

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 493 OF 2008

1. Tanaji Tukaram Chavan
2. Vikas Tanaji Chavan
3. Sou. Lilabai @ Shobha Tanaji Chavan
4. Amol Tanaji Chavan
5. Sachin Tanaji Chavan
R/o. Aundh, Tal. Khatau, Dist. Satara

.....Appellants

V/s.

The State of Maharashtra

....Respondent

Mr. Milind Deshmukh i/b Mr. Dhananjay Rao Rananaware Advocate for
Appellant
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 11, 2016.

JUDGMENT:

Appellant nos. 1 to 3 & 5 are convicted for offence punishable under section 306 and 498 (A) r/w 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and fine of Rs. 5000/- in default to suffer rigorous imprisonment for one month. Appellant/accused no. 4 is sentenced to suffer rigorous imprisonment for three years and fine of Rs. 3000/- in default to suffer rigorous

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imprisonment for one year. No separate sentence is awarded for offence punishable under section 498 (A) of Indian Penal Code. Appellants are acquitted of the offence punishable under section 304 (B) of Indian Penal Code by Additional Sessions Judge Satara in Sessions Case No. 92 of 2007 vide Judgment and Order dated 09/05/2008. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows.

3) Appellant Vikas was married to deceased Seema on 14/05/2006. That on 13/11/2006 Seema committed suicide in her matrimonial home. Mother of Seema namely Smt. Shalan Wagh approached the police station on 14/11/2006 and lodged a report alleging therein that her daughter Seema was being harassed and ill-treated in her matrimonial house. That Seema had informed her about the same. That they had not taken her complaints seriously. At the time of Diwali, Seema had come to visit her mother along with her husband. At that time, husband of Seema had demanded Rs. 10,000/- for purchasing a pair of bullocks. That Seema was threatened of dire consequences in

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the eventuality that demand was not fulfilled. Seema was taken to the hospital of Dr. Laddad. She was informed that in all probabilitites Seema has conceived pregnancy, however, she was advised to undergo pathological test to confirm pregnancy. Complainant had assured Vikas that she would fulfill the demand subsequently. Seema had returned along with her husband. 10 days prior to 13/11/2006 Seema had called the complainant telephonically and informed that she was being harassed and ill-treated in her matrimonial house. That she was also being harassed and coerced to undergo medical termination of pregnancy. Complainant had assured her to remain safe and that she would send her brother to her matrimonial house. On 13/11/2006 in the evening, complainant at about 5.00 p.m. received a message from the father-in-law of Seema i.e. Tanaji that Seema had committed suicide by hanging and therefore complainant along with her relatives had rushed to Aundh i.e. matrimonial house of Seema. At that time, dead body of Seema was laid on the cot. Police had also arrived there. After completion of post-mortem, funeral was performed and thereafter, complainant and approached the police station alleging

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therein that since her daughter could not take ill-treatment anymore, she has committed suicide. On the basis of her report, crime no. 70 of 2006 was registered at the Aundh police station against the accused for offence punishable under section 498 (A), 304 (B) r/w 34 of Indian Penal Code. After completion of investigation, charge-sheet was filed on 09/02/2007. case was committed to the court of Sessions and registered as Sessions Case No. 92 of 2007. Prosecution examined as many as 7 witnesses to bring home the guilt of the accused. Accused have examined 2 defence witnesses.

4) P. W. 1 Dr. Sushma Jadhav who had performed autopsy on the dead body of Seema on 13/11/2006. She had performed autopsy and arrived at a conclusion that cause of death was "Asphyxia due to hanging". That the death had occurred 6 hours after the last meal. Post mortem notes are at Exhibit 36. It is categorically admitted in the cross-examination by the witness that there was no sign of pregnancy.

5) P. W. 2 Dr. Manisha Laddad was a Gynaecologist having her dispensary and maternity home at Koyana Vasahat Maltapur. She has deposed before the court that Seema had visited her dispensary on

13/10/2006 at about 6.30 p.m. and had complained that she has missed her menses. P. W. 2 had advised her to undergo pathological test to ascertain as to whether pregnancy test was positive and had advised her to return to the hospital after 10 days.

