

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 406 OF 1996

Pandit Baburao Gurgurde
R/o Datane, Taluka : Niphad,
Dist. Nasik.

.....Appellant

V/s.

The State of Maharashtra

....Respondent

Mr. Prasanna Bhangale appointed Advocate for Appellant
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : FEBRUARY 29, 2016.

JUDGMENT:

None appeared for the appellant. Since the appeal is of the year 1996, this Court had requested Advocate Mr. Prasanna Bhangale to espouse the cause of appellant. He has graciously accepted to do so.

2) Appellant herein is convicted for offence punishable under sections 498 (A) of Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 years and fine of Rs. 2000/- in default to suffer rigorous imprisonment for 3 months by 2nd Additional Sessions Judge, Nasik in Sessions Case No. 63 of 1996 vide Judgment and Order dated 29/06/1996. Hence, this appeal.

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

4) Appellant herein was married to Sharda on 29/04/1994. Couple was blessed with a son. On 11/01/1996, police of Ozar police station received an information from Civil Hospital, Nasik that Sharda had succumbed to death. The cause of death was poisoning. On the basis of the said information, A.D. No. 1 of 1996 was registered. In the A.D. inquiry, police had recorded the statement of Bhausahab who happens to be son-in-law of the paternal uncle of Sharda. On the next day, P.W. 1 Bhagwant Shinde lodged a report at the police station alleging therein that Sharda was being harassed and ill-treated by her husband. On various occasions, he had abused her and physically assaulted her. That Sharda could not take the ill-treatment anymore and therefore, she committed suicide by consuming Organo Phosphorous Compound. It is also stated in the F.I.R. that after P.W. 1 reached to the hospital and enquired about the cause of death, he was informed by brother-in-law of Sharda that on the earlier day, there was a quarrel between husband and wife and as a corollary to the said quarrel, Sharda had consumed

poison. On the basis of the said report, crime no. 3 of 1996 was registered against the accused for offence punishable under section 306 and 498 (A) of Indian Penal Code. After completion of investigation, charge-sheet was filed on 25/02/1996. Prosecution examined 6 witnesses to bring home the guilt of the accused.

5) P.W. 1 Bhagwant Shinde happens to be father of deceased Sharda. He has deposed before the court that after 4 months of marriage, Sharda was being harassed and ill-treated at the hands of her in-laws and that accused no. 1 used to suspect the character of Sharda. It is alleged that Sharda had disclosed to P.W. 1 that she was being ill-treated in her matrimonial house. P.W. 1 had given her hopes. It is contended in the deposition that Sharda had disclosed to her father that she was being abused by her husband who used to give her kick and fist blows. On 11/01/1996, they had received a message that Sharda is hospitalized as she had consumed poison. Her parents and relatives rushed to the hospital. It is also admitted in the cross-examination that Sharda had visited her maternal house on 3 to 4 occasions before she committed suicide. She had stayed for 4 months in

her maternal house at the time of her delivery. Family members of Sharda were visiting her. After receiving the message of consuming of poison by Sharda, P.W. 1 and other relatives had rushed to the hospital and had reached the hospital at about 2.30 a.m. At about 7.00 a.m., body was handed over to them. No report was lodged with the police on that day. He has deposed in consonance with the F.I.R. which is marked at Exhibit 17. It is admitted that Mandabai is the wife of Bhausahab and that they reside in village Datane i.e. the village where Sharda had committed suicide.

