

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 305 OF 2001

Dattatraya Malikarjun Kshirsagar,
Age : 32 years, Occupation - Service,
R/o.: Jewali, Taluka Omerga,
District Osmanabad

.. Appellant
(Orig. Accused no.1.)

VERSUS

The State of Maharashtra,
Through S.P.

.. Respondent

WITH
CRIMINAL APPEAL NO. 529 OF 2001

The State of Maharashtra

..Appellant
(Ori. Complainant)

VERSUS

1. Dattatraya Mallikarjun Kshirsagar,
Age : 32 years, resident of Jewali,
Tq. Omerga, District : Osmanabad

2. Gangubai w/o Mallikarjun Kshirsagar,
Age : 45 years, resident as above

..Respondents
(Ori. Accused)

AND
CRIMINAL APPEAL NO. 530 OF 2001

The State of Maharashtra

..Appellant
(Ori. Complainant)

VERSUS

Dattatraya Mallikarjun Kshirsagar,
Age : 32 years, resident of Jewali,
Tq. Omerga, District : Osmanabad

..Respondent
(Ori. Accused no.1)

Mr. N.K. Kakade, Advocate h/f Mr. V.G. Sakolkar, Advocate for the appellant in Criminal Appeal No. 305 of 2001 and for the respondents in Criminal Appeal No. 529 of 2001 and Criminal Appeal No. 530 of 2001

Mr. A.R. Kale, A.P.P. for respondent/State in Criminal Appeal No. 305 of 2001 and for appellant-State in Criminal Appeal No. 529 of 2001 and Criminal Appeal No. 530 of 2001

CORAM : M.T. JOSHI, J.
RESERVED ON : 22/01/2016
PRONOUNCED ON : 18/02/2016

JUDGMENT :

Heard both sides.

2. All the present appeals have arisen out of the judgment and order passed by the learned 2nd Additional Sessions Judge, Osmanabad in Sessions Case No. 74 of 1997 on 07/07/2001.

3. Vide the said judgment, the learned Additional Sessions Judge had convicted accused no.1 - Dattatraya (appellant in Criminal Appeal No. 305 of 2001) for the offence punishable under section 498-A of the Indian Penal Code. He alongwith his mother accused no.2 - Gangubai were acquitted from the

offence punishable under section 306 of the Indian Penal Code. Accused no.2 - Gangubai was also acquitted from the offence punishable under section 498-A r/w. 34 of the Indian Penal Code. Aggrieved by the order of conviction, Criminal Appeal No. 305 of 2001 is preferred by the original accused no.1 - Dattatraya while rest of the appeals are filed by the State against the acquittal, as detailed supra.

4. Appellant - Dattatraya was sentenced to suffer rigorous imprisonment for a period of 6 months and to pay fine of Rs.500/-, in default further to suffer rigorous imprisonment for 1 month for the offence punishable under section 498-A of the Indian Penal Code.

5. Deceased - Ranjana wife of appellant - Dattatraya was married to him on 27/05/1994 at Latur. After marriage, she started cohabiting in the joint family at village Jewali, Taluka - Omerga, District - Osmanabad. Upto the Diwali festival of the year 1994, there appears to be no complaint of ill-

treatment from deceased Ranjana to her parents or no ill-treatment was noted by them at any time. The FIR filed by the father of the deceased, PW1 – Gundappa details of the following incidents :

6. For Diwali festival of the year 1994, deceased Ranjana and the appellant came to Latur. At that time, deceased went to her friend Sangita Shete and Sunita Bansode to meet them. As she returned in late hours, appellant Dattatraya became angry with her.

7. Second of the incident is dated 18/12/1994. Deceased Ranjana alongwith the appellant – Dattatraya had been to Latur for attending the marriage of the cousin of Ranjana (maternal uncle's son). At that time, in the marriage pandal, deceased Ranjana was seen by the appellant – Dattatraya chit-chating with her girl friends. Appellant – Dattatraya therefore became angry with her and asked her not to linger in the pandal and leave the marriage house. Thereafter, the couple halted at the house of the father of the

deceased. Thereafter, on the next day, the couple alongwith their parents returned to their house at Jewali. At that time, sister of Ranjana i.e. PW3 – Anjana accompanied her. She stayed in the family for about 10-12 days. At that time, she noted that the appellant – Dattatraya always used to insult and scold the deceased on the ground that old fan and cheap clothes were presented to him in the marriage. In the same incident, he had even slapped the deceased.

. In the situation on 12/3/1995, deceased Ranjana's grandfather i.e. mother's father died. Therefore, deceased Ranjana and both the accused came for final rites. At that time, she stayed upto 15/3/1995 alongwith accused no.2. She, at that time was reluctant to return back to the matrimonial home, however, her father and the relatives anyhow persuaded her to return back.

