

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL APPEAL NO.315 OF 1997**  
WITH  
**CRIMINAL APPLICATION NO.1275 OF 2009**

1 Sunil Ashok Pawar  
Age 28,

2 Sou. Kamalabai Ashok Pawar  
Age 42 yrs.,

Both r/o. Mauli Bungalow,  
Ramdas Swami Nagar, Gandhinagar,  
Nashik 6.

....Appellants

V/s.

The State of Maharashtra

....Respondents

None for Appellants.

Mrs. A.A.Takalkar, APP for the Respondent-State.

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**CORAM :- SANDEEP K. SHINDE, J.**

**DATE :- 3RD MARCH, 2018.**

**ORAL JUDGMENT :-**

The Appellants were convicted by the learned Additional Sessions Judge, Nashik under Sections 498A, 307 read with Section 34 of the Indian Penal Code and sentenced to suffer RI for one year and three years respectively by the order dated 17.5.1997 in Sessions Case No.187 of 1996.

2           That against the aforesaid conviction, this Appeal is preferred. It appears since period of sentence was less than three years, during the pendency of this Appeal, execution of sentence was suspended and the appeal was admitted. It further appears from the record that both the accused were in custody from 4.7.1996 to 17.7.1996.

3           The Appellant No.1 is the son of the Appellant No.2. Marriage of the Appellant No.1 with Rekha (“**Complainant**” for short) was performed on 26.2.1995. It is the Complainant's case that she was subjected to harassment by the Accused as parents of the Complainant did not offer any customary present to husband in 'Adhik Mas' soon after the marriage. It is her case that on this count, her husband and mother-in-law were taunting and asking her as to why they were not invited by her parents and extended the hospitality. It appears from the evidence of Complainant (PW.2) that she was disclosing the alleged ill-treatment caused to her to her parents. However, on assurance given by her Parents that everything would be normal in the short span of time, she lived and co-habited with the Accused No.1. It is her evidence that she was beaten up by

the Accused Nos.1 and 2 in the presence of her relatives on the small incident in June, 1996.

4           It is the prosecution's case that on 1.7.1996 when Rekha was at home, her husband caught hold her hands, gagged her nose and mother-in-law Kamlabai poured liquid in her mouth. Resultantly, she became restless, as liquid dripped into her stomach. It is her specific case that after the incident, Accused left the home and latched the door of the house from outside. The Complainant would depose that as the door was latched from outside, she could not seek help. She would depose that in the circumstances, she called for help of neighbour whose house was alongside her house as could be seen from the map produced on record. It is the prosecution's case that neighbour, Mrs. Chavan (P.W.3), who heard loud cry of Rekha, called for help of one P.W.4 Santosh Borade, rickshaw driver. It further appears that Rekha, was removed by Mrs. Chavan and rickshaw driver to the clinic of Dr. Vasaikar who then advised to admit her in the Civil Hospital. It is the prosecution's case that she was admitted in the Civil Hospital at 11 am on 1.7.1996. That she was examined by Dr. Matha at 11.50 a.m. and, thereafter by Dr. Vyavahare. The prosecution has examined Dr. Ravindra Ashtaputre P.W.5 who had also an occasion to treat Rekha.

It is his evidence that on 4.7.1996, she was discharged from the hospital. He deposed as Prosecution Witness and said that it was the case of poisoning. A sample of vomit of Rekha was sent to Chemical Analyser which resulted in detection of organo phosphorous insecticides as is evident from the C.A.Report. He would further depose that had Rekha been not treated in the hospital within reasonable time, she would have died. He further stated that he could not tell how much quantity of organic phosphorous insecticides is sufficient in the ordinary course of nature to cause death.

5           It also appears from the record that the statement of Rekha was recorded by the Special Executive Magistrate. Besides statements of parents were also recorded. That after completing investigation, charge-sheet came to be filed and Accused were tried. The learned Judge convicted the Accused of the offences punishable under Sections 307, 498-A read with Section 34 of the Indian Penal Code and were sentenced to suffer RI for three years and one year respectively. It is against this order of conviction, this appeal is preferred.

6            Heard the learned APP for the State. None appears for the Appellants though called out repeatedly.

7            With the assistance of the learned APP, I have gone through the records and proceedings and the evidence of the prosecution witnesses.

8            The only question which is required to be answered is; “Whether the prosecution has proved beyond reasonable doubt that on the given date whether the Accused administered poison to Rekha and attempted to cause her death.”

              It is also required to be answered whether prosecution has proved that the residue of the poison found on the body of Rekha was sufficient in the ordinary course of nature to cause her death.

              In my view, second question would be incidental if this Court comes to conclusion that the prosecution has proved beyond reasonable doubt that the Accused forcibly attempted to administer poison to Rekha with an intention to cause her death.

9            Mrs. Takalkar the learned APP has taken me through the evidence of P.W.2-Rekha and the evidence of neighbour-Mrs. Chavan (P.W.3). She has also taken me through the evidence of P.W.4- Mr. Santosh Borade, Rickshaw Driver.

10           That after going through the evidence of Rekha, it transpires that soon after the alleged administration of poison to her by the Accused, the Accused left the house and locked the house from outside. In the circumstances, she was not able to seek help or to go out of the house. It is her case that in the circumstances, she called for help of neighbour, which was responded by Mrs. Chavan (PW.3). I have also gone through the evidence of PW.3 who in her evidence would state that after hearing her loud cry and sensing something was serious and wrong with Rekha, she called for the help of PW.4-Santosh Borade and requested him to call Doctor. She would further say that when she entered the house of the accused, she found doors were not latched and nobody was present in the house.

          Thus, question which falls for consideration is as to whether the prosecution has proved the fact that soon after the alleged incident, the Accused left the house and locked the same from outside so as to prevent Rekha from seeking any help.

11           To ascertain this fact, I have also gone through the evidence of PW.4-Santosh Borade, who in his evidence does not throw any light on this issue. This witness would depose that at the

request of Mrs. Chavan, he went to call Doctor. When he returned home, he found Mrs. Chavan was inside the house. In the circumstances, there is no evidence to hold that after the alleged incident of administering poison, the Accused locked the house from outside. It makes evidence of Rekha doubtful. Her evidence does not inspire confidence. It is not corroborated by other evidence. Thus, there is absolutely no evidence on record to accept the theory of Rekha that soon after the alleged incident, Accused left the house by locking the room from outside.

12           The learned APP has taken me through the evidence of Investigating Officer as well as previous statements of Mrs. Chavan. There was an attempt by the prosecution to contradict Mrs. Chavan with her previous statement recorded by the Police. However, this contradiction alone is not sufficient to hold that doors of the house were locked by the Accused from outside after the incident so as to prevent Rekha from seeking any help.

13           That even otherwise after going through the evidence of witnesses and particularly that of P.W.4-Santosh Borade and neighbour, Accused were not found in the house soon after the incident. Evidence of Rekha (P.W.2) if read along with the evidence of Dr. Ashtaputre (P.W.5), one more fact surfaces in the evidence is

that Rekha appears to have not offered any resistance to the alleged attempt by the Accused to administer poison to her. Her evidence is silent on this aspect, which appears to be not a natural. More so, map on record would indicate that house of the Accused was surrounded by the other houses and at the given point of time also, it appears window of the house was not closed. That as a natural conduct, Rekha ought to have offered some resistance. However, she did not whisper about such resistance in her evidence. More so, there is no medical evidence on record to indicate or even suggest remotely that Rekha had offered any physical resistance to the Accused when they attempted to give poison to her.

14           Thus, after taking the survey of entire evidence on record, the prosecution has not proved beyond reasonable doubt that at the first place, there was an attempt by giving poison to Rekha by the Accused. I hold so, because evidence of Rekha is not reliable. It appears event of latching of door from outside was set-up by Rekha to make the intention of Accused louder. Secondly, there is no evidence to hold beyond reasonable doubt, that after the incident, the Accused Nos.1 and 2 locked the house from outside. More so, the evidence of Dr. Ashtapure does not show as to how much quantity was allegedly given to Rekha by the Accused so as to

cause her death in the natural course. Thus, in my view, the prosecution has failed to prove that the Accused attempted to poison Rekha and caused her death.

15           Accused were also prosecuted and convicted for the offence punishable under Section 498A of the Indian Penal Code. Rekha in her evidence would narrate only the incident of not offering any customary present to her husband in '*Adhik Mas*' by her parents. She would say that on this count both the Accused were unhappy and were taunting Rekha to extend the appropriate hospitality to them by her parents. She would further depose that in June, 1996, she was also beaten up by the Accused Nos.1 and 2 in the presence of her relatives. In my view, evidence of Rekha is falling short of requirement to hold that she was recurrently harassed and was ill-treated at the hands of the Accused for not meeting unlawful demands or otherwise. In view of these facts, I hold that the prosecution has equally failed to prove that the Accused were ill-treating Rekha for not meeting unlawful demands or otherwise so as to hold them guilty for the offence punishable under Section 498-A of the Indian Penal Code.

16           It appears from the record that parties had filed proceedings under the Hindu Marriage Act being Petition No.25 of

2006 wherein the disputes between the husband and wife has been settled and marriage between the parties was dissolved.

17 In view of the discussion aforesaid and the reasons recorded, the Appeal is allowed. Conviction and the sentence recorded against them in Sessions Case No.187 of 1996 by the Additional Sessions Judge, Nashik dated 17.5.1997 is hereby quashed and set aside. Bail bonds executed by the Accused stand cancelled. Muddemal property, if any, preserved may be disposed of after three months.

18 The Appeal is allowed and disposed of accordingly and Criminal Application No.1275 of 2009 therein does not survive and stands disposed of accordingly.

**(SANDEEP K. SHINDE, J.)**