

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 36 OF 2003

The State of Maharashtra,
through Phulambri Police Station,
Tq. Phulambri,
District Aurangabad

.. Appellant
(Ori. Complainant)

VERSUS

1. Manikrao s/o Panditrao Bodkhe,
Age 25 years, Occu.: Agril & Business,
R/o. Lohgadnandra,
Tq. Phulambri, Dist. Aurangabad
2. Shamrao s/o Panditrao Bodkhe,
Age 40 years, Occu.: Business & Agri,
R/o. as above
3. Sau Rukhmanbai w/o Shamrao Bodkhe,
Age 30 years, Occu.: Household,
R/o. as above
4. Sahebrao Panditrao Bodkhe,
Age 35 years, Occu.: Agril.,
R/o. as above.
5. Sau Yeshodabai w/o Sahebrao Bodkhe,
Age 30 years, Occu.: Agril.,
R/o. as above.
6. Shalikrao s/o Panditrao Bodkhe,
Age 30 years, Occu.: Agril.,
R/o as above
7. Sau. Dwarkabai w/o Shalikrao Bodkhe,
Age 25 years, Occu.: Agril.
& Household, R/o as above
8. Smt.Tulsabai w/o Panditrao Bodkhe,
Age 65 years, Occu.:Agril.
& household, R/o as above

.. Respondents

(Ori. Accused)

Mr. R.B. Bagul, A.P.P. for the appellant/State

Mr. S.G. Ladda, Advocate for the respondents

CORAM : M.T. JOSHI, J.

DATE : 08/01/2016

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the respondents by the learned 3rd Adhoc Additional Sessions Judge, Aurangabad vide judgment and order dated 26/08/2002 passed in Sessions Case No. 82 of 2002 from the offences punishable under section 498-A, 304-B r/w. 34 of the Indian Penal Code, the State has preferred the present appeal.

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

. PW1 - Bapurao Mhaske, the father of the deceased - Latabai had filed the complaint against the present respondents upon hear death on 07/10/2001. In the complaint, he has reported that the marriage between the deceased and the respondent no.1 took place on 11/03/2001. However, even prior to the solemnization

of the marriage, though, there was agreement to give certain valuables and the dowry of Rs.1,10,000/-, one week prior to the same, all the respondents met him and made demand of big colour television set and told that they would not come to the marriage unless the demand is met with. Therefore, the colour television set was also presented in the marriage. After the marriage, after some days, all the present respondents again told that they had purchased certain land and for that purpose, the complainant should be ready with Rs.20,000/- to Rs.25,000/- on the date of registration of the sale deed. The complainant however showed his inability and, therefore, ill-treatment to the deceased was started. The deceased used to tell about the ill-treatment as and when occasion arose. The complainant used to give her understanding and he also used to tell the respondents that as and when there would be harvesting, he would pay the amount.

. In the circumstances, Dhonda festival came. As per the custom, some gifts were to be given to the in-laws. The respondents however were obstinate in making the demand of golden finger ring for the

respondent no.1. The complainant was able to give the gift of only clothes. In the circumstances, the respondents told that the deceased would not be send to the complainant's house for Dhonda festival. Even some days before the death of the deceased, the complainant made a enquiry on phone with the respondents, as to when they would come for Dhonda festival. The respondents however replied that as no golden finger ring is arranged, they would not come. In the circumstances, the death has occurred and, therefore, the complaint was filed with a suspicion that the respondents might have murdered the deceased.

4. Before the filing of the complaint, accidental death enquiry report was filed. The post-mortem note as well as the chemical analyzer's report showed that the deceased died due to the organo phosphorous poison. Besides this, on her person, three abrasions were noted. During accidental death enquiry, it was found that the deceased was brought by a moped from the village of the respondent no.1 and she had fallen on the ground while bringing on the moped. In serious condition, therefore, she was put in a auto-rickshaw

and was brought to the Civil Hospital at Aurangabad.

