

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

CRIMINAL APPEAL NO.117 OF 1999

The State of Maharashtra

APPELLANT

VERSUS

1. Vaijinath Lekroba Kendre,
age 23 yrs.
2. Lekroba Bhujang Kendre,
age 55 yrs.
3. Sow. Gundubai Lekroba Kendre,
age 45 Yrs.
4. Dhondiba Lekroba Kendre,
age : 25 yrs.

All r/o. Brahmawadi,
Tq. Ahmedpur.

RESPONDENTS

[Ori. accused]

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Mr.S.J.Salgare, APP for the Appellant
Mr.S.V.Mundhe, Advocate for Respondent Nos.
1 to 4.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Date : 06.06.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Appeal is filed by the
appellant - State, challenging the judgment

and order of acquittal dated 19th November, 1998, passed by the Additional Sessions Judge, Latur in Sessions Case No.181/1997.

2. The prosecution case in a nutshell is as under:

The informant Datta Kondiba Chate is resident of village Brahmawadi. His daughter namely Vidyabai, when her age was approximately 7 years, had married with accused Vaijinath. It is further the case of the prosecution that, an amount of Rs.30,000/- was given by Datta towards dowry to Vaijinath in addition to 5 grams of gold. According to the prosecution case, Vidyabai had not attained puberty at the time of marriage, therefore she was not sent to the matrimonial home, and resided at her parents place. It is only after she attained puberty, Vidyabai was sent to the matrimonial home for cohabitation.

It is further the case of the prosecution that, accused Vaijinath and his parents started asking Vidyabai to bring an amount of Rs.10,000/- and television set from her parents. They threatened her that failure to bring Rs.10,000/- and television set would be seriously viewed, whenever Vidyabai used to visit parents house; she told about demand of Rs.10,000/- and television set by the accused persons.

3. On 1st September, 1996, the informant Datta was at his home. At about 13.30 hours, his young children informed him that Vidyabai was being beaten by her in-laws at matrimonial place. After receiving such information, the informant Datta had been to the place of the accused Vaijinath; there he noticed that accused Lekroba and his wife Mandubai were present in the door of the said house armed with sticks. The accused Vaijinath was beating Vidyabai with stick.

When the informant and his wife tried to enter in the house, they were prevented by Lekroba and Mandubai from entering into the house. There was scuffle between Datta and Lekroba. Datta was assaulted with the help of stick. Vidyabai started raising hue and cry and was asking for help. The accused Lekroba had threatened to Datta that he would burn Vidyabai to death and would not allow Datta to have a look at Vidyabai even when her dead body is kept on pyre.

4. It is further the case of the prosecution that, the informant Datta returned to his house. He has consulted with his relatives and on next day of the incident i.e. on 2nd September, 1996, he had been to Ahmedpur Police Station to lodge the First Information Report being Crime No.102/1996 for the offences punishable under Sections 498-A, 323, 506, 342, 34 of IPC. An investigation was entrusted to one

Mr.Kulkarni working as Police Head Constable. It was stated in the said FIR that, on 1st September, 1996, after the aforementioned incident had taken place, Vidyabai was confined in the room. She was not provided with food on that day. On the next day in the morning at 11.00 O'clock, another incident had taken place.

5. As per the prosecution case, accused no.2 Lekroba stated that, Vidyabai should be killed by administering poison. Pursuant to such statement, Vidyabai was caught hold by Lekroba and Mandubai and pesticides stored in the house was given by Vaijinath to Vidyabai, and she was asked to consume the same. The said pesticides was readily stored in the house of the Vaijinath for the purpose of spraying it on cotton crop to save it from insecticides. After administering poison to Vidyabai, accused Vaijinath and Lakroba left the house, leaving Vidyabai confined in a

room. Thereafter, one Balaji and Geetabai had rescued Vidyabai. Thereafter, she was taken to the Hospital.

