

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPEAL NO. 426/2007

* Laxman s/o Zibal Marbate
Aged 26 years,
R/o Umari, Tah.Kuhi, dist. Nagpur. **..APPELLANT**

v e r s u s

State of Maharashtra
Through PSO Paoni, Bhandara. **.. RESPONDENT**

.....
Ms.Vaishnavi Khamborkar, Adv.h/for Mr. N.D.Khamborkar,
Advocate for appellant
Mr. I.J.Damle, APP for respondent
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CORAM: MRS.SWAPNA JOSHI, J.
DATED: 19th December, 2019

ORAL JUDGMENT:

1. This Appeal has been directed against the judgment and order dated 20th September, 2007 delivered by the learned Additional Sessions Judge, Bhandara, in Sessions Trial No. 61/2006, convicting the appellant/accused for offence punishable under Sections 498A and 306 of the Indian Penal Code. For offence punishable u/s 498A, the appellant was sentenced to suffer RI for

two years and fine of Rs. 500/-, in default, to undergo SI for three months; whereas for offence u/s 306 IPC, he was sentenced to suffer RI for seven years and fine of Rs. 2000/-, in default, SI for six months. The learned trial Judge further directed that both the sentences shall run concurrently.

2. The prosecution case in brief can be summarized as under :-

Complainant-Prabhu Meshram (PW4) is the father of Archana(deceased), who married with the accused two years prior to the incident which had taken place on 15th February, 2006. It is the case of the prosecution that about 2 to 3 months after the marriage, Archana was treated properly by the accused, however thereafter, he started ill-treating her. Whenever Archana used to visit her parents' place, she used to complain against the accused about ill-treatment and the accused used to insist for divorce by consent. The accused used to suspect her fidelity. Whenever Archana telephone her mother, she used to complain against the accused, so also used to cry. The accused contacted PW4-Prabhu Meshram,i.e. father of the deceased, telephonically

and informed that Archana was seriously ill. As such, PW4 immediately proceeded to Umari ie. matrimonial house of deceased -Archana. On reaching there, PW4 found Archana in a disturbed condition. Archana informed him that she was beaten by her husband i.e. accused. PW4 stayed there overnight in the house of the accused. On the next day, in the Panchayat, accused insisted for divorce. The accused then asked PW4 to take Archana with him and, therefore, PW4 brought her to his house. PW 4 then proceeded to the market, however, when he returned home, he found froth coming from the mouth of Archana. Therefore he brought her to Primary Health Centre, Asgaon and then shifted to General Hospital, Paoni, however she was declared as dead. The complaint came to be lodged by PW4 vide Exh.19. PW6-PSI Warlu Pursange registered an accidental death. On receipt of information about the death of Archana from the hospital (Exh.25), the complaint was lodged by PW4, vide Exh.20, on the basis of which offence was registered vide Crime No.30/2006. PW6-PSI Pursange visited the place of incident and recorded the spot *panchnama* (Exh.17) and Inquest *Panchnama* (Exh.15). Statements of the

witnesses were recorded. *Muddemal* including glass in which Archana allegedly had consumed poison, was taken charge and sent to CA office for its analysis. After completion of investigation charge sheet was filed. The case was committed to the Court of Sessions. On recording the evidence and hearing both the sides, the learned trial Judge convicted the accused, as aforesaid. The prosecution examined in all six witnesses.

3. With the able assistance of both sides, I have gone through the record and proceedings. Ms.V. Khamborkar, learned Advocate h/for Mr. N D Khamborkar, for accused vociferously argued that the Court below has not considered the evidence led by the prosecution witnesses in its proper perspective. As against this, Mr. I.J. Damle, learned APP for respondent supported the impugned judgment and canvassed that the learned trial Judge has properly assessed the evidence led by the prosecution witnesses and has rightly convicted the accused.

4. In order to consider the rival contentions of both sides, it

would be advantageous to go through the evidence led by the prosecution witnesses, more particularly PW1-Sakhubai Meshram, mother of deceased and PW4-Prabhu Meshram, father of deceased.

5. It is worthwhile to note that the prosecution has not placed on record the CA report in respect of the viscera of the deceased which was collected, while performing the autopsy. The PM report (Exh.23) shows the cause of death due to poisoning, however, the opinion was reserved till the report of the Chemical Analyser was received. Thus, the cause of death is not clear from Exh.23 and it shows that final cause of death was not mentioned by the Medical Officer in the PM report (Exh.23) for want of viscera report i.e. CA report. Thus, since the CA report has not been placed on record, the cause of death is not clear. The testimony of Medical officer PW5 -Dr.Jyoti Kukade shows that she opined the probable cause of death due to poisoning. PW5 preserved the viscera for its chemical analysis and prepared the PM notes Exh.23. Thus, her evidence makes it clear that the viscera was preserved and sent for chemical analysis. The requisition letter (Exh.27) also shows that

the glass which was taken charge from the place of incident, was sent for chemical analysis to find out whether there was any residue of poison in that glass. However, as discussed herein-above, the CA report is not placed on record by the prosecution for the reasons best known to it and for want of CA report, one cannot come to the conclusion that the cause of death was due to poisoning. Thus, it is held that the prosecution has failed to prove the cause of death of Archana and consequently that Archana committed suicide by consuming poison. Since the cause of death is not proved, it is held that the prosecution has failed to prove that the accused aided and abetted the commission of suicide of Archana.

6. So far as cruelty meted out to Archana is concerned, the testimony of PW1-Sakhubai Meshram, who is the mother of deceased, shows that Archana was married some time in the year 2004. After marriage, she went to cohabit with the accused at Umari. She contended that the relations between Archana and the accused were cordial for two to four months after the marriage.

Thereafter, the accused started ill-treating Archana. Archana used to narrate about the ill-treatment meted out to her at the hands of the accused. The accused used to ask Archana whether her father had given him sufficient money. The accused was insisting for divorce however Archana was reluctant to give consent for divorce. PW1 contended that the accused used to suspect her character. Since the accused used to beat her Archana used to come to her parental home. A day before the death of Archana, the accused had informed telephonically in the neighbourhood that Archana was serious. Therefore, she contended that her husband PW4- Prabhu went to the house of Archana and brought her to her parental home. When PW1 returned home from the field at 6.00 pm, she saw Archana lying outside the house and froth was coming out from her mouth. Archana was taken to the hospital however she was declared as dead.

7. The cross-examination of PW1 shows material improvements in her version before the Court. The improvements were with regard to the fact that the relations between Archana

and the accused were cordial for about two to four months after their marriage and then the accused started ill-treating her. Archana used to frequently call her on telephone and complain about the ill-treatment at the hands of the accused and at that time she used to cry. The accused used to ask Archana about the amount of money paid by her father and also about insistence of the accused for divorce. Improvement was also made by PW 1 in her testimony that Archana visited her house on 2 to 4 occasions prior to her death. Similarly, further improvement was also pointed out in the testimony of PW1 that one day prior to the death of Archana, the accused had informed them on telephone that she was serious. All these improvements made by PW1 go to the root of the prosecution case and it create a serious doubt about the strained relations between the accused and Archana, so also the fact whether Archana used to cry on telephone and complain against the accused to her. Similarly, the accused had asked about amount of money paid by PW4 to her and the fact that accused insisted for divorce to Archana. It was suggested to PW1 that due to scolding by PW4, father of deceased, she consumed poison.

Thus, the testimony of PW1 does not throw any light on the aspect of alleged ill-treatment at the hands of the accused to deceased Archana, prior to her death.

8. According to PW4-Prabhu Meshram, father of deceased-Archana used to cry and tell something to her mother. He admitted that Archana was not telling anything to him. PW4 deposed that the accused telephonically informed that Archana was serious. Therefore PW4 proceeded to Umri. He found that Archana was crying and her bangles and *mangalsutra* were broken. Archana did not tell at that time, however, in the evening, she was beaten by her husband i.e accused and Meerabai. On the next day, the accused called five persons and in their presence, he insisted for divorce. The accused then asked PW4 to take Archana with him. Therefore he brought his daughter to his house. In the evening, he returned from the market and found that Archana was lying in front of his house and froth was coming out from her mouth. PW4 contended that he took Archana to the hospital however she was declared dead. PW 4 then lodged the complaint (Exh.14).

9. The cross-examination shows that PW4 has made certain improvements in his testimony before the Court with regard to the fact that for about one and a half years, the relations between Archana and accused were cordial and thereafter she used to cry in front of her mother. PW4 further admitted that he did not tell in his report that bangles and mangalsutra were found broken when he visited the house of the accused. So also, PW4 made an improvement with regard to the fact that the accused called a panchayat and insisted for divorce by mutual consent. The said version of PW4 creates a serious doubt about the accused insisting for divorce to Archana, so also about the fact that he used to ill-treat Archana and Archana used to cry in front of her mother. It also creates a doubt about finding of Archana in a disturbed condition and that mangalsutra and bangles were found in broken condition. The aforesaid improvements go to the root of the case and creates a serious doubt that accused used to ill -treat Archana, so much so that she was constrained to take the drastic step.

10. In the instant case, the prosecution has failed to prove that the learned trial Judge has not assessed the evidence led by the prosecution witnesses in its proper perspective and as such, an interference at the hands of this Court in the impugned judgment, is warranted. Hence, the order.

ORDER:

- (i) Criminal Appeal No. 426/2007 is allowed.
- (ii) The judgment and order passed by learned Additional Sessions Judge, Bhandara in Sessions Trial No.61/2006 on 20th September 2007, convicting the appellant/accused, is set aside and he is acquitted of the offences for which he was convicted.
- (iii) The bail bonds of the appellant shall stand cancelled.
- (iv) Fine amount if paid by the appellant/accused, be returned to him.

JUDGE

sahare