

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.12 OF 2003

1. Supadu Narayan Patil, **...APPELLANTS**
Age-25 years,
2. Narayan Maharu Patil,
Age-50 years,
(Since deceased abated)
3. Dilip Narayan Patil,
Age-27 years,
4. Sau. Sushilabai Narayan Patil,
Age-27 years,
5. Bhaidas Narayan Patil,
Age-23 years,
(Since deceased abated)
6. Sau. Vandanabai Dilip Patil,
Age-22 years,

All R/o. Walwadi Khurd,
Tq. Bhadgaon, Dist. Jalgaon

VERSUS

The State of Maharashtra

...RESPONDENTS

Mr. V. R. Dhorde, Advocate for the appellants
Mr. G. L. Deshpande, APP for the respondents/State

CORAM : KISHORE C. SANT, J.
RESERVED ON : 04-10-2022
PRONOUNCED ON : 21-11-2022

JUDGMENT :

1. This is an appeal filed by the original accused persons who are convicted by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.8/2001 by judgment and order dated 20-12-2002. By the impugned judgment the appellants are held guilty for the offences punishable under Section 306 and 498-A of the Indian Penal Code and they are sentenced as below.

2. Appellant No.1 is directed to suffer rigorous imprisonment for 7 years and to pay fine of Rs.500, in default to undergo rigorous imprisonment for 6 months for the offence punishable under Section 306. He is sentenced to undergo 3 years rigorous imprisonment and to pay fine of Rs.100/-, in default to suffer rigorous imprisonment for 1 month for the offence punishable under Section 498-A. The appellant No.3 is directed to undergo

rigorous imprisonment for 5 years and to pay fine of Rs.300 and in default to undergo rigorous imprisonment for 3 months for the offence punishable under Section 306 and for the offence punishable under Section 498-A he is directed to undergo rigorous imprisonment for 2 years and to pay fine of Rs.100/- and in default to undergo rigorous imprisonment for 1 month. The appellant Nos. 4 and 6 are directed to undergo rigorous imprisonment for 1 year and to pay fine of Rs.100/- each and in default to undergo rigorous imprisonment for one month each for the offence punishable under Section 306 and 498-A of the IPC. The appellant No.1,3 and 4 were in jail from 07-09-2000 till 20-01-2001 i.e. for 4 months and 13 days. Appellant No.6 was in jail from 11-09-2000 till 20-01-2001 i.e. for 4 months 9 days.

3. The prosecution story in short is as under:

a] In 1997 deceased Sangita married with appellant No.1. Out of the said marriage a female child was born. It is alleged

that for one year she was treated well & thereafter the appellants started demanding Rs.50,000/- from her father for buying buffalo. Five to six months before the incident father of the deceased visited in-laws at that time also there was a demand. It is because of this ill-treatment the deceased committed suicide by pouring kerosene on her person & setting herself on fire. Initially a report from the Medical Officer was received from Rural Hospital, Bhadgaon on 05-09-2000 by the Police Station and the same was treated as accidental death. The Investigating Officer went to the spot and drew spot panchanama. It is thereafter, a postmortem was conducted. After postmortem last rites were performed. It is only thereafter, on 07-09-2000 father of the deceased namely Jairam Ganpat Patil (PW-1) lodged an FIR in Bhadgaon Police Station.

b] It is alleged in the FIR that deceased used to tell about ill-treatment and harassment by in-laws whenever she used to come for festival season. It is further alleged that the appellant No.4 used to say that deceased is of dark complexion & on that

the appellant No.1 used to beat the deceased. Appellant No.3 who is elder brother of the husband used to give abuses in the name of mother and father etc. She was not allowed to take proper food. The husband used to beat her like an animal. On 05-09-2000 at around 07.30 the informant received a message that the deceased died of burn injuries. He immediately came to hospital where it was informed by appellant No. 2 that the deceased caught fire in the house. Next day after completing the last rites, he lodged the complaint. Though initially a case of accidental death was registered however after lodging of the FIR, the investigation was carried out and charge-sheet came to be filed.

4. The prosecution in support of it's case examined five witnesses. 1]PW-1 Jairam father of the deceased, 2] Yamunabai, mother, 3] PW-3 Latabai Patil, 4] PW-4 Kailash a panch and 5] PW-5 the Investigating Officer. The accused admitted the spot panchanama and also postmortem report. It needs to be mentioned here that there is no suicide note or dying

declaration in this case. The entire case of the prosecution thus rests upon spot panchanama, inquest panchanama and postmortem report besides oral testimony. Thus, we have to consider the evidence of PW-1. In his evidence, he stated about the harassment. Last complaint by the deceased Sangita was made 4 to 5 months before the incident wherein she had stated that she was being ill-treated and she does not want to reside in the matrimonial house.

5. In the cross-examination, he accepted that all the accused persons were residing separately. However, voluntarily stated that at the time of incident they were residing together. Daughter was given in the family looking at their financial condition. He did not immediately lodge the report about the incident as he was mentally disturbed. He further stated that the police did not record the statement of the mother and other relatives of the deceased on the date of incident or even on the next day. He stated that the dead body was taken by the accused person for the last rites.

6. Next is the evidence of Yamunabai i.e. mother of the deceased. Her evidence is also like PW-1 except that she stated that her husband that is father of the deceased had been to the place of the accused to explain that they are poor persons and they cannot satisfy the demand of the in-laws. In the cross she accepted that though the deceased used to tell about the ill-treatment no report was lodged with the police station about the same. She clearly accepted that father of the deceased never told anybody about the harassment or ill-treatment.

