

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1509 OF 2003

The State of Maharashtra	}	Appellant
		(Orig. Complainant)
Versus		
1. Vijay Bhupal Mane, Age about 25 yrs.,	}	Respondents (Orig Accused Nos. 1 & 2)
2. Smt. Shakuntala Bhupal Mane, Age about 60 yrs.,		
Both R/o. Arjuni, Tal. Kagal, Dist. Kolhapur.		

Mr H.J. Dedhia, APP for the Appellant – State.
Mr. P.D. Gharge for the Respondents.

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

DATED : JANUARY 11, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the 4th Ad-hoc. Assistant Sessions Judge, Kolhapur in Sessions Case No. 116/2003, dated 16th September, 2003, whereby respondents herein (Original Accused) was acquitted of the charge for committing offences punishable under Sections 498-A, 304(b), 306 read with Section 34 of

the India Penal Code (for short “**IPC**”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. Learned APP appearing for the Appellant – State vehemently submitted that death of Shilpa Vijay Mane occurred within a short span of her matrimonial life at her matrimonial house and the witnesses before the Court have stated that deceased Shilpa was subjected to ill-treatment and harassment on account of dowry and as such, for dowry death of Shilpa the accused persons were responsible. It is further submitted by the learned APP that apart from the version of the witnesses the other evidence in the form of the medical evidence, panchnama of scene of offence also supports the case of prosecution. Learned APP then submitted that the learned Trial Court committed an error in appreciating the evidence and arrived at an erroneous conclusion. Thus, it is the submission of learned APP that by setting aside the judgment and order of acquittal criminal appeal may be allowed.

3. Per contra, learned Counsel appearing for the Respondent (Orig Accused) vehemently submitted that the evidence brought before the Court by the prosecution was wholly insufficient to hold accused

person guilty of the offences charged against them. It is then submitted by the learned Counsel for Respondents that the prosecution is miserably failed to meet out the basic ingredients of the charges leveled against the accused with cogent and reliable evidence and as such, learned Trial Court committed no error in acquitting the Respondents. Learned Counsel for Respondents then submitted that the evidence brought on record by the prosecution is not only insufficient but it shows that the case of prosecution lodged against the accused at the instance of complainant was a result of afterthought theory set out to implicate the accused persons.

4. Learned Counsel appearing for the Respondents invited our attention to the judgment of the Hon'ble the Apex Court in the case of Sampat Babaso Kale and Anr V/s. The State of Maharashtra¹, wherein the Apex Court reiterated the principles regarding the powers of Appellate Court while dealing with the Appeal against order of acquittal. Thus, learned Counsel for Respondents prayed for dismissal of appeal.

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

¹ Criminal Appeal Nos. 694-694 of 2011

6. The case of the prosecution primarily unfolds through complaint / report lodged at the instance of Chandrakant Sadashiv Kamble (PW 1) – father of deceased Shilpa and can be summarized as follows:

Marriage between Shilpa daughter of Chandrakant (PW 1) was solemnized with Vijay Bhupal Mane (Accused No. 1) on 06th May, 2001. After marriage for initial period of 3 months Shilpa was treated well in her matrimonial home by her relations thereafter, Respondents started ill-treating and harassing her by raising suspicion over her character and started demanding money to the tune of Rs. 5,000/- and she was not provided food and was subjected to abuses. Shilpa came to her parental home and informed her parents about ill-treatment caused to her. As the financial condition of her parents was weak, they were unable to fulfill demand of money and Shilpa was stayed at her parental home for 5-6 months. Thereafter, Respondent accused no. 1 reached her parental home and assured that Shilpa would be treated well, on his assurance Shilpa was sent back with Accused no. 1 to her matrimonial home. Again for 2-3 months Shilpa was treated well and then was subjected to ill-treatment for demand of money. Then Shilpa told about

the ill-treatment caused to her to her parents. Then parents of Shilpa thought to discontinue the matrimonial tie (by way of 'sodchitthi') and accordingly, Shilpa stayed at her parental home for nearly 10-11 months.

7. On 03.04.2003, Respondent No. 1 Vijay along with her brother-in-law Baban Jadhav resident of Lakhanpur reached parental home of Shilpa. Baban Jadhav assured to the father of Shilpa that henceforth Shilpa would not be subjected to any ill-treatment and she would be treated well. He stated that he himself give guarantee for a good behaviour of the accused persons. On the assurance of Baban Jadhav, Shilpa was also given an understanding and she was sent back to her matrimonial home along with Accused No. 1 and his brother-in-law. Thereafter, Shilpa's grandmother visited village Arjuni (where the matrimonial home of Shilpa was situated). Though, grandmother wanted to visit Shilpa but her matrimonial relations didn't allow Shilpa to meet her grandmother.

8. On 06.05.2003, Respondent No. 1 informed to one Yuvraj Kamble, by making a phone call, that Shilpa left house early in the morning at about 06.00 am and was missing. On receiving this

information, father of Shilpa along with his brother Sanjay and his father Sadashiv immediately rushed to Arjuni. After reaching to Arjuni it was informed to them that Shilpa died due to fall in the well. Her dead body was removed from the well and was subjected to postmortem.

9. On the next day i.e. on 07.05.2003 Chandrakant (PW 1) father of Shilpa lodged the report at Murgud police station. Police head constable Mr. Vasant Kamble (PW 6) took over the investigation and recorded the statement of witnesses, various panchanamas were drawn i.e. inquest and scene of offence panchanama, report of medical officer who had conducted postmortem was also obtained. On completion of investigating formalities charge-sheet was filed. As the case being exclusively triable by the Court of Sessions, the same was committed to the Court of Sessions and the learned Trial Court on appreciation of evidence recorded the judgment and order of acquittal.

10. The prosecution has examined 6 witnesses in support of its case. True it is that it is not quantity of witnesses but the quality of witnesses which matters, keeping this principle, in our mind, now we proceed to assess the evidence.

11. We may refer to the first set of witnesses who are in relation with deceased Shilpa and are examined by the prosecution to support its case that Shilpa was subjected to ill-treatment and harassment on demand of dowry and the accused was raising suspicion over character of Shilpa.

12. Chandrakant Sadashiv Kamble (PW 1) is the father of Shilpa narrated the facts above-referred by us in the summary of prosecution case as such, we may not repeat the same. Needless to state that Chandrakant (PW 1) proves the complaint. On perusal of evidence of this witness, it reveals that he has stated before the Court that the accused nos. 1 and 2 suspecting the character of Shilpa and raised demand of Rs. 5,000/- after three months of marriage. He has stated before the Court that for first three months after marriage Shilpa was treated well in her matrimonial home. It is not stated by this witness that there was any demand made of an amount or other articles at the time of marriage of Shilpa and Accused No. 1.

In the cross-examination, certain important admissions are brought on record. Chandrakant (PW 1) admitted that his statement was recorded by police head constable Patil on 06.05.2003 at about 4-5 pm

and in this statement he had not made any complaint against the accused though he immediately provides an explanation that as family was in sorrow. No explanation was provided to the fact of the matter is when the statement of this witness is recorded on 06.05.2003 i.e. on the day when death of Shilpa occurred he had not disclosed any material against accused persons. Then he further admits that he and his family members were present at the time of postmortem till 2.30 pm on the next day and the police personnel were also present there and at that time also he had not made any complaint about the accused persons. Then one more important admission is brought on record i.e. there was a discussion in between himself and his relations regarding the expenses of the marriage to be given by accused. Then he stated in the cross-examination that he has made an expenditure to the tune of Rs. 15,000/- to 20,000/- for the marriage of his daughter. Then he stated in the cross-examination that he was doing agricultural work as well as the work of polishing tiles. Then he further stated in the cross-examination that Shilpa appeared for the examination for 10th Standard in March, 2003 and she was taking education at his village Nartawade. Then he further admits that Shilpa was attending school regularly in 10th Standard. He further admitted that

after the examination accused no. 1 came to his house and took Shilpa along with him to her matrimonial house. He further admitted that the accused was working as Tempo driver. He then admitted that he and his wife had decided to provide education to Shilpa. Then he admits in the cross-examination that he is unable to tell the day or date or month on which accused demanded money to Shilpa. The version of this witness i.e. Chandrakant (PW 1) who is father of deceased Shilpa clearly show that the alleged demand was after 3 months of the marriage even the allegation of raising suspicion over the character of Shilpa is also after 3 months of marriage. It also reveals from the version of this witness that after her marriage till death for most of the time i.e. 1 year 7-8 months Shilpa was residing at her parental home. Her stay in matrimonial home is nearly of 6 months that too at intervals. It also revealed that Shilpa was continued her studies and appearing for the examinations and accused raised no objection for continuation of studies of Shilpa. It also reveals that in the first opportunity i.e. when statement of this witness was recorded and when police personnel were present, this witness made no complaint against accused persons and complaint / report was lodged on 07.05.2003 after the talks between relatives and Chandrakant (PW 1)

and these talks were on account of demand of money from the accused against marriage expenses. Thus, in our opinion, version of this witness is not at all trustworthy and it only supports the defence of the accused persons that they were falsely implicated.

13. Sadashiv Parsharam Kamble (PW 3) and Sou. Savitri Sadashiv Kamble (PW 5) are the father and mother of Chandrakant (PW 1). Now in so far as the allegations of ill-treatment and demand of money are concerned, these witnesses merely stated in chorus that accused persons were ill-treating Shilpa by raising suspicion over her character and was demanding money from her. None of these witnesses provide any detail as to on which day or month these demands were made or the Shilpa was subjected to ill-treatment on account of suspicion raised over her character. These witnesses admits that for first 3 months after marriage Shilpa was treated well. It is also admitted by these witnesses that Shilpa was residing at her parental home for a period of more than 1 year.

Now interestingly Sadashiv (PW 3) father of Chandrakant (PW 1) in cross-examination denied the suggestion that no complaint was made by Chandrakant against accused persons when his statement

was recorded on 06.05.2003. In contrast to this, Chandrakant (PW 1) had admitted in his cross-examination that when his statement was recorded on 06.05.2003 he made no complaint against accused. It is also admitted by the these witnesses that marriage of Shilpa had taken place at the house of accused. It was also admitted by these witnesses that Shilpa was continuing her education and attending school for 9th and 10th standard from her paternal home. It was also admitted by this witness that financial condition of accused is sound.

14. Satish Kamble (PW 4) who is an acquaintance of Chandrakant (PW 1) and Shilpa admits that the alleged ill-treatment on account of demand came to his knowledge after 3-4 months of marriage of Shilpa. He admits in the cross-examination that at the time of marriage Shilpa was studying in one school namely, Shivtej Girls High School. He also admits that Shilpa was appeared for 10th standard examination.

15. Sou. Savitri Kamble (PW 5) is the mother of Chandrakant (PW 1) and grandmother of Shilpa clearly admitted in her cross-examination that marriage of Shilpa was taken place at Arjuni at the house of accused and all the expenses of marriage were borne by the

accused. She also admitted that Shilpa was taking her education and was attending 9th and 10th standard from her parental home.

16. Vasant Tukaram Kamble (PW 6) is the police head constable attached to Murgud police station at the relevant time. On receipt of the complaint by Chandrakant Kamble (PW 1) he registered the offence bearing Crime No. 25/2003 under Sections 498-A, 304(b), 306 read with Section 34 of the IPC and conducted the investigation. Needless to state that he took necessary steps in the process of investigation such as, effecting arrest of the accused persons, recording the statement of witnesses, drawing the inquest and scene of offence panchanamas etc. After completing the major part of investigation, the investigation was then handed over to Shri. API Kazi who had filed charge-sheet.

In the cross-examination he admits that when Chandrakant (PW 1) attended police station to lodge complaint an accidental death was already registered. Then he clearly admits in the cross-examination that while statement of Chandrakant (PW 1) was recorded on 06.05.2003 he made no grievance or complaint in his statement.

17. Now we may refer to Exhibit 11 i.e. panchnama of scene of

offence, which is proved by Vasant Kamble (PW 6). It reveals that the dead body of Shilpa was found in the well. The well was partially filled with water. It is an open well to the north side. Pair of slippers of the deceased and a plastic can was found (used for attending nature's call). Thus, this panchanama show that possibility of accidental fall of deceased Shilpa could not have been ruled out.

18. Dr. Nandkumar Kulkarni (PW 2) who had conducted the postmortem of deceased Shilpa. He has stated that all the symptoms were of drowning. Cause of death of deceased was asphyxia due to drowning.

19. On appreciation of the above referred evidence brought by the prosecution and then by referring to the relevant provisions i.e. the offences charged against the accused person and the ingredients thereof, the learned Trial Judge was of the opinion, that the evidence is wholly insufficient to prove the charges against the accused persons. It was observed by the learned Trial Judge that the allegation of demand of money are after 3 months of the marriage. There was nothing is brought on record to show that there was an agreement between the parties at the time of marriage in respect of either payment of money or giving some

articles. It was also observed by the learned Trial Judge that the witnesses made allegation of demand of money and a suspicion being raised about the character of Shilpa by the accused persons at the same time and these two opinion would not go simultaneously. Learned Trial Judge observed that if the accused were raising suspicion over character of Shilpa then they would not have insisted for continuation of matrimonial tie. It was also observed by the learned Trial Judge that the marriage was performed at Arjuni i.e. at place of accused and the expenses of the marriage were borne by the accused persons. The financial condition of accused was comparatively better than the financial condition of father of deceased Shilpa.

20. Learned Trial Judge was justified in making above observations on the backdrop of the evidence to which we have also referred to. Learned Trial Judge committed no error in observing that for most of the time after the marriage of Shilpa and till her death Shilpa was residing at her parental home and the accused permitted Shilpa to continue her education. The prosecution witnesses have clearly stated before the Court that Shilpa was attending 9th and 10th Standard while she was regular student meaning thereby, Shilpa was at her parental home

for more than a year. There is also an admission given by the Chandrakant (PW 1) that there was a talk between him and relatives prior to lodgment of complaint / report in respect of demand of marriage expenses. Thus, learned Trial Judge committed no error in observing that the complaint was not lodged with the bonafide intention but with some oblique motive. Though, prosecution and the defence relied on certain judgments, it may not be necessary for us to refer to those judgments in view of the facts referred by us above on which we are of the clear opinion that the prosecution miserably failed to prove its case against accused persons beyond reasonable doubt.

21. Learned Trial Judge appreciated the evidence in proper perspective and arrived at just and proper conclusion. We see no reason to show any interference in the judgment and order of acquittal passed by the learned Trial Judge. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)