

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 17 OF 2015**

State, Through Police Inspector, Ponda
Police Station, Ponda, Goa.

.... Appellant

Versus

1. Shri Rupesh Muli, s/o Shri Babuli Muli, major, R/o H. No. 64, Adulshem Borim, Ponda, Goa.
2. Shri Babuli Muli (deceased), s/o Upasso Muli, major, R/o H. No. 64, Adulshem Borim, Ponda, Goa.
3. Smt. Kesar Muli, w/o Shri Babuli Muli, major, R/o H. No. 64, Adulshem Borim, Ponda, Goa.
4. Shri Rajesh Muli, s/o Shri Babuli Muli, major, R/o H. No. 64, Adulshem Borim, Ponda, Goa.

.... Respondents

Shri Mahesh Amonkar, Additional Public Prosecutor for the Appellant.

Shri Ryan Da Piedade Menezes, Advocate for the Respondent No. 1.

Shri Ryan Da Piedade Menezes, Advocate holding for Mr. Pavithran A.V., Advocate for the Respondent Nos. 3 and 4.

**CORAM:- C.V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE:- 16th NOVEMBER, 2017.

ORAL JUDGMENT: (Per C.V. Bhadang, J.)

The Appellant-State is challenging the acquittal of the respondents from the offences punishable under Sections 302, 304B and 498A read with Section 34 of the Indian Penal Code (IPC, for short).

2. The brief facts, necessary for the disposal of the appeal, may be stated thus:-

That, the respondent no. 1 is the husband of Sneha alias Lalan Rupesh Muli. The respondent nos. 2 and 3 are the parents of the respondent no. 1, while the respondent no. 4 is the brother of the respondent no. 1. The respondents were put on trial for the offences punishable under Sections 302, 304B and 498A read with Section 34 of IPC, before the learned Sessions Judge at Mapusa in Sessions Case No. 12/2008, for having intentionally caused the death of Sneha Muli.

Now deceased, Sneha was married to the respondent no. 1 on 17.04.2006 and started staying in the matrimonial house along with the respondents at Adulshem, Ponda, Goa. It is the material case that the respondents with their common intention subjected Sneha to harassment and cruelty claiming that the parents of Sneha had given inadequate gold and utensils in the marriage. It was also claimed that the respondents were

demanding money from the father of Sneha.

On 21.05.2007 at about 3:00 hours, Sneha was found hanging from the roof of her bedroom. The respondent no. 1 brought the body down with the help of the respondent nos. 2 to 4, when she was declared dead.

3. It appears that PW-2, Rohidas Naik, the father of Sneha lodged a complaint with PW-1, Jayant Tari, the Deputy Collector at Panjim on 05.07.2007 seeking inquiry in the matter. PW-1, Jayant Tari recorded the statement of witnesses and by an order dated 16.08.2007, directed the Police Inspector, Ponda Police Station to register an offence and to investigate the matter. In pursuance of that, an FIR came to be registered against the respondents on 18.08.2007, under Section 306 read with Section 34 of IPC. The Investigating Officer carried out the investigation in which he recorded the statement of witnesses and drew a spot panchanama and after completion of the investigation, a chargesheet was filed, which eventually came to be committed to the Sessions Court at Mapusa. It is significant to note that the chargesheet was filed against the respondents for the offence punishable under Section 306 of IPC, however, the learned Sessions Judge by an order dated 27.05.2009, directed the charge to be framed against the respondents for the

offences punishable under Sections 302, 304B and 498A read with Section 34 of IPC. Accordingly, charge was framed on 17.08.2009, to which the respondents pleaded not guilty and claimed to be tried. The defence of the respondents is one of total denial and false implication. The respondent no. 1 claimed that when he woke up at 3:00 a.m., he did not find his wife i.e. Sneha in bed and found that she was hanging from the roof by a dupatta. He alerted the respondent nos. 2 to 4 and the body was brought down, when Sneha was found dead.

4. The prosecution examined in all ten witnesses at the trial and produced the record of the investigation. The respondents neither entered into the witness box, nor examined any defence witness.

5. The learned Sessions Judge, on appreciation of material on record, came to the conclusion that Sneha met with a suicidal death. The learned Sessions Judge further held that the prosecution evidence did not bring out that Sneha was harassed in connection with the demand for dowry. In that view of the matter, the learned Sessions Judge, by the impugned judgment and order dated 03.07.2014, acquitted all the respondents of the offences, as alleged.

6. We have heard Shri Amonkar, the learned Additional Public Prosecutor for the appellant and Shri Menezes, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, we have gone through the record and the impugned judgment.

7. It is submitted by Shri Amonkar, the learned Additional Public Prosecutor for the appellant, that Sneha died a homicidal death as it was unlikely for Sneha, who was carrying a pregnancy of eight month's, to commit suicide. It is submitted that there were two sacks found in the corner of the roof, below the dupatta. It is submitted that it is not possible for a lady in eighth month of her pregnancy to bring those sacks in the room and hang herself after climbing on the sacks. It is submitted that the respondent no. 1 was in the very same room where Sneha was found hanging and it is highly improbable that the respondent no. 1 was unaware of the incident in which Sneha hanged herself. It is submitted that this is a case, where Sneha was done to death by strangulating her and then an attempt is made to pass it off as a suicide. It is submitted that the learned Sessions Judge was not right in holding that the death of Sneha was suicidal in nature. The learned Additional Public Prosecutor

has taken us through the evidence of PW-1, PW-2, PW-7, PW-8 and PW-9 in order to submit that there is sufficient evidence of ill-treatment meted out to Sneha, on account of dissatisfaction of the respondents, due to inadequacy of the gold ornaments and money given at the time of the marriage and non-satisfaction of the demand, subsequent to the marriage, by the parents of Sneha. It is submitted that the evidence of these witnesses is natural and one inspiring confidence and the learned Sessions Judge was not justified in refusing to place reliance on the said evidence. He, therefore, submits that this is a case where the view taken by the learned Sessions Judge is an impossible view, which militates against the weight of the evidence on record, requiring interference by this Court.

8. On the contrary, it is submitted by Shri Menezes, the learned Counsel for the respondents, that there is no evidence to suggest that Sneha met with a homicidal death. The learned Counsel has referred to the evidence of Dr. Andre Fernandes (PW-6), who has opined that there was nothing to suggest that the death was homicidal. It is submitted that once the death is found to be suicidal, the commission of the offence under Section 302 of IPC is ruled out. Insofar as the offence punishable under Section 304B of IPC is concerned, it is submitted that the

necessary ingredients of ill-treatment and that too, on account of a demand or non-satisfaction of a demand of dowry is not established on record. It is submitted that the view taken by the learned Sessions Judge is a plausible view. The learned Counsel submits that there is evidence on record to show that the respondent no. 1 had opened a shop, which was run by Sneha and this negates the claim that Sneha was ill-treated after her marriage. He, therefore, submits that no case for interference is made out.

9. We have carefully considered the circumstances and the submissions made and we find that no case for interference is made out. The respondents were tried, *inter alia*, for the offence punishable under Section 302 of IPC. It is, therefore, necessary for the prosecution to establish that Sneha died a homicidal death. It would, therefore, be necessary to find out if there is evidence to show that Sneha died a homicidal death. In this regard, it is significant to note that the Investigating Officer had come to the conclusion that it was a case of suicidal death and that is how the charge was filed alleging offence under Section 306 read with Section 34 of IPC. The learned Sessions Judge, however, in his discretion directed framing of charge under Sections 302, 304B and 498A read with Section 34 of IPC.

The appellant-State did not challenge the said order. The fact remains that even as per the Investigating Officer, this was a case of Sneha meeting with a suicidal death and not a homicidal one. Be that as it may, PW-6 Andre Fernandes had conducted autopsy on the dead body of Sneha on 21.05.2007, in which he found only one injury namely a ligature mark in the form of pressure abrasion, present all along the neck, 33 cms. in circumference and 1.5 cms. in width. Except this, there are no injuries found on the dead body. PW-6 Andre Fernandes gave the cause of death as due to hanging. He further stated that based on the autopsy finding, there is nothing to suggest that the death was homicidal. He further pointed out that the possibility of a homicidal death cannot be ruled out and, this is because, a woman carrying eight month's pregnancy, in normal circumstances, would not commit suicide. This later part of the evidence, where PW-6 Andre Fernandes suggested that the possibility of a homicidal death, cannot be ruled out, cannot be said to be an expert opinion where the opinion is based on the fact that normally a woman carrying eight month's pregnancy would not commit suicide. The part of the evidence, which can be treated as an expert opinion, clearly shows that based on the autopsy finding, there was nothing to suggest that the death was homicidal. In this case, the dupatta which was found hanging

from the roof was not seized by the Investigating Officer and, therefore, it was not referred to the witness during the course of his evidence. The witness, however, states in the cross examination that it is possible that the ligature mark could be that of dupatta. Thus, the submission on behalf of the appellant that this is a case of a homicidal death, which cannot be accepted. Even in the evidence of PW-6 Andre Fernandes there was nothing to suggest that the death was homicidal in nature. The possibility of an act, where the deceased was forcibly hanged, is also ruled out in this case. The other possibility is that Sneha was first strangled to death and then hanged, in an attempt to pass it off as a suicidal death. However, this aspect is also ruled out, in view of the evidence of PW-6 Andre Fernandes, in which the witness has categorically stated that in such a case, there has to be strangulation marks, marks of injury and marks of resistance on the body "unless the person is intoxicated by any alcohol or drug". There is nothing on record to show that Sneha was incapacitated on account of any intoxication or sedation. Thus, the absence of any other injuries on the body, except a ligature mark, in our considered view, firmly rules out that the death was homicidal in nature. In the wake of evidence of PW-6 Andre Fernandes, it is not possible to hold that the death is homicidal, only on the ground that

normally, a woman carrying eight month's pregnancy would not venture to commit suicide. We have carefully gone through the finding recorded by the learned Sessions Judge, in which the learned Sessions Judge has come to the conclusion that the death was suicidal and we find no reason to take a different view. At the cost of repetition, it needs to be stated that the Investigating Officer had, in fact, filed the chargesheet alleging an offence under Section 306 of IPC. Unfortunately, the State did not challenge the order of the learned Sessions Judge, directing framing of charge, *inter alia*, amongst others under Section 302 of IPC. Once, it is held that Sneha met a suicidal death, the commission of offence under Section 302 of IPC is entirely ruled out and no exception can be taken to the acquittal of the respondents from the said offence.

10. This takes us to the offences under Section 304B and Section 498A of IPC. Undisputedly, the death of Sneha occurred under unnatural circumstances and within seven years of her marriage. The only question is whether, it is shown that soon before her death, Sneha was subjected to cruelty or harassment "for or in connection with any demand for dowry". In this regard, it would be necessary to look into the evidence of PW-2 Rohidas Naik and PW-7 Rohini Naik, who are the parents of

Sneha. PW-8 Madan Kharanjekar, who is their neighbour and PW-9 Deepali Naik who is the younger sister of Sneha.

11. It has come in the evidence of PW-2 Rohidas Naik that Sneha was working in a cloth shop by name 'Selection Corner' at Ponda. The respondent no. 1 started following her and was forcing her to marry him. Initially, Sneha was not ready to marry respondent no. 1 "as the respondent no. 1 was having a dark complexion". However, on account of insistence by respondent no. 1, she agreed to marry the respondent no. 1. It is the evidence of PW-2 Rohidas Naik that Sneha was being ill-treated by the respondents claiming that she was not knowing to cook and that she was being asked to cook on a hearth (Chulah). The respondent nos.2 and 3 were harassing Sneha on the ground that she had brought inadequate gold ornaments and utensils, during her marriage. It is further the evidence of PW-2 Rohidas Naik that Sneha complained about she being ill-treated and insisted the respondent no. 1 to stay separately, which the respondent no. 1 did not agree. On 06.11.2006, PW-2 Rohidas Naik gave gold earrings to Sneha on the eve of 'Navdurga Zatra'. It has further come in the evidence that Sneha became pregnant and that respondent no. 3 i.e. her mother-in-law escalated the harassment in which Sneha was asked to get up at 5:00 in the

morning and to do cooking on the hearth (chulah) and she was not allowed to cook on the gas stove and to use the mixer and was asked to do the grinding on the grinding stone. He further claims that the respondent no. 1 had demanded Rs.70,000/- from him, which PW-2 Rohidas Naik could not afford to give and there was yet another demand of Rs.35,000/- on 18.05.2007. It is significant to note that the statement of PW-2 Rohidas Naik was recorded by the Investigating Officer on 18.08.2007 i.e. close to three months after the incident. PW-2 Rohidas Naik even went on to say that the statement was not recorded, as per his say. Cross- examination of PW-2 Rohidas Naik reveals that the material part of the evidence about the ill- treatment and the demand of money is by way of an improvement. There are several improvements and omissions that have come on record in the cross examination of PW-2 Rohidas Naik. PW-7 Rohini Naik had lodged a complaint with PW-1 Jayant Tari, the Deputy Collector on 05.07.2007, when the incident had happened on 21.05.2007, which is clearly belated.

12. PW-7 Rohini Naik has also stated about the ill-treatment meted out to Sneha and the demand of money. However, here again, the statement of PW-7 Rohini Naik is recorded on the same date as that of PW-2 Rohidas Naik i.e. on

18.08.2007 and the material part of the evidence of PW-7 Rohini Naik is by way of an improvement over the police statement. There are several other omissions recorded in the cross examination of this witness, which are on material aspects of the evidence about the demand of dowry.

13. PW-8 Madan Kharanjekar is staying in the rented premises belonging to PW-2, Rohidas Naik, who claims that five months after the marriage of Sneha with respondent no. 1, he had visited the house of Rohidas, where he met Sneha. Subsequently also, he had an occasion to meet Sneha two to three times and during the said visit, he has "heard Sneha telling her parents that her parents-in-law were harassing her". This witness does not claim that the deceased had narrated the incident about her ill-treatment to him. All that he has stated is that he had "heard", while Sneha was narrating about her ill-treatment, to her parents. The statement of this witness was recorded on 23.08.2007. We find that the evidence of PW-8 Madan Kharanjekar is too casual and perfunctory to be accepted. Apart from the fact that the statement of the witness is recorded belatedly i.e. more than three months of the incident, there are several omissions brought on record and we do not find that the evidence of PW-8 Madan Kharanjekar inspires confidence.

14. PW-9 Deepali Naik is the younger sister of Sneha, who states that Sneha as well as her parents initially did not agree to the proposal of marriage of Sneha with the respondent no. 1. She states that one Josna, who was the close friend of Sneha pressurized Sneha to marry with respondent no. 1. PW-9 Deepali Naik states in her evidence that when she visited the matrimonial house of Sneha, respondent no. 3 i.e. mother-in-law of Sneha was scolding her saying that she has to do the household work speedily. Although, this witness states that the respondents were “not behaving with Sneha nicely and used to scold her”, there is nothing in the evidence of PW-9 Deepali Naik that it was on account of demand of dowry. Here again, the statement of PW-9 Deepali Naik was recorded belatedly i.e. on 02.10.2007.

15. On a careful reading of the evidence of PW-2, PW-7, PW-8 and PW-9, we are unable to hold that the prosecution has established that Sneha was being ill-treated on account of demand of dowry, which is the necessary ingredient to be established by the prosecution to bring home the charge under Section 304B of IPC. It is now well settled that “dowry”, within the meaning of Section 304B of IPC, has the same meaning, as

assigned to it, in Section 2 of the Dowry Prohibition Act, which requires that such a demand should be in consideration of marriage. Apart from the fact that the demand, which is stated by PW-2 Rohidas Naik and PW-7 Rohini Naik, is not established, the demand also cannot be said to be in consideration of marriage, within the meaning of Section 2 of the Dowry Prohibition Act. It has come on record that, in fact, the respondent no. 1 had opened a shop to be run by Sneha at Ponda.

16. We are conscious of the fact that in this case, a girl, who was carrying a pregnancy of eight month's, has met with an unfortunate death, within seven years of her marriage. However, given the evidence on record, there is no other option than to affirm the finding recorded by the learned Sessions Judge. The legal position as to the scope and ambit of interference available and permissible in an appeal against acquittal is now well settled. The Appellate Court cannot interfere unless the view taken by the learned Sessions Judge is perverse or is an impossible view (See: **Chandrappa and others Vs. State of Karnataka, 2007 4 SCC 415**). We do not find that the finding recorded by the learned Sessions Judge is perverse or is an impossible view. In that view of the matter, no case for

interference is made out.

The Criminal Appeal is accordingly dismissed.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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