

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 686 OF 1998

Mahendra @ Dada Vasant Patole
R/o. Ranjangaon Sandas, Tal. Shirur,
Dist. Pune.

... Appellant

Vs.

The State of Maharashtra

... Respondent

Mr. S. R. Phanase Court appointed Advocate for Appellant.
Mr. S. R. Agarkar APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATED : MAY 18, 2017.

JUDGMENT:

1) Appellant herein is convicted for offence punishable under section 304-B of Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years. Appellant is also convicted for offence punishable under section 498 (A) of the Indian Penal Code by Additional Sessions Judge, Pune in Sessions Case No. 383 of 1995 vide Judgment and Order dated 11/08/1998. However, no separate sentence has been passed for offence punishable under section 498 (A) of the Indian Penal Code.

2) Such of the facts necessary for the decision of this appeal are as follows.

(i) Appellant herein was married to Asha @ Laxmi on 21/04/1995. Asha happens to be a close relative of present appellant in as much as the mother of accused was maternal cousin of the father of Asha. That Asha had visited her maternal house on about three occasions after marriage. That on 02/06/1995, Asha had committed suicide by hanging herself in her matrimonial house. Appellant had immediately informed police patil of the village who had reported the incident to the police. Report was lodged at the police station. It was registered as Accidental Death No. 39 of 1995. In A.D. inquiry, statement of the appellant was recorded and he had disclosed that his wife had informed him that she has been forced to marry him and that she does not like him and therefore, she used to underestimate him. That since she had married him, against her wish, she had committed suicide. Parents of Asha were present in the matrimonial house during the course of A.D. inquiry. It *prima facie* appears that there was no grievance made by the parents of Asha and therefore, their statements may not have been recorded.

(ii) On 03/06/1995, father of Asha lodged a report at the police station alleging therein that at the time of marriage, it was agreed that they would pay amount of Rs. 5000/- towards dowry. Rs. 3000/- was paid at the time of marriage. According to him, he had gifted two golden rings at the time of marriage weighing 5 gms each and had also gifted utensils. It is further alleged that on 24/05/1995, father of Asha had been to visit her house at village Ranjangaon Sandas. He had stayed overnight. Mahendra and Asha had accompanied him to village Rahu. They had stayed there overnight. According to the complainant on 26/05/1995, he had taken newly wedded couple to Baramati to meet his elder daughter. At that time, co-brothers had been to watch movie. According to the complainant, Asha had complained to him that she was being ill-treated on account of non-payment of Rs. 2000/- and also that he suspected her character and that she has made to starve.

(iii) On 27/05/1995, Asha and Mahendra had left for village Ranjangaon Sandas. On 30/05/19995, complainant had visited the house of Asha to give her clothes. He had stayed overnight and returned to his village. On

02/06/1995, at about 6.00 p.m., he had received a message that his daughter Asha had committed suicide by hanging. According to the complainant, accused had suspected her character and had also demanded Rs. 2000/- which was the remainder of dowry amount and hence, she had committed suicide. On the basis of the said report, crime no. 383 of 1995 was registered at the police station against the appellant for offence punishable under sections 498 (A) and 304-B of the Indian Penal Code. After completion of investigation, charge-sheet was filed. Case was committed to the Court of Sessions and registered as Sessions Case No. 383 of 1995. Prosecution has examined as many as 8 witnesses to bring home the guilt of the accused.

3) The learned APP in support of Judgment and order passed by the Additional Sessions Judge has vehemently submitted that Asha had committed suicide in her matrimonial house not only within 7 years of marriage, but within hardly 5 weeks of marriage and therefore, it would be necessary to draw the presumption under section 113 (B) of Indian Evidence Act and confirm conviction.

4) This Court had requested Advocate Mr. S. R. Phanase to espouse the cause of the appellant and he has graciously gone through the records and proceedings and advanced his submissions.

5) The learned counsel appointed for the appellant has drawn the attention of this Court to the substantive evidence of the parents of Asha which would be a relevant factor for considering the aspect of demand of dowry in close proximity to the death of Asha.

6) P.W. 1 Ganpat Khandale has deposed before the Court in consonance with F.I.R. lodged by him which is marked at Exhibit 8. He has reiterated before the Court that Asha had disclosed to him that accused/appellant is suspecting her chastity. He has further reiterated that on 29/05/1995 he had been to the house of Asha to deliver her clothes. He had stayed overnight and on third day of his return Asha had committed suicide.

7) In the cross-examination, the complainant has deposed before the Court that the mother of the accused happens to be his maternal cousin. That

accused was adopted by his grand mother i.e. mother of his father. He has further admitted that at the time of settlement of marriage, there was no mediator and both families had decided to get the appellant married to Asha. Parents of Asha as well as parents of the accused are agricultural labours. It is also admitted that Asha had visited her maternal house on three occasions after marriage. During her first visit, there was no grievance against accused. Within two weeks thereafter, she had again visited her maternal house. She had re-visited her maternal house within a week thereafter. He has also admitted that after hearing the grievance of Asha, he had made no attempts to convince the adopted parents of the accused since the marriage was recent. He has also admitted that when he had been to visit Asha three days prior to her suicidal death he was given reasonable treatment at her house. That at night, family members as well as Asha and her in-laws were in a jovial mood. It also appears that there are inherent omissions in the evidence of P.W. 1. It is also admitted that on 02/06/1995, upon hearing the news of his daughter's death, he had immediately visited the house of the accused, however, F.I.R. was lodged on 03/06/1995 after 6.00 p.m.

8) P.W. 2 Aruna Khandale happens to be mother of the deceased Asha. She has reiterated the contentions of P.W. 1.

9) P.W. 3 Sitabai Bhosale is the Panch for inquest Panchanama. P. W. 4 Sitabai patole is the neighbour of the appellant. She has been declared hostile. P.W. 5 Savita Patole is the neighbour who had visited the house of the accused. She has been declared hostile by the prosecution. P.W. 6 Anilkumar Reddy is the Medical Officer who had conducted autopsy on the dead body of deceased Laxmibai Patole on 3rd June 1995 at about 9.00 a.m. Except the ligature mark, there were no other external injuries on the person of Asha. P.W. 7 Sathu Mali is the Police Officer who had registered A.D. no. 39 of 1995 and had conducted A.D. inquiry. He has admitted in the cross-examination that he has received complaint at Exhibit 8 on 03/06/1995 at about 9.10 p.m.

10) No plausible explanation is offered for the delay in lodging F.I.R., although the parents were present at the time of A.D. inquiry. P.W. 7 has proved the omissions and contradictions in the statement of P.W. 1. He has

also admitted that house of the accused is surrounded by several houses.

11) P.W. 8 Sanjay Nikam is A.P.I. of Crime Branch who had investigated crime no. 65 of 1995. He had filed charge-sheet on 30/07/1995. He has admitted in the cross-examination that he had recorded the statement of material witnesses on 4th and 6th June, 1995. He has also admitted that he had recorded statement of Dada Ganpat Khandale and Taibai Dada Khandale. The lacunas in the course of investigation are admitted in the cross-examination.

12) It is pertinent to take into consideration the statement of the accused which was submitted under section 313 (2) of Code of Criminal Procedure, 1973. He has specifically contended in his statement under section 313 of Code of Criminal Procedure, 1973 that his wife had disliked him and she was forced to marry him against her will. It is contended that Asha had disclosed to the neighbours that she did not like the accused. According to him, she was beautiful and that his appearance did not match her beauty and she was frustrated due to this fact. He has further contended that just three days before the marriage when his father-in-law had visited him, they were all in a happy

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mood as admitted by P.W. 1 in his cross-examination.

13) It appears that the learned Sessions Judge has lost sight of the explanation offered by accused under section 313 (2) of Code of Criminal Procedure, 1973. The marriage had subsisted for hardly 5 weeks during which she had visited her parents house on three occasions. The couple had also been to Baramati to visit the house of her sister. Despite the fact that parents of the accused and the deceased were close relative, as admitted by P.W. 1, he had not even questioned the relatives about the grievances made by deceased daughter Asha and according to him, marriage was too recent to stretch any grievance further. All this would clearly indicate that there was no harassment meted out to Asha.

14) The explanation offered by the accused under section 313 of Code of Criminal Procedure, 1973 is not merely a defence as he had disclosed the same to the police soon after her death in his statement which was recorded in A.D. inquiry, he had specifically stated that on the day of the incident, he had been to watch a movie (Tejaswini) in the video parlour and that after he

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returned, he knocked the door of his room. The door was not opened by Asha. He had to break open the door and was shocked to see Asha hanging to rafter in his room. He had called the neighbours and had also informed the police patil about the same. He had specifically stated that Asha underestimated him because of his appearance and that she did not like his appearance and personality and therefore, she had committed suicide. The explanation needs to be taken into consideration. Moreover, parents of Asha had not specifically stated that she was harassed on account of demand of dowry. Instead, P.W. 1 has admitted that just three days before her death, he had visited her house and stayed overnight. There was no grievances and they all were in a joyful mood.

15) Taking into consideration the evidence of the parents, statement of the accused under section 313 (2) of Code of Criminal Procedure, 1973, accused deserves to be acquitted of the charge under section 304-B and under section 498 (A) of the Indian Penal Code. Hence, following order.

ORDER

- (i) Appeal is allowed.
- (ii) The Judgment and Order dated 11/08/1998 passed by Additional Sessions Judge, Pune is hereby quashed and set aside.
- (iii) Appellant is acquitted of the offence punishable under section 304-B and 498 (A) of the Indian Penal Code.
- (iv) Bail bonds of the appellant stand cancelled.
- (v) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)