

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

**CRIMINAL APPEAL NO.1034 OF 2002**

The State of Maharashtra  
(Through Bandgarden Police,  
Station, Pune)

.... Appellant/  
Orig. Complainant

versus

Maruti Narhari More

... Respondent  
Orig. Accused

.....

- Mrs.Geeta P. Mulekar, PP for the State/Appellant.
- None for the Respondent.

**CORAM : C.V. BHADANG, J.**  
**DATE : 24<sup>th</sup> MAY, 2017.**

**ORAL JUDGMENT :**

1. This is an appeal by the State against acquittal. The Respondent was prosecuted for the offences punishable u/s 306 and section 498-A of the Indian Penal Code (IPC for short) for ill-treating and for abetment of the suicide of his wife.

2. The prosecution case may be briefly stated thus:

That, now deceased Yamuna was married to the

Respondent in the year 1996. The Respondent is serving as Civil Engineer with Municipal Corporation, Pune. After their marriage, the Respondent and his wife Yamuna were residing in a flat at Rahul Co-operative Housing Society, Koregaon Park, Pune. According to complaint lodged by PW-1 Vitthal Krishna Shinde, the brother of Yamuna, it was claimed that Yamuna was treated well by the Respondent during the initial period after marriage. However, from the year 1997 the Respondent started ill-treating Yamuna. It was claimed that the Respondent was demanding Rs.50,000/- for purchasing a flat and was also suspecting character of Yamuna. She was also physically assaulted. The family members of Yamuna tried to pacify the Respondent, however, to no avail. It was claimed that the father and brother of the deceased Yamuna gave Rs.50,000/- to the Respondent. It was further claimed that the Respondent was insisting for bringing more money.

3. According to prosecution case on 05/08/2001 at about 02.00 p.m. Yamuna attempted to commit suicide by setting herself on fire. She was admitted in Budhrani Hospital, Pune.

Her dying declaration was recorded by an Executive Magistrate, in which she claimed that she set herself on fire after dousing herself with kerosene. Yamuna died in the hospital in the midnight on the same day. The dead body of Yamuna was taken to her native place at Lonvire on 06/08/2001 where her last rites were performed. The Respondent was not present at the time of funeral.

4. Mr.Vitthal Shinde (PW-1) lodged a complaint on 09/08/2001 with Bandgarden Police Station, Pune, on the basis of which an offence was registered. API Nanasaheb Hole (PW-9), the Investigating Officer, conducted investigation in which he recorded the statement of witnesses and drew a spot panchanama. The Respondent came to be arrested. The inquest panchanama of the dead body was drawn and it was sent for post mortem examination. After completion of the investigation, a charge-sheet came to be filed against the Respondent for the offences punishable u/s 306 r/w 498-A of IPC, which was eventually committed to the Court of Sessions.

5. The learned Sessions Judge framed charge against the accused for the aforesaid offences, to which he pleaded not guilty and claimed to be tried. The defence of the accused is one of total denial and false implication.
6. The prosecution examined in all 9 witnesses, namely; Mr.Vitthal Krishna Shinde (PW-1), Mr.Prakash Bhagwant Falle (PW-2), Mr.Hanumant Krishna Shinde (PW-3), Mr.Yashwant Krishna Shinde (PW-4), Mr.Shankar Amarnath Chobe (PW-5), Mr.Ravindra Jaykumar Jain (PW-6), Mr.Shankar Nivrutti Patil (PW-7), Dr.Amit Audumbar Pavle (PW-8) and API Nanasahab Bhikaji Hole (PW-9). The prosecution also produced contemporary record of the investigation. The Respondent neither entered into the witness box, nor lead any defence evidence.
7. The learned Sessions Judge framed following points for determination;

|    | <b><i>POINTS</i></b>                                                                                                                                                                                                                                                                                                                                                            |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Does prosecution prove that, the accused, during the period 1997 to 5/8/2001, at Koregaon Park, Pune, subjected Yamuna Maruti More to cruelty by harassing and illtreating her, on account of demand of money for purchase of flat and by suspecting her character and his wilful conduct was of such a nature, likely to drive said Yamuna to commit suicide, as alleged?      |
| 2. | Does prosecution further prove that, on 5/8/2001 at 11.45 p.m. at flat No.12, Rahul Society, Koregaon Park, Pune, Yamuna committed suicide by pouring kerosene upon her person and by setting herself with fire being abetted by accused for commission of the suicide, on account of cruel treatment to her for fulfillment of money and suspecting her character, as alleged? |
| 3. | What offence the accused has committed?                                                                                                                                                                                                                                                                                                                                         |
| 4. | What order?                                                                                                                                                                                                                                                                                                                                                                     |

8. The learned Sessions judge on appreciation of evidence answered point Nos.1 and 2 in the negative and acquitted the Respondent by a judgment and order dated 24/04/2002. Feeling aggrieved the Appellant is before this Court.

9. I have heard Smt. Mulekar, the learned Additional Public Prosecutor for the Appellants. There was no appearance on behalf of the Respondent. With the assistance of the learned APP, I have gone through the record and the impugned judgment.
10. It is submitted by the learned APP that, Yamuna More died within four years of the marriage in unnatural circumstances. It is submitted that the prosecution evidence and more particularly that the complainant Vitthal Shinde and Hanumant Shinde who are the brothers of the deceased, clearly bring out the aspect of ill-treatment of the deceased by the Respondent, on account of the demand of money for purchase of a flat and on account of Respondent suspecting character of the deceased. It is submitted that the dying declaration recorded by the Executive Magistrate Shankar (PW-7) is also natural and one inspiring confidence, which corroborates the fact of the deceased having committed suicide. It is submitted that the learned Sessions Judge failed to properly appreciate the prosecution evidence and the view taken by the learned Sessions

Judge being an impossible view, needs interference by this Court. The learned PP has extensively taken me through the evidence of prosecution witnesses and submitted that the offences u/s 498-A and 306 of the Indian Penal Code are clearly established, against the Respondent beyond reasonable doubt.

11. It is submitted that the evidence of the witnesses, more particularly, that of Mr.Vitthal Shinde (PW-1) and Mr.Hanumant Shinde (PW-3) and for the matter of that Mr.Yashwant Shinde (PW-4) has to be tested on the touch stone of human conduct. It is submitted that in all cases it cannot be expected that the close relatives of the deceased, would rush to the police station in lodging complaint. It is submitted that the delay in lodging the complaint would not be significant and not would strike at the root of the veracity of the evidence of these witnesses. She therefore submits that the appeal be allowed.

12. I have carefully considered the circumstances and the submissions made.

13. The principal question in a prosecution for the offence punishable u/s 306 of IPC is whether the deceased has met with suicidal death. The learned Sessions Judge has answered point No.2 in the negative. The Respondent/accused admitted the Post-mortem report (Ex.8), the spot panchanama (Ex.21), inquest panchanama (Ex.22), medical notification of death (Ex.23) and injury certificate of Yamuna (Ex.24). The post-mortem report shows cause of death as “shock due to burns”. It discloses that Yamuna suffered burn injuries to the extent of 91%. The material allegation against the Respondent is that the Respondent was demanding money for purchase of a flat at Koregaon Park, Pune. The record discloses that the Respondent had purchased a flat in May 2001. There was house warming ceremony conducted, which was attended by both the families namely, that of the Respondent and the deceased. The Respondent who is serving in the Municipal Corporation, Pune as a Civil Engineer, was drawing monthly salary of Rs.10,000/- and was also having agricultural land at his native place at village Lonvire, Taluka Sangola, District Solapur. The

Respondent had obtained a loan of Rs.3,00,000/- from Corporation. The Respondent claimed that his monthly income from all the sources is Rs.25,000/- per month and excluding expenses his income was Rs.15,000/- per month.

14. The evidence of the prosecution mainly consists of the evidence of Vitthal Shinde (PW-1) and Hanumant Shinde (PW-3), who are brothers of the deceased and the evidence of Shankar Patil (PW-7), Executive Magistrate. In the dying declaration (Ex.26), the deceased stated that on the date of incident at about 02.00 p.m. a friend of her husband (Respondent) had come to their house. After her husband went away, the said friend Prakash Falle again came and entered the house. After some time, the Respondent came home when the door was closed. When she opened the door, the Respondent found Prakash Falle in the house, on account of which, the Respondent assaulted her and there was a quarrel between them. As she was enraged due to conduct of the Respondent, she went inside, poured kerosene on her and set herself ablaze.

Nobody came to set of the fire. She claimed that she was annoyed because of the conduct the Respondent and also on account of the fact that the Respondent had assaulted her, which was reason for setting herself on fire.

15. Mr.Prakash Falle was examined as PW-2. He states that on the date of incident at about 11 to 11.30 a.m. he alongwith Respondent went to purchase grocery articles. As the vehicle of the Respondent dried, he went to a petrol pump near Gunjan Theatre. He was waiting for the Respondent in the next square. Even after waiting for about 30 minutes as the Respondent did not come there, hence, he went to his house, when the deceased opened the door. The deceased asked him come inside. They were waiting in the gallery when the Respondent returned. On that point of time some altercation took place between the Respondent and the deceased. The Respondent told him that the Respondent does not now want to go for purchase of grocery and he left.

16. It can thus be seen that the dying declaration coupled with the evidence of PW-2 Prakash Falle, shows that Prakash Falle was found in the house with the deceased when the Respondent came home and there was some altercation between the Respondent and the deceased and out of annoyance, the Respondent went and set herself ablaze. If the dying declaration is accepted as it is, one thing is clear that it was on the spur of the moment and being annoyed by the conduct of the Respondent that the deceased set herself on fire. However, there is one difficulty in accepting the dying declaration namely the spot panchanama (Ex.21), which is conducted on the same day i.e. 05/08/2001, does not show presence of any kerosene on the spot. The spot panchanama discloses that there was a partially burnt nylon sari found on the spot which was seized. Thus, in my considered view no implicit reliance can be placed on the dying declaration. Even assuming that the dying declaration can be accepted it was on the spur of the moment and in a fit of rage that the deceased might have set herself ablaze.

17. In so far as the aspect of demand of money is concerned, according to prosecution case, it was in the year 1998 while the incident had occurred in 2001. It is not the case of the prosecution that even after the amount of Rs.50,000/- was allegedly paid to the Respondent, a demand of further amount continued till 2001.

18. In so far as the evidence of Hanumant Shinde (PW-3) and Yashwant Shinde (PW-4) is concerned, the learned Sessions Judge has noticed certain omissions/improvements. A brief reference to the evidence of Yashwant Shinde may be made at this stage. According to this witness he is related to Krishna Shinde, the father of the deceased. At the time of Diwali 1998 Krishna Shinde asked him and one Sambhaji Shinde to give Rs.25,000/- each as he (Krishna Shinde) wants to give Rs.50,000/- to his son-in-law i.e. the Respondent, for purchase of a flat. Thereafter Vitthal Shinde (PW-1) who is another brother of deceased and Hanumant Shinde also made similar request. Accordingly, he and Sambhaji gave amount of

Rs.25,000/- each to Krishna Shinde, which he paid to the Respondent in their presence.

19. There are certain omissions which are brought on record in the cross examination. This witness admitted that he did not state to the police that at the time of Diwali 1998, Krishna Shinde had asked for the money and the similar demand was also made by Hanumant Shinde. He also did not state to the police that he and Sambhaji Shinde paid an amount of Rs.25,000/- each to Krishna Shinde. It would be significant to note that Vitthal Shinde (PW-1) claims that his father Krishna Shinde and Hanumant Shinde (PW-4) paid that amount behind his back and without his knowledge.

20. There is nothing in the evidence of Yashwant Shinde to show that Krishna Shinde or Hanumant Shinde had stated to the said witness Yashwant Shinde that it was the Respondent who was demanding the amount.

21. The learned Session Judge also noticed that complaint was lodged by PW-1 after four days of the incident and before that they had a discussion as to what complaint is to be lodged and what is to be stated to the police. On consideration of overall evidence, the learned Sessions Judge has proceeded to acquit the Respondent. I have carefully gone through the impugned judgment and I find that the view taken by the learned Sessions Judge is a plausible view. It is now well settled that unless and until the view taken by the Trial Court is perverse or is an impossible view, no interference is called for in an appeal against acquittal. (See Chandrappa and Others, Versus, State of Karnataka, (2007) 4 Supreme Court Cases 415). In the result no case for interference is made out. The Appeal is accordingly dismissed.

(C.V. BHADANG, J.)