. However, immediately on the next day i.e. on 16/03/1995, father of the deceased received a message

that the deceased was electrocuted and was admitted to Civil hospital, Solapur. Thereupon, when they visited the Civil hospital, they found that the deceased has died and her nicker was smelling of kerosene. In the circumstances, her father PW1 – Gundappa filed complaint on 21/3/1995. In the complaint, he explained that due to the death of the daughter and also due to the death of his father-in-law just within 3-4 days, he was not mentally stable and, therefore, the complaint could not be filed immediately.

8. Initially, Police Station, Solapur city had conducted the enquiry into the accidental death case. Inquest panchanama at Exhibit 47 was drawn. The clothes of the deceased were seized. All these documents were forwarded to Police Station, Lohara, as the deceased had suffered injuries at village Jewali i.e. within the jurisdiction of that Police Station.

. In the said accidental death case,

thereafter, PSI Ghodake of Lohara Police Station drawn the panchanama of the spot of occurrence. He seized the ash and burn clothes from the spot under the very same panchanama. Thereafter, upon receipt of the complaint from PW1 – Gundappa, he registered the crime no.21 of 1995 for the offences punishable under section 306, 498-A r/w. 34 of the Indian Penal Code and conducted the investigation.

9. During investigation, Investigating Officer PSI Mr. Ghodke recorded the statement of the witnesses from village Jewali. On 24/03/1995, he recorded statements of mother, brother and other relatives of Ranjana. On 24/03/1995, complainant – Gundappa produced two inland letters, those were seized under panchanama at Exhibit 45. Clothes of the deceased and the ash of the burn clothes as seized from the spot was sent to the Chemical Analyzer. The Chemical Analyzer's report was collected at Exhibit 69. Post-mortem examination notes were collected and ultimately, the chargesheet came to be filed.

10. Before the learned Additional Sessions Judge, in all 11 witnesses were examined.

11. The learned Additional Sessions Judge came to the conclusion that the deceased did not die due to any electrocution but due to the burn injuries, as has been proved by the inquest panchanama, PW11 – Dr. Kulkarni and the Chemical Analyzer's report at Exhibit 69, which certified that the kerosene residuals were found on the clothes of the deceased.

12. As regards the actual offence, the Court relied on the testimony of PW1 to PW4 i.e. father – Gundappa, mother – Shakuntalabai, sister – Anjana and maternal uncle – Madhukar. It was found that the prosecution case is proved as against the present appellant – Dattatraya. It was observed that accused no.2 – Gangubai has no connection with the cruelty and, therefore, she was entitled to the benefit of doubt. Hence, the present Criminal Appeal No. 305 of 2001.

13. Mr. Kakade, learned counsel for the appellant in Criminal Appeal No. 305 of 2001 and for the respondents in rest of the appeals (Criminal Appeal Nos.529 of 2001 and 530 of 2001) took me through the material on record. He submits that not only the FIR is filed belatedly but even vast improvements above statements made in the FIR are made by the near relatives of the deceased. Some minor incident during the marital life were exaggerated to an extent to show that appellant – Dattatraya was chauvinist, who used to dominate the deceased to such an extent that she had no other alternative but to commit suicide. In the circumstances, he submits that not only appeals filed by the State be dismissed but also appellant – Dattatraya be acquitted from the offence punishable under section 498-A of the Indian Penal Code.

14. On the other hand, learned A.P.P. took me through the evidence on record. He submitted that the evidence would clearly show that the accused had

tried to gloss over the commission of suicide by the deceased and made a false show of accidental death due to electrocution. He also took me through the material on record to buttress his submissions that in-fact both the accused had subjected the deceased to cruelty and driven her to commit suicide.

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

I) Whether the prosecution has proved that on 16/03/1995 at about 6:00 am, deceased Ranjana met with suicidal death by setting her on fire in the joint family house of appellant at village Jewali, Tq. Omerga, Dist. Osmanabad ?

II) Whether the prosecution has further proved that during the co-habitation of the deceased – Ranjana with both the accused, they, in furtherance of their common intention, subjected the deceased – Ranjana to cruelty, as is likely to drive a woman to commit suicide ?

III) Whether the prosecution has further proved that both the accused had abetted the commission of suicide of deceased Ranjana ?

My finding to point no. (I) is in the affirmative and to point nos. (II) and (III) are in the negative. Criminal Appeal No. 305 of 2001 filed by the appellant – Dattatraya is therefore allowed while Criminal Appeal No.529 of 2001 and Criminal Appeal No.530 of 2001 filed by the State are dismissed, for the reasons to follow.

R E A S O N S

16. The admitted facts on record would show that deceased Ranjana was a Science graduate earlier residing at Latur city. The present accused are resident of village Jewali, Tq. Omerga, District – Osmanabad. Sister of the deceased PW3 – Anjana was able to seek admission in the medical faculty while the deceased i.e. the elder sister was married to the present appellant – Dattatraya.

