

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.510 OF 2021

Baban s/o Bandu Solankar

.. Appellant

Versus

1. The State of Maharashtra
2. Shivaji Punjaram Jamadar
3. Pandurang Punjaram Jamadar
4. Punjaram Rangnath Jamadar
5. Bhanudas Vitthal Kambale
6. Mangalabai Bhanudas Kambale
7. Yamunabai Punjaram Jamadar
8. Baban Baburao Hake
9. Latabai Baban Hake
10. Suresh @ Jija Gangadhar Dinde
11. Meenabai Suresh Dinde
12. Lahanubai Aba Narote
13. Devichand Sajaba Narote

.. Respondents

...
Mr. V. B. Kale h/f Mr. N. B. Narwade, Advocate for appellant.
Mrs. V. S. Choudhary, APP for respondent No.1 - State.
...

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

DATE : February 21, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed by the original informant under Section 378(4) of the Code of Criminal Procedure challenging the acquittal of original accused Nos.1 to 12 by learned Additional Sessions Judge, Aurangabad on 13.09.2017 in Sessions Case No.09 of

2012 from the offences punishable under Section 498-A, 304-B, 306 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. V. B. Kale holding for learned Advocate Mr. N. B. Narwade for the appellant and learned APP Mrs. V. S. Choudhary for respondent No.1 - State for the purpose of admission. With the able assistance of the learned Advocate for the appellant as well as learned APP, we have considered the material evidence, which was before the learned Trial Judge.

3. Present informant had lodged the report on 09.06.2011, wherein it was stated that deceased Malan was his daughter, who got married to accused No.1 - Shivaji about three years prior to the incident. She had son out of the wedlock. Some of the accused persons were residing jointly, but certainly they are the relatives of accused No.1. Malan went missing on 08.06.2011 and such message was given to the informant. He had gone to the house of accused, searched for Malan and then gave missing report Exhibit-15. Dead body of Malan was found floating in the Well of accused on 09.06.2011 and then the report was lodged stating that the husband and the relatives were ill-treating Malan for the demand of Rs.25,000/-. She was subjected to cruelty and because of the same, she has committed suicide.

4. After the committal of the case, as aforesaid, the trial was conducted and after scanning the evidence of the witnesses and hearing both sides, the learned Trial Judge has acquitted all the accused persons.

5. P.W.1 Baban is the informant and father of deceased Malan. P.W.2 Jijabai is the mother of deceased. P.W.3 Damodhar is the cousin of deceased. P.W.6 Ganesh is the real brother of deceased Malan. P.W. 5 Dr. Shivaji is the autopsy doctor, who has stated that he conducted autopsy on 09.06.2011. There was abrasion of 1 x 1 cm. over right nostrils roundish. But according to him, it was the postmortem injury. The probable cause of death was "respiratory failure due to drowning". Accordingly, the postmortem report Exhibit-85 was given by him. This opinion by the said autopsy doctor is not seriously challenged by the accused, however, that does not mean that accused have accepted that it was the suicide by the deceased Malan. In order to prove that it was suicide, the prosecution should rule out the possibility of accidental death as well as homicidal death. Section 304-B of Indian Penal Code has been invoked in this case, but it is not the prosecution case that death of Malan was homicidal in nature. No doubt, thereby they wanted to say that it is unnatural death, but certainly the tenor of the evidence that has been left by the prosecution is not that of homicidal death.

Under such circumstance, it was for the prosecution to rule out the possibility of accidental death. None of the witnesses, who have been examined by the prosecution, had seen Malan jumping into the Well in order to commit suicide. Merely by finding the dead body floating on the Well, it cannot be concluded that deceased jumped into the Well in order to commit suicide. The person, who had seen the dead body of the deceased first in the Well, has not been examined. Who had noted the dead body first and at what time is not explained by the Investigating Officer. When the possibility of accidental death has not been ruled out, we cannot jump to the conclusion that the death was only homicidal in nature. We cannot say that the ingredients of the offence are in any way proved.

6. Prosecution wanted to believe the Court that deceased was subjected to cruelty due to the illegal demand of dowry and as it was not fulfilled, deceased had committed suicide. The relatives of the deceased i.e. the parents, brother and cousin brother have stated about the illegal demand of Rs.25,000/- by the accused persons, however, it is to be noted that according to them the accused had made demand of Rs.25,000/- for household expenses. They have merely used the word "ill treatment" without specifying the acts of ill treatment. In catena of judgments of this Court as well as Hon'ble Apex Court, it has been held that mere use of word "ill treatment" is

not sufficient to bring it within the scope of Section 498-A of Indian Penal Code. Specific acts will have to be explained and then only they can be tested as to whether they amounted to ill-treatment. P.W.1 Baban has further stated that after the daughter was left to her matrimonial home and after she had enjoyed the festival of Diwali with them for about a month, accused started demanding amount of Rs.10,000/-. He then says that he brought his daughter again from the house of the accused, whereupon she stayed with him for about 15 days. That means, immediately after the alleged demand of Rs.10,000/- he had brought his daughter back to his house, then where is the question of giving ill-treatment to her. Further for what purpose the amount of Rs.10,000/- was demanded has not been told by him. In his cross-examination, he has given vital admissions. He has admitted that his daughter was not willing to go to matrimonial place, but he used to send her forcibly. Whenever his daughter used to come to the matrimonial house, her husband used to come to fetch her and, at that time, the informant was showering every hospitality for the son-in-law. Therefore, when the relationship was normal where was the question of ill-treating the daughter. Even at the time of delivery, Malan had stayed with them for about 5-6 months. It is unfortunate that a young lady had expired, however, the evidence that has been led by the prosecution in no way shows that it was

either homicidal or suicidal and in any way the said suicide was abetted by the accused persons. What was the conduct of the accused in the immediate occurrence of the incident has not been told or brought on record. Therefore, the view taken by the learned Trial Judge was correct. The acquittal of the respondents was based on sound legal principles and appropriate appreciation of evidence. It does not require any interference. The appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm