



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

CRIMINAL APPEAL NO.61 OF 2021

1. Nandu s/o. Bansi Pawar,
Age : 49 years, Occ. Agri.,
r/o. Waghadi Wadi, Tq. Partur,
Dist. Jalna
2. Pandit w/o. Bansi Pawar,
Age : 56 years, Occ. Agri.,
r/o. Waghadi Wadi, Tq. Partur,
Dist. Jalna
3. Kalabai w/o. Nandu Pawar,
Age : 42 years, Occ. Agri.,
r/o. Waghadi Wadi, Tq. Partur,
Dist. Jalna
4. Sharda Vilas Rathod,
Age : 30 years, Occ. Agri.,
r/o. Khambewadi,
Tq. and Dist. Jalna

..Appellants

Vs.

The State of Maharashtra,
Through In-Charge,
Police Station Officer,
Partur Police Station,
Tq. Partur, Dist. Jalna

..Respondent

Ms.Poonam Bodke - Patil, Advocate for appellants
Mrs.Kalpalata Patil - Bharaswadkar, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : NOVEMBER 26, 2024**

JUDGMENT (PER R.G.Avachat, J.) :-

The challenge in this appeal is to the judgment and order of conviction and consequential sentence passed by learned Addl. Sessions Judge-5, Jalna, in Sessions case No.07 of 2017. Vide the impugned order, the appellants have been convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life with a direction to pay fine of Rs.5,000/-, with default stipulation.

The appellants were also prosecuted for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code. They have, however, been acquitted thereof. The State has not preferred an appeal against acquittal.

2. The facts in brief, giving rise to the present appeal are as follows:-

The appellants – Nandu (A1) and Pandit (A2) are real brothers. Appellant No.3 – Kalabai (A3) is the first wife of A1; while, Appellant no.4 – Sharada (A4) is daughter of A1 and A3. Since A1 had no male child of his first marriage, he married Kantabai (daughter of PW 1 – Harichand). On marriage, Kantabai started residing with the appellants at her matrimonial home at village

Waghada Wadi, Tq. Partur, Dist.Jalna. Kantabai was not treated well by the appellants. She had, therefore, gone back to her parental house. A1 got her back to his residence after giving written assurance that he would treat her well. It was way back in November, 2014.

3. The incident took place on 16.09.2016 at the house of the appellants by little past 8.00 pm. As per the case of prosecution, A1 came home drunk. He beat her up. He sat on her person and asked A3 to bring poisonous substance. She obliged. She opened the container and gave it into the hand of A1. By that time, A2 came. He said, *"don't leave her alive, will see what happens"*. Thereafter, A1 forcibly administered poisonous substance to Kantabai. While administering poison, A3 and A4 held hands and legs, respectively, of Kantabai. Kantabai was rushed to Krishna Hospital, at Jalna. A1 informed PW 1 - Harichand, father of Kantabai, that his daughter consumed poisonous substance and she was admitted to hospital. He, therefore, immediately rushed to Krishna Hospital, at Jalna, and made inquiry with her. Kantabai narrated him the aforesaid circumstances, relating to as to how she was administered poisonous substance by the appellants. As PW 1 had no money for treatment of Kantabai, she was shifted to Civil Hospital,

at Jalna. Unfortunately, she died on 19.09.2016. PW 1 – Harichand, thereafter, lodged the FIR (Exh.54) against the appellants herein.

4. A crime vide C.R. No.233 of 2016 was registered at Partur Police Station, Dist. Jalna. The crime-scene panchnama (Exh.80) was drawn. A tin-container of poison, 'PROTRIN' with other articles, was seized from the crime scene. Inquest and autopsy were conducted on the mortal remains of Kantabai. The opinion relating to cause of death was "due to poisoning". Viscera was preserved and sent to F.S.L. for analysis. Statements of the persons acquainted with the facts and circumstance of the case were recorded. An eight-year old son (PW 2) of the deceased was in the house. He had witnessed the incident. His statement too was recorded. Upon completion of the investigation, charge sheet was filed. The trial court framed charge. The appellants pleaded not guilty. In response to the last question put during the appellants' examination under Section 313 of Cr.P.C., they came with a defence that the deceased committed suicide by consuming insecticide.

5. To bring home the charge, the prosecution examined nine witnesses and produced in evidence certain documents. On appreciation of the same, the trial court convicted and consequently, sentenced the appellants, as stated above.

