

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 546 OF 2006

The State of Maharashtra,
through Police Station Officer,
Police Station, Patoda, Tq.
Patoda, Dist. Beed.

.. Appellant / orig.
Complainant

versus

- 1) Subhash s/o Dnyanoba Sonwane,
Age 23 years, occup. Agril and Pan
Shop, R/o Therla, Tq. Patoda, Dist. Beed
 - 2) Dnyanoba s/o Dadarao Sonwane,
Age : 56 years, occup. Agril,
R/o Therla, Tq. Patoda, Dist. Beed
 - 3) Sau. Nilawati w/o Dnyanoba Sonwane,
Age : 52 years, Occup. Household,
R/o Therla, Tq. Patoda, Dist. Beed
 - 4) Santosh s/o Dnyanoba Sonwane,
Occup. Driver & Agril., R/o Therla,
Tq. Patoda, Dist. Beed
- .. Respondents /
Orig. accused.

Mr. P. K. Lakhotia, Additional Public Prosecutor for appellant
Mr. K. F. Shingare, Advocate for respondents

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

DATE : 07-12-2017

JUDGMENT (PER: SUNIL P. DESHMUKH, J.)

1. This is an appeal by the State against judgment and order dated 31-03-2006 in Sessions Case No. 8 of 2006 of 4th Adhoc Additional Sessions Judge, Beed, acquitting respondents - accused of the offences punishable under sections 304-B, 498-A, 323, 504 read with section 34 of Indian Penal Code.

2. On behalf of appellant - State, learned Additional Public Prosecutor while presenting the facts refers to that, statement (Exhibit - 27) of prosecution witness no. 4 Ashruba Bhaurao Rakh had been recorded on 12-06-2005 by Police Chowki Officer, Civil Hospital, Beed, on the basis whereof Crime No. 65 of 2005 came to be registered in Police Station, Patoda, on 13-06-2005. Ashruba has stated that he is father of deceased Priyanka. He had been employed in tahsil office, Ashti and had been visiting weekly to his residence at village Therla. He has three daughters. Priyanka had been married a year before and her marital relations were from very village Therla. While he had been to Therla on 11-06-2005, he had learnt that Priyanka had suffered *fits* and, therefore, she had been

admitted in government hospital at Beed. He, thus, had been to said hospital, however, Priyanka did not speak anything. He, after meeting relatives, had returned to the village. On the next day, when he went back to Beed, around 2.45 hours he found his daughter Priyanka dead. Thereafter, death certificate had been obtained and her corpse had been taken to the village. There, it was learned and he was told by Gorakh Dadarao Rakh and Damodhar Pandurang Misal that Priyanka was being beaten over a gold ring which had remained to be given to her in the marriage as agreed with her in-laws. He had thereafter seen that Priyanka had suffered bruises on right side of the face, and on back and buttocks. He was also told by one Pratap Babasaheb Rakh that Priyanka was beaten on 05-06-2005. Therefore, the corpse was brought to government hospital, Beed and *post mortem* had been conducted. He, therefore, complained that Priyanka had been beaten by her husband, parents-in-law and brother-in-law for not bringing from her parents gold ring agreed to be given in marriage and that Priyanka had told the same to him and she had died due to severe beating by aforesaid members of her matrimonial family.

3. Investigation was carried out by Police Sub Inspector Ramrao Tatyarao Wagh (P.W. 9, Exhibit 36) then attached to Police Station, Patoda, who in deposition has stated, he had received information from Ashruba (P.W. 4) and on that basis, crime bearing no. 65 of

2005 was registered for commission of offences under sections 304-B, 498-A and 323 read with section 34 of Indian Penal Code. Two *panchanamas* during the course of investigation had been drawn of the scene of offence, one was of the well (Exhibit – 19) and the other of the house (Exhibit – 20) recorded in presence of two *panchas*, namely, Baburao Rakh (P.W.1) examined at Exhibit – 18 and one Baliram Rakh.

4. The *panchanama* of inquest (Exhibit-22) was drawn on 12-06-2005 in presence of Sanjivani Rakh (P.W. 2, at Exhibit 21) who is said to be second wife of Ashrubha Rakh (P. W. 4). Sanjivani has stated in her cross examination that while dead body of Priyanka had been brought back to village Therla and there was discussion with a few persons for initiation of action.

5. Navnath s/o Karbhari Rakh (P.W. 3) has been examined at Exhibit 23 in respect of statement of accused that he would discover the stick and *panchanama* of seizure of weapon – a stick in this case with which, it is alleged, Priyanka had been beaten leading to her death. Said memorandum and *panchanama* drawn on 18-06-2005 are at Exhibits 24 and 25 respectively.

6. Shamrao s/o Radhaji Rakh (P. W. 5) has been examined at Exhibit – 28 who has stated in his evidence that the marriage of deceased Priyanka had been settled with accused no. 1 with an

agreement to give to accused no. 1, an amount of Rs.30,000/- and a gold ring and that gold ring had remained to be given. He in his deposition has stated that after marriage, accused persons had treated Priyanka nicely and when he learnt that she had been admitted in hospital for 2-3 days and while taking treatment she had died and further that she had died on account of sufferings.

7. Witness Shamrao had declined to byline of ill-treatment as alleged and, as such, was declared hostile and was cross examined by learned Assistant Police Prosecutor and counsel for the respondents-accused. In cross examination, he referred to that about 1-1/2 months before the incident, the in-laws of deceased had asked him to tell Ashruba (P.W.4) to give gold ring as agreed and the same had been conveyed to Ashruba when he had been to his residence at Therla. Witness resiled from his statement made before police regarding continuous ill treatment and harassment by accused persons to the deceased. In the course of cross examination, he also purported to refute the statement by him to police to the effect that on 05-06-2005 and 06-06-2005 Bhaurao Rakh and Santosh Rakh had told him about assault by accused persons on Priyanka. He, however, purports to state that he had called Ashruba to Therla and around 4.00 p.m. they had been to Beed where they were told by Nanasaheb Rakh that Priyanka had died at about 2.45 p.m. At that time, accused persons and their relatives were about to proceed

towards their village along with dead body of Priyanka. He also resiled from his statement to the police which is to the effect that he had found bruises and marks on the person of Priyanka by means of stick.

8. In the cross examination on behalf of accused persons, it has been elicited from P.W. 5 Shamrao that parents of accused no. 1 had been sitting around the bed of Priyanka while carrying her dead body to Therla and that Ashurba and parents of accused no. 1 and he went to Therla along with dead body and after reaching Therla, discussion had taken place about death of Priyanka.

9. Gayabai Rakh (P. W.6) who has been examined at Exhibit 29 happens to be wife of brother of Ashruba. She in her deposition refers to that Priyanka whenever had come to her mother's house used to tell about harassment and ill-treatment to her by accused persons over non compliance of demand of accused for gold ring and that the witness and relatives of Priyanka used to console her and send her back to matrimonial house telling her to tell accused persons that their demand would be fulfilled. About four days before death, Priyanka had been to her mother's house and while the witness had been there, she (Priyanka) had told about having been beaten by accused persons and had shown marks of beating on her legs, hands and back. Thereafter on the next day, again the witness had been to house of Laxmibai and Priyanka was found vomiting

and had been suffering epilepsy attack. She was, therefore, taken to civil hospital, Beed. On her way, Priyanka had become unconscious and was in hospital for four days and died there. The police had recorded Priyanka's statement.

10. In cross examination of Gayabai, it emerged that she had seen 4 to 5 weal marks and swelling on the person of Priyanka and yet, she had not been given any medical treatment. The same had not been told to Ashruba or for that matter husband of the witness. She further stated that initially Priyanka had been taken to hospital of one Dr. Gangadharrao Mundhe. She resiled from her statement that Dr. Mundhe had told her to take Priyanka to government hospital. Cross examination further refers to that despite weal marks and hospitalization, no action had been mooted against accused persons nor the witness had lodged any first information report against accused persons nor father-in-law of Priyanka was told to take any action despite there being one police chowki in the hospital.

11. Bhaurao Rakh, (P.W.7) examined at Exhibit 30 is father of Ashruba (P.W.4). He, in his deposition, has stated that he had been resident of Therla and that he had told his son to give gold ring to Priyanka's in-laws as she was being ill-treated and harassed on that count, however, the son had been obsessed with ailment of cancer of his wife who was taking treatment for the same and had agreed to give gold ring after the treatment. Despite this position, ill-

treatment to Priyanka continued at the hands of her in-laws and husband and yet, he had been telling Priyanka to bear with the accused persons. He had been told by Priyanka – his grand daughter that, she was beaten by means of stick and due to assault she had been taken to her mother's house at Beed and he rushed there. There, due to severe head-ache Priyanka had been admitted by Shamrao – husband of P.W. 6 Gayabai to civil hospital in unconscious condition. After death of Priyanka, she had been brought to Therla. The beating marks on her person were noticed and the body was taken to civil hospital Beed again for post mortem and post mortem was conducted.

12. In cross examination of Bhaurao (P. W. 7), it has been brought on record that he is freedom fighter and was getting pension of Rs.6,500/- per month. He though accepts that his son P.W. 4 Ashruba is in service, disowns that salary of Ashruba is around Rs. 10,000/- to Rs.12000/- per month as claimed by defence. He has stated that Priyanka had been taken to her mother's house at Beed since she was suffering headache and he had taken her upon her request to the hospital. He also purported to disown some portions of his statement made to police.

13. Dr. Sukhdeo Sonaji Rathod (P. W. 8) who has been examined at Exhibit 31 was Medical Officer then attached to civil hospital, Beed. He has proved and admitted the hospital documents. He has

referred to provisional diagnosis about Priyanka had been suffering epilepsy and she being treated accordingly. The documents reflect that there has been convulsion and because of temperature there had been swelling to brain, kidney and lungs of deceased Priyanka. He denied that due to contusions, there was swelling. He referred to that the injury at serial no. 1 in colubuylinemn no. 17 of the post mortem report is superficial and second injury is superficial and deep.

14. The investigating officer Mr. Ramrao Wagh has been examined as prosecution witness no. 9 at Exhibit 36. He, on completion of investigation, had submitted charge-sheet against respondents – accused to the court of Judicial Magistrate, First Class, Patoda. Since offence under section 304-B of the Ibuylinendian Penal Code is triable exclusively by Court of Session, the Magistrate committed the case to Sessions Court, Beed

15. The Trial Judge framed charge against the accused persons and read over and explained it to them. Accused had pleaded not guilty to the charge and claimed to be tried. Their defence is of total denial and false implication by complainant as reflected from their statements recorded under section 313 of the Code of Criminal Procedure, 1973. According to them, death of Priyanka was due to epilepsy and thus natural. They are not even remotely concerned with the death.

16. With reference to the evidence adduced on record, learned Trial Judge has acquitted the accused persons of all the charges, finding that the evidence does not bring home guilt of accused persons convincingly.

17. Learned Additional Public Prosecutor appearing on behalf of appellant – State contends that Priyanka had died in suspicious circumstances. Marks / weals are found on her dead body and medical case papers do depict the same. Priyanka had been residing with her in-laws and it has emerged on record that she was being ill-treated and harassed over non fulfillment of demand of gold ring which was purportedly to be given in the marriage. There have been persons who had known about about ill-treatment and harassment of Priyanka over demand of gold ring being not met with by her parents. The evidence amply bears that there is substance in accusations about ill-treatment and harassment and coupled with medical papers, there is sufficient material to show that accused are guilty of commission of offences under sections 304-B, 498-A and 323, 504 read with section 34 of Indian Penal Code. He submits that there is error in the judgment of the Trial Judge while appreciating the evidence which has been apparent on record. He submits, may be one of the witnesses has resiled from accusations against respondents – accused about ill-treatment and harassment to Priyanka over gold ring yet, other witnesses have

been steadfast and have adhered to the allegations made against accused persons about ill-treatment and harassment to Priyanka over gold ring to be given. He, therefore, urges to convict respondents – accused for commission of the offences referred to.

18. On the other hand, Mr. Shingare, learned counsel appearing on behalf of respondents – accused contends that the Trial Judge has rightly acquitted respondents as there is no convincing and cogent evidence placed on record to bring home guilt to the accused. He submits that Trial Judge has rightly appreciated that the medical papers do indicate that Priyanka has died in natural and normal course since she was suffering from epilepsy.

19. He further refers to that even going by the case as contended by the prosecution witnesses no. 4 to 7, Priyanka had been to Beed at least about four days before 12-06-2005 on which day she died. She had been hospitalized on 08-06-2005 and was being given treatment for epilepsy. As a matter of fact, her dead body had been taken to village Therla and then discussion had taken place and thereafter her dead body was brought back to civil hospital, Beed. Post mortem report as appreciated by the Trial Judge reveals that Priyanka was suffering from an ailment like epilepsy and that contusions found at serial no. 17 in post mortem report were superficial in nature for the reasons as have been reported under the medical papers.

20. He submits that theory about ill-treatment and beating is cooked up with a view to harass accused persons to have satisfaction of illegal and gotten demands by parents of Priyanka, taking disadvantage of her death. As a matter of fact, according to learned counsel, it was heinous act by parents of deceased. Ashruba (P.W.4), father of Priyanka, has married three women and Priyanka was daughter from first wife Laxmibai who is stated to be suffering from cancer. Ashruba used to frequently go to Therla and not Laxmibai, giving sufficient indication that Ashruba had no love and affection for Laxmibai and for that matter children begotten from her and has tried to take disadvantage of the situation making allegations against accused-respondents and his real brother's wife and father had joined hands with him in the same. He submits that queerly, despite grandfather of Priyanka being possessed with sufficient means to satisfy demand of a gold ring had not offered any help to Priyanka while she is stated to be suffering ill-treatment and harassment. In those days, the demand could have been easily satisfied with earnings of Ashruba who had been in government service. He submits that, in the circumstances, the Trial Judge has rightly adjudged the situation and the evidence does not depict at all the guilt against accused – respondents. He, therefore, urges not to indulge into the request made in the appeal on behalf of the State.

21. The evidence as is appearing on record does show that law had been set in motion only on 12-06-2005 upon a statement by P. W. 4 Ashruba who is from Therla visiting the place weekly being resident of the same and his daughter Priyanka was given in marriage to respondent no. 1 who also is a resident of same village. According to the evidence of the prosecution witnesses, particularly, P.Ws. no. 4, 6 and 7, it appears that Priyanka had been treated well for 1-1/2 months and thereafter harassment and ill-treatment had been meted out to her over non-fulfillment of demand of a gold ring and the same having been told by her to the witnesses. Despite this, though the witnesses themselves appear to be well placed and could be said to have been sufficiently well worth, who are closely related to the deceased, had not attempted or offered to placket accused no. 1 to 4. There is no evidence in respect of the same at least on record. The witnesses have never complained of harassment or ill-treatment to Priyanka any time before 12-06-2005. There is no other evidence on behalf of the prosecution except statements by grandfather, father and real aunt of deceased Priyanka about her accusations against respondents-accused persons. Ashruba (P.W.4), father of Priyanka, although in his statement to police refers to persons, namely, Gorak Dadarao Rakh, Damodhar Pandurang Misal and Pratap Babasaheb Rakh about them having told him regarding harassment and ill-treatment

to Priyanka over a demand of gold ring, said persons have not been examined as witnesses for reasons best-known to prosecution.

22. Besides, the evidence as has been led by prosecution witnesses no. 4, 6 and 7, appears to be replete with omissions. Defence has been able to elicit sufficient material depicting that the decision to cause post mortem and make allegations had been an afterthought while the dead body of Priyanka had been taken to Therla from civil hospital, Beed. It is thereafter, the statement had been recorded of P.W. 4 Ashruba and the investigation as has emerged had been carried out, after registration of Crime in Police Station, Patoda.

23. Coupled with aforesaid, the most important evidence in the form of medical papers and oral testimony of the doctor depicts that the death of Priyanka had not been caused due to alleged ill-treatment or harassment or for that matter beating and contusions referred to at serial no. 17 in post mortem report. The reason for death given is different i.e. suffering in the brain. The Trial court, in the circumstances, appears to have properly gauged the evidence and the circumstances. The evidence on record does not depict at all that the accusations against the respondents – accused for commission of offences under sections 304-B, 498-A, 323, 504 read with section 34 of Indian Penal Code can be sustained. Thus, no case has been brought about for conviction of

respondents - accused and to reverse the decision of acquittal rendered by the Trial Court rendered on appreciation of evidence as has come on record.

24. Appeal does not carry any force and is thus dismissed.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH,
JUDGE

pnd/-