2001, passed by IInd Additional Sessions Judge, Jalgaon in Sessions Case No.112 of 1995, convicting and sentencing the present appellant for the offences punishable under section 498A and 306 of the Indian Penal Code is hereby quashed and set aside.

. Instead, the present appellant/original accused No. 2 – Sudhakar Kashinath Wani is acquitted of the offences punishable under section 498A and 306 of the

Indian Penal Code. His bail bonds, if any shall stand cancelled. Fine amount, if any deposited by him be refunded to him after a period of eight weeks.

[M.T. JOSHI]
JUDGE

npj/criapl363-2001