

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

CRIMINAL APPEAL NO.457 OF 2004

The State of Maharashtra
Through the Police Station,
Majalgaon

.... **APPELLANT**

VERSUS

1. Sakharam @ Baburao s/o Bhagoji Natkar,
Age : 51 years, Occu.: Agril.,
R/o.: Majalgaon, Tq. Majalgaon,
District : Beed.
(deleted)
2. Shakuntala w/o Sakharam Natkar,
Age : 47 years, Occu.: Household,
R/o.: As above.
(Deleted)
3. Trimbak s/o Sakharam Natkar,
Age : 26 years, Occu.: Agriculture,
R/o.: As above.
4. Kum. Rajshree d/o Sakharam Natkar,
Age : 19 years Occu.: Household,
R/o.: As above.
(Deleted)
5. Kum. Reeta d/o Sakharam Natkar,
Age : 20 years, Occu.: Household,
R/o.: As above.
(Deleted)
6. Bebisaroja w/o Ankush Chikhale,
Age : 25 years, Occu.: Household,
R/o.: Dolara, Tq. Partur,
District : Jalna.
(Deleted)

..... **RESPONDENTS**
(Original accused)

.....
A.P.P. for Appellant-State : Mr. R. D. Sanap
Advocate for Respondent No.3 : Mr. Kuldeep S. Patil h/f
Mr. S. S. Choudhari
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 31/08/2023
PRONOUNCED ON : 06/09/2023
....

JUDGMENT :

1. The appellant / State has filed this appeal challenging the acquittal of respondents / original accused from the offences punishable under Sections 306 and 498A r.w. 34 of the Indian Penal Code under judgment and order dated 04/03/2004 passed by the learned Assistant Sessions Judge, Beed (hereinafter referred to as 'the learned trial court') in Sessions Case No.69 of 2003. However, this court while granting leave to appeal under order dated 11/10/2006, granted leave to prefer an appeal only against the acquittal of respondent No.3 i.e. original accused No.3, who is the husband of the deceased. Further, it was pointed out that during pendency of this appeal, respondent No.4 i.e. sister of respondent No.3 was reported dead.

2. Brief facts giving rise to the present appeal are as under:

One Archana Shivaji Kadam i.e. daughter of PW-2 -Shivaji, who was married with respondent No.3 on 21/05/2002 at village Dharmapuri. Respondent Nos.1 & 2 are the in-laws of Archana, whereas respondent Nos.4 to 6 are her sisters-in-law. In the said marriage, father of Archana, had given cash amount of Rs.1,51,000/-, five tolas gold, clothes and household articles to accused No.3. After the marriage, PW-2 Shivaji brought Archana to his house on occasion of Rakhi-Pournima festival and at that time, she disclosed to her parents namely Shivaji and Shantabai that all the respondents were telling her to bring Rs.50,000/- from her parents for purchasing a motorcycle. She also told that as she refused to do so, respondent Nos.1 to 5 beat her. The prosecution claims that as Shivaji could not pay the said amount, respondents started ill-treating Archana. Further, at the time of Diwali festival also initially respondent Nos.1 & 2 refused to send Archana but on the next day they told Shivaji to take her and accordingly Shivaji went to Majalgaon and brought Archana to his house. At that time also Archana disclosed her parents about her ill-treatment at the hands of respondents. Then respondent No.3 after Diwali came to the house of Shivaji, where he was honoured by giving clothes and then Archana went with him for cohabitation. The prosecution has further claimed that on 08/12/2002 PW-2 Shivaji had gone to

