

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

CRIMINAL APPEAL NO. 814 OF 2008

The State of Maharashtra
(Sahakarnagar Police Station, Pune)

...Appellant

vs.

1. Sou. Sunita Kailas Nindane
Age 45 years, Occ. Household

2. Kailas Babu Nindane
Age 62 years, Occ. Well to do

3. Satish Kailas Nindane
Age 21 years, Occu. Service

4. Vinod Kailas Nindane
Age 30 years, Occ. Driver

...Respondents

Mr. H. J. Dedhia - APP for the Appellant/State.

Mr. Vivek Joshi i/by Mr. Vikas Shivarkar - Advocate for the
Respondent Nos. 1 to 4.

CORAM : S. M. MODAK, J.

DATE : 20th DECEMBER, 2022

JUDGMENT :-

1. Heard learned APP Shri Dedhia for the Appellant/State
and learned Advocate Shri Vivek Joshi for the Respondents-Accused.

2. Respondents were acquitted by the Court of Additional
Sessions Judge in Sessions Case No. 274 of 2006 on 01/01/2008, for
the offence punishable under Sections 498A, 306 r/w 34 of the

Indian Penal Code. The deceased-Vaishali married with the Respondent No. 4 in the year 2000. Whereas she succumbed to the injuries caused to her by burning on 04/02/2006. There was son borne out of the said marriage and his name is Yash and he was of four years old. Even he died during the incident.

3. There was an allegation of ill treating the deceased by all accused persons on account of bringing the amount. The said demand was made on various occasions including at the time of delivery of the deceased. Initially Accused No. 4 and deceased cohabited together at Dhanakwadi. However after she was pregnant both of them started residing alongwith other accused persons at Bibwewadi, Pune.

4. She informed about the ill treatment to her sister and brother. On one occasion, brother gave Rs. 5,000/-. Finally she has put an end to her life on 04/02/2006. She and her son, were there inside the room. It was situated on the first floor of the house owned by the accused. She has closed the door from the inside. When the neighbours came to know about the fire, somehow they could have entered the room by removing the tin sheets.

5. From the spot both the deceased were shifted to Sasoon

Hospital. They were declared as dead. Her brother Nilesh lodged the complaint with Sahakarnagar Police Station and offence came to be registered as mentioned above. The defence of accused was of denial.

EVIDENCE

6. During the evidence, the prosecution in all examined seven witnesses. Out of them, Witness No. 1-Nilesh brother, Witness No. 2-Chaitali-Sister of the deceased. Witness No. 3- Sunanda-Maternal Aunt of the deceased were examined. Even neighbour P.W. No. 5- Dilip was examined. He has not aware about the relationship in between the spouses. P.W. No. 4-Mahesh is the spot panch. Whereas P.W. No. 6- Shantaram is the witness on the point of entering into house by removing the tin sheets. P.W. No. 7-PSI Sakpal is the Investigating Officer.

SUICIDE

7. On the point of proving the death by suicide, the trial Court concluded that the suicide is not proved. It is true that there were 100% burnt injuries to both the deceased and cause of death was due to burn injuries.

8. It is true that there are certain articles seized from the

spot which consist of pieces of bangles and clothes. Apart from that clothes of some of the accused were also seized. They were sent to the Chemical Analyzer by forwarding letter but Chemical Analyzer report is not there on record.

9. Burn injuries may be suicidal or accidental. It can be ascertained by verifying the position prevailing at the time of the spot. Unfortunately nothing was seized from the spot which suggest pouring of Kerosene or explosion of stove. I do not find any reason to interfere in the findings given by the trial Court on the point of suicide. It is correct that suicide is not proved. The evidence adduced on the point of ill treatment also cannot be considered, in order to verify whether suicide was the outcome of the abetment.

Ill-treatment

10. Now it needs to be seen whether trial Court has committed an error in appreciating the evidence for commission of offence under Section 498A of the Indian Penal Code. The trial Court has noticed certain inconsistencies in between the evidences of P.W. No. 1 - Nilesh and P.W. No. 2- Chaitali and P.W. No. 3-Sunanda. No doubt they are referred about demand made by the Accused for certain amount. However said incident of demand has not taken

place in their presence. But they were communicated to them by the deceased. It is also true that their marriage lasted for six years.

11. In case of involving matrimonial offence, all the incidents need to be looked into. After the deceased was pregnant, both of them have shifted from Dhanakwadi to Bibwewadi and started staying with other accused persons. This fact is certainly in favour of the accused persons.

12. Furthermore, the witnesses have not given the details when the deceased informed about these incidents to them. It is true to say that during all these six years, none of her relatives approached the Police. It was also came in evidence that financial condition of the family of the accused was better than financial condition of the relatives of the deceased.

13. It is also important to note that the relatives of the deceased have not consented for the marriage of the deceased with the Accused No. 1. Deceased belonging to Maratha community whereas accused belonging to Mehtar community. It was the love marriage and both of them were working with bank. So there is every reason to believe that the relatives of the deceased were having grudge against the accused persons.

14. The incident of harassment will fall under Section 498A of the Indian Penal Code only when it falls under either of the categories described under explanation. The degree of harassment must be high degree, if it is not coupled with demand for dowry. If the harassment is for demand for dowry, the degree of the harassment need not be of high degree. In this case, the harassment was on account of bringing of amount from the relatives. It has also come on record that the P.W. No. 1-Nilesh was taking education and deceased was not having parents. So it is not probable that accused will demand any amount from the deceased and it has been considered by the trial Court.

15. It is true that if there is appeal against acquittal, the Appellate Court shall not interfere in the decision. It can be certainly be interfered in exceptional circumstances. I do not think it is an exceptional circumstance. So I find no merit in the appeal.

16. Hence appeal is dismissed.

[S. M. MODAK, J.]