6. Heard learned counsel for the parties. Learned counsel for the appellants first took us through the cross-examination of PW 2 – Mst. Anil, an 8-year old child of the deceased. It was brought to our notice that he admitted that it was his grand-father (PW 1 - Harichand), who gave a statement to the police and asked him to sign below the same. According to learned counsel, the evidence of PW 2 – Mst. Anil, therefore, materially gets distracted and becomes uninspiring. According to her, if the deceased had really made oral dying-declaration to PW 1-Harichand, he would not have kept quiet for three days. He (PW 1) did not offer explanation, as to why the FIR was lodged so late. According to her, the defence of the appellants was that the deceased herself committed suicide by consuming insecticide. She then invited our attention to the C.A. reports pertaining to viscera and then, urged for allowing the appeal.

7. Learned APP would, on the other hand, submit that all was not well between A1 and the deceased. Since the deceased was not treated well, she had left her matrimonial home way back in November, 2014. A1 executed a bond assuring to treat her well and thereafter only, she had resumed cohabitation. A1 was addicted to alcohol. The incident was witnessed by the son of A1 and the deceased. The son was 11 years old when he gave evidence. He

had no reason to give false evidence against his own father. Learned APP then adverted our attention to the C.A. reports (Exh.133 to Exh.139), which indicate that the clothes on the person of A1 were found stained with poisonous substance like Organophosphorus insecticide Monocrotophos (Nuvacron). Same enforces the case of prosecution that A1 administered the same to the deceased. According to learned APP the deceased gave oral dying declaration to her father (PW1) immediately when he met her on the day of the incident itself. Since he was financially poor, he went back to his village and raised money for medical treatment. He was in distress and therefore, could not lodge the FIR promptly. Learned APP, ultimately, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us advert to the evidence and appreciate the same.

9. The relation *inter-se* the appellants has already been stated above. Since A1 and A3 did not have male-child, A1 married Kantabai (deceased) with the consent of A3. Kantabai, therefore, started residing with the appellants at her matrimonial home. It appears that all was not well between the couple. A1 was addicted

to alcohol. Kantabai was being illtreated. She had, therefore, gone back to her father's house. She resumed cohabitation only after A1 executed written assurance on a bond paper to treat her well. Said bond paper has been admitted in evidence vide Article "A" on the basis of the evidence of PW 8 - Asaram. The incident took place about 22 months after execution of the said written undertaking.

10. The incident took place by 08.00 in the evening of 16.09.2016. Kantabai was rushed to Krishna Hospital, Jalna. Then, she was shifted to Civil Hospital at Jalna. Unfortunately, she died on 19.09.2016, i.e. three days after the incident. PW 3 - Dr. Santosh conducted autopsy on the mortal remains of the deceased. The post mortem examination report under his signature finds place at Exh.69. In his opinion, the deceased died of poisoning. Viscera was preserved. The Inquest panchnama (Exh.78) has been admitted in evidence.

11. True, the C.A. reports pertaining to viscera and other seized articles were received at the fag end of the trial. The C.A. reports relating to viscera indicate that no poisonous substance was found therein. The C.A. reports in relation to the other articles, i.e. clothes on the person of A1, shirt, trouser, saree of A3, earth, etc.

were found to have been stained with Organophosphorus insecticide Monocrotophos (Nuvacron). Learned APP would, therefore, submit that had A1 not been involved in the crime, there would have been no reason for the clothes on his person to have been stained with said poisonous substance.

12. A mute question is, whether the appellants committed murder of Kantabai by forcibly administering her poisonous substance or she herself consumed the same to end her life. The appellants, before the trial court, did not dispute that Kantabai died of consumption of poisonous substance. The C.A. reports regarding viscera, therefore, take back seat. The C.A. reports relating to the clothes of the appellants indicating poisonous substance to have been thereon, was not put to him in examination under Section 313 of Cr.P.C. and therefore, cannot be read in evidence against him.

13. The prosecution heavily relies on the eye-witness account narrated by PW 2 – Mst. Anil. The trial court, considering him to be a child witness, put certain questions to ascertain him to be competent to give evidence. PW 2 – Mst. Anil testified that in September, 2016, he was in 3rd standard. He would reside along with all the appellants jointly. He further testified that on the given day,

i.e. on 16.09.2016, his father came home drunk. He beat up his mother by sitting on her person. His uncle - A2 came and said "पाजवा पाजवा काय होते ते पाहून घेऊ" (*"administer poison, will see what happens"*). Then, his step-mother - A3 and step-sister - A4 caught hold of the hands and legs of his mother Kantabai. Thereafter, his father - A1 administered poisonous substance to his mother. He went on to testify that his mother was making efforts to make escape from the clutches of his father; but she was held tightly. He was shouting. Thereafter, his mother was rushed to the hospital. According to him, his statement was recorded in the court of Judicial Magistrate, First Class, Partur, under Section 164 of the Code of Criminal Procedure. He referred to the same.