7. PW-3 Latabai is Aunt of the deceased. She stated that whenever the deceased used to come for festival she used to visit the house of this witness. Whereupon, it was told that there was ill-treatment and harassment at the hands of in-laws on account of demand of Rs.50,000/- for purchasing buffalo. No specific instance is quoted by any of the witnesses.

8. In evidence of Kailash he only stated that he was

called by the police on 05-09-2000 at the house of accused person and there panchanama was drawn and he signed the same. He proved the contents of the said panchanama. In the cross-examination he accepted that when the panchanama was drawn the Chulha (earthen oven) was found to be hot. He stated that he resides in the same lane of that of the accused. He stated that he never heard about dispute in the family or that there was any demand from Sangita and on that count she was beaten.

9. Evidence of the Investigating Officer shows that he received an information about accidental death and thereafter he lodged FIR on 3rd day on statement by father of the deceased. He stated that it was revealed during the investigation that there was ill-treatment at the hands of the in-laws. He could not give any more particulars about the offence or any specific instances about the ill-treatment etc. In the cross-examination he accepted that when he had gone to draw the spot panchanama and inquest panchanama, he did not record statements of neighboring persons.

10. As already stated the inquest panchanama is accepted. So also postmortem notes are accepted and there is no dispute about factum of death due to burn injuries. The prosecution therefore has not examined the Doctor who reported the accidental death. The prosecution has also not bothered to send the burn pieces of clothes for chemical examination from the spot panchanama, the case is tried to be made out by the prosecution that there was no kerosene smell or traces found on the spot.

11. The learned trial court on the basis of this investigation recorded that on the spot no kerosene is found. For the first time a mention of kerosene is found in the postmortem report. The trial court found that the deceased was completely burnt and such condition of dead body is not possible when a women catches fire accidentally. The learned trial court has relied upon the presumption as per section 113-A of the Indian Evidence Act and by recording conclusion that the death

is a suicidal death. So far as Section 498-A is concerned the court found the oral evidence of the witness to be sufficient to prove the offence.

12. Learned advocate for the appellant submitted that the prosecution has not proved the case to be a case of suicidal death. The prosecution has failed to rule out the possibility of accidental death completely. The case is not proved beyond reasonable doubt. It was necessary to examine the Doctor who reported accidental death to the police. He prayed for allowing the appeal by quashing and setting aside the judgment and order passed by the learned trial court. He relied upon the judgment reported in 2022 DGLS (Bombay) 284 in the Case of Shivaji Shankara Zagade Vs State of Maharashtra more particularly para 15 of the judgment to submit that though the memorandum and discovery panchanama was admitted, still it was necessary for the trial court to prove the signatures of the panch witnesses by examining them. Observing that it is important piece of evidence to connect the appellant with the

crime. Next judgment he relied upon which is reported in 2013 ALL MR (Cri) 3754 in the case of State of Maharashtra Vs Parmeshwar Waghchaure and anr. In the said case this court has held that when the prosecution is not able to prove it's case of suicidal death, there is no question of using the evidence against the accused. In the facts of that case which are similar to this case wherein death had taken place in the kitchen and there was article like kerosene utensils etc. The blood that was found and matchstick in that case were not forwarded to ascertain as to whether there was use of kerosene or not. It is observed that in such cases, it is desirable to examine the neighbors who must have rushed to the spot after noticing fire etc. In this case also it is submitted that such evidence is lacking. The prosecution has not even made any attempt to collect the evidence of the neighbors. Ultimately he prayed in the alternative that already the appellants have under gone a period of more than four months. He further submitted that the daughter born out of the marriage namely Yogita is looked after by the appellant and now Yogita is also married. The appellant No.1 is now settled in his

life. He has performed second marriage and prayed that appellants be released on probation of good conduct under Section 360 (4) of the Code of Criminal Procedure.

13. Learned APP supports the judgment. It is submitted that PW Nos. 1, 2 and 3 are consistent on the point of harassment and ill-treatment given to the deceased. From the evidence PW-4 he points out that no traces of kerosene were found shows that it was a death by suicide. She further submitted that postmortem report and inquest panchanama are not even challenged by the defense. The delay in lodging the FIR is properly explained as the father of the deceased was in disturbed condition because of the death of his daughter. He further submitted that there is no suggestion in the cross-examination of accidental fire. From 313 statement also she stated that, there is no defense that the deceased caught fire accidentally. She further submitted that in case of accidental fire woman will not get 100% burn injuries.

14. Considering the case, it is clear that there is no evidence as to who took the body to the hospital. There is no sufficient evidence even about causing ill-treatment and harassment meted out to the deceased. The allegations though are made no specific instances of ill-treatment and harassment are given. It is rightly pointed out that the prosecution has not even bothered to record statements of neighboring persons etc. The fact of the suicide & thus, foundational facts are not proved by the prosecution to invoke the presumption under Section 113(A) of the Evidence Act.

15. Considering very weak type of evidence and statements of witnesses prosecution could not bring sufficient evidence on record. The learned trial court has recorded the findings without actual material being on record. In such circumstances, this court finds that the prosecution has utterly failed to prove a case and thus there is no option but to set aside the conviction recorded by the court below. Hence, the following order.

ORDER

- a] The appeal stands allowed.
- b] Conviction and sentence awarded by the learned trial court in Sessions Case No. 8/2001 is quashed and set aside.
- c] The appellants are acquitted of the offences punishable under Sections 306 and 498-A of the IPC.
- d] Their bail bonds stand cancelled.
- e] Fine amount be refunded to the appellants, if paid.
- f] The appellants to comply with the condition under Section 437-A of the Code of Criminal Procedure.

[KISHORE C. SANT, J.]