Majalgaon for attending marriage of his relative, where he met Archana. At that time also Archana told him about ill-treatment of respondents and to arrange for certain amount. Then on 14/12/2002 when Shivaji attended 13th death day (Teravi) of father-in-law of respondent No.6, Archana again told him about her ill-treatment. On 19/12/2002, Shivaji learnt from his relative one Dagare that Archana had died. Therefore, Shivaji alongwith family members went to Majalgaon at about 7.00 p.m. to the house of the respondents. When they entered in the said house, they saw Archana lying dead on one cot. On the same day, Ashok More gave information to the police station about the incident and accordingly, A. D. No.61 of 2002 was registered. The police authorities of Majalgaon Police Station prepared inquest panchanama and the dead body of Archana was sent for post-mortem. On 20/12/2002, Shivaji lodged a complaint against respondents / accused in Majalgaon Police Station and Crime No.223 of 2002 under Section 306 and 498A r.w. 34 of the Indian Penal Code was registered against the respondents / accused. On completion of investigation, charge-sheet was filed against the respondents / accused. The learned trial court conducted the trial, however, acquitted the respondents / accused from the aforesaid charges. Hence, this appeal.

3. Heard rival submissions. Also perused entire oral and documentary evidence on record alongwith the impugned judgment and order.

4. The learned APP strongly submits that the learned trial court has definitely erred in acquitting the respondents/accused when the material witnesses PW-2, 4 and 5, who are respectively father, mother and grand-father of the deceased Archana, had corroborated each other on the material aspect of cruelty. He further submits that marriage of respondent / accused No.3 had taken place on 21/05/2002 and just within seven months, death of Archana occurred due to hanging which was not at all a natural death. According to him, the version of the aforesaid witnesses remained unshattered even in the cross-examination. Therefore, he claimed that the learned trial court should have convicted the respondents / accused.

5. On the contrary, the learned counsel for respondent No.3 / accused No.3 submitted that the learned trial court has rightly acquitted all the respondents / accused since PW-1, who had proved inquest panchanama & spot panchanama, has given vital admission that nobody was present in the house at the time of incident. According to him, the prosecution only examined close relatives of the deceased Archana on the point of allegations against the respondents / accused. He places reliance on Exhibit-35 i.e. an application filed by the relative of the deceased to police wherein there was no mention of cruelty as such. He pointed out that there was no other external injuries on the dead body of Archana except ligature marks which clearly indicated that she

was not subjected to any physical torture soon before her death. As such, he prayed for dismissal of the appeal.

6. It is extremely important to note that though all the respondents / accused were arrayed as respondents while filing this appeal, but while granting leave, this court vide order dated 11/10/2006 only granted leave to file an appeal against respondent No.3 / accused No.3 Trimbak Sakharam Natkar i.e. husband of deceased Archana. Moreover, vide order dated 27/07/2015 this court had directed office to correct the record by deleting the name of other respondents except respondent No.3 since leave to file an appeal was granted only against him. Thus, it is clearly evident that this court was of the opinion that the acquittal recorded by the learned trial court against other respondents / accused except respondent No.3 / accused No.3, was proper. On going through the aforesaid order dated 11/10/2006 this court had recorded findings that on perusal of the judgment it was found that as many as five witnesses, which were the close relatives of the deceased Archana, were examined in proof of alleged cruelty but there were so many discrepancies observed in their evidence about visit of Archana to their house at the time of Mahlaximi festival. Further, this court had heavily relied on admissions given by PW-1 Anil Kachrual Rathod, who had proved inquest and spot panchanamas. This court has also recorded his admissions as vital since he was a neighbour of the respondents / accused. This witness in his cross-examination admitted that present respondent No.3 / accused No.3 i.e. husband of the deceased Archana was staying with her separately from parents and the other accused. Further all the accused were not at all present in the house on the

day of incident. It has also come on record through him that parents of respondent No.3 / accused No.3 were residing at different village and sisters of respondent No.3 / accused No.3 had gone to college. While rejecting the leave to file appeal against these respondents / accused, this court has already observed that since those accused were staying separate from respondent No.3 / accused No.3, it could not be held that they had committed the alleged offence. Further, it is important to note that this court while granting leave to file appeal only against respondent No.3 / accused No.3, had observed that since he was residing with the deceased Archana separately from the other accused and that the death of Archana took place within seven months of the marriage, which was definitely unnatural i.e. suicidal death due to hanging, the acquittal of the husband of Archana i.e. respondent No.3 / accused No.3 at least was not justified and re-appreciation of the evidence against him was necessary.

