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

CRIMINAL APPEAL No. 464 OF 1998

Dhondiram Janardhan Kashid)
Village Dahitale, Tal. Barshi,)
Dist. Sholapur and at present residing)
at Kadoli, Tal. Karad, Dist. Satara)....Appellant

Versus

The State of Maharashtra)
(At the instance of Inspector of Police)
Karad Taluka Police Station, Dist. Satara)...Respondent

Mr. Lokesh Zade, Court appointed Advocate for Appellant

Mr. Y.M. Nakhwa- APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : FEBRUARY 14, 2019

JUDGMENT:

1. Heard. The Appellant herein is convicted for the offences punishable under Section 498A of the Indian Penal Code and sentenced to suffer R.I. for two years and to pay a fine of Rs.500/- , in default, to undergo further R.I. for two months. However, accused is acquitted of the offences punishable under section 306 and 504 r/w. 34 of the Indian Penal Code by the III Additional Sessions Judge Satara in Sessions Case No. 187 of 1992

on 6.4.1998.

2. Such of the facts necessary for the purpose of deciding the appeal are as follows.

3. The Appellant was married to Sarubai on 8th May, 1990. The Appellant was servicing as an agricultural labourer with Tukaram Haritatty More. He was also residing in his agricultural land at Village Kadoli. After marriage, he was residing with his wife in the said agricultural land in a hut with thatched roof.

4. On 31st December, 1991, Sarubai had died in the agricultural land. A message was sent to her parents by Kadoli Taluka Police Station that their daughter had died. It was a case of accidental death. Her parents (PW1) had rushed to village Kadoli. AD No. 101 of 1991 was registered at Karad Taluka Police Station, Satara. The body was sent for postmortem. The cause of death could not be ascertained. However, viscera was preserved and opinion was reserved. It appears that on 7th January, 1992, it was learnt that Sarubai had died due to poisoning. Therefore, PW1-Vishwanath Raut had lodged a report at the police station on

7.1.1992 alleging therein that Sarubai had visited her maternal house for the first time after marriage on the occasion of Nag Panchami. She had disclosed to her father that she is being harassed by her husband and that he is insisting upon purchasing two acres of land. He had also insisted upon her to ask her parents to give financial aid for purchasing a land and thereafter, at the time of Diwali, her in-laws had demanded Rs.7,000/- for purchasing cows and buffaloes. The complainant had paid the same. However, their demands had not stopped and they continued to harass Sarubai.

5. The funeral was performed on the same day. It appears that on receipt of the Chemical Analyzer's report, the first information report was lodged. On the basis of the said report, Crime No. 6 of 1992 was registered at Karad Taluka Police Station, Satara for the offence punishable under section 498A and 306 of the Indian Penal Code. After completion of investigation, charge-sheet was filed on 19th February, 1992. The case was committed to the Court of Sessions on 5.9.1992. The prosecution examined 7 witnesses to bring home the guilt of the accused.

6. PW1 – Vishwanath Raut is the father of the deceased. He has deposed before the Court in consonance with the first information report. However, he has failed to mention the cause of delay in filing the FIR. According to him, his daughter had studied upto IVth Standard. He was working as a teacher. After the marriage, there were intermittent quarrels and that the Appellant had refused to take Sarubai for co-habitation and hence, they had explored the possibility of mutual settlement by calling respectable persons of the society including the Sarpanch. They had reconciled the relations and thereafter, Sarubai had gone to her matrimonial house. There are inherent omissions and contradictions in the evidence of PW1.

7. PW2- Dr. Manorama Das Patnaik was working as a Medical Officer at Primary Health Centre, Sadashiv Gad. The autopsy was conducted by Dr. Shinde. However, he had gone to Dubai. She had identified the signature of Dr. Shinde. She has further stated that as per column No.21 of the postmortem notes, the small intestine and large intestine contents were congested. The lung was congested as per column 20 of the report and that all symptoms were indicative of poisoning. She had received the

viscera report which clearly indicates that the cause of death was petroleum hydro carbon. The postmortem notes are at Exhibit 23. It is her firm opinion that the deceased Sarubai may have died due to petroleum hydro carbon. In the cross examination, she has candidly stated that in the eventuality, petroleum hydro carbon is consumed, it would emanate a foul smell at the time of conducting postmortem. There is no observation of any such fact in the postmortem note. If there is consumption of pesticide also it could emanate foul smell at the time of conducting postmortem.

8. PW3 – Channappa Kondappa Chetty was working as Deputy Sarpanch of the village. According to him, when a discordant note struck between the spouses, he had acted as a mediator.

9. The prosecution has examined PW4 – Pushpa Suryabhan Gaikwad in order to substantiate that the deceased had disclosed to her as well as her own parents that she was subjected to ill-treatment since her parents had failed to fulfill the demands of her in-laws. The witness was working as a Anganwadi Servika in Primary School. She has admitted that she was not on visiting terms to the house of the Complainant i.e. PW1.

10. PW5 – Shrimant Bhairu Gavhane, happens to be interested witness as he is a close relative of PW1. He has substantiated that an amount of Rs.5,000/- was given to all the accused persons. He was not even knowing as to where the accused and the deceased were residing after their marriage.

11. PW6- Tukaram Vitthal Mane is the panch for the scene of offence and panchnama, which is at Exhibit 29. He has proved the contents of the panchnama, which would show that the deceased was in pain because of inhalation of hydro carbon and that there were footmarks in the soil as she had died just near the standing crop of sugarcane.

12. PW7 is the investigating officer. According to him, he has conducted the investigation in accordance with law.

13. The accused has examined Tukaram Hari Tatya More as defence witness. The accused was working as an agricultural labourer with Mr. More, three years prior to the incident. After marriage, he was residing in a thatched hut in his agricultural land.

There were cordial relations between the accused and the deceased. That after marriage, the deceased had not gone to her maternal home at Dahitane.

14. On the day of the incident i.e. 31st December, 1991, the accused was in the company of Defence Witness No.1. They had returned after spreading manure in the land adjacent to the standing sugarcane crop. When they were returning home, they saw the deceased eating sugarcane. Within no time, after the accused had reached the home, he had rushed to the house of Mr. More informing him that his wife is serious. When they went to the spot, they had noticed that she was restless. She was on the same spot where she was seen eating sugarcane. He had immediately arranged for a jeep, soon thereafter the villagers had gathered on the spot. They informed about the same to the authorities. The deceased was taken to Karad Taluka Hospital where she was declared dead on admission and an autopsy was performed.

15. The learned counsel appointed for the Appellant has submitted that in fact, the prosecution has not brought on record any material to indicate that there was any harassment to the deceased at the hands of the Appellant. More over, the accused

has been acquitted of the offences punishable under section 306 and 504 of the Indian Penal Code and has been convicted for the offence punishable under section 498A. That there is an inordinate delay in lodging the FIR.

15. It appears to be a case of accidental death. It appears that the hydro carbon pesticides were sprayed on the sugarcane crops just before she had eaten the same. The evidence of Defence Witness No.1 needs to be taken into consideration and that he has categorically stated that the accused was in the company of DW1 at the time of incident. It is in these circumstances that it can be safely held that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the appeal deserves to be allowed by passing the following order:

ORDER

- (i) The Appeal is allowed and stands disposed of.
- (ii) The judgment and order passed by the III Additional Sessions Judge Satara in Sessions Case No. 187 of 1992 dated 6.4.1998 is hereby quashed and set aside. The Appellant herein is acquitted of the offence punishable under Section 498A of the Indian Penal Code. The Appellant be released forthwith.

- (iii) Fine, if any paid, be refunded.
- (iv) Writ be issued immediately.
- (v) The Advocate Mr. Zade was appointed by this Court to espouse the cause of the Appellant. He has put in his best efforts. The proceessional fees are quantified as per the Rules, to be paid by the High Court Legal Aid Services.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam