

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

CRIMINAL APPEAL NO.400 OF 2015

Pankaj Ramesh Patil
Age: 32 years, Occu.: Agriculture,
R/o. Datta Colony, Taloda,
Tq. Taloda, Dist. Nandurbar.

..Appellant
(Orig. Accused No.1)

VERSUS

State of Maharashtra

..Respondent

...
Advocate for Appellant : Mr.R.N.Dhorde, Senior Advocate i/b.
Mr.Vikram R. Dhorde
APP for Respondents: Mr.A.M.Phule

...
**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 3rd February, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. Present appeal is filed by the original accused No.1, against judgment and order of conviction passed by learned Ad-hoc Additional Sessions Judge, Shahada in Sessions Case No.56 of 2013, by which accused No.1 is held guilty for commission of offence under Sections 498A, 302, 201 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for two months for offence under Section 302 of IPC and to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month respectively for offence under Sections 498A and 201 of IPC.

PROSECUTION CASE IN TRIAL COURT

2. **PW1** Nagin, father of deceased Manisha, set law into motion alleging that his daughter Manisha was married to accused No.1 in 2007. After her marriage, his daughter went to reside with accused No.1 husband and accused Nos.2 and 3 in-laws and they all resided jointly. Out of wedlock, his daughter delivered a girl child. Accusations are raised that on giving birth to a girl child, Manisha was subjected to ill treatment, beating and abuses by accused persons. Deceased used to inform whenever she visited informant's house about it. Even 2 to 3 months prior to the incident, deceased had informed about illicit relations of her husband with a girl. Fearing that deceased Manisha would disclose about affair of accused No.1 to others, on 15-05-2013 accused persons assaulted her and set her on fire and therefore, he lodged FIR Exhibit 72 on the basis of which Police registered Crime No.44 of 2013 for offence under Section 306, 498A read with 34 of IPC.

Investigation was carried out. Accused persons were arrested. After gathering sufficient evidence against accused, they came to be charge-sheeted for the offence punishable under Sections 302, 498A, 201, 504, 120B read with 34 of IPC and hence, they are put up for trial before learned Ad-hoc Additional Sessions Judge, Shahada, who after appreciating oral and documentary evidence on record, reached to above finding and accordingly, held accused No.1 guilty for offences under Sections 498A, 302 and 201 of IPC and acquitted rest of the accused.

Hence, instant appeal by accused No.1 husband on various grounds raised in appeal memo.

SUBMISSION ON BEHALF OF APPELLANT

3. Taking exception to the judgment of conviction, learned Senior Advocate for the appellant has pointed out that there is no involvement of the appellant husband in the alleged incident. Story of prosecution about ill treatment, abuses, assault at the hands of appellant husband and in-laws has no basis or foundation. Learned Senior Advocate took us through the FIR, various panchanamas and entire substantive evidence, which came on record during trial. He pointed out that admittedly after marriage of accused No.1 and deceased in the year 2007, a girl child was begotten, however, there is no foundation in the entire evidence regarding accusation on accused persons being upset on deceased for delivering a girl child.

4. Learned Senior Advocate took us through the FIR as well as substantive evidence of informant father and pointed out that informant father admits about receiving information from none other than accused No.1 husband that said information was passed from Police Station in presence of Police. That deceased had suffered 100% burns and the said incident had taken place in bathroom, the door of which was opening from inside and it has come on record that deceased was found resting her back on the door and therefore,

taking such situation into consideration, learned Senior Advocate pointed out that there is no reason to doubt any foul play. It is pointed out that admittedly deceased had suffered a cut injury and the same must have been suffered by deceased after she was in flames and might have come in contact with bathroom accessories and door. That there is no accusation of assault by any weapon and even there is no recovery of any weapon. He pointed out that infact initially the offence was registered by Police as A.D.

5. He next submitted that **PW6** Ghansham - Police Head Constable is also a resident of same locality to whom accused No.2 has immediately approached and informed about burn suffered by his daughter-in-law. Said person accompanied him, visited the spot and noticed deceased suffering 100% burn and lying in bathroom and that on the strength of such material, A.D. was registered. However, subsequently after two days, after due deliberation, informant father has lodged present report levelling false allegations of ill treatment and alleged illicit relations.

6. It is pointed out that allegations of illicit relations are also not reported in the FIR, but such allegations are made in supplementary statement, which was recorded after inordinate delay. There is admission to that extent in the cross-examination of informant. That first time allegation of assault by weapon is made but same has not been confirmed either by medical evidence

or there is any recovery of same and therefore, learned Senior Advocate points out that an attempt of false implication is out of annoyance of loosing daughter. Learned Senior Advocate took us through the evidence of **PW3** Mayabai who was neighbour of accused and who had allegedly spotted smoke and fire emanating from bathroom of the house of accused and has raised alarm after which accused persons realized that deceased had suffered burns. That thereafter, immediately accused No.1 husband approached Police Station and gave Khabar and that such conduct of appellant has not been considered by the learned trial Judge.

7. Learned Senior Advocate would question as to why, when as per supplementary statement, deceased had informed informant about alleged affair of her husband with a girl, no complaint was lodged and no attempts were made by informant or his family members to give understanding to accused No.1.

8. Learned Senior Advocate pointed out that learned trial Judge ought to have correctly appreciated evidence of very Police personnel **PW6** Ghansham, who had immediately accompanied appellant to the spot and with the help of others removed dead body of Manisha from bathroom and thereafter carried out inquest panchnama. He in his evidence has not stated about any foul play and said Police personnel has not not entertained any suspicious and has not

lodged any report.

9. Learned Senior Advocate emphasizes that there is no evidence to suggest that immediately prior to the alleged episode of burn suffered by Manisha, there was any quarrel or shouts heard by any of the neighbours. What preceded prior to the incident also has not been brought by prosecution on record. Infact appellant, deceased, their daughter and parents in law had returned in the night on 14-05-2013 and next day in the morning the alleged episode has taken place. That even **PW3** Mayabai, who is neighbour has admitted in cross-examination that there was nothing unusual noticed by her immediately after the incident or preceding night.

Lastly, it is submitted that there was either no or weak evidence in support of prosecution case. However, learned trial Court has failed to appreciate evidence on record, belated FIR of accusation of ill treatment and illicit relation and story of prosecution has been accepted by learned trial Judge. There was no cogent and trustworthy evidence in support of ill treatment. He emphasizes that on same set of evidence, accused Nos.2 to 5 are acquitted, however, accused No.1 has been held guilty and therefore, the evidence being without any foundation and in absence of trustworthy evidence, the impugned judgment is not sustainable and hence, prayed that same be set aside.

SUBMISSIONS ON BEHALF OF PROSECUTION

10. On behalf of State, learned APP in answer of above submissions, pointed out that there is strong, cogent and reliable evidence on behalf of prosecution before the learned trial Court. That father of deceased set law into motion alleging annoyance of accused persons for begetting girl child as they are expecting male child and therefore, on such count there was ill treatment and beating to deceased. That she had promptly informed about it to informant father and relatives. That subsequently she has also realized that her husband accused No.1 was maintaining extra marital affair with a girl residing in same locality. That, therefore out of fear that she would disclose it to others, accused persons have done her to death.

11. Learned APP points out that apart from above, deceased has suffered bleeding injuries. There is no explanation from accused persons regarding burns or bleeding injuries suffered by deceased while she was in their house and in their company. No plausible explanation is given while answering questions under Section 313 of the Code of Criminal Procedure. Therefore, learned APP submits that Section 106 of Indian Evidence Act can be invoked.

12. Learned APP points out that true it is that initially A.D. was registered, however, as informant father was in mental shock, he lodged FIR after two days and that time he held accused persons responsible and had disclosed

their conduct towards deceased. That merely to avoid complications and defamation of their daughter, they had refrained from taking immediate steps against accused No.1 husband for maintaining illicit relations. That thorough investigation has revealed that death was not suicidal or accidental rather it was homicidal one. That deceased had suffered 100% burns. Autopsy Doctor has ruled out possibility of bleeding injury to be self inflicted one. Therefore, accused persons are solely responsible for death of Manisha.

13. That there is strong evidence suggesting involvement of accused. They are solely responsible for homicidal death of Manisha and therefore, learned trial Court has correctly appreciated evidence on record and has committed no error in passing order of conviction of accused No.1 and acquittal of rest of the accused persons. He emphasizes that there is reason to hold that due care is taken by the learned trial Court while recording guilt of accused No.1 husband and acquitting other accused persons. He submits that, said findings as regards accused No.1 husband being sustainable and based on sound reasons and strong evidence, the same need not be disturbed with.

EVIDENCE BEFORE TRIAL COURT

14. Record shows that following is evidence on behalf of prosecution :

- a) **PW1** Nagin Chaudhary is father of deceased and informant, at Exh.56.

- b) **PW2** Sakharm Patil is Pancha to inquest panchanama, at Exh.63.
- c) **PW3** Mayabai Pawar is immediate neighbour, at Exh.77.
- d) **PW4** Prakash Mistari is Panch to spot panchanama, at Exh.78.
- e) **PW5** Mohansing Raghuwanshi is also a panch to spot panchanama, at Exh.80.
- f) **PW6** Ghansham Varsale is another neighbour, at Exh.82.
- g) **PW7** Shivdas Chaudhary is uncle of deceased, at Exh.83.
- h) **PW8** Ritabai Gosavi is third neighbour, at Exh.85.
- i) **PW9** Motilal Thakure is first Investigating Officer, at Exh.88.
- j) **PW10** Dr.Shitalkumar Padavi is Autopsy Doctor, at Exh.104.
- k) **PW11** Vijay Jadhav is Investigating Officer, who concluded investigation and filed charge-sheet, Exh.107.

Apart from above oral testimonies, prosecution has also sought reliance on FIR, inquest panchanama, post mortem report, spot panchanama, seizure panchanama and communication made by investigating machinery.

15. We have carefully examined the substantive evidence of above discussed witnesses and we propose to only deal and narrate the sum and substance of their substantive evidence which is as under :

PW1 Nagin, informant, father of deceased, after stating about marriage of his daughter with accused No.1, about having a daughter out of wedlock,

has stated that for not begetting male child, her daughter was ill treated, beaten and abused. That she duly informed about it to him. That 2-3 months prior to the incident, she also spoke about illicit relations of her husband with a girl. Then he stated about receiving phone call on 15-05-2013 about his daughter sustaining burns and accordingly visiting the spot. It seems that he has given supplementary statement on 30-05-2013 wherein he has alleged assault by deadly weapon in the backdrop of fear of likelihood of his daughter disclosing about illicit relations of her husband to others. He has implicated accused no.1, 2 and 3 for committing murder and accused nos.4 and 5 aiding them in causing disappearance of the evidence.

16. **PW2** Sakharam, who acted as inquest panch, spoke about panchanama to that extent being drawn on 15-05-2013 between 07:30 to 08:30 a.m. and he also claims to have come across injury seen near genital organ of the deceased. He identified panchanama at Exhibit 64.

17. **PW3** Mayabai is neighbouring lady and she stated that she woke up early in the morning at 05:00 a.m. While she was proceeding to answer call of nature, she saw that there was fire and smoke in the window of house of accused. She raised alarm and gave calls to accused nos.2 and 3 and thereafter, she heard cries and later had learnt that Manisha died due to burns in the bathroom.

18. **PW4** Prakash, who acted as spot pancha, identified panchanama at Exhibit 79.

19. **PW5** Mohansing was also a panch to spot panchanama, however, he did not support prosecution.

20. **PW6** Ghansham is Police Head Constable then attached to Taloda Police Station and his version in the witness box is that he resides in Datta Colony. According to him, while he was sleeping in house in the earlier hours of 14-05-2013 accused no.2 came to him, woke him up and informed about the occurrence and so he accompanied accused no.2 and saw that Manisha was lying with 100% burns in bathroom. He claims that he asked husband accused no.1 to lodge report and thereafter, he informed his higher authorities. That after dead body was taken out from bathroom, inquest was drawn and body was referred for post mortem and thereafter, handed over to the relatives. He states that there was smell of kerosene. He also stated that accused nos.4 and 5 used to visit accused no.1 and that there were illicit relations between accused no.1 and accused no.4 and that incident had taken place with intention that said relations should not be disclosed by deceased to anyone.

21. **PW7** Shivdas is paternal uncle of deceased. He stated that he received

telephonic message from his brother PW1 Nagin that Manisha had poured kerosene on herself and she has sustained burns and therefore, he went there but Police did not allow him to see Manisha. When he asked accused no.1 about incident, he was told that Manisha poured kerosene on her person and set her on fire by latching the bathroom from inside. He stated that after some time he saw the dead body. That in his presence Police measured the injury with help of finger. He also stated that there were blood stains and the blood marks from the bathroom till bed room and there were foot prints and blood stains in the bed room. Police recorded his statement on 31-05-2013.

22. **PW8** Ritabai, who is a resident of Datta Colony, has stated that accused nos.1 to 3 are residing in front of her house. She denied that she was in the house on 14-05-2013 and is unaware as to what has happened on 15-05-2013. Therefore, she has not supported prosecution.

23. **PW9** Motilal is the P.S.I., who received telephonic call from Police Head Constable Varsale and he speaks about instructing him to conduct inquest and that husband of deceased lodged A.D. bearing No.19 of 2013. He also visited the spot, saw the dead body, he noticed bleeding injury on right side of the private part. He prepared inquest of the spot Exhibit 64, filed report for post mortem, after post mortem, body was handed over by him to father of deceased. He again visited spot, drew panchanama, he gave details of

bathroom and articles lying there and about seizure of plastic can vide Exhibit 79. He spoke of snapping photographs of scene of spot, recording statements of witnesses. That on the basis of report at the instance of PW1 Nagin, Crime No.44 of 2013 was registered for the offence punishable under Sections 306 and 498A read with 34 of IPC. Thereafter, he arrested accused. He claims that while accused No.1 was in the custody, he recorded statement of mother and uncle of deceased and investigation revealed that accused no.1 had illicit relations with a girl and so he procured mobile of accused no.1 and applied for CDR, gathered medical papers and further investigation was handed over to PI. Jadhav.

24. **PW10** Dr.Shitalkumar is autopsy Doctor, who carried out post mortem, prepared post mortem report and issued opinion that probable cause of death is due to shock due to 98% to 100% superficial and deep (mixed) burns.

25. **PW11** Vijay is the succeeding Investigating Officer who gathered initial investigation papers from P.S.I. Thakur, carried out investigation, collected the CDR and made it part of investigation papers. He recorded statements of few witnesses and thereafter, charge-sheeted accused.

ANALYSIS AND CONCLUSION

26. On careful sifting of prosecution evidence, it seems that allegations

against accused persons are two fold; **firstly** ill treatment meted out to deceased by accused No.1 husband and in-laws for not delivering a male child and **secondly**, accused no.1 maintaining extra marital affair with a girl and fearing its disclosure, she being done to death.

Therefore, let us see whether above accusations are with any foundation and whether further prosecution has discharged its primary burden of establishing guilt of accused No.1 husband beyond reasonable doubt. Here parents-in-law and two other accused, who were also charge-sheeted, having been acquitted by the learned trial Judge, only involvement and guilt of accused No.1 husband being maintained, remains for our consideration.

27. If we go by the sequence of events, which are narrated by the prosecution witnesses, in our view, testimony of **PW3** Mayabai needs to be visited first as it is this lady, who has spotted smoke and fire emanating from the house of accused persons. It is her evidence that about 05:00 in the morning when she woke up for answering call of nature, from the window of her kitchen she saw smoke and light in the window of house of accused and therefore, she alerted accused Nos.2 and 3 and thereafter, the incident of deceased Manisha sustaining burns came to light.

After her, evidence of **PW6** Ghansham assumes importance. He is a Police personnel and he is resident of the same locality. In his testimony, he claims that accused no.2 knocked his doors at around 05:30 a.m. and

informed that his daughter-in-law suffered burns and they both arrived back to the spot. He stated that when they went near bathroom, the door of the bathroom was slightly in opened condition and there he saw daughter-in-law of accused No.2 lying with 100% burn injuries and that she was dead and so this witness asked accused No.1 husband to give information of the incident to Police Station. This witness states that he also went alongwith accused no.1 to Taloda Police Station and thereafter, accused no.1 husband lodged report regarding death of his wife due to burns.

28. Informant **PW1** Nagin in his testimony states that at around 06:00 a.m. on 15-05-2013, accused no.1 telephoned from Police Station itself and informed that Manisha had poured kerosene on her person and set her on fire and therefore, he alongwith his wife, children and relatives went at the spot and saw that in the bathroom Manisha was lying in dead condition and kerosene Can near her. That Police prepared panchanama. In substantive evidence, he stated that due to illicit relations of accused no.1, his daughter was abetted by accused persons to commit suicide and hence, she died. According to him, on that day, his mental condition not being proper, he lodged FIR on 17-05-2013. He identified it at Exhibit 72. He also claims to have given supplementary statement on 30-05-2013 wherein he levelled allegations about illicit relations of his son-in-law accused no.1 with a girl and to prevent its disclosure, deceased was assaulted and thereafter, pushed in

bathroom.

29. If we go by sequence of events which are narrated by prosecution witnesses, it is emerging that alleged occurrence has taken place in the matrimonial house which is undisputedly occupied by accused No.1 husband, in-laws, deceased Manisha and daughter Harshada. Marriage of accused No.1 and deceased seems to be of 2007. At the time of incident, accused no.1 husband and deceased Manisha had a two years daughter. Alleged incident has apparently taken place on 15-05-2013. Therefore, apparently incident is occurred after six years of marriage.

From testimony of father **PW1** Nagin, it is emerging that he has attributed allegation of ill treatment to his daughter only by her father-in-law. This is evident from his testimony in paragraph No.2 of examination-in-chief. He stated that they used to beat her and abuse her. When all such events took place or details of abuses are not quoted by informant. He speaks that his daughter used to inform them whenever she came to his house. Considering the nature of allegations and accusations, it was expected from him and even from prosecution to seek details from him as to when such ill treatment was meted out to her or when she was abused. As stated above, ill treatment is attributed only to accused no.2 father-in-law. Then, informant father speaks that 2 to 3 months prior to the incident, which is also by approximation, that daughter came to his house and told that her husband accused No.1 Pankaj

has illicit relations with one lady. Surprisingly, no concrete steps are taken by father inspite of claiming to have learnt about affair of accused No.1 son-in-law. Inspite of Police being present at the scene of occurrence, no efforts whatsoever seem to have been taken by him to report about such antecedents of accuse no.1.

We find him answering in his **cross-examination** that efforts were required to be done to remove the dead body because the door was closed in view of back of deceased resting on the door rendering it in shut condition from inside. Such position of bathroom shows that entry of anybody else going in the bathroom, committing the act and thereafter closing the door is rather doubtful. He admits about giving supplementary statement after making some enquiry wherein he alleges illicit relations of his son-in-law accused no.1, however, with whom he made enquiries has not come on record. As stated above, even his supplementary statement, like FIR is belated one giving rise to possibility of levelling after thought allegations.

30. At this juncture, it would also be proper to go through the evidence of his own brother **PW7** Shivdas. Admittedly from his testimony it is emerging that he stays at another place and he was called only after incident has happened. He has stated whatever he learnt from his brother PW1 Nagin. Though, in examination-in-chief he went to the extent of narrating about Police measuring the length and breadth of injury on the person of deceased

on the thigh, his cross-examination shows that he had not stated in his statement under Section 161 of Code of Criminal Procedure and he is speaking about it first time.

31. Therefore, now let us turn to the another crucial witness both for prosecution as well as defence i.e. **PW6** Ghansham. We have already reproduced his substantive evidence in para 20. It is to be noted that he is a Police Head Constable and was the first one to accompany accused No.2 to the scene of occurrence. It seems from his above testimony that he has directed accused no.1 to lodge report of his wife and thereupon A.D. has been registered. In presence of this witness, after updating Investigating Officer, his superior, inquest was drawn and body was referred to post mortem. He has also admitted that dead body of deceased was resting on the door rendering it in closed condition from inside. He has not come across anything foul. Had it been so, he would have not advised accused no.1 husband to lodge A.D. In his substantive evidence, we find him speaking about alleged affair of accused no.1 and accused no.4, but in his cross-examination he has admitted that he never came across anything suggesting illicit relations. Therefore, mere visit of accused no.4 to house of accused no.1, cannot be treated as extra marital affair. Infact this witness in his initial cross-examination has candidly admitted that cohabitation between accused no.1 and deceased was cordial and they resided happily and he never come across any complaint. It is pertinent to

note that he is also a resident of same locality. This witness was very much present when informant and other relatives came to the spot but no grievance whatsoever regarding conduct of all accused with deceased or illicit relations of accused no.1 and accused no.4 are reported to him.