14. During the searching cross-examination of PW 2 - Mst. Anil, he testified that since the death of his mother, he was residing with his maternal grand-father (PW 1). He admitted that his grand-father is taking all his care to bring him up. Following question was put to him. The answer thereto is also given there-below:-

Q.1	My grand father told to the police and police reduced it into writing and thereafter obtained my signature, is it true?
Ans.:	Yes. After 15 days we had been to the Court at Partur

This witness went on to testify that while his statement was recorded in the Court fifteen days after the incident, his grand-parents and maternal uncle were also with him. PW 2's aforesaid admission that the contents of his police statement were narrated by his grand-father (informant - PW 1), renders his evidence before the Court uninspiring.

15. Then, what remains is the oral dying declaration made by the deceased to her father, PW 1 - Harichand. He testified that the brother of A1 called him on phone and told that his daughter - Kantabai consumed some poisonous substance and he should rush to Krishna Hospital, at Jalna. He, accordingly, went to the hospital immediately. Kantabai related him that A1 came home drunk. He beat her up. He sat on her person and asked A3 to bring poisonous substance. She obliged. She opened the container and gave it into the hand of A1. By that time, A2 came. He said, "don't leave her alive, will see what happens". Thereafter, A1 forcibly administered poisonous substance to Kantabai. While administering poison, A3 and A4 held hands and legs, respectively, of Kantabai. Kantabai was rushed to the hospital.

16. PW 1 – Harichand went on to testify that PW 2 – Mst. Anil had witnessed the incident. He returned to village for raising money for treatment of Kantabai. Kantabai was, thereafter, shifted to Civil Hospital, at Jalna, whereat, she died. He then lodged the FIR (Exh.54) on 20.09.2016, i.e. four days after the incident. During his cross-examination, he admitted that he was prosecuted for the offence of murder. He volunteered to state that he has been acquitted thereof. He further admitted that two wives of A1 were residing separately. Kantabai was admitted in I.C.U.

17. Kantabai was hospitalised for three days before she breathed her last. Had PW 1 – Harichand reported the matter to the police immediately on having learnt the same from Kantabai, a statement (dying declaration) could have been recorded. PW 1 – Harichand did not offer plausible explanation, as to why did he make four days' delay in lodging of the FIR (Exh.54). He went on to state that he did not meet the Doctor in the hospital second time, after returning from the village. When he went to the village on the next day to collect money for treatment of his daughter, he did not relate to any of his villagers about the incident nor did he relate to the Doctor, as to what had happened with the deceased. His evidence further disclosed that his sister Kausabai had visited the hospital. He did not relate her anything about the incident.

18. It was the defence of the appellants that PW 1 - Harichand had obtained loan from the deceased and taken her gold ornaments. Therefore, there used to be frequent quarrels between him and his daughter. True, he denied all these suggestions.

19. Appreciation of the evidence referred herein above shows that Kantabai died of poisoning. The prosecution evidence fell short to establish the appellants to have administered poisonous substance with an intention to kill her. In short, the evidence of PW 2 - Mst. Anil is not relied on, in view of his admission that his police statement was recorded on the say of his grand-father (informant) and he simply put signature below the same. Since the death of his mother, he has been residing with his grand-father (informant). Therefore, the possibility of PW 2 - Mst. Anil deposing against the appellants at the behest of his maternal grand-father, therefore, could not be ruled out. So far as regards the oral dying declaration is concerned, the conduct of the informant, to whom it was made, in not reporting to the police for next four days or sharing the same to anyone else in the village when he went there to raise money for treatment, go a long way to extend benefit of doubt to the appellants herein, although there is evidence indicating that all was not well between the couple, i.e. the deceased and A1 and the

deceased had resumed cohabitation only on A1's giving assurance in writing to treat her well.

20. For all the aforesaid reasons, the appeal succeeds. Hence, the following order:-

(i) The appeal is allowed.

(ii) The impugned order dated 30.01.2021, passed by learned Addl. Sessions Judge-5, Jalna, in Sessions case No.07 of 2017, convicting and sentencing the appellants for the offences punishable under Section 302 of Indian Penal Code, is set aside. They are acquitted of the said offence.

(iii) Appellant no.1 - Nandu s/o. Bansi Pawar is in jail. He be released forthwith, if not required in any other case. Appellant nos.2 to 4 have already been released on bail.

(iv) Fine amount paid by the appellants, if any, be refunded to them.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP