

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

CRIMINAL APPEAL NO.456 OF 2003

The State of Maharashtra
through the Police Station,
Dindrud, through Machindra
Balaji More, Age 22 years, Occu. Agri.
R/o Purushottampuri, Tal. Majalgaon,
District Beed. ... APPELLANT
(Original Complainant)

VERSUS

1. Madhukar s/o Dasaji Deshmane,
Age 26 years, Occu. Labour,
R/o Dindrud, Tal. Majalgaon,
District Beed.
2. Gangubai w/o Dasaji Deshmane,
Age 50 years, Occu. Household,
R/o as above. ... RESPONDENTS
(Original Accused)

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Shri R.V. Dhasalkar, A.P.P. for appellant/ State
Shri M.A. Tandale, Advocate for respondents
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CORAM: A.I.S. CHEEMA, J.

DATED: 6th June, 2016.

J U D G M E N T :

1. This appeal has been filed by the State against the acquittal of respondent accused Nos.1 and 2 under Sections 498-A and 306 read with Section 34 of the Indian Penal Code, 1860

(I.P.C. in brief). The judgment was passed in Sessions Case No.90/1998 on 17.3.2003 by 2nd Additional Sessions Judge, Beed.

2. The case of prosecution in short is as follows :

(a) On 30.5.1998, the complainant Machindra Balaji More, uncle of victim Asha, wife of respondent - accused No.1 Madhukar Deshmane filed statement at the Outpost at Civil Hospital, Ambajogai, with A.S.I. Arjun Kamble (P.W.7). It was reported by him that, Asha was married to accused No.1 and accused No.2 is the mother-in-law. The marriage had taken place about one and a half year back. After marriage, Asha was treated well for about two months and thereafter the accused persons were asking the victim Ashabai to bring Rs.10,000/- for field purpose and for buying sewing machine and for the same, were troubling her. She was not being provided proper food, clothes or oil for her head. The victim had complained about this to the complainant and her parents. Her father had taken up the matter before the Women's Grievances Redressal Cell on 1.4.1998 and Police Station was also orally informed. The victim used to say that she does not feel like living. On 29.5.1998, from one Jagannath Deshmane, the complainant came to know

that the victim had got burnt and taken to the hospital. The relatives went to the hospital. It was learnt that the victim was burnt to the extent of 90% and before giving statement she expired at 7.05 p.m. of 29.5.1998. Thus, the complaint was filed.

(b) A.S.I. P.W.7 Kamble recorded the statement and sent the same to Ambajogai Police Station, where offence was registered as Crime No.50/1998. The document has been proved at Exh.23. P.W.7 investigated the matter. He prepared the inquest panchanama (Exh.24). The body was sent for post mortem (Exh.29). Spot panchanama (Exh.26) was prepared. Statements of witnesses were recorded. Part of the investigation was done by A.P.I. Mane (P.W.6). After investigation, charge sheet was filed under Sections 498-A and 306 of the I.P.C.

3. Charge was framed against the accused persons for Sections mentioned above. The accused pleaded not guilty. Their defence is of denial.

4. Before the trial Court, prosecution examined 7 witnesses to prove the offence. Trial Court considered the evidence led by the prosecution and the defence of the accused as appearing from the cross-examination and for reasons

recorded, acquitted the accused persons.

5. Now, the learned A.P.P. for State has argued the matter praying for conviction. He has taken me through the evidence of various witnesses. According to the learned A.P.P., the judgment of the trial Court itself shows that the trial Court recorded finding (in para 14 of its judgment) that harassment was established, but in spite of such finding, the trial Court acquitted the accused adopting reasoning that it was not proved that the harassment was of such a nature that the victim would have committed suicide. It is argued that, the judgment of the trial Court is not maintainable and relying on the evidence brought on record, the accused should have been convicted.

6. Learned counsel for the respondents - accused submitted that the evidence of the doctor itself shows that the burns were only on the front part of the body and deep burns were found to the thigh of the victim. The spot panchanama shows that there was hearth in the compound of the house where the incident took place and the incident took place in the afternoon, which was time of cooking and thus, the trial Court rightly observed that the possibility of accidental burns was not ruled out. According to the counsel, the allegations of alleged

harassment are vague and not of such gravity which could be calculated as cruelty. Thus, according to the counsel, the reasons recorded by the trial Court are correct and when acquittal has been recorded, the judgment may not be reversed.

