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Cr1.A.No. 1104 OF 2003

ITEM No.101

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.1104 OF 2003

KASHINATH JAIRAM MALI Appellant (s)

VERSUS

STATE OF MAHARASHTRA Respondent (s)

(with office report)

Date : 05/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. Atul Sharma, Adv., for
Mr. Yash Pal Dhingra, Adv.

For Respondent(s)Mr. Mukesh K Giri, Adv.
Mr. Ravi K Adsure, Adv. (NP)

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The appeal is dismissed of in terms of the signed order.

(D.L.Chugh) (Vijay Aggarwal)

Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1104 OF 2003

KASHINATH JAIRAM MALIAppellant(s)

versus

O R D E R

The above appeal has been filed by Accused No.1 who is the husband of the deceased Aruna Bai, challenging the judgment of a Division Bench of the High Court of Bombay, Aurangabad Bench, dated 19.8.2002 in Criminal Appeal No.72 of 2001 whereunder the High Court confirmed the conviction of the appellant under Section 302 of the Indian Penal Code and Section 498A read with Section 34 IPC for which he was sentenced to life imprisonment and one year respectively, in addition to the payment of fine of Rs.500/-. Originally, there were three accused and all were convicted by the trial court for the offences punishable under Section 302 and Section 498A read with Section 34 IPC but the High Court, in appeal, A-2 and A-3 (the father and mother of A-1) were acquitted of the charge under Section 302 IPC but their conviction was affirmed under Section 498A read with Section 34 IPC.

The case of the prosecution was that on 13.5.1990 the deceased and the accused appellant got married and that though, initially the dowry demands were satisfied, at the time of marriage, the accused were consistently making further demands from PW 6, the father of the deceased, which at times were said to have been met but not always, and this resulted in torturing as well as harassment and ill treatment of the deceased in the hands of the accused. It was also stated for the prosecution that even six/seven months prior to the date of occurrence A-1 made a demand of Rs.10,000/- from PW 6 for purchasing a new jeep vehicle after disposing the old one which could not be met with and the ill treatment of the victim was said to have been persisted in the hands of the accused. The further case of the prosecution was that on 21.3.1999 between 5.00 AM to 6.00 A.M. in furtherance of common intention of all the accused poison was administered to the deceased and when she did not die of the same immediately, she was strangulated with a rope and thus was murdered. Thereupon the accused alleged to have stage managed to have taken the deceased to the Cottage Hospital at Dondaicha purporting to be for treatment in their own jeep, to give an impression that she had consumed poison on her own. It appears that though there were no doctors to attend at that time, they were said to have waited unjustifiably without showing any keen interest to provide alternative medical treatment immediately, despite several avenues available for doing so. By the time the doctors seem to have arrived and attended on her, she was declared already dead. On receipt of information on an unnatural death from the hospital the police seems to have swung into action and PW 6 also seems to have lodged a formal complaint with the police on the night of 23rd of March, 1999.

The investigation process which was set in motion seem to have been pursued and after getting the chemical examination as well as the post mortem report all the accused, as noticed earlier, were charged for offences indicated supra. The prosecution examined in all 20 witnesses besides marking documents and exhibits in support of its case. For the defence also two witnesses DW 1 and DW 2 were examined and the accused were also duly examined under Section 313 of the Code of Criminal Procedure. On a careful consideration of the materials on record the learned trial judge, as pointed out earlier, concluded that the prosecution has substantiated the charges by sufficient evidence and convicted all the three. On further appeal to the High Court conviction of the present appellant alone came to be affirmed resulting in this appeal.

So far as the other two accused were concerned, their conviction under Section 302 read with Section 34 IPC alone was set aside, and their conviction under Section 498A read with Section 34 IPC was confirmed with the sentence imposed therefor, which sentence also it appears they have undergone already.

Learned counsel for the appellant vehemently contended that the appellant was innocent and that the deceased consumed poison on her own and, at any rate, the materials on record would demonstrate it to be a case of hanging on her own and do not justify, at any rate, the version of death by strangulation. It is further contended that the appellant, at any rate, was not in any manner responsible for the death of his wife, irrespective of the nature of cause of death. Attempts have been made by the learned counsel for the appellant to point out what according to the learned counsel was shortcomings in the medical opinion with reference to the strangulation part of the prosecution case is concerned. The learned counsel for the respondent sought to justify the concurrent findings recorded by the courts below. The learned counsel appearing on either side invited our attention to the relevant portions of the judgments of the courts below as well as the evidence on record to substantiate their respective stands, besides highlighting the evidence of the Doctor PW 10, to challenge the version as to the cause of death, which found favour of acceptance in the hands of both the courts below.

We have carefully considered the submissions of the learned counsel appearing on either side.

In our view, the High Court has not only at considerable length and detail but meticulously considered the entire materials on record in their proper perspective and enumerated in paragraph 25 of its judgment the adverse circumstances proved on the basis of cogent, concrete and convincing evidence the continuous chain of events which conclusively substantiated inescapably the guilt of the appellant for the murder of his wife. The learned trial judge also undertook an exhaustive and critical analysis of the evidence on record before arriving at the guilt of the appellant and convicting him for well merited reasons supported and supplemented by over

overwhelming evidence on record. The High Court also, in spite of an independent approach and appreciation of the evidence undertaken could not find any justification to interfere with the findings as against the appellant. The concurrent findings recorded against the appellant are not shown to be vitiated on account of any perversity of approach either in the manner of appraisal of evidence undertaken or of the conclusions ultimately arrived at, and, in our view, seem to be on the other hand well merited and based on strong and unimpeachable evidence. The varying versions attempted to be urged at different stages by the appellant was also rightly considered to provide the additional strength to the already proved strong links in the chain of adverse circumstances inevitably lending credence and strong support to the finding of guilt arrived at by the courts below. The adverse circumstances found established remained in any manner unrebutted or properly explained. On carefully going through the materials on record to which our attention has specifically invited in detail, we are unable to find any vitiating factors in the concurrent findings recorded by both the courts below. Per contra they are found to be unassailable having been based upon and also found to have been arrived at on sufficient and substantial evidence tendered for the prosecution. Despite the endeavours attempted by the learned counsel for the appellant he was unable to substantiate any infirmity whatsoever which could undermine the reasonableness or the efficacy of the concurrent findings recorded by the courts below, well fortified by concrete and specific medical evidence, which proved the real cause and manner of murder beyond reasonable doubt. The death occurred while the deceased was staying with the appellant in his house, and the manner in which the victim seem to have met her death obligates the appellant only to explain the same, being matters specifically and specially within his knowledge. The misleading clues and half baked and varying versions coming forth from the appellant, actually go to strengthen the guilt of the appellant, rather than even creating even any semblance of doubt in the case of the prosecution as to his involvement.

The appeal is, therefore, bereft of any merit and substance and shall accordingly stand dismissed.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)

New Delhi,
FEBRUARY 05, 2004