

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1344 OF 2006

The State of Maharashtra

..Appellant

Vs.

Dipak Dattatraya Thombare
Age 49 years,
R/o. Subhash Nagar – Koregaon,
Presently residing at Kavathe
Tal.-Wai, District – Satara.

..Respondent

Mr. Y. Y. Dabke, APP for the Appellant / State.

Mr. Hrishikesh Kale i/b. Mr. V. V. Purwant, for the Respondent.

CORAM : C.V. BHADANG, J.

RESERVED ON : 23 NOVEMBER 2021

PRONOUNCED ON : 06 JUNE 2022

Judgment :

. By this Appeal, State is challenging the acquittal of the Respondent, from the offence punishable under Section 498-A, 306 and 504 of IPC.

2. The prosecution case may be briefly stated thus-

That on 13 March 2004, at about 9.00 a.m. Balutai alias Vrunda, wife of the Respondent, committed suicide by consuming poison. According to the prosecution, she was subjected to mental and physical ill-treatment by the Respondent on account of non-satisfaction of illegal demand of Rs.1 Lakh from her brother. It is claimed that from the year 2000, the deceased was subjected to cruelty on account of non-fulfillment of such demand, which led her to commit suicide.

3. The incident took place in the Government Quarter at Village Kavathe. The deceased was working as a midwife. After she was found to have consumed poison, she was taken to Babar Hospital at Wai where she expired. Police registered a case of accidental death and drew an inquest panchanama of the dead body in presence of the panchas. The dead body was sent for post mortem examination and it was handed over to her brother Rajendrakumar Salunkhe for funeral. During the inquiry, P.W.7 Rajendrakumar filed a complaint on 13 March 2004 in Police Station Bhuij alleging ill-treatment to the deceased.

4. The Appellant had married the deceased in the year 1995. The Respondent was serving as a driver on a private vehicle and although the deceased was treated well initially, subsequently from the year 2000 she was subjected to ill-treatment on account of the

illegal demand. On the basis of the complaint lodged by the Complainant Rajendrakumar, offence at Crime No.39/2004 came to be registered with the concerned Police Station and upon investigation, a chargesheet was filed. The case was committed to the Court of Sessions and was registered as Sessions Case No.96/2004.

5. The learned Sessions Judge framed charge against the Respondent for the aforesaid offence. The Respondent pleaded not guilty to the charge and claimed to be tried. The defence of the Respondent is of total denial and false implication.

6. At the trial, the prosecution examined in all nine witnesses and produced the record of investigation. The Respondent led the defence evidence of Mr. Nilesh Bhasme (D.W.1) and Mr. Abhinandan Patil (D.W.2). The learned Sessions Judge by a judgment and order dated 15 February 2005 has acquitted the Respondent. Hence, this appeal.

7. I have heard Mr. Y. Y. Dabke, the learned APP for the Appellant / State and Mr. Hrishikesh Kale, the learned counsel for the Respondent.

8. The learned APP for the Appellant submitted that the learned Sessions Judge was in error in acquitting the Respondent. The learned APP has taken me through the prosecution evidence and particularly of P.W.1 and P.W.5 to 7 in order to submit that there is sufficient evidence to show that the deceased was subjected to physical and mental cruelty by the Respondent on account of non satisfaction of the demand of Rs.1 Lakh for purchasing a flat. Learned APP has taken exception to the manner in which the evidence of these witnesses has been appreciated. It is submitted that the learned Sessions Judge was in error in holding that the evidence of these witnesses is not reliable. In the submission of learned APP, the evidence of P.W.5 Sunanda, who is the sister of the deceased, P.W.7 Rajendrakumar, who is the brother of the deceased and P.W.6 Sunita, who is the sister-in-law of the deceased is consistent, cogent and reliable on the point of ill-treatment meted out to the deceased. The learned APP pointed out that even P.W.1 Shivam, who is the son of the Respondent and the deceased has also supported the prosecution. It is submitted that P.W.1 Shivam has specifically stated about quarrel having taken place between the Respondent and the deceased in the night on 12 March 2004, in which the deceased was assaulted by the Respondent and the following morning she committed suicide by consuming certain tablets. It is submitted that the reasoning articulated by the learned Sessions Judge by accepting the defence is also perverse and not

acceptable. It is submitted that there are no circumstances brought on record to hold that P.W.7 Rajendrakumar was harbouring any grudge against the Respondent. It is thus submitted that the learned Sessions Judge, was in error in holding that possibility of false implication, cannot be ruled out. It is submitted that merely because the flat was already purchased in January 2004 is not sufficient to discard the otherwise consistent evidence of the prosecution witnesses. The learned APP also pointed out the evidence of P.W.8 Jayashree Kadam, who is an independent witness working in Primary Health Centre (P.H.C.). It is thus submitted that the finding of acquittal recorded by the learned Sessions Judge is based on misappreciation of the evidence and is against the weight of the evidence on record. It is submitted that the view taken by the learned Sessions Judge is perverse and is an impossible view, which requires interference.

9. The learned counsel for the Respondent has supported the impugned judgment. It is submitted that the learned Sessions Judge was justified in holding that the required degree of ill-treatment in order to drive the deceased Vrunda to commit suicide is not established on record. It is submitted that the learned Sessions Judge, on appreciation of the evidence, has rightly come to the conclusion that the evidence of the prosecution witnesses and particularly P.W.1 Shivam and P.W.5, P.W.6 and P.W.7 is not reliable.

It is submitted that the deceased was in Government service and quite to the contrary the Respondent was running an Auto-rickshaw and even according to the prosecution, at the time of incident was not doing any job. He submitted that the deceased was financially independent. The Respondent and the deceased had jointly applied for obtaining a loan for purchase of the flat to ICICI Bank and upon sanction of the loan, the flat was already purchased in January 2004, i.e. prior to the commission of the suicide by the deceased. He therefore submitted that the view taken by the learned Sessions Judge is a plausible view which does not require interference. It is submitted that there is no acceptable evidence of the Respondent having abetted the deceased to commit suicide. No complaint of such ill-treatment was lodged prior to the incident. The allegations of cruelty are of general nature. He pointed out that P.W.1 Shivam was admittedly staying with P.W.7 Rajendrakumar after the incident and thus the possibility of tutoring the child witness cannot be ruled out. He also pointed out that although P.W.1 Shivam claimed that in the previous night, that of the incident, the deceased was allegedly assaulted by the Respondent, the Inquest Panchanama and the Post Mortem report does not reveal that the deceased had any external injuries on her person.

10. I have carefully considered the rival circumstances and the submissions made. It has come on record that the deceased was

earlier married to one Dattatray Bhosale in the year 1994 and the marriage of the deceased with the Respondent in the year 1995 was her second marriage. It has also come on record that the deceased was serving in the health department since the year 1998 and at the time of the incident was working as a midwife in P.H.C. Kavathe. She alongwith Respondent and their son was residing in the Government quarter at Kavathe. According to the prosecution, the Respondent was not doing any work. According to the defence, he was working as a driver. Be that as it may, it has clearly come on record that the deceased being in Government service was financially independent. The Respondent has examined D.W.1 Nilesh Bhasme and D.W.2 Abhinandan Patil from ICICI Bank and it has come in their evidence that the deceased and the Respondent had made a joint application for obtaining financial assistance from the said Bank for purchase of a flat at Satara. It has also come on record that the earnest amount was paid by the deceased and after sanction of the loan, the flat was purchased on 28 January 2004 i.e. prior to the incident. The principal reason, according to the prosecution, for which the deceased was being ill-treated was that the Respondent was asking her to bring an amount of Rs.1 Lakh from her brother for purchase of the flat. I will revert back to this aspect a little later.

11. In this case, although the aspect of the deceased having suffered a suicidal death, is not disputed, there is one circumstance which needs to be noted in this regard. The prosecution case is that the deceased had consumed certain tablets. The evidence of P.W.8 Jayshree Kadam who was working as a lady attendant in P.H.C. Kavathe shows that at about 9.30 a.m. she was informed that the deceased had consumed tablets of Clorophine. The evidence of P.W.3 Dr. Madanrao Jadhav who conducted autopsy on the dead body of the deceased and the Post Mortem report shows that cause of death is respiratory failure due to pulmonary oedema secondary to unknown poisoning. However, viscera was preserved for chemical analysis. The Chemical Analyst report (Exh.38) of the viscera shows that the general and specific chemical testing did not reveal any poison. Thus, notwithstanding the fact that the aspect of suicidal death was not disputed, there is a serious doubt as to whether Vruda died of consuming poison. However, I will leave this aspect at that, as the suicidal death of Vrunda is not disputed even by the defence. The question is whether the deceased committed suicide on account of the ill-treatment meted out to her by the Respondent on account of her failure to bring Rs.1 Lakh from her brother.

12. I have gone through the evidence of P.W.1 and P.W.5 to 7 who are the relevant witnesses on the point of ill-treatment. As noticed

earlier, the principal reason, according to the prosecution, for the Respondent having ill-treated the deceased is that the Respondent was asking her to bring Rs.1 Lakh from her brother for purchase of a flat. It has clearly come on record that the deceased was in Government service since the year 1998 and the Respondent was serving as a driver on a private vehicle. It has also come on record that the deceased had applied alongwith the Appellant to the ICICI Bank for obtaining the loan and the flat was indeed purchased prior to the incident of suicide by the deceased. This is one of the reasons articulated by the learned Sessions Judge for not accepting the prosecution evidence on the point of ill-treatment. There is nothing on record to show that there was any prior complaint lodged of any such ill-treatment. It is all along the prosecution case that after their marriage in 1995, the deceased was treated well till the year 2000, after which the ill-treatment started. There is no specific reason why after treating the deceased well for initial five years, the Respondent started physically and mentally ill-treating her. As noticed earlier, the reason for such ill-treatment about the failure of the deceased to bring Rs.1 Lakh from her brother for purchase of a flat has rightly not been accepted by the learned Sessions Judge as the flat was already purchased. It can be seen that the deceased who was financially independent and in all probability, it was on the strength of her salary certificate that she obtained financial assistance from the ICICI Bank and the flat was purchased in January 2004.

13. The learned Sessions Judge has articulated some other reasons for not accepting the prosecution evidence. However, I do not find it necessary to go into the same as the very purpose of the alleged demand of Rs.1 Lakh by the Respondent falls through in view of the fact that the flat was purchased prior to the incident. P.W.1 Shivam is the son of the deceased and admittedly since the date of the incident is residing with her maternal uncle i.e. P.W.7 Rajendrakumar and therefore the possibility of tutoring cannot be ruled out. It is significant to note that P.W.1 Shivam states that in the night prior to the date of the incident i.e. on 12 March 2004 about 7.00 p.m., there was a quarrel between the Respondent and the deceased in which she was assaulted by means of a belt. However, there are no external injuries noted in the Inquest Panchanama nor in the Post Mortem Report.

14. I find that the view taken by the learned Sessions Judge based on these circumstances is a plausible view. It is well settled that in an Appeal against acquittal, this Court would not interfere unless and until the finding recorded by the trial Court is perverse or is against the weight of the evidence on record or is an impossible view. If the view taken by the learned Sessions Judge is a plausible view, this Court would not re-appreciate the evidence to come to a different conclusion in an Appeal of the present nature (See the decision of

the Supreme Court in *Chandrappa and Ors. Vs. State of Karnataka*¹).

15. Considering the over all circumstances, no case for interference is made out. The Appeal stands dismissed. Bail bonds of the Appellant stand cancelled.

C.V. BHADANG, J.

¹ (2007) 4 SCC 415