

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.173 OF 2003

State of Maharashtra

... Appellant

Vs.

1. Pandurang Malhari Kagale
2. Malhari Sakharam Kagale
(Appeal abated against Resp. No.2)
3. Krishnabai Malhari Kagale
4. Sau. Shakuntala Babu Lamdade

... Respondents

all residents of Miraj, Taluka Miraj, District
Sangli

Mr.V.B. Konde-Deshmukh, APP, for the Appellant – State
None for Respondent Nos.1, 3 & 4

**CORAM: S.S. SHINDE &
SANDIPKUMAR C. MORE, JJ.**

**JUDGEMENT RESERVED ON: OCTOBER 22, 2021
JUDGEMENT DELIVERED ON: DECEMBER 17, 2021**

JUDGEMENT (PER S.S. SHINDE, J.):

1. This Criminal Appeal is preferred by the State of Maharashtra challenging the judgement and order dated 7th September, 2002 in Sessions Case No.49 of 1999 passed by the learned II Adhoc Additional Sessions Judge, Sangli at Sangli, whereby the respondents – accused were acquitted of the charges under sections 498A, 304B read with section 34 of the Indian

Penal Code.

2. The prosecution case in brief is as under:

The complainant, namely, Kasappa Mali, is the father of the deceased—Rukmini. Accused No.1 – Pandurang was the husband of Rukmini. Accused No.2, who has expired, was the father of accused No.2. Accused No.3 is the mother of accused No.1 and accused No.4 is the sister of accused No.1. Rukmini died on 18.12.1998, after four years of her marriage with accused No.1.

It is the case of the prosecution that, about six months after the marriage, the accused started ill treating the deceased on the grounds that she was unable to cook properly and also that her conduct was not good. They used to beat the deceased on said counts. They used to torture the deceased by asking her to bring money and gold from her parents. These facts were narrated by the deceased to her father as well as her uncle, namely, Mhalsab, whenever she used to meet them at Sangli. The complainant as also his brother tried to pursue the accused not to ill treat the deceased but the ill treatment continued. Therefore, the brother of the deceased took her to their parents' house at Thane. Thereafter, pursuant to the requests

and intervention of the relatives of the accused that the accused will not ill treat the deceased, the complainant and his brother sent the deceased back to the accused. At that time, the accused had also addressed a letter to the Police Inspector, City Police Station, Miraj, stating that they will not ill treat the deceased. Thereafter, on 18th December, 1998, the complainant got information that Rukmini had died. On these allegations, a complaint was lodged against the accused with Miraj City Police Station, Miraj bearing C.R. No.241 of 1998. During the course of investigation, the accused came to be arrested and on completion of investigation, chargesheet came to be filed against them before the learned JMFC, Miraj. The case was then committed to Court of Sessions, Miraj, who after framing the charge and completion of trial, acquitted all the accused under sections 498A, 304B read with section 34 of the Indian Penal Code. Hence, this Appeal.

3. At the outset, it needs to be mentioned that the Appeal has already abated against Respondent No.2 – Malhari Sakharam Kagale, vide order dated 21st January, 2020.

4. Mr.V.B. Konde-Deshmukh, the learned APP appearing for the Appellant – State, has assailed the impugned judgment and

order of the learned Sessions Judge on the following grounds. He submitted that the death of Rukmini occurred within 7 years from the date of marriage. Therefore, presumption under section 113-B of the Indian Evidence Act would arise. The prosecution witnesses while deposing before the Court have made categorical statement that the respondents herein used to harass and give ill treatment to Rukmini. They have also stated that there was unlawful demand from the accused. Since Rukmini died in the house of the accused, the accused were obliged to give explanation since the facts about the death of Rukmini was within the special knowledge of the accused.

5. Although Vakalatnama for Respondents is filed by advocate Ashok J. Chaugule, the learned Counsel is absent.

6. We have given due consideration to the rival submissions, with the able assistance of the learned APP appearing for the Appellant. Perused the notes of evidence and also the other material placed on record. The trial Court framed the charge against the respondents. The first charge was that the respondents in furtherance of their common intention subjected Rukmini physically and mentally on the count that her behaviour

was not proper, she could not work properly in the house and did not meet the demand of the accused to bring 1 tola gold from her maternal house. Due to harassment and cruelty on the part of the respondents, Rukmini died. The respondents have committed an offence punishable under section 498A read with section 34 of the Indian Penal Code.

7. The second charge was that on 18.12.1998 at or about 1900 hrs, at Miraj, the death of Rukmini had occurred otherwise than under normal circumstances within 7 years of her marriage. She was subjected to mental and physical cruelty and harassment by the accused in connection with the demand of 1 tola golden ornaments from her parents and on other counts and thereby the respondents have committed offence punishable under section 304B read with section 34 of the Indian Penal Code.

8. In order to appreciate the allegation of harassment and ill-treatment of Rukmini by the respondents on account of not performing domestic work and bringing golden ornaments as alleged by the prosecution witnesses, it would be appropriate to discuss the evidence of the prosecution witnesses.

9. The prosecution had examined Kasappa Mali as PW1, who is the father of the deceased Rukmini. In his deposition before the Court, he stated that he has six daughters and Rukmini was elder and got married to accused No.1. Initially, for six months, the accused treated her properly, however, thereafter, they started harassing and giving ill treatment to her. On her failure to fulfill their unlawful demands to bring gold (Bormal) weighing 1 tola, the accused persons used to ask her to give divorce to Respondent No.1. This witness has, in detail, stated about the alleged harassment and ill treatment given to Rukmini by the respondents. He stated in his examination-in-chief that after some days of marriage and when Rukmini left the matrimonial house and stayed at Thane with the brother of PW1, the accused persons wrote one letter expressing regret and requesting to send back Rukmini to matrimonial home with assurance that they will treat the daughter of PW1 properly. He further stated that his daughter Rukmini died on 18.12.1998 at Miraj in Government hospital. One Ganpatrao Mali intimated his brother at Jat about the death of his daughter and he came to know about it from his brother. It is alleged by him that he met accused No.1 on way to Sangli and accused No.1 told him that his daughter died due to fever. He further stated that on

receiving the dead body of his daughter on 19.12.1998 at about 12pm to 1 pm, he registered the First Information Report with the concerned police station.

10. It is important to note that during the cross-examination, a suggestion was given to this witness by the defence Counsel that he (PW1) used to visit Rukmini for supplying her medicines since she was suffering from some mental ailment and was being treated for her mental weakness. Further suggestion was given that PW1 took Rukmini to school of mentally retarded persons at Miraj. This suggestion was denied by PW1. He also denied the suggestion that his brother took Rukmini to Thane for referring her to mental hospital at Thane. He admitted that his daughter stayed at Thane for four months and then, came back to Miraj.

11. The prosecution examined one Shankar Dhondiba Lamdade as PW2. In his deposition before the Court, PW2 stated that accused No.1 and the deceased Rukmini pulled down marital life properly for about 1 to 2 years and thereafter, disputes started between accused Nos.1 and 3 and Rukmini on account of cooking that she was not cooking well. The accused used to beat Rukmini on that count. In his deposition, he has not stated about unlawful

demand of 1 tola gold by the accused persons from Rukmini. He stated that he scribed a letter to the uncle of Rukmini at Thane which was received from accused No.2. He further stated that the letter was scribed by Pandu, son of accused No.2 and after receiving the said letter and due deliberations with PW1, Rukmini was brought to the house of the accused by her father.

During his cross-examination, PW2 stated that Rukmini was strongly built, however, she was mentally weak. He further stated that it is true to say that Rukmini was taking treatment at her matrimonial house as well as at the house of the accused but he did not know her ailment.

It can thus safely be gathered from the evidence of PW2 that the alleged ill treatment and harassment of Rukmini started at the hands of the accused after 1 to 2 years from the date of marriage and Rukmini was suffering from some mental weakness and for that, at the relevant time, she was being treated at Miraj. It has also come in the evidence of PW2 that the said alleged letter was signed by him. At this stage, it is relevant to mention that the prosecution failed to bring on record cogent evidence to show that the said alleged letter was written by the accused.

12. The prosecution examined Mahadevi Mahadeo Yesu Mali as PW3. It appears that the deceased Rukmini was residing in her neighbourhood. She stated that the accused treated Rukmini properly for six months and on account of her non-performance of work in the house so also in the field, the accused started ill treating her. She tried to intervene in the dispute, however, she could not succeed to resolve the dispute. She stated that Rukmini went to reside with her uncle at Thane. A suggestion was given to her in cross-examination that on account of some dispute between the family of the accused and her family, she had deposed against the accused. This has been denied by her, however, the fact remains that she stated about visit of Rukmini to Thane.

13. The prosecution examined Ganapati Appa Mali as PW4. His evidence is hearsay inasmuch as he stated that his son-in-law used to tell him about the ill-treatment to Rukmini by the accused. The evidence of PW4 is not important for the prosecution case.

14. The prosecution examined Dr. Deepak Shankar Amale, who had performed postmortem on the dead body of Rukmini. He stated that after studying the reports, they formed final opinion as

to the cause of death and in their opinion, the death has been caused due to poisoning due to Organo Phosphorous compound insecticide "Dimetheate (Rogor)".

However, in his cross-examination, PW5 stated that the probable time and death is not mentioned in the postmortem report (exhibit 34).

From his entire evidence, it is not clear that as to when the death of Rukmini had occurred and he has not stated any injury mark on Rukmini which would suggest overt acts on the part of the accused.

15. PW7 Subhash Babu Kadam was the Investigating Officer, who had stated in detail about the manner in which the investigation was carried out.

16. If the evidence of the prosecution witnesses is considered in its entirety, firstly, they are not consistent on the beginning point of the alleged harassment or ill-treatment to Rukmini at the hands of the respondents – accused. Secondly, it is deposed by PW2 that Rukmini was being treated for mental illness, however, the other witnesses are not consistent. There is a reasonable delay in

lodging the First Information Report which remains to be unexplained by the prosecution. If the entire prosecution case is viewed in the light of the evidence collected, it is difficult to understand as to why accused No.4 Shakuntala Babu Lamdade was added as an accused. At the relevant time, accused No.4 was already married and there was no any material to suggest any overt act on behalf of accused No.4. We have carefully perused the finding recorded by the trial Court. In our opinion, the prosecution has utterly failed to bring on record positive acts on the part of the accused within the proximate time and date of death of Rukmini indicating their involvement in the alleged harassment and ill treatment to Rukmini on account of non-fulfillment of unlawful demand so as to attract the ingredients of sections 304B and 306 of the Indian Penal Code. In that view of the matter, the question of presumption under section 113B of the Evidence Act would not arise. The prosecution was obliged to show specific acts on behalf of the accused within the proximate date and time of the alleged incident which would suggest the involvement of the respondent accused. On the contrary, the prosecution witnesses, in particular, PW2 had stated that Rukmini was suffering from mental weakness. Therefore, the reasonable inference that can

be drawn is that she might have consumed poison on her own. In our considered view, the findings recorded by the trial Court are not perverse and those are in consonance with the evidence brought on record. The view taken by the trial Court is a plausible view in the light of the evidence brought on record. Even if another view is possible, is no ground to interfere in the order of acquittal. Hence, no case is made out to interfere with the finding of acquittal.

17. For the reasons aforesaid, we are unable to persuade ourselves to reverse the findings of acquittal and allow the appeal. As a corollary, the Appeal shall fail and accordingly, the same stands dismissed.

(SANDIPKUMAR C. MORE, J.)

(S.S. SHINDE, J.)

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