

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 20 OF 2014

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|----|---------------------------------|----------------------------|--|
| 1. | Sachin Anant Mindhe |) | |
| | Age – 30 yrs. |) | |
| | Occupation – Agriculturist |) | |
| 2. | Smt. Kuntabai Anant Mindhe |) | |
| | Age – 55 yrs. |) | |
| | Occupation – Nil. |) | |
| | Both R/o Mindhevasti Bhatambare |) | |
| | Tal -Barshi, Dist. Solapur. |).. Appellants | |
| | vs. | (Orig. Accused Nos. 1 & 2) | |
| | ... | Respondent | |

Ms. Monali Patil, Advocate for the appellants.

Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.

DATE : 2nd April, 2016.

ORAL JUDGMENT :

1. Heard the learned counsel for the appellants.
2. The appellants herein are convicted for the offence punishable under Section 498A read with Section 34 of IPC and sentenced to suffer R.I. for two years and fine of Rs.1,000/- each in default further R.I. for 3 months. The appellants are also convicted for the offence punishable under Section 306 read with Section 34 of IPC and sentenced to suffer R.I. for 4

years and fine of Rs.1,000/- each in default to suffer R.I. for 3 months by the learned Addl. Sessions Judge, Solapur in Sessions Case No. 19 of 2010 vide judgment and order dated 5.9.2013. Hence, this appeal.

3. Appellant No.2 has been enlarged on bail. However, the appellant No.1 – Sachin Anant Mindhe is in custody since the substantive sentence imposed upon him was not suspended at the time of admission of the appeal. The appellant No.1 was arrested on 9.11.2009 and was enlarged on bail by an order dated 12.2.2010. However, he was taken into custody on 5.9.2013 and continues to remain in jail. Hence, this appeal was taken up for hearing as a jail appeal.

4. The learned counsel for the appellant had not attended the matter on several dates and, therefore, this Court had requested Advocate Ms. Monali Patil to espouse the cause of the appellants. She graciously accepted to do the same and has made her submissions after inspection of the records and proceedings.

5. Such of the facts necessary for the decision of this appeal are as follows :-

(a) On 8.11.2009, one Anil Mindhe lodged a report at Vairag Police Station contending therein that the wife of his cousin namely Shubhangi had committed suicide by hanging herself with a saree to the rafter of the house. That she was suffering from kidney problem and being fed up, she had committed suicide. On the basis of his report, A.D.No.51 of 2009 was registered at Vairag Police Station. Police had been to the house of the appellants and had also recorded statements of the parents of the deceased and the other relatives. It is pertinent to note that the statements recorded in A.D. Enquiry do not form part of the records and proceedings in the present case.

(b) On 9.11.2009, Dinkar Sawant lodged a report at Vairag Police Station alleging therein that his daughter was married to the appellant No.1 on 18.4.2008. At the time of marriage, he had given dowry of Rs.35,000/- and Rs.10,000/- for purchasing gold. That Shubhangi was treated properly for the first two months, but thereafter she was being harassed by the appellants on the ground that she should fetch Rs.25,000/- for opening a xerox shop at Barshi. Shubhangi had informed her parents about the same when she had been to visit her parents. That the complainant had pacified the appellants. However, it was of no avail. That Shubhangi was being

abused and assaulted in her matrimonial house. That 7 – 8 months prior to commission of suicide, Shubhangi had consumed poison. She was admitted in Dr. Jagdalemama Hospital at Barshi. She had recovered. No report was lodged at that time. At the time of incident, i.e. at the time when Shubhangi committed suicide, she was pregnant of 7 months. On 8.11.2009, at about 6 a.m. The complainant had received a phone call informing him that Shubhangi had committed suicide. When they reached the house of the appellants, Shubhangi was made to lie on a cot. There was ligature mark on her neck. Upon enquiry, the appellant No.1 had informed that early in the morning at about 4.30 a.m., he had noticed that Shubhangi had committed suicide by hanging. On the basis of his report, Crime No.191 of 2009 was registered against the appellants for the offence punishable under Sections 498A, 306, 323, 504 read with Section 34 of IPC. Appellant No.1 was arrested on 9.11.2009. After completion of investigation, charge-sheet was filed on 7.1.2010. The case was committed to the Court of Sessions and registered as Sessions Case No.19 of 2010. The prosecution examined as many as 9 witnesses to bring home the guilt of the accused.

6. PW-1 Khandu Sawant happens to be the close relatives of

Dinkar Sawant. He has deposed before the Court that on 8.11.2009, police had called him to the house of accused. When he reached their house, he learnt that Shubhangi had died due to hanging. That he is a panch for the scene of offence panchnama which is at Exhibit 43. He has deposed before the Court that the distance between the floor and iron bar is 7.1/2 ft.

It is elicited in the cross-examination that the panchnama was prepared by the police. It was not read over to PW-1. The police had obtained his signature on the panchnama. PW-1 reached the house of Shubhangi at 7.30 a.m., whereas the appellant had arrived at 8 a.m. As soon as they reached the house, the police started panchnama and then signature of PW-1 was obtained at Vairag Police Station. It is categorically admitted in the cross-examination that Dinkar Sawant had reached the house of Shubhangi prior to PW-1 prior to recording of panchnama.

7. PW-2 Dinkar Sawant is the complainant. He has deposed in accordance with the recitals in the FIR. He has deposed before the Court that when he reached the house of Shubhangi, the dead body was made to place on a cot. The dead body was sent for post-mortem to Civil Hospital, Solapur. The dead body was brought to Village Bhatambare. The funeral

ceremony had taken place at 2 a.m. and he had lodged the complaint at night after the funeral. He has proved the FIR which is at Exhibit 45. He has denied the suggestion that his daughter Shubhangi was suffering from pain due to kidney stone. He has also denied the suggestion that Shubhangi was taking treatment from Dr. Yadav at Barshi. He has also denied the suggestion that she could not be operated for kidney stone since she had conceived pregnancy. It is admitted in the cross-examination that his statement was recorded by the police. That initially dead body was taken to Vairag and thereafter to Solapur. PW-2 was at Vairag for one hour. He has denied the suggestion that he had informed the police initially that his daughter had committed suicide due to kidney problem.

8. PW-3 Laxmi Savant is the mother of deceased Shubhangi. She has reiterated the narration as given by the complainant PW-2. In the cross-examination, she has admitted that when she reached the house of her daughter, police was present. That the police had made enquiry with her and her husband on the same day. That their statement was recorded by the police and thereafter the dead body was shifted to Vairag and then to Solapur.

9. At this stage, the learned counsel appointed for the appellants rightly and vehemently submits that statements of the parents and relatives were recorded in A.D. Enquiry. That no cognizable offence was made out in their statements and, therefore, no offence was registered. However, on the next day, after due deliberation and verification, the complainant has lodged a report making out a cognizable case.

10. PW-5 Sharad Sawant is the nephew of PW-2. His evidence also corroborates the evidence of PW-2 and PW-3 in all material aspects. The cause of death certificate is at Exhibit 30. The post-mortem notes are at Exhibit 35. It shows that Shubhangi was pregnant of 34 weeks. Column No.17 of the post-mortem notes show that there was ligature mark present over neck running obliquely upwards above the level of thyroid cartilage.

11. PW-6 Somnath Savant is the panch of inquest panchnama.

12. PW-8 Sidheshwar Shinde had taken photographs of deceased Shubhangi.

13. PW-9 Maruti Patil is the Investigating Officer. He has deposed

before the Court that he had recorded the statements of the neighbours. However, no neighbour is examined by the prosecution at the time of trial. He has also admitted that A.D. No.51 of 2009 was registered by him.

14. The learned counsel for the appellants has, on the basis of records and proceedings, submits that Shubhangi was rather taking treatment for the problem with her kidney. On 30.6.2008, she was examined at Dr. Yadav Hospital at Barshi. That the ultra sonography done on the person of Shubhangi at Pushpan Imaging Centre would reveal as follows :-

“Left kidney shows mild hydronephrosis due to impacted stone in proximal ureter of size 13x5mm.”

Urinary Bladder was also well distended. After she had conceived pregnancy, she was again examined at Dr. Yadav Hospital on 30.6.2008. It was revealed that she had 13x5 mm left uretery proximal. The medical case papers were filed on record in the application seeking bail under Section 439 of Cr.P.C.

15. The learned counsel for the appellants submits that there is sufficient evidence to indicate that the appellant was taken to the hospital

for giving her timely treatment. Even after she had conceived pregnancy, she was being taken care of at a hospital as well as at home. There was no specific reason for commission of suicide. It is further submitted that the Investigating Officer had not collected the papers from Dr. Yadav Hospital. There is no proper investigation. The witnesses have suppressed the material facts. It is also submitted that the Court while granting bail to the appellants had taken into consideration this aspect that Shubhangi was rather suffering from kidney problem. The learned counsel has further submitted that the prosecution has not examined the Doctor who had given her treatment after she had consumed poison.

16. The learned APP submits that the observations made by the Sessions Judge while granting bail to the accused as an under-trial prisoner should not be taken into consideration at the time of final hearing of this appeal. It is submitted that the accused have examined the doctor who had treated her initially as a witness. The possibility of the officer remaining present would be highly objectionable on the ground that the PSI was an interested witness.

17. The learned counsel for the appellants further submits that the evidence on record does not indicate that the appellant had facilitated or

abetted the commission of suicide.

18. It is true that the deceased Shubhangi had earlier made an attempt to consume poison. The medical case papers are on record for the reasons best known to the investigating agency. The learned counsel for the appellant had not appeared in the matter and, therefore, this Court had to appoint the learned Advocate Ms. Monali Patil to espouse the cause of the appellant.

19. Upon perusal of the evidence adduced by the prosecution, it can be fairly said that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. That there is no evidence to indicate that the appellants were instrumental inasmuch as the commission of suicide by Shubhangi is concerned. However, the fact remains that the wife of the appellant No.1 had to commit suicide while she was having six months' pregnancy. The learned Sessions Judge has given some reasons for recording the conviction under Section 498A of IPC. However since there is no evidence on record to convict the appellants for the offence punishable under Section 306 of IPC, the appellants deserve to be acquitted of the said charge. Shubhangi had committed suicide in the matrimonial house while she was in the exclusive custody of her husband and mother-in-law. She had attempted to commit suicide hardly within 7 months of marriage.

20. Taking into consideration the above aspects, it is clear that it cannot be said that the appellants herein had instigated, abetted and facilitated the commission of suicide. Hence, they deserve to be acquitted of the offence punishable under Section 306 of IPC. However, this Court cannot be oblivious of the fact that the prosecution has proved beyond reasonable doubt that the accused-appellant had subjected the deceased to ill-treatment and cruelty which she could not take any more. The appellants deserve to be convicted for the offence punishable under Section 498A of IPC.

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellants are convicted for the offence punishable under Section 498A of IPC and sentenced to the period already undergone.
- (iii) The sentence of fine amount for the offence punishable under Section 498A of IPC is maintained.
- (iv) However, the conviction of the appellants for the offence punishable under Section 306 of IPC is hereby quashed and set aside.
- (iv) The appellant/accused – Sachin Anant Mindhe be set at liberty forthwith, if not required in any other offence.

(v) Fine if paid for the offence punishable under Section 306 of IPC be refunded to the appellant.

(vi) Bail bonds of appellant No.2 – Smt. Kuntabai Anant Mindhe stand cancelled.

Appeal is allowed in the above terms and stands disposed of.

(SMT.SADHANA S.JADHAV, J.)