

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

CRIMINAL APPEAL NO. 1093 OF 2007

The State of Maharashtra	]	..	Appellant
v/s.			
Shri Sanjay Bhau Shinde	]		
Age 27 years, Occu: Agriculture	]		
R/o. Kanhapuri, Tal. Pandharpur	]		
Dist. Solapur.	]	..	Respondent.

Shri S. H. Yadav, APP for the Respondent-State.
Shri D. W. Bhosale, for the Respondent.

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CORAM: PRAKASH D. NAIK, J.
DATED : 20th JANUARY, 2022.
(THROUGH VIDEO CONFERENCING)

ORAL JUDGMENT:-

This Appeal is preferred by State of Maharashtra under Section 378 (3) of Code of Criminal Procedure, challenging the judgment and order dated 28th March, 2005 passed by Additional Sessions Judge, Pandharpur in Sessions Case No.152 of 2004 wherein accused was acquitted for the offence punishable under Section 498-A and 306 of Indian Penal Code.

2 The case of the prosecution is as follows:-

The accused No.1 is the son of accused Nos. 2 & 3 and accused No.4 is the brother of accused No.1. PW-2 Laxmibai is the mother of deceased Sunita. Marriage between accused No.1 and deceased was performed on 18th May, 2001. For a period of one year after

the marriage, the victim was treated well. Thereafter, there was ill-treatment. Accused was demanding Rs.30,000/- for purchase of landed property. The demand was fulfilled by family members of the deceased with a hope that ill-treatment would be discontinued. However, the harassment to deceased continued. She was assaulted and abused. There was a demand of Rs.25,000/- for purchasing plot. At the time of death anniversary of the grandfather of deceased, accused No.1 demanded Rs.1,00,000/- for construction of house in the presence of relatives. The deceased had complained about the harassment caused to her by the accused. She committed suicide by consuming poison. The complainant and others visited the matrimonial house of the deceased. FIR was lodged for offences punishable under Sections 498-A and 306 of IPC. On completing the investigation, charge-sheet was filed.

3 The charge was framed against the accused vide order dated 5th July, 2001 for the offence punishable under Section 498-A of IPC and Section 306 read with Section 34 of the IPC.

4 Evidence of the witnesses was recorded. Thereafter, statement of accused was recorded under Section 313 of Cr. P. C. Pursuant to that, Trial Court acquitted the accused of both the charges.

5 The State has preferred appeal against impugned judgment of acquittal. Vide order dated 8th October, 2007, leave to appeal was granted against Accused No.1 (Respondent No.1) only. Leave was refused against Accused Nos. 2, 3 & 4 (Respondent Nos.2,3 & 4).

6 The prosecution has examined 5 witnesses. PW-1 – DigamberShinde is the panch witness for spot panchnama. PW-2 – Smt.Laxmi Pandhare is the mother of deceased Sunita. PW-3 – Vithal Pandhare is uncle of deceased. PW-4 – Vishnu Karche is maternal uncle of the deceased. PW-5 Krishna Raskar is the Investigating Officer.

7 The trial Court on appreciation of evidence, recorded the finding that the prosecution has failed to prove cruelty or abetment to commit suicide.

8 Learned APP submitted that the marriage between accused No.1 and the deceased was performed on 18th May, 2001 and the incident of suicide had occurred on 5th July, 2004. Thus, the deceased had committed suicide by consuming insecticide within a period of 7 years from the date of marriage. Section 113(A) of the Evidence Act can be invoked in this case. The deceased was continuously ill-treated by accused. She was subjected to cruelty. The Respondent No.1 is husband of deceased. The evidence of PW-2, PW-3 and PW-4 establishes that the victim was physically and mentally tortured by the accused. There was demand of money by accused. For not fulfilling the demand, deceased was continuously harassed. The deceased had informed about it to her parents. Even while accused had visited the parental home of the deceased for attending death anniversary of grand-father of deceased, there was demand of Rs.1,00,000/- in the presence of relatives for the purpose of construction of house. On account of ill-treatment, deceased was compelled to commit suicide. The act attributed to the Respondent amounts to cruelty. The respondents act amounts to abetment to commit suicide. Thus, offences punishable under Section 498A and 306 of IPC

were clearly established by the prosecution. The trial Court has overlooked the evidence adduced by the prosecution. The reasons assigned by the trial Court are contrary to the evidence on record. The acquittal has resulted in miscarriage of justice. Hence, the judgment of acquittal be set aside and the accused No.1 be convicted for the offences punishable under Sections 498-A and 306 of IPC.

9 Learned Advocate for Respondent No.1 submitted that trial Court has acquitted all the Accused. This Court has granted leave to prefer appeal, qua Respondent No.1 and it is refused against the other Respondents/ Accused. The finding of acquittal are supported by reasons. No case is made out to interfere in the judgment of acquittal. On perusal of evidence recorded during the trial, it can be seen that the prosecution has failed to establish that there was any cruelty or abetment to commit suicide. The version of witnesses is contradictory to each other. Hence, this appeal may be dismissed.

10 On perusal of the impugned judgment and order passed by the trial Court, it is clear that the Court has appreciated the evidence in proper perspective. The trial Court has assigned reasons for acquittal. I do not find any reason to take a different view.

11 PW-1 – Digamber Shinde is panch witness for spot panchnama. He is from the same village. He has stated that he was called by police to act as panch for spot panchnama. In cross examination, he stated that accused No.1 was residing in the field. Poison is used for spraying on crops like chilly, bringal and other vegetables. He had attended the marriage of accused No.1. The accused was residing separately from his parents within one month of the marriage. He resides

at the distance of one furlong from the house of accused No.1. and his fields are near to the field of accused No.1. Occasionally, he visited house of accused No.1.

12 From the evidence of the aforesaid witness, it can be derived that accused Nos.1 was residing separately from accused Nos. 2, 3 and 4. The separation was effected within one month from the date of marriage.

13 PW-2 – Laxmi Pandhare is mother of deceased. According to her, the marriage between accused No.1 and her daughter was solemnized on 18th May, 2001. The other accused are father-in-law, mother-in-law and brother-in-law of deceased. All the accused were residing together in the house situated in the field after the marriage. For a period of one year, the deceased was treated properly. Thereafter, deceased had disclosed that all the accused were demanding Rs.30,000/- for the purchase of land and on that count, she was ill-treated by them. The amount of Rs.30,000/- was paid by family of the deceased. The deceased had informed about harassment by accused whenever she visited matrimonial home of deceased. The accused was abusing her, starving her and make her to work in the field and there was demand of Rs,25,000/- for purchasing plot. She delivered male-child. The naming ceremony was performed. The accused has visited this ceremony. They were honoured by offering clothes. The accused then took the deceased and child with them. Accused No.4 has threatened the deceased and her family. He had assaulted the deceased whenever he came on holidays. He assaulted the deceased. When accused No.1 had visited the house of PW-2 for attending the death anniversary of her father-in-law, he demanded Rs.1,00,000/- for construction of house. There was harassment to her daughter by the

accused. She committed suicide by consuming poison. After learning about the death of the deceased, her husband was unconscious and he was admitted in hospital. On the next day, they lodged the report. In cross-examination, she have stated that the accused are related to her father prior to marriage. Her father had told that the family of the accused is good and they have sufficient agricultural land. Deceased was the only child. She was not allowed to cook. Accused No.4 is in military. He used to come to the village at the time of his leave with his family. Accused Nos. 2 and 3 were residing in their old house in the field. Tin shed was given to accused No.1. One year after marriage, her daughter and accused No.1 started residing in the tin shed situated in the field. Accused No.1 was cultivating his land. Her daughter was residing separately at the instance of her husband from accused Nos. 2 to 4. Her daughter was insisting her husband to reside separately and accused No.1 had resided separately at her insistence. Her sister-in-law had thick relation with deceased. She is married and presently, her sister-in-law residing at Jeur with her husband on constructing the house. Her sister-in-law had consumed poison but survived. After that incident, she came to reside with her husband at Jeur. Deceased was insisting the accused No.1 to reside at Jeur on constructing house like that of Ujwala on selling property at Kanapuri. 2-3 days before the incident, accused had gone to the field of accused No.2 for work. The deceased had stated to her that in spite of separate residence with accused No.1 he was not listening to her and he obeys accused Nos. 2 and 3. Accused No.1 was not listening to the deceased and hence, she was angry and committed suicide. After the funeral, all of them went to Jeur. All the relatives decided to lodge the report against accused. She had not produced any evidence before police

regarding admission of her husband in hospital.

14 From the evidence of PW-2, it can be seen that deceased was the only child of her parents. She was pampered. She was not allowed to work. Accused No.1 and deceased were residing separately from accused Nos.2, 3 and 4. Accused No.4 is working in military. Accused No. 1 was cultivating the agricultural land separately. Accused No.1 is residing separately at the insistence of deceased. Deceased under the influence of Ujwala who is residing with her husband at Jeur, she had attempted to commit suicide. Deceased was also interested in residing with her husband at Jeur by constructing new house by selling the agricultural land. The accused No.1 was visiting house of his parents which was not liked by deceased. Few days prior to incident, accused No.1 had visited accused No.2 and worked in his field.

