

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1353 OF 2002

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

VERSUS

1. Shri Arun Ramchandra Riswadkar,)
Age 30 yrs., Occ. Nil,)
R/o. Masud Mala, Akluj,)
District Solapur.)
2. Shri Ramchandra Anantrao Riswadkar,)
Age 60 yrs., Occ. Agri,)
R/o. Masud Mala, Akluj,)
District Solapur.)
3. Sou. Nirmala Ramchandra Riswadkar,)
Age 50 yrs., Occ. Household,)
R/o. Masud Mala, Akluj,)
District Solapur.)
...Respondents
(Orig Accused)

Mr H.J. Dedhia, APP for the Appellant – State.
None for the Respondent.

CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.

DATE : DECEMBER 16, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the IV

Addl. Sessions Judge Pandharpur in Sessions Case No. 136/1998 dated 02nd August, 2002, whereby respondents herein (Original Accused) were acquitted of the charges for committing offences punishable under Sections 304B, 306, 498A read with Section 34 of the IPC (for short “IPC”) the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. Heard learned APP, Mr H.J. Dedhia, for the Appellant – State.

3. The case of the prosecution can be summarized as follows:
Arun Riswadkar (A 1) who was doing tailoring work married to Vandana (deceased) who was serving as primary teacher sometime in the year 1992. At the time of marriage, the father of deceased presented Rs. 10,000/-, 2 ½ tola gold, steel cupboard, cot mattresses utensils and LPG gas connection. Couple lived a happy married life initially for a period of one year. Couple was blessed with two sons namely, Akash and Vikas. Unfortunately Akash met with an accident on 12.08.1997 and lost his life. Accused No. 1 in the year 1993 started making demands to deceased to bring Rs. 50,000/- from her parents so as to pay the amount as a

deposit to book a shop premises. For this demand, Accused no. 1 was abusing and ill-treating deceased. Accused Nos. 2 and 3 (parents of accused no. 1) were instigating accused no. 1. It is further the case of the prosecution that the accused no. 1 was insisting deceased to obtain loan from credit society and teachers society. It is further the case of prosecution that initially the couple along with their children was residing in a house whereas the parents namely, accused nos. 2 and 3 were residing along with other son in other house though in the same locality. On an occasion due to some dispute deceased left her matrimonial home and went to her parental home. Accused no.1 gave a notice to deceased and called upon deceased to join him and reside in matrimonial home. On receipt of notice deceased returned back to her matrimonial home. On 01.04.1998, one Mrs. Chaya Jagtap (PW 2) neighbour found that smoke is coming out of the house of accused no.1. This fact was also noticed by sister-in-law of accused no. 1 Vaishali. Vaishali immediately rushed to the house of parents of deceased. Brother of deceased Prashant Jagtap (PW 5) was there in the house. Vaishali told him the incident of burning. Prashant Jagtap (PW 5) rushed to the house of deceased. Meantime, some other neighbours also gathered there and

on opening of the house they found that deceased was in burning condition. Attempts were made to extinguish the fire by pouring water. Initially deceased was shifted to Rural Hospital, Akhuj. Father of deceased who had left his house to attend his service at Wagholi, a message was forwarded to him. On receipt of message he rushed to Rural hospital, Akhuj. It was informed to him that deceased was shifted to Civil Hospital, Solapur for further treatment by his son Prashant. Father of deceased Dattatraya Jagtap (PW 1) then rushed to Solapur. On reaching Civil Hospital Solapur, Dattatraya (PW 1) found that burned body of deceased was kept in the Hospital. Vandana was died. Autopsy / postmortem was conducted. On the next day on receipt of the body the same was cremated.

4. Dattatraya (PW 1) then went to police station and lodged report against the accused persons. Investigating agency was already set in motion on receipt of an occurrence report filed by Dattatraya in the police chowki attached to Civil Hospital. On the basis of occurrence report, the police head constable Shri. Madhukar Bhosale (PW 3) of Akhuj police station proceeded to the scene of offence along with panchas. Certain articles were found at the scene of offence, namely, a

ladies purse, diary and a notebook. Panchanama was drawn. On 02.04.1998 autopsy surgeon issued postmortem notes. Shri. Prabhakar Patil (PW 7), PI took the matter in his hands for further investigation. The necessary formalities such as, effecting arrest of the accused persons, recording the statement of the witnesses, seizure of articles, forwarding articles to CA laboratory, and drawing certain panchanama were conducted by the investigating officer. On completion of investigation charge-sheet was filed in the Court of JMFC, Malshiras. The offences leveled against the accused persons being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. Accused pleaded not guilty and claimed trial. The accused persons were subjected to statement under Section 313 of the Cr.P.C. Learned Additional Sessions Judge could not find any evidence brought before the Court as cogent, reliable and sufficient enough to hold the accused persons guilty, and resultantly judgment and order of acquittal was recorded by the learned Trial Court.

5. Learned APP vehemently submitted that the prosecution brought before the Court reliable evidence in the form of oral testimony of witnesses as well as documentary evidence. It is also submitted by

learned APP that the witnesses have submitted a consistent version of demand and ill-treatment suffered by the victim. Learned APP further submitted that the learned Trial Court failed to appreciate the evidence in its proper perspective and prayed for allowing the appeal.

6. None appeared for the Respondents.

7. The prosecution has examined 7 witnesses in support of its case. Dattatraya Jagtap (PW 1) is father of deceased. Chaya Jagtap (PW 2), Prashant Jagtap (PW 5) brother of deceased, this one set of witnesses whereas, other set of witnesses consist of panch witnesses i.e. Madhukar Bhosale (Pw 3), Adesh Gosavi (PW 4), Kisan Avaghade (PW 6) who had received the occurrence report and had taken certain initial steps whereas, Shri. Prabhakar Patil (PW 7), PI had conducted the further part of investigation. The documents, namely, forwarding letter to CA laboratory Exh. 30 and report of CA Exh. 31 are the documents admitted by the defence.

8. Now we may refer to the evidence in the form of oral testimony.

9. Dattatraya Jagtap (PW 1) deposed before the Court that marriage of Vandana was solemnized with accused no. 1 in the month of May, 1992. He further deposed that before marriage, Vandana was serving in a private primary school and after her marriage within 2-3 months she got service in Zilla Parishad Girls School at Akluj. Then he deposed about the presenting cash amount and certain articles in the marriage subsequently, he did not paid any money to the accused. He further deposed that accused was insisting deceased to obtain loan. Deceased obtained loan of Rs. 50,000/- from Sumitra Credit Society and also loan of Rs. 30,000/- from Teachers Co-operative Society. He further deposed that the accused took shop premises from one Dhongale situated in Dhaval square of Akluj by keeping Rs. 75,000/- towards deposit amount with the owner. He further deposed that as there was no positive response the accused no. 1 closed the shop within couple of months and surrendered possession of shop premises and took back the deposit amount. He further deposed that Akash son of daughter Vandana died of an accidental death at the age of 4 ½ years. He further deposed that accused were not providing food to Vandana. He further deposed that Vandana used to attend the school without food and he was going to

school by carrying tiffin and while providing tiffin Vandana used to tell about the ill-treatment. He further deposed that on 01.04.1998 at about 5.00 pm when he was in the school at Wagholi his son Prashant came there and informed that Vandana was subjected to burn in the house of accused. He rushed to the house of accused and learned that Vandana was shifted to Rural hospital, Akluj for treatment. On reaching Rural Hospital, Akluj he came to know that Vandana was shifted to Civil Hospital, Solapur for further treatment. It is also important to note here that Dattatraya (PW 1) further deposed that he went to the police station met police officials and told them that he would come back after visiting the Civil Hospital to file report. He further deposed that he went to the police chowki attached to Civil Hospital, Solapur and told the police officials in the police chowki that he had told Akluj police that on his return he would file report. Then he gave a brief statement. He further deposed that it was informed to him that it would not be possible to conduct autopsy on that day therefore, he halted at Solapur and on the next day i.e., on 02.04.1998 on receipt of the death certificate and postmortem report he returned back to Akluj. He further deposed that on that day police met him and they told him that he is in grief they

would come after 3rd day ceremony. He further deposed that on 02.04.1998 he went to the police station and lodged the report. He further deposed that being fed up with the ill-treatment Vandana committed suicide by setting herself on fire. He identified the articles, namely, purse and diary belonging to Vandana. He also identified the writing of the Vandana.

It would be important to note that in the cross-examination Dattatraya Jagtap (PW 1) admits that the accused no. 1 was running a separate shop in Shivapur Peth Akhuj. The another shop was being run by the accused no. 2 along with brother of accused no. 1. He further deposed that residence of accused no. 1 was separate from residence of accused no. 2. Then he further deposed that Vandana, accused no. 1 and their children were residing separately in their house and Vandana had to attend duty to the household work and marketing etc. Then he admits that on receipt of notice after 2-3 months Vandana went to the house of accused no. 1 for cohabitation. He further admits in the cross-examination that due to the accidental death of son Akash Vandana was in grief. Dattatraya (PW 1) failed to give any specific instances of witnessing an ill-treatment to Vandana at the hands of either accused no.

1 or other accused persons. It is also clear from the evidence of PW 1 that Vandana had obtained the loan of Rs. 50,000/- and Rs. 30,000/- respectively and out of that amount Rs. 75,000/- were paid against deposit for a shop and as there was no positive response, the possession of the shop was surrendered and the deposit was taken back. It is also deposed by PW 1 that after surrendering the shop premise an open plot was purchased. Thus on consideration of this material the learned Trial Judge was pleased to observe as follows:

In fact, it appears from the tenor of evidence of the informant that the demand of money from him through Vandana was not perused, when the loans were taken. It appears that the loans were taken earlier to rejoining of Vandana to the company of the accused no. 1. It is in this circumstance, it appears that the monetary requirements of the family were fulfilled and hence there is no evidence on record to prove that even after rejoining of Vandana she was subjected to cruelty by the accused.

We see no error in these observations. The allegations that the accused no. 1 used to ill-treat Vandana under influence of liquor is only by way of an omissions. The allegation that Vandana used to attend school without having any food is also falsified and the learned Trial Judge was right in making following observations:

It is pertinent to note that this evidence of Mr. Dattatraya can not be believed for simple reason that he himself states that even before the birth of eldest son Vandana was residing separately from her in-laws. Therefore, accused no. 1, Vandana, and their children were residing in the house. If this fact is taken into consideration then except Vandana there was no other woman to cook the food. It is in this circumstance, it does not appear to be probable when the informant says that she was sent to school without food.

10. Then the version of Dattatraya (PW 1) reveals that in spite of having opportunities to disclose his grievance against the act of the accused persons which could have been resulted in recording the first information report at the shortest possible time, Dattatraya (PW 1) for the reasons best known to him lodged report on 02.04.1998. Needless to state here that on the earlier day Dattatraya (PW 1) submits an occurrence report and on that report police head constable proceed to the spot and spot panchanama as well as inquest panchanama is drawn on that day but while submitting the occurrence report Dattatraya (PW 1) nowhere refers to alleged ill-treatment suffered by his daughter Vandana.

11. The next witness is Chaya Jagtap (PW 2) neighbour of Vandana. She deposed before the Court that on 01.04.1998 at about

03.00 pm she saw smoke coming from the window of house of the accused. Accused No. 1 left the house on his motorcycle at that time on a query by his sister as to where he is going he looked her angrily and went away. Vaishali then rushed to the parental house of Vandana to inform mother of Vandana. She further deposed that Bagav family resides nearby. The members of those family came there and opened the house. At that time, they saw the flames and smoke were in the house, by pouring water the fire was extinguished. She further deposed that Vandana was subjected to burns and was shifted to Rural Hospital, Akluj. Then she deposed that there used to be quarrels between the Vandana and accused no. 1. Suggestion was given to this witness that as she had an affection towards Vandana at the instance of Dattatraya (PW 1) she gave the evidence against accused person before the Court, this suggestion is denied. Now though the prosecution wanted to use this witness as a supportive witness for the prosecution on the aspect of an ill-treatment suffered by Vandana at the hands of accused persons the version of this witness only refers to quarrel between the couple. There is no reference to any specific instances and mere quarrel between the couple is a part of a usual wear and tear in the matrimonial life. The observations to that

effect by the learned Judge were just and proper.

12. Then the next witness is Prashant Jagtap (PW 5) brother of deceased Vandana. It is interesting to note that Prashant (PW 5) deposed that after one year of the marriage the accused persons started ill-treating Vandana on account of money and the accused started to incur loan in the money of Vandana. As stated above, Dattatraya (PW 1) in his deposition stated before the Court that the loan obtained was utilized for payment of advance for one shop and there was no positive response to the shop, the shop was surrendered to the owner and the deposit amount was then utilized for purchase of a plot. Prashant (PW 5) in his version stated before the Court that the couple i.e. accused no. 1 and Vandana started to have luxury and started to have rest on money. He further stated that the directions of installment of loan amount was from the salary of Vandana. This it seems that the grievance of this witness was the loan amount which was initially utilized for the shop and subsequently the couple started to have the luxury and rest on the amount now by this act it cannot be termed as an act of ill-treatment to deceased Vandana. Then the alleged act of beating, insulting and abusing Vandana came on record by way of omissions.

13. Madhukar Bhosale (PW 3) and Adesh Gosavi (PW 4) are the panch witnesses to seizure and scene of offence. It may not be necessary for us to refer the version of this witnesses in detail.

14. Kisan Avaghade (PW 6) who was the police station officer on 02.04.1998 in Akluj police station. A report was lodged at the instance of Dattatraya (PW 1) and on lodgement of report Crime No. 53/1998 under Sections 304B, 306, 498A read with Section 34 of the IPC were registered by this witness. Then he handed over the investigation to Prabhakar Patil (PW 7).

15. Prabhakar Patil (PW 7), PSI who took over the investigation on lodgment of report received by Kisan (PW 6). Mr. Patil then states about steps taken by him namely, effecting arrest of the accused persons, recording the statement of witnesses, seizure of motorcycle of accused no.1, receiving the postmortem notes, forwarding viscera to CA laboratory, receiving CA report and filing of charge-sheet before the Court.

16. It may not be out of place to refer to the opinion expressed

by the medical officer in respect of cause of death referred to in the postmortem report Exhibit 16 and it reads as “shock due to 100 percent burns, further viscera preserved for CA. The perusal of CA report show that the general and specific testing does not reveal any poison in Exhibit 1,2 and 3 and Exhibit 1,2 and 3 are 1. viscera in a bottle labelled stomach and pieces of small intestine with contents, 2. viscera in a bottle labelled piece of liver, pieces of spleen, pieces of kidney. 3. Blood in a phial labelled blood.

17. The learned Additional Sessions Judge framed the four points for determination on the basis of material submitted to the Court by prosecution at the instance of investigating agency and recorded the negative findings to the points, the same are as under:

1. *Does the prosecution prove that accused no. 1 Arun being husband of Vandana, and the accused no. 2 & 3 being the parents of accused no. 1, subjected Vandana to cruelty by harassing her with a view to coerce her or any person related to her to meet their unlawful demand for money, during the period from 1993 till 9 p.m of 1.4.98 at Masud Mala, Akaluj ?*
2. *Does prosecution prove that during the said period, time and place accused infurtherence of their*

common intention caused dowry death of Vandana by subjecting her to cruelty or harassment in connection with demand for dowry?

3. *Does the prosecution prove that during the said period, time and place accused infurtherence of their common intention abetted the commission of suicide by Vandana by subjecting her to cruelty?*

18. In so far as point No. 3 is concerned, the learned Additional Sessions Judge arrived at a conclusion that the death of Vandana was a suicidal death. The learned Trial Judge then observed that merely because the accused no. 1 husband left the house could not have been a ground to hold accused no. 1 guilty of an offence punishable under Section 306 of IPC. Learned Trial Judge justified in observing on the basis of evidence that Vandana was depressed due to unfortunate and accidental death of her son Akash. Learned Trial Judge was also justified in observing that there was nothing on record to show that the accused no. 1 instigated deceased Vandana to take the extreme steps of committing suicide. There is no clinching and cogent evidence so as to hold that the accused either instigated, aided or conspire themselves for leading Vandana for her suicidal death.

19. On going through the material thoroughly, we are of the

opinion that the learned Additional Sessions Judge appreciated the evidence in its proper perspective, and arrived at just and proper conclusion as such, we are unable to find any perversity in the judgment and order of acquittal. Appeal thus being devoid of any merit deserves to be dismissed. Accordingly, Criminal appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)