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

CRIMINAL APPEAL NO.586 OF 2001

The State of Maharashtra

... Appellant

Vs.

1) Bhausahab Barku Datir

... Respondents

2) Barku Chenda Datir (DECEASED)

Mr.S.S. Hulke, APP, for the Appellant – State
Mr.Anilkumar Patil for Respondent No.1

**CORAM: S.S. SHINDE &
SURENDRA P. TAVADE, JJ.**

DATED: DECEMBER 4, 2021

ORAL JUDGMENT (PER S.S. SHINDE, J.):

1. This is an Appeal arising out of the impugned judgment and order of acquittal dated 28th March, 2001 passed by the learned Assistant Sessions Judge, Malegaon in Sessions Case No.9 of 1995.

2. The Respondents herein i.e., accused Nos.1 and 2, were tried for the offences punishable under sections 498A, 304(B) and 306 read with section 34 of the Indian Penal Code. The trial Court after a full fledged trial, acquitted the respondents. Hence, this Appeal by the State.

3. Respondent No.2 – Barku Chenda Datir died during the pendency of the present appeal on 23rd September, 2021 and hence, the Appeal has abated against Respondent No.2.

4. It was the case of the prosecution before the trial Court that the respondents subjected Shobhabai (the deceased) to cruelty by making unlawful demand and death of Shobhabai was caused otherwise than under normal circumstances within 7 years from the date of her marriage. It is alleged that Shobhabai got married with accused No.1 three years prior to her death. Her matrimonial house was at Shitane and the parental house at Bhagur, District Nashik. Shobhabai died on 25th July, 1993. The Police Patil of the village reported accidental death of the deceased Shobhabai to the police at Malegaon and accordingly an Accidental Death Report No.21 of 1993 was registered. Thereafter, PW1 Genu Lande, the mother of the deceased Shobhabai, filed the complaint. It was alleged in the said complaint that PW1 spent Rs.60,000/- in marriage and paid Rs.10,000/- as dowry to the respondents. Initially after marriage, for one year, the respondents properly treated Shobhabai. However, thereafter, they started giving cruel treatment to her for unlawful demands of one golden ring, wrist

watch and Rs.10,000/-. It is alleged that Shobhabai used to visit her parents house and on each occasion, narrated the ill-treatment meted out to her by the respondents.

On the basis of the said complaint given by Respondent No.1, the offence was registered being C.R. No.259 of 1993 with Malegaon police station.

5. The prosecution, in all, examined five witnesses. The star witness of the prosecution case is PW1. Upon a careful perusal of the deposition of PW1, she has stated about unlawful demand of Rs.10,000/-, wrist watch and a golden ring. She also stated that whenever Shobhabai visited her house, she stated about the unlawful demand by the respondents and threats given by Respondent No.1 that in case the said demand is not fulfilled, he will kill her.

It appears from the evidence of PW1 that she lodged the complaint on second day of cremation. The prosecution has not satisfactorily explained any delay in lodging the First Information Report. It is stated by PW1 that she went to the village of the accused for cremation and on that date, after cremation was over,

she stayed in the school premises. Though the police approached her, she stated that she was not in a state of mind to lodge complaint and on second day, the complaint was lodged. It appears that her evidence suffers from serious omission insofar as the demand of Rs.10,000/- is concerned. The same has not been confirmed by the Investigating Officer in his evidence. It further appears that during her cross-examination, the defence has succeeded in bringing on record that on 26th July, 1993, as stated by PW1, she stayed in the school premises of village Shitane. The said version has not been mentioned in the complaint recorded by the police. This fact assumes importance to appreciate the fact of not lodging the complaint immediately on the date of the incident or at least on the date of cremation. PW1 was not diligent in lodging the complaint. The complaint, as already observed, appears to have been lodged on 27th July, 1993. Therefore, the delay in lodging complaint would give rise to concoction and improvements. When the police met PW1 on 26th July, 1993, as she had stated in her statement, the natural course as a mother would have been that she should have immediately protested and lodged the complaint against the respondents. Insofar as her contention in her deposition that the respondents made a demand

of dowry and also PW1 incurred expenses of Rs.60,000/- towards expenses of marriage, it has not been recorded by the police in her complaint as admitted by PW1 in her cross-examination.

6. Insofar as PW2 is concerned, it appears that at the relevant time, he was minor and he had no first hand information from Shobhabai about the harassment and ill treatment given to Shobhabai by the accused.

7. Importantly, the medical officer, who performed the postmortem, was not examined by the prosecution. It appears that the probable cause of death of Shobhabai, as mentioned, was due to drowning and viscera was preserved for Chemical Analyser's examination. However, till the conclusion of the trial, the Chemical Analyser's report was not produced on record. As already observed, the medical officer was not examined by the prosecution and as a result, there is no definite finding i.e., whether the death was homicidal, accidental or suicidal. Since the Chemical Analyser's report was not produced on record and the medical officer was not examined, the prosecution had utterly failed to bring on record whether the death was homicidal or suicidal. It is true that the well from which the body of the deceased was

recovered, belonged to Respondent No.2. It has come on record that the said well was situated 1 km away from the house. The prosecution has not brought on record relevant material showing the activities of the accused nearby the alleged spot of the incidence within the proximate date and time of the alleged incident, attributing that they were involved in the alleged commission of the offence. At the cost of repetition, in absence of any finding that the death was homicidal, accidental or suicidal, we find it difficult to accept the case of the prosecution and reverse the order of acquittal. In our considered view, the trial Court has taken a plausible view upon appreciating the evidence on record. We do not see any perversity in the findings recorded by the trial Court. Suffice it to say that the findings recorded by the trial Court are in consonance and in conformity with the evidence brought on record.

8. Hence, no case is made out to cause interference in the impugned judgment and order. Therefore, the appeal filed by the State shall fail, and accordingly the following order is passed:

ORDER

- i) The Appeal qua Respondent No.1 stands dismissed.

- ii) The appeal *qua* Barku Chenda Datir – Respondent No.2 stands abated.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)