

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

CRIMINAL APPEAL NO. 35 OF 2003

The State of Maharashtra
(through, P.I. Vaijapur P.S.)

....Appellant.

Versus

1. Ganesh Sukhdeo Marathe,
Age 28 years, Occu. Driver,
R/o. Laxmi Colony, Vaijapur.
2. Sanjay Sukhdeo Marathe,
Age 35 years, Occu. and
R/o. As above.
3. Sow. Nirmalabai Sanjay Marathe,
Age 26 years, Occu. Household,
R/o. As above.
4. Sow. Sonabai Sukhdeo Marathe,
Age 65 years, Occu. and
R/o. As above.

[Appeal is admitted only against
respondent Nos. 1 to 4 as per
Court order dated 29.4.2004.]

5. Vijay Bhagwat Harkal,
Age 20 years, Occu. Education,
R/o. Saigaon, Tq. Vaijapur.
6. Damodar Ramchandra Narwade,
Age 50 years, Occu. Service,
R/o. Samarthnagar, Aurangabad.
7. Sow. Kundabai w/o. Damodhar Narwade,
Age 45 years, Occu. Household,
R/o. As above.

....Respondents.

Mr. S.J. Salgare, APP for appellant/State.

Mr. V.R. Dhorde Advocate h/f. Mr. R.N. Dhorde, Advocate for respondent
Nos. 1 to 4.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVALÉ, JJ.**

DATED : November 1, 2017

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

1) The appeal is filed against judgment and order of Sessions Case No.124/2000, which was pending in the Court of 1st Ad-hoc Additional Sessions Judge, Aurangabad. The Trial Court has acquitted the respondents of the offences punishable under sections 302, 498-A and 506 r/w. 34 of Indian Penal Code ('IPC' for short). The case was filed against seven persons, but the appeal is admitted only as against accused Nos. 1 to 4. Accused No. 1 Ganesh is the husband of deceased, accused No. 2 is brother of husband of deceased, accused No. 3 is the wife of accused No. 2 and accused No. 4 is the mother of husband. Both the sides are heard.

2) Deceased Sharda was daughter of first informant Devrao Shejul. Devrao is resident of Vairagad, Tahsil Gangapur. Accused persons are residents of Vaijapur. Sharada was given in marriage to accused No. 1 Ganesh on 20.4.1999. The incident in question took place on the night between 9.1.2000 and 10.1.2000 in the matrimonial house of deceased. On 10.1.2000 accused No. 1 gave report to police and on the basis of his report, A.D. was registered. Sharda was found in hanging condition and she had used her Sari as ligature material.

3) During inquiry of A.D., inquest panchanama was prepared and dead body was referred for post mortem ('P.M.' for short) examination. On 10.1.2000 itself Devrao gave report against all the accused persons. In the report, he contended that there was demand of Rs.50,000/- from the husband as he wanted to purchase a jeep for his transport business. He contended that the deceased used to disclose about the demand and also the illtreatment which she was suffering in the house of her husband. She had disclosed that her husband, her brother in law, wife of brother in law and also mother in law were harassing her and they were even giving beating to her. She had informed that they had given threat to finish her by hanging her or by giving shock of electricity. Brother of the husband was working in police department and he used to say that he can manage anything.

4) Due to illtreatment, about six months prior to the date of incident, the deceased had left the matrimonial house and she was residing in the house of her parents. The father could not make arrangement of money and ultimately few days prior to the date of incident, he sent the deceased to matrimonial house. He made allegations that as the demand of money was not met with and as the husband of deceased had illicit relations with the wife of his brother, the deceased was finished by them.

5) The doctor, who conducted P.M. gave opinion that the death had taken place due to hanging. The spot panchanama showed that the incident had taken place in a room of house where the deceased and the husband were living. During the course of investigation, the statements of some relatives on parents side of deceased were recorded. As some chits were produced by the father of deceased before police during investigation, the chits were sent to hand writing expert along with the hand writing of deceased which was available in her school. The report was received that there was no significant difference in the two hand writings. Chargesheet was filed for aforesaid offences.

6) The charge was framed only for aforesaid offences. The accused pleaded not guilty. Prosecution examined the first informant, Medical Officer who conducted the P.M. examination, the hand writing expert and the Investigating Officer. The Trial Court has considered all the evidence and has given benefit of doubt to the husband.

7) The husband has not disputed that the deceased committed suicide and that can be seen from the A.D. report given by him on 10.1.2000. The inquest panchanama is not seriously disputed and the evidence of Dr. Khillare (PW 5), who conducted P.M. examination and the P.M. report prepared by him which is at Exh. 51 lead to only one

inference that the deceased died due to asphyxia, secondary to hanging. This Court has carefully gone through the description of ligature mark given by doctor in P.M. report and in substantive evidence. Other than ligature mark, no injury was found on the dead body. In view of this evidence, it is not possible to hold that it is homicide. Thus, the prosecution has failed to prove that Sharda died homicidal death.

8) Chargesheet was filed against as many as seven persons and in view of this circumstance, it was necessary for the prosecution to prove that all the seven persons had the opportunity to commit the offence viz. they were living in the same house where the incident took place. There is no such evidence on record. The A.D. report and the spot panchanama do not show that any other person except the husband was living in that house with deceased. The house had three rooms. The front room was being used as bed room. After the front room, there was one kitchen and on one side of the kitchen, there was room in which the incident had taken place. No neighbour is examined to prove that any other accused was present in the house on 9th or 10th January 2000. Due to these circumstances, it was not possible for prosecution to prove the offence of murder against the accused Nos. 2 to 7.

9) There was no separate charge for the offence punishable under section 306 of IPC. But, there was charge for the offence punishable under section 498-A of IPC. For proving that offence, the prosecution is relying on the evidence of mother of deceased Sakharabai (PW 1) and father Devrao (PW 7). Both of them have given evidence that the deceased had disclosed to them that there was demand of Rs. 50,000/- from accused as accused No. 1 wanted to purchase a jeep for his transport business. Admittedly, accused No. 1 was earning the livelihood by plying taxi. In the cross examination, Devrao (PW 7) has admitted that accused No. 1 was already having jeep. Further, the evidence of PW 1 and PW 7 shows that financial condition of accused persons was more sound than the financial condition of the complainant.

10) Even if other circumstances are ignored and the so called chits written by the deceased are read in evidence, it can be said that in those chits, the deceased had not contended that there was demand of Rs.50,000/- from accused and accused wanted to collect such amount for purchasing jeep. In those chits, there is also no mention that accused No. 1 had illicit relations with the wife of his brother. In the evidence of Investigating Officer and also Devrao, it is brought on the record that accused No. 2 was working in Police Department and he was posted at other station where he was living with his family.

11) In the chits at Exhs. 69 and 70, the dispute and quarrels which took place in between husband and wife and between relatives of husband and newly wedded wife are mentioned and the incidents which took place right from the date of marriage are also mentioned. From the contents of chits, it cannot be said that there was harassment to wife as defined in section 498-A of IPC. Further, these chits do not bear the date and so, it is not possible to ascertain or infer as to when the chits were written by the deceased. The P.M. report and the evidence of father of deceased show that the deceased was pregnant of three months. If the chits were written immediately prior to the date of incident, the deceased would have definitely mentioned about her pregnancy in the chits. As there is no such mention, it can be said that if the chits were really written, they were written long back and there is no proximity in the disclosures which can be found in the chits and the death of deceased.

12) The evidence of prosecution which include the evidence of Investigating Officer shows that Investigating Officer had collected hand writing of deceased from her school. Nobody from school is examined to prove that this hand writing was available in the school, it was of deceased and it was supplied by the school to police. The aforesaid chits were produced after about one month of the incident by

first informant before police. No explanation is given with regard to delay caused in production of documents and there is further one more circumstance like absence of evidence of Head Master or other teacher, who could have given substantive evidence on hand writing of the deceased which was allegedly collected from the school. Such lacuna cannot be ignored in a case like present one.

13) Devrao (PW 7), father of deceased has exaggerated the things. He had not mentioned in F.I.R. that he had lastly visited the house of accused four days prior to the date of incident when he has given such substantive evidence. The evidence on oral disclosures made by the deceased is very vague in nature and for the reasons already given, it does not look probable that the deceased had made disclosures of the nature mentioned by this witness. On the other hand, it is brought on the record in the cross examination of Devrao (PW 7) that he is employed in one cooperative institution of which accused No. 6 is the Chairman. There was allegation of misappropriation against PW 7 and he had committed defalcation in the capacity of Secretary of the said institution. A criminal case was also filed due to initiative taken by accused No. 6 against PW 7. Accused No. 6 and his wife were not that close relatives of the husband of the deceased and they were never lived together with the husband of deceased. In spite of that, father of the deceased had implicated these accused persons in the case. This

circumstance cannot be ignored as it shows possibility of false implication of all accused due to trouble which the first informant was facing due to action taken by accused No. 6.

14) The prosecution has not examined any neighbour of the husband. On the other hand, the husband gave A.D. report immediately, on the next morning when he saw the dead body. The deceased was carrying of three months and this circumstance also needs to be kept in mind. There can be many reasons for committing suicide for Indian lady. Only because she committed suicide, inference is not possible that there was illtreatment to her from the husband. Due to these circumstances, this Court holds that it is not possible to convict the respondents for any offence. The Trial Court has rightly given benefit of doubt to the respondents and this Court sees no reason to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

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