

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPEAL NO.881 OF 2015**

Chandrakant s/o Narayan Wankhede,
Age-42 years, Occu:Service,
R/o-Plot No.37, Dandekar Nagar,
Pimpralam Jalgaon, Dist-Jalgaon.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
MIDC Police Station,
Jalgaon, Dist-Jalgaon,
- 2) Kiran Ananda Bavaskar,
Age-37 years, Occu:Service,
R/o-Plot No.1, Yashwantnagar, Bhusawal,
Tq-Bhusawal, Dist-Jalgaon,
- 3) Ananda Ukhardu Bavaskar,
Age-68 years, Occu:Pensioner,
R/o-Plot No.1, Yashwantnagar, Bhusawal,
Tq-Bhusawal, Dist-Jalgaon,
- 4) Sushilabai Ananda Bavaskar,
Age-63 years, Occu:Household,
R/o-Plot No.1, Yashwantnagar, Bhusawal,
Tq-Bhusawal, Dist-Jalgaon,
- 5) Pradeep Ananda Bavaskar,
Age-44 years, Occu:Service,
R/o-HUDCO, Ranacha Mahadeo,
Bhusawal, Dist-Jalgaon,

- 6) Sunanda Sanjay Dole,
Age-35 years, Occu:Service,
R/o-Bhalod, Tq-Yawal,
Dist-Jalgaon,
- 7) Sanjay Ramdas Dole,
Age-40 years, Occu:Service,
R/o-Bhalod, Tq-Yawal,
Dist-Jalgaon,
- 8) Chhaya Sopan Wadhe,
Age-41 years, Occu:Service,
R/o-Purushottamnagar, Jamner,
Tq-Jamner, Dist-Jalgaon.

...RESPONDENTS

(Resp. Nos.2 to 8 - Orig. Acused Nos.1 to 7)

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Mr.Yogesh B. Bolkar Advocate for Appellant.
Mr.A.M. Phule, A.P.P. for Respondent No.1.

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CORAM: A.I.S. CHEEMA, J.

DATE : 26TH APRIL, 2016

ORDER :

1. Heard counsel for the Appellant- original complainant. This Appeal is against acquittal of Respondent Nos.2 to 8 - original accused Nos.1 to 7 for offence under Section 498-A and 306 of the Indian Penal Code, 1860 ("I.P.C.").

2. Learned counsel for the Appellant submitted that sister of the Appellant, namely Shobha was married to the accused No.1 on 29th June 2005. There was evidence brought that she committed suicide on 24th January 2011 by drowning. According to the counsel, evidence was brought on record that there was consistent demand of money and as the demand was not fulfilled by Shobha by bringing money from her parents, she was ill-treated and because of the harassment, she committed suicide. According to the counsel, there was sufficient evidence to prove the cruelty and the reasonings recorded by the trial Court were wrong. The learned counsel referred to the evidence which was brought on record and has taken me through the Judgment of the trial Court to submit that the acquittal of the accused persons was erroneous and the Judgment needs to be interfered with and evidence should be re-appreciated. The counsel relied on the Judgments in the following matters:-

I) Thanu Ram vs. State of M.P. (Now C.G.), 2010 (10) S.C.C. 353,

II) Vajresh Venkatray Anvekar vs. State of Karnataka, 2013 A.I.R (S.C.) 329,

III) K. Prema S. Rao vs. Yadla Srinivasa Rao, 2003 A.I.R. (S.C.) 11,

. Relying on the above Judgments, the counsel submitted that the Judgments show that when the death has occurred within seven years of marriage, presumption is required to be raised under Section 113-A of the Indian Evidence Act and it must be held that accused persons abetted the suicide of the victim. According to the counsel, when such presumption is raised, the accused could not have been acquitted.

3. I have gone through the documents from the original record and the evidence and the reasonings recorded by the trial Court. It can be

seen that the victim was working as an Agricultural Assistant and used to travel from Bhusawal to another village for the purpose of service. The trial Court, from the evidence, found that it was a case of suicide. For dealing with the question of cruelty and abetment to commit suicide, trial Court discussed the evidence. It observed that there was evidence of PW-1, the elder brother and PW-2 who is father of the victim. They have deposed that the accused were insisting the victim to bring Rs.30,000/- and Rs.1,00,000/- to purchase shares of Reliance Company and construction of house. The learned counsel for the Appellant pointed out that when such amounts were not brought, the victim was subjected to ill-treatment. However, the learned counsel could not state as to what was the alleged ill-treatment. The trial Court discussed the evidence that the victim herself was earning and the circumstances of the family of the accused were considered by the trial Court to find that

except for the mother in law all the other members in the family were teachers and had independent sources of income and they were well educated and financially sound. Thus, according to the trial Court, the need for making such demand was not inspiring confidence.

. Trial Court also discussed that details of the alleged unlawful demand were not disclosed anywhere although it was the evidence that fifteen days after the marriage, solemnized in the year 2005, the demand has started and victim committed suicide in the year 2011. The trial Court took note of various instances which took place between 2005 to 2011 and found that there was evidence to show that victim had earlier given notice to her husband and thereafter, on intervention, cohabitation had been resumed. Trial Court discussed rejoinder dated 29th July 2009, to observe that there was no reference of alleged demand and harassment on that count. Trial Court

observed that rejoinder showed that even the husband had complaints against the victim regarding the mental condition. Then there is discussion by the trial Court of the incident dated 23rd December 2010 and 3rd January 2011 wherein allegedly the victim had tried to commit suicide. While dealing with the incident dated 3rd January 2011 trial Court noticed that the victim had written suicide note Exhibit 45. Defence was that it was snatched away by accused No.1. The observations of the trial Court show that considering the material, it found that there were disputes between the victim and her husband which were settled and again they had started cohabitation. Thus, according to the trial Court, the resumption of cohabitation minimized the earlier alleged harassment. Regarding the demands, it was found that there was no other evidence except that of the brother and the father. Trial Court also discussed the evidence relating to earlier treatment of the victim regarding mental

ailment and keeping all that in view, the trial Court concluded that offence was not made out. The trial Court also kept in view the provisions of Section 113-A of the Indian Evidence Act, to find that they did not attract.

4. Learned counsel submitted that it has come on record that postmortem was conducted, surprisingly, within five minutes. The document in this regard is at Exhibit 49 and it appears that the accused persons admitted the document. Consequently, doctor was not examined and the point on this count was not cleared in the trial Court. The document, however, read as a whole, shows recorded details regarding the contents of the stomach, intestine, liver pancreas etc. which shows that detail postmortem was done. Only by pointing out timing of five minutes, which could be an error also (one does not know), by that itself, it will not be a reason to interfere in Judgment of acquittal, specially when there is no

dispute regarding the fact that victim did die of drowning. No doubt, it was duty of the prosecution itself to clarify things if required by calling doctor.

5. The Judgments relied on by the learned counsel for the Appellant are based on their own facts and can be distinguished. The present matter has to be considered on the basis of its own facts. Although the death occurred within seven years of marriage, the accused discharged onus to show that the victim had personal problem of depression and on earlier occasions they had intervened to stop her from committing suicide. The presumption is thus rebutted.

6. Looking to such reasonings recorded by the trial Court and the evidence which is available, the findings recorded by the trial Court that offence is not proved, is a possible view of the evidence. That being so and only

because on the basis of evidence some other view could be taken, is no reason to interfere in the acquittal.

7. No ground is made out to admit the Appeal. The admission of the Appeal is declined. The Appeal is dismissed.

[A.I.S.CHEEMA, J.]

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