6) In the cross-examination she has stated that she had issued certificate at Exhibit 38 on the request of the brother of deceased Seema. She has deposed on the basis of her memory that Seema was accompanied by a woman. Upon perusal of the said certificate, it is clear that doctor had not mentioned on the certificate "LMP" near the identification marks. She has admitted the same in the cross-examination. She has denied the suggestion that the certificate was issued on the request of her brother Santosh. It is a matter of record that Exhibit 38 has been issued on 15/11/2006 i.e. 2 days after the death of Seema.

7) P. W. 3 is the Panch who has been declared hostile.

8) P. W. 4 Santosh Wagh happens to be brother of deceased Seema. His deposition is in consonance with the deposition of the complainant i.e. P. W. 5. According to Santosh he had been to the house of Seema on

one occasion when she was assaulted in his presence. Seema had shown injury marks to him. He had requested accused Vikas to forgive his sister in the eventuality that she has done some error. He has also deposed before the court that Seema has visited the matrimonial house at the time of Panchami. She had informed her mother and brother that accused Sachin had an ill eye upon her. That he used to cut obscene jokes with her. That she has disclosed about this to her husband and his parents and they had abused her. When accused no. 1 i.e. father-in-law of Seema had gone to fetch her from her maternal house, brother of Seema had requested him to keep her properly. They had sent Seema along with her father-in-law. That at the time of Diwali accused Vikas who happens to be husband of Seema had demanded Rs. 10,000/- through Seema for purchasing bullocks and two Tolas gold chain. She was sent back to her matrimonial house along with her husband and soon thereafter, i.e. within 15 days Seema had committed suicide. According to Santosh on 13/11/2006 at about 5.00 p.m., accused no. 1 had informed them about the suicidal death of Seema.

9) In the cross-examination P. W. 4 has categorically stated that his
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sister Seema was smart and good looking. They do not have a telephonic connection in their house. It is also admitted in the cross-examination that accused owns a jeep and tractor. It is a specific allegation of the parents of Seema that accused were taunting on account of being deaf. P. W. 4 has denied the suggestion that Seema was under the treatment of a psychiatrist and that she was mentally ill.

10) P. W. 5 Shalan Wagh happens to be mother of deceased Seema. She has deposed in consonance with her F.I.R. which is at Exhibit 38. it is pertinent to note at this stage that there is no admission by P.W. 5 that upon receipt of information that Seema had committed suicide by hanging, they had been to the house of Seema at Aundh. That police were present and were writing down something. It is pertinent to note that at that stage in the presence of prosecution witness, A.D. No. 34 of 2006 was registered on the basis of the narration given by accused no. 1. Preliminary investigation was carried out in the presence of prosecution witnesses P.W. 4 & P. W. 5. Inquest Panchanama was conducted in A.D. inquiry. Witness has admitted that police had informed P.W. 5 that body was being sent for post mortem. It is

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pertinent to note that at that stage, prosecution witness no. 4 & 5 had made no grievance against the accused. At that point of time, P.W. 5 could not disclose to the police that Seema was being harassed and there was demand of Rs. 10,000/- and she had been harassed and ill-treated on account of non-fulfillment of the demand made just 10 days before her death, however, no such grievance was ventilated before the police at that stage. That no specific overt act has been attributed to original accused no. 4 and accused nos. 1 & 3 who happen to be father-in-law and mother-in-law respectively. The demand was made by accused no. 2 and accused no. 5 is alleged to have an evil eye upon Seema which was not liked by her.

11) In the cross-examination P. W. 5 has also admitted that her daughter was not wearing bangles and Mangalsutra. It is also admitted that after accused were enlarged on bail, they have returned the articles which were gifted to Seema by her mother. She has also admitted that she had surrendered to the suggestion of her brother Sunil and Dinkarrao. There are inherent omissions and contradictions in the substantive evidence of P.W. 5. It is also admitted by P.W. 4 & 5

that they did not have telephonic connection in their house, however, they stand by their contention that they have telephonic conversation with Seema. P.W. 4 & 5 have failed to give the identity of the person who had received the said phone calls.

12) P. W. 6 Netaji Wagh happens to be cousin of deceased Seema. According to him, Seema had disclosed to him that she was being harassed and ill-treated at the hands of the accused.

