

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.965 OF 2001

The State of Maharashtra

.Appellant

Vs.

1. Vilas Bhagawan Chavan, Age : 27 yrs. .Respondents
2. Satish Bhagawan Chavan, Age : 22 yrs.
3. Radhubai Bhagawan Chavan, Age : 45 yrs.
4. Kum. Kavita Bhagawan Chavan, Age : 18 yrs.

All R/o. Surli, Taluka - Karad, District - Satara

Mr.Y.M.Nakhwa, APP, for the Appellant - State
None for the Respondents

CORAM : REVATI MOHITE DERE, J.

DATE : 08.05.2017

ORAL JUDGMENT

. By this Appeal, the Appellant - State of Maharashtra has impugned the Judgment and Order dated 31.08.2001 passed by the learned Additional Sessions Judge, Karad in Sessions Case No.112 of 2000 acquitting the Respondent - accused of the offences punishable under Sections 306, 498A, 323 & 504 r/w.34 of the Indian Penal Code.

2. A few facts as are necessary are stated as under :-

The deceased - Surekha was married to Respondent No.1 - Vilas Chavan on 08.03.1996. Initially, for about eight days after marriage, Surekha was treated well. Thereafter, according to Surekha, the Respondents were not behaving properly with her. She has stated that Respondent No.1 would abuse and assault her with fist and kick blows; that the Respondent No.2 - Satish, her brother-in-law was trying to get intimate with her and would leave no opportunity to do the same; that the Respondent No.3 - Radhubai would abuse and assault her and would state that she did not know cooking, was not behaving properly and would starve her; and that the Respondent No.4 - Kavita, who was 18 at the relevant time, would also abuse and assault her. She has stated that being fed up with the ill-treatment, on 31.05.1996 at 12.00 noon, when nobody was in the house, she consumed some poisonous substance, as a result of which she started vomiting and became unconscious. She has stated that she was admitted by the Respondent - accused in Krishna Charitable Hospital, Karad. She has stated that she regained consciousness, pursuant to which her statement dated (10.06.1996) was recorded. On 24.06.1996, Surekha expired, pursuant to which her statement dated 10.06.1996 was treated as an FIR, and accordingly, C.R.No.93 of 1996 was registered, on 24.06.1996 as against the Respondent - accused. The offences

alleged were Sections 306, 498A, 323 & 504 r/w.34 of the Indian Penal Code. After investigation, charge-sheet was filed in the Court of the learned Magistrate. As Section 306 was triable by the Court of Sessions, the case was committed to the Court of Sessions. Charge was framed on 24.04.2001. The Respondent - accused pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication.

3. The prosecution in support of its case examined five witnesses; PW.1 - Anandrao Bajirao Jadhav, father of the deceased; PW.2 - Dr. Mohan Yeshwant Patil, the Dr. who performed the post mortem; PW.3 - Ishwar Sangappa Sutar, the officer who investigated the case; PW.4 - Mahadeo Annarao Patil, who recorded the statement of Surekha and PW.5 - Dr. Mrs. Navina Brid, in whose presence Surekha's statement dated 10.06.1996 was recorded. The learned Sessions Judge after considering the evidence on record was pleased to acquit the Respondent - accused of all the offences with which they were charged. The Respondent - accused in support of their defence examined DW.1 - Vasant Kashinath Jadhav, a Mediator, who had settled the marriage and the dispute after marriage.

4. Perused the papers, the evidence on record and the impugned Judgment and Order.

5. The learned Sessions Judge was pleased to acquit the Respondent - accused of all the offences/charges, as the prosecution had failed to prove its case beyond reasonable doubt. The learned Sessions Judge has observed that PW.1 - Anandrao Jadhav had infact supported the defence, in his cross-examination. He further observed that PW.1 had admitted in his cross-examination, that the entire hospital expenses were borne by the Respondent - accused, even after she had regained consciousness; that during his stay at the hospital with his daughter, he had not made any complaint as against the Respondent - accused, about the alleged ill-treatment meted out to her; and that the deceased was in the hospital for 24 days, and as such, he had ample opportunity to lodge a complaint. As far as PW.4 - Mahadeo Patil and PW.5 - Dr. Mrs. Navina Brid are concerned, the learned Sessions Judge has disbelieved their testimony, in view of the several lacunae in their evidence. The learned Sessions Judge has accepted the evidence of the defence witness DW.1 - Vasant Jadhav.

6. After considering the evidence on record, the learned Sessions Judge observed that the prosecution had failed to prove, that Surekha was subjected to cruelty by the Respondent - accused, resulting in her committing suicide.

7. The evidence of PW.1 - Anandrao Jadhav, father of the deceased - Surekha shows that all the Respondent - accused were residing together. PW.1 - Anandrao has stated that after the marriage of Surekha with the Respondent No.1 - Vilas Chavan on 08.03.1996, Surekha went to reside in her matrimonial house at village Surli. He has stated that after marriage, his daughter, Respondent No.1 and his maternal brother had come to their house for the Solava ceremony on 19.03.1996. He has stated that Surekha resided with them for six days. According to PW.1 - Anandrao, Surekha had disclosed to him, that all the Respondent - accused were harassing her, ill-treating her and were not giving her food. He has stated that he convinced Surekha's in-laws and told them that they should take care of her. He has stated that on 26.05.1996, his son brought Surekha to their house when she stayed with them for four days. She has stated that Surekha had disclosed that the Respondent - accused were saying that she could not cook and were harassing her on account of the same. He has stated that he

had asked Surekha's father-in-law to let Surekha stay with them for two months, during which time, they could teach her cooking, however, Surekha's father-in-law asked him, to send Surekha back and stated that they would not complain against her. He has stated that in the month of June, 1996, he learnt that his daughter - Surekha was admitted to the Krishna Charitable Hospital, Karad, pursuant to which, he came to the hospital. He has stated that Surekha was admitted in the I.C.U. and she had been accompanied by her father-in-law. He has stated that Surekha was unconscious and regained consciousness after seven days. He has further stated that when Surekha regained consciousness, she disclosed to him, that the Respondent - accused were harassing her and as she could not bear the same, she consumed insecticide.

8. In the cross-examination, PW.1 - Anandrao Jadhav has admitted, that one Vasant Jadhav (DW.1) was the Mediator, who had settled the marriage of Surekha with Respondent No.1 - Vilas Chavan. He has stated that he did not ask about the educational qualification of the Respondent No.1 - Vilas Chavan and only asked whether the Respondent No.1 - Vilas Chavan owned landed property or not. He has stated that he learnt that the Respondent No.1, owned 4 - 5 acres of land. He has admitted

that village Surli comes under the famine affected area. He has further admitted that when he spoke to Respondent No.1 - Vilas Chavan, he realised, that he had some defect in his speech. He has also admitted that he had learnt, that because of the said defect in speech, Respondent No.1's marriage could not be fixed earlier. The said witness has further admitted that his daughter - Surekha was fluent in her speech as well as in her behaviour and that she was a perfect cook and that it was her first proposal. He has also admitted that he had brought to the notice of his daughter - Surekha, Respondent No.1's speech problem. He has further admitted that his financial position was average; and that the marriage was performed in a healthy atmosphere. He has stated that soon after marriage, Surekha visited them a couple of times. He has further admitted that Vasant Jadhav (DW.1) from village Kharade had accompanied Surekha's father-in-law, when he had come to take Surekha back home. There is an omission with regard to the allegation that Respondent - accused were stating that Surekha did not know cooking. He has further admitted in his cross-examination, that he had visited Krishna Charitable Hospital on the same day, when Surekha was admitted in the hospital. He has admitted that during his six days stay at the hospital, he had not spent a single penny on his daughter's medicines; that he had not lodged

any complaint during his six day stay, at the hospital alleging ill-treatment to his daughter - Surekha, at the hands of Respondent - accused, despite the fact, that the police had enquired with him. He has further stated that after Surekha's statement was recorded, he went back to the village and that he learnt that Surekha had expired on 24.06.1996. PW.1 - Anandrao Jadhav has admitted that he had not spent any money on his daughter even after she regained consciousness, and that the entire expenses were borne by the Respondent - accused; and that the Respondent - accused had paid all the hospital charges. The said witness has, however, denied the suggestion that his daughter disliked her husband i. e. Respondent No.1 - Vilas Chavan and she was not ready to cohabit with him, because of his speech problem. The said witness has admitted that there were exchange of words, between himself and his daughter.

9. The evidence of PW.2 - Dr. Mohan Patil shows that the deceased died due to multiple organ failure due to consumption of poison. The viscera report has not been placed on record.

10. PW.3 - Ishwar Sutar was attached to the Taluka Police Station at the relevant time. He has conducted the

investigation in the said case.