5. The Investigating Officer carried the investigation. As usual, he recorded the panchanama of the spot of occurrence, recorded statements of the relatives and other witnesses, collected the post-mortem notes and the chemical analyzer's report and filed the chargesheet.

6. In all 8 witnesses were examined before the trial Court. Of all these witnesses, PW1 - father - Bapurao Mhaske, PW4 - mother - Parigabai Mhaske, PW7 - uncle Kautik Mhaske and PW8 - grandfather Dadarao Mhaske were examined to show that the deceased had made complaints of ill-treatment during her co-habitation with the respondents.

7. The learned Additional Sessions Judge however found that the prosecution case that the present respondents, in furtherance of their common intention, had cruelly treated the deceased and as a result of the said ill-treatment, the dowry death has occurred is not proved. Therefore, the respondents came to be

acquitted.

8. Learned A.P.P. took me through the evidence on record. He submitted that the deposition of the four relatives of the deceased would show that there was unlawful demand of money to the complainant and over the same, there was cruel treatment to the deceased. He submits that as it has been sufficiently proved that the death has occurred otherwise in natural circumstances, the learned Additional Sessions Judge ought to have convicted all the respondents.

9. On the other hand, learned counsel for the respondents took me through the reasoning forwarded by the learned Additional Sessions Judge and the material on record and submits that a reasonable and probable view has been taken by the learned Additional Sessions Judge of the material placed before him and hence no interference in the reasoning is warranted.

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

I) Whether the prosecution has proved that

all the present respondents, in furtherance of their common intention, had treated the deceased with cruelty during her co-habitation with them ?

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

My findings to both the points are in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

11. We have four prosecution witnesses, who had deposed about the alleged ill-treatment given to the deceased. Their testimony however is shrouded in suspicion. While PW1 - Bapurao - complainant/father of deceased deposed about the demand of colour television in the marriage and demand of Rs.20,000/- to Rs.25,000/- for purchase of the land and, thereafter, of refusal of the respondents either to come for Dhonda festival or send the deceased to Dhonda festival, to

his house for want of gift of golden finger ring, his evidence would show that the deceased had no occasion to visit his house after the Nagpanchami festival and admittedly upto Nagpanchami festival, all was well with the deceased from the side of the respondents.

. It is the prosecution case that the deceased was not taken for Dhonda festival to the house of the complainant at village Kanhori, Tq. Phulambri. As against this, PW4 - the mother of the deceased has deposed that when the deceased was brought to her home for Dhonda festival, at that time, she complained about the demand of golden finger ring. She also went on to depose that whenever the deceased came to her house, she used to complain that she was harassed and abused. Her statement that 4-8 days prior to Dhonda festival, the deceased had been to their house, however, is an improvement over the statement recorded by the Police.

12. PW7 - the uncle of the deceased, namely, Kautik has deposed that the complaint of ill-treatment to the deceased at the hands of the respondents was not made by the deceased to him but by the father of the

deceased i.e. by PW1 and thus it cannot be called as the dying declaration. Similar is the case regarding PW8 i.e. the grandfather – Dadarao, who deposed that his son told him about the ill-treatment and other facts.

13. It is an admitted fact that on the date of the death of the deceased, the complainant was all the while present in the hospital when the inquest panchanama was recorded by the Police, yet on that date, no complaint was filed. It is an admitted fact that on the next day, a typed complaint was filed. The complainant has admitted that one of his earlier colleague Mr. Bhosale is practicing as an Advocate at Aurangabad. It was therefore suggested that a concocted FIR belatedly was filed.

14. Taking into consideration all these facts, the learned Additional Sessions Judge has extended reasonable benefit of doubt to acquit the respondents. In my view, the learned Additional Sessions Judge has taken a reasonable and probable view of the material placed before him, as detailed supra. The reasoning

cannot called as perverse. In the circumstances, in the present appeal against acquittal, no interference in the said finding is warranted. The Appeal is therefore dismissed. Bail bonds, if any, of the respondents shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/