

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1244 OF 2002

State of Maharashtra] ... Appellant/
 (Orig. Complainant)

Versus

1. Bhimrao Gangaram Potdar, Age 32 yrs., Occu. Driver	]	]	... Dead
2. Baban Gangaram Potdar. Age 43 yrs.,	]	]	... Abated
3. Sou Chandra Eknath Bhamkar, Age 36 yrs., Occu. Housewife. All R/p. Kushire, Tal. Panhale, Dist. Kolhapur.	]	]	]
		]	... Respondents

Mr. Deepak Thakare, PP for State - Appellant.
 None for Respondents.

CORAM :- G. S. KULKARNI, J.
DATE :- 15 MAY 2017

JUDGMENT :-

1. This appeal by the State impugns the judgment and order dated 09/07/2002 passed by the learned 2nd Ad-Hoc Additional Sessions Judge, Kolhapur whereby the respondents - accused, stand acquitted of the offences punishable under Sections 498A, 306, 504, 323 and 201 read with 34 of the Indian Penal Code (for short, 'IPC').

2. Accused no.2 - Baban Potdar expired during the pendency of the trial. By an order dated 25/07/2001, the proceedings against him were held to be abated. The office report indicates that during the

pendency of this appeal, accused no.1 - Bhimrao Potdar had also expired and thus the appeal against him too stands abated. Accordingly, the appeal is required to be adjudicated only against respondent no.3 / accused no.3.

3. Facts necessary for adjudication of this appeal may stated as under :-

Deceased Chhaya was the daughter of PW 1 Sonabai Tukaram Sonar. The deceased was married to accused no.1 in the year 1991. The couple had two issues from the marriage, a son and a daughter. The case of the prosecution is that the accused was ill-treating deceased Chhaya on the ground of non-fulfillment of demand for gold bangles weighing 5 tolas and Rs.50,000/- for repairing the house. As and when deceased Chhaya visited the house of her mother PW 1- Sonabai, she disclosed about the beating, abuses and the ill-treatment to her. PW 1- Sonabai would console Chhaya and send to her to the matrimonial house. PW 1- Sonabai also pleaded about the financial condition to the accused persons stating that she was unable to fulfill their demands.

4. Sometime prior to 24/04/2000, one evening, deceased Chhaya had come to the house of her mother PW 1. She was accompanied by her son and daughter. After dinner, deceased Chhaya wept and informed PW 1 - Sonabai about the harassment meted out to her by the accused persons and that it was unbearable and miserable for her to survive. She told PW 1 that the accused had demanded gold bangles weighing 5 tolas and Rs.50,000/- for construction of house and had warned that she should not come back without them. However, on the next day, PW 1 - Sonabai persuaded Chhaya to return to the house

of accused no.1 and took her to the place where accused no.1 was plying autorickshaw and left deceased Chhaya with her husband - accused no.1 and returned to her village. On the following Friday, PW 1 - Sonabai had gone to the house of deceased Chhaya to see if things were normal, at that time, children and husband of deceased Chhaya were in the house. Deceased Chhaya, falling on the shoulders of PW 1, told PW 1 that husband - accused no.1 and sister-in-law Chandrabai - accused no.3 had beaten her at night and they also uprooted her hair and threatened that she would not remain alive and they would kill her. Even on such complaint of deceased Chhaya, PW 1 - Sonabai again consoled her and asked deceased Chhaya to wait for good days, and returned to her village.

5. On 24/04/2000 at 8.00 a.m. when PW 1 - Sonabai was in her house, the nephew of accused no.1 - Bhimrao and other two unknown persons came to her house in a vehicle and informed that deceased Chhaya was admitted at the Civil Hospital, Kolhapur, as she was suffering from vomiting and dysentery and informed PW 1 - Sonabai and others should immediately accompany them. PW 1 - Sonabai and her two sons Vasant and Ashok, her brother Vithoba Potdar, brother-in-law Balkrishna and his wife and son-in-law Ravindra came to the C.P.R. Hospital, Kolhapur. When they alighted from the vehicle, Bhimrao told them that deceased Chhaya had consumed poison on the earlier day and she died when being treated. They were informed that the dead body was kept in the post-mortem room. Thereafter, post-mortem of the dead body was performed. On the same day, PW 1 - Sonabai lodged a report at 17.15 hours at Kodoli Police Station. An offence under C.R.No.24/2000 came to be registered against the accused under Sections 498A, 306, 323 and 504 read with 34 of IPC.

6. The investigation was handed over to Mr. Sampatrao Patil, API - PW 7 attached to Kodoli Police Station. PW 7 visited the spot of incident and prepared a spot panchanama. He also recorded the statements of witnesses. On 24/04/2000 at 21.15 hours, he arrested accused nos.1 and 2 and recorded the statements of seven witnesses from village Fejivade. On 25/04/2000, PW 7 arrested accused no.3. On 10/05/2000, API Patil received the post-mortem report. On 15/05/2000, he forwarded the viscera to the Chemical Analyzer (for short, 'CA'), Pune. After completion of investigation, a charge-sheet came to be filed against the accused on 13/06/2000 before the J.M.F.C., Panhala. The offences being exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the case for a trial before the Sessions Court at Kolhapur. However before framing of the charge, accused no.2 died on 02/04/2001. By an order dated 25/06/2001 passed by the learned Sessions Judge, the proceedings against accused no.2 were ordered to have abated. Accused nos.1 and 3 pleaded not guilty and claimed to be tried.

7. To bring home the guilt of the accused, 7 witnesses were examined on behalf of the prosecution. Also, the statements of accused under Section 313 of Code of Criminal Procedure (for short, 'Cr.P.C.') came to be recorded. Accused Bhimrao had taken the defence of total denial. Accused no.3 - Chandrabai had taken a defence that she was staying at Mumbai and she had no concern with the case and that she being the sister of accused no.1 - Bhimrao, a false case was lodged against her. On behalf of the accused, it was urged that except the testimony of PW 1 - Sonabai, there was no other evidence on record as also the report of the CA was in favour of the accused. According to the report of the CA, no poison was detected in the samples sent by the

police and thus, there was no evidence about cause of death of deceased Chhaya and therefore, the accused cannot be convicted. The learned trial Judge, examining the evidence, has come to a conclusion that none of the offences charged against the accused were proved and accordingly has acquitted the accused of the offences punishable under Sections 498A, 306, 504, 323 and 201 read with 34 of the IPC.

8. I have heard Mr. Thakare, learned PP for State. With his assistance, I have perused the evidence and record as also I have gone through the impugned judgment.

9. PW 1 - Sonabai Tukaram Sonar, in her evidence, has stated that after her marriage, deceased Chhaya, joined the house of the accused. At that time, her brother-in-law accused no.2 - Baban and her sister-in-law accused no.3 - Chandra were staying with her deceased daughter Chhaya. She further deposed that accused no.3 was staying separately from her husband and she was staying along with accused no.1 - Bhimrao. PW 1 - Sonabai further deposed that she visited the house of deceased Chhaya on the said friday to see how Chhaya was pulling on. At that time, Chhaya fell on her and told her that on the previous night, 'accused persons had beaten her and uprooted her hair and she was told to bring gold bangles weighing 5 tolas and Rs.50,000/- and that they would kill her if she would not fulfill her demands. At that time, PW 1 - Sonabai pleaded with the accused and told him that she was unable to fulfill their demands and thereafter returned to her village. In the cross-examination, as against accused no.3 - Chandra, PW 1 - Sonabai has stated as under :-

"7. I have stated before the police while lodging the report that, Chandrabai was staying with accused Bhimrao till the

death of my daughter Chaya. I have stated before the police that accused Chandrabai was not living with her husband and she was staying with accused Bhimrao. I cannot assign any reason as to why said fact is not mentioned in my report. It is not true to say that accused Chandrabai is staying in Mumbai since 1987 along with her husband. I have stated before the police that my daughter Chaya told me that I should give Rs.50,000/- and golden bangles to the accused or else the accused would kill her. It is not true to say that, I deposed falsely that on Friday I had gone to meet my daughter Chaya and at that time, she made complaint to me against the accused. It is not true to say that, I deposed falsely that prior to the incident, on Tuesday, my daughter came to me and at that time also, she made complaint to me against the accused-persons."

Apart from the above version, there is no other material in the evidence of PW 1 - Sonabai against accused no.3 - Chandra.

10. PW 7 - Sampatrao Shamrao Patil is the API attached to Kodoli Police Station, Kolhapur and was the I.O. He has stated in his evidence that on 24/04/2000, he received a telephone message from C.P.R. Police Station that the deceased had died due to consuming poison and there was complaint of her relatives about her death. He accordingly, after making station diary entry, went to the C.P.R. Hospital at Kolhapur. Thereafter he went to C.P.R. Hospital Police Chowky where mother of deceased Chhaya orally lodged a report before him. It was reduced into writing. On the basis of this report, he registered an offence vide C.R.No.24/2000 and conducted the investigation. He prepared spot panchanama. He recorded statements of seven witnesses of village Kushire. On 24/04/2000, at 21.15 hours, he arrested accused nos.1 and 2. On 25/04/2000, he arrested accused no.3. On receiving

the post-mortem report on 10/05/2000, he included the said report in the case-papers and on 15/05/2000, he sent the viscera to CA at Pune. On 13/06/2000, on completion of investigation, he filed the charge-sheet under his signature. In the cross-examination, he has deposed that it was revealed that accused no.3 was married and her husband was staying at Mumbai.

11. PW 2 - Ashok Tukaram Sonar is the brother of deceased Chhaya. His evidence is similar to the evidence of PW 1 - Sonabai. He has deposed that after marriage of deceased Chhaya, for about two years, there was no ill-treatment to deceased Chhaya. Thereafter accused Bhimrao and accused Chandrabai started abusing and beating his sister Chhaya on the ground that she should bring golden bangles weighing 5 tolas and Rs.50,000/- for construction of the house. He deposed that whenever Chhaya used to come to his village, she would tell them about the ill-treatment to her. The rest of the testimony of PW 2 is not different from what PW 1 - Sonabai has deposed. However, he does not attribute or make a specific reference of any role of accused no.3 - Chandrabai to connect her to the crimes in question.

12. PW 3 - Dhondiram Krishna Sonar is the cousin brother of deceased Chhaya who was residing in a house adjacent to the house of PW 1 - Sonabai. The testimony of PW 3 - Dhoniram is not different from what has been deposed by PW 1 and PW 2 that initially after marriage, for a period of two years, Chhaya was leading a happy marital life and thereafter she was ill-treated by her husband Bhimrao for a demand of gold bangles weighing 5 tolas. However, in his evidence, he does not say anything about the demand of Rs.50,000/- as stated by PW 1 - Sonabai. PW 3 - Dhondiram has deposed that deceased Chhaya was coming to

the village after marriage and used to inform about the ill-treatment and harassment and that it was going for about 8 to 9 years.

13. The other witnesses examined on behalf of the prosecution are PW 4 - Subhash Tayappa Banage who is the Police Constable attached to Shahupuri Police Station, Kolhapur. He has prepared the inquest panchanama as witnessed by two panchas. PW 5 - Sanjay Arjun Chavare is a Police Constable attached to Shahupuri Police Station. He had recorded the statement of PW 2. The prosecution also examined Dr. Ganesh Prabhakar Dhovalshank - PW 6 who was working at the C.P.R. Hospital at the relevant time when deceased Chhaya came to be admitted on 24/04/2000 at 12.50 a.m. as brought by her husband. He has deposed that he examined deceased Chhaya on her admission to the hospital and was informed that the patient had consumed poison half an hour before she was brought to the hospital, as disclosed to him by the relatives of the deceased. He has stated that deceased Chhaya was in a semi-conscious condition and her general condition was poor and that she was not responding to any painful stimuli. Her pulse was feeble. He has stated that Chhaya died at 1.10 a.m. He also performed post-mortem on the dead body and found foul smelling white coloured liquid in the stomach and intestine. Post-mortem report was prepared by him and issued under his signature. He states that the viscera was preserved and the opinion was reserved. He has deposed that the report of the CA, it did not show presence of poisonous substance in the viscera. Nothing of any further relevance is elicited from the cross-examination.

14. On the above evidence, it can surely be concluded that there is no evidence to bring about any incriminating connection of

accused no.3 - Chandrabai to the crimes in question and to conclude that accused no.3 - Chandrabai is guilty of committing the charged offences punishable under Sections 498A, 306, 504, 323 and 201 of the IPC. What is significant is that, it has clearly come in the evidence of the cousin brother of deceased Chhaya PW 3 - Dhondiram, that the ill-treatment to deceased Chhaya was going on for a period of 8 to 9 years for the demand of golden bangles weighing 5 tolas not being fulfilled. It is explicit from the evidence of PW 1 - Sonabai, PW 2 - Ashok and PW 3 - Dhondiram, that deceased Chhaya was being harassed on account of non-fulfillment of demand of golden bangles weighing 5 tolas and Rs.50,000/- this on the backdrop that initially for about two years, everything was fine and all this trouble started only after the initial two years of marriage. In her statement recorded under Section 313 of Cr.P.C., accused no.3 has denied the prosecution story to be false. When asked that why the witnesses are deposing against her, her answer is that being the relative of deceased Chhaya, the witnesses are deposing falsely against her. Also when asked in Question No.21 as to what she wanted to say about the case by the prosecution, she has stated that being the sister of accused no.1, false case has been lodged against her. She has stated that she is staying at Mumbai and had no concern with this case. This version of accused no.3, cannot be discarded in the absence of any contrary incriminating evidence to connect accused no.3 to the crimes in question.

15. Thus, it needs to be concluded that there is no evidence to show that accused no.3 - Chandra was residing along with accused nos.1 and 2. There is no evidence to show the specific instances of any harassment by accused no.3 or any other acts pointing out to the guilt of accused no.3 to have committed the offences in question. Thus, the

very background that for 8 to 9 years, no complaint whatsoever was made by deceased Chhaya or any of her relatives including PW 1 - Sonabai against accused no.3, also becomes a relevant factor. Mere assertion of PW 1 and probably the mechanical repetition of the same by PW 2 and PW 3, certainly would not be sufficient to bring home the guilt of accused no.3 to have committed the offences in question. The learned PP is also not in a position to show anything which would require this Court to displace and interfere with the findings of the trial Court to come to a different conclusion. I therefore do not find any perversity or illegality in the findings of the learned Trial Judge against accused no.3 - Chandra as in my opinion, the same are correctly recorded by the learned Trial Judge and considering the case of the prosecution against accused no.3 - Chandra, the evidence of PW 1 - Sonabai, mother of deceased Chhaya, and the evidence of PW 7 - API Sampatrao Patil, the Investigating Officer, are relevant.

16. Resultantly, the appeal needs to fail. It is accordingly dismissed.

17. Bail bond of accused no.3 - Chandra shall stand cancelled.

(G. S. KULKARNI, J.)