

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 249 OF 2004

The State of Maharashtra
Through Ramkrishna Dattu Sutar,
Age : 51 years, Occu. : Service,
R/o Kasar Shiral, Tq. Nilanga,
District. Latur. ...Appellant

Versus

- 1] Nathprasad @ Sudhir Bhagwat
Vaijnath, Age : 30 years,
Occu. : Service, R/o Nath Colony,
Paithan, Tq. Paithan.
- 2] Bhagwat Dharamraj Vaijnath,
Age : 60 years, Occu. : Pensioner,
R/o Nath Colony, Paithan,
Tq. Paithan, Dist. Aurangabad.
- 3] Sunanda Bhagwat Vaijnath,
Age : 50 years, Occu. : Household,
R/o Nath Colony, Paithan,
Tq. Paithan, Dist. Aurangabad.
- 4] Sunita Dilip Bhalekar,
Age : 32 years, Occu. : Service,
R/o Nath Colony, Paithan,
Tq. Paithan, Dist. Aurangabad.
- 5] Suchita Bhagwat Vaijnath,
Age : years, Occu. : Service,
R/o Nath Colony, Paithan,
Tq. Paithan, Dist. Aurangabad. ...Respondents

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Mr. M. M. Nerlikar, A. P. P. for Appellant-State.

Mr. S. M. Kulkarni, Advocate for Respondent Nos. 1
to 5.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 19-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Present appeal has been filed by the State challenging the acquittal of the accused persons from the offences punishable under Sections 498A, 302, 304-B read with Section 34 of I. P. C. in Sessions Case No. 27 of 2002 by 3rd Adhoc Additional Sessions Judge, Aurangabad.

02. Prosecution has come with a case that one Ramkrishna Dattu Sutar resident of Kasar Shiral, Dist. Latur was having 2 sons and 2 daughters. He was serving as Teacher with the private institution. Deceased Madhuri was his 4th child. Madhuri got married to accused No. 1 on 1.12.2000. All the accused persons were residing together. Accused No. 1 is the husband of deceased, accused Nos. 2 and 3 are the parents of husband-accused No. 1, accused Nos. 4 and 5 are the sisters of accused No. 1. It has been stated in the F. I. R. that at the time of marriage, he had given all the gifts which are required under rituals. However, his expectations were more, he could get that from talks with Madhuri on phone. All the accused persons used to give pinching words to Madhuri.

Thereafter, accused Nos. 1, 3 to 5 used to assault Madhuri. Accused No. 2 used to abuse her. She used to explain the ill-treatment given to her, to her parents. However, they were not paying much attention so that there should not be any hurdle in her marital life. Accused persons were demanding amount of Rs. 70,000/- in cash and gold ring of one tola. Madhuri had gone to Kasar Shiral for celebrating Makarsankranti on 12.1.2001. At that time, she disclosed that all the accused persons are demanding the said articles and assaulting her, abusing her and giving threat to kill for the fulfillment of the demand. Informant himself had left Madhuri to her matrimonial home and at that time, he had given an advice to accused persons that they should not harass his daughter. He promised that he would give amount of Rs. 20,000/- and gold ring of half tola. In spite of that there was no satisfaction on the face of accused persons. He was informed by accused No. 1 on 23.3.2001 that Madhuri had poured kerosene on her person and set herself to fire and then she has expired. Even the Police Officer also gave the said message to him. Therefore, he came to Paithan and saw the dead body of daughter. Thereafter, he lodged the F. I. R.

03. On the basis of F. I. R., offence vide C. R. No.

24 of 2001 came to be registered for the offence punishable under Sections 302, 304-B, 498-A read with Section 34 of I. P. C. and the investigation was undertaken.

04. It appears that the fact of death was already informed to the Police Station and accidental death was registered. Panchnama of the spot and the inquest panchnama was carried out. The dead body was sent for post mortem. At the time of executing spot panchnama, certain articles were seized. After the registration of the offence, statements of witnesses were recorded. Accused came to be arrested. After the completion of the investigation, charge-sheet was filed before J. M. F. C., Paithan.

05. After the committal of the offence, the accused appeared before the learned Adhoc Additional Sessions Judge, Aurangabad, charge was framed and the contents of the charge were read over and explained to them in vernacular. They pleaded not guilty. Trial has been conducted. Prosecution has examined in all 5 witnesses in order to bring home the guilt of the accused. After considering the evidence on record and hearing both the sides, the learned Trial Judge has acquitted all the

accused persons from all the charges. The said acquittal is under challenge in this appeal.

06. The appeal was admitted. Heard learned A. P. P. Mr. M. M. Nerlikar for State-appellant and learned Advocate Mr. S. M. Kulkarni for respondent Nos. 1 to 5. It has been submitted on behalf of the prosecution that the learned Trial Judge has not appreciated the evidence properly. There is no dispute that Madhuri died due to burn injuries. The PM report shows that the probable cause of death was "shock due to superficial to deep burns 75%". Though the viscera was preserved, the C. A. report is negative and therefore, the cause of death is certain i.e. due to burns. It is also apparent from the situation stated in the spot panchnama Exh. 15. The testimony of PW-1 Ramkrishna-informant was supported by PW-3 Kiran Sutar-son of informant. Further, PW-2 Ashok Lokhande is neighbour of informant. He also supports the prosecution story. So also another relative PW-4 Abhimanyu Sutar who is the brother-in-law of PW-1 also supported the prosecution story. All of them have stated that there was a demand of Rs. 70,000/- and gold article. When the said demand was not fulfilled Madhuri was harassed. They came to know about the harassment through Madhuri. Madhuri was married on 1.12.2000 and the death has taken place on

23.3.2001 i.e. within 7 years of the marriage. Therefore, the learned Trial Court ought to have invoked the presumption under Section 113(b) of the Indian Evidence Act.

07. Per contra, the learned Advocate appearing for the respondents supported the reasons given by the learned Trial Court.

08. PW-1 Ramkrishna (informant) has deposed as per his F. I. R. In his cross-examination, he has admitted that accused Nos. 1 to 4 were in his relations even prior to the marriage of his daughter with accused No. 1. But, then he says that they were not much acquainted with each other. After considering the entire circumstances, he felt that his daughter would be happy with the accused and therefore, the marriage was performed. He also admitted that the financial condition of the accused is better than his financial condition. The perusal of F. I. R. would show that at the time of marriage or even prior to that there was no demand by any of the accused in respect of amount of Rs. 70,000/- and gold ring. The marriage was performed on 1.12.2000. He does not give approximate date or period from which the demand started. Vague statements are made that whenever he used to make phone call, at that

time Mahduri used to disclose about the harassment. It is stated that the harassment was in the nature of assault. But, then he says that he and his family members did not pay any attention which would then would have raised hurdle in the marital life of Madhuri. Initially, he has stated that though he had given the gifts as per the custom, the expectation of the accused was high. He does not say that specific amount was demanded at that time. When exactly the demand of specific amount and article started is not clarified. However, it is stated that when Madhuri had come for Makarsankranti on 12.1.2001 all the accused persons had disclosed about the demand and the said disclosure was made by Madhuri to him. He says that when he left Madhuri after about 8 to 10 days. He had promised to give the amount of Rs. 20,000/- and gold ring of half tola. After giving inability to fulfill the demand as demanded by the accused, but, then he only says that he could not see any kind of happiness on the face of the accused persons. He does not say that after he returned to his house till 23.3.2001, he had received any kind of phone call from Madhuri stating that the accused are again harassing her. Therefore, just prior to the suicide what had happened it has not been brought on record. The demand made afterwards which was not the

amount as promised may or may not be termed as dowry. But, neither the informant nor the other relatives including the brother of the deceased have stated as to since when the demand was started. Harassment in the nature of assault was given is a vague statement and it can be stated at any time after the incident is over. That can not be counted as evidence. None of the neighbours of the accused have been examined. Prosecution has also not examined the person who had seen the deceased while burning or extinguishing the fire and then admitting her to hospital. It appears from the testimony of PW-5 then Police Officer Rasul Mukeri that one Police Head Constable Madar told him that accused No. 1 has given information about death of his wife due to burns. Accordingly, accidental death was reported vide AD No. 18 of 2001. The panchnama of the spot, inquest panchnama and the PM report have been admitted by the accused persons that means there is no dispute that Madhuri died due to burn injuries. Under such circumstance, three possibilities are created. One is accidental, another is suicidal and third is homicidal. Prosecution has not come with a theory of suicidal death and therefore, we may not address the same. Only two possibilities remained. One is accidental and another is homicidal. When prosecution

intends to come with a positive theory of homicidal burns, then, prosecution should eliminate the possibility of accidental death. Except the interested witnesses, who are related to each other and had no direct information have been examined. At the most their evidence would have been helpful for the offence punishable under Section 498A of I. P. C. However, for the aforesaid reason that their testimony is vague, it can not be stated that the accused persons were subjecting Madhuri to cruelty.

09. Taking into consideration, the evidence on record, the learned Trial Court has taken a possible view. Merely because a second view is possible, the Appellate Court can not take the another possible view. Hence, appeal is dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-