6. During the course of investigation, it was revealed that the accused have committed offence punishable under Section 307 of the Indian Penal Code. Further the investigation was entrusted to the Police Sub-Inspector Mr.Thorat. He recorded the statement of the witnesses and procured medico-legal certificate of Vidyabai. Initially, the accused were arrested and were produced before the Magistrate at about 3.30 p.m. on 3rd September, 1996. The accused were remanded to the Magisterial custody. On the same day, the accused were again produced before the Court of Magistrate for the offence punishable under Section 307 of the IPC and their police custody was obtained. Thereafter, the Investigating Officer completed investigation and the charge-sheet

came to be filed in the Court of Judicial Magistrate First Class, Ahmedpur. Since the case was triable by the Sessions Court, the same was committed to the Court of Session at Latur.

7. The learned Additional Sessions Judge, Latur framed charge against the accused for the offences punishable under Sections 498-A, 307, 342, 323 and 506 r/w.34 of the IPC to which accused pleaded not guilty and claimed to be tried. Their defence is denial. In defence they examined Ujjwala Kendre at Exh.36.

8. The prosecution in support of its case has placed reliance on ocular as well as documentary evidence, which is consisting of spot panchnama [Exh.11], complaint [Exh.13], case papers maintained by the Hospital [Exh. 21], Medico-legal certificate [Exh.22], Remand reports [Exh.28 and 29], transfer

certificate issued by the Primary Health Centre, Ahmedpur [Exh.31], admission card of Ambejogai Hospital [Exh.32] and the certificate issued by Ambejogai Hospital [Exh.33]. So far as ocular evidence is concerned, it is consisting of testimonies of complainant Datta [Exh.12], Vidyabai [Exh. 14], Balaji [Exh.15], Surekha [Exh.18], Vishnu Padapure the Medical Officer [Exh.20], Geetabai [Exh.26], Constable Vasant Kulkarni [Exh.27], Dr.Suresh Lakhne [Exh.30], and Bhaskar Thorat is the Investigating Officer [Exh.34]. The trial Court, after full-fledged trial, acquitted the accused. Hence this Appeal preferred by the State of Maharashtra against the order of acquittal.

9. We have heard the learned APP appearing for the appellant-State, and the learned counsel appearing for the respondents – accused. The learned APP appearing for the State submits that, ocular testimony of

Vidyabai [PW2] ought to have been believed by the trial Court. There was no reason to disbelieve her deposition recorded before the Court. She herself is a victim. She has stated in detail the manner in which harassment and ill-treatment was given to her by the accused, so as to ensure fulfillment of their unlawful demand of Rs.10,000/- and a television set. He invites our attention to her deposition before the Court and submits that, same is trustworthy and inspires confidence, and therefore, the judgment and order of acquittal deserves to be quashed and set aside.

10. It is submitted that, Vidyabai has attributed specific overt act qua each of the accused. An involvement of the accused in the commission of offence was active, and due to administering pesticides to Vidyabai, she was unconscious for two days and treated as an indoor patient. She was taken to the Hospital

by Balaji and Geetabai. It is submitted that, after she was compelled to consume the pesticide, she was confined in one room of the house, and the door of the said room was latched from outside. One Geetabai and Balaji rescued her from the said room and she was taken to the Hospital. It is further submitted that, father of Vidyabai namely Datta is resident of same village i.e. Brahmawadi. He invites our attention to the evidence of Datta [PW-1] and submits that, he has categorically stated in his deposition about unlawful demand by the accused and also harassment and ill-treatment given by the accused to her on non-fulfillment of said demand due to the poor financial condition of Datta. Datta [PW-1] has stated in his evidence that one day before the incident, the accused assaulted Vidyabai. Datta [PW-1] and his wife rushed to her house. However, they were not allowed to enter inside the

house by the accused and on second day, they compelled her to consume pesticides. It is submitted that, the evidence of other prosecution witnesses also supports prosecution case. He invites our attention to the deposition of Geetabai and Balaji before the Court and submits that, their evidence clearly supports version of Vidyabai, and therefore, the prosecution case deserves to be accepted. He invites our attention to the medical evidence and submits that, the Medical Officer has deposed that, the poisonous substance was found in stomach during the medical examination of Vidyabai.

