

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 380 OF 2002**

The State of Maharashtra ... Appellant
V/s.
1. Subhash Pandurang Gaikwad
2. Pandurang Bhau Gaikwad
3. Sou. Vatsala Pandurang Gaikwad
4. Mahadeo Pandurang Gaikwad ... Respondents

Mr. N.B. Patil, APP for the Appellant-State.
Mr. Ateet Shirodkar i/b Mr. Ganesh Gole for Respondent Nos.1 to 4.

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

**RESERVED ON : 11.03.2021.
PRONOUNCED ON : 16.07.2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal at the instance of State takes an exception to the judgment and order dated 12.12.2001 passed by the learned 4th Ad-hoc Additional Sessions Judge, Kolhapur in Sessions Case No. 152 of 2000. By the impugned judgment and order, the respondent Nos.1 to 4, who were accused Nos.1 to 4 respectively before the trial court, have been acquitted of the offences punishable under sections 498-A, 304-B and 306 read with 34 of the Indian Penal Code (for short 'IPC').

2] The deceased Sunita was the daughter of PW-4 Subhash Hari Patil. The marriage of deceased Sunita was solemnized

with accused No.1 in the year 1999. Accused Nos.2 and 3 are the parents of accused No.1. Accused No.4 is the brother of accused No.1.

3] It is the case of the prosecution that after marriage, the deceased Sunita was treated well for about 3 to 4 months. The accused, thereafter, started ill-treating her on account of demand of gold ornaments and motorcycle from her parents. The deceased used to disclose to PW-4 about the ill-treatment to her, whenever she happens to meet him. PW-4 was not able to fulfill the demand of accused due to his poor financial condition.

4] It is alleged that due to constant ill-treatment inflicted by the accused on account of demand of gold ornaments and motorcycle, the deceased committed suicide on 20.4.2000 by pouring kerosene on her person and setting herself on fire.

5] On the basis of report lodged by father of deceased, i.e., PW-4 Subhash Patil on 21.4.2000 with Kurundwad Police Station, crime No.20 of 2000 was registered against the accused persons for the offence punishable under sections 498-A, 304-B and 306 read with 34 of the IPC. On completion of investigation, the chargesheet was filed against the accused for the said offences.

6] The accused were charged and tried for the above said offences. As stated earlier, the trial court by the impugned

judgement and order acquitted the accused of all charges.

7] We have heard learned APP for the appellant/State and learned counsel appearing for the respondents.

8] The trial court on the basis of evidence on record, though acquitted the accused, however, has not accepted their defence of accidental death of the deceased. The trial court has held that the death of the deceased was suicidal. No exception is taken to the said finding of trial court on behalf of the accused.

9] The only question is, therefore, whether the deceased was subjected to cruelty on account of demand of dowry ?

10] It appears from the evidence of PW-4 Subhash Patil that the deceased was educated upto 9th standard. The marriage of the deceased was solemnized with the accused No.1 in the year 1999. After marriage, upto the festival of Dusshera the deceased was treated well by the accused. The accused thereafter started ill-treating the deceased on account of demand of gold ornaments and motorcycle. The accused were not allowing the deceased to go out of the house. The deceased disclosed to PW-4 about ill-treatment to her on account of demand of gold ornaments and motorcycle when he visited the house of accused after Diwali festival. PW-4 told to the parents of the accused No.1 that he would not be able to fulfill their demands due to his poor financial condition.

11] It further appears from the evidence of PW-4 that when he brought the deceased to his house, at the time of Gudipadwa, again she disclosed to him about the ill-treatment to her on account of demand of gold ornaments and motorcycle and the accused warned her that she should not come back to their house unless their demand is met. According to PW-4, after Gudipadwa, nobody came from the side of the accused to take back the deceased to their house. He, therefore, dropped the deceased at the house of accused. At that time, only her mother-in-law was present at the house and she did not talk with him. He thereafter went to the house of Pandurang Bacharam Gaikwad, who was the Mediator in the marriage, to convey him about the ill-treatment to the deceased and he assured him that he would go to the house of accused and would convince them to treat the deceased well. According to PW-4, the deceased died unnatural death due to the ill-treatment inflicted by the accused on account of demand of dowry.

12] Admittedly, the marriage of the deceased with the accused No.1 was arranged marriage. It is not the case of prosecution that at the time of marriage any demand in the form of dowry was made by the accused. The deceased was educated upto 9th standard, whereas it appears that the accused No.1 was illiterate and was having speech problem. PW-4 has admitted that before marriage of the deceased with accused No.1, he did enquire about the financial position of the accused and he found it to be sound. According to PW-4

himself, his financial condition was not sound and the accused were aware about it. In such circumstances, the allegation of demand appears to be doubtful.

13] According to PW-4, the deceased disclosed to him about the alleged ill-treatment on account of demand of gold and motorcycle for the first time when he had gone to the house of accused after Diwali festival. The said fact is, however, missing in the report lodged by PW-4 at Exhibit-31. Similarly, the fact that the accused were not allowing the deceased to go out of the house is also missing in the report at Exhibit-31.

14] PW-4 has admitted in his evidence that the last rites of the deceased were performed at the village of accused and all the religious rituals were performed by the accused No.1. If the accused would have really ill-treated the deceased as alleged by PW-4, then he would not have allowed the accused to perform her last rites.

15] According to PW-4, Pandurang Gaikwad was the Mediator and he did disclose to him about the alleged ill-treatment to the deceased by the accused. However, said Pandurang Gaikwad has not been examined in the matter.

16] With regard to ill-treatment to the deceased, the prosecution has examined one more witness, i.e., PW-5 Shahaji Patil. It appears from his evidence that the deceased Sunita was his cousin sister. He had once gone to the house of

accused. At that time, the deceased disclosed to him about the demand of gold ornaments and motorcycle by the accused. He promised her that he would tell about it to her father.

17] PW-5 has admitted in his cross-examination that he might not have stated to the police that he would tell her father about the ill-treatment to her. He has further admitted that he has not stated before the police that on that day, he stayed at the house of Sunita. There are lot of omissions in the evidence of PW-5. It would not be, therefore, safe to rely upon the evidence of PW-5.

18] There is no other witness on the point of alleged ill-treatment to the deceased. Considering the overall facts and circumstances of the case, no interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(SMT. SADHANA S. JADHAV, J.)