

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.360 of 2002

1. Govind s/o Dnyanoba Gitte,
Age : 29 yrs, Occ. : Service, ..Appellant no.1
R/o : Sane Guruji Niwas (Original accused
Vidyalaya, Kaij. no.1)

2. Dnyanoba s/o Patloba Gitte,
Age : 71 years,
Occupation Agriculture, ..Appellant no.2
R/o : Nandagaul, (Original accused
Tq. Parali no.5)

VERSUS

The State of Maharashtra
Through Babu s/o Ranba Fad,
Age : 55 years, Occupation
Agriculture, R/o : Saundana,
Taluka Ambajogai. .. **Respondent**
(Original
complainant)

Ms. Dr. Supriya L. Pansambal, Advocate h/f Mr. V.D.
Gunale, Advocate for appellants
Ms.R.P.Gaur, APP for respondent – State

CORAM : SANGITRAO S. PATIL, J.

DATE : 28th JULY, 2017

ORAL JUDGMENT :

The Appellants (original accused Nos. 1 and 5) have challenged their conviction and sentence for the offences punishable under Sections 306 and 498-A read with Section 34 of the Indian Penal Code ('I.P.C.', for short) recorded by the learned I Ad-hoc Additional Sessions Judge, Ambajogai, in Sessions Case No. 63 of 2000 on 28.06.2002.

02. During pendency of the appeal, appellant No. 1, who was husband of the deceased Rukminbai, expired. Therefore, the appeal stood abated against him. The appeal proceeded in respect of appellant No. 2 only who was the original accused No. 5 and father-in-law of the deceased Rukminbai.

03. The case of the prosecution, in short, is that the deceased Rukminbai and the deceased appellant No. 1 got married in the month of May-1998. After the marriage, she started residing with appellant No. 1 at village Nandagaul. That original accused No. 2 was the mother-in-law and original accused Nos. 3 and 4 were sisters-in-law of the deceased Rukminbai. It is alleged that the appellants as well as original accused Nos. 2 to 4 used to subject the deceased Rukminbai to cruelty with a view to compel her to bring Rs. 50,000/- from her maternal home, so as to enable appellant No. 1 to take admission for D.Ed. Course.

04. It is alleged that the appellants took her to her maternal home and demanded Rs. 50,000/- from her father prior to 8 to 9 months of occurrence of the

incident. They warned that in case, that amount was not paid to them, they would leave the deceased Rukminbai there only. At that time, a meeting was convened and the appellants were persuaded to take back the deceased Rukminbai with them on the assurance of paying some amount after harvesting season was over. Accordingly, the appellants took the deceased Rukminbai with them. It is alleged that thereafter also, the deceased Rukminbai was brought to her maternal home for about 3 to 4 times with a view to compel her to bring Rs.50,000/-, but she was being reached back to her matrimonial house anyhow by persuading her in-laws.

05. On 11.01.2000, the deceased Rukminbai sustained burns when she was at her matrimonial house. She was admitted in the Government Hospital at Ambajogai. When her parents met her, she informed that she was illtreated by all the accused persons and told that if the amount of Rs. 50,000/- had been paid, she could have been saved. Rukminbai died in the Hospital on 29.01.2000. Thereafter, Kamalbai, the mother of the deceased Rukminbai, lodged the report in Police Station, Parali (Rural) on 24.02.2000.

06. The investigation followed. The statements of witnesses were recorded. The post-mortem report of the deceased Rukminbai was obtained. The Medical Officer opined that she died due to "Septicaemia due to burns". After completion of the investigation, the appellants and other three accused persons came to be prosecuted for the above-mentioned offences.

07. The prosecution examined six witnesses to establish the guilt of the appellants and the other three accused persons for the above-mentioned offences. The appellants and other accused persons examined Police Head Constable Darade as a defence witness. After considering the evidence on record, the learned trial Judge found the appellants only guilty of the above-mentioned offences and sentenced each of them to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months in respect of the offence punishable under Section 306 read with Section 34 of the I.P.C. and further sentenced each of them to suffer rigorous imprisonment for three years and to pay a fine of Rs.

