

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

CRIMINAL APPEAL NO.245 OF 2019

Salim Abdul Rahim Sutar

.. Appellant

Versus

State of Maharashtra & Ors.

.. Respondents

...

Mr. Kalpesh U. Patil, Advocate for the Appellant.

Mrs. M.R.Tidke, APP for the State/Respondent No.1.

Mr. Sachin K. Hande, Advocate for Respondent No.2 to 8.

CORAM: P N. DESHMUKH, J.

DATED : 13th NOVEMBER,2019.

P.C:-

. Heard learned counsel for the appellant, learned APP for the State/Respondent No.1 and learned counsel for Respondent Nos.2 to 8.

2. This appeal is challenging the judgment dated 7th October, 2015 passed by the Learned Additional Sessions Judge, Sangli acquitting Respondent Nos.2 to 8 of the offences punishable under Section 304-B, 498 A r/w 34 of the Indian Penal Code. By order

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dated 25th January, 2019 appeal was directed to be registered and directed to be listed in the caption (Admission). Accordingly heard learned counsel for the appellant and respondents. It is submitted that from the evidence of P.W. 1 – Salim Abdul Rahiman Sutar, father of the deceased and P.W. 3 – Afrin Salim Sutar, who is sister of the deceased Najneen, the prosecution has established that deceased was provided physical and mental ill treatment after some time of her marriage with Respondent No.2 and due to such ill treatment deceased died on 10th August, 2010 within seven years of her marriage. It is thus contended that as there is sufficient evidence establishing ingredients of offence for which Respondent Nos.2 to 8 are charged with, appeal be admitted.

3. Learned APP and learned counsel for Respondent Nos.2 to 8 submitted that there is no sufficient evidence to establish the guilt of respondents and as such opposed for admission of appeal. Learned APP on instructions also makes a statement that no appeal is preferred by the State against the acquittal.

4. Perusal of evidence on record shows that deceased was married to Respondent No.2 on 21st December, 2008. Respondent

Nos.3 and 4 are parents of Respondent No.2 is husband of deceased while Respondent Nos.4 and 5 are his brother-in-law and sister-in-law. Respondent No.7 and 8 are aunt of Respondent No.2 and her husband respectively.

5. Perusal of evidence of complainant would reveal that after marriage of Najneen, she was treated happily for couple of months. However, since May 2010 she was provided ill treatment as according to complainant's evidence on her visiting her parental home she used to complain that she was subjected to beating and abuses on trivial issues by her husband. It has further contended that on such issues like using excess soap for washing clothes and excess oil for cooking etc., she was harassed at the hands of her husband and her in laws. The complainant has further claimed that on receiving such information, he along with his wife visited matrimonial home of deceased and inspite of requesting Respondent Nos.2 to 8 to treat her happily she was continued with the harassment which resulted into her death on 10th August, 2010.

6. Similar is the evidence of P.W. 3 – Afrin Salim Sutar, who is sister of the deceased. As such on bare perusal of evidence of both

these witnesses it cannot be said that their evidence is sufficient to establish the ingredients of offence of which Respondent Nos.2 to 8 are charged for. Admittedly, mother of the deceased is not examined.

7. So as to prove the offence under Section 304 – B of the Indian Penal Code, it is necessary to bring on record that death of woman has occurred otherwise than in normal circumstance within seven years of her marriage and that it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband or in connection with demand of dowry.

8. In the background of above requirement when evidence on record is perused there is absolutely no evidence establishing demand by Respondent Nos.2 to 8 so as to provide harassment to deceased which forced her to commit suicide. In fact from the evidence of P.W. 2 – Dr.Smita Chandrakant Mane it has come on record that deceased died of natural death as per Postmortem Report Exh.65 which does not disclose probable cause of death and opinion as to this aspect was reserved. In the evidence of P.W. 2 – Dr.Smita Chandrakant Mane it has come on record that she has

performed postmortem and after reserving the cause of death has issued final cause of death stating that the death was due to pulmonary oedema which according to the expert is due to cardiac respiratory causes and according to her deceased might have died due to causes like hypertension etc. In her cross-examination expert has admitted that even viral infection is one of the cause for death due to pulmonary oedema. The expert further admitted that such death is natural death.

9. In that view of the matter and since there is no evidence on record to show that soon before death of deceased she was subjected to cruelty and harassment by Respondent Nos.2 to 8 in connection with demand of dowry. Having considering the nature of evidence as deposed by P.W. 1 – father and P.W. 3 – sister of the deceased since do not established any harassment on the part of Respondent Nos.2 to 8, no case is made out for grant of leave to admit the appeal. The view taken by the Learned Trial Judge does not appears to be perverse but in the set of circumstances is the possible view that can be taken. Appeal is thus dismissed.

(P. N. DESHMUKH, J.)