



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 634 OF 2005

Pralhad S/o. Dagdu Thorat,
Age : 45 years, Occu. : Rickshaw Driver,
R/o. Plot No.93, Sonya Maruti Colony,
Dhule, Tq. & Dist. Dhule.

.... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

.... Respondent
(Orig. Complainant)

...
Mr. N. L. Choudhari h/f. Mr. Ravindra Shinde, Advocate for Appellant
Mrs. Ashlesha S. Deshmukh, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 OCTOBER, 2024

PRONOUNCED ON : 17 OCTOBER, 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order dated 31.08.2005 passed by 4th Ad-hoc Additional Sessions Judge, Dhule in Sessions Case No. 6 of 2005, recording guilt of appellant for offence punishable under section 307 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. Appellant was charge-sheeted on accusations that, he used to beat and ill-treat his wife Rekhabai on trifle counts. Because of such treatment, mother had lodged complaint in the court of Jalgaon. Still, he continued to ill treat her to suspect her

character. On 21.12.2004, he laced her glass of water with some tablets and made forcibly drink it, due to which she fell uneasiness and was taken to civil hospital, Dhule, where her statement was recorded by PW3 Virsing and made the basis for registration of crime bearing No.199 of 2004 for offence punishable under sections 498-A, 307 and 323 IPC, which was investigated by PW1 PSI Sushir and after completing investigation and gathering evidence, appellant was charge-sheeted.

Appellant Pralhad was tried vide Sessions Case No.6 of 2005 by 4th Ad-hoc Additional Sessions Judge, who accepted the case of prosecution as regards to offence under section 307 IPC only and acquitted him of remaining charge of 498A and 323 IPC.

Feeling aggrieved by the above judgment and order of conviction, instant appeal has been preferred.

SUBMISSIONS

On behalf of Appellant :-

3. Learned counsel would submits that there is false implication due to strained matrimonial relations. That, there was already matrimonial dispute. It is pointed out that, allegations are now raised that poison was administered through drinking water, but it is pointed out that, there is no evidence about administration

of poison. Learned counsel submitted that, there is CA report of analysis and stomach wash is negative and therefore this itself had falsified complainant's version.

4. He further pointed out that, PW2 Priyanka daughter was said to be in the house at the time of alleged incident. She had not seen appellant in the house at that time. That, in her evidence she merely spoke appellant leaving the house. Therefore, no convincing and cogent evidence that, appellant administered poison. He pointed out that, even testimony of daughter PW2 Priyanka is not supported by independent evidence. According to learned counsel, medical expert admitted that, there was no threat to life and so he questions the finding of trial court for offence under section 307 IPC. He submitted that, except evidence of PW2 Priyanka, there is no trustworthy evidence and therefore he questions the findings and conclusions drawn by learned trial court and prays to set aside the same.

On behalf of Respondent :-

5. In answer to above, learned APP pointed out that, appellant husband mal-treated wife and beat her by suspecting her character. Therefore, she had lodged case against him in the court that, on 21.12.2004, he forcibly administered poison in the form of

tablets. Daughter PW2 Priyanka, who was in the house and shifted her mother to the hospital has seeing appellant running away after administering poison. Medical experts, who examined Rekhabai noticed sedative being administered. She pointed out that, because quantity was small, chemical analysis was negative. She pointed out that, there is direct eye witness in the form of PW2 Priyanka. That, there is no reason for false implicating father itself. That, she has witnessed to the ill treatment and therefore learned APP submitted that learned trial Judge has correctly relied on the version of PW2 Priyanka and has recorded the guilt and hence according to her, findings and judgments being infallible, the same may not be interfered with.

EVIDENCE BEFORE TRIAL COURT

6. **PW1** PSI Sushir, Investigating Officer, who recorded statement of victim (Exh.12) and on its basis registered the crime for offence under sections 307 and 323 IPC.

PW2 Priyanka, daughter of appellant and victim, claims to be present in the house on 21.12.2004 at 8:30 p.m. She claims that after hearing noise, she went to the kitchen and saw appellant abusing her mother and later on heard noise of glass falling on the ground and also saw father leaving the place from the backdoor. On inquiry, her mother told that, her father put

poisonous tablets in the water and administered it to her. Due to which, her mother complained of uneasiness and giddiness and she shifted her to civil hospital.

PW3 Special Executive Magistrate, who recorded statement of Rekhabai (Exh.17).

PW4 API Vadnere, who conducted investigation and charge-sheeted accused.

PW5 Dr. Prashant Shinde, Medical Officer at Dhule Civil Hospital, who prepared medical papers and gave treatment. He also collected stomach wash and sent it to laboratory. He also certified fitness statement on being approached by police.

ANALYSIS

7. Here, out of five witnesses, two are police witnesses i.e. one who recorded statement and other who investigated crime. One is the Special Executive Magistrate and one is Medical Officer and remaining witness is daughter. Surprisingly, Rekhabai is not examined by prosecution.

8. The substantive evidence of PW2 Priyanka, who is the star witness is already dealt in aforesaid paragraph. Her evidence is that, her father ill treated her mother, suspected her chastity and assaulted her and hence, her mother lodged complaint in

court. Regarding the incident she stated that, around 8:30 p.m. while she was studying, her father was talking with her mother in the kitchen and she claims to have heard filthy words uttered by her father. So she claims to have rushed towards the kitchen i.e. after hearing noise of glass falling on the floor and that time she claims she saw her father left the from the backdoor. She claims that she made inquiry with her mother, upon which mother told that her father put poisonous tablets in the water and forcibly administered to her. Her mother complained of uneasiness and giddiness and was taken to hospital.

While under cross, in paragraph no.5, which is relevant, she answered that, on 18.05.2005 her mother committed suicide by hanging while she was residing with grandfather and grandmother. She further admitted that, her father had filed H.M.P. No.37 of 2001 against her mother for restitution of conjugal rights. She denied quarrel between her parents on the ground of poor financial position of appellant. Omissions are brought in paragraph no. 7 to the extent that she heard noise of glass falling on the ground and she rushing to the kitchen. She answered that, she does not remember whether she stated to police about her mother telling her that father forcibly administered the solution of water of poisonous tablets. She stated that, she does not remember

the exact words she narrated to police allegedly uttered by her father. She denied seeing statement of her mother. She stated that police did not make any inquiry on 21.12.2004. Rest is all denial.

9. Statement of victim, which was recorded at Exh.12. She reported that, after quarreling, her husband beat her, mixed poisonous tablets in glass of water and forcibly administered her.

10. Prosecution claims that, statement of Rekhabai was recorded by PW3 Virsing and the same is at Exh.17. The statement is in question answer form. Question no.7 is the relevant question pertaining to occurrence and the answer to it in translated form are as under :-

Question No.7 : Why occurrence took place ? Whether there was trouble by family members ? Who all were present at the time of incident and their names ?

Answer : "Quarrel between husband and wife. Husband raised suspicion on character of wife. It appears that, her husband Pralhad forcibly administered water containing medicine and was therefore brought by daughter to civil hospital, Dhule. Husband repeatedly put up demand of money for light bill and troubled to her and to the children at late night."

While under cross PW3 Virsing admitted that he was newly appointed Special Executive Magistrate and therefore did

not read over the statement back to her. He did not seek information as to how dying declaration is to be recorded. He admitted that Medical Officer did not give endorsement of consciousness to record statement.

Admittedly, remaining two witnesses are police witnesses.

11. PW5 Dr. Prashand Shinde, another important witness, who is a Medical Officer, in examination-in-chief itself stated that, when he was on duty, patient by name Rekhabai was admitted with history of some sort of sedative drugs administered by husband forcibly on 21.12.2004 at 8:30 p.m.. He prepared case papers and testified about giving treatment by way of antibiotic injection and injection lasix (diuretics), antacid and injection hydrocole steroid. He collected stomach wash and sent it to laboratory. He also certified fitness to give dying declaration.

While under cross he admitted that, when patient was admitted, her condition was not serious. He answered that stomach wash obtained for confirmation of poison on sedative. He admitted that Investigating Officer has not sent him CA report. After going through the same, he answered that according to CA report, no poisonous substance was found . He denied that there was no drugs poisoning, however, he deposed that, there may be sedative drugs

and being in minimum quantity, in C.A. report, such sedative poison will not be detected. He again answered that after going through the case papers and thereafter till she was discharged, there was no danger to the life of her. He answered that, Special Executive Magistrate did not record dying declaration from 11.15 to 11:30 p.m. of 21.12.2004 in his presence.

12. Therefore, on appreciating the above evidence, here, two things are emerging, i.e. *firstly*, matrimonial discord between Rekhabai and appellant. *Secondly*, allegation of forcibly administering water containing poison. But, though admitted and treated by PW5 Dr. Prashand Shinde, he is categorically stating that, there was no danger to the life till she was discharged nor her condition was serious. After going through the CA report, doctor has admitted that no poison was detected. It is noticed that, what doctor deposes is that, history were reported was of administering sedative drugs, but there is no evidence in that regards.

13. Only evidence is of PW2 Priyanka daughter and she has stated about hearing abusive words and filthy language used by her father with her mother that night and after hearing noise of fall of glass, she ran to the kitchen and claims that, she saw accused leaving from back door. Even, the so called glass in which water

mixed with poisonous tablets were forcibly administered is not seized by investigating machinery.

14. Law is fairly settled that, for attracting the charge under section 307 IPC, prosecution is duty bound to prove following essential ingredients :-

“(1) The accused did some act;

(2) Such act was done with intention or knowledge that hurt was likely to be caused to the victim by the act.”

15. From above discussion, what is emerging that there were allegations of administering poison. But, stomach wash analysis ruled out poison which is evident from CA report at Exh.10/C. PW5 Dr. Prashant Shinde categorically answered in cross that condition of patient was not serious nor there was any danger to life. Under such circumstances, required ingredients under section 307 IPC are patently missing.

16. Perused the judgment under challenge. Findings of learned trial court from paragraph no.24, 25 and 26 are not in consonance with the evidence. Resultantly, there is incorrect appreciation and reaching to erroneous conclusion. Hence, interference is called for. Accordingly, I proceed to pass the following order :-

ORDER

- I) The criminal appeal is allowed.
- II) The conviction awarded to appellant Pralhad S/o. Dagdu Thorat in Sessions Case No.06 of 2005 by learned 4th Ad-hoc Additional Sessions Judge, Dhule on 31.08.2005 for the offence punishable under section 307 of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under section 307 of Indian Penal Code.
- IV) The bail bonds of the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

(ABHAY S. WAGHWASE, J.)