

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 118 OF 2003

The State of Maharashtra ... Appellant
Versus
Vithal B Mukadam & ors. ... Respondents

Mr. H. J. Dedhia, APP for the State/Appellant.
None for the Respondents.

CORAM: A. S. GADKARI &
N. J. JAMADAR, JJ.
DATED : 17th SEPTEMBER, 2020

PC:-

1. Heard Mr. Dedhia, the learned APP for the State/appellant.
Perused the entire record.

2. This is an appeal against acquittal of the respondents from the charges under Sections 498A, 306 and 304-B read with 34 of the Indian Penal Code, by the learned 2nd Adhoc Additional Sessions Judge, Thane, in Sessions Case No. 107 of 1998, by its Judgment and Order dated 22nd July 2002.

3. The prosecution case in nutshell is that the deceased Aruna was married with respondent no.1 Vithal on 28th May, 1997 and started cohabiting with him at his house at village Kon. Respondent no.2 is the sister and respondent 3 is the mother of respondent no.1. Respondent no.4 Indirabai is the sister-in-law i.e. brother's wife of respondent no.1.

Respondent nos.2 to 4 used to reside with respondent no.1 as joint family in the same house. That immediately after the marriage, the respondents started demanding money from the parents of Aruna (deceased). On her expressing inability to fulfill the demand, the respondents used to cause ill-treatment and torture her in various ways. It is also alleged that, respondent no.1 i.e. the husband of Aruna was having illicit relations with respondent no.4. That it became very difficult for Aruna (deceased) to sustain the constant ill-treatment and mental and physical cruelty at the hands of the respondents and therefore on 25th September, 1997, she left the house. Her dead-body was traced out in the creek of Kevni-Diwa, Taluka Bhivandi on 7th October, 1997 i.e. approximately 12 days later. It was in highly decomposed condition and as per the evidence of Dr. Mohd. Salim Anwarali Ansari, it was in skeletonised condition. Sitaram Dongre (PW-1) i.e. brother of deceased Aruna identified the body of deceased on the basis of the blouse, which was on the person of the said dead-body and thereafter lodged the present crime. The Trial Court after recording evidence and hearing the learned counsel for the respective parties was pleased to acquit the respondents by its impugned Judgment and Order dated 22nd July, 2002.

4. It is to be noted here that Dr. Mohd. Salim Ansari (PW-8) has categorically deposed that at the time of performing postmortem he

found that, the body of deceased was highly decomposed with presence of maggots. The body was in skeletonised condition. The eye orbits were empty. Both the arms were present upto wrist joint and muscles were absent from both the arms. All the internal organs were found liquified as a cause of the decomposition and was difficult to identify. He has admitted that, as the dead-body was highly decomposed, he could not give exact cause of death in the postmortem report. PW-8, who is expert in the field, admits in his cross-examination that, the body was beyond recognition by others also.

5. In contradiction to this, PW-1 i.e. the brother of deceased Aruna in his cross-examination has stated that he identified the dead-body of Aruna on the basis of the blouse, which was on the person of the dead-body. He personally verified the dead-body with his hands. The body was decomposed at face and stomach only.

In view of the evidence of PW-8, it was therefore highly improbable for PW-1 to ascertain its identity by his own hands. It is to be noted here that, the PW-1 has not stated anything as to how he recognized the blouse on the dead body as of his sister. There were no specific marks on it to arrive at the said conclusion. No specialized features have been mentioned by PW-1 about the said blouse to clearly discern that the dead body was of Aruna only.

6. The prosecution has clearly failed firstly to establish the identity of the deceased and thereafter the exact cause of death of Aruna. The prosecution has propounded a specific case that, the deceased committed suicide due to ill-treatment meted out to her by the respondents. The prosecution has also failed to bring on record the alleged exact ill-treatment meted out to the deceased by the respondents and all the allegations against the respondents thereof are as vague as possible.

7. In view of the above, we are of the opinion that the entire prosecution case is doubtful and therefore the respondents are entitled for benefit of doubt. Minute perusal of entire record would clearly indicate that, the Trial Court has not committed any error either in law or on facts while passing the Judgment and Order dated 22nd May, 2002.

8. We find no merits in the appeal. Appeal is accordingly dismissed.

9. This order is digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

[N. J. JAMADAR, J.]

[A. S. GADKARI, J.]