7. Thus, it appears that this court is of the opinion that only re-appreciation of the evidence to the extent of respondent No.3 / accused No.3 is necessary. It is a cardinal principle of law that the identical evidence which is similar to all the accused, cannot be used for acquitting some accused and convicting the remaining accused. Therefore, from the evidence adduced on record it has to be seen whether there is any additional evidence on record against respondent No.3 / accused No.3, which leads to his guilt.

8. The prosecution has quoted in all three main instances about illegal demand and ill-treatment of deceased Archana. So far as evidence of PW-2, 4 and 5, who are close relatives of the deceased

Archana, is concerned, all have stated about these three main instances. Admittedly, marriage of Archana took place with respondent No.3 / accused No.3 on 21/05/2002. As per the story of the prosecution, after three months of the marriage, all the accused started harassing her on account of demand of Rs.50,000/- for purchasing a motorcycle. If the evidence of aforesaid witnesses on this aspect is seen, then it is evident that at the time of Rakhi festival when Archana had come to their house, she had stated to them about the alleged ill-treatment from all the respondent / accused. There was no specific reference in respect of special ill-treatment from respondent No.3 / accused No.3. At the time of second incident, which took place at the time of Mahalaximi festival, also deceased Archana had made allegations against all the respondents/accused. Further, in respect of third incident, which took place at the time of Diwali festival, the evidence from these witnesses, is that initially respondent No.3 / accused No.3 refused to send Archana to their house but on the next day, accused No.1 asked PW-2 to take Archana to his house. When Archana came to his house at that time also she made allegations against all the respondents / accused in respect of alleged demand and ill-treatment as stated before.

9. Thus, the evidence of all these witnesses clearly indicates that on each and every time at the time of Archana's visit to their house, she made allegations against all the respondents / accused. Nothing was stated by Archana during her life time specifically against respondent No.3 / accused No.3 in addition to her allegations against all the accused. Further, this court while

granting leave to file appeal has considered the aforesaid evidence and found that there were many discrepancies. Moreover, it has specifically come record in cross-examination of PW-1, who was a neighbour of respondents / accused that nobody was present in the house at the time of incident. Moreover, it appears that leave to file appeal is granted against respondent No.3 / accused No.3 only because it has come in the evidence of PW-1 that respondent No.3 / accused No.3 and deceased Archana were residing separately from other accused. It is extremely important to note that the evidence adduced by the prosecution witnesses in respect of alleged ill-treatment of deceased Archana is identical to all the accused. Nothing is stated by the deceased Archana additionally against respondent No.3 / accused No.3. Therefore, the same evidence which was used by the learned trial court for acquitting the other accused, cannot be used for convicting respondent No.3 / accused No.3 specially when there is no additional evidence about any overt act from them.

10. Further, though the death of Archana was unnatural and took place within seven months of the marriage, but the postmortem report on record clearly indicated that there were no external injuries found on her dead body except ligature marks. Further as stated by PW-1 in his cross-examination, none from the respondents / accused were present in the house when the incident of suicide was committed. As such, Archana was alone in the house at the time of incident and absence of any external injuries on her body indicates that she was not subjected to cruelty soon before her death. Therefore, considering all these aspects, I come to the conclusion that there is no sufficient

evidence on record to establish the guilt of respondent No.3 / accused No.3 i.e. husband of the deceased Archana.

11. In criminal cases, the prosecution has to prove the guilt of the accused beyond all reasonable doubts. However, in the instant case the learned trial court has already acquitted all the respondents / accused by observing that there was no reliable and trustworthy evidence to convict them. Further, the identical evidence which was used for acquittal of other respondent Nos.1, 2, 4 to 6 / accused Nos. 1, 2, 4 to 6, cannot be used for conviction of respondent No.3 / accused No.3 in absence of any additional trustworthy and specific evidence against him. In view of the same, I find no substance in the appeal and it stands dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-