17. The marriage has taken place on 27/5/1994. The death has occurred on 16/3/1995. As per the prosecution case, upto Diwali of 1994, there is no reported incident of ill-treatment to the deceased. First of the incident is of Diwali – 1994. Thus, the bickering between the parties lasted for a period of 4-5 months, which ultimately ended with the death of the deceased.

18. In the situation, the FIR at Exhibit 27 would catalogue the following events :

i) At the time of Diwali festival, when the couple visited the house of the parents of the deceased, at that time, appellant – Dattatraya was angry with her, as she went to visit her girl friends i.e. one Bansode and another Smt. Shete and returned late in the night. He was not ready to leave her alone.

ii) On 18/12/1994, in the pendal of the wedding of her cousin, the appellant – Dattatraya did not

allow deceased Ranjana to talk with relatives and asked her to go away from the pendal to the parent's house. At that time, when the complainant questioned her, she told that a husband is free to do anything but a woman is bound.

iii) When PW3 – Anjana, the younger sister of the deceased came as a guest in the house of the appellant – Dattatraya for a period of 10 – 12 days, after the said marriage, at that time, in her presence, appellant – Dattatraya used to taunt her on the count that old fan and cheap clothes were gifted in the marriage. He had even given two slaps to her and, therefore, after return from the final rites of her grandfather, she immediately committed suicide.

19. It is not the prosecution case that at any time, any unlawful demand of money was made by the appellant – Dattatraya or acquitted accused no.2 – Gangubai. On the other hand, the admitted exchanges of letter between the deceased and her admitted sister would show that appellant – Dattatraya was all

the while ready to give financial help to PW3 – Anjana, who was taking education in B.A.M.S. course at Mozari, Amravati.

. The letter dated 28/12/1994 at Exhibit 28 from one of the cousin brother would reveal that the deceased was somewhat obstinate and, therefore, he had requested the appellant to look after her.

20. In this state of affair, if we appreciate the facts on record, then it would be clear that despite filing of the FIR after due deliberation in the family by the complainant, glosses are made over the incidents during the trial or later-on during the investigation.

. As regards the Diwali incident, PW2 – Shakuntala, the mother deposed that appellant – Dattatraya became angry with Ranjana, as he had an impression that she was wandering in the city of Latur. PW3 – Anjana had no occasion to be in the house at that time, as she has appeared for the examination at Amravati. PW4 – Madhukar also had no

occasion to witness the said incident since he resides away.

21. As regards the incident that has occurred in the pandal of the marriage on 18/12/1994, according to PW1, the complainant, after the marriage, deceased started chit-chating with her girl friends in the pandal. Appellant – Dattatraya however questioned her as to why she was lingering there and asked her to go home. The witness therefore asked the deceased about her coming to house and she told that only woman had certain restrictions while the men are free to do anything.

. Beyond these allegations, as are found in the FIR, PW1 in the witness box added that in the same night, appellant – Dattatraya returned from the marriage house and, he again became angry with deceased Ranjana in his house. PW2 – Shakuntala, the mother deposed that not only appellant – Dattatraya scolded deceased Ranjana in the pandal for the above reason, but additionally in the night, he came to the

house of his in-laws under the influence of liquor and quarreled with deceased Ranjana.

. PW3 – Anjana had repeated the allegations of quarrel under the influence of liquor by appellant – Dattatraya in the house of his in-laws with the deceased. According to her, while all the family members were sleeping in the ground floor, the deceased and the appellant were to sleep on the first floor. The appellant however came to the house under the influence of liquor and quarreled with the deceased, which kept her on the ground floor.

22. As regards the fourth of the incident, i.e. of physical ill-treatment as well as taunting while residing in the joint family, naturally, only PW3 – Anjana the younger sister of the deceased was the witness. She deposed that the appellant – Dattatraya used to scold deceased Ranjana in insulting language on the ground that in the marriage, old fan and inferior clothes were gifted.

. Additionally, she deposed that the appellant

even scolded her on the ground that there was dust on his shoe, as old shoes were presented to him. Upon that, deceased Ranjana replied that the appellant was very well knowing the financial condition of her parents, still, he married with her. In reply, the appellant – Dattatraya slapped her sister on her cheek.

. She further deposed that acquitted accused no.2 – Ganguba was always taunting the deceased on the count that the deceased was not well versed in cooking or to carry any other domestic work like smearing the floor with cow-dung, grinding etc. She also added that the deceased was not given adequate quantity of vegetable in her meal. Deceased Ranjana however on oath asked her not to divulge all this ill-treatment to her parents and, therefore, she remained silent after returning to Latur.

23. Additionally, the incident after the death of father-in-law of PW1, is also made a ground of cruelty by these witnesses. The sum and substance of

their statements would show that the deceased wanted that after attending the funeral ceremony, appellant – Dattatraya should also reside during the mourning period from 12th March, 1995 to 15th March, 1995. The appellant however did not stay on the ground that he had to attend the job. Accused no.2 – Gangubai – mother-in-law stayed with the deceased at that time. This was also posed to be a sort of cruelty as the appellant – Dattatraya did not accede to the insistence of the deceased. Not only this, PW3 – Anjana went further and deposed that acquitted accused no.2 was kept with the deceased at that time “with a view” that the deceased – Ranjana should not have any privacy. Thus, the stay of the accused no.2 – Gangubai for mourning period is also viewed prejudicially. This is an opinion evidence and will have to be rejected.

24. Regarding belated filing of the FIR, it has been sufficiently explained that father-in-law of the complainant has died on 12/3/1995. No sooner, the deceased returned to her matrimonial home after three

days of the said death, she committed suicide. Further, the complainant has explained in his evidence that his wife PW2 suffers from certain brain disease and if in those circumstances, the FIR was filed on 21/3/1995 i.e. after 5 days of the incident, the same cannot be termed as a concocted piece of allegations.

25. It is however admitted by complainant PW1 that the said FIR was filed after due deliberation in the family. Despite this, we have the vast improvements in the prosecution case qua each of the incidents as detailed supra.

26. The sum and substance of the chain of events would show that at the time of Diwali, appellant – Dattatraya became angry with the deceased, as according to him, she was merely wandering in the city of Latur late in the night. As regards the incidents in the pandal of the marriage, appellant – Dattatraya wanted that the deceased should not chit-chat with her girl friends and should return to her

father's house after the function. As regards the episode that has occurred in his own house, in presence of PW3 – Anjana, as regards the complaint of gifting of old fan and the clothes, there was no complaint of the same in the marriage function. Further, PW1 – Gundappa has admitted that the clothes were purchased with the approval of appellant – Dattatraya and there was no complaint of any kind in the marriage. It is an admitted fact that finance was not an issue between the parties at any time. In-fact, admittedly appellant – Dattatraya has given some money to PW3 – Anjana to help her in pursuing her education.

27. In the circumstances, if the improvements made during the trial, as deposed by the near and dear ones of the deceased are ignored, what would emerge from the fact situation is that the appellant expected the deceased to be a mature and somber married lady, than reverting back to her college days of visiting the girl friends at their house in the late hours or chit-chating in the pendal in a public

place. It appears that while appellant is a short tempered and somewhat chauvinist, the deceased was somewhat obstinate, as is found from the letter sent by her brother to appellant – Dattatraya. Letter written by the deceased to her friend at Exhibit 41 would also show that the deceased had no experience of the life and of the outer world. She suddenly was required to be a mature lady upon marriage without any preparation.

28. If all these admitted facts, as detailed in the FIR are taken into consideration, with a caveat that near and dear ones of the deceased would add a pinch of salt unwittingly to the incidents from the prism of their own eye, as is found from the deposition of PW3 – Anjana, who even deposed about the mental thinking process of the acquitted accused no.3 – Gangubai, in residing with the deceased during the mourning period at Latur, then in my view no case of cruelty is made out.

29. The prosecution evidence would clearly show

that the deceased has died due to suffering of burn injuries. While the incident of suffering injuries has occurred on 16/3/1995, the panchanama of the spot of occurrence was conducted on 20/3/1995. At the spot, certain evidence of burning of the electric wire was found, however, the material evidence naturally would have vanished within those three days. The clothes on the person of the deceased however had ruled out the case of electrocution, as it had residual of kerosene.

. It appears that the accused had made a false claim of death due to electrocution, in order to show that the deceased has not committed any suicide. The same however would not take us to conclude that not only the deceased has committed suicide but even the accused had driven the suicide to commit the suicide by subjecting her to cruelty.

30. In that view of the matter, the following order :-

: O R D E R :

31. Criminal Appeal No. 305 of 2001 is hereby allowed while Criminal Appeal No.529 of 2001 and Criminal Appeal No. 530 of 2001 filed by the State are hereby dismissed.

32. The impugned judgment and order of the learned Additional Sessions Judge, Osmanabad, convicting the appellant – Dattatraya Malikarjun Kshirsagar in Criminal Appeal No. 305 of 2001, is hereby set aside.

. Instead, appellant – Dattatraya Malikarjun Kshirsagar is acquitted of the offence punishable under section 498-A of the Indian Penal Code. His bail bonds shall stand cancelled. Fine amount deposited by him be refunded to him after a period of 8 weeks from the date of this order.

Sd/-

[M.T. JOSHI]
JUDGE

arp/