

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 407 OF 1996

1) Rajendra Ramji Jadhav
2) Chandrabhaga Ramji Jadhav
3) Sharad Ramji Jadhav
4) Sunil Ramji JadhavAppellants

V/s.

The State of MaharashtraRespondent

Mr. Ganesh Bhujbal appointed Advocate for Appellant
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 29, 2016.

JUDGMENT:

Since none appeared for appellants, this Court had requested Advocate Mr. Ganesh Bhujbal to appear on behalf of appellants and espouse the cause of the appellants. He has graciously accepted to do so and has put in best of efforts to espouse the cause of the appellants.

2) Appellants herein are convicted for offence punishable under sections 498 (A), 307 r/w section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for 2 years and fine of Rs. 500/- in default to suffer

further rigorous imprisonment for 3 months. They are also convicted for offence punishable under section 307 r/w section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and fine of Rs. 500/- in default to undergo further rigorous imprisonment for one month in Sessions Case No. 154 of 1995 by Additional Sessions Judge, Nashik vide Judgment and Order dated 04/07/1996. Hence, this appeal.

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

4) Accused Rajendra was married to Sunita. On 28/05/1993. That after a few months of marriage, Sunita had complained about harassment and ill-treatment meted out to her by her husband, mother-in-law and brother-in-law. They were demanding a sum of Rs. 25,000/- for securing an employment for Rajendra. She was driven out of the house on several occasions. There was a persistent demand by all the members of the matrimonial family. On 14/05/1995, accused Rajendra had been to the house of the complainant and informed that Sunita is admitted in the hospital at Niphad. Family members rushed to the hospital. Members of the family of Sunita had realized that she had consumed poison. Sunita was discharged from the hospital on the same

day against medical advise. A report was given to the police station. Police had drawn panchanama of scene of offence, inquest panchanama. Statement of Sunita was recorded by Special Judicial Magistrate and on the basis of the said statement crime was registered against the accused persons. After completion of investigation, charge-sheet was filed under section 498 (A), 307 r/w 34 of Indian Penal Code.

5) Learned APP has submitted that Organo Phosphorous Compound was easily available to Sunita.

6) Sunita has been examined as P.W. 3. She had not even disclosed to the Special Judicial Magistrate that she was taken to the hospital by her husband and neighbours. There are inherent omissions and contradictions in the substantive evidence of P.W. 3. According to her, in the morning, her mother-in-law had called her inside the house and thereafter she was forcibly administered the poison. P.W. 3 has admitted in the cross-examination that the house of the accused has only two rooms. In her statement before Special Judicial Magistrate, she had stated that she was forcibly administered poison by her husband and brother-in-law. Thereafter, her mother-in-law had poured water on her.

She was taken to the hospital where her statement was recorded under section 32 of Indian Evidence Act but since the victim has survived, the said statement happens to be *res gestae* witness. In the said statement she has levelled allegations against her mother-in-law that her mother-in-law did not permit her to talk to her husband. She was not given any space. It appears that soon after she had consumed insecticide, she was taken to the hospital by her husband and relatives. She has survived the same. Prosecution has failed to bring any evidence on record which would demonstrate that appellants had in any way facilitated the commission of suicide.

7) P. W. 7 Chandrabhan Kshirsagar has deposed before the court that Sunita had disclosed that there was a demand of Rs. 25,000/- and upon failure to pay the same, she was being harassed and ill-treated by her husband and in-laws. Accused are agriculturists and the presence of tin of insecticide cannot be objected. It appears to be the case of suicidal hanging. Prosecution has failed to establish that the accused had in any way abetted the commission of suicide by Sunita. The material omissions in the evidence of P.W. 3 Sunita go to the core of the

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matter. According to Sunita, her mother-in-law had instigated her husband and brother-in-law to administer the poison, however, the Court cannot be oblivious of the fact that she was taken to the hospital by her husband and his brother.

8) Learned counsel appointed for the appellant rightly submits that in the eventuality that accused wanted to eliminate her, they would not have taken her to the hospital after administering the poison and would have abandoned her to die by herself, however, the very fact that the husband and his brother had taken her to the hospital would certainly indicate that they had no intention to eliminate Sunita.

9) During the pendency of the appeal, parties had arrived at an amicable settlement and they had agreed to divorce with mutual consent. Accordingly on 05/03/1997, they had consented to draw a decree of divorce. It was mentioned in the consent memo that complainant had no objection for disposal of criminal case no. 407 of 1996. Brother-in-laws of Sunita were hardly of 18 and 19 years old at the time of incident. Today, they are leading a happy married life. Appellants have filed criminal application no. 1670 of 2012 praying

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therein that the fact that parties have arrived at an amicable settlement and decree of divorce is drawn by mutual consent shall be considered at the time of decision of the appeal.

10) It is true that the said fact deserves to be taken into consideration and a Judicial note needs to be taken of the compromise arrived between the parties. Complainant and the appellants had filed criminal application no. 2262 of 1997 for composition of offence. The said application seeking composition of offence was dismissed for want of prosecution and therefore, subsequently an application was filed in the year 2012 for taking into consideration the fact that parties have arrived at an amicable settlement.

11) Taking into consideration the above mentioned facts, appeal deserves to be allowed.

ORDER

(i) Appeal is allowed.

(ii) The Judgment and Order dated 04/07/1996 in Sessions Case No. 154 of 1995 passed by Additional Sessions Judge, Nashik is hereby quashed and set aside.

- (iii) Appellants are acquitted of all the charges levelled against them.
- (iv) Fine amount, if paid, be refunded to the appellants.
- (v) Bail bonds of appellants stand cancelled.
- (vi) The professional fees is quantified to the tune of Rs. 2000/- to be paid to the appointed Advocate for appellant within 3 months from today.
- (vii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)