13) P. W. 7 happens to be Investigating Officer. He has specifically admitted that accused no. 1 Tanaji had been to the police station on 13/11/2006 and had informed the police about the suicidal death of Seema and that on the basis of his report, A.D. No. 34 of 2006 was registered. He has proved the omissions and contradictions in the evidence of P.W. 4, 5 & 6.

14) Accused had examined Dr. Dnyanesh Kharade who is a psychiatrist by profession. He has done his Masters in psychiatry. He was practicing at Phaltan since 1983. He has deposed before the court that deceased Seema was under his treatment. He has given specific dates when he had examined Seema. According to him, Seema had

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been to his dispensary for the first time on 09/07/2006. She was being taken to the hospital by her father-in-law and her husband. There were entries to that effect in the O.P.D. register. He had prescribed medicines to her. According to him, on 30/10/2006, patient had been to his hospital. There is entry in the register to that effect. At that juncture, he had noticed that patient Seema was suffering from schizophrenic disorder and that response to the medicines was very poor. That patient was not feeling comfortable in the surrounding activities. He has changed the medicines. Prescriptions are at Exhibit 82 and 83. It is pertinent to note that the witness has not been shattered in the cross-examination. He has deposed on the basis of register maintained at the hospital.

15) Evidence on record would indicate that accused no. 1 & 3 had been taking Seema to Dr. Kharade and that she was given treatment for her mental illness.

16) Learned counsel for the appellants submits that in all probabilities Seema had committed suicide in a fit of temporary mental disorder and therefore, they cannot be held liable for offence

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punishable under section 306 of Indian Penal Code.

17) It is true that there is no evidence on record which would indicate that accused persons, more particularly accused nos. 1, 3 & 4 have facilitated or abetted the commission of suicide, much less there is no evidence of any ill-treatment to Seema at the hands of accused nos. 1, 3 & 4. Evidence on record would indicate that accused no. 2 has rather demanded Rs. 10,000/- through Seema just 10 days prior to her death. There is no reason to disbelieve the evidence of P.W. 4 Santosh that accused no. 2 had assaulted his wife and that she had shown injury marks on her person to P.W. 4.

18) Learned APP submits that there is positive evidence on record which would indicate that accused no. 2 had left the house soon after the marriage and was sleeping in the courtyard and therefore mental ill-treatment was meted out to Seema due to which in all probabilities she had lost her mental equilibrium. That she was hail and hearty before marriage, however, soon within two and half months of marriage, she needed psychiatric treatment and that her husband and her father-in-law were taking her to psychiatrist. There is also no

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record to show that Seema was carrying pregnancy at the time of her death as the post mortem notes do not indicate any changes in organs of generation. It is also a matter of record that Dr. had issued the certificate two days after the death of Seema. Hence, the said aspect does not inspire the confidence of the Court.

19) Taking into consideration the evidence on record, it is clear that accused nos. 1, 2 & 4 deserve to be acquitted of all the charges levelled against them. It is a matter of record that accused no. 4 was in the Armed Forces and that he had come to his native village only two days prior to the suicidal death of Seema. It cannot be said that any member of the family had facilitated, abetted or instigated the commission of suicide by Seema. Hence, the following order.

ORDER

- (i) Appeal is partly allowed.
- (ii) Appellant nos. 1, 3 & 4 are acquitted of all the charges levelled against them.
- (iii) Appellant nos. 2 & 5 are acquitted of the offence under section 306 of Indian Penal Code.

(iv) Conviction of appellant nos. 2 & 5 is maintained for offence punishable under section 498 (A) of Indian Penal Code.

20) Learned Sessions Judge had not awarded any separate sentence for the offence under section 498 (A) of Indian Penal Code. Accused nos. 2 & 5 were in jail from 14/11/2006 to 17/12/2006. Thereafter, on 09/05/2008 accused were taken into custody and were enlarged on bail on 05/06/2008.

(v) Appellant/accused nos. 2 & 5 are sentenced to the period already undergone.

(vi) Bail bonds of appellants stand cancelled.

(vii) Fine amount, if paid by original accused nos. 1, 3 & 4 be refunded.

(viii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)