11. PW.4 - Mahadeo Patil is the officer, who was attached to the Krishna Charitable Hospital at the relevant time. He has stated that Surekha was admitted in the said hospital on account of poisoning and that he was intimated by the ward authority to record her statement. He has stated that later on, he recorded Surekha's statement as per her say, obtained her thumb impression and obtained the signature of the Doctor.

12. In his cross-examination, the said witness has stated that for the first time, he had recorded the dying declaration of Surekha. He has stated that he did not know how long the patient was in the hospital prior to recording of her statement. He has stated that he asked questions to the patient and she replied. He has admitted that he was not aware of the questions, which he had put to the patient; and that he had not asked Surekha when she was admitted in the hospital. He has also admitted that Surekha had not disclosed the date when she had consumed poison. He has admitted that saline was administered to Surekha, at the relevant time and that the patient was not talking when saline was applied to her. He has also admitted that he had not recorded the time when the statement was recorded.

He has also admitted that he had not requested the police station, to requisition a Special Executive Magistrate for recording Surekha's dying declaration. He has denied the suggestion, that he had prepared the statement after consulting Surekha's father and other relatives.

13. PW.5 - Dr. Mrs. Navina Brid, was the Medical officer attached to the Krishna Charitable Hospital, at the relevant time. She has only stated that Surekha was conscious but was anxious, when her statement was recorded. She has admitted that she was present when the statement was recorded and that she had signed on the said statement, that Surekha was conscious.

14. In her cross-examination, she has admitted that Surekha was unconscious for fifteen days. The said witness has admitted that Surekha was being administered I.V., at the relevant time. She has also admitted that they had not informed the police that Surekha was conscious on 3rd, 4th & 7th June, 1996. She has also admitted that she had not mentioned in the case papers, that Surekha was conscious on the said dates. She has further stated that some of the entries made in the case papers do not bear her signature and that the entries are in the hand writing of other doctors. She has admitted that she has

written on the statement that the patient was conscious, but her pupils were dilated on account of Atropine. She has stated that the patient was treated by Psychiatrist - Dr. Kulkarni. She has admitted that since the time of admission, I.V. was continuously administered to Surekha. She has admitted that Surekha was examined by a Psychiatrist and that the Psychiatrist in his observation has mentioned, that the patient was extremely agitated and had persecutory delusions.

15. The evidence of DW.1 - Vasant Jadhav shows that he had settled the marriage of Surekha and Respondent No.1 - Vilas. He has stated that Surekha had disclosed that she did not want to co-habit with Respondent No.1, as he was a simpleton. He has stated that when Surekha's father PW.1 - Anandrao heard this, he told her that he would not maintain her and that she had to go to her husband's house. According to DW.1 - Vasant, Anandrao (PW.1) had sent Surekha to her matrimonial house with his son Surli, eight days prior to the incident.

16. As the evidence on record, in particular, the dying declaration of the deceased did not inspire confidence, the learned trial Judge rejected the said evidence and acquitted the Respondent - accused. The medical evidence shows that Surekha

was admitted to the hospital on 31.05.1996; that her statement came to be recorded on 10.06.1996; and that she expired on 24.06.1996. PW.5 - Dr. Mrs. Navina Brid states that she was not the only doctor, who had examined the deceased and that there were other doctors, who had examined Surekha. The said witness has also admitted that she had not mentioned in the case paper that Surekha was conscious on 3rd, 4th & 7th June, 1996. Admittedly, Surekha was being treated by Psychiatrist, who has also not been examined by the prosecution. The evidence of PW.5 - Dr. Mrs. Navina Brid shows, that Surekha had persecutory delusions. PW.4 - Mahadeo Patil's evidence also does not inspire confidence. His evidence does not show that, the patient was in a proper frame of mind, when he recorded the statement. The said witness has also admitted that he had not taken any steps to requisition a Special Executive Magistrate, to record Surekha's statement. The evidence of the witnesses does not inspire confidence in view of several lacunae in their evidence. The evidence on record also shows that none of the Respondent - accused were present in the house, when Surekha committed suicide.

17. The overall reasons given by the learned Sessions Judge for acquitting the Respondent - accused, cannot be faulted

or be said to be perverse or unsustainable. The same are borne out by the material on record.

18. Considering the aforesaid, the Appeal, being sans merit is dismissed.

(REVATI MOHITE DERE, J.)