11. On the other hand, the learned counsel appearing for the respondents [original accused] submits that, the evidence of the prosecution witness suffers from the serious infirmities, contradictions, omissions and improvements. He submits that, if really the incident of beating of Vidyabai

had happened on 1st September, 1996, no reasons are brought on record for not lodging the FIR on very same day. He submits that, there was inordinate delay in lodging the FIR, and the same has not been explained by the prosecution. It is submitted that, though the FIR is lodged by the Datta [PW-1] on 2nd September, 1996 at 3.00 p.m., there is no mention in it of an alleged incident of compelling Vidyabai to consume pesticides even though according to the prosecution case, incident of administering pesticides has happened at about 12.30 p.m. on 2nd September, 1996. He submits that, the inferences drawn by the trial Court are on the basis of the evidence on record. The trial Court, upon appreciation of the entire evidence, reached to the conclusion that, ocular evidence of Vidyabai does not inspire confidence, and therefore, does not deserve acceptance. If really there would have been

continuous harassment and ill-treatment on account of non-fulfillment of demand of Rs.10,000/- and television set, in that case Datta [PW-1] or Vidyabai [PW-2] ought to have lodged the FIR/complaint promptly. The prosecution has not brought anything on record to show that, either Datta [PW-1] or Vidyabai [PW-2] lodged such FIR or complaint prior to alleged incidents on 1st September, 1996 and 2nd September, 1996. It is submitted that, nothing was recovered from the spot of incident, and therefore, the prosecution case that pesticides was readily available in the house of the accused is not supported by bringing any evidence on record. It is submitted that, in absence of any cogent and sufficient evidence available on record, the trial Court has given benefit of doubt to the accused, and therefore, the order of acquittal deserves no interference.

12. The FIR was filed by Datta [PW-1].

Upon careful perusal of his deposition before the Court, he stated about incident dated 1st September, 1996. Though the alleged incident had happened on 1st September, 1996, he lodged the FIR on 2nd September, 1996, at about 15.20 hours. As per the prosecution case, the incident of compelling Vidyabai [PW-2] to consume the pesticides had happened on 2nd September, 1996, at about 12.00 noon. Upon careful perusal of the contents of the FIR, there is no whisper about the said incident, though FIR came to be lodged at about 15.20 hours on 2nd September, 1996. There is delay of one day in lodging the FIR about the incident dated 1st September, 1996. The said delay is not explained by the prosecution, therefore, it creates serious doubt about such alleged incident of assaulting Vidyabai [PW-2] by her husband Vaijinath. Upon careful perusal of the evidence of Medical Officer, namely Vishnu Pandurang Padapure [PW-5], who

examined Vidyabai, there is no whisper in his evidence that, he noticed injuries or contusions and any other marks, and therefore, ocular evidence of PW-1 and PW-2 that, Vaijinath assaulted Vidyabai on 1st September, 1996, by stick gets falsified. Datta [PW-1] has admitted in his evidence that, when Vidyabai was sent to the matrimonial home, for initial one year there was no any harassment or ill-treatment to Vidyabai by the accused. If the ill-treatment and harassment was started two years prior to the alleged incident; it was but quite natural for Datta or Vidyabai to lodge the FIR / complaint. However, the prosecution has not brought anything on record to suggest that, prior to the alleged incident such FIR or complaint was lodged alleging therein harassment or ill-treatment by the accused. It is also stated by Datta [PW-1] in his deposition that, when he himself and his wife

attempted to enter in the house, but they were prevented by accused nos.2 to 4 and Vaijinath was beating Vidyabai inside the house. It is also stated by Datta [PW-1] that, accused nos.2 to 4 assaulted him and his wife. However, the prosecution has not brought on record any medical evidence to suggest that, as a matter of fact they were assaulted. It appears that, Datta and Vaijinath are resident of the same village, and the house of the accused is at the distance of about 100 to 200 feet from the house of Datta [PW-1]. During cross examination, Datta [PW-1] stated that, on 1st September, 1996, when he witnessed the incident at about 1.00 p.m., he felt that, Vidyabai's life is in danger. If really Vidyabai's life was in danger, Datta [PW-1] should have immediately rushed to the Police Station to lodge the FIR. However, he candidly admitted in his cross examination

that, he did not feel it necessary to go immediately to the Police Station to lodge the FIR. It further appears that, though he has named Shantabai Sugriv Chate and Kushabai Sangram Ghuge as eye witnesses to the alleged incident of 1st September, 1996, nevertheless the prosecution did not examine said two witnesses.

