

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.212/2020

Ramdas S/o Vasant Rajbhar,
Aged about years, Occ.: Service,
R/o. Quarter No.76/1, WCL Colony,
Saoner, Tah. Saoner, District – Nagpur. **..... APPELLANT**

// VERSUS //

1. State of Maharashtra Through PSO
Khaperkheda, Tah. Saoner, District- Nagpur.
2. Deonarayan s/o Jogendra Rajbhar,
Aged about 29 years, Occ.: Service,
R/o. Qtr. No.635, Walni Khadan,
Tah. Saoner, District – Nagpur.
3. Manoj s/o Shivnarayan Rajbhar,
Aged about 29 yeears, occ.: Service,
R/o. Lalchowk, Sillewada Colony,
LCH – 34, Tah. Saoner, District – Nagpur.
4. Sau. Sandhya w/o Manoj Rajbhar,
Aged about 31 years, Occ.: Housewife,
R/o. Lalchowk, Sillewada Colony,
LCH – 34, Tah. Saoner, District – Nagpur.
5. Ravi s/o Jogendra Rajbhar,
Aged about 21 years, Occ.: Driver,
R/o. Qtr. No.635, Walni Khadan,
Tah. Saoner, District – Nagpur.
6. Smt. Bechnibai wdo Jogendra Rajbhar,
Aged about 52 years, Occ.: household,
R/o. Qtr No.635, Walni Khadan,
Tah. Saoner, District – Nagpur. **.... RESPONDENTS**

Shri. M. V. Rai, Advocate for appellant.
Shri A. M. Kadukar, APP for respondent No.1.
Shri A. C. Jaltare, Advocate for respondent Nos.2 to 6.

**CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
DATED : 16/11/2022**

ORAL JUDGMENT : [PER: VINAY JOSHI, J.]

1. Challenge in this appeal is to the judgment and order of acquittal dated 23.10.2019 in Sessions Trial No.218 of 2015 by which the trial Court has acquitted the respondents/accused from the charges levelled against them. Being aggrieved by the order of acquittal, this appeal has been filed by victim in terms of Section 372 of the Code of Criminal Procedure.

2. The victim is an informant, who lodged a report with concerned police on 17.02.2015 suspecting about foul play in death of his daughter. On the basis of said report, police initially registered Crime No.27/2015 for the offence punishable under Sections 498-A and 304-B read with Section 34 of The Indian Penal Code. During course of investigation, Section 302 has been added. After investigation, final report has been filed. Respondents are the husband and nearer relatives of the husband of deceased, namely Sumitra.

3. The informant is father of deceased Sumitra. It is his case that on 29.05.2014, his daughter Sumitra got married with accused Deonarayan. At the time of marriage, he has given dowry in the shape of cash amount

of Rs.1,25,000/- and gold ornaments worth Rs.2,00,000/-. After 15 days from the marriage, the deceased has informed that all accused used to harass her at the instance of dowry demand. The deceased stayed for four months at her maternal house and then she was sent back with some household articles. After one month, again the harassment repeated for demand of dowry which the deceased communicated to her father. It is stated that the accused Deonarayan also raised monetary demand of Rs.4,00,000/- for purchasing Scorpio Car. The informant stated that on 15.02.2015, he was telephonically informed about the incident on which he rushed to the house of accused. He was informed that deceased Sumitra has committed suicide by hanging. The informant realized the things and on the following day lodged report, alleging that due to harassment on account of dowry demand, his daughter committed suicide and therefore, the offence.

4. In order to bring home the guilt of accused, the prosecution has examined as many as six witnesses. The prosecution mainly relied on the evidence of PW-2 Ramdas (informant) and PW-3 Madhukar Motghare, who was the middle man allegedly knowing the harassment. Besides that, the prosecution has examined panch witness, neighbouring person and police officers. With the assistance of both sides, we have gone through the evidence of PW-2 Ramdas as well as PW-3 Madhukar. Informant PW-2 Ramdas has stated several things which were not stated

in the police report which is rightly noted by the trial Court. There are several omissions like, at the time of marriage there was demand of Rs.6,00,000/-, the deceased informing harassment on mobile phone etc. Though PW-3 Madhukar a middle man deposed that he has been personally informed by deceased about harassment, however, his entire evidence is in the form of omissions. The defence has proved all the omissions through the evidence of PW-6 Investigating Officer Bhagoji Chormale.

5. The learned counsel appearing for victim would submit that the aspect of suicidal death itself is doubtful. He would submit that at the time of occurrence husband Deonarayan was very much slept with the deceased and therefore, the fact of her death was within his exclusive knowledge. According to him, the facts being so onus lies on him to explain the things in terms of Section 106 of the Evidence Act. To substantiate said contention he relied on the decisions of Hon'ble Supreme Court in cases of *Gajanan Dashrath Kharate Vs. State of Maharashtra (2016) 4 SCC 604* and *State of Rajasthan Vs. Kashi Ram (2006) 12 SCC 254*. We have gone through above decision. No doubt, if the offence took place in secrecy inside the house, it is for the husband to explain the things, however, the prosecution is not relieved from initial burden of establishing case. It is brought on record that on 15.02.2015 itself the accused Deonarayan has a lodged report with the

police informing that his wife has committed suicide. It is not a case that a murder has been committed in the house requiring the husband to explain as to how his wife died. Case is having distinct features, as it is a case of suicide and therefore, it is not excepted from accused to explain as to the manner in which the lady has committed suicide. As per the report lodged by Deonarayan, on earlier night he was talking with his wife till late hours and in the morning he saw his wife hanging.

6. The learned counsel appearing for the appellant has drawn our attention to spot panchnama, to contend that distance between bed and ceiling Fan was 6 ft. and therefore, in the morning before opening door accused must have got knowledge about hanging of his wife. As per report of Deonarayan around 6.00 a.m. his sister has knocked the door on which he opened the door and saw that his wife was hanging to ceiling Fan. It is not brought on record that accused was also sleeping on the same cot where the lady was found hanging. Merely on the basis of short distance between cot and ceiling Fan definite inference cannot be drawn.

7. In order to establish the offence of dowry death, it is pre-requisite for prosecution to prove that soon before death lady was subjected to cruelty in connection with dowry demand. As noted by us, as well as trial Court, the evidence of star witnesses is full of exaggeration. No

other witness like relatives or neighbours have been examined to strengthen the prosecution case.

8. This is an appeal against acquittal. Time and again Hon'ble Supreme Court has explained that unless the judgment of acquittal is perverse or rendered without considering the evidence, the Appellate Court shall not interfere. It is not permissible for Appellate Court to substitute another view if the view taken by trial Court is probable. Always there is presumption of innocence in favour of accused which get strengthen by the seal of acquittal. We have examined the reasons assigned by learned trial Court about inadequacy of evidence to bring home the guilt of accused. We do not find that trial Court has either rejected the important evidence or the reasoning are illogical and perverse. Keeping in mind the above parameters, we have re-examined the entire evidence, and on that basis we concur with the view expressed by trial Court. In short, the appeal against acquittal carries no merits, hence stands dismissed.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)