

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1014 OF 2003

The State of Maharashtra.] ... Appellant

Versus

1. Vijay Dhondiram Shinde,]
Age – 28 years, Occu. - Agriculture,]

2. Dhondiram Piraji Shinde,]
Age – 86 years, Occu. - Agriculture,]

3. Tarabai Dhondiram Shinde,]
Age – 71 years, Occu. - Household,]

All above are residents of Manerajuri,]
Taluka – Tasgaon, District – Sangli.]

... Respondents /
Orig.Accd.Nos.1 to 3

Mrs. M. H. Mhatre, APP for State – Appellant.

Mr. U. R. Mankapure for Respondent No.1.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 01 AUGUST, 2018

JUDGMENT :-

1. By this Appeal, the State of Maharashtra has challenged the Judgment and Order dated 30/07/2002 passed by the learned III Ad-hoc Asstt. Sessions Judge, Sangli, in Sessions Case No.73 of 2002.

The Respondent No.1 was the original accused no.1. The Respondent Nos.2 and 3 are his parents. All the accused were charged for commission of the offences punishable under Sections 498A and 306 read with 34 of the IPC. At the conclusion of the trial, the learned Judge was pleased to acquit all of them. The State of Maharashtra has preferred this Appeal against the said Judgment and Order of acquittal passed by the trial Court. Though the Appeal was preferred against all the accused, the Appeal was specifically admitted as against the Respondent No.1 who was the original accused no.1.

2. The prosecution case is that the deceased Nanda was married to the Respondent No.1 on 01/07/1998. They had a daughter from the wedlock. It is the case of the prosecution that Nanda was ill-treated by all the accused on the ground that she was not cooking properly and also on the ground that the Respondent No.1 was having illicit relationship with his sister-in-law i.e. wife of his brother. It was alleged that the accused no.1 wanted to take divorce from Nanda. As per the prosecution case, on 05/06/2001, Nanda's grandfather and maternal cousin had visited her at her matrimonial house and they found that a quarrel was going on

between all the accused and Nanda. The grandfather and her cousin tried to pacify the parties and then they left from there. It is the prosecution case that in the late evening, Nanda's grandfather received a telephone call that Nanda had consumed poison. Therefore, they again came back to her village i.e. Manerajuri. When they reached there, they found that she was shifted to Civil Hospital, Sangli where she had already expired. On the next day at about 5.00 p.m., FIR was lodged by PW 1 Bhau Kale who was the maternal grandfather of the deceased. The investigation was carried out. Post-mortem was conducted. Viscera report showed presence of poison. The accused nos.1 and 2 were arrested on 08/06/2001. The accused no.3 had obtained anticipatory bail, subsequently. At the conclusion of the investigation, charge-sheet was filed. As the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions for trial.

3. The charge was framed against all the three accused under Sections 498A and 306 read with 34 of the IPC. All the accused pleaded 'not guilty' to the charge.

4. During trial, the prosecution examined four witnesses. PW 1 Bhau Kale was the maternal grandfather of deceased Nanda. PW 2 Anil Shinde was the maternal cousin of the deceased Nanda. Both of them had deposed about the ill-treatment meted out to the deceased at the hands of the accused. PW 3 SPI Maruti Shinde had registered the accidental death report and had conducted initial inquiry into the death of the deceased Nanda. PW 4 PSI Satish Pawar had registered the FIR vide C.R.No.110 of 2001 at Tasgaon Police Station and thereafter had conducted the investigation. PW 4 had arrested the accused and had filed the charge-sheet. After recording the evidence as well as the statements of all the accused under Section 313 of the Cr.P.C., the learned trial Judge heard the arguments. At the conclusion of the trial, the learned Judge was pleased to acquit all the accused of all the charges as mentioned earlier. The State of Maharashtra has preferred this Appeal as mentioned earlier. The Appeal was admitted only against the accused no.1. During trial, the defence had admitted the post-mortem notes which were produced on record at Exh.20 and CA report in respect of viscera which was produced at Exh.20. There is no challenge to the post-mortem notes and CA report on behalf of the accused. The post-mortem notes

shows that the opinion regarding the cause of death was reserved. The viscera was sent for chemical analysis. The chemical analysis in respect of viscera shows that there was presence of organophosphorus insecticide dimethoate. Thus, there is no dispute that the deceased had consumed poison and had died as a result of that.

5. To establish their case, the prosecution has examined PW 1 Bhau Kale and PW 2 Anil Shinde. PW 1 was the maternal grandfather of deceased Nanda. He had a daughter by name Pamatai. Nanda was Pamatai's daughter. Nanda was brought up by this witness and his family. Nanda's father was residing at some other village. PW 1 has deposed that, after marriage, for about one year, Nanda was treated properly and she was happy. Thereafter, she started complaining that all the accused used to beat her and used to starve her. PW 1 has deposed that Nanda was ill-treated on the ground that she was not cooking properly. PW 1 then tried to convince the accused nos.1 to 3 to treat Nanda properly but the ill-treatment continued. He has further deposed that on 05/06/2001, he received a phone-call from Nanda and she had called him to her matrimonial house. He went to meet her at village Manerajuri with

his grandson i.e. PW 2. He has further deposed that when they reached there, a quarrel was going on between the accused and Nanda and that the accused were beating her. It is his case that the accused no.1 was having illicit relations with one Meena who was his brother's wife. He has further deposed that all the accused were asking Nanda to execute some writing. At that time, PW 1 tried to pacify them and tried to convince the accused not to ill-treat her and thereafter went back to his own village Kharsing. When he reached home, he received a telephone call that Nanda had consumed some medicine and tablets. He, along with others, went to Civil Hospital, Sangli. Nanda had already died. On the next day at about 5.00 p.m., he lodged his FIR. The FIR is produced on record at Exh.22. In his cross-examination, he has deposed that Jaysing and Respondent No.1's maternal uncle Pandharinath had acted as mediators. Meenakshi was Pandharinath's daughter who was married to Respondent No.1's brother. He has deposed that Nanda's father Pandurang Patil was residing at village Karoli, Taluka Miraj. He has further admitted that marriage between the accused no.1 and Nanda was performed in happy manner and there were no problems. He has even admitted that after Nanda's marriage he used to go to the house

of the accused persons. He has also deposed that Nanda was cooking and was also doing household work at her matrimonial house. He has further deposed that Nanda was brought to his son's village Kharsing at the time of her pregnancy. After delivery of her daughter, Nanda resided at village Kharsing and then was brought to this witness's village. The naming ceremony was performed at village Kharsing and all the accused had attended the ceremony. Thereafter for about six months, Nanda resided with this witness and then she was taken to village Manerajuri. He has further deposed that Nanda used to tell him that she was burdened by the household work.

In his cross-examination, he has given important admissions. PW 1 has deposed that the accused persons and one Pundalik Patil had told him about the eccentric behaviour of Nanda and about her consuming liquor. They had also requested this witness to convince Nanda. He has further deposed in his cross-examination that on the day of the incident, he had gone to meet Nanda at village Manerajuri at about 5.00 to 5.30 p.m. and at that time, Nand had offered him tea and snacks. He has further deposed that he left the village Manerajuri at about 6.30 to 7.00 p.m. and reached his own village at about 8.30 p.m. when he received the phone-call. That

means during the period from 7.00 p.m. to 8.30 p.m., Nanda had consumed poison. PW 1 was present in the Civil Hospital, Sangli. He has admitted that at that time, police had made inquiries with him and had even recorded his statement. That statement is not brought on record. It is only on the next day at about 5.00 p.m., the FIR was lodged. In the FIR, there is no reference that the accused were beating her on the date of the incident.

6. PW 2 Anil is another witness examined by the prosecution to establish the ill-treatment meted out to Nanda. He has supported the deposition of PW 1 Bhau. In addition, he has deposed that whenever he used to visit Nanda at her matrimonial house, she used to complain that the accused used to ill-treat her on the ground that she could not cook properly and also because of the illicit relationship between the accused no.1 and his sister-in-law Meena. On 05/06/2001, he had visited Nanda with PW 1. He has deposed that when they reached there, a quarrel was going on and the accused were asking them to execute some document relating to divorce. The accused also told them to take Nanda to their own village. PW 2 has further deposed that they told the accused that they would decide

after meeting the mediators. Thereafter, he received the message about Nanda having consumed poison. He also went to the Civil Hospital at Sangli where Nanda's dead body was kept.

In his cross-examination, he has admitted that when he reached Civil Hospital at Sangli at about 10.30 p.m. on 05/06/2001, at that time his father and grandfather were present and some discussion took place among them regarding Nanda's suicide. He has admitted that even at that time, police were present in the Civil Hospital at Sangli but he has denied the suggestion that the police made inquiries with him. This witness's statement was recorded after registration of the FIR on 06/06/2001.

7. Apart from these two witnesses, the prosecution has not examined any witnesses viz. the neighbours or the villagers from Nanda's village or any other relatives including the father of deceased Nanda. As can be seen from the evidence that the grievance which Nanda had was on two counts i.e. ill-treatment because of not doing household work including cooking properly and on the ground that the accused no.1 was having illicit relationship with his brother's wife. The allegations were made against all the accused together and the

case against them is not separable. According to PW 1, initially he himself was satisfied that Nanda was living a happy married life. It is only on the ground of not cooking properly or not doing the household work she was being scolded by her in-laws, including her husband. He himself had told Nanda to do all the household work properly. It appears that this witness had no immediate grievance against any of the accused. He was present in the Civil Hospital at Sangli and he has stated that the police made inquiries with him and had recorded his statement, but that statement is not brought forth by the prosecution. The FIR was lodged after 5.00 p.m. on the next day. The learned trial Judge has taken this fact into consideration for giving benefit of doubt to the accused. The learned Judge has rightly held that the FIR was lodged as an afterthought. The prosecution has not brought any evidence to show that there was any illicit relationship between the accused no.1 and his sister-in-law i.e. his brother's wife. The prosecution has not examined any other family member who could have thrown light on this aspect. In fact, these allegations do not travel beyond the realm of suspicion and therefore, none of the accused can be held responsible for the same. Even PW 2 has deposed only what was told to him by Nanda. Therefore, the

allegation of illicit relationship between the accused no.1 and his sister-in-law is not proved by the prosecution.

8. As far as the allegations of ill-treatment on the ground of not cooking properly and not doing household work are concerned, PW 1 himself has deposed that he had told the deceased to do the household work properly. Telling the deceased to cook properly or to do her household work properly, by itself, would not mean that she was ill-treated. There is no further evidence to show that the treatment was of such a nature which would fall under Section 498A or Section 306 of the IPC. More significantly, PW 1 has clearly admitted that in the past, all the accused and one Pundalik Patil had told him about Nanda's eccentric behaviour and also of her consuming liquor. The accused had even requested him to intervene and to have a discussion with Nanda regarding the same. This admission goes a long way to show that there were possible causes for her to consume poison. The prosecution has to rule out all the possibilities which are not consistent with the guilt of the accused. On the date of the incident itself, PW 1 and PW 2 had visited Nanda and at that time, Nanda had offered them tea and snacks, as deposed by PW 1 himself.

Therefore, the quarrel, if at all it was there, was of not such a serious nature which would have driven Nanda to commit suicide. The learned Judge, in paragraph 16 of the impugned Judgment, has considered this aspect in sufficient detail. Thus, taking overall view of the matter and taking into consideration the evidence led by the prosecution, it cannot be said that the view taken by the learned trial Judge was not a possible view or that his findings are perverse. Therefore, I am not inclined to interfere in the impugned Judgment and Order. With the result, the Appeal fails and stands dismissed.

(SARANG V. KOTWAL, J.)