

SOHEL MEHABOOB SHAIKH

A

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1080 of 2007)

APRIL 17, 2009

B

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Penal Code, 1860 – s. 302/34 – Unnatural death of wife – Conviction of husband u/s. 302 by courts below – However, acquittal u/s. 498A as accusation for dowry torture not established – On appeal, held: Order of High Court based on surmises and conjectures – Charge against husband was not established – Circumstances that deceased met with unnatural death and accused did not offer explanation regarding the incident cannot be considered to be relevant either separately or collectively – There was no evidence to show that accused was present in the room at the time of occurrence – Prosecution could not establish time of occurrence – Thus, conviction by courts below set aside.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1080 of 2007.

From the Judgment & Order dated 03.04.2007 of the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No. 169/2005.

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Gaurav Agrawal for the Appellants.

Sushil Karanjakar and Sanjay Kharde for the Respondents.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment and order dated 3.4.2007 passed by a Division

A Bench of the Bombay High Court upholding the conviction and sentence of the appellant for commission of offence punishable under Section 302 read with Section 34, Section 498A and Section 323 read with Section 34 of the Indian Penal Code (in short 'I.P.C.').

B 2. Originally there were five accused persons. Out of them, A-2, A-4 and A-5 were acquitted by the Trial Court under Section 235 of the Code of Criminal Procedure, 1973 (in short 'the Code') of the charges relating to offences punishable under Sections 498A and 323 of the I.P.C. while the appellant herein and A-3 were convicted for the offence punishable under Section 302/34 of the I.P.C.

C 3. By the impugned judgment the High Court set aside the conviction of A-3 but upheld the conviction of the present D appellant under Section 302 of the I.P.C.

E 4. The case of the prosecution is based on certain circumstances and the Trial Court and High Court found those circumstances to be sufficient to warrant the conviction of the appellant. The High Court found that the accusations for dowry torture were not established and therefor, it acquitted the appellant of the charge relating to Section 498A of the I.P.C.

F 5. The judgment of the High court is assailed on the ground that the circumstances highlighted by the Trial Court and the High Court do not form a complete chain in order to rule out the innocence of the accused and to unerringly point at the accused to be author of the crime.

G 6. The counsel for the respondents on the other hand, supported the judgment of the High Court.

7. The three circumstances brought on record by the prosecution and highlighted by the Trial Court and High Court are as follows:

H "(i) Deceased Sofiya met with an unnatural death;

(ii) Deceased Sofiya had died in the room which was solely and exclusively occupied by her and her husband i.e. accused No.1; A

(iii) The appellant has not offered any explanation in respect of the incident in which deceased Sofiya had sustained burns." B

8. We have gone through the evidence on record and we find that the High Court has arrived at some conclusions which, in our opinion, are based on surmises and conjectures, without there being any evidence to support the conclusions. That being so, we find that the charge against the appellant has not been established. C

9. The first and third circumstances cannot be considered to be relevant either separately or collectively. So far as the second circumstance is concerned, there is no evidence to show circumstantially that accused was present in the room at the time of occurrence. The time of occurrence, even by approximation has not been established by the prosecution. D

10. We, therefore, set aside the judgment of conviction recorded by the Trial Court and upheld by the High Court. The appeal is allowed. E

11. The appellant is in jail. He is directed to be set at liberty forthwith, unless required in connection with any other case. F

D.G.

Appeal disposed of.