

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 13 OF 2006

The State of Maharashtra,
through PSI City Police Station,
Shrirampur, complainant
Sau. Reshma Aasif Khan,
R/o Near Fatima Housing Society,
Ward No.1, Shrirampur

**APPELLANT
(Prosecution)**

VERSUS

1. Nasrin Zakir Patel,
Age : 31 years
2. Zakir Husen Patel,
Age : 37 years
3. Mumtaz Sharifkhan @
Mumtaz Maheboob Shaikh,
Age : 54 years
4. Asifkhan Sharifkhan,
Age : 30 years

All r/o Ward No.1,
Shrirampur, Dist. Ahmednagar

**RESPONDENTS
(Orig. Accused)**

Mr. S.P. Deshmukh, A.P.P. for the appellant/State
Mr. V.R. Dhorde, Advocate holding for Mr. R.N.
Dhorde, Senior Advocate for respondent Nos. 1 to 4

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : 14th SEPTEMBER, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Heard the learned A.P.P. for the State/ Prosecution and the learned counsel for the respondents.

2. This is an appeal by the State/Prosecution against the judgment dated 4th August, 2005, delivered in Sessions Case No. 62 of 2003 by the learned Additional Sessions Judge, Shrirampur, whereby the respondents have been acquitted of the offences punishable under Sections 498-A and 304-B of the Indian Penal Code ("IPC", for short).

3. Respondent No. 4 is the husband, respondent No.1 is the sister-in-law and respondent No. 3 is the mother-in-law of the deceased Reshma. Respondent No. 2 is the husband of respondent No.1. The deceased Reshma had married to respondent No. 4 in the year 1998. She was residing with respondent Nos. 3 and 4 in Ward No.1 at Shrirampur, District Ahmednagar. Respondent Nos.1 and 2 resided in the same ward after 3 to 4 houses from the matrimonial home of the deceased Reshma. It is alleged that respondent No.1 wanted to have share in the property of her parents and she was under the impression that the deceased Reshma was coming in her way in

getting that share. Therefore, respondent Nos.1 and 2 used to insult and illtreat her. On 12th May, 2003 at about 11.00 a.m., respondent No. 1 gave a phone call which was received by the deceased Reshma, whereon respondent No.1 questioned her as to why she received the phone call. Respondent No.1 further hurled abuses against the deceased Reshma. Then, after some time, respondent Nos.1 and 2 went to the matrimonial home of the deceased Reshma and hurled abuses against her. Respondent No.1 caused the deceased Reshma to fall on the ground. Respondent No.2 slapped on the face of the deceased Reshma. Respondent No.1 also beat her. The deceased Reshma got annoyed. She went to the room, which was on the first floor of the house, latched the door thereof from inside, poured kerosene on her person from a stove and set herself ablaze. She sustained burns on her face, neck, both hands, chest, abdomen, thighs, calves and back. Respondent No.4 took her to Kamgar Hospital at Shrirampur and admitted her for treatment.

4. PHC Hazare of Police Station, Shrirampur visited Kamgar Hospital, Shrirampur and recorded the statement of the deceased Reshma at about 4.00 p.m., which was treated as the FIR. On the basis of that FIR,

crime No. I-100 of 2003 came to be registered against the respondents for the offences punishable under Sections 452, 498-A, 323, 504 read with Section 34 of the IPC. The investigation followed. The spot panchanama was prepared. On the same day, at about 6.00 p.m., the statement of the deceased Reshma was recorded by the Special Executive Magistrate in Kamgar Hospital. She was shifted to Surya Hospital at Pune for further treatment on 13th May, 2003. On that day also, her statement was recorded by PHC Newse of Police Station, Faraskhana, Pune. Then, ASI Khare of that police station also recorded her statement on that day. One more statement of the deceased Reshma was recorded by PHC Chavan in Surya Hospital at Pune on 21st May, 2003. She died on 23rd May, 2003. After conducting further investigation, the respondents came to be chargesheeted for the offences punishable under Sections 498-A, 452, 304-B, 306, 323, 506 read with Section 34 of the IPC.

5. After hearing the learned A.P.P. and the learned counsel for the respondents, the learned Trial Judge framed charges against the respondents for the offences punishable under Sections 498-A and 304-B read with Section 34 of the IPC only. The respondents

pleaded not guilty to the said charges and claimed to be tried. Their defence is that the deceased Reshma sustained burns accidentally.

6. The prosecution examined eight witnesses to bring home the guilt to the respondents. After evaluating the evidence on record, the learned Trial Judge came to hold that the prosecution failed to establish guilt of the respondents for the offences with which they were charged. The respondents, therefore, came to be acquitted.

7. The learned A.P.P. submits that from some of the dying declarations of the deceased Reshma, it is clear that respondent Nos.1 and 2 were harassing and illtreating her. The evidence of the mother and brother of the deceased Reshma shows that she was being illtreated with a view to compel her to bring money from her maternal home. She died under unnatural circumstances within seven years of her marriage. Therefore, the presumption under Section 113-B of the Evidence Act would come to assist the prosecution and unless contrary is proved by the respondents, it would have to be presumed that the respondents caused dowry death, punishable under Section 304-B of the IPC.

According to him, there is sufficient evidence to connect the respondents with the above mentioned offences.

8. As against this, the learned counsel for the respondents submits that there are five dying declarations of the deceased Reshma, out of which, in two of the dying declarations, she states that she sustained burns accidentally and in the remaining three dying declarations, she states that she committed suicide. He submits that there is absolutely no mention in her dying declarations that respondent no. 4 committed any overt act leading to her death. There is nothing in her statements to show that the respondents demanded dowry from her. There is no evidence to show that the deceased Reshma was subjected by the respondents to cruelty as defined in Section 498-A of the IPC. He submits that the evidence of the mother and brother of the deceased Reshma in respect of some events those took place much prior to the date of the incident, would be of no help to the prosecution to establish guilt of the respondents for the above mentioned offences. He submits that the learned Trial Judge has rightly considered the facts of the case as well as the

evidence on record and has rightly acquitted the respondents.

