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*IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION**CRIMINAL APPEAL NO.388 OF 1997*

Ankush Bhiku Pandhare,
Age: 34 years, Occu: Service,
R/o. Bhavaninagar, Taluka
Indapur, District Pune.

..Appellant.

V/s.

The State of Maharashtra

..Respondent.

Mr.Rupesh Atul Zade for the Appellant.

Mr.Deepak Thakre, APP for the Respondent-State.

CORAM : P.N.DESHMUKH, J.

DATE : 9 MAY 2017

ORAL JUDGMENT

This is an appeal filed by the Appellant-original accused against the judgment and order dated 30 June, 1997 passed by the Additional Sessions Judge, Baramati in Sessions Case No.62/1995 whereby the accused came to be convicted for the offences punishable

under section 498A and 306 of the Indian Penal Code and sentenced to suffer R.I. for three years and to pay a fine of Rs.1,000/- i/d. to suffer R.I. for three months for offence punishable under section 498A of the Indian Penal Code and for offence punishable under section 306 of Indian Penal Code to suffer R.I. for five years and to pay a fine of Rs.1,000/- i/d to suffer R.I. for nine months. Both the sentences are directed to run concurrently. The original accused Nos.2 and 3, the parents of the Appellant are acquitted of the above charges.

2. In brief, it is the case of the prosecution that deceased Rani @ Mangala was married to Appellant on 31 December, 1987 and thereafter she was co-habiting with the Appellant at his native place Bhavani Nagar, while the Appellant used to visit Pune as he used to work there. It is the case of the prosecution that from the date of the marriage till 31 January, 1995, deceased was treated good. However, thereafter was harassed and subjected to beating on the ground that deceased has brought less articles from her parents' house in marriage and for this reason, they were demanding money for purchasing plot, gold ring, etc. However, the parents of the deceased since could not satisfy the unlawful demand, deceased committed suicide on 31 January, 1995 by consuming

poison and died while under medical treatment at Sassoon Hospital, Pune on 1 February, 1995.

3. The information about the death of Mangala was given by the Hospital authorities to the Bund Garden police station, who informed about the same to Walchandnagar police station where Accidental Death No.5/1995 was registered and was investigated by PW13 Lalit Pandule, PSI. Post mortem was performed by PW15 Dr.Rajendra Zope and he certified that the death of the deceased was caused due to poisonous substance. PW13 Lalit Pandule during the course of inquiry recorded statements of PW1 Shantabai and on the basis of her report Exhibit-26, registered offence vide Crime No.6/ 1995 and further investigated the case. He prepared the spot panchanama Exhibit-33 and recorded statements of witnesses and after completion of investigation, filed charge-sheet in the Court of learned Judicial Magistrate First Class, Indapur. In the course of time, the case came to be committed for trial to the Sessions Court. Charge came to be framed against the accused who pleaded not guilty and claimed to be tried. The defence of the accused is total denial and false implication in the case.

4. To establish the charge against the accused, prosecution has examined as many as 15 witnesses. PW1 Shantabai is the mother of the deceased who has lodged report Exhibit-26. PW3 Dr.Mahadeo, PW6 Dr.Ransingh Wable and PW7 Dr.Harischandra to whom Mangala was referred after she had consumed poison. PW2 Rajendra is the brother of the deceased. PW4 Laxman is the grand father of the deceased. PW5 Suryaban Dhakane who has proved spot panchanama Exhibit-33. PW8 Vijaya, the complainant's sister, PW9 Tukaram, the father of the deceased, PW10 Saraswati is the neighbourer of the Appellant and the deceased. PW11 Hanumant Waghmode is the cousin brother of the deceased. PW12 Naryan Pethe, the Police Head Constable attached to Walchandnagar Police Station, who carried the viscera to the Chemical Analyser's office. PW13 P.S.I. Lalit Pandule is the investigation officer. PW14 Laxman Bhosale is the police officer who recorded the report Exhibit-26 and registered the offence vide Crime No.6/1995. The learned trial Judge considering the evidence of various witnesses and documents proved on record, convicted the Appellant as aforesaid. Hence this appeal.

5. Heard the learned counsel for the Appellant and learned APP. He submitted that from the evidence of the witnesses namely,

complainant, the mother, brother and other relatives of the deceased, no case is made out by the prosecution establishing ingredients required for the offence under section 498A of the Indian Penal Code. It is also contended that the learned trial Judge has erroneously relied upon the letters alleged to be written by the deceased during her lifetime to her family members, alleging ill-treatment provided out to her by the Appellant and his parents contending that no investigation is carried out to establish that the letters on record at Exhibits 21 to 25 are in the handwriting of the deceased and thus contended that the evidence in the form of letters as aforesaid requires to be discarded on this ground itself. It is, therefore, submitted that in the absence of sufficient evidence no case is made out against the Appellant to establishing his involvement for an offence under section 498A of the Indian Penal Code.

6. With regard to the case of the prosecution for the offence punishable under section 306 of the Indian Penal Code, it is submitted that there is absolutely no evidence establishing that immediately prior to deceased committing suicide, the Appellant has in any manner abetted the commission of the same as it was contended that, according to the prosecution case, the alleged quarrel between the deceased and accused

took place at the time of marriage of Bharat, brother of the accused, on 27 December, 1994 and since the deceased, as per the case of the prosecution, has consumed poison on 31 January, 1995, it cannot be said that there was any kind of abetment by Appellant to deceased to commit suicide and, therefore, learned counsel for Appellant prays that the appeal be allowed.

7. The learned APP has contended that from the evidence on record Appellant's involvement in the present crime is clearly established and has thus submitted that the appeal be dismissed. The learned APP has supported the impugned judgment and order.

8. In the background of submissions as aforesaid, on considering evidence of PW1 Shantbai, it reveals that the deceased was married to the Appellant on 31 December, 1987 and since marriage, the Appellant was working at Pune while the deceased was residing with her in-laws at Bhavani Nagar in Indapur Taluka, District Pune situated at a distance of 100 Kms from Pune. With regard to the alleged harassment provided by Appellant to deceased, evidence of PW1 Shantabai appears to be too vague as according to her, after marriage, deceased was treated

well for about one year and was thereafter subjected to ill-treatment. In fact, it is found from the evidence of Shantabai that the ill-treatment was in fact alleged to have been provided to her by Indubai, mother of the Appellant, who is already acquitted.

9. From the evidence of the complainant PW1 Shantabai, it has further come on record that during her lifetime, deceased had sent letters on record marked as Exhibits 21 to 25 and by all these letters, she had communicated that she was subjected to ill-treatment at the hands of the Appellant-accused and his parents. On perusal of the impugned judgment, the learned trial Court in paragraphs 27 and 29 relied upon the said letters and on reading the contents thereof, has held that from the letters it is established that the deceased was subjected to ill-treatment during her lifetime. The approach of the learned trial Judge in relying upon these letters, is not at all acceptable having considering the fact that there is no investigation on record as to whether the letters Exhibits-21 to 25 are in the handwriting of the deceased. Admittedly, no specimen handwriting of the deceased was obtained during investigation nor it is the case of the prosecution that any notebook or any other note in the handwriting of deceased was seized and the same was sent along with the

alleged letters to the Handwriting Expert to obtain opinion if the letters are in fact in the handwriting of the deceased or otherwise. In absence of any such evidence on record, the learned trial Judge has come to the conclusion from these letters that deceased Mangala had informed about her ill-treatment to her parents. It is material to note that the learned trial Judge on considering contents of the letters Exhibits 21 to 25 had in fact observed that these letters does not establish that there was any harassment to the deceased on account of demand of plot, gold ring or utensils. From the evidence of PW1 Shantabai, PW2 Rajendra, PW8 Vijaya and PW10 Saraswati, it is stated that they heard about having harassment to Mangala only from the letters sent by her, however, in view of admitted fact of having no investigation carried out on this aspect, evidence of PW1 Shantabai, PW2 Rajendra, PW8 Vijaya and PW 10 Saraswati is not at all credible. In that view of the matter, there is absolutely no evidence to establish that deceased was in any manner subjected to ill-treatment within the meaning of section 498A of the Indian Penal Code.

10. With regard to the charge for the offence punishable under section 306 of the Indian Penal Code is concerned, on considering further

evidence of PW1 Shantabai, it has come on record that on 28 December, 1994 the Appellant visited their house and had invited for marriage of his brother Bharat which was to be performed on 27 December, 1994 at Village Nirgude. Accordingly, Shantabai, PW2 Rajendra and PW8 Vijaya and other relatives attended the said marriage. Shantabai's evidence further reveals that on that day quarrel took place between the deceased and her mother-in-law Indubai when Appellant beat the deceased. Similar is the evidence of PW8 Vijaya. However, it is material to note that besides the evidence of alleged beating on 27 December, 1994, there is absolutely no evidence that after this incident any incident took place establishing mental or physical ill-treatment or torture or beating provided to deceased by the Appellant due to which she consumed poison on 31 January, 1995 and died of the same on 1 February, 1995. In that view of the matter and considering the long time gap, by no stretch of imagination it can be said that the act of suicide by deceased Mangala on 31 January, 1995 is on account of harassment or beating by the Appellant on 27 December, 1994.

11. The case of prosecution is even otherwise doubtful, from its inception as from the evidence of Shantabai, it has come on record that

after deceased had consumed poison on 31 December, 1995, she died while under medical treatment at the Sassoon Hospital, Pune on 1 February, 1995 and that after her death, the hospital authorities had informed Bund Garden police station about the death of Mangala who in turn informed Walchandnagar police station as said incident took place within its jurisdiction when A.D. was registered. It is, therefore, found that while investigating the crime, police arrived at the house of the complainant at Kasarwadi on 6 February, 1995. Spot panchanama was drawn on 5 February, 1995. It is the not case of the complainant that she has lodged her complaint with the police on her own. In fact, Shantabai has admitted that in her presence, inquest panchanama was carried out by the police in Sassoon Hospital and even at the time of performing post mortem, other relatives were present. In spite of that, it is noted that there was no complaint lodged with the police.

12. From the evidence of PW1 Shantabai it is further come on record that 5 to 6 days thereafter, on 5 February, 1995 Police Officer of Walchandnagar police station came to her house at Pune and had specifically called her to police station on 7 February, 1995 where she lodged the report Exhibit-26. As per her evidence, she has lodged the

report at the instance of police. In view of evidence as evidence as aforesaid, it cannot be said that PW1 Shantabai wanted to lodge report after the death of the deceased. It, therefore, goes to establish that deceased had not committed suicide for reasons as put forth by the prosecution and, therefore, Shantabai never wanted to lodge her report. However, it is noted that at the instance of police, seven days after the death of Mangala, the report came to be lodged by her as insisted by police.

13. On considering the evidence on record as aforesaid, as prosecution is found to have failed to establish the charge against the Appellant, appeal is liable to be allowed by setting aside conviction and sentence awarded by the trial Court. In the result, appeal is allowed. The Appellant is on bail. His bail bond stands discharged. Fine amount, if paid, be refunded back to the Appellant.

(P.N.DESHMUKH, J.)

