

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Appeal No. 463 / 2002

Barikrao s/o Babasaheb Deshmukh,
Age 30 years, Occu. Agriculture,
R/o. Pimpalgaon, Tq. Kaij,
District Beed.

...Appellant

Versus

The State of Maharashtra,
Copy to be served on Public Prosecutor
High Court of Judicature at Bombay,
Bench at Aurangabad.

...Respondent

Mr. S. J. Salunke, Advocate for the Appellant.

Mr. P. N. Kutti, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 9th DECEMBER, 2022.

PRONOUNCED ON : 9th FEBRUARY, 2023.

JUDGMENT :

1. This appeal is against judgment and order dated 08.08.2002 passed by the learned Sessions Judge, Ambajogai in Sessions Case No. 37/2000, whereby the present appellant-

accused is held guilty of the offences punishable under Sections 306 and 498-A of the Indian Penal Code. He is sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.5000/- in default to suffer Simple Imprisonment for six months for the offence of 498-A of IPC. He is further directed to suffer Rigorous Imprisonment for five years and to pay a fine of Rs.5000/-, in default to suffer Simple Imprisonment for six months for the offence of 306 of IPC. The remaining accused nos. 2 to 5 are acquitted of the same offences.

2. The informant lodged FIR on 04.12.1999 in the Kaij Police Station. It is the allegation that his sister namely Jayashri @ Aruna was married to accused no.1 namely Barikrao Deshmukh. After two to three months of the marriage, the accused started suspecting character of Jayashri. There was a demand of Rs.50,000/- from the informant. Since the condition of informant in condition happens to be poor, they could not fulfill the demand. On that count also, the accused started ill-treatment to his wife/Jayashri. The in-laws did not even use to give food to Jayashri and they used to harass her. On the date

of incident, informant received information from that deceased Jayashree committed suicide by consuming poison. He thus lodged the FIR against the husband and in-laws saying that they are responsible for her death. On the basis of this information, the police carried out an investigation and filed a charge-sheet. The case was tried by learned Sessions Court bearing Sessions Case No. 37/2000. After the trial, the learned Additional Sessions Judge, Ambajogai, held the appellant/accused no.1 guilty of the said offences punishable under Sections of IPC by the judgment and order dated 08.08.2002. The learned Judge acquitted accused nos. 2 to 5. Therefore, the appellant is thus before this Court.

3. The defence of the accused is only that there was no such harassment at the hands of the husband and the in-laws.

4. There are nine witnesses examined by the prosecution. The first witness is the Medical Officer namely Shivaji Sawalkar, who conducted postmortem on the dead body. He deposed that on internal examination, he found that both the

lungs of deceased were edematous on cut section, fine froath, smell like poison. He opined that the cause of death was pulmonary edema secondary and insecticide poisoning subject to confirmation by the report of viscera. In the cross, he deposed that he did not observe any symptoms of cyanosis. In P. M. notes, it is taken that he has not mentioned that in the stomach, there was a kerosene with greenish in colour. He could not state of which kind of poison was found in the body of deceased.

5. The next witness is a maternal aunt of the deceased, who examined as PW-2 namely Gangubai Pingle. She deposed that the marriage of deceased/Jayashri had taken place, seven months before her death. She further stated that all the accused were demanding Rs.50,000/- for purchasing a jeep, on that count, deceased was subjected to ill-treatment. She stated that all the accused were used to beat her and used to pinch her, pull her cheek. In the next visit in Dashra Festival, the accused had also come with her and that time there was demand by the accused of Rs.50,000/- for purchasing a jeep on

that day the accused left the house of informant without food.

. In the cross-examination, she stated that the brothers of the deceased namely Rambhau and Laxman and their wives were present, when the deceased told about the ill-treatment. She did not state before the police that accused were pinching and pulling cheeks of deceased. She accepted that there was no direct demand of the amount. It is further taken on record that she had not stated before the police all the five accused had come at the time of Dashra.

