

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 72 OF 1999

The State of Maharashtra ... Appellant
V/s.
1. Sanjay Karbhari Shinde
2. Karbhari Sahadu Shinde
3. Vilas Karbhari Shinde
4. Laxmibai Karbhari Shinde
All residing at Songaon, Shivar,
Taluka Niphad, District Nashik. ... Respondents

...

Mrs. G. P. Mulekar, Asstt. Public Prosecutor for the respondent-the State.
None for the respondents.

...

CORAM : S. B. SHUKRE, J.

DATE : 16 JUNE 2016.

P.C.:

1. This is an appeal preferred against the Judgment and order dated 16 August, 1995 in Sessions Case No.76 of 1995 passed by the learned Additional Sessions Judge, Nasik thereby acquitting the respondents of the offence punishable under sections 498-A and 306 read with section 34 of IPC.

2. I have heard the learned Asstt. Public Prosecutor for the appellant – the State. I have carefully gone through the record of the case including impugned Judgment and order.

3. The learned Asstt. Public Prosecutor for the appellant – the State has strongly urged that the impugned Judgment is illegal

and perverse for the reason that it was passed without taking into consideration proper effect of the evidence on the suicide committed in this case by Mangala, the wife of respondent no.1, daughter-in-law of respondent nos. 2 and 4, and sister-in-law of respondent no.3. She submits that marriage of the deceased Mangala was solemnized with respondent no.1 Sanjay on 21 April 1994 and within about eleven months, the deceased Mangala committed suicide under suspicious circumstances. She submits that the evidence of her parents, PW-1 Karbhari Kashinath Tarle and PW-2 Narmadabai in particular sufficiently indicated that immediately before her death in unnatural circumstances the deceased Mangala was subjected to harassment and cruelty and therefore, the presumption under section 113-A of the Evidence Act, 1872 should have been drawn by the learned Additional Sessions Judge. She submits that the no material has been brought on record by the respondents to rebut the presumption of abetment made by the respondents for commission of suicide by the deceased Mangala. Therefore, according to her this is the fit case for making interference in the impugned Judgment and order.

4. Upon careful consideration of the evidence available on record, I find it difficult to draw the presumption under section 113-A against the respondents. In order to draw such a presumption, it is necessary that the prosecution proves the essential fact of subjecting of the deceased to cruelty by her husband and/or relatives of her husband within a period of seven years from the date of her marriage. So far as, concerned the period of seven years, there is no difficulty in this case as suicide has been committed by the deceased

Mangala within a period of about eleven months from the date of her marriage. The difficulty arises, however, from the fact that there is no reliable evidence brought on record by the prosecution showing that the deceased Mangala, during this period of time was subjected to cruelty by the respondents or any of them.

5. If we consider the evidence of material witnesses of prosecution witnesses viz. PW-1 Karbhari and PW-2 Narmadabai we will find that their evidence has too many improvements which are of such a nature as to virtually amount to contradicting their previous version. The dead body of the deceased Mangala was found to be floating in a well in the morning of 13 March 1995. On 12 March 1995 at about 3.30 pm PW-1 Karbhari, father of Mangala, alongwith his Nephew Dhondiba had been to the village Songaon where Mangala was co-habiting with her husband Sanjay. Her in-laws were also residing at the same place. PW-1 Karbhari was with Mangala till about 6 O'clock and then by about 9 O'clock in the night he returned to his village, which was Chandori. Sometime thereafter, father-in-law of the deceased Mangala, alongwith Vishwanath Gavale and Mahadu Kale came to Chandori and met PW-1. At that time, these persons informed PW-1 Karbhari that Mangala was missing. They also enquired as to whether or not Mangala had come to his house to which PW-1 replied as in the negative. PW-1 Karbhari, however, sent alongwith those persons, his son Shivaji and nephew Sanjay to village Songaon in order to help them in tracing out the deceased Mangala. Next date at about 7 am, PW-1 Karbhari was informed over telephone by the nephew Sanjay that dead body of the deceased

Managala was found as floating in a well situated at the spot adjacent to agricultural field of accused no.2, the father-in-law of the deceased Mangala. The same day, on 13 March 1995, vide Exh. 16 a report on those lines was lodged by PW-1 Karbhari. Nowhere in the report filed by PW-1 has he stated anything about the alleged harassment and cruelty meted out to his daughter prior to her death by all the respondents. After the conduct of postmortem examination on the same day i.e. on 13 March 1995 at about 5.30 pm, PW-1 Karbhari lodged another report vide Exh.18. This report was treated as FIR by the Police Station Niphad. In this report, PW-1 Karbhari came out with specific allegations of harassment given to his daughter by all the respondents. He also referred to his visit to the house of the deceased Mangala at Songaon on 12 March 1995, during the course of which according to him, the deceased Mangala was subjected to humiliation and abusive treatment, firstly, by her mother-in-law Laxmibai, the respondent no.4 and subsequently by her husband Sanjay, father-in-law Karbhari, brother-in-law Vilas, i.e. the respondent nos.1, 2 and 3 respectively. He also specifically mentioned that all these respondents declined to let Mangala go alongwith him. Then PW-1 Karbhari states in the said report that he and his nephew Dhondiba persuaded the deceased Mangala to take it easy in the interest of welfare of her marital life. In this report PW-1 Karbhari has further stated that at about 10 or 11 pm on 13 March 1995, he was informed by respondent no.2 and two other persons accompanied by him that Mangala had left the house and was not traceable. He has further stated that in the morning of 13 March 1995 at about 7 pm., he was informed by his son Shivaji and nephew

Sanjay that dead body of the deceased Mangala was found floating in a well.

6. These facts shows that the unusual situation and discomfort of Mangala was very well known to PW-1 Karbhari before he lodged the report at about 10.30 am of 13 March 1995 at police station Niphad. But, he maintained a complete silence about the same in that report. He did not say anything about the humiliation and ill treatment that the deceased Managala was suffering at the hands of the respondents and which he even saw in the afternoon of 12 March 1995. He did not say anything about refusal of the respondents to take Mangala alongwith him in the evening of 12 March 1995. He also did not say anything about the missing of Managala since the night of 12 March 1995. These circumstances create a doubt about the genuineness of the allegations made by the PW-1 Karbhari against all the respondents regarding their harassing the deceased Managala. PW-1 Karbhari has also not given any explanation as to why did he maintain the silence in first report and why did he make material improvements in his subsequent report and the story based on that report. There are no other circumstances available in the prosecution evidence providing any explanation for the same. Therefore, testimony of PW-1 Kharbhari can not be believed and considered to be reliable in nature. It has been discarded by the learned Additional Sessions Judge and rightly so.

7. Once the evidence of PW-1 Karbhari is disbelieved, the evidence of his wife PW-2 Narmdabai, which is almost on same lines

can also not to be believed and it has been rightly rejected by the learned Additional Sessions Judge.

8. The evidence of other witnesses such as PW-4 Dhondiba, the cousin of the deceased Mangala and PW-6 Motiram, brother-in-law of the deceased Managala which shows something about the harassment being meted out to the deceased Mangala by the respondents also can not be believed for the same reasons as are applicable to the testimony of PW-Narmbadai. PW-5 Mahadu turned hostile and nothing incriminating emerged in his cross examination conducted by the learned Asstt. Public Prosecutor. His evidence is therefore, of no help to the prosecution. Rest of the witnesses are of formal nature and therefore their evidence, against the background of the aforesaid facts and circumstances, needs no consideration.

9. In the result, I find that the view taken by the learned Additional Sessions Judge is possible in as much as the harassment of the deceased Mangala by the respondents within a period of about eleven months from date of her marriage by the respondents has not been proved. There are no sufficient grounds to enable me to upset the finding of acquittal recorded by the learned Additional Sessions Judge and, therefore, the Appeal deserves to be dismissed. Accordingly, the Appeal stands dismissed.

(S. B. SHUKRE, J.)