

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1016 OF 2003

The State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

1) Mohammed Siddique Mohammed Yunus)
39 years, Service)

2) Sou.Hanifabi Mohammed Yunus Shaikh)
73 years, Household)

3) Smt.Ayeshabi Mohammed Yunus)
Age-51 years, Occ.: Service)

All resident of 59/8, Parvati-Darshan,)
Pune.)....Respondents
(Org.Accused Nos.1 to 3)

Ms.Pallavi Dabholkar APP for appellant.
Mr.Sachindra B.Shetye a/w Mr.Mayur Jadhav and Mr.Chinmay Gunjal
for respondent nos.1 to 3.

CORAM : K.R.SHRIRAM,J
DATE : 9.1.2020

ORAL JUDGMENT :-

1. It is the prosecution's case that one Nasreen was married to respondent no.1 (original accused no.1) on 31.12.1993. After 3 to 4 months of marriage, respondents started ill-treating Nasreen and used

to demand sum of Rs.1,00,000/- to purchase a house. As the demand was not fulfilled, respondents continued ill-treating Nasreen and abuse her. There were occasions when respondents also physically assaulted Nasreen. It is also alleged that respondents were not happy because Nasreen delivered two girls and on that ground also used to harass Nasreen.

2. On 14.5.1998 almost 4 & ½ years after marriage, Nasreen informed her parents about the ill-treatment by accused and on 15.5.1998 at about 7.45 a.m. Nasreen committed suicide at her matrimonial home by hanging herself.

3. PSI P.D.Thorat (PW-6) visited the spot and made inquest and spot panchanama. The dead body was sent for post mortem. Dr.Patil conducted autopsy and opined that cause of death was asphyxia due to hanging.

4. On the same evening Haji Dadamiya, father of Nasreen who is PW-1 lodged complaint which came to be registered as C.R.No.147/1998. After the investigation, charge-sheet came to be filed and case was committed to the Court of sessions in due course.

5. The charge-sheet was read over to the accused who pleaded not guilty and claimed to be tried.

6. In the statement recorded under Section 313 of Cr.P.C of the accused, accused no.1 states that they were totally innocent and Nasreen, it seems had overheard somebody coming with a proposal of 2nd marriage to accused no.1 which disturbed her. Despite accused no.1 assuring her that he would not leave Nasreen and he would not marry again, Nasreen was upset and perhaps that was a reason for her killing herself.

7. After considering the evidence and the documents the Additional Sessions Judge, Pune by an order and judgment dated 13.5.2003 acquitted the accused of charges under Sections 498-A, section 306 read with section 34 of the Indian Penal Code (IPC).

8. Aggrieved by the said order of acquittal, the State has preferred this appeal impugning the said order and judgment.

9. To prove the case, prosecution led evidence of six witnesses, viz., Haji Dadamiya Haji Mohd.Gous, father of Nasreen (PW-1); Rafique Ahmad Dadamiya, brother of deceased (PW-2);

Sayyaed Sattar Abdul Razzak, neighbour of the complainant (PW-3) ; Amina Khatun Haji Dadamiya, mother of deceased (PW-4) ; Dr.Ulhas Shankarrao Jadhav, Medical Officer (PW-5) ; and Investigating officer PSI Parmeshwar Dnyandeo Thorat (PW-6).

10. The defence did not adduce any evidence and also admitted Inquest panchanama Exh.21, Advance death certificate Exh.22, Spot panchanama Exh.23, Panchanama of seizure of clothes Exh.24 and Exh.25.

11. I am in agreement with the impugned judgment and I see no reason to interfere with the same because there are too many omissions and contradictions in the evidence.

12. PW-1 Haji Dadamiya who is the father of Nasreen in his examination-in-chief states that after 4 to 6 months, the accused started ill-treating Nasreen, accused no.1 used to beat her, meals were not provided in time to her and accused nos.2 & 3 used to instigate accused no.1 by making false complaint against Nasreen. PW-1 says Nasreen used to tell about the ill-treatment. In cross-examination PW-1 says it is correct that Nasreen complained about ill-treatment for the first time after delivery of the 1st child. Therefore, there is clearly a

contradiction. PW-1 also says in his examination in chief that he does not know why Nasreen was subjected to cruelty and he says on two occasions Nasreen informed him that accused asked Nasreen to bring Rs.1,00,000/- from her parents to purchase a house. He does not say which accused demanded the money and one thing is also clear that according to him, only on 2 occasions in 4 & ½ years of marriage, Nasreen is supposed to have informed him about the demand of Rs.1,00,000/- for purchase of a house. PW-1 also says that 2 days prior to her death, Nasreen had been to their house and complained about ill-treatment and that they persuaded her and sent her back. None of the other witnesses have stated that 2 days prior to her death, Nasreen had gone to matrimonial home and complained about ill-treatment. PW-1 also admits that the fact of Nasreen going to matrimonial home 2 days prior to her hanging is not recorded in the police complaint. PW-1 says that he informed it to the police but Investigating officer Thorat PW-6 says it was not stated to the police at all. In the examination in chief PW-1 says accused were not present even at the time of funeral of Nasreen but agrees that it is not so recorded in the complaint.

13. PW-1 says the dead body was taken to Sasoon hospital at 10.00 a.m. and the police were there. He also says at that time, he did

not file complaint to the police which I find very strange. It is alleged by PW-1, Nasreen has been continuously subjected to cruelty, she went to the house of PW-1, 2 days prior to her death and informed them about the ill-treatment but PW-1 still chose not to mention any of these cruelty to the police or other relatives who were present at Sasoon hospital. Therefore, evidence of PW-1 is not reliable.

14. PW-2 Rafique Ahmad Dadamiya is the brother of Nasreen. He says Nasreen was treated well for 3 to 4 months after marriage and after the 1st daughter was born in the parental home when the family took Nasreen back to her matrimonial home with the child, accused no.1 demanded Rs.1,00,000/- for purchase of house from PW-1 and accused no.1 also wanted to start business. PW-1 does not mention anywhere that when they went to drop of Nasreen, accused no.1 demanded Rs.1,00,000/- PW-1 also does not mention about desire of accused no.1 to start a business. Moreover, PW-2 is not making any such allegation against accused no.2 and accused no.3.

15. PW-2 says, after 2 years Nasreen returned to their house with daughter in the night and she told that she was beaten and driven out by the accused as the demand has not been fulfilled and they took her to the police and they were directed to Sasoon hospital

for examination and treatment. As against this, PW-1 is totally silent about going to the police. In fact, PW-1 says 2 & ½ years prior to the incident Nasreen was beaten by accused and they have taken her to Sasoon hospital for treatment and they took Nasreen to their house and then persuaded her and then sent her back. He does not say that Nasreen was beaten and driven out of the house or they took her to the police. PW-4 also states that once Nasreen was severely beaten, she came to 'us' and 'we' took her to Sasoon hospital for treatment. She also has not mentioned about going to police and being directed to go to Sasoon hospital. PW-2 admits that in his statement recorded by the police, there is no mention about his version that accused demanded money for his business. PW-6 Investigating officer says that Rafiq Dadamiya (PW-2) did not state before him that demand of money was for starting business. At one place they say demand of money for purchasing a house and in the other place, demand was for starting a business. Admittedly, accused no.1 was a Government servant and I ask myself why would he demand a sum of Rs.1,00,000/- for starting any business.

16. Sayyaed Razzak PW-3 is a neighbour and tenant of complainant PW-1. PW-3 says he accompanied PW-1 and others to reach Nasreen to the house of the accused after her 1st delivery,

Nasreen's husband, mother in law and sister in law made demand of money at that time. PW-1, PW-2 and PW-4 do not mention anywhere that PW-3 accompanied them when they went to drop Nasreen along with 1st child. PW-1 and PW-2 state it was accused no.1 who demanded the money. But PW-3 states accused nos.2 & 3 also demanded the money. PW-3 also admits that in his statement recorded by the police, it is not stated that he went to the house of accused to reach Nasreen and that they demanded money and were displeased to see a female child. Therefore, evidence of PW-3 also is not reliable.

17. Coming to the demand for purchase of a house it is difficult to believe. Accused were living in a 3 room house albeit in a crowded locality which was owned by the father of accused no.1. The father of accused no.1 was alive at the time of marriage and died after the 1st child was born. Therefore, accused no.1 had a house of his own to reside. Moreover, PW-1 purchased a 3 storied building named Burhani house, in which one flat was given to Nasreen and was in the name of Nasreen until her death. When that flat was already in the name of Nasreen, why would accused no.1 want another house. According to PW-1 Nasreen and accused no.1 resided in that flat only for six months. But PW-3 states in his cross-examination, after the

marriage Nasreen and her husband were residing at Burhani house at Market yard. Therefore, there is a contradiction between what PW-1 has stated as compared to PW-3. Prosecution should have clarified this in re-examination or in whatever manner they would have deemed fit. Exh.35 is a card issued by KEM hospital, Pune. This card is issued when the 1st child was born in March-1995. This card, PW-3, who is working in KEM hospital in Pune, says it also has entries whenever Nasreen visited hospital for treatment of child. The address in the card is Market Yard, Burhani Society, Pune which is the flat that was in Nasreen's name gifted to her by PW-1. Therefore, it is difficult to believe that accused used to demand money for purchase of a house.

18. PW-4 who is the mother of Nasreen in her examination in chief states after Nasreen delivered female child, her husband started to ill-treat her. This witness says nothing about accused nos.2 & 3. She also says accused no.1 demanded Rs.1,00,000/-. Again there is nothing against accused nos.2 & 3. PW-4 says she used to visit the house of accused and that house was at a distance of half an hour walk from her house. She says she had no talk with accused no.1 about the ill-treatment and demand. Why would the mother not discuss with accused no.1 if her daughter is being ill-treated. Again

there is no allegation against accused nos.2 & 3.

19. PW-5 is a doctor who was examined to prove the alleged physical assault made about 2 & ½ years before the incident. In his examination in chief, PW-5 states that on 10.8.1995, Nasreen came to the hospital on her own. He examined her and found two injuries which according to him, were caused by hard and blunt object. He says those injuries were simple and age of injuries was 10 days. He also says Nasreen has given history of assault on 2.8.1995 at 7.00 p.m. At the end of his examination in chief he has shown the medical certificate and after he confirms the same, it was received in evidence as Exh.42. If Nasreen had given history of assault on 2.8.1995 at 7.00 p.m. and he has examined her on 10.8.1995 how could he opine that the injuries were 10 days old. Moreover, he says Nasreen came on her own and he cannot say who accompanied her. He also says that Nasreen did not name the assailants. She gave history of pregnancy. Injuries were minor and simple and the injuries may be possible due to fall. Therefore, this certificate also does not help prosecution to prove the alleged physical assault on Nasreen by accused, 2 & ½ years before the death.

20. PW-6 is the Investigating officer who, in his cross-

examination, states that PW-1 did not inform him while giving complaint that 2 days prior to the incident Nasreen made complaint about ill-treatment by accused. He also says PW-2 did not state before him that demand of money by accused no.1 was for starting of business. He also says PW-3 did not state that he went to the house of accused to reach Nasreen and at that time they demanded money.

21. None of the ingredients of section 498 of IPC is met.

Similarly as regards section 306 of IPC, there is no evidence to speak of. Nobody has stated anywhere that Nasreen committed suicide due to any harassment or instigation by the accused. There is no evidence to suggest that accused knew or had reason to believe that Nasreen would commit suicide. It is settled law that it is not enough if the acts of accused caused persuasion in the mind of the deceased to commit suicide. It is not what Nasreen felt but what the accused intended which is more important.

22. I have to also note that admittedly the two daughters delivered by Nasreen were still living at the time of the impugned judgment with accused and they were going to a convent school. It is therefore, difficult to believe that accused were unhappy with Nasreen

because she delivered two girls.

23. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court. For acquitting the accused, the Trial Court observed that prosecution had failed to prove its case.

24. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

25. In the circumstances, the trial Court was absolutely correct in acquitting accused.

Appeal dismissed.

(K.R.SHRIRAM,J)