

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.496 OF 2001

1. Vithalrao S/o Nagorao @ Kerba Nawakikar,
Age; 62 years, Occ; Agriculture,
R/o; Phulkalas, Tq. & Dist. Parbhani. ..**DECEASED**.
2. Kausalyabai w/o Vithalrao Nawakikar,
Age; 55 years, Occ; Household,
R/o; As above. ...Appellants.

VERSUS

The State of Maharashtra,
Through Police Station Tadakalas
Tq. & Dist. Parbhani. ...Respondent.

AND

CRIMINAL APPEAL NO. 501 OF 2001

Gangadhar s/o Vithalrao Nawakikar,
Age; 34 years, Occ; Service,
R/o; Phulkalas Tq. Parbhani. ...Appellant

VERSUS

The State of Maharashtra,
Through Police Station Tadakalas
Tq. & Dist. Parbhani. ...Respondent.

...
Advocate for Appellants : Mr. C.V.Thombre h/f Mr.Ganesh Patil
APP for Respondent-State : Mrs. G.L.Deshpande
...

CORAM : N.R. BORKAR , J.

DATE : 15th NOVEMBER, 2021.

COMMON JUDGMENT :

1. Both these Criminal Appeals are filed against one and the same judgment and order dated 24.10.2001 passed by the First Adhoc Additional Sessions Judge, Parbhani in Session Case (S.T.) No. 71 of 1990. Thus, they are being disposed of by this common judgment.

2. By the impugned judgment and order, the appellants, who were the accused before the trial Court, have been convicted for the offences punishable under Section 498-A and 306 read with Section 34 of the Indian Penal Code (for short "I.P.C."). The appellant in Criminal Appeal No. 501 of 2001 was accused No. 1 & appellants in Criminal Appeal No. 496 of 2001 were accused Nos. 2 and 3 respectively before the trial Court. The appellant/accused No. 2 Vithalrao S/o Nagorao @ Kerba Nawakikar died during the pendency of present appeals.

3. The accused No. 1 is sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2,000/-, in default to suffer rigorous imprisonment for 3 months for the offence punishable under Section 306 of the I.P.C.

4. The accused No. 3 is sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for 3 months for the offence punishable under Section 306 of the I.P.C.

5. No separate sentence is passed for the offence punishable under Section 498-A of the I.P.C.

6. The deceased was the wife of accused No. 1. The accused No. 3 is the mother-in-law of the deceased. The incident took place on 17.09.1989. According to the prosecution, the deceased was ill-treated on account of demand of motorcycle & Television Set (for short "T.V.Set"). It is alleged that due to said ill-treatment the deceased got fed-up and committed suicide, by jumping into the well.

7. I have heard the learned counsel for the appellants and the learned APP for respondent-State.

8. The factum of the suicide is not in dispute. According to PW 1 Nagoba s/o Tolaji Damodhar, the father of the deceased, accused were beating and abusing the deceased on the count that she was not able to do the domestic & agricultural work. According to PW 1 when he came back to his village after funeral of the deceased, his wife and daughter-in-law told him that the accused were demanding motorcycle and T.V. Set and on that count they were

harassing the deceased & she disclosed to them about the said harrasment.

9. In the cross-examination conducted on behalf of accused, PW 1 has admitted that after the marriage, the deceased had come to his house only once. PW 1 further admitted that he has not stated in his complaint that accused were beating and abusing the deceased. He has further admitted that his wife and daughter-in-law told him about the alleged demand of motorcycle and T.V. Set, after he came back to village from the funeral of the deceased.

10. It is thus, apparent from the evidence of PW 1 that the alleged disclosure about the demand of motorcycle and T.V. Set, was not directly disclosed to PW 1 and thus his evidence to that extent is of no consequence. As regards the beating and abusing, the PW 1 has admitted that he has not stated about it in his complaint. It is thus, very difficult to hold on the basis of evidence of PW 1 that the deceased was subjected to ill-treatment on account of demand of motorcycle and T.V. Set.

11. According to PW 1 the alleged disclosure of demand of motorcycle and T.V. set was made to his wife PW 3 Dhrupadabai w/o Nagorao Damodhar. PW 3 has stated that when she met the deceased in the function of their relative at village Foolkalas, the deceased

disclosed to her about the ill-treatment to her and demand of motorcycle and T.V. set by her husband. According to PW 3, she assured to give these two articles after Diwali. In cross-examination PW 3 stated that the deceased told her husband (PW- 1) about the demand of motorcycle and T.V. Set. However, the evidence of PW 1 is otherwise. Apart from it, PW 3 has admitted in her cross-examination that she has not stated in police statement about the demand of motorcycle and T.V. set by the accused No. 1. Considering the material omission in the evidence of P.W. 3, it would not be safe to rely upon the evidence of PW 3.

12. According to PW 1 the similar disclosure about the demand of motorcycle and T.V. set was made to his daughter-in-law, P.W. 4 - Girjabai w/o Malikarjun Damodhar. According to PW 4 the deceased disclosed to her about the alleged illegal demand of motorcycle by the accused No. 1 and harassment to her on account of said demand. PW 4 has however, admitted in her cross-examination that she has not stated in police statement about the demand of the motorcycle and T.V. set by the accused persons. It is thus, apparent that neither PW 3 nor PW 4, to whom the alleged disclosure about the illegal demand of motorcycle and T.V. set was made by the deceased, has disclosed the said fact in their statements to the police. Thus, after thought attempt by PW 3 and PW 4 to

improve their version by alleging the demand of motorcycle and T.V. set cannot be ruled out.

13. PW 5 Kisan Nagorao Shirale, according to prosecution, is an independent witness. He has however, admitted in his cross-examination that he had not told to the police as to what Haribai exactly told before her death to him.

14. The trial Court was thus not justified in convicting appellants/accused. Hence following order is passed :

ORDER

- a. Appeals are allowed.
- b. The impugned judgment and order passed by the First Adhoc Additional Sessions Judge, Parbhani in Session Triable Case (S.T.) No. 71 of 1990 is set aside.
- c. The appellants/accused Kausalyabai w/o Vithalrao Nawakikar and Gangadhar s/o Vithalrao Nawakikar, are acquitted of the offences punishable under Section 498-A and 306 read with Section 34 of the Indian Penal Code.

(N.R. BORKAR)
JUDGE