

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

Criminal Appeal No.206 of 2000

* The State of Maharashtra. .. **Appellant.**

Versus

- 1) Vilas Dattatraya Shinde,
Age 31 years,
R/o Premdan Hudco,
Ahmednagar.
- 2) Vikas @ Rajendra Dattatraya Shinde,
Age 24 years. R/o As above.
- 3) Sushilabai @ Chandrabhagabai
W/o Dattatraya Shinde,
Age 51 years.
- 4) Dattatraya Kashinath Shinde,
Age 56 years. .. **Respondents.**

Shri. S.D. Ghayal, Additional Public Prosecutor, for
appellant.

Shri. S.S. Jadhavar, Advocate, for respondent Nos.1 & 2.

Respondent Nos.3 and 4 are reported to be dead.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date : 24 July 2017

JUDGMENT (Per T.V. Nalawade, J.):

1) The appeal is filed to challenge the judgment and order of Sessions Case No.156/1996 which was pending in the Court of the Additional Sessions Judge, Ahmednagar. The respondents-accused are acquitted of the offences punishable under sections 302, 306, 498-A, 34 of the Indian Penal Code. Both the sides are heard.

2) In short, the case of the prosecution can be stated as follows :

The deceased Uma @ Asha was sister of first informant, Sanjay Garudkar. She was given in marriage to respondent No.1 on 19-3-1993. Respondent No.2 is a brother of respondent No.1 and at the relevant time he was unmarried. Respondent Nos.3 and 4 were the parents of respondent No.1. During arguments report came to be submitted on behalf of the appellant that respondent Nos.3 and 4 are dead. Death certificates in respect of these two persons are produced on the record. The incident in question took place on 25-2-1996, within seven years of the marriage. The deceased has left behind one male issue, aged about one and half years.

3) It is the case of the prosecution that for about 4 to 5 months there was no ill-treatment but after that accused persons started giving ill-treatment to the deceased. The deceased used to disclose about the ill-treatment to her parents and relatives on parents' side when they used to visit her matrimonial house and when the deceased used to visit her parents' house. Both the sides are residents of Ahmednagar. It is contended that in November 1993 accused No.1, husband had demanded Rs.30,000/- as he wanted to repay the loan and this amount was given by the parents of the deceased. It is contended that said amount was never returned. In 1995 at the time of Diwali festival the deceased had disclosed that all the accused had asked her to bring two-wheeler, TVS Suzuki, or money for purchasing two-wheeler for accused No.1. It is contended that after the Diwali festival the deceased was reached to the matrimonial house by the parents of the deceased and some how the accused were convinced to behave well.

4) It is the case of the prosecution that in the year 1994 due to some dispute the deceased was driven out of

the matrimonial house and on that occasion on one stamp settlement was written and the matter was settled without approaching police or other authority. It is contended that on 30-12-1995 when the deceased had visited the parents' house due to death of the grandfather, she had disclosed that accused No.1 had kept illicit relation and he was saying that he had no desire to cohabit with the deceased.

5) The incident took place on 25-2-1996 in the night time in the matrimonial house. Two persons came to the house of the first informant at about 12.45 hours of the night between 25 and 26 February 1996 and they informed that the deceased had sustained burn injuries and she was shifted to civil hospital. The first informant and other relatives of the deceased's parents side went to civil hospital. When the first informant met the deceased and inquired about the incident, she disclosed that, the accused had set fire to her. She died on the same night at about 2.30 a.m. Report came to be given on 26-2-1996. Crime came to be registered at CR No.53/1996 in Topkhana Police Station Ahmednagar. Post mortem was conducted on the dead body. Statements of neighbours of

husband and relatives of the deceased on parents' side came to be recorded. After completion of the investigation, charge sheet came to be filed. Charge was framed for offence punishable under sections 302, 306 & 34 of the Indian Penal Code. In the trial Court, the prosecution examined in all nine witnesses, including the first informant. The accused took defence of total denial. They took defence that only the husband was living in the house with the deceased where the incident took place, but on that night he was also not present in the house and he rushed to the spot when there was fire. The trial Court has held that the prosecution has failed to prove even the suicidal death. The evidence given on the aforesaid alleged demand and ill-treatment is disbelieved by the trial Court.

6) The inquest panchanama is not disputed and the accused have not disputed that death took place due to burn injuries. There was smell of kerosene to the clothes of the deceased. The spot panchanama which is proved in the evidence of PW 8 Ashok, panch witness, shows that the incident took place in the kitchen though

some partly burnt articles were found in the room which is situated on road side. The circumstances mentioned in the spot panchanama show that attempt was made to save the deceased by bringing her to the outside from the kitchen. There was no sign of bursting of stove. In view of the time of the incident, which was after 10.00 p.m., it can be said that Court could have inferred that it is a case of suicide. There are also other circumstances to support that inference. However, inference that it is homicidal death is not possible.

