

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

CRIMINAL APPEAL NO.552 OF 2003

State of Maharashtra
(At the instance of
Pimpri Police Station)

... Appellant
Orig. Complainant

versus

1. Rohidas Eknath Saste
2. Eknath Dashrath Saste
3. Sou. Vimal Eknath Saste

All r/o Sanjay Gandhi Nagar,
Borate Vasti, Moshi, Pune.

... Respondent

.....

- Mrs.S.V. Sonawane, APP for the State/Appellant.
- None for the Respondents.

**CORAM : SARANG V. KOTWAL, J.
DATED : 30th JUNE, 2018**

JUDGMENT :

1. This is an Appeal preferred by the State of Maharashtra challenging the Judgment and Order dated 16/01/2003 passed by the 5th Ad-Hoc. Additional Sessions Judge, Pune, in Sessions

Case No.376/02, whereby the Respondent Nos.1 to 3 were acquitted from the charges of committing offence punishable u/s 498-A and 306 r/w 34 of the Indian Penal Code.

2. I have heard Mrs.S.V. Sonawane, APP for the State of Maharashtra. None appeared for the Respondents.

3. The prosecution case pertains to suicide committed by the deceased in this case Sharada Rohidas Saste on 11/05/2002 in her matrimonial house at village Moshi. The Respondent No.1 is the husband of deceased and the Respondent Nos.2 and 3 are his parents. According to the prosecution case, the marriage was performed between the said Sharada and the Respondent No.1 on 01/05/2002 and within 10 days Sharada committed suicide. According to the prosecution case, the father of the deceased Sharada had agreed to give 7 Tolas of Gold; out of which 4 Tolas were given before marriage and 3 Tolas remained to be given. It is the prosecution case that, after marriage, the deceased was ill-treated for the demand of 3 Tolas of Gold and therefore she had committed suicide.

4. Initially accidental death report vide A.D.No.54/02 was registered at Bhosari Police Station in respect of suicide committed by Sharada. On 16/05/2002, the father of the deceased lodged FIR and made allegations against the present Respondent Nos.1 to 3. After registration of the FIR, the investigation was conducted. Statements of witnesses were recorded. The Respondent Nos.1 to 3 were arrested. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.
5. During trial, the prosecution examined 7 witnesses, which included the parents of the deceased, the maternal uncle of the deceased, the Doctor who had treated the mother of the deceased who had taken ill after the incident. This witness was examined to explain the delay in lodging the FIR. It was claimed by the prosecution that the mother of the deceased was under mental shock after Sharada's death and therefore there was delay in lodging the FIR. Prosecution also examined one

Jeweller from whom, the ornaments were purchased for marriage and the investigating officer (P.W.7) Mr.Vijay Govind Kulkarni. Various documents were produced on record including the spot panchanama, the post-mortem notes and the C.A. Reports.

6. The accused were arrested on 17/05/2002. The post-mortem notes were admitted by the defence and were produced on record at Ex.12 before the Trial Court. The cause of death mentioned in the post-mortem notes was "Asphyxia due to compression of neck. However viscera was preserved for chemical analysis." The spot Panchanama was also admitted and was produced through the evidence of P.W.7. The spot Panchanama shows that the door of was broken open for making entry as Sharada had committed suicide in the said room. From the post-mortem notes as well as the spot panchanama it is quite clear and it is also undisputed that Sharada had committed suicide.

7. To prove its case, the prosecution mainly relied on the evidence of the parents of the deceased and her uncle. P.W.1 Balasaheb Yashwant Lonari was the father of the deceased. He has deposed that the marriage between the Respondent No.1 and the deceased took place on 01/05/2002 at village Chimle Phata. He has deposed that expenses for the marriage were borne by him. He has further deposed that it was decided that P.W.1 would give 7 Tolas of gold in marriage. However, he could manage to give only 4 Tolas gold and promised to give remaining gold after marriage. He further deposed that after marriage on 4th day, Sharada came back to her parental house and complained that her in-laws and husband were ill-treating her and were insisting that she should bring the remaining 3 Tolas of gold. She was told that the co-habitation was not possible if the remaining gold was not given to them. P.W.1 has further deposed that his brother purchased some gold and gave it to Sharada to take it to her matrimonial house. He deposed that on 11/05/2002 he came to know that Sharada had committed suicide. He further deposed that after Sharada's

