

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 68 OF 2004**

State of Maharashtra } Appellant

Versus

1. Arun Kashinath Kokate	}	
2. Amar Kashinath Kokate	}	
3. Kashinath Dattatray Kokate	}	
4. Sangita Amar Kokate	}	
5. Sunita Kashinath Kokate,	}	Respondents
	}	(Orig. accused nos. 1 to 5)

Ms. M.H. Mhatre – APP for the State/Appellant.

Mr. S.A. Rajeshirke for the Respondents.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : FEBRUARY 16, 2021.

PRONOUNCED ON : APRIL 30, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The State of Maharashtra impugns the judgment and order dated 20th May 2003 passed by 2nd Ad-hoc Additional Sessions Judge, Kolhapur, thereby acquitting the accused of the offence punishable under section 304 (B) and 498(A) read with 34 of Indian Penal Code in Sessions Case No. 20 of 2003.

2. Such of the facts necessary for the decision of this appeal are as follows:-

a) On 3rd October 2002, PW.7 – Raghunath Yadav, who was attached to Juna Rajwada Police Station, as a police constable, received a telephone call informing the police that a lady had fallen in Rankala Lake. He summoned the fire fighter squad and the body of unidentified lady was removed from the lake. A.D. No. 79 of 2002 was registered at Juna Rajwada Police Station and thereafter, the investigation was handed over to P.S.I. Koli. PW-8, P.S.I.- Koli had been to the spot, he held the preliminary enquiry and recorded the inquest panchnama of the dead body with the help of two panchas. The inquest panchnama is at 'Exhibit-13'. Similarly, the scene of offence panchnama was drawn, which is at 'Exhibit-14' and the dead body was sent to C.P.R. Hospital for conducting Autopsy. The dead person was identified as Rupali wife of Arun Kokate by her brother-in-law Amar Kokate. Anil Khamker, father of Rupali lodged a report at Juna Rajwada Police Station, on the basis of which Crime No. 110 of 2002 was registered for the offence punishable under section 498(A) and 304 (B) read with section 34 of Indian Penal Code against the accused persons. Rupali daughter of Anil Khamkar was married to the respondent no.1 – Arun Kokate on 28th November 2001.

3. At the trial the prosecution has examined as many as 9 witnesses to bring home the guilt of the accused. The prosecution witnesses nos. 2,3,4 and 5 who happened to be the tenants of the respondents are declared hostile.

4. The further investigation was handed over to PW.9-Bajirao Kalantre.

5. On 4th October 2002, PW.1-Anil Khamkar lodged a report at Juna Rajwada Police Station, alleging therein that Rupali was married on 28th November 2001, she was residing in the joint family with her husband and others. That, one day all the accused persons had told his daughter to fetch a vault from her parents and on that count had started abusing and ill-treating her. When she visited her maternal house, she had informed her parents about the same. That, two months prior to 3rd October 2002, she was dropped in her maternal house by her brother-in-law and her co-sister. PW.1 had requested them to take her back. Accordingly, she had returned to her matrimonial house. On the occasion of Ganesh Festival she had visited her maternal house and at that time also she had reiterated about the demand made to her by her husband and in-laws and therefore, she was not willing to return to her matrimonial house. At the time of Ganesh Festival, she was carrying pregnancy of about 5 months. PW.1 has proved the contents of the First Information Report, which was lodged on 4th October 2002 and which is marked as 'Exhibit-17'.

6. In the cross-examination, it is admitted by PW.1 that even after marriage, Rupali was celebrating each and every festival in the house of his mother i.e. grandmother of Rupali. He admits that he had not visited the matrimonial house of Rupali on any single occasion since he is addicted to Alcohol and therefore, all the problems of Rupali were being dealt with by his mother and his sister-in-law. It is also admitted that Rupali was dropped at the house of her

grandmother by her sister-in-law and her co-sister and not to the house of PW.1. It is admitted that the said contention is incorrectly stated in the First Information Report. He has refused to have stated before the police that after the demise of Rupali, there were deliberations between the relatives and then the First Information Report was lodged.

7. PW.6- Suvarna Khamkar, who happens to be the paternal aunt of deceased Rupali, she has reiterated the allegations levelled by PW.1-Anil Khamkar. According to her, the accused had told Rupali, that she should not return from her maternal house without the vault. That, she was restrained from making telephone calls or from talking to anybody and that she was made to starve.

8. According to her, on 3rd October 2002, the brother-in-law and sister-in-law of Rupali had been to her house at bout 3.30 p.m. and enquired with her as to whether Rupali had been to her house. She had nurtured some suspicion and therefore, they had visited the house of the accused and saw a gathering of people there. They were directed to C.P.R. hospital, where they learnt that Rupali had committed suicide in Rankala Lake. She had also admitted that after marriage every festival was celebrated by Rupali in her maternal house and that PW.6 and her mother-in-law used to go to fetch her. That, in-laws of Rupali had restrained her from visiting her parents house and therefore, they all used to meet at the house of PW.6. She has admitted to have stated before the police that the First Information Report was lodged after due deliberations amongst the relatives. It is also admitted that in the 5th month of pregnancy a small function was held in the house of the

respondents to celebrate the pregnancy of Rupali. The 7th month function was also to be celebrated in the house of the respondent. There are omissions and contradictions in the evidence of PW.6.

9. PW.7-Raghunath Yadav had registered A.D. No. 79 of 2002. It is admitted by him, in the cross-examination that there is a small garden towards the northern side of the Rankala Lake where the said lady was found dead and that the said spot is always crowded by people.

10. PW.8-P.S.O, Shivaji Koli had conducted an enquiry in A.D. No. 79 of 2002 before the investigation was handed over to PW.9-Kalantre. PW.8 has admitted that he had not recorded the statements of the persons who were present at the time of the said incident to know as to how the said lady had fallen in the Lake.

11. PW.9-Bajirao Kalantre has proved the omissions and contradictions in the substantive evidence of the witnesses. PW.9 has admitted that he had not recorded the statements of the persons who were present at the spot of incident, as they were not found. He has subsequently stated that the said statements were not recorded as the witnesses were not convenient to him. The postmortem notes are admitted by the respondents. The postmortem notes would not indicate any injuries whether external or internal on the person of the deceased Rupali. It shows that she was carrying pregnancy of 20 weeks and the cause of death is shown as 'Asphyxia due to drowning'

12. It is a case of suicide by a wife within one year of her marriage. The defence of the accused is that it is not a case of suicide

but a case of accidental death. It is pertinent to note that the demand was in respect of a vault and not any ornament or cash or dowry in cash or kind. There is no evidence to show that there was a demand of dowry at the time of marriage neither soon after marriage and according to the prosecution witnesses, ill-treatment and harassment was meted out to Rupali on account of demand of a vault which appears to be strange.

13. In fact, there has to be a nexus between the demand, the harassment meted out for fulfillment of the demand and the death of a wife in suspicious or unnatural circumstances. There was no demand soon before her death. It is established from the evidence of the witnesses that the respondents had celebrated the pregnancy of Rupali in the 5th month in her matrimonial house i.e. soon before 'her death' and this fact is established by the postmortem notes and which shows that she was carrying five month of pregnancy at the time of her death.

14. There is no evidence to show that the death is preceded by any cruelty or ill-treatment meted out to her. There is no evidence adduced through the neighbours that Rupali was subjected to any cruelty. In the absence of any legal or admissible evidence, it cannot be held that the death of Rupali was a result of any ill-treatment meted out to her soon before her death. The prosecution has not been able to establish necessarily that it is a suicidal death since it is admitted by PW.8 and 9, that they have not recorded the statements of the people who were present at the spot. Neither the prosecution has been able to establish the identity of the person who had telephonically informed the police station about 'the fall' of a lady in Rankala Lake.

15. The prosecution has failed to prove its case beyond reasonable doubt. The reasons assigned by the learned Sessions Judge for acquitting the accused are justified, no interference is called for. Hence, appeal stands dismissed.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)