7) The prosecution heavily relied on the so called oral dying declaration of the deceased made to Sanjay (PW 1), brother of the deceased. He has deposed that disclosure was made to him in Civil Hospital by the deceased that all the accused had set fire to her. Particulars of disclosure given in the F.I.R. at Exhibit 23 were very vague. This evidence is not believable because after admission of the deceased in the civil hospital by accused, information was given to the police and police had given requisition to doctor to obtain opinion regarding fitness of the deceased, which is at Exhibit 38.

This record including the opinion given by the doctor shows that opinion was given that the deceased was not fit to give statement. Due to this opinion, there is no recorded oral dying declaration. It can be said that the first informant must have reached the hospital subsequent to the arrival of police and for that reasons the first informant cannot be believed in respect of his evidence that oral dying declaration was made to him.

8) Sanjay (PW 1) has given evidence that on the occasions when the deceased used to come to her parents' house she used to disclose that there was ill-treatment to her and accused No.1 used to give even beating to her. According to him, initially there was virtually no reason for ill-treatment was given. After that in December 1994 the deceased disclosed that accused No.1 had asked her to bring Rs.30,000 from her parents as he wanted to repair the house and construct his own house. He has given evidence that the amount was given in installments by his family to the accused and it was never returned. The prosecution is relying on some documents which include one inland letter allegedly sent by the deceased

and one stamp paper which was given by the parties when the dispute was settled in January 1994. In both these documents at Exhibits 23 and 24 there is no mention about ground for ill-treatment to the deceased and at any time any particular reason was given by the accused to the deceased for the ill-treatment. From these two documents it can be inferred that the deceased had suspicion that husband had extra marital affair. Due to this suspicion there used to be quarrels and even accused No.1 had admitted that he had given beating to the deceased on that count. However, the dispute was settled on 5-1-1994 and it can be said that till that time there was no demand of money and no amount was given by the complainant's side to the accused.

9) The first informant, Sanjay (PW 1) has given evidence that at the time of Diwali festival of 1995 accused had asked the deceased to bring two-wheeler vehicle or bring money for purchasing the vehicle for the husband. Evidence is given that they some how convinced the accused to behave well and then the deceased returned to the matrimonial house. The incident took

place on 25-2-1996 and it is not the version of the complainant that after the Diwali festival there was any grievance expressed by the deceased to them. Thus, there was time gap of more than two months from the so called last disclosure and the incident in question. These circumstances cannot be ignored and particularly the circumstances that the deceased had suspicion that accused No.1 had illicit relations with a lady cannot be ignored. Indian lady would do anything to herself out of such suspicion.

10) Some neighbours are examined by the prosecution like Satish (PW 2) and Mangal (PW 3). Their evidence shows that the deceased had suspicion about the character of accused No.1 and on that ground there used to be quarrels. They had also tried to convince the deceased that she should not take such suspicion. This independent evidence shows that there used to be quarrels but the evidence does not show that there was any other reason for the quarrel. Mangal (PW 3) has admitted in the cross examination that on the night when she heard hue and cry of the deceased she came out and

noticed that accused No.1 was sleeping in a temple of Tuljabhavani situated at a distance of 100 ft from his house and he also reached to the spot. Though attempt is made to show that the deceased had disclosed to her that she caught fire due to explosion of stove the spot panchanama which was prepared immediately does not support such a case.

11) The evidence of father (PW 4) of the deceased is similar to the evidence of the first informant and for the reasons already given, this Court holds that the allegation that there was illegal demand from the accused persons and due to that there was harassment to the deceased cannot be believed.

12) The conduct of the accused was not consistent with the guilt but it was consistent with the innocence. They had immediately shifted the deceased to the civil hospital and it can be said that within no time the deceased was reached to the civil hospital. They had also reported about the incident to the parents of the deceased. This circumstance also cannot be ignored.

13) The aforesaid circumstances have created clear probability that due to suspicion of the deceased that accused No.1 was having extra marital affair she set fire to herself. For such suspicion the accused persons cannot be convicted for offences punishable under sections 498A and 306 of the Indian Penal Code. It is already observed that there is virtually no evidence to prove the offence punishable under section 302 of the Indian Penal Code. This Court holds that it is not possible to interfere in the decision given by the trial Court of acquittal. In the result, the appeal stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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