13. Upon careful perusal of the evidence of Vidyabai, she stated that, for about one year after she went for cohabitation, she was happy in the matrimonial home. She has also stated that, she was beaten by Vaijinath by stick, and other accused were present in the door of the house with sticks, and they did not permit her parents to enter into the house. Admittedly, the mother of Vidyabai is not examined by the prosecution for the reasons best known to it. Vidyabai [PW-2] further stated that, her parents were assaulted by the accused, however, as already

observed, the prosecution has not brought on record any medical evidence by way of corroboration to lend support to ocular evidence of Vidyabai or her parents. She further stated in her evidence that, the pesticide was available in the house, and her husband poured pesticide in small pot, and he compelled her to drink it. In the first place, the Investigating Officer did not recover anything incriminating material from the house of the accused, and secondly, if really Vidyabai was compelled to consume such pesticides, in that case, it was incumbent upon the prosecution to seek opinion of C.A.

14. It is true that, Vishnu Padapure, Medical Officer [PW-5] in his evidence deposed that, the poisonous substance was found in the stomach of Vidyabai on medical examination. However, the same was not sent to C.A. so as to ascertain whether the consumed substance was pesticides. When it

was specific case of the prosecution that, the pesticides, which was available in the house of the accused, was consumed by Vidyabai; it was but natural to seek report from the expert, to ascertain whether the said poisonous substance was pesticides or not. Though PW-2 Vidyabai in her statement stated that, she was unconscious for two days, however, when in her deposition she narrated history as to how she was taken to Mogha, who admitted her in Government Hospital, and thereafter, how the Doctor examined her and she was taken for better treatment in the Government Hospital at Ambajogai, her statement that, she was unconscious for two days does not inspire confidence. Though she stated that she was taken to Mogha by Geetabai and Balaji, the Medical Officer, Vishnu Padapure [PW-5], in his cross examination stated that, the patient was brought to the Hospital by

father-in-law of Vidyabai, as per the entry in the M.L.C. register. He specifically denied suggestion that, patient was admitted in his Hospital by two ladies, and Lekroba was brought to the Hospital by the Police. He has specifically admitted in his cross examination that, for analysis of contents, the material has to be referred to the C.A. office. The opinion of the C.A. is conclusive in such cases. In the present case, the stomach contents were not referred to C.A. for analysis. No tests were taken by him for finding out the contents in the stomach fluid. Therefore, the admission given by PW-5 goes to the root of the matter inasmuch as the prosecution has not proved that, the stomach contents were removed from the stomach of Vidyabai contained pesticides. It is also necessary to make reference to the evidence of the defence witness no.1 namely Ujwala Kendre, who is the wife of the brother

of Vaijinath. In her evidence, she stated that, atmosphere in the house was happy, healthy, and congenial and no such incident had happened as alleged by the PW-1 or PW-2 in the matrimonial house. It is also relevant to make reference to the evidence of Geetabai [PW-6]; in her deposition, she stated that Vidyabai was happy at the place of her in-laws. She did not know anything about the incident. She was told by a young girl that, Vidyabai has consumed poison, while she was proceeding towards the field at about 11 O'clock in the morning. The name of informant is Surekha. She had been to the place of Vidya i.e. the house of the accused. Vidya was present in the house. She did not notice anything at the spot. She reached to the Hospital. The mother in law of Vidyabai was with her. She did not notice anything containing poison at her house i.e. the house of the accused.

15. The prosecution examined Vasant Anandrao Kulkarni – Investigation Officer as PW-7. In his deposition he stated that, no poison was found at the place of accused when search was taken before drawing panchnama of scene of offence.

16. Upon careful perusal of the evidence of the prosecution witnesses. Their evidence so far actual incident is concerned, does not appear to be consistent, and the evidence of PW-1 and PW-2 does not inspire confidence. Upon careful perusal of the findings recorded by the trial Court, those appears to be in consonance with the evidence brought on record. The view taken by the trial Court is plausible. In that view of the matter, we do not think that, this is a fit case to reverse the order of acquittal.

17. In the light of the discussion in the foregoing paragraphs, an inevitable

conclusion is that, the appeal shall fail,
and accordingly, the same stands dismissed.
The bail bonds of the respondents—accused
stand cancelled.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC