

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 14 OF 2003

The State of Maharashtra	}	Appellant (Orig. Complainant)
Versus		
1. Sanjaykumar Bajirao Jadhav, 30 yrs.,	}	Respondents (Orig Accused)
2. Ramrao Bajirao Jadhav, 27 yrs,		
3. Jaiprakash Maruti Jadhav, 41 yrs,		
4. Bajirao Tukaram Jadhav, 56 yrs,		
5. Tarubai Bajirao Jadhav, 56 yrs		
All R/o. Nilam, Tal. & Dist. Satara.		

Mr. Arfan Sait, APP for Appellant – State.
Dr. Uday Varunjikar for Respondents.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : JANUARY 21, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

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

learned IV Additional Sessions Judge, Satara in Sessions Case No. 87/2000, dated 08.02.2002, whereby respondents herein (Original Accused) was acquitted of the charge for committing offences punishable under Sections 306, 304-B, 498-A read with Section 34 of Indian Penal Code (for short “IPC”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. At the outset, we may state here that Respondent Nos. 2, 3 and 5 are expired during pendency of the Appeal as such, Appeal abates against these Respondents.

3. It is the case of the prosecution that on 27.10.1999 at about 08.30 pm Sou. Archana Sanjay Jadhav (deceased) wife of accused no.1, sister-in-law of accused no. 2, cousin sister-in-law of accused no. 3, daughter-in-law of accused no. 4 and accused no. 5 committed suicide by setting herself ablaze. Archana received 95% burns. The accused person with a common intention mentally and physically ill-treated and harassed Archana on account of her failure to bring Rs. 50,000/- from her parents. The accused persons were keeping Archana starved alleging that she was unable to cook food properly. It was further case of prosecution that the

constant ill-treatment and harassment by the accused persons on account of demand of money prompted Archana to take extreme step of committing suicide. It was also the case of prosecution that death of Archana occurred within 7 years of her matrimonial life. The complaint came to be lodged at the instance of Arvind Dhumal (PW 2) father of Archana on 21.11.1999.

4. In the complaint Arvind stated about his family background, solemnizing marriage of Archana and accused no. 1 – Sanjaykumar, the demand made by the accused persons, ill-treatment and harassment caused to Archana. An information was received by Arvind father of Archana on 27.10.1999 at about 12.30 midnight through one Ramrao and Prakash brother-in-law and cousin brother-in-law of Archana respectively that Archana is subjected to fire / burns and she was admitted in the Civil Hospital at Satara. The parents of Archana i.e. father and mother immediately rushed to Hospital at Satara. Then he stated about oral statement made by Archana which was treated as oral dying declaration. Archana succumbed to burn injuries on 29.10.1999. Her last rituals were performed at village Niman and as the father was under depression as such he had not lodged the complaint for sometime

and forwarded written complaint through postal communication to Borgaon Police Station. Then his statement was recorded on 21.11.1999 at Borgaon Police Station. An offence was registered vide Crime No. 162/1999. Devdas Shinde – PSI took over the investigation and recorded the statement of Alka Arvind Dhumal (PW 3) and Vithal Dhumal (PW 4). Necessary steps such as drawing the inquest panchanama, spot panchanama were also taken by investigating officer and on completion of investigation formalities charge-sheet came to be filed in the Court of CJM, Satara on 21.12.1999. The offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, Satara. The accused persons denied the charges and defence of accused person was of total denial.

5. The documents namely, intimation dated 29.10.1999 in respect of death of Archana by Medical Officer, Civil Hospital, Satara, inquest panchanama, medical certificate, postmortem notes, Grampanchayat extract of property and two photographs were admitted by defence.

6. Learned Sessions Judge on appreciation of evidence framed

certain points for consideration and arrived at conclusion that death of Archana was a suicidal death and recorded negative findings on every point such as, whether the prosecution was successful in proving that the accused committed offences charged against them, beyond reasonable doubt, whether Archana was subjected to cruelty and harassment by the accused person, whether the prosecution proved that all the accused persons abetted in commission of suicide by Archana.

7. Learned APP appearing for the Appellant – State vehemently submitted that the evidence collected by the investigating agency was reliable. It is also submitted by learned APP that the oral evidence of the witnesses ought not to have been rejected by the learned Trial Court on account of some minor omissions. It was also the submission of learned APP that the marriage between accused no. 1 and Archana was solemnized on 10.06.1999 and death of Archana occurred on 27.10.1999 i.e. within a short span of matrimonial life. Suicide by Archana, this fact itself show that she was harassed and ill-treated in such a way that led Archana to take an extreme step. It is also submitted by learned APP that learned Trial Court failed to appreciate the evidence in the form of oral dying declaration in proper perspective. Hence, learned APP prayed for

allowing the appeal.

8. Learned Counsel, Mr. Varunjikar appearing for Respondents vehemently submitted that the learned Trial Judge committed no error in appreciating the evidence. It is then submitted by learned Counsel, Mr. Varunjikar that an inordinate delay in lodging the report by Arvind Dhondiram Dhumal (PW 2) father of Archana itself creates the suspicion over the entire theory of prosecution. Learned Counsel, Mr. Varunjikar further submitted that though Arvind (PW 2) had every opportunity to lodge complaint to the police station at earliest, he waited for a long period and then initially forwarded complaint by post communication and then his statement was recorded. It is also the submission of learned Counsel, Mr. Varunjikar that this fact shows that the lodgment of complaint is a result of consultation and tutoring to Arvind (PW 2). Learned Counsel, Mr. Varunjikar further submitted that the so called oral dying declaration to the witnesses are not consistent as such, they failed to inspire confidence of the Court and the learned Trial Court was right in not accepting these dying declarations as material piece of evidence. Hence, learned Counsel, Mr. Varunjikar prayed that appeal may be dismissed.

9. With the assistance of learned Counsel appearing for the respective parties, we have gone through the record.

10. The prosecution in support of its case examined as many as five witnesses. We may first refer to Arvind Dhumal (PW 2) father of Archana. He stated in examination-in-chief that marriage between accused no. 1 - Sanjaykumar and Archana was solemnized on 10.06.1999. At the time of marriage Archana was studying in 10th standard. He further stated that accused nos. 1 to 5 formed a joint family and sharing common residence. He further stated that after the marriage Archana started cohabiting with accused no. 1. After 5-6 days of pooja she came to her parental home and disclosed to Arvind (PW 2) that accused nos. 4 and 5 were harassing her on allegation that she was unable to cook the food properly. She also told that the accused were abusing her. Then he stated that after 1 ½ month he brought Archana to her parental home for panchami festival and at that time she told that the accused are ill-treating her on the ground that she failed to bring anything in marriage. Then after two months he brought Archana for Dasera festival and at that time she told that accused no. 1 was insisting her to bring Rs. 50,000/- as nothing was given in marriage. She told that Sanjay was

assaulting her by giving kicks and fists. Then he stated that Archana told him that accused no. 3 Jaiprakash Jadhav was insisting other accused for assaulting her. Then he stated that after 5-6 days of Dasera festival he reached the house of accused and expressed his inability to fulfill the demand of money because of his financial condition. Then he stated that on 27.10.1999 at about 12.30 in the midnight accused no. 2 Ramrao and one person came in a jeep to his house, they informed him that Archana was subjected to burns due to flickering of stove and she was admitted in Civil Hospital, Satara. He along with his wife rushed to Civil Hospital and found that entire body of Archana was blacked due to burns. He further stated that initially she was unable to talk with the parents and after sometime when his wife (mother of Archana) inquired Archana as to how the incident took place she disclosed that she ablaze herself. Then he returned back to his house and on next day he again came along with Ravindra Dhumal, Vitthal Dhumal, Vithal Dhondiram. Ravindra made an inquiry with Archana to which Archana only said that she could able to cook and she stopped talking. Then he stated that on the next day Archana died. Then he further stated that after the death of Archana for about 3 days he had gone to police station to lodge the complaint but the

police refused to accept his complaint on the ground that he was not possessing any evidence. He again went to the police station after 4-5 days and on that day also police refused to accept his complaint. Same thing happened after 4-5 days also. Then he forwarded a written complaint through post, then police came to Naigaon and then accepted his complaint.

In the cross-examination, a suggestion was given to this witness that accused no. 2 Ramrao gave an amount of Rs. 8,000/- to him by way of cheque against the marriage expenses, this suggestion was denied. A counter foil of the cheque bearing his signature was shown to him, he denied that the cheque was issued to him. Then he admits in the cross-examination that on 15.06.1999 accused Sanjay proceeded on war front and the battle is known as Kargil War. He further admitted that thereafter Sanjay never came to village Niman for any holiday or leave. Then in the cross-examination he further admits that when he went to the Civil Hospital to see Archana, Archana was unconscious and she was admitted in ICU on the third floor of hospital. He further admitted that when he saw Archana in the Hospital at that time saline was administered to Archana. Then he further admits that though there was a

police chowki in the hospital he had not informed the police on that day or even on the next day. Then he stated that second day he visited the hospital but police did not recorded the statement of Archana. Then he stated in the cross-examination that after the postmortem corpus of Archana was given in possession of accused no. 2. Then he admitted that he had not gone for third day ceremony of death of Archana nor he attended the 10th day ritual. He further admitted in the cross-examination that on 17.11.1999 a news was published by him in respect of death of Archana and then police approached him for lodging the complaint. Then the abuses and ill-treatment by accused nos. 3 to 5 are brought on record by way of an omission. The instigation at the instance of accused no. 3 is also brought on record by way of an omission and the harassment to Archana on account of non payment of Rs. 50,000/- is also by way of an omission.

Thus, the testimony of this important witness Arvind (PW 2) father of Archana clearly show that there was an unexplained and inordinate delay in lodging the complaint. The entire theory of the dying declaration made to this witness falls flat in view of admission given by witness in the cross-examination that when he visited Civil Hospital,

Satara Archana was unconscious and was in ICU and saline was administered to her.

11. Bharat Gangaram Jadhav (PW 1) is the panch witness who was called upon with another panch for drawing the spot panchanama. Bharat Jadhav (PW 1) stated before the Court that on 07.11.1999 he along with another panch went to the house of Vijay Jadhav in the wada. Tarubai mother of accused no. 1 had shown the place. The said house was constructed in stone and bricks. There were three rooms and the incident took place in the middle room. Then he stated that the floor of the house was of soil.

In the cross-examination he admitted that he is the resident of same wada where the house is situated. Then he admitted in the cross-examination that from an unlocked cupboard of the middle room of the house police seized one diary and chit. Then he admitted that when the diary was seized by the police there was no name written in marathi as Madhav Sakharam Jadhav on the first page of diary. He further stated that the person by name Madhav Jadhav died before 7-8 years, who was a teacher at Mumbai and after his retirement he is residing in the Niman in the same wada.

12. Alka Arvind Dhumal (PW 3) is the mother of deceased Archana. She stated before the Court that Archana was her young daughter who had studied up to 10th standard. She further stated that after her marriage Archana had gone for cohabitation and on the occasions when she visited her parental home, namely, immediately after her marriage, then on account of Panchami festival, Dasera festival she disclosed that her husband was insisting to bring an amount of Rs. 50,000/- from her parents and accused nos. 2 to 5 were harassing her. Archana also disclosed to her that she was subjected to starving. Then she further stated that when she reached Civil Hospital to see Archana Archana told her that she herself set ablaze.

In the cross-examination Alka Dhumal (PW 3) admitted that she is suffering illness since last 15-16 years and is taking treatment at Pune. She also admitted that because of her illness she was unable to teach the art of cooking to her daughters. She further admitted that due to her mental sickness she did not remember anything. Then she admitted that when she saw Archana in the Civil Hospital she fell giddiness and as such, her husband brought her on the ground floor of the Hospital and then she returned back to her village.

13. Vithal Krishna Dhumal (PW 4) is cousin brother of Arvind (PW 2) and is resident of neighbouring house of Arvind. The prosecution draws support from this witness on the count of alleged demand of ill-treatment. Vithal (PW 4) stated before the Court that Archana in her first visit after marriage did not tell anything to this witness but when she visited second and third time on account of Panchami and Dasera festival she told him about the demand of Rs. 50,000/- at the instance of accused Sanjay and ill-treatment at the hands of other accused persons. He stated that he convinced Archana and then he met her at Civil Hospital, Satara. In his examination-in-chief itself he admits that when he visited Archana in the Hospital at Satara she was unconscious.

In the cross-examination he admitted that there are as many as four persons in the village by name Vitthalrao. He further admitted that he was an accused in murder trial and was in prison for six months on allegation of murder of wife of his brother. Then an omission is brought on record in respect of the assault on Archana on account of demand of Rs. 50,000/-.

14. Devdas Shinde, PSI (PW 5) was attached to Borgaon Police

Station at the relevant time i.e. since month of November 1999. He stated before the Court that on 30.10.1999 he received an information of an accidental death from Civil Hospital, Satara accordingly, he registered AD No. 37/1999. Then stated that he received inquest panchanama and advance medical certificate and also statement of accused no. 1 and then he started investigation by recording the statement of witnesses. He further stated that on 21.11.1999 complaint was lodged at the police station and on the basis of complaint first information report was registered. Then he effected arrest of accused persons and recorded statement of some witnesses. Then he states about drawing panchnama of spot and collecting the articles namely, diary and chit from the spot. Then he collected the postmortem notes and filed charge-sheet against accused persons.

In the cross-examination this witness admitted that after registering the AD he had not recorded any statement as there was no material against the accused persons. He also admitted that there was nothing either in the diary or chit against accused persons. Then he stated that the handwriting of diary and chit was shown to the parents of Archana and they have stated that it is not the handwriting of Archana.

Then he admitted that he had prepared two pachnamas of the spot of incident but produced only one panchanama Exhibit 24. He further admitted that in the process of inquiry on registration of accidental death he recorded statement of Arvind Dhumal on 02.11.1999 and in the statement of 02.11.1999 there was no material to show that any offence was committed. He also admitted that total two statements of Arvind (PW 2) were recorded. He then admitted that during his investigation it was revealed that after the marriage the accused Sanjaykumar who was serving in Army proceeded on his duty.

15. On consideration of above referred evidence, it clearly reveals that, this material utterly fails to support the case of prosecution. There is inconsistency in so far as the allegation of demand and ill-treatment for non fulfillment of demand is concerned. In the version of material witnesses the allegations of demand and ill-treatment is brought on record by way of omission. Even the theory of oral dying declaration is not established by reliable and trustworthy evidence. Learned Trial Judge on assessment of evidence was justified in arriving at conclusion that the death of Archana was suicidal death. It is also revealed that when the incident of Archana setting herself ablaze took place her husband accused

No. 1 was not in village, he had already proceeded to Kargil so as to discharge his duties. By assigning reason in detail the learned Trial Judge arrived at conclusion that the prosecution failed to establish its case against the accused persons for commission of offences under Sections 306, 304-B and 498-A of IPC. The reasons are reflected in paragraphs 20 to 24 of the judgment. It may not be necessary for us to reiterate these reasons suffice it to say that the learned Trial Court committed no error in appreciation of evidence and arriving at conclusion.

16. Learned Trial Court was justified in observing that there were material improvements in the version of material witnesses more particularly, witness nos. 2 and 4. Arvind (PW 2) father of Archana could have lodged the report in the police chowki situated in the premises of Civil Hospital, Satara after his visit to Archana or even within a reasonable time after death of Archana but the unexplained delay in lodging the report and the any supported allegations against the accused persons only makes the case of prosecution doubtful and complaint being the product of tutoring or afterthought.

17. The material brought on record also fails to support the case

of prosecution that the accused no. 2 was sharing the residence with other accused person. There is also no material to show that the accused nos. 2 and 3 were having any active involvement either in the alleged abuses or ill-treatment to victim Archana. Interestingly Arvind (PW 2) father of Archana in his cross-examination clearly admitted that he is not aware as to how many brothers of Bajirao accused no. 4 are there. There is another factor falsifying the case of prosecution in so far as the alleged demand is concerned, it was brought on record that family of accused no. 1 helped Arvind (PW 2) in bearing the expenses of marriage by giving some amount to him. Though, Arvind (PW 2) in his cross-examination denied the suggestion by giving a cheque for amount of Rs. 8,000/- for bearing expenses of marriage the learned Trial Judge had an occasion to see the counterfoil of the cheque and the signature on the said counterfoil on the back side, the learned Trial Judge then tallied that signature with signature of complainant in FIR exhibit 26. Then learned Trial Judge observed thus:

If we compare the signature on the counter-foile of the cheque Exh. 28 on its back side with the signature of the complainant F.I.R. Exh. 26 it is talling with each other. Neither complainant mentioned in his F.I.R. nor he has

stated in his evidence that he incurred the expenses on the marriage of Archana. This itself shows that it is extremely improbable that the accused nos. 1 and his family members on the face of the fact that they were helping the parents of deceased would have demanded either any money from them or made any demands from them on account of non fulfillment of the amount for which have illtreated deceased Archana.

18. Learned Trial Judge was justified in making above referred observations on assessment of evidence. There was a contra material brought on record showing that the deceased written some letters to her parents showing that she was treated well in her matrimonial home. The discussion to this contra material is in paragraphs 31 and 32 of the judgment. While considering the aspect of unexplained and inordinate delay in lodging the report, learned Trial Judge made reference to the decisions of the Hon'ble the Apex Court reported in AIR 1980 SC 638 (Marudaanal Augusti V. State of Kerala) and AIR 1973 SC 501 (Thulia Kali v. State of Tamil Nadu).

19. Though death of Archana is within 7 years of her matrimonial life but in absence of any positive and reliable material

against accused person the prosecution failed to establish that Archana was subjected to an ill-treatment and harassment on account of demand of money and non fulfillment of demand and as such the learned Trial Judge was justified in observing thus:

It is true that in the present prosecution has proved that Archana committed suicide within the span of 7 years but the prosecution has not proved the cruelty or harassment to such degree which compelled Archana to commit suicide, hence there is no question of drawing inference u/133 (a) of the abetment of suicide. After giving my authentic consideration to the matter I am of the opinion that this is a case, in which all the accused persons deserved benefit of doubt.

20. Considering all the above referred aspects, we are of the opinion that the learned Trial Judge committed no error in appreciating the evidence and recorded the judgment and order of acquittal. Learned Trial Judge rightly adopted one of the possible view on assessment of evidence as such we are unable to find any illegality or perversity in the judgment. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)