

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

**CRIMINAL APPEAL NO.3 OF 2007**

The State of Maharashtra,  
Through Public Prosecutor,  
High Court Bench at Aurangabad ..Appellant  
(Prosecution)

Vs.

1. Malhari Babu Kamble,  
Age : 25 years,
2. Babu Laxman Kamble,  
Age : 65 years,
3. Gayabai w/o. Babu Kamble,  
Age : 55 years,
4. Ananta Babu Kamble,  
Age 18 years

All r/o. Sindphal, Tq.Tuljapur, ..Respondents  
Dist. Osmanabad (Orig. accused)

----

Mr.S.Y. Mahajan, A.P.P for appellant

Mr.S.S. Chapalgaonkar, Advocate for respondents

----

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

**DATE : SEPTEMBER 22, 2017**

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

The learned III Ad-hoc Addl. Sessions Judge, Osmanabad acquitted the respondents of the offences punishable under Sections 302 and 498-A of the Indian Penal Code ("I.P.C.", for short) as per the judgment and order dated 31.08.2006 delivered in Sessions Case No.56 of 2005. The State/prosecution has challenged the legality and correctness of the said judgment and order by this appeal.

2. The deceased Manisha was the wife of respondent no.1. Their marriage was performed about six years prior to the incident that took place on 18.03.2005. Respondent nos.2 and 3 are the parents and respondent no.4 is the brother of respondent no.1. The respondents are the residents of village Sindphal, Tq.Tuljapur, Dist. Osmanabad.

3. The deceased Manisha was residing at the house of the respondents at village Sindphal. The deceased Manisha gave birth to a male child namely,

Mahavir from the wedlock, who was aged about three years at the time of the incident.

4. It is the case of prosecution that the respondents were suspecting chastity of the deceased Manisha and were subjecting her to cruelty. Ultimately, they set the deceased Manisha on fire on 18.03.2005 at about 10.00 p.m. to 11.00 p.m. She was admitted in the General Hospital, Osmanabad, for treatment. Her statement was recorded by A.S.I. - Shaikh of Police Outpost, General Hospital, Osmanabad on 19.03.2005 at about 2.05 a.m.. She died on that day at about 2.10 p.m.

5. Inquest of the body of the deceased Manisha was prepared. It was sent for post mortem. Dr.Gilbile and Dr.Karanjkar, Medical Officers, attached to the General Hospital, Osmanabad, conducted post mortem of the body of the deceased Manisha. They found 100% burns on her body. No other injuries were noticed by them. According to them,

the deceased Manisha died of 'Hypovolumic shock due to 100% superficial to deep burns'. Her body was cremated on 19.03.2005 itself.

6. Initially, A.D. No.12 of 2005 was registered in respect of the incident of fire. Spot panchnama was prepared. After the death of Manisha, her father namely, Shahu Mahadeo Dolare, r/o. Savargaon, lodged F.I.R. against the respondents on 20.03.2005 at about 11.40 p.m. alleging *inter-alia* that they were subjecting the deceased Manisha to cruelty by suspecting her chastity and ultimately, they committed her murder by setting her on fire. On the basis of that report, Crime No.22 of 2005 came to be registered against the respondents for the above-mentioned offences.

7. The statements of the witnesses were recorded. After completion of the investigation, the respondents came to be charge-sheeted for the above-mentioned offences.

8. After the case was committed to the Sessions Court, it was assigned to III Ad-hoc Addl. Sessions Judge for trial. The learned trial Judge framed charges against the respondents for the above-mentioned offences vide Exh.29 and explained the contents thereof to them in vernacular. The respondents pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication on the say that after the death of Manisha, her father had demanded money from them. Since they were not in a position to pay money to him, he lodged a false report against them.

9. The prosecution examined seven witnesses to prove guilt of the respondents for the above-mentioned offences. After evaluating evidence of the witnesses, the learned trial Judge did not find the same to be sufficient and dependable to hold the respondents guilty of the above-mentioned offences. The learned trial Judge, therefore, acquitted the

respondents of the said offences as per the impugned judgment and order.

10. The learned A.P.P. submits that there was sufficient, cogent and dependable evidence on record to establish guilt of the respondents for the above-mentioned offences. The deceased Manisha died at the house of the respondents in unnatural circumstances within seven years of her marriage with respondent no.1. Therefore, it was necessary for them to explain the circumstances under which she died. However, they did not furnish any plausible explanation. There is positive evidence of the father and cousin-grandmother of the deceased Manisha as well as that of one Rajkumar Patil, resident of village Savargaon to show that the respondents were subjecting the deceased Manisha to cruelty. According to the learned A.P.P., the learned trial Judge wrongly disbelieved the evidence of the prosecution and wrongly acquitted the respondents.

11. On the other hand, the learned Counsel for the respondents submits that there is no dependable evidence on record to establish that the respondents were residing jointly and were subjecting the deceased Manisha to cruelty. He submits that after the deceased Manisha was admitted in the hospital, her statement was recorded by A.S.I. - Shaikh of Police Out-post, General Hospital, Osmanabad, wherein she specifically stated that she sustained burns accidentally. The statement of Manisha was recorded by A.S.I. - Shaikh after getting it confirmed from the Medical Officer that she was in a fit condition to give statement. According to him, this statement itself, is sufficiently to explain the circumstances under which the deceased Manisha sustained burns. She did not allege against any of the respondents that they subjected her to cruelty or set her ablaze. He submits that the evidence of father and cousin grand-mother of the deceased Manisha and that of Rajkumar (PW 4) is not admissible so far as the

offence of subjecting the deceased Manisha to cruelty is concerned. The post mortem report does not show that the deceased Manisha had sustained any injury except the burns. Therefore, it is clear that she was not physically tortured on the day of the incident. He submits that the learned trial Judge rightly appreciated the facts of the case as well as the evidence on record and rightly acquitted the respondents.

12. Shahu (PW1)(Exh.40) is the father of the deceased Manishia, while Anusaya (PW 2)(Exh.42) is the maternal aunt of Shahu (PW 1) (i.e. cousin grandmother of Manisha). It has come in their evidence that after marriage, the respondents treated Manisha properly for about six months and thereafter, they started ill-treating her suspecting her character. Both of these witnesses did not state that any of the respondents beat or ill-treated the deceased Manisha in their presence at any point of time. As such, their evidence about the alleged illtreatment given

to the deceased Manisha is hearsay. It being hearsay, would not come within the ambit of sub-section (1) of Section 32 of the Indian Evidence Act, since their evidence is in respect of the alleged ill-treatment that was being given to the deceased Manisha much prior to the date of the incident which has no proximity with the incident of fire subject matter of this case. It is not admissible in evidence.

13. Rajkumar (PW 4)(Exh.47) is the village-mate of Shahu (PW 1). He states that Shahu (PW 1) and himself went to the house of the respondents along with the deceased Manisha and persuaded the respondents to treat her properly, whereon the respondents assured to treat her properly. The respondents treated her properly for some days and then again started ill-treating her. Therefore, the deceased Manisha came back to her maternal home at Savargaon. Then respondent no.1 came there and beat Manisha in his presence. He asked respondent no.1 not to take Manisha and allow her to reside at her

maternal home for some days. However, respondent no.1 took her by beating her. From the evidence of this witness, the prosecution has tried to show that the deceased Manisha was beaten by respondent no.1 in his presence. However, in cross-examination, this witness admits that the above-mentioned facts about his visit to the house of the respondents to persuade them to treat the deceased Manisha properly, respondent no.1 beat the deceased Manisha in his presence and further took her with him by beating her, have not been stated by him before the police. These are the material omissions in his statement before the police. As such, he tried to improve his version. Consequently, his evidence is not helpful for the prosecution to establish that the deceased Manisha was subjected by respondent no.1 or other respondents to cruelty, as claimed by the prosecution.

14. The evidence of Shahu (PW 1), Anusaya (PW 2) and Rajkunar (PW 4) about alleged ill-treatment to the deceased Manisha is very vague and general.

There is nothing in their evidence to show any particular period when the deceased Manisha was subjected to cruelty. Their evidence does not show that the deceased Manisha had sustained any injury. Their evidence certainly falls short to establish that the respondents subjected the deceased Manisha to cruelty, as explained under Section 498-A of the I.P.C. As state above, the evidence of these witnesses, on the point of the alleged cruelty to the deceased Manisha, is not only vague and general, but also is not admissible in evidence being hearsay and not covered under sub-section (1) of Section 32 of the I.P.C.

15. P.S.I. - Jagtap (PW 7) (Exh.57) is the Investigating Officer. It has come in his cross-examination that statement of the deceased Manisha was recorded by the police at Osmanabad and the same was produced by him with papers of investigation. He pointed to that statement, which is at Exh. 60. This dying declaration of the deceased Manisha was

recorded by A.S.I. – Shaikh on 19.03.2005 between 2.05 a.m. and 2.40 a.m. on 19.03.2005 in General Hospital at Osmanabad, after getting it verified from the Medical Officer that she was conscious and was in a condition to give statement. This dying declaration has been recorded in question and answer form. From the answers given by the deceased Manisha also, it would be sufficiently clear that she was in the fit state of mind to give statement. In answer to question no.12, she states that in the night intervening 18.03.2005 and 19.03.2005, she had ignited a kerosene lamp (*Chimni*) and kept it on a resting place (*Katta*) of the wall. Due to dash given by a rat, the said kerosene lamp fell down on her body where she was sleeping near the wall. Due to that, she sustained burns. She specifically states that she has no complaint to make against anybody. She further states that respondent no.1 and herself were residing away from respondent nos.2 to 4. From this statement of the deceased Manisha coupled with

the fact that there was no other injury on her person showing that she was ill-treated in the night of the incident, it cannot be said that respondent no.1 set her ablaze. Respondent nos.2 to 4 were residing away from respondent no.1 and the deceased Manisha. Therefore, they cannot be said to have harassed or ill-treated the deceased Manisha and ultimately, committed her murder by setting her on fire.

16. The learned trial Judge committed a grave mistake in disbelieving the dying declaration (Exh.60) by misreading the time of recording thereof. It was recorded between 2.05 a.m. and 2.40 a.m. on 19.03.2005. However, the learned trial Judge read "a.m." as "p.m." and held that when the deceased Manisha died on 19.03.2005 at 2.10 p.m., the dying declaration (Exh.60) could not have been recorded between 2.05 p.m. and 2.40 p.m. This finding of the learned trial Judge is totally incorrect.

17. The prosecution has failed to establish that the respondents subjected the deceased Manisha to cruelty and further committed her murder. The learned trial Judge rightly held them not guilty and acquitted of the said offences. The view taken by the learned trial Judge is quite probable. We do not find any reason to interfere with the finding of the learned trial Judge to the extent of holding the respondents not guilty of the above-mentioned offences. The appeal is devoid of any substance. It is liable to be dismissed.

18. Hence, the order :-

- (i) The appeal is dismissed.
- (ii) Bail bonds of the respondents are cancelled. They are set at liberty.
- (iii) The appeal is disposed of accordingly.

**[SANGITRAO S. PATIL, J.]**

**[SUNIL P. DESHMUKH, J.]**