

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1061 OF 2008

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The State of Maharashtra
(Through Mira Road Police Station)

... Appellant

Versus

1. Shahid Fakir Mohammad Shaikh
Age : 32 Years, R/o. : Chandresh Residency,
K 302, Naya Nagar, Mira Road (East).
Fresh address :-
Room No. 02, Sikandar Chawl, M.S.T.,
Miranagar, Saphale East, Saphale,
Palghar, Umbarpada, Maharashtra : 401102.
2. Fakir Mohammad Bandumaster Shaikh,
Age : 55 Years, R/o. : Punjabi Chawl,
Behind Karukiya Masjid, Jugu Galli,
Andheri (West).
3. Shahida Fakir Mohammad Shaikh,
Age : 48 Years, R/o. : Punjabi Chawl,
Behind Karukiya Masjid, Jugu Galli,
Andheri (West).

[Leave refused against Respondent Nos.
2 and 3 in view of order passed dated
14th August, 2008 in Criminal Application
No. 2490 of 2006].

... Respondents

Mr.N.B.Patil – APP for the Appellant State.

Mr.Prashant Aher a/w Mr.Vipul Patil, Advocates for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 13th JANUARY, 2023

P. C. :-

1. Heard learned APP Shri.N.B.Patil for the Appellant-State and the learned Advocate Shri.Prashant Aher for the Respondent-Accused.

2. Though there are three Respondents, Special leave to Appeal is granted only against Respondent No.1 – husband. Leave is not granted against the Respondent No.2 – father in law and Respondent No.3 – mother in law. So, the evidence needs to be considered only against Respondent No.1 – husband.

3. All Respondents were prosecuted by Mira Road Police Station for ill-treating the deceased – Shakina Banu and for abetting her to commit a suicide. She consumed poison on 12th March, 2004 and she expired on 14th March, 2004. Initially, accidental death report was lodged and then, on 16th March, 2004, FIR came to be registered on the complaint under Sections 304, 498-A read with 34 of the Indian Penal Code, 1860 (45 of 1860) [“IPC”] of Amina Shaikh – PW No.1 i.e. mother of the deceased.

4. The Respondents have denied committing any offence. During trial, the Prosecution in all examined 8 witnesses. Out of them, 2 are the relatives i.e. PW No.1 – Amina Shaikh and PW No.5 – Mohomad Salim. Whereas, PW No.4 – Yakub Choudhari is the neighbour and PW No.6 – Abdul Hamid is the person who informed to PW No.1 about consumption of poison. However, he has not supported the Prosecution case.

5. There are three Medical Officers who were examined. They are as follows :-

- (i) PW No. 2 - Dr.Bharati Vijay Kushwaha - who has sent her assistant to the house of Respondents on 13th March, 2004.
- (ii) PW No. 3 – Dr.Abdul Kanif Abdul Majid – who has visited the house of Respondents on 14th March, 2004.
- (iii) PW No. 8 – Dr.Ramchandra Mhasu Dhotre – who has performed an autopsy.

6. Learned APP invited my attention to various facts stated by two relatives. According to him, the reasons for harassment have been proved sufficiently and in fact, the conduct of the Accused No.1 was reckless. He did not take his wife to hospital on 13th March, 2004. Whereas, according to learned Advocate for the Respondent No.1, Accused No.1 has performed his responsibility which can be performed by a man of ordinary prudence and the FIR was filed belatedly after due deliberation. According to him, the trial Court has rightly given benefit of improvements in the testimony of two material witnesses. He relied upon the following judgments :-

- (i) Girdhar Shankar Tawade V/s. State of Maharashtra [(2002) 5 Supreme Court Cases 177]
- (ii) Pratap Misra and Others V/s. State of Orissa [(1977) 3 Supreme Court Cases 41]
- (iii) S. Gopal Reddy V/s. State of A.P. [(1996) 4 Supreme Court Cases 596]
- (iv) Mariano Anto Bruno and Another V/s. Inspector of Police [2022 SCC OnLine SC 1387]
- (v) Ramesh and Others V/s. State of T.N. [(2005) 3 Supreme Court Cases 507]
- (vi) Bhagwan Sakharam Said and another V/s. State of Maharashtra [2000(4) Mh.L.J. 410]

7. The marriage of the deceased was performed with Accused No.1, 10 years prior to the incident and there are three children. Initially, the spouses were residing at Andheri along with the Respondent Nos. 2 and 3. Afterwards, they shifted to Mira Road. If we read the evidence, we may find that the reasons of harassment are for bringing the amount and insistence by the Accused No.1 to transfer the shop of the father of the deceased in the name of Accused No.1. On this aspect, I have read the

evidence of PW No.1 – Amina Shaikh and PW No.5 – Mohomad Salim. Learned trial Judge has not accepted their evidence for the reason that the reasons of harassment are not stated by the mother – PW No.1 to the Police on the earliest occasion i.e. on 14th March, 2004. According to learned Advocate for the Respondent, harassment may fall under the “*cruelty*” under Section 498-A of the IPC only in two contingencies. One is harassment for fulfilling the unlawful demand of money and second ; grave harassment so as to drive a woman to commit suicide. According to him, second category harassment is not there, because, they have cohabited together for 10 years and the first kind of harassment was not accepted in view of the improvement.

8. Learned APP invited my attention to the events that took place on 13th March, 2004. PW No.6 – Abdul Hamid was having a grocery shop situated nearby the residential premises of Accused No.1. Though on 14th March, 2004, he has visited the house and called Dr.Abdul Khalid but other portion he has not supported the Prosecution case. Whereas, PW No.4 – Yakub Choudhari is also the neighbour of the Accused and the deceased Sakina used to disclose him about the harassment by all the Respondents. He reached to the house of the Accused on 13th March, 2004 on getting telephonic information from PW No.5 – Mohomad Salim i.e. brother of the deceased. When inquired deceased Sakina, has disclosed to the witness regarding the quarrel, beating on account of demand of money. Further, has disclosed about consuming poison because of ill-treatment. In turn, this witness called Accused No.1 and then after one and half hours, he came to house. However, deceased Shakina did not disclose to her reason of harassment (demand of money). It is discussed in Para No.28 of the judgment.

9. On this point, it will be material to consider the evidence of

doctors. PW No.2 – Dr.Bharati Kushwaha has not personally visited the house on 13th March, 2004 but she had sent her assistant. Even, she has advised that it is a police case and patient cannot be treated in a private dispensary. Accused No.1 assured to take the deceased to the hospital. There is an emphasis on this conduct of the Accused No.1 not to take the deceased to the hospital. Whereas, PW No.3 – Dr.Abdul Kanif is the doctor who has visited the house after the deceased has expired. When he visited, deceased was lying on the ground and he has not noticed any vital parameters.

10. Learned Advocate Shri.Aher invited my attention to the events that took place after PW No.1 and PW No.5 visited the matrimonial house. It has come in their evidence that PW No.1 had a discussion with the deceased and even, she settled the dispute in between the deceased and Respondent No.1. It seems that she was satisfied with the treatment given to the deceased up till then. It is true that PW No.1 has left the house at night.

11. The evidence on record is sufficient to infer that the deceased has consumed some poison. It is true that PW No.8 – post mortem doctor has not certified the cause of the death initially as samples of viscera were preserved, however, later on, he opined that it was due to the “*cardio respiratory failure due to pulmonary edema*” which is due to unknown poisoning (Page No.123). Above evidence is sufficient to infer that she has consumed some poison. So, certainly it was a case of unnatural death.

12. It is true that the Prosecution has brought on record the circumstances which suggest that the Respondent No.1 ought to have taken the deceased to hospital on 13th March, 2004. On that basis,

whether we can infer that he has done it deliberately. At the same time, it has also come on record that PW No.1 and PW No.5 who were close relatives of the deceased have visited the matrimonial home and they had a talk with the deceased. Even they could have taken the deceased to the hospital. At the same time, it is material to see ; whether the reasons of harassment have been proved. When I have perused the impugned judgment, I find that the learned trial Judge has discussed all the circumstances in detail from the evidence of PW No.1. He has emphasized that all the reasons of harassment stated in the FIR at Exhibit-15 were not stated by the first informant when her statement is recorded on 13th March, 2004 at Exhibit-14. There is no satisfactory explanation. So, it is difficult to believe that the Respondent No.1 has deliberately not taken the deceased to hospital on 13th March, 2004. This could have been considered as a circumstance if the evidence on the point of harassment could have been satisfactory. Unfortunately, it is not there.

13. It is a settled principle that merely because a view is different from the trial Court is possible, the judgment of acquittal cannot be interfered with. It is for the reason that the presumption of innocence is reinforced when there is a judgment of acquittal. At the most, it can be said that, the Prosecution has succeeded in pointing out certain circumstances pointing out finger to Respondent No.1. But, it cannot be accepted as there is a judgment of acquittal.

14. Hence, I am not inclined to interfere in the judgment. Accordingly, the Appeal is dismissed.

(S. M. MODAK, J.)