

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 377 OF 2001

- 1] Bhagwan s/o Punjaba Tupe,
age 32 years, occ. Agril.,
R/o Babhulgaon, Tq.Vaijapur,
District Aurangabad,
- 2] Punjaba s/o Ravji Tupe,
age 61 years, occ. & R/o as above,
- 3] Fakirchand s/o Punjaba Tupe,
age 36 years, occ. & R/o as above ...Appellants

VERSUS

The State of Maharashtra

...Respondent

Appeal abates against appellant no.1 as per order dt.12.2.2016
Mr. R.S.Deshmukh, Advocate for Appellant nos. 2 and 3
Mr. S.D.Ghayal, APP for Respondent/State

CORAM : INDIRA K. JAIN, J.
DATED : 21st APRIL, 2016

ORAL JUDGMENT :

This appeal is directed against the judgment and order,
dated 6.9.2001 passed by the learned Additional Sessions Judge,

Aurangabad, in Sessions Case No. 248 of 1998. By the said judgment and order, Trial Court convicted the accused of the offences punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code and sentenced each of them as under :-

Offence under Section	Sentence awarded
498-A r/w 34 IPC	R.I. For 3 months and fine of Rs.500/-, in default R.I. for one month
306 r/w 34 IPC	R.I. for two years and fine of Rs.500/- in default R.I. for one month

2] During pendency of appeal, accused no.1 Bhagwan Punjaba Tupe died on 11.8.2004. Vide order dated 12.2.2016 appeal at the behest of appellant no.1 has been abated.

3] For the sake of convenience, appellants shall be referred in their original status as accused as were referred before the Trial Court.

4] Prosecution case, in brief, is as under :-

(i) Accused no.2 Punjaba is father of deceased Bhagwan and accused no.3 Fakirchand. They were residents of village Babhulgaon (Bk.), Taluka Vaijapur. Bhagwan was married to Nirmala daughter of PW 1 Jijabai Girjinath Gat somewhere in May, 1995. Nirmala was brought up by her maternal

grand father PW 2-Ganpat. Ganpat was resident of Gangapur.

(ii) After marriage, Nirmala started residing with her husband, father-in-law and brother-in-law at village Babhulgaon. Initially for 6-7 months she was treated well in her matrimonial house. It is the case of prosecution that thereafter accused started illtreating Nirmala on demand of money for purchase of motor cycle. She was also harassed by the accused as she disclosed to her mother that accused no.3 Fakirchand tried to outrage her modesty.

(iii) On 6.12.1997 at 11.00 a.m. Nirmala left the house for agricultural work. She did not return. On 7.12.1997 at 5.00 a.m. during search her dead body was found floating in a well in the house of accused. Accused no.2 informed police. A.D. was registered and inquiry into A.D. was made.

(iv) PW 5-P.S.I. More visited the place of incident and recorded spot panchanama. Dead body was sent for postmortem. PW 3-Dr. Subhash Khillare performed postmortem and noticed some injuries on the body. The cause of death opined was cardio respiratory failure due to drowning.

(v) PW 6-Ramesh Devare recorded complaint lodged by Girjinath on 7.12.1997 at 3.30 p.m. On the basis of complaint, investigation was set into motion. During investigation statements of several witnesses were recorded. On completing investigation, charge sheet was submitted to the Court of Judicial Magistrate, First Class, who in turn committed the case for trial to the Court of Sessions.

5] On committal of the case, charge was framed against the accused vide Exh.3. They pleaded not guilty and claimed to be tried. Their defence was of total denial. According to accused, Nirmala went to fetch water on the well and due to accidental slip fall into the well and died.

6] Prosecution examined in all seven witnesses in support of its case. Considering the evidence of prosecution witnesses, Trial Court came to the conclusion that accused was guilty of the offences punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code and in consequence thereof convicted the accused as stated in para 1 above.

7] Heard Shri R.S.Deshmukh, learned counsel for the appellant nos. 2 and 3 and Shri S.D.Ghayal, learned Additional

Public Prosecutor for the respondent/State.

8] On going through the evidence of prosecution witnesses, hearing the submissions made on behalf of the parties and keeping in view the defence raised by accused, this Court, for the below mentioned reasons, is of the view that evidence of prosecution witnesses is not sufficient to bring home the guilt of accused beyond reasonable doubt and judgment and order of conviction and sentence needs to be set aside.

9] PW 1-Jijabai and PW 2-Ganpat are the star witnesses. PW 1-Jijabai is mother of Nirmala and PW 2-Ganpat is her maternal grand father. It can be seen from the evidence of both the witnesses that since her childhood Nirmala was residing with PW 2-Ganpat. She was brought up by her maternal grand father. The evidence of Jijabai and Ganpat further makes it clear that financial condition of Jijabai was not sound and therefore marriage of Nirmala with accused Bhagwan was arranged and solemnised by PW 2-Ganpat. It is further clear from the evidence of these two witnesses that initially for 6-7 months Nirmala was treated well in her matrimonial home.

10] According to Jijabai, Nirmala visited her maternal place after six months of marriage and that time she disclosed to her that accused were demanding money for purchase of motor cycle and she was being assaulted on non-fulfillment of demand. Nirmala also disclosed to her about the misbehaviour by accused no.3. In turn, Jijabai informed about the illtreatment to PW 2-Ganpat.

11] From the evidence of PW 2-Ganpat it is apparent that Nirmala did not disclose about illtreatment to him. The evidence of Ganpat on alleged illtreatment is hear say as he learnt about the same from Jijabai. He stated in his examination-in-chief that in 1997 he brought Nirmala to his house for Diwali festival. He also stated that that time she did not state anything against the accused. It means the disclosure about illtreatment on demand of money and harassment at the hands of accused no.2 outraging her modesty was at the time of Diwali festival of 1996. Prosecution could not bring on record either in the evidence of Jijabai or in the evidence of Ganpat regarding the last disclosure of Nirmala about the illtreatment on demand of money and harassment at the hands of accused no.3. In the absence of such evidence it would not be possible to come to the conclusion regarding nexus between alleged cruelty and suicidal attempt by the victim.

12] Another draw back in the case of prosecution is regarding mode of death. Prosecution has come with a case that deceased committed suicide. PW 4-Shantilal is a witness on spot panchanama. He stated that on 7.12.1997 police called him as panch. Karbhari Tupe was another panch. The spot was inspected in his presence and spot panchanama Exh.16 was recorded. From spot panchanama it appears that well was not constructed. It was at the ground level and there was no parapet wall to the well. Spot panchanama shows detailed description of well. At the time of spot panchanama a big pot known as Handa was found lying. From the description of well and admissions elicited in cross-examination of panch witness Shantilal it can be seen that possibility of accidental slip by Nirmala is not overruled by the prosecution.

13] So far as injuries are concerned, PW 3-Dr. Subhash has admitted in cross-examination that injuries mentioned in column no.17 of postmortem report were possible by fall in the well against the inside surface of well. The admission brought in cross-examination of Dr. Subhash indicates possibility of sustaining injuries while falling in the well. So far as mode of death is concerned, it is for the prosecution to establish that death in question was suicidal. Spot panchanama and medical evidence creates doubt regarding

mode of death as suicidal and suicidal alone.

14] In the above premise, this Court finds that accused could not be convicted for the offences alleged. The impugned judgment and order of conviction, therefore, calls for interference in this appeal. Hence the following order.

ORDER

- (i) Criminal Appeal No. 377 of 2001 is allowed.
- (ii) The judgment and order, dated 6.9.2001 passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No. 248 of 1998 is set aside.
- (iii) Appellant nos. 2 and 3 are acquitted of the offences punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code.
- (iv) Bail bonds of appellant nos. 2 and 3 stand cancelled.
- (v) Fine, if any, paid by appellant nos. 2 and 3 shall be refunded to them.

[INDIRA K. JAIN, J.]

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