7. I have already referred to the contents of the F.I.R. Coming to the evidence of P.W.1 Ujwala Sirsat, the mother of the victim, she stated that, after marriage, for about one and half month the victim was treated well, but thereafter, she was being beaten and there was demand of Rs.10,000/-. The trial Court referred to the evidence of the other two relatives P.W.2 complainant Machindra and P.W.4 Walmik to observe that, these witnesses did not refer to victim being beaten and that the F.I.R. also did not state that the victim was at any time beaten. Thus, the trial Court disbelieved P.W.1 regarding her evidence that the victim was being beaten.

8. The evidence of P.Ws.1, 2 and 4 claims that there was a demand of Rs.10,000/-. However, there is no evidence of these witnesses to say as to for what purpose the amount was being demanded. In the F.I.R., it was stated that for field and purchasing sewing machine demand was made. However, the complainant P.W.2 Machindra did not mention these factors in

the oral evidence.

9. Then there is evidence of P.W.1 Ujwala that the victim had informed her that she was not provided clothes or oil for her head and that she was being provided less food. In this regard, P.W.2 complainant Machindra deposed that the victim was not provided clothes and oil for head. P.W.4 deposed that, the victim was not provided clothes or oil for her head or given proper food. The trial Court, while dealing with the post mortem notes, noticed that, the intestine were partly loaded. Column No.21 of the post mortem report (Exh.29) refers to small intestine and large intestine and their contents are recorded that the same were partly loaded. The trial Court observed that, it showed that the victim had taken food in the concerned morning. Trial Court thus ruled out the fact that the victim was not being given food.

10. The panchanama Exh.26 relating to the spot shows that it was a small house having four "Patre" or tin sheets. It was constructed with mud walls. Evidence of panch P.W.3 Mahadeo also shows that it was house of mud with some open space in front. There is no material to show that the accused persons were rich. Thus, how much weight should be given to

the grievance regarding clothes and oil for head is a matter of consideration.

11. Judgment of the trial Court shows that, the trial Court considered the following facts :-

- (1) The evidence of P.W.1 regarding beating was not supported in the evidence of P.Ws.2 and 4;
- (2) The evidence did not show the purpose of the alleged demand;
- (3) Although the evidence of witnesses was that the victim was sent back to the matrimonial home 5-6 times, there was no evidence that when continuously demand was not met, there was increase in harassment;
- (4) Although Bhagwan, the father of victim had taken the victim to Women's Grievances Cell, she was sent back to the place of accused and it showed that the harassment was not of serious nature;
- (5) Prosecution failed to prove that the victim was subjected to such cruelty as would drive her to commit suicide;
- (6) The burns to the person of the victim were on front side and the evidence of doctor shows that there were deep

burns on the anterior aspect of chest, arms thighs and rest of the burns were superficial. Trial Court found that there was no evidence of kerosene oil found on the body of the victim. Looking to the spot, the trial Court observed that, the possibility of receiving burns accidentally could not be ruled out;

(7) The commission of suicide itself was doubtful.

For such reasons and findings recorded by the trial Court, it acquitted the accused persons.

12. I have gone through the evidence and find that the observations of the trial Court have substance. It cannot be said that the reasons recorded by the trial Court are not possible view of the evidence. Although the trial Court observed in para 14 of the judgment that the harassment was established, it again referred to its findings that the evidence regarding beating was unsupported; that there was no acceleration of harassment, that purpose of demand was absent and thus, it went on to observe that the nature of harassment was of lower level. What appears is that, the trial Court found that the harassment was of not such a nature that the person would commit suicide. There is substance in this. The harassment alleged that proper clothing

was not provided and oil for head was not provided. Looking to the status of the accused persons, for victim, a daughter of labourer like P.W.1 Ujwala, this cannot be said to be cruelty in the facts of this matter. The victim must be aware of the background from which she came and the economic status of the accused persons. The accused No.1 is also apparently and admittedly a labourer. Further, I find substance in the observations of the trial Court that keeping in view the evidence of the doctor and spot panchanama the possibility of accidental burns is not ruled out.

13. I do not find any reason to interfere in the judgment of acquittal, which is a possible view of the evidence. There is no substance in the appeal.

14. The appeal is dismissed. Bail bonds of the accused are cancelled.

(A.I.S. CHEEMA, J.)