5,000/-, in default, to suffer simple imprisonment for six months in respect of the offence punishable under Section 498-A of the I.P.C. The substantive sentences of imprisonment were ordered to run concurrently. The appellants deposited the fine amount in the trial Court.

08. The learned trial Judge did not found original accused Nos. 2 to 4 guilty of the above-mentioned offences. He, therefore, acquitted them of the above-mentioned offences. Their acquittal has not been challenged and the judgment of the trial Court to the extent of that acquittal has become final.

09. During pendency of the appeal, appellant No. 1 (original accused No.1) who was the husband of the deceased Rukminbai expired. Therefore, the appeal stood abated against him.

10. Kamalbai (PW 3)(Exh. 47) is the informant, who lodged report Exh. 48 in Police Station, Parali (Rural) on 24.02.2000. Babu (PW 1) (Exh. 45) is the father, while Dattu (PW 4)(Exh. 52) is the maternal uncle of the deceased Rukminbai. Govind (PW 2)(Exh. 46) and Sambhaji (PW 5)(Exh. 53) are the village-mates of Babu (PW 1),

who claimed that they were present when the appellants had been to the house of the Babu (PW 1) for demanding Rs. 50,000/-.

11. Even if it is accepted for a while, that the appellants had been to the house of Babu (PW 1) with a demand for money eight to nine months prior to the date of the incident, the fact remains that the deceased Rukminbai, thereafter, resided at her matrimonial house and therefore, the said visit of the appellants to the house of Babu (P.W.1) cannot be said to have direct connection with the incident in question. It cannot be said that there was any proximity in the demand of money made by them at that time and the incident that took place after about eight to nine months particularly when in the meanwhile, the deceased Rukminbai resided at the house of the appellants.

12. Babu (PW 1) and Kamalbai (PW 3) depose that during the said period of eight to nine months, the appellants and the other accused persons illtreated the deceased Rukminbai for three to four times and drove her away from the house. Accordingly the deceased Rukminbai

visited their house. According to them, the deceased Rukminbai visited their house, lastly prior to about eight days of the incident. There is absolutely no corroboration to the evidence of Babu (PW 1) and Kamalbai (PW 3) in respect of the said illtreatment and visits of the deceased Rukminbai to their house. Their evidence in respect of the alleged illtreatment is very vague and general. There were five accused persons prosecuted on the basis of the report lodged by Kamalbai (PW 3). There is nothing in the evidence of these witnesses, as to which of the accused had illtreated the deceased Rukminbai and in what manner. There is nothing in the evidence to show that the deceased Rukminbai had sustained any injuries, except burns, on any part of her body to indicate that she was physically tortured prior to sustaining burns. Such vague and general evidence would not be sufficient to establish that the deceased Rukminbai was subjected to cruelty under section 498-A of the I.P.C.

13. It has come in the evidence of Babu (PW 1) and Kamalbai (PW 3) that after receiving the message about the admission of the deceased Rukminbai in the Hospital

at Ambajogai, they went there and on being inquired by them, she told them that all the accused illtreated her on account of demand of money and therefore, she committed suicide by setting herself on fire. Kamalbai (PW 3) also states that the deceased Rukminbai told that if the amount of Rs. 50,000/- had been paid, then she could have been saved and further stated that all the accused persons subjected her to cruelty. This evidence is very vague and general. Therefore, the learned trial Judge acquitted accused Nos. 2 to 4 of the above-mentioned offences. However, on the basis of the same evidence, he convicted the appellants, though, there was no specific evidence to show that the appellants only, subjected the deceased Rukminbai to cruelty.

14. It has come in the cross-examination of Babu (PW 1) that when Kamalbai (PW 3) and himself visited the hospital to see the deceased Rukminbai, the appellants and the accused No. 2 were present in the Hospital and they were providing medical aid to her. She states that appellant No. 1 provided blood to the deceased Rukminbai. Babu (PW1) states that since after visiting the hospital on admission of the deceased Rukminbai till

her death, that took place on 29.01.2000, Kamalbai (PW 3) and himself were present in the Hospital. However, neither Kamalbai (PW 3) nor Babu (PW 1) lodged report against any of the accused for the alleged illtreatment meted-out to the deceased Rukminbai.

15. The learned counsel for the appellants pointed out to the fact that the First Information Report (Exh.48) has been lodged on 24.02.2000 i.e. after about one and half months from the date of the incident and about three weeks after the death of the deceased Rukminbai. There is absolutely no justifiable reason given by Kamalbai (PW 3) for the delay in lodging the F.I.R. (Exh.48). The delay in the circumstances of the case creates a strong doubt about the case of the prosecution.

16. Here, It would be necessary to refer to the evidence of PHC Darade (DW 1) Exh. 62, who visited the hospital on 11.01.2000 after receiving the information about admission of the deceased Rukminbai in ward No. 14 of the Government Hospital at Ambajogai. He states that he got it verified from the Medical officer about her

fit state-of-mind to give statement. Accordingly, he recorded her statement (Exh.56) as per her say. In the statement, the deceased Rukminbai specifically mentioned that on 10.01.2000 between 9.30 p.m. and 10.00 p.m., since there was no electricity, a kerosene lamp was placed inside the house. The said kerosene lamp fell down since it was dashed by a rat and due to that, she sustained burns. She raised shouts whereon the appellants and her mother-in-law extinguished the fire and took her to the Hospital at Ambajogai. She specifically mentioned that she has no grudge against anybody. Her dying declaration was tried to be suppressed by the prosecution for the simple reason that it was not supporting the case of the prosecution. However, the appellants got it proved by examining PHC Darade, who had recorded the dying declaration. There is nothing in the cross-examination of Darade (DW 1) to show that he recorded the dying declaration of the deceased Rukminbai at his own with a view to save the accused persons. If this dying declaration is perused, the case of prosecution that the deceased Rukminbai was subjected to cruelty by the accused persons with a view

to compel her to bring money from her maternal home and because of the illtreatment meted-out to her she committed suicide, would not stand to reason. In the circumstances, the inordinate delay in lodging the F.I.R., would indicate that it was an outcome of after thought. The said F.I.R. cannot be used to corroborate the version of Kamalbai (PW3). Had there been illtreatment to the deceased Rukminbai prior to the incident, Kamalbai (PW3) and Babu (PW1) would have lodged report against the accused persons immediately. The inaction on their part in this regard, for considerably long a period would create great suspicion about their versions that the deceased Rukminbai was subjected to cruelty by the accused persons driving her to commit suicide.

17. The learned trial Judge did not appreciate the evidence of the prosecution correctly and properly. The learned Judge wrongly discarded the dying declaration (Exh.56) of the deceased Rukminbai. The said dying declaration was sufficient to discard the case of the prosecution. The impugned judgment and order convicting the appellants cannot be said to be legal, proper and

correct. They are liable to be set aside. In the result, I pass the following order :-

O R D E R

- (i) The appeal is allowed.
- (ii) The impugned judgment and order passed in Sessions Case No. 63 of 2000 are quashed and set aside.
- (iii) Appellant No.2 is acquitted of the offences punishable under Sections 498-A and 306 of the I.P.C.
- (iv) The bail bonds of appellant No. 2 are cancelled and he is set at liberty.
- (v) The appeal has been abated against appellant No.1.
- (vi) The fine amount of Rs. 10,000/-, if deposited by appellant No. 2 namely Dnyanoba Patloba Gitte, be returned to him.
- (vii) The appeal is accordingly disposed of.

Sd/-

[**SANGITRAO S. PATIL**]

JUDGE

shp