

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 201 OF 2000

The State of Maharashtra
Through Police Station Sonkhed,
Tq. Kandhar, District Nanded.

**....Appellant.
(Ori. Complainant)**

Versus

1. Sadashiv s/o. Ramchandra Bodke,
Age 26 years, Occu. Agri.,
2. Ramchandra alias Sopan Jalba
Bodke, Age 65 years, Occu. Agri.,

Both R/o. Vadepuri, Tq. Kandhar,
Dist. Nanded.
3. Madhukar s/o. Ramchandra Bodke,
Age 30 years, Occu. Vadepuri.
4. Sow. Gangabai w/o. Ramchandra
Bodke, Age 55 years, Occu. Agri.,
R/o. Vadepuri.
5. Sow. Sangita w/o. Madhukar Bodke,
Age 26 years, Occu. Agri.,
R/o. Vadepuri.
6. Baliram s/o. Khandu Bodke,
Age 26 years, Occu. Agri.,
R/o. Vadepuri, Tq. Nanded.

**....Respondents.
(Ori. Accused Nos.1 to 6)**

Mr. P.G. Borade, APP for appellant/State.

Mr. S.S. Choudhari, Advocate for respondent Nos. 1 to 6.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JULY 10, 2017.**

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed by the State to challenge the judgment and order of Sessions Case No. 77/1998 delivered by the learned 2nd Additional Sessions Judge, Nanded. The respondents/accused were chargesheeted and charged for the offences punishable under sections 302, 304-B, 498-A and 34 of Indian Penal Code ('IPC' for short). Only accused No. 1 - Sadashiv, husband of deceased is convicted and sentenced for the offence punishable under section 498-A of IPC. Other accused are acquitted of all the offences and the husband is acquitted of the remaining offences. As the State wants conviction for the offences punishable under section 302 or 304-B of IPC against husband and also against the other accused, appeal is filed. Both the sides are heard.

2) Deceased - Devprayabai alias Savita was youngest sister of first informant - Vasant Raut. Vasant Raut is a teacher. The deceased was given in marriage on 28.5.1997 to accused No. 1 - Sadashiv. Accused Nos. 2 and 4 are parents of accused No. 1. Accused No. 3 is brother of accused No. 1. Accused No. 5 is wife of accused No. 3. On the occasion of Diwali festival, the deceased had visited her parents' house and on that occasion, she disclosed that her husband was asking her to bring Rs. one lakh as he wanted that

money for getting employment. She complained that her husband was asking her to terminate the pregnancy when she was carrying of four months. She complained that on these two counts all the accused were giving illtreatment to her. Due to this complaint, Vasant Raut sent some relatives to the house of accused to convince them to behave well. They returned and informed that accused were not in a mood to listen to them.

3) After Diwali festival, deceased was sent back to matrimonial house. On 25.11.1997 in the night time, Ramchandra, father-in-law of deceased visited the residential place of Vasant Raut and informed that deceased was missing since 11.00 a.m. He informed that she had gone to the field with tiffin, but she had not returned. The informant and his relatives went to Vadeपुरी, the place of accused on that night. Search was made at the places of relatives, but the deceased could not be traced.

4) On 26.11.1997 police search was made in the field of the accused. There was standing hybrid crop and inside of the crop, they noticed the dead body of the deceased. There was some smell of poison to the substance which was oozing from the mouth of the deceased. On 26.11.1997 Vasant gave report and on the basis of the report, crime came to be registered for the offences punishable

under sections 302, 304-B, 498-A, 34 etc. of IPC.

5) During the course of investigation, spot panchanama was prepared and post mortem was conducted on the dead body. Viscera was sent to C.A. Office. C.A. Office gave report that insecticide deltamethrine was detected. Ultimately, opinion was given that the death took place due to poisoning. Statements of some mediators, who had tried to settle the dispute and the statement of Vasant Raut along with statement of one of friend of the deceased came to be recorded. After few days, two persons like Nagorao Bapurwade of village Vadepuri and Trimbak Dalve of the same village came forward and gave statements that they had witnessed the incident in which poison was administered by the accused to the deceased in the field. Chargesheet came to be filed and during trial, the charge came to be framed for aforesaid offences against all the accused.

6) Prosecution examined in all fourteen witnesses to prove the offences. The accused took the defence of total denial. There was no charge for the offence punishable under section 306 of IPC, though the charge was framed for offence punishable under section 304-B r/w. 34 of IPC.

7) The prosecution heavily relied on the evidence of two eye

witnesses namely Nagorao Bapurwade (PW 3) and Trimbak Dalve (PW 5), so called eye witnesses. When the crime was registered on 26.11.1997, the statement of these two witnesses before police came to be recorded on 3.12.1997 i.e. after about eight days. No reason is given by these witnesses as to why they did not approach police immediately after the incident when police were making investigation in the village. They have not explained as to how the police learnt that they have witnessed the incident. Thus, the delay in disclosing the incident is not at all explained by these two witnesses.

8) Map of scene of offence is prepared during investigation. This record at Exh. 76 shows that the field where allegedly Nagorao is working is situated at long distance from the spot of offence. Similarly, the field of Trimbak is also situated at long distance and there are many fields between their fields and the field in which the incident took place. Further, there was standing crop of hybrid, which was ready for harvesting in the field. These circumstances are sufficient to create a probability that there was no possibility that even if there was shouting, these two persons could have heard the shouting and could have rushed to the spot of incident. Even police were required to take search in the standing crop to trace the dead body.

9) The evidence of these two witnesses shows that the story given by them is not probable in nature. On one hand, they say that they witnessed the incident of administering poison, but Trimbak said that he thought that it was trivial quarrel and he left the place. They did not disclose the incident to anybody prior to 3.12.1997. These circumstances are sufficient to create a probability that they are got up witnesses and they had no opportunity to see the incident in which poison was consumed or administered.

10) The medical evidence is not consistent with the case of prosecution that poison was forcibly administered. No surface wound was found on the dead body. The medical evidence of Dr. Devidas Kanote (PW 9) shows that abdomen was distended, there was peeling of skin at places, chest was also swollen, rigor mortis had developed over lower extremities, but decomposition had not started. This evidence is not consistent with the versions of the two so called eye witnesses which shows that they had witnessed the incident at about 4.00 p.m., before about 24 hours of P.M. examination. In view of these circumstances, this Court holds that the Trial Court has rightly refused to believe these two so called eye witnesses.

11) So far as the evidence for the offence punishable under section 498-A of IPC is concerned, it can be said that the allegations made by the relatives and one friend of the deceased are not that specific and believable. Vague allegations are made that on the occasion of Diwali festival, first disclosure was made by the deceased that there was demand of Rs. one lakh by the husband and the husband was asking the deceased to terminate the pregnancy. One friend of deceased has given evidence that deceased had disclosed to her that the husband had probably illicit relations with one close relative. However, there is no evidence of close relatives of the deceased including the first informant, brother of the deceased that such possibility was expressed by the deceased to them. In any case, that conduct was of husband and not of other relatives of husband. The allegation of illtreatment is very vague and what kind of illtreatment was given by the relatives of the husband is not mentioned by the relatives. In view of the specific allegations against the husband made by the relatives, the Trial Court has convicted the husband for the offence punishable under section 498-A of IPC. Thus, the prosecution could not prove the offences against the relatives of the husband beyond reasonable doubt and the offence punishable under section 302 of IPC could not be proved against the husband beyond reasonable doubt. There was clear possibility of suicide committed by the deceased. The death took

place within one year from the date of marriage. But, in view of the aforesaid circumstances, the Trial Court has held that even the husband cannot be blamed for the death of Devpriyabai alias Savita. This Court sees no reason to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

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