

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

CRIMINAL APPEAL NO. 1111 OF 2019

Bhagwansingh Govindsingh Kathar,	]	
Age : 50 Years, Occu. Labour,	]	
R/o. Gadipura, Nanded,	]	
Dist. Nanded.	]	... Appellant. (Orig.Informant)

Versus

1.	The State of Maharashtra,	]	
	Through Police Station Officer,	]	
	Osmannagar Police Station,	]	
	Tal. Loha, Dist. Nanded.	]	
2.	Ganeshsingh Ranjitsingh Kachave,	]	
	Age : 29 Years, Occu. Agri.,	]	
3.	Ranjeetsingh Gokulsingh Kachave,	]	
	Age : 58 Years, Occu. Agri.,	]	
4.	Sou. Ranjanabai @ Sarjabai Ranjeetsingh	]	
	Kachave, Age : 54 Years, Occu. Household,	]	
	Resp. Nos.2 to 4 are R/o. Kalambar (Bk.),	]	
	Tal. Loha, Dist. Nanded.		... Respondents (Resp. No.2 to 4 Orig. accused)

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Mr. S. J. Salunke h/f. Mr. Anandsingh Bayas, Advocate for Appellant.
Mr. R. D. Sanap, APP for Respondent No.1 – State.
Mr. N. B. Dhage, Advocate for Respondent Nos.2 to 4.

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

DATE : 16th FEBRUARY 2023.

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

1. Judgment and order of acquittal passed by the learned Additional Sessions Judge, Kandhar, Dist. Nanded in Sessions Case No. 44 of 2012, dated 30.01.2018 is impugned herein by original informant.

Background of the case in brief is as under

2. Present appellant set law into motion by approaching Osmannagar Police Station, Nanded on 22.02.2012, alleging that he resides with his family. His elder daughter Payal was married to present respondent No.2 Ganeshsingh in 2011. After few days of marriage, in-laws and husband started ill treating and harassing Payal and she informed about it. They were insisting Payal to bring Rs.30,000/-, and in that backdrop she was kept starved and beaten. In spite of complying demand of Rs.10,000/-, ill treatment and harassment continued. On 05.02.2012, he had given understanding to accused persons. On 06.02.2012, around 11.30 p.m., he received message that his daughter's condition has deteriorated and therefore he reached at Kalambar (Bk.) and then he informed his daughter lying on the cot. He and one Pavansingh Bais, immediately took his daughter to hospital but there while undergoing treatment she expired on 06.02.2012 itself in the evening. Hence, father lodged report against husband and in-laws. On the strength of which police registered crime bearing No.20 of 2012.

3. Investigation was carried out and after its completion accused were charge-sheeted. Learned Additional Sessions Judge, Kandhar conducted sessions trial case vide No. 44 of 2012, during which evidence on behalf of prosecution was adduced and examined. After conclusion of trial, arguments were heard by the learned trial Judge and finally by judgment and order dated 30.01.2018, the learned trial Judge held that prosecution has failed to prove the charges and thereby acquitted accused – respondent Nos.2 to 4 from offence under sections 498-A, 304-B read with section 34 of Indian Penal Code.

4. By invoking section 372 of the Code of Criminal Procedure, father informant is questioning the legality and sustainability of the said judgment and order by way of instant appeal on various grounds raised in the appeal memo which could be summarized as under :-

Firstly, there is failure on the part of trial court in appreciating the oral and documentary evidence on record.

Secondly, evidence of prosecution witnesses is unfortunately disbelieved and case is decided on surmises and conjectures.

Thirdly, in spite of availability of oral and documentary evidence which unerringly pointed of guilt of accused, trial Judge unfortunately acquitted the accused persons.

Fourthly, prosecution had established the guilt by examining eight witnesses who were consistent and corroborating each other, but the learned trial Judge did not appreciate the same.

Fifthly, evidence of informant was cogent and trustworthy and it was brought on record that after marriage there was demand of money and on non fulfillment, harassment had begun. Deceased had informed promptly and therefore informant had given understanding and have even met part demand, but such evidence has been overlooked by the learned trial Judge.

Therefore for all of reasons, it is prayed that judgment and order passed by the learned Additional Sessions Judge not being sustainable in the eyes of law, is required to set aside by allowing the appeal.

5. On behalf of State learned APP would submit that there was sufficient cogent evidence about demand and ill-treatment. Including informant father and other witnesses had also testified about conduct of accused towards deceased. That, unnatural death has taken place within seven years of marriage and there was charge under section 498-A also, offence of section 304-B of IPC was also made out, but the same has not been considered and appreciated by the learned trial Judge and therefore he also submits that the judgment and order under challenge is required to be interfered with by allowing an appeal.

6. We have given anxious thought to the submissions made before us by each of the side. We have carefully examined evidence adduced by prosecution in the trial Court.

7. It is emerging that **PW-1** Jyoti is the aunt of deceased Payal. She has stated that accused Ganeshsing started harassing his niece on account of demand of Rs.30,000/-. They were keeping her starving and her mother-in-law beat her and he claims that he learnt about it from Payal herself whenever she came to Nanded.

8. **PW-2** Bhagwansing is the informant and father of deceased. He reiterated whatever he lodged in the complaint regarding marriage to be performed in May 2011 and after two months of marriage, ill treatment being subjected to his daughter on account of Rs.30,000/-. According to him, husband and in-laws used to beat her, keep her starving and they providing stale food to her. Because of the said demand, he paid Rs.10,000/- and also give understanding, but still harassment and ill-treatment continued and as such all accused persons are responsible for the death of her daughter Payal.

9. **PW-3** Sambhaji is the panch to the spot has not supported the prosecution. Likewise, **PW-4** Piraji also did not support the prosecution as he denied about seizure of any shirt and pant in his presence at Osmannagar

police station on 23.02.2012. **PW-5** Balaji is the brother of deceased. In his testimony, he stated that accused persons harassed his sister for non-fulfillment of unlawful demand of Rs.30,000/-. His sister told that whenever she came to there house in spite of giving Rs.10,000/- conduct of accused did not change. He holds accused responsible for her death. **PW-6** Maroti also did not support prosecution on account of seizure of clothes. **PW-7** Pandit Kachave, is the Investigating Officer. **PW-8** Dr. Maroti Dake, is the autopsy doctor and he admitted that opinion regarding cause of death was reserve for want of viscera and thereafter he issued final cause of death certificate (Exh.44) as “cerebro pulmonary edema with interstitial pneumonitis”.

10. We have reassessed and re-examined the oral and documentary evidence adduced before the trial Court, as it is the case of prosecution that deceased Payal met unnatural death while she was cohabiting with accused and in-laws, it is to be seen whether prosecution has proved the same.

11. **PW-8** Dr. Maroti Dake seems to have conducted autopsy on the the dead body of Payal on 06.02.2012. He stated about external injuries which are noted by him in column No. 17. He narrated the findings reached by him regarding the condition of organs on conducting autopsy.

In examination-in-chief, he states opinion as to cause of death was

reserved for want of histopathological examination. He stated that postmortem report findings are in the handwriting of his colleague Dr. N. P. Zanzad. He stated that final cause of death was issued while certificate at Exh.44. In Exhibit-44 opinion is issued as death due to 'cerebro pulmonary edema with interstitial pneumonitis'.

Above witness in cross-examination has answered that deceased had history of pain in abdomen, she was unconsciousness and admitted for treatment in Government Hospital, Nanded. He admitted that he did not mention the name of injuries noted by him in column number No.17, but said injuries were part of treatment and hence there being no direct collusion between it and cause of death, therefore age is not specified. He admitted that death of deceased may or may not be natural.

12. After taking into account the inquest panchanama and the autopsy doctor's evidence discussed above, at the threshold here prosecution has not cogently proved death of deceased to be unnatural. Doctor has also expressed possibility of natural death. Though viscera was preserved and subjected to analysis, no general or specific chemical testing revealed any poison. Therefore, CA reports being negative and taking into consideration the autopsy doctor's evidence, it can be safely inferred to state that here prosecution has not established death of Payal to be unnatural.

13. Now, let us see as put-forth before us by learned counsel for appellant that prosecution had strong evidence in support of allegations of demand and ill treatment. **PW-1** Jyoti, who is her aunt seems to be resident of Hyderabad. She claims that whenever she came to Nanded, she learnt about ill treatment and demand. But, in cross-examination this witness has stated that she does not remember as to when she had come to Nanded in the year 2011. Therefore, testimony of this witness of not much avail to prosecution.

Though **PW-2** Bhagwansing - father reiterated about harassment, ill-treatment and demand of Rs.30,000/-, he admitted in cross-examination that accused Nos.2 and 3 were in the vehicle when deceased was shifted to civil hospital. He admitted that his economical condition was better than accused. He denied knowing whether deceased was suffering from vomiting problems for about four months prior to her death and whether accused Nos.2 and 3 had given treatment to her with Dr. Sudhakar Kashte at Kalambar. All suggestions put in cross-examination are flatly denied by this witness. He is unable to state exactly when and during which period of the year accused persons subjected Payal to cruelty. He is unable to give the date when he allegedly paid Rs.10,000/- to the accused, then he stated that he went to her matrimonial house in June 2011, while he paid said amount to accused, at that time no villagers was present there. He admitted that last rituals of Payal were done at Kalambar (Bk.).

14. Another witness who is important for prosecution is **PW-5** Balaji brother. We have already discussed his examination-in-chief in aforesaid para. In cross-examination he admitted that since prior to marriage, accused are in their relation. He is also unable to give exact date, month and year when his parents and relatives had been to the house of accused to give them understanding. He answered that respectable persons of the village Kalambar were not called. He is unable to state mobile number of his sister. He admitted that accused Nos.2 and 3 had admitted Payal at PHC Kalambar while his sister was suffered from stomach ache. He is unable to state whether she was taken for treatment one day prior to incident i.e. at private hospital Dr. Kaste. He also admitted that after death, custody of dead body of Payal was given to accused and they performed last rituals. Rest of the witnesses are panchas.

15. From the above evidence, it is emerging that only aunt, father and brother are examined by prosecution, but their above discussed evidence shows that though there are allegations of harassment, ill-treatment in the backdrop of demand of Rs.30,000/-, none of them have spoken about for what purpose Rs.30,000/- were demanded. Though PW-2 Bhagwansing, informant father claims that he paid Rs.10,000/-, he is unable to state when the said amount was paid and in whose presence. Omnibus allegations seems to be

levelled about demand and ill-treatment and subjecting deceased to starvation. Brother candidly admits about previous stomach ache ailment of his sister and it being treated by accused Nos.2 and 3 with Dr. Kashte. Therefore, such material suggest that deceased had some previous stomach ailment and was being treated for the same. When above witnesses candidly admit that after death of Payal, dead body of deceased was handed over to them and last rituals were performed at their place and at their instance, it is clear that allegations raised subsequently are apparently out of annoyance of loosing deceased.

16. When there was charge under section 304 Part B of IPC, it was imperative for prosecution to demonstrate by leading cogent evidence that “soon before her death” Payal was subjected to maltreatment and as a result of which she met unnatural death in the house. There is no evidence contemporaneous to the date of death suggesting harassment, ill-treatment in the backdrop of said demand. Therefore, very necessary ingredients for attracting charge under section 304-B of IPC are patently missing from the prosecution. Resultantly, as required ingredients for attracting any of the charges being missing from the prosecution evidence, charges cannot be sought to be brought home and guilt cannot be said to be proved.

17. We have gone through the judgment passed by the learned trial court which is taken exception here before us. It seems that the learned trial Judge has carefully sifted the oral and documentary evidence on record adduced by prosecution. Evidence of material witnesses **PW-1** Jyoti, **PW-2** Bhagwansing and **PW-5** Balaji is properly appreciated. Therefore, the judgment reached at by the learned trial Judge being in consonance with the evidence of prosecution, no error has been committed by the learned trial Judge in holding that prosecution failed to establish the charges and thereby further committed no mistake in acquitting the accused. Therefore, no case on merits being made out before us, we proceed to pass following order : -

ORDER

- (i) The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)