

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

CRIMINAL REVISION APPLICATION NO. 344 OF 2003

Shaikh Ahmed Sk. Mohammad,
Age: 45 years, Occ: Agri.,
R/o. Ghagnandur, Tq. Ambajogai,
District Beed.

...Applicant

versus

1. State of Maharashtra,
Through Police Officer,
Police Station, Parali (Rural)
Taluka Parli-vaijinath, Dist. Beed.
2. Syd. Mustafa Syd. Lal Patel,
Age: 32 years, Occ: Agri.,
R/o. Dharmapuri, Tq. Parli-vaijinath,
District Beed.
3. Syd. Rustum Syd. Lal Patel,
Age: 50 years, Occ: Labour,
R/o. Dharmapuri, Tq. Parli-vaijinath,
District Beed.
4. Syd. Babu Syd. Lal Patel,
Age: 42 years, Occ: Labour,
R/o. Pakistan Mohalla,
Parli-vaijinath, Tq. Parli-vaijinath,
Dist. Beed.
5. Syd. Akbar Syd. Rustum,
Age: 28 years, Occ: Driver,
R/o. Chanai, Tq. Ambajogai,
Dist. Beed.

...Respondents

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Mrs. Vaishali D. Jadhav, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1
Mr. S.Y. Patil, Advocate h/f Mr. B.N. Patil, Advocate
for respondent Nos. 2 to 5

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CORAM : N.W. SAMBRE, J.

DATE : 2nd MAY, 2016

ORAL JUDGMENT :

Present Criminal Revision Application is against the verdict of acquittal delivered by 2nd Adhoc Additional Sessions Judge, Ambajogai on 29/07/2003 in Sessions Case No. 06 of 2003.

2. The facts as are necessary for deciding the present criminal revision application are as under :-

The marriage of deceased Shabana, second daughter of present applicant, was solemnized on 04/02/2002 with respondent No. 2- accused No.1 at Dharampuri, as per Muslim rituals. It is then claimed that the accused persons i.e. respondent Nos. 2,3,4 and 5 demanded Rs.50,000/- from deceased Shabana and her father for purchasing auto rickshaw for accused No. 1 and illtreated her. As such, Shabana by consuming poison, committed suicide. The incident took place on 12/08/2002, whereas she died on 16/08/2002 at S.R.T.R. hospital, Ambajogai. On 17/08/2002 the applicant filed first information report at out post of S.R.T.R. hospital, Ambajogai and Crime No. 0/2002 for the offence punishable under Sections 498-A, 306, 323, 504 read with Section 34 of the Indian Penal Code came to be registered against the accused persons.

3. The investigation thereafter was transferred to Police Station Parali (Rural) and A.P.I. Tatyasaheb Bhojane (PW-7) carried out the investigation after registering Crime No. 121 of 2002 for the offence punishable under Sections 498-A, 306, 323, 504 read with Section 34 of the Indian Penal Code. From his evidence and the evidence of complainant, first information report (Exhibit-23) came to be proved. He claimed that he visited the spot of incident on 18/08/2002 in presence of two panch witnesses Venkati Phad and Laxman Phad and he proved the panchnama (Exhibit-37). The supplementary statement of the complainant was recorded on 18/08/2002. He tried to trace out the accused on 18/08/2002, however the accused persons were traced and arrested on 25/09/2002. Post mortem notes are at Exhibit-33.

4. From the evidence of Shaikh Shakil, it was sought to be brought on record that deceased Shabana was weeping while giving statement. It is also brought on record that Shaikh Shakil has not stated before the police that he stayed for two days at Ghatnandur so as to convince Shabana.

5. PW-1 Venkati Phad, panch witness to the spot, has turned hostile. PW-2 complainant Shaikh Ahmad has deposed that there was demand of Rs.50,000/- and for that, deceased Shabana was narrating that the accused persons were treating her with cruelly.

He has then stated that as Shabana could not sustain the cruelty, she committed suicide on 11/08/2002, for which the said witness got knowledge on 13/08/2002. He claimed that he tried to lodge complaint on 13/08/2002 at Parli, however, his complaint was not accepted. It is then brought on record that he was aware about the fact that there is police station at Ambajogai and office of Dy. Superintendent of Police is also located at Ambajogai. He then admitted that he has not filed any complaint to Dy. S.P. for not accepting his complaint Parli police station. He then stated that he filed first information report at police out post at S.R.T.R.hospital, Ambajogai. He then admitted that he has not narrated to the police that accused persons have not permitted Shabana to visit her parental home on the occasion of *Nagpanchami* that he has stated in examination in chief. He then admitted that he has not stated that Shafik Syd. Babu alongwith deceased Shabana visited his place and at that time, he demanded Rs.50,000/-. Rather he admitted that he stayed with his daughter for a day.

6. From the record, material omissions are brought on record as regards refusal of accused to send Shabana at the time of *Nagpanchami* festival, as regards non narration of demand made by accused No. 1 when reached with Shabana at her parental place and their stay.

7. The material omissions as are brought on record, *prima facie* does not repose any confidence in the testimony of PW-2 complainant.

8. The other witnesses namely Venkati, PW-1 and Laxman, PW-3 have turned hostile.

9. PW-4 Sk. Natifabee, mother of deceased Shabana stated about the alleged demand and illtreatment meted to Shabana in her examination in chief. In cross examination, she has admitted that accused Nos. 3 and 4 were residing separately from accused No.1. It is stated that accused No. 3 was staying at Parli for four days in a week. Accused Nos. 2 and 4 were staying at Ambajogai for four days in a week. She has admitted that marriage of Shabana was solemnized with accused No.1 against her wish. The material omission that is noticed is, her non mentioning of visit of Shabana alongwith accused No. 4 and demand of Rs.50,000/-. The alleged visit of the family members of complainant i.e. aunt of Shabana and grandmother of Shabana etc., is also material omission that is noticed, as same is absent from the statement given to the police. The material omission that is also brought on record that the alleged threats issued by accused persons for non fulfillment of demand. The another material witness PW-6 Sk. Shakil claimed that the complainant is brother in law. He then narrated about the alleged

illtreatment and demand of money. In his cross examination, he has admitted that he was not present at the time of marriage of deceased Shabana. He then stated that he is not aware about visit of deceased Shabana to her parental house.

10. In the above referred background of the evidence as is brought on record, Mrs. Vaishali Jadhav, learned Counsel for the complainant would urge that acquittal as is ordered by learned Sessions Judge is not sustainable. She would submit that the cumulative effect of the evidence as is brought on record, it could be inferred that there is sufficient evidence to prove the demand and cruelty practiced on deceased Shabana. She would submit that there is material to infer that offence punishable under Section 306 of the Indian Penal Code was committed by the accused persons. She has also invited my attention to the certain perverse findings recorded by the learned Sessions Judge.

11. Learned Counsel for the applicant-complainant would rely upon the judgment of the Apex Court in the matter of **S. Sudershan Reddy and others vs. State of A.P. reported in (2006) 10 SCC 163** so as to canvass that merely because the complainant has given supplementary statement implicating the accused persons that does not shake very story of the prosecution. She would then urge that first information report cannot be treated as encyclopedia of

the facts of crime and hence non mentioning of certain facts in the first information report cannot be detrimental to the prosecution case. She would then submit that even if the majority of evidence brought on record by the prosecution is found to be deficient, residual evidence is sufficient to prove the guilt of accused and conviction can be maintained. She would then rely upon the judgment of the Apex Court in the matter of ***Narayan Chetanram Chaudhary vs. State of Maharashtra*** reported in ***(2000) 8 SCC 457*** so as to canvass that while appreciating the evidence, the contradictions in the testimony of witnesses would always not to be fatal to the prosecution case. Such contradictions in material particulars and not minor contradictions can be a ground to discard the testimony of the witnesses, and the whole testimony, as such, cannot be discarded.

12. Having regard to the evidence as is discussed here in above, it is required to be noted that in the statement of accused recorded under Section 313 of the Code, the accused have come with the case that the deceased Shabana was not happy since her marriage was performed against her wish. From the evidence of PW-4 Shaikh Natifabee, it is brought on record that deceased Shabana married with accused No.1 against her wish.

13. It is then required to be noted that accused Nos. 1 to 3 are real brothers and accused No. 4 is son of accused No. 2. It is

then brought on record that the accused persons were not staying together and were staying at different places. The inquest panchnama which is at Exhibit-19 does not speak external injuries though during recording of evidence of complainant, has also tried to put forth the case of causing murder of deceased Shabana. However, there is hardly any material to that effect to believe such story. Furthermore, the approach of present applicant in coming out with a case of murder of deceased Shabana, prima facie speaks of intention of false implication of the accused persons in the crime in question. It is then required to be noted that the complainant himself has come out with story that the deceased Shabana consumed poison and died because of the same. Learned Counsel for the applicant, as such, is right in inferring that the death of Shabana was suicidal death.

14. The testimony of complainant if analyzed in the light of what has been observed herein above, it is to be noted that in the cross examination the story as is sought to be put forth by the complainant was demolished by bringing on record material omissions. The ingredients for the offence punishable under Section 498-A of the Indian Penal Code were also not proved and the approach of the applicant trying to implicate other accused persons namely sister of accused No.1 and her husband vide supplementary statement on 18/08/2002 speaks voluminous about approach of the

complainant in the matter. The complainant has implicated all family members of the husband of deceased Shabana as accused in crime without attributing any specific role to each of the accused.

15. So far as the death of deceased Shabana within period of seven years from the date of marriage, particularly in view of provisions of Section 113-A of the Evidence Act if analyzed, it is required to be noted that the prosecution was required to establish that suicide in question is in view of harassment and cruelty practiced by the accused persons to fulfill their unlawful demand. It is required to be noted that presumption as against the accused persons pursuant to the provisions of Section 113-A of the Evidence Act could only be drawn, if death is within seven years from the date of marriage and husband or his relatives have practiced cruelty. In the present case, though death has occurred within seven years from the date of marriage, however, it is not proved by the prosecution that the accused persons were responsible for the alleged cruelty, which has driven deceased Shabana to commit suicide. Though the accused persons owing an explanation, however, it is rightly brought on record by them in their evidence that they were not staying together.

16. Having regard to the evidence of PW-2 and other material on record, there is hardly any case to draw presumption that

the accused have committed crime and pursuant to the provisions of Section 113-A of the Evidence Act, are required to be convicted.

17. Looking to the scope of revisional jurisdiction, particularly in the matter of acquittal of the accused persons, in my opinion, no case for interference is made out. Criminal Revision Application fails and stands dismissed. Rule stands discharged.

[N.W. SAMBRE, J.]

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