

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.499 OF 2002

The State of Maharashtra
Through Nandgaon Police Station,
District: Nashik

.....Appellant

V/s.

1 Bhaginath Gangadhar Raut,
Age - 21 Years.

2 Mainabai Gangadhar Raut,
Age- 50 years,

Both R/o. Jategaon, Tal: Nandgaon,
District: Nashik

.....Respondents

Mr. Ajay Patil , APP for Appellant/State.

Mr. Jitendra Gaikwad with Mr. Anilkumar Patil , Advocates
for Respondents.

CORAM : SANDEEP K. SHINDE, J.

DATE : 6TH FEBRUARY, 2018.

JUDGMENT :

The State has preferred this Appeal under Section 378(1) of the Criminal Procedure Code, 1973 against the order of acquittal dated 9.1.2002 passed by the First Ad-hoc Additional Sessions Judge, Malegaon, District: Nashik in Sessions Case No.31 of 2000, whereby the Respondents/Accused were acquitted of the offences

punishabe under Sections 498A, 306 read with Section 34 of the IPC.

2 Heard the learned APP for the State and the Mr. Gaikwad for the Respondent Nos.1 and 2. Perused the Record and Proceedings.

3 Briefly stated prosecution story is as under:

Complainant is father of the deceased Surekhabai who was then married to the Accused No.1 in May, 1997. Accused No.2 is mother of Accused No.1. That a year after the marriage, both the accused started ill-treating Surekhabai for non-fulfilment of their demand of Rs.15,000/-. They were demanding the said sum for purchasing motor-cycle. Fact of demand of Rs.15,000/- and consequential ill-treatment caused to her by husband and mother in law was disclosed by Surekhabai to her parents. It is complainant's case that he had promised accused no.1 to pay Rs.15,000/- upon receiving the sale proceeds of cotton crop. That on the eve of Nagpanchami, Surekha had been to her parents' house and at that time, she had disclosed that accused were demanding Rs.15,000/- for buying motor-cycle. The complainant and his brother again assured the accused no.1 to pay Rs.15,000/- after harvesting cotton crop. The said assurance was given when the

complainant and his brother had gone to the house of accused to leave Surekhabai after festival of Nagpanchami. The complainant would assert that on 9.9.1999, he had received the message that Surekhabai was admitted in the hospital and her health condition was critical. It is his case that accused no.1 told him that quarrel ensued between him and the deceased Surekhabai and in the hit of anger, she consumed poison (insecticide). On 10.9.2009 Surekhabai died.

4 Father of the Surekhabai lodged complaint on 12.9.2009. After completing investigation in Crime No.88 of 1999 registered under Sections 498A, 306 read with Section 34 of the IPC, the case was committed to the Court of Sessions.

5 Prosecution in support of its case, had examined father of Surekhabai (P.W.1) and her mother (P.W.2). Besides prosecution had not examined any other relatives of the deceased particularly, brother of P.W.1. Be that as it may, prosecution had examined Mr. Ashok Supare (P.W.3), Police Hawaldar who had recorded the statement of the deceased in the hospital which is at Exhibit 29. Prosecution had examined Investigating Officer (P.W.4) and Doctor Kailas Zine (P.W.5),

Medical Officer who had conducted post-mortem.

6 The learned trial Judge after appreciating the evidence, acquitted both the accused for want of cogent and reliable evidence. The learned Judge was of the view that evidence placed on record by the prosecution had not proved ingredients of offences for which the accused were charged.

7 Mr. Patil, the learned Assistant Public Prosecutor, has taken me through the evidence of P.W.1 and P.W.2. He has taken me through the complaint, post-mortem report, panchanamas as well as the evidence of police constable who had recorded the statement of the deceased in the hospital. Mr. Patil submitted that the learned trial Judge has ignored the evidence of P.W.1 which has not been dislodged on any count in searching cross-examination and his evidence has been amply corroborated by his wife P.W.2. Mr. Patil submitted that evidence of P.W.1 and P.W.2 had established the fact that the accused were demanding Rs.15,000/- from Surekhabai and for not paying the said amount, she was ill-treated by the accused. Mr. Patil would further submit that since Surekhabai suffered unnatural death within 7 years of

her marriage, a presumption under Section 113A of the Indian Evidence Act, 1872 is relevant. Mr. Patil would further submit that since evidence of P.W.1 and 2 proved that the deceased was ill-treated by the accused for not fulfilling demand of Rs.15,000/- and such a ill-treatment left her with no alternative but to commit suicide by consuming poison (pesticide). Mr. Patil would therefore, submit that it is a clear case of "abetment" by the accused nos.1 and 2 and, therefore, the prosecution has also proved the charge under Section 306 of the IPC.

8 Mr. Gaikwad, who supports the judgment of the learned Sessions Judge has also pointed out to me the evidence of Mr. Ashok Supare, Police Constable who had recorded the statement of the deceased Surekhabai in the hospital. He has taken me through the said statement which is at Exhibit 29 and would submit that this statement alone is sufficient to disbelieve the case of the complainant. Mr. Gaikwad would also submit that evidence of parents of the deceased has not proved unlawful demand and alleged consequent harassment caused to Surekhabai by the accused. He would submit that the prosecution has also not proved the

element of “abetment” which is essential for proving the charge under Section 306 of IPC.

9 That before adverting to the evidence on record and the arguments canvassed by the both the parties, it may be stated that this appeal is preferred against the order of acquittal. The Supreme Court in the case of **Babu v. State of Kerala reported at (2010) 9 SCC 189** upon considering various judgments pertaining to the approach to be adopted by the Appellate Court while considering the appeal against acquittal has held as follows:

“19 Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner whether the other view is possible should be avoided, unless there are good reasons for interference.”

10 Thus, acquittal by the trial Court re-enforces presumption of innocence of the accused and the order of acquittal cannot be interfered with unless it is found to be perverse.

11 Thus, keeping in mind the principles laid down by the Apex Court as aforesaid, I have gone through the prosecution evidence as well as reasons recorded by the learned Sessions Judge while acquitting accused. Particularly, in evidence father of the deceased merely stated that his daughter had disclosed to him about unlawful demand by the accused without any further and better particulars. Though it has come in the evidence that he had promised his son-in-law to pay Rs.15,000/- and at that time, his brother was present but for the reasons not known, the prosecution has not examined brother of the P.W.1. That save and except the statement of father and mother of the deceased that the accused were demanding Rs.15,000/- and since that amount was not paid, she suffered ill-treatment at the hands of the accused, there is no any other evidence on record to believe the same. I say so because prosecution itself had produced on record the statement of the deceased recorded at Exhibit 29 in the hospital by independent person i.e., Police Constable Ashok Supare. In the said statement, there is no whisper by the deceased that accused were demanding Rs.15,000/- from her for purchasing motor-cycle. Her statement at Exhibit 29 would read that on 9.9.1999 her mother-in-law complained to

her husband that she was not able to cook food properly and on that count she was beaten by him. In the statement, she would say that after the incident, in the hit of anger, she consumed poison (insecticide) and thereafter, she was removed to hospital. This piece of evidence, in my view, would completely demolish the prosecution case. It may also be stated that Surekha died on 10.9.1999. However, complaint was lodged on 12.9.1999, i.e., two days after death of Surekhabai. No doubt that delay of two days is not fatal to the prosecution but keeping in mind the available evidence on record and particularly, the statement of the deceased at Exhibit 29, it casts a shadow of doubt on the case of the prosecution.

12 Thus, after appreciating the evidence of parents of the deceased that Surekhabai was ill-treated for not paying Rs.15,000/- to the accused and such ill-treatment drove her to commit suicide, it is difficult and doubtful to accept the version of parents of Surekhabai. It is so and particularly in the light of statement of Surekhabai at Exhibit 29 wherein she did not state that accused were demanding Rs.15,000/- and for not fulfilling such demand, she was subjected to

harassment. In fact, she had stated that in the fit of anger, she consumed poison (insecticide).

That even otherwise for want of minimum details/particulars of alleged unlawful demand and nature of alleged ill-treatment, in my view, the learned trial Judge committed no error in disbelieving the evidence of parents of deceased.

13 Thus, after considering the entire evidence on record, I do not see any reason to interfere with the order of acquittal passed by the learned Sessions Judge.

14 So far as the presumption under Section 113A of the Indian Evidence Act, 1872 is concerned, it may be stated that presumption is neither conclusive nor mandatory. In the case in hand, there is no evidence on record even to suggest that accused had abetted Surekhabai to commit suicide. In fact, entire case of the prosecution stands vitiated in view of her statement at Exhibit 29. That even otherwise evidence of the parents of Surekhabai is not cogent and they being interested witnesses as a matter of prudence, the prosecution ought to have examined independent witnesses or at least brother of P.W.1 who had an occasion to convince accused no.1 about the

unlawful demand. Furthermore, there is no explanation coming forth on record as to why complaint was lodged two days after the incident.

15 In view of reasons as stated, the appeal deserves no consideration. The appeal is, accordingly, dismissed.

(SANDEEP K. SHINDE, J)