6) P.W. 2 Hirabai Shinde is the mother of deceased Sharda. Her deposition is in consonance with P. W. 1. She has admitted in the cross-examination that Bhausahab & Mandabai were present at the time of cremation. It is pertinent to note that Investigating Officer P.W. 6 had recorded the statement of Bhausahab and Mandabai in the A.D. inquiry. That Bhausahab and Mandabai had not made any grievance against the appellant at that stage. In the A. D. inquiry, although, Bhausahab and Mandabai were present till the stage of cremation, they had not made any allegations against present appellant or his family members. That

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the prosecution had not examined Bhausahab and his wife. The allegation of P.W. 1 and others to the extent of harassment, cruelty and ill-treatment cannot be accepted at the face value. P.W. 2 has also admitted in the cross-examination that Sharda had disclosed to her that her in-laws did not like her to have any communication with her relatives, however, the accused no. 1 had never prevented her from talking to her relatives. The inquest panchanama which is at Exhibit 19 does not show that Sharda had sustained any injuries prior to her death.

7) P. W. 3 Pandharinath Shinde happens to be maternal uncle of Sharda. There are inherent omissions in the evidence of P.W. 3.

8) P.W. 4 Nivrutti Dhanavate is the panch for scene of offence. He has deposed before the court that at the time of spot panchanama which is at Exhibit 22, they had discovered a tin containing Endosulfan.

9) P.W. 5 Dr. Narayan Deogaonkar is Medical Officer who had conducted autopsy on the dead body of Sharda. He has deposed before the Court that death of Sharda was because of 'Organo Phosphorous Poisoning with shock'.

10) P. W. 6 Sudam Walke is the Investigating Officer. He has admitted that A.D. inquiry report was not submitted along with charge-sheet.

11) Learned counsel appointed for the appellant submits that in fact, charge under section 306 and 498 (A) of Indian Penal Code was framed against 4 accused persons. That original accused no. 2 happens to be brother of the original accused no. 1 i.e. present appellant. Original accused no. 3 was the wife of accused no. 2 and accused no. 4 Bhimabai is the mother of accused nos. 1 & 2. It is submitted that allegations levelled against all the accused are not only similar but are same in nature. They are omnibus allegations which do not spell any particulars of offence punishable under section 498 (A) of Indian Penal Code. Learned counsel appointed for the appellant further submits that the suicidal death of Sharda is admitted, however, it cannot be said that appellant was instrumental in the commission of suicide by Sharda. He further submits that despite the allegations being same in nature, original accused nos. 2, 3 & 4 have been acquitted by the Sessions Court and the present appellant has been convicted only on the ground that he happens to be husband of the deceased.

12) It is true that safety, security and happiness of the wife is the sole responsibility of the husband. That Sharda had committed suicide in her matrimonial home. In fact, accused is bound to explain the circumstances in which She committed suicide. However, it is not a case of custodial death.

13) Learned APP vehemently submits that deceased was a mother of 5 months old child and in that circumstance, she would not have committed suicide.

14) One cannot ascertain the reason of commission of suicide by Sharda. The evidence adduced by the prosecution falls short to convict the accused/appellant of the offence under section 498 (A) of Indian Penal Code. It is stated in the F.I.R. itself that parents of Sharda had enquired with the accused about the cause of commission of suicide and at that time, they were given to understand that on the previous day, there was a quarrel between husband and wife. Being enraged by the said quarrel Sharda had taken the extreme step of consuming Organo Phosphorous Compound Endosulfan for which the accused cannot be held responsible. A trifling quarrel between the spouses

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cannot be termed as harassment, cruelty and ill-treatment. The evidence falls short to convict the accused of offence punishable under section 498 (A) of Indian Penal Code.

15) In view of this, appeal deserves to be allowed.

ORDER

- (i) Appeal is allowed.
- (ii) The Judgment and Order dated 29/06/1996 passed by 2nd Additional Sessions Judge, Nasik in Sessions Case No. 63 of 1996 is hereby quashed and set aside.
- (iii) Appellant is acquitted of offence punishable under section 498 (A) of Indian Penal Code.
- (iv) Fine amount, if paid, be refunded to the appellant.
- (v) Bail bonds of the appellant stand cancelled.
- (vi) The professional fees is quantified to the tune of Rs. 2000/- to be paid to appointed Advocate for appellant within 3 months from today.
- (vii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)