

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(s). 442 OF 1999

AYUB GULAM RASUL KOILKAR AND ANR.

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(With office report)

Date: 01/02/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s)

Mr. A.K. Ganguli, Sr. Adv.

Mr. S.C. Ghosh, Adv.

Mr. Satish Vig, Adv.

For Respondent(s) Mr. V.N. Raghupathy, Adv.

Mr. Ravindra Keshavrao Adsure, Adv. (N.P.)

UPON hearing counsel the Court made the following

O R D E R

The conviction and In the result, we partly allow this Criminal Appeal.

His sentence of the first Appellant is confirmed. He is on bail.
His bail bonds are

cancelled and he is directed to surrender to serve out the remaining portion of the

is acquitted of the sentence. The Appeal qua the second Appellant is allowed. She

charges levelled against her. Her bail bonds shall stand discharged.

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(K.K. Chawla)

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Court Master

Court Master

[Detailed signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.442 OF 1999

AYUB GULAM RASUL KOILKAR AND ANR.

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

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O R D E R

The Appellants were found guilty for the offences punishable under Sections

498A and 306 read with Section 34 of the Indian Penal Code by the 2nd Additional

Sessions Judge, Raigad at Alibag on 22nd November, 1989 and were sentenced to

undergo rigorous imprisonment for a period of two years and also to pay a fine of

Rs.500/- in default to undergo simple imprisonment for a period of six months.

The Appellants preferred an Appeal before the High Court and the learned

Single Judge confirmed the conviction and sentence. Hence, this Appeal by way of

Special Leave.

We have heard learned senior counsel for the Appellants and the counsel for

the State.

The first Appellant Ayub Gulam Rasul Koilkar was the husband of the

deceased Mahirunissa and the second Appellant is the mother of Ayub Gulam Rasul

Koilkar. Marriage of the first Appellant with Mahirunissa was solemnized on 8th

April, 1984 and thereafter deceased had been staying in the house of the Appellants.

According to the prosecution, the Appellants had been harassing the

deceased Mahirunissa and demanding money from her parents. It is also alleged that

the first Appellant-the husband, used to beat deceased Mahirunissa and the second

Appellant on some occasions refused to give her sufficient food. The life of the

deceased was miserable and she on one occasion came to her parents house and stayed

there for about two months and later returned to the Appellants' house. On 18th

October, 1985, she consumed poison (malathion) and died. One Fazruddin a resident

of that area came to know about the death of Mahirunissa. He went to the Hospital

where she was admitted and saw her dead body. Thereafter he went to the Police

Station and gave information about the same. The police registered a case and

thereafter conducted investigation. The dead body of Mahirunissa was subjected to post-mortem examination and no external injury was found and the viscera preserved was sent for chemical examination. On examination Doctors gave their opinion that the death was due to organo-phosphorous poisoning i.e. Malathion. The police after investigation filed charge sheet against Appellants. Six witnesses were examined by the prosecution in support of its case and the Appellants were questioned under Section 313 of the Code of Criminal Procedure in which they said that they had been falsely implicated.

The Sessions Judge on the basis of the prosecution evidence held that there was harassment on the part of the Appellants and that they caused cruelty to deceased Mahirunissa which prompted her to commit suicide. Thus, the Appellants were charged and convicted for the offences under Sections 498A and 306 read with Section 34 of the Indian Penal Code. The High Court confirmed the findings recorded by the Sessions Judge.

Learned Senior counsel for the Appellants contended before us that evidence adduced by the prosecution is not sufficient to hold the Appellants guilty. It is urged that there are vague allegations of ill-treatment and it is not sufficient to hold that the Appellants had caused any harassment to the deceased and that the said harassment had prompted her to commit suicide. It was argued that in the absence of specific allegation about any incident whereby the deceased had been subjected to cruelty, the Appellants cannot be convicted. The evidence of the prosecution witnesses alleging

general allegations should not have been accepted by the Sessions Judge as well as by the High Court. Reliance was also placed on a decision of this Court in the case of

Ashok Vishnu Davare v. State of Maharashtra reported in (2004) 9 SCC 431.

In the instant case, PW.1 who is a neighbour of Mahirunissa's parents at Village Salokh, has stated that she knew the deceased from her childhood. She

deposed that deceased Mahirunissa used to tell her that she was being ill-treated by

the first Appellant as well as by the second Appellant. She had also stated that on one

day when she was passing near the house of the deceased, she had seen the deceased

Mahirunissa being beaten by the first Appellant. As regards second Appellant she

had only stated that Mahirunissa told her that she (second Appellant) was not giving

sufficient food to the deceased.

PW.2 is the real sister of deceased Mahirunissa. She was also examined as a witness. She had deposed that Mahirunissa told her that her husband used to beat

her and that her mother-in-law used to ill-treat her. She had further stated that prior

to the death of Mahirunissa she had visited her parents at the time of Ramzan festival

and she stayed with them for two or two and a half month and thereafter she left for her

husband's house and within 40 days she died. PW.2 had also deposed that deceased

Mahirunissa did not want to go back to her husband's house because of the ill-

treatment. In the same way the father of the deceased also gave his statement. It is

true that these witnesses have not spoken to any specific instance of violence meted out

to the deceased. However, the evidence clearly establishes that there was a willful

conduct on the part of the first Appellant and the conduct was of such a nature which prompted Mahirunissa to commit suicide. It is also a case where the presumption under Section 113A of the Evidence Act could be drawn.

However, the evidence against the second Appellant stands on a different footing. The main and only allegation against the second Appellant is that she had not been giving sufficient food to the deceased Mahirunissa. We do not find any cogent evidence against the second appellant and she is entitled for the benefit of doubt. As regards first Appellant, the prosecution evidence is clear to hold him guilty of the offences under Sections 498A and 306 read with Section 34 of the Indian Penal Code.

We do not find any infirmity in the conviction and sentence rendered against the first Appellant.

In the result, we partly allow this Criminal Appeal. The conviction and sentence of the first Appellant is confirmed. He is on bail. His bail bonds are cancelled and he is directed to surrender to serve out the remaining portion of the sentence. The Appeal qua the second Appellant is allowed. She is acquitted of the charges levelled against her. Her bail bonds shall stand discharged.

.....J.

(K.G. Balakrishnan)

.....J.

(G.P. Mathur)

New Delhi;

February 01, 2006.