9. PHC Hazare (PW1) (Exh-28) states that he recorded the FIR/dying declaration (Exh-30) of the deceased Reshma in Kamgar Hospital at Shrirampur on 12th May, 2003 between 4.00 p.m. and 4.30 p.m. The said dying declaration does not speak anything against respondent Nos.3 and 4. From that dying declaration, at the most, it can be said that on the day of the incident at about 11.00 a.m., respondent nos. 1 and 2 hurled abuses against the deceased Reshma and assaulted her. The deceased Reshma has given the cause behind such harassment by respondent Nos. 1 and 2. According to her, respondent Nos.1 and 2 wanted to have share in the property of respondent No.1. This demand, in any case, cannot be considered as a demand for dowry as defined under Section 2 of the Dowry Prohibition Act, 1961. There is nothing in this dying declaration to show that either respondent Nos.1 and 2 or respondent Nos.3 and 4 demanded dowry from the deceased Reshma. She states that she got annoyed and therefore, went to the room on the upper floor of the house, latched the door thereof from inside, poured kerosene on her from a stove and set

herself ablaze. As such, she states that she committed suicide.

10. In the dying declaration (Exh-47), recorded on 12th May, 2003, she states that there had been quarrel between respondent No.1 and herself in which respondent No.1 caught hold of her hair and beat her. She further states that she went to the bedroom and while she was igniting the stove, it got burst and she sustained burns. This dying declaration (Exh-47) speaks of sustaining the burns by the deceased Reshma accidentally.

11. In the dying declaration (Exh-46), recorded on 13th May, 2003, the deceased Reshma states that she sustained burns because of flaring up of the stove. She further states that she was not tortured by anybody and she sustained the burns accidentally.

12. ASI Khare (PW5) (Exh-43) recorded the dying declaration (Exh-44) of the deceased Reshma on 13th May, 2003, wherein she repeated the same facts which were stated by her in her FIR/dying declaration (Exh-30).

13. PHC Chavan (PW7) (Exh-51) states that he recorded the dying declaration (Exh-57) of the deceased

Reshma in Surya Hospital at Pune on 21st May, 2003. In that dying declaration, she stated that she committed suicide due to the harassment of respondent Nos.1 and 2.

14. The oral dying declarations given by the deceased Reshma to her mother Munwar (PW4) (Exh-41) and Imran (PW6) (Exh-45), who are interested witnesses, show that she committed suicide.

15. It has come in the evidence of Dr. Ashwini (PW8) (Exh-59), attached to Surya Hospital, Pune, that on 13th May, 2003, when the deceased Reshma was admitted in that hospital, she had stated that she sustained burns due to bursting of the stove.

16. As stated above, there are five dying declarations of the deceased Reshma, out of which three speak of her suicidal death, while two speak of her accidental death. From these dying declarations, one thing is certain that the alleged harassment of the deceased Reshma at the hands of respondent Nos.1 and 2 was not for demand of dowry. Moreover, it cannot be said that the alleged harassment was of such a grave nature which left the deceased Reshma with no other option but to put an end to her life. Therefore, the death of

Reshma cannot be called as "dowry death" since the essential ingredients i.e. the demand for dowry and harassment in connection with that demand, to constitute the offence punishable under Section 304-B of the IPC (i.e. the demand for dowry) are absent in this case.

17. The learned counsel for the respondents cited the judgment in the case of ***Amol Singh Vs. State of Madhya Pradesh (2008)5 SCC 468***, wherein it has been held that when there are more than one dying declarations, they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the Court has to examine the nature of the inconsistencies namely whether they are material or not.

18. In the present case, two of the dying declarations of the deceased Reshma show that the injuries which led to her death were sustained by her accidentally, while the other dying declarations show that she committed suicide. Her statement recorded at the time of her admission in the hospital also shows that she sustained burns accidentally. The inconsistency of the dying declarations of the deceased Reshma about the cause of her sustaining burns is very material.

Both of the causes given by her cannot stand together. There is nothing in the evidence of the mother and brother of the deceased Reshma to show that there was any recent unlawful demand from the side of the respondents, which can be said to be proximate to the suicidal/accidental death of Reshma. In fact, the deceased Reshma herself does not state about any such demand. In the circumstances, the presumption under Section 113-B of the Evidence Act would not come to assist the prosecution.

19. In view of the inconsistent statements of the deceased Reshma about the cause of the burns sustained by her, it was immensely necessary for the prosecution to produce independent evidence to prove the allegations levelled against respondent nos. 1 and 2. No such evidence has been produced by the prosecution. Therefore, it cannot be held that the prosecution established guilt of the respondents and particularly that of respondent Nos.1 and 2 for the offences punishable under Sections 498-A or 304-B of the IPC.

20. The learned Trial Judge has rightly considered the facts of the case and rightly appreciated the evidence on record. The learned Trial Judge has rightly

held that the evidence on record falls short in establishing guilt of the respondents for the above mentioned offences. We subscribe to the inferences drawn by the learned Trial Judge and the concur with the finding that the prosecution failed to establish guilt of the respondents for the above mentioned offences. The appeal is devoid of any substance. It is liable to be dismissed. In the result, we pass the following order:-

O R D E R

- (i) The Criminal Appeal is dismissed and disposed of.
- (ii) The bail bonds of the respondents are cancelled. They are set at liberty.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE