

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.382 OF 2002

State of Maharashtra.] ... Appellant

Versus

1. Bhikaji Vithu Chougule.	]	
Age – 50 years, Occu. - Agri.	]	... Appeal abated
		as per order dtd.27/11/15
2. Minabai Bhikaji Chougule.	]	
Age – 40 years, Occu. - Household work.	]	
3. Namdeo Bhikaji Chougule.	]	
Age – 27 years, Occu. - Agri.	]	
All residents of Lolane, Taluka - Shahuwadi,	]	
District – Kolhapur.	]	... Respondents

Mr. S. R. Agarkar, APP for State - Appellant.
Mr. Sanjiv P. Kadam for Respondents.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 30 NOVEMBER, 2017

JUDGMENT :-

1. This is an Appeal filed by the State of Maharashtra against the Judgment and Order dated 18/12/2001 passed by the 4th Ad-hoc Additional Sessions Judge, Kolhapur in Sessions Case No.104 of 2001. By the said Judgment and Order, the learned Trial Judge was pleased to acquit the original accused nos.1, 2 and 3 who are the Respondent

Nos.1, 2 and 3 in the present Appeal, from the charges of commission of offences punishable under Sections 498A, 306, 323 and 504 read with 34 of the IPC.

2. During the pendency of the Appeal, the Respondent No.1 expired on 15/07/2006 and therefore vide the order dated 27/11/2015, the Appeal stood abated as far as the Respondent No.1 was concerned. As against the other two Respondent Nos.2 and 3, the Appeal was pending

3. I have heard the learned APP for State – Appellant and Mr.Sanjiv Kadam for the Respondent Nos.2 and 3.

4. The case relates to the death of one Shantabai who was the wife of the Respondent No.3. The Respondent No.2 is the mother-in-law of the deceased Shantabai and the Respondent No.1 was the father-in-law of the deceased Shantabai. As per the prosecution case, Shantabai's dead body was found by her husband (Respondent No.3) floating in a well on 23/11/2000 at 4.00 p.m. He lodged accidental death report at Shahupuri Police Station, Kolhapur and it was mentioned in the said report that his wife had committed suicide. Subsequently on 25/11/2000, the brother of the deceased lodged his FIR and an offence was registered vide C.R.No.136 of 2000 at Shahupuri Police Station. According to the first informant Dhanaji; the father-in-law i.e. the Respondent No.1 of the deceased Shantabai was trying to develop illicit relationship with her. The other accused

were ill-treating her and therefore she committed suicide. The body was sent for post-mortem examination and the opinion in respect of cause of death was reserved till the receipt of the report of analysis of viscera. On the receipt of viscera report, the cause of death was given as 'Asphyxia due to drowning'. The accused nos.1 and 3 were arrested on 25/11/2000 and the accused no.2 was arrested on 29/11/2000. The police conducted investigation and after completion of investigation, filed the charge-sheet. After filing of the charge-sheet, the case was committed to the Court of Sessions for trial and the charges were framed under Sections 498A, 306, 323 and 504 read with 34 of the IPC.

5. Perusal of the evidence shows that the prosecution had examined mostly the relatives of deceased Shantabai and the residents of her parental village. PW 1 Dhanaji Dnyandeo Arshekar was the brother of the deceased and he had lodged his FIR on 24/11/2000. According to him, the deceased Shantabai was his sister and had got married to the Respondent No.3 seven years prior to the incident. According to him, the Respondent No.3 was working in a bakery at Mumbai and Shantabai was staying at village Lolavane along with the Respondent Nos.1 and 2. The Respondent No.3 and Shantabai had a son and a daughter. The Respondent No.3 used to visit his house in the village once or twice a year. According to him, one year prior to the incident, Shantabai had come to their village and had informed that the Respondent No.1 was mentally and physically ill-treating her and that he, in fact, slept in the same bed with her. It is his case that

they called the Respondent No.3 from Mumbai and sent Shantabai with him. He has further deposed that one month prior to the incident, she had come to their house and had told him that the Respondent No.1 had kept illicit relations with her. This time again, the Respondent No.3 promised that such things would not be repeated and therefore again she was sent with him to their village. He further deposed that one day prior to the incident, Shantabai had come to their village and had informed him that the things had not improved, the Respondent No.3 had not paid any heed to the complaint and the accused were beating her. Thereafter on the next day, she was found dead in the well. Based on these allegations, he lodged his FIR which is exhibited at Exh.23 in the trial.

6. In the cross-examination, he has deposed that when his sister made grievance against the Respondent No.1, the other villagers were called and the Respondent No.3 was warned in their presence. According to him on the day when the dead body was taken out from the well, that time itself he had stated all these facts to the police and he has further added that after 15 days the police again called him by issuing notice and that time they recorded statements of the witnesses. He has admitted in his cross-examination that he had not stated before the police that the Respondent No.3 was called to their house when Shantabai made complaint against her father-in-law. He has also admitted that he has not mentioned in his police statement that Shantabai had told him that the Respondent No.1 was keeping illicit relations with her.

7. PW 2 Housabai Dnyandev Arshekar was the mother of the deceased Shantabai and she has deposed about the complaint made by Shantabai to her in respect of the immoral conduct of the Respondent No.1 with her. She has also deposed about the grievance made by Shantabai one month prior to her death and she had also referred to Shantabai's visit one day prior to the incident and her grievance being repeated. In her cross-examination, she has stated that Shantabai complained about her father-in-law when this witness was present alone in the house and that this witness herself had not disclosed this fact to anybody. She had also admitted that though Shantabai had made the grievance on three separate occasions, this witness still had not disclosed this fact to anybody on her own as she was worried about tarnishing her reputation. She has admitted that she has not stated before the police that the Respondent No.3 had promised that no such incident would occur in future. She has further admitted that they allowed cremation to take place in the village of the accused because at that time they had no complaint against them.

8. PW 3 Ananda Arshekar was the cousin of the deceased. He has deposed about the meeting which had taken place one month prior to the incident when the deceased had made grievance in respect of the behaviour of her father-in-law. In his cross-examination, he has admitted that when the police had reached the spot, that time none of them had made any complaint to the police. He has also admitted in his cross-examination that they had discussed amongst themselves as to what report should be given to the police.

9. PW 4 Anusaya Arshekar was the neighbour in Shantabai's village where her parents used to reside. She has deposed about the grievance made by Shantabai one month prior to the incident. This witness has referred to the fact that Shantabai had come to her place one day prior to the incident. In the cross-examination, she had admitted that she had not disclosed that Shantabai had made any grievance to her. The cross-examination also reveals that there was an important omission from her statement before the police regarding Shantabai's complaint against her father-in-law i.e. the Respondent No.1.

10. PW 5 Tarabai Arshekar was Shantabai's sister-in-law. She has also deposed about the grievance made by Shantabai one year prior to the incident in respect of the behaviour of the Respondent No.1. She has stated in her cross-examination that her statement was recorded on the third day after the dead body was recovered from the well.

11. PW 6 Balu Firake was the Sarpanch of the village and who had attended the aforesaid meeting which had taken place one month prior to the incident when Shantabai had made grievance against her father-in-law's behaviour. As per this witness, in this meeting, The Respondent No.1 was called and he had promised to treat Shantabai properly. Importantly, this witness has not stated that the accused no.3 i.e. the Respondent No.3 was called during this meeting and on this material aspect, his evidence is in variance with the evidence of

the other witnesses. In his cross-examination, he clearly admitted that though they had given statements before the police, all the statements were wrong and they wanted to give their fresh statements and when such fresh statements were recorded, that time they had made all these allegations.

12. PW 7 HC Tukaram Kamble was attached to Shahupuri Police Station and he had registered the ADR (which is at Exh.34) on 23/11/2000 lodged by accused no.3 i.e. the Respondent No.3.

13. PW 8 ASI Vasant Rannaware was the Investigating Officer. He had registered the FIR and conducted the investigation. He had recorded statements of various witnesses and had arrested the accused. The improvements in the depositions of different witnesses from their police statements were proved through his evidence.

14. After carefully perusing the evidence of all these witnesses, it is quite clear that all the allegations are specifically directed towards the Respondent No.1. Shantabai's main grievance was that the Respondent No.1 was trying to establish illicit relationship with her and therefore that appears to be the cause which had driven Shantabai to commit suicide. As far as the evidence against the Respondent Nos.2 and 3 is concerned, the deposition of all these witnesses show that there is absolutely no evidence against them in respect of ill-treatment. Only at two places, there is some vague reference of general nature that all the accused were ill-treating her

but that by itself does not establish that the ill-treatment was of such a nature which would fall within the four corners of Section 498A of the IPC or would fall within the meaning of 'abettment' under Section 107 of the IPC attracting Section 306 of the IPC. Even otherwise, the quality of evidence led by the prosecution is not such which would prove the prosecution case beyond all reasonable doubts. As deposed by the Sarpanch PW 6, all these witnesses had given their versions in first point of time and then they had termed those statements as incorrect and gave further statements where the allegations were made against the accused. This clearly establishes that all the allegations were made as an afterthought and were made to implicate the accused. The mother of the deceased has accepted that the cremation was allowed to take place in the village of the accused because at that point of time, they had no complaint against the accused persons. This again shows that all these witnesses who are either the relatives of deceased Shantabai or neighbours of her parents, have come together and have made such allegations. The learned Trial Judge has referred to such omissions and such conduct of all these witnesses and therefore it cannot be said that the approach adopted by the learned Trial Judge is perverse or unreasonable. I do not find that the reasoning given by the learned Trial Judge is perverse or that the benefit of doubt was wrongly given to the accused. The view taken by the learned Trial Judge is a possible view.

15. It is significant to note that the Appeal against the accused no.1 i.e. the Respondent No.1 is already abated because of his death.

In any case, the allegations were specifically directed against him and even those allegations were not substantiated by cogent evidence. There is no evidence against the present Respondent Nos.2 and 3 attracting any of the offences for which they are charged. Therefore, I have no hesitation in dismissing the present Appeal. As a result, the Appeal is dismissed.

(SARANG V. KOTWAL, J.)