32. Even other witness **PW8** Ritabai, who is a resident of same locality has not supported prosecution as she has denied knowing anything. **PW9** Motilal and **PW11** Vijay are Investigating Officers and **PW10** Dr.Shitalkumar is autopsy Doctor.

SUMMATION

33. On Carefully analyzing above evidence on behalf of prosecution, we are of the opinion that here there is no strong, trustworthy, credible evidence in the testimony of any of the above witnesses to accept prosecution case about accused persons ill treating, harassing deceased for not begetting male child. There is a girl child but she was already more than two years old at the time of incident. Under such circumstances, above allegations comes under shadow of doubts. Allegation about extra marital affair by accused no.1 husband was said to be reported to informant father three months prior to the incident of burns. Apart from being no reliable evidence about alleged affair between accused no.1 and accused no.4, the theory advanced by prosecution that, fearing disclosure of said relations to others at the hands of deceased, she was

done to death, is also not acceptable. Infact prosecution own case is that informant father was made aware by deceased herself but he has not questioned accused no.1 son-in-law nor has taken any concrete steps to get it verified from independent corners. Even otherwise deceased had stayed with husband till the incident and had never left his company. Rather informant father himself admits that his son-in-law and deceased both had come to his house together 10-15 days back prior to the incident of burns. Here Prosecution has failed to completely rule out incident to be not accidental or suicidal. We have already discussed the surroundings circumstances at the scene of occurrence. There is no material whatsoever suggesting involvement of accused in pouring kerosene and igniting her. Neighbours have not heard shouts and cries. For all above reasons, case of prosecution cannot be said to be proved beyond all reasonable doubt.

34. We have gone through the judgment of the learned trial Court. It is worth noting that on same set of facts and circumstances and evidence, accused nos.2 and 3 are acquitted from the same charge. Accused nos.4 and 5 are acquitted from charge under Section 201 of IPC. Therefore, in our opinion same yardsticks for evaluation were required to be applied by learned trial Judge. However, it seems that presence of accused persons in the house at the time of incident has prevailed over the opinion of learned trial Judge. Learned trial Judge seems to have accepted the version of father PW1 Nagin, however,

belated FIR and belated supplementary statement has been lost sight of by learned trial Judge. Aspect of earlier A.D. by none other than accused no.1 husband in presence and on directions of PW6 Ghansham, Police personnel has not been considered in proper spirit. The learned trial Judge erred in holding that evidence of PW1 Nagin finds corroboration from his own brother PW7 Shivdas, who infact had reached later and had infact learnt from PW1 Nagin. Only examination-in-chief seems to have been taken into account and answers given by prosecution witnesses are not properly appreciated. Therefore, there is no proper appreciation of evidence as a result of which, there seems to be miscarriage of justice. Consequently, in the interest of justice, interference at the hands of this Court has become necessary and we accordingly allow the appeal by passing following order :

ORDER

- (i) Criminal Appeal stands allowed.
- (ii) The conviction awarded to the appellant - Pankaj Ramesh Patil in Sessions Case No. 56 of 2013 on 13-04-2015 by the learned Ad-hoc Additional Sessions Judge, Shahada, District Nandurbar by holding him guilty of committing offence punishable under Sections 302, 498A and 201 of Indian Penal Code, stands set aside.
- (iii) The appellant is acquitted of the offence punishable under Sections 302, 498A and 201 of Indian Penal Code.

- (iv) The appellant be set at liberty, if not required in any other case.
- (v) The fine amount deposited, if any, be refunded to the accused after the statutory period.
- (vi) It is clarified that there is no change in the order regarding disposal of Muddemal.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT