

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

CRIMINAL APPEAL NO.723 OF 2001

1. Navnath Appa Chopade
Age – 37 years,
2. Appa Pandurang Chopade
Age – 72 years,
3. Kasudabai Pandurang Chopade
Age – 67 years,

All r/o. Adhegaon, Tal.Madha,
Dist. Solapur.

... Appellants/
Orig. Accused
Nos.1, 3 and 4

versus

The State of Maharashtra
(At the instance of
Khadki Police Station, Pune,
C.R.No.124/00)

... Respondent

.....

- Mr.Abhaykumar Apte, Advocate for the Appellants.
- Ms.Sharmila S. Kaushik, A.P.P. for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th MAY, 2018.

JUDGMENT :

1. By this Appeal, the Appellants have challenged the

Judgment and Order dated 14/09/2001 passed by the Sessions Judge, Solapur, in Sessions Case No.157/2000.

2. By the said impugned Judgment and Order the Appellants were convicted for the offence punishable u/s 498-A r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.2,000/- each and in default of payment of fine, were sentenced to suffer rigorous imprisonment for one month. The Appellants were also convicted for the commission of offence punishable u/s 306 r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.2,000/- each and in default of payment of fine to suffer rigorous imprisonment for one month. Both the sentences were directed to run concurrently and the Appellants were given benefit of set off u/s 428 of Cr.P.C. for the period, for which they were in custody during trial.

3. The Appellants are the original accused Nos.1, 3 and 4. The Appellants had faced the trial along with the original

Accused No.2 Krishan Appa Chopade, who was acquitted of all the charges. The Appellant No.1 Navnath Appa Chopade is the husband of the deceased Rekha Navnath Chopade. The Appellant No.2 is the original Accused No.3 and the father-in-law of the deceased Rekha. The Appellant No.3 is the original Accused No.4 and is the mother-in-law of the deceased Rekha.

4. The prosecution case is that the Appellant No.1 and Rekha got married on 18/03/2000. After initial few days, the Accused started ill-treating Rekha by demanding a gold chain and a wooden cot. According to the prosecution case, on two occasions Rekha had gone to her parental house and had complained about the ill-treatment meted out to her on the ground of non-fulfilment of the unlawful demand on the part of the Accused. At her matrimonial house she was residing with the Appellants, the Original Accused No.2 Krishan Chopade who was the brother-in-law and his wife Tai. According to the prosecution case, in the early morning on 10/06/2000 Rekha committed suicide by jumping in the well situated in the

agricultural field of the Accused. The mother and brother of the deceased Rekha came to the Rekha's matrimonial house and on the next day i.e. on 11/06/2000 Rekha's mother lodged her FIR vide C.R.No.65/00 at Tembhurni Police Station, u/s 498-A, 306 r/w 34 of IPC. The investigation was conducted. The post-mortem notes showed that Rekha had died because of 'Asphyxia due to drowning'. Various panchanamas were carried out. The map of the site of the incident was drawn. After completion of the investigation the charge-sheet was filed. The case was committed to the Court of Sessions. The charge was framed on 23/11/2000 against the four Accused under Section 498-A r/w 34 and 306 r/w 34 of IPC. All the accused pleaded 'not guilty' to the charges and claimed to be tried.

5. During trial the prosecution examined 7 witnesses. P.W.1 Bhamabai Keshav Waghmode was the mother of the deceased Rekha and had lodged the FIR. P.W.2 Audumbar Keshav Waghmode was the brother of the deceased and he is also examined on the point of ill-treatment meted out to the

deceased Rekha. P.W.3 Kantabai Navnath Doltode was the Pancha, when the inquest Panchanama was conducted. P.W.4 Hanmant Narhari Padvalkar was the Pancha when the spot panchanama of the well was prepared. The said panchanama is produced on record at Ex.24. P.W.5 Dr.Prakash Shivappa Pol had conducted the post-mortem examination on the dead body of Rekha and the post-mortem notes are produced on record at Ex.27. P.W.6 Bajirao Krishna Gaikwad was the Circle Officer at Tembhurni, who had drawn the map. The map is produced at Ex.23. P.W.7 Dinkar Bhagwan Gore was the Investigating Officer.

6. The prosecution case has unfolded through the evidence of P.W.1 Bhamabai Keshav Waghmode. This witness was the mother of the deceased. She has deposed that at the time of marriage, she had paid Rs.17,000/- as dowry and had given two dresses and a wooden cot to the Accused. She has deposed that when the deceased Rekha had visited her house, she had complained that the Accused were demanding golden

ring and a wooden cot and on that count were beating and harassing her. P.W.1 informed the Appellant No.2 Appa Pandurang Chopade that their demands would be met very soon. She has also stated that she had requested the Accused No.2 to tell the Appellant No.1 not to torture Rekha. Thereafter she has deposed as to how she came to know on 10th June 2000 that Rekha had fallen in a well and had died. She went to the matrimonial house of Rekha and thereafter she lodged the FIR. In her cross-examination she has admitted that the expenses for the marriage were borne by the Accused. She could not tell exactly when Rekha told her about demand of gold and wooden cot.

7. P.W.2 Audumbar Keshav Waghmode is examined on the similar lines to prove that Rekha was ill-treated by the Accused. He has deposed that Rekha had told him that there was torture at the hands of the Accused. He has further deposed that the Appellant No.1 was beating her after consuming liquor and was demanding 20 gms of gold and wooden cot and that

the Appellant Nos.2 and 3 were insulting her verbally. On 27/05/2000 this witness had brought Rekha for season of Mangoes and even at that time, she had reiterated about the ill-treatment given to her. Thereafter this witness had left Rekha to her matrimonial house on 01/06/2000 and on 10/06/2000 the incident occurred.

8. Insofar as the spot of the incident is concerned, the evidence of P.W.4 Hanmant Narhari Padvalkar and P.W.6 Bajirao Krishna Gaikwad, who was the Circle Officer is important. The analysis of their evidence as well as the spot panchanama divulge that the well was not constructed fully. There was a temporary arrangement of rocks for climbing down in the well. Significantly one pot for fetching water was lying near diesel engine fixed near the well and another pot with a rope tied around it, was lying in the water. P.W.4 Hanmant Padvalkar has categorically stated that the Family members of the Accused used to fetch water from well by standing near the engine. There is no re-examination of these witnesses and the

prosecution has not examined any person from the locality to show that the water was directly supplied to the house of the Accused through pipeline. Though, P.W.2 Audumbar Waghmode has stated in his deposition that there is a pipeline from the well to the house of the accused, that portion appearing in his deposition is an omission as he had not stated so in his statement before the police. Though, the map also shows pipeline, there is nothing to show that it was regularly used by the Accused and there was no necessity to manually draw water from the well directly.

9. I have heard learned Counsel Mr. Abhaykumar Apte for the Appellant and Ms. Sharmila S. Kaushik, A.P.P. for the State of Maharashtra.

10. Mr.Apte rightly submitted that the evidence on record shows that the family members of the Accused had to manually draw water from the well and looking at the incomplete construction of the well, there was a strong possibility that the deceased had fallen in the well accidentally.

11. It is important to note that the prosecution has not examined any witness who had seen the dead body at the first instance or who had taken out the body from the well. There is no explanation forthcoming as to why any of such witnesses were not examined. The prosecution has not examined any neighbours of the Accused to throw light on the regular practice in respect of the supply of water from the well. In these circumstances I am inclined to accept the submissions of Mr.Apte that there is a strong possibility that the deceased had fallen in the well accidentally and that, it is not a case of commission of suicide.

12. The learned Judge has relied on the evidence of the Medical Officer, wherein he had opined that the death had taken place 10-12 hours prior to conducting of post-mortem. The post-mortem examination was conducted from 02.00 p.m. to 02.30 p.m. on 10/06/2000 and Medical Officer has mentioned that the Rigor Mortis had developed all over the body. The learned Trial

Judge therefore concluded that the death must have occurred at around 02.00 a.m. to 03.00 a.m. in the night. According to the learned Trial Judge, there was no occasion for the deceased to go to well and fetch water at these odd hours and therefore the learned Trial Judge ruled out the possibility of accidental death. In my opinion, this conclusion of the learned Trial Judge is not correct. The medical opinion based on development of Rigor Mortis gives only an approximate indication of time of death. It can never be a conclusive proof of the time of death. In any case, the approximate time of death is fairly proximate to the morning hours, when the deceased could have gone to fetch water.

In these circumstances it cannot be said that the prosecution has proved beyond reasonable doubt that the deceased had committed suicide and it was not an accidental death.

13. Insofar as the allegations in respect of the section 498-A are concerned, the prosecution has relied again on the

evidence of P.W.1 Bhamabai Waghmode and P.W.2 Audumbar Waghmode. Though both of them have stated that the deceased was ill-treated by the Accused on the ground of demand of golden ring and a wooden cot, the evidence shows the allegation are general in nature. The evidence does not disclose as to which of the four accused had demanded the golden ring and wooden cot from the deceased and which accused had ill-treated her and in what manner. The P.W.1 has deposed that she had informed the Appellant No.2 that the articles would be given shortly. Thereafter she has not deposed about the reaction of the Appellant No.2. P.W.1 has further deposed that she had told the Appellant No.2 to tell the Appellant No.1 not to torture the deceased. This action would indicate that the deceased had no complaint atleast against the Appellant Nos.2 and 3. Even against the Appellant No.1 there are no specific direct allegations in respect of the ill-treatment meted out. P.W.1 has admitted that the expenses for the marriage were borne by the accused.

14. P.W.2 on the other hand has deposed that the Appellant No.1 was beating her by consuming liquor and was demanding gold and wooden cot. This allegation is not supported or corroborated by P.W.1. She has nowhere stated that the Appellant No.1 used to consume liquor and then used to beat the deceased. P.W.2 Audumbar Waghmode has also made a general statement that Rekha was tortured at the hands of the Accused. He has further deposed that the Appellant Nos.2 and 3 were verbally insulting the deceased.

15. Most significantly these allegations are not made immediately by either P.W.1 or P.W.2 to the Police. The incident had occurred in early hours on 10/06/2000. Both P.W.1 and P.W.2 were present near the well soon thereafter. Inspite this, they have made no complaints to the police till 04.30 p.m. on 11/06/2000. Therefore Mr.Apte rightly submitted that these allegations were made as an afterthought to implicate the Accused. It is also worth to note that the Trial Judge has already acquitted the Accused No.2 based on the same allegations.

Therefore there is no reason as to why the same benefit cannot be extended to the present Appellants. Therefore in my opinion, in this case, benefit of doubt can be given to these three Appellants.

16. In view of the aforementioned discussion, the Appellants are entitled for benefit of doubt. Accordingly the Appeal is allowed. The Judgment and Order dated 14/09/2001 passed by the Sessions Judge, Solapur, in Sessions Case No.157/2000 is set aside. The Appellants are acquitted from all the charges. Their bail bonds shall stand discharged.

(SARANG V. KOTWAL, J.)