6. The next witness is brother of deceased namely Laxman Anantrao Ingle (PW-3). He deposed that in the marriage of deceased, Rs.40,000/- was given as dowry alongwith gold ring and locket of two Tola Gold. After marriage, the accused started suspecting the character of deceased and he was not providing meal to her and was also used to beat her. He further deposed that the deceased used to tell about the demand of money and the ill-treatment on account of the non-fulfillment of the demand. This witness also stated about the demand of money, when deceased had visited the parents' house with the

accused for the second time.

. In the cross-examination, it has come that the deceased had come to her parents' house in between the marriage and the festival of Panchmi, after 8 to 15 days after marriage. He accepted that the deceased never sent any letter to them. It is taken on record that the police recorded the FIR as per his say. The omissions are brought on record in respect of subjecting the deceased to ill-treatment.

7. The next witness is father of deceased, namely Anandrao Ingle (PW-4). He also deposed in the similar lines about the demand and the ill-treatment. He stated that he received a telephonic message about the death of his daughter and on that he went to Kaij, but before his arrival funeral had taken place. In the cross, he stated that after the marriage till the death of the deceased, he had been to her matrimonial house for 5 to 6 times. He accepted that he did not tell the police that the deceased had stayed with him for eight days at the time of Panchmi. He accepted that in his statement, the fact about ill-treatment on account of suspicion of her character is not

mentioned. He accepted that he did not state before the police that the accused were not providing meal to the deceased. It has further come that the accused and the deceased had come on invitation at the time of Dashra for attending death anniversary of grand-mother of the deceased. He accepted that he did not state before the police that his son Laxman had gone to bring the deceased at the time of Diwali.

8. The next witness is the sister of deceased namely Surekha (PW-5). She stated about the demand and the ill-treatment at the hands of the accused persons. In the cross, she accepted that she had not stated before the police about the poor health condition of the deceased. She had also not stated that for Diwali, the accused did not send the deceased to her parents' house. She accepted that for the first time she deposed the above facts before the Court.

9. The next witness is another brother of the deceased, namely Rambhau (PW-6). He deposed that at the time of Dashra, when the deceased had been to her parents' house, she

told about the cruelty. At the time of Diwali, he had gone to fetch the deceased, however she was not sent by the accused, on account of non-payment of the amount as per the demand.

. In the cross, he accepted that in his statement before police there is no mention that unless the amount was paid, the deceased could not be sent on Diwali.

10. The next witness is Ramrao Gulve, panch of the inquest panchnama. However this witness did not admit the contents of portion mark A in the said panchnama. He accepted that the contents of the spot panchnama. This witness was declared hostile and was cross-examined. In the cross, he accepted that accused no.2 and his sons are residing separately even since prior to the incident. All the accused are independently doing labour work on their respective lands. He accepted that the deceased and accused were residing happily till her death.

11. The next witness is the Investigating Officer namely Dattatraya Sonnar (PW-8), who registered the crime in this case. He stated about the investigation and filing of the charge-

sheet. He identified the muddemal.

. In the cross, he accepted that he did not record statement of any person from Pimpalgaon. The omission from the statement of Gangubai is brought from his evidence. Omission from the statement of Anand in respect of suspicion of character is also brought on record.

12. The last witness is P.S.I. Shaikh Maheboob Pasha (PW-9), who filed the charge-sheet, after the investigation was handed over to him. He asked the Medical Officer to conduct autopsy, who told that there was poison in the body of deceased and therefore he did not send Viscera to C.A.

. In the cross-examination, he accepted that he did not give in writing any letter to the Medical Officer to send Viscera for C.A. report. He accepted that he did not make any enquiry about Viscera and that it was not collected from the Doctor.

13. Thus this is the evidence from the prosecution. There is no report about the Viscera. The allegation is that it was a case of poisoning is only on the basis of the opinion given by the

Medical Officer (PW-1). The learned Sessions Judge however considered that the death of deceased is not natural death and recorded findings as that the death is suicidal. About the cruelty, it is observed that there is evidence of the witnesses on the point of cruelty. However since except accused no.1, there are no specific allegations and therefore acquitted all other accused. Thus, this Court has now to consider as to whether the learned trial Judge has appreciated the evidence properly in respect of present appellant after going through the submissions and judgments cited before this Court.

14. The learned Advocate for the appellant vehemently argued that there is no sufficient evidence in this case to convict the appellant. He submits that in column no.17 of the P.M. notes, no external injuries are mentioned. In column no.20 of the P.M. notes, it is mentioned that the condition of left lung is semell like poisoning. However there is no specific finding that it was a case of poisoning in absence of Viscera. The prosecution has not brought on record sufficient poof to prove that the death is suicidal. There is no proof about the ill-treatment, harassment

and demand. Though the death is unnatural, it was necessary for the prosecution to prove that the death was a suicidal death and for this reason, C.A. report in respect of Viscera was necessary. This fundamental defect goes to the route of the matter. He criticized the finding of the learned Sessions Judge as it is held that since the death is not natural and therefore it is suicidal. For convicting a person with by recording finding of the guilt, there has to be a proof or evidence beyond reasonable doubt. In this case, merely on the opinion of the doctor that it is probably, a case of poisoning is not sufficient to come to that conclusion. He submits that the opinion of the doctor without reasoning is not binding on the Court. In the oral evidence of the witnesses, there are no specific allegation found. At last, he submitted that in case the conviction is upheld, the sentence be reduced by submitting that the accused has already undergone about four months of imprisonment. Since last twenty years, the appeal is pending now the appellant is settled in life and there is no propriety in sending accused to jail after this long period. Following judgments are cited before the Court by the appellant.

1. Mayur Panabhai Shah Vs. State of Gujrat
AIR 1983 SC 66
2. Mahindra Vs. Sajjan Galpha Rankhamb
AIR 2017 SC 2397
3. Rajbabu Vs. State of M.P.
AIR 2008 SC 3212
4. Mangat Ram Vs. State of Haryana
AIR 2014 SC 1782
5. Dinesh Ganpat Bondre Vs. State of Maharashtra
2017 (2) ABR (Cri.) 524
6. Kunjabai Vs. State of M.P.
2016 All M.R. (Cri.) 410 (SC)

15. The learned APP submits that it is clear that the prosecution has sufficiently established that the deceased died due to poisoning and there is doctor's opinion to support this fact. It is further submitted that in this case the death is not natural. He submitted that in view of Section 113A of the Evidence Act, there is a presumption of the abetment as the deceased died within seven years of marriage. There is a nexus between the act of cruelty and the suicide. He relied upon the judgment reported in 2014 AIR(SC) 378 in the case of **Bhupendra Vs. State of Madhya Pradesh**, on the point of

presumption as to dowry death. He further relied upon the judgment reported in 2021 SCC OnLine SC 660 in the case of **Gumansinh alias Lalo alias Raju Bhikhabhai Chauhan and Another Vs. State of Gujarat.**

16. Before coming to the conclusion, it would be necessary to discuss the judgments relied upon by the learned Advocate for the Appellant. In the case of Mayur Panabhai Shah (supra), the Hon'ble Apex Court has observed that the evidence of doctor also needs to be appreciated like evidence of any other witness and there is no irrebuttable presumption that doctor is always a witness of truth.

17. In the case of Mahindra (supra), the Hon'ble Apex Court in paragraph no.15, it is held that the expert's opinion should be demonstrative and should be supported by convincing reasons. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value.

18. The judgment in the case of Rajbabu (supra), is on the

point of presumption under Section 113A of the Evidence Act, it is held that merely because a suicide is committed by the wife within seven years of marriage and due to cruelty by the husband does not automatically give rise to the presumption so as to invoke Section 113A of the Evidence Act. It is necessary to consider the nature of cruelty to which this is to be considered in the light of the evidence and the circumstances brought on record by the prosecution.

19. In the case of Mangat Ram (supra), the Hon'ble Court has considered Section 113A of the Evidence Act and also Section 498-A. The judgment in the case of Rajbabu (supra), which is discussed above on the point of presumption under Section 113A of the Evidence Act and Sections 498-A and 306 of the Indian Penal Code. In both these cases, it is held that merely because there is a suicide by the wife within seven years of marriage that itself would not be sufficient to raise presumption under Section 113A of the Evidence Act. It is further held that for offence under Sections 498-A and 306 of IPC, the prosecution has to bring on record sufficient evidence.

20. The last judgment in the case of Kunjanbai (supra), the Hon'ble Apex Court had reduced the sentence to the period already undergone for the offence punishable under Section 498-A of the IPC. The sentence was reduced by recording that the appellant was at the age of 65 years and was suffering from various ailments. It was also considered that 27 years had passed since the incident.

21. The judgments relied upon by learned APP, in which the first judgment is in the case of Bhupendra (supra), it was a case of dowry death. In that case also, the viscera report was not available though it was called. It was held that the absence of viscera report was not fatal to the case of prosecution, when a unnatural death is proved punishable under Section 304-B of the IPC. The Hon'ble Apex Court held that death was caused "soon before death", then Section 306 of the IPC can be restored.

22. The next judgment relied upon by the learned APP, in the case of Gumansinh alias Lalo alias Raju Bhikhabhai Chauhan

(supra), on which learned APP submits that the evidence of the witnesses cannot disbelieved merely for the reason that they happened to be relatives of the deceased. In that case, no independent witness was examined by the prosecution. The Hon'ble Apex Court has held that merely because the witnesses happen to relatives cannot by itself be said to be interested witnesses. A bare reading of Section 113-A shows that to attract applicability of Section 113- A, it must be shown that :

- (i) woman has committed suicide,
- (ii) such suicide has been committed within a period of seven years from the date of her marriage,
- (iii) the husband/accused or his relatives, who are charged had subjected her to cruelty.

. After considering the various judgment, the Hon'ble Apex Court affirmed the judgments, by which the High Court had confirmed the judgment of the trial Court and had held the accused guilty of the offences punishable under Section 306, 498-A of the IPC.

23. Looking to the judgments, it is clear that though the

presumption can be raised under Section 113-A of the Evidence Act, however it was necessary for the prosecution to establish the fundamental facts. In this case, the prosecution has utterly failed to bring on record, sufficient evidence to show that there was cruelty. In the cross-examination, it is brought on record that the witnesses had not stated about cruelty or harassment and also demand before the police. Though it is alleged that the appellant was suspecting character of the deceased and therefore there was cruelty and harassment, also there is also satisfactory evidence except statement before the Court. The witnesses clearly accepted that they have not stated about the specific harassment or the cruelty before the police.

24. From the judgment in the case of Gumansinh alias Lalo alias Raju Bhikhabhai Chauhan (supra), relied upon by the learned APP that for raising presumption, above three things are required to be considered in this case. Thus the presumption cannot be raised under Section 113-A of the Evidence Act. The third thing i.e. '*(iii) the accused had subjected her to cruelty*' is not sufficiently proved by the

prosecution. Thus, the learned Sessions Judge has rightly acquitted the remaining accused. At the same time, it was necessary to consider that against all the accused, the same evidence was led by the prosecution. The witnesses have not assigned any special role to this appellant, different than the other accused, when the Court has rightly appreciated that there is no evidence against respondent nos. 2 to 5 and also recorded that Section 34 is not attracted, it was necessary even to acquit the present appellant. This Court therefore finds that a case is made out to allow the appeal. Hence the following order.

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order passed by the learned Additional Sessions Judge, Ambajogai in Special Case No.37/2000 dated 08.08.2002 is quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 306 and 498-A of the Indian Penal Code.

- (iv) Amount of fine deposited in the Trial Court be refunded to the appellant.
- (v) Bail bonds of the appellant stand cancelled.
- (vi) Appellant to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

25. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]