15 PW-3 – Vithal Pandhare is the paternal uncle of the deceased. He deposed that after the marriage, Sunita (deceased) went for co-habitation with husband. She was treated well for a period of 1 year. Sunita had stated that there is demand of Rs.30,000/- by accused No.1 and she is being harassed by him. Thereafter, again there was demand of Rs.25,000/- for purchasing of plot. She was ill-treated by the accused. Child was born out of the wed-lock. Accused No.4 was harassing the deceased. In the cross-examination, he deposed that his brother has spent huge amount in marriage of Sunita. He had visited the house of accused No.1. The financial condition of the accused is better than the family of deceased. Sunita was the only child and she was beloved child in the family. His statement was recorded on 6th July, 2004. There is no mention in the statement that the amount of Rs.30,000/- was given two months

after the diwali and thereafter amount of Rs.25,000/- was demanded by accused. There is no mention in the statement that accused No.1 had told on phone that Sunita had consumed poison.

16 PW-4 – Vishnu Karche is the maternal uncle of the deceased. He stated that deceased was ill-treated by the accused one year after marriage. They were on visiting terms. He went to house of accused. The amount of Rs.25,000/- was demanded by the accused for purchase of plot. The amount of Rs.1,00,000/- was demanded by the accused No.1 for construction of the house. On 14th June, 2004, amount was not paid by his brother. At the time of incident, he was at Mumbai. He came to know that due to harassment by the accused No.1, deceased Sunita committed suicide. In the cross-examination, it is stated that he was working at Mumbai since last 6 to 7 years. The amount of Rs.25,000/- was demanded after six months from demand of Rs.30,000/-. The demand of Rs.1,00,000/- was not made in his presence. He was residing at Mumbai for 6 to 7 years prior to the incident in question.

17 The Investigating Officer – PW-5 has recorded the First Information Report and conducted investigation. He recorded statement of Vithal Pandhare on 6th July, 2004. Statement of Vishnu Karche and others were recorded on 7th July, 2004. Accused was arrested on 8th July, 2004. On completing the investigation, charge-sheet was filed. There are many vasties near the vasti of the accused.

18 Considering oral evidence and documentary evidence, the trial Court has acquitted the accused. The judgment of trial Court is based on appreciation of evidence.

19 The evidence of the witnesses depicts that marriage was settled with the consent of both the parties. The accused were related to the father of PW-2. Accused No.1 was helping his father in cultivating the land which was not liked by the deceased. Accused No. 1 had separated from his parents and was residing with the deceased in a separate house situated in the field. Accused Nos. 2 to 4 were residing in the old house situated in the field. Accused No.4 is working in military. The separation of accused No.1 from his parents was at the insistence of the deceased. She was complaining that she was made to work in the field. Although accused No.1 residing separately from the Accused Nos. 2 to 4, he was on visiting terms visited the house of his parents, which was not liked by the deceased. Accused No.1 had not only separated from his parents and started residing separately with the deceased but he was also cultivating the agricultural land separately. It is alleged that accused No.1 had demanded amount of Rs.1,00,000/- from the father of the deceased. The trial court has observed that this demand was purportedly made in the presence of the relatives when accused No.1 had visited the house of deceased for attending death anniversary of grand-father of the deceased. The trial court has also noted that accused No.1 was staying at the premises of the father of the deceased. He stated that in the night he had meal with the father of the deceased. Considering this situation, it is difficult to believe that Accused No.1 has demanded Rs.1,00,000/- . PW-3 has stated that the amount of Rs.1,00,000/- was not paid to accused. The version of PW-2, PW-3 and PW-4 is contrary to each other. Deceased was under influence of sister-in-law of PW-2. The mother of the deceased had admitted in the evidence that the deceased was under the influence of the sister-in-law of PW-2. Sister-in-law had attempted suicide. She was

residing separately with her husband by constructing house. It appears that deceased was insisting the accused No.1 to stay separately and they should settle at Jeur by constructing new house by selling the land situated in the village. The accused were farmers. Evidence discloses that insecticide are purchased for agricultural purposes. The frustration of victim is on account of circumstances which are set out from the evidence of witnesses.

20 Considering the aforesaid circumstances, it is apparent that trial Court has correctly held that prosecution has not established that the accused has committed alleged offences, I do not find any reason to take a different view. Hence, I pass the following order :

ORDER

Criminal Appeal No. 1093 of 2007 is dismissed and disposed of .

(PRAKASH D. NAIK,J.)