death, he and his wife were not well and they had to take treatment and only after that he could lodge his FIR. In his cross-examination he has admitted that Sharada had studied upto 12th standard and Respondent No.1 had passed 10th standard. Importantly he has deposed in his cross-examination that after marriage, his younger daughter Seema had accompanied Sharada to reside with her to her matrimonial house. He has admitted that on the next date of marriage, Pooja was performed at the matrimonial house of Sharada. He further deposed that on 04/05/2002 Sharada came back to the parental house and was sent to her matrimonial house on 09/05/2002. He has further admitted that after death, religious rituals were performed on 14/05/2002 by the in-laws of Sharada and about 100 persons from his village were present at that time. In his cross-examination he could not answer as to whether Sharada was admitted in hospital prior to one year of marriage. The defence was on the line that Sharada had tried to commit suicide even then. To this, P.W.1 has not given satisfactory answer and showed ignorance about the admission of Sharada

in the hospital one year before the marriage. It was suggested to him that the marriage was performed against her wish and that was the cause she has committed suicide. The FIR lodged by this witness on 16/05/2002 is produced on record at Ex.15. The FIR was registered vide C.R.No.104/02 u/s 498-A and 306 of IPC at Bhosari Police Station.

8. P.W.2 Govind Yashwant Lonare was the brother of P.W.1 and he has deposed on the same lines as those of P.W.1. In addition, he has produced a bill purportedly dated 05/05/2002 when he had purchased gold worth Rs.1,600/-. The person, who had issued this bill, is not examined. Handwriting on the same is not proved. Therefore this bill was not proved in accordance with law by the prosecution. P.W.3 Indubai Balasaheb Lonari was the mother of the deceased and she has also deposed in the same fashion as the P.W.1 and P.W.2. She further deposed that as she was unconscious, she was taken to hospital and therefore her statement was recorded only after she was back from the hospital on 16/05/2002. In her cross-

examination she has admitted that at the time of Pooja ceremony after marriage, about 50 persons from her side had attended the Pooja at the matrimonial house of Sharada. P.W.4 Kisan Yashwant Lonari was another brother of P.W.1. He has also reiterated the same story. P.W.5 Dr.Rajesh Narayan Bhatkar had examined P.W.3 Indubai Lonari on 11/05/2002 and had treated her. This witness was examined to explain the delay in lodging FIR on the ground that Indubai Lonari was admitted in hospital and required treatment till 16/05/2002 and then the FIR was lodged. P.W.6 Kamlesh Narpatraj Mehta was a jeweller from whom Sharada's family had purchased gold before marriage. P.W.7 PSI Vijay Govind Kulkarni, has deposed about the lodging of accidental death report vide ADR No.54/02 and thereafter lodging of the FIR. This witness had conducted major part of the investigation in respect of the C.R.No.104/02.

9. The defence of the Respondent is that they are falsely implicated and the parents of the deceased were responsible for the mishap. It appears that the deceased was forced into

marriage against her will and therefore she took this extreme step.

10. Mrs.Sonawane, the learned APP, submitted that the evidence given by the parents and uncles of the deceased is consistent which is supported by the evidence of the Jeweller's receipt produced on record. She has further submitted that the evidence of the medical officer who had treated the mother shows that there was a valid reason why the FIR was lodged after 5 to 6 days. She has further admitted that the reasoning given by the learned Trial Judge was not proper and in fact was perverse and was not in consonance with the evidence on record. She further submitted that the Appeal be allowed and the Respondents should be convicted and sentenced.

11. I have gone through the entire evidence produced on record and the Judgment passed by the learned Trial Judge. The main evidence is obviously that of the parents and uncle of the deceased. The father of the deceased has deposed about the

allegations that the deceased was ill-treated by the Respondent. It is important to note that the marriage has taken place on 11/05/2002. She came back to her matrimonial house on 04/05/2002 as per normal customs. When she was sent back on 09/05/2002 to her matrimonial house, she committed suicide on 11/05/2002. Thus, in all she has been about 5 days at her matrimonial house, out of which, on the next day of marriage, there was Pooja ceremony at her matrimonial house. The deceased Sharada committed suicide merely after four days of co-habitation with her in-laws. The prosecution has not examined any neighbour or nor any person from the village of the Respondents. The prosecution case is based simply on the evidence of the parents and the uncle of the deceased. Neither of these witnesses have given specific instance or nature of ill-treatment. The most significant person in the entire episode was Seema, who was the younger sister of the deceased. According to P.W.1 Seema had accompanied Sharada to her matrimonial house as per customs. If the prosecution case is that at the first instance itself between 01/05/2002 to 04/05/2002, she was ill-

treated; Seema was the best person to give evidence in that behalf. On 02/05/2002 there was a Pooja ceremony which was attended by a large number of people from the family and village of P.W.1. On 04/05/2002, Sharada had come back to her matrimonial house. So there was only one day i.e. 03/05/2002 when there could have been possible ill-treatment. It is difficult to believe that on that day itself she would have been subjected to ill-treatment to such an extent that she had to make her mind to commit suicide. In that event, Seema could have been the best witness to throw light on the incidents between 02/05/2002 and 04/05/2002. Non-examination of Seema clearly compels the Court to draw adverse inference against the prosecution.

12. P.W.2 Govind Lonari has produced on record the purported bill issued by a Jeweller as discussed earlier. This document is not properly proved and if it was the prosecution case that this document goes to show that there was some attempt on the part of the prosecution witness to satisfy the

Respondents and seek some time in fulfilling their demand for gold, it was necessary to examine the maker of that document. Even the owner of Deepak Jewellers, the maker of that document is not examined. Therefore there is no corroboration to the allegations made by the P.W.1 and P.W.2. It is also significant that the rituals were performed by the family of the Respondents on 14/05/2002, which was attended by about 100 persons from the village of the deceased. If the deceased was ill-treated to such an extent that she had to commit suicide, there should have been some response or some demonstration of anger on the part of some of the persons or family members of P.W.1. There was no such instance, which means that there was no grievance against the Respondents till the FIR was lodged.

13. The prosecution has tried to explain the delay in lodging the FIR, through the evidence of Dr.Rajesh Bhatkar, who had treated Indubai Lonari, the mother of the deceased. While delay in lodging FIR in such case may not be fatal, but in this case passive participation of the family members and the

villagers from P.W.1's side shows that there was no grievance against the Respondents and the FIR was lodged only as an afterthought.

14. There is another aspect to the matter and i.e. the reluctance of P.W.1 to admit that Sharada had tried to harm herself in the past too. In the cross-examination of P.W.1 the defence has asked him about the incident which had taken place a year prior to her marriage. According to defence, even at that time Sharada had tried to commit suicide and she was hospitalized. However, P.W.1 has not emphatically denied that she was hospitalized. On the contrary, he has given answer that he was not aware as to whether Sharada was hospitalized. This seems quite strange. If his daughter was not hospitalized, then nothing prevented him from saying so before the Court. His reluctance to throw light on these allegations goes long way to show that there is some substance in the defence argument that Sharada was married against her wish and therefore she took this extreme step.

15. The learned Trial Judge has taken all these aspects into consideration and has recorded finding of acquittal in favour of the Respondents. The view taken by the learned Trial Judge is a possible view and certainly cannot be termed as perverse.

16. Therefore in this Appeal against the acquittal, I am not inclined to interfere with the findings recorded by the learned Trial Judge. With the result, the Appeal fails and is accordingly dismissed.

(SARANG V. KOTWAL, J.)