

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.226 OF 2012

- 1) Sambhaji s/o Nanarao Sitaprao,
Age-29 years, Occu:Service,
R/o-Sangavi (Bk.),
Tq. & Dist-Nanded,
R/o-Amba nagar, Nanded,
- 2) Nanarao s/o Pundlik Sitaprao,
Age-61 years, Occu:Agri.,
R/o- Ambanagar, Nanded,
- 3) Sushila @ Chimabai w/o Nanarao Sitaprao,
Age-46 years, Occu:Household,
R/o-Amba Nagar, Nanded,
- 4) Mangalabai w/o Datta Shinde,
Age-25 years, Occu:Service,
R/o-Nanded, Tq. & Dist-Nanded.

...APPELLANTS
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station, Bhagya Nagar,
Nanded,
- 2) Reshmaji s/o Arjun Kolhe,
Age-47 years, Occu:Agri.,
R/o-Bhayegaon, Tq. & Dist-Nanded.

...RESPONDENTS

...
Mr. S.S. Choudhari Advocate for Appellants.
Mr. B.L. Dhus, A.P.P. for Respondent No.1- State.
Mr. Amit Mukhedkar Advocate for Respondent No.2.
...

**CORAM: A.B. CHAUDHARI AND
INDIRA K. JAIN, JJ.**

DATE : 6TH OCTOBER, 2015

JUDGMENT [PER A.B. CHAUDHARI, J.] :

1. Being aggrieved by the Judgment and order dated 1st March 2012 passed by IVth Additional Sessions Judge, Nanded in Sessions Case No.115 of 2011, by which all the Appellants i.e. Accused No.1 - Sambhaji s/o Nanarao Sitaprao, Accused No.2 - Nanarao s/o Pundlik Sitaprao, Accused No.3 - Sushila @ Chimabai w/o Nanarao Sitaprao and Accused No.4 - Mangalabai w/o Datta Shide were convicted for the offence punishable under Section 498-A read with 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/-(Rs. Five

Thousand), in default to suffer further further rigorous imprisonment for one month each, and for the offence punishable under Section 304-B read with 34 of the Indian Penal Code and sentenced to suffer Life Imprisonment, and for the offence punishable under Section 302 read with 34 of the Indian Penal Code and were sentenced to suffer Life Imprisonment and to pay fine of Rs.5000/- (Rs. Five Thousand) and in default to suffer further rigorous imprisonment of one month each, the present Appeal was preferred by the Appellants in this Court.

FACTS:-

2. Briefly stated, it is the case of prosecution that Shivkanta, daughter of complainant Reshmaji s/o Arjun Kolhe was married to Appellant No.1 Sambhaji on 7th March 2010 at Bhagyanagar, Tq. & Dist-Nanded. An amount of Rupees One Lakh Seventy Thousand was given to

Sambhaji in lieu of marriage along with one tola gold, cot, bed, cupboard and household articles worth Rupees Four Lakhs including performance of marriage. Till Diwali Shivkanta was treated properly but thereafter she was asked to bring an amount of Rupees Two Lakhs for establishing garage for Accused No.1 Sambhaji and she was tortured by all the Appellants - accused persons. Demand was made by her husband Sambhaji, father-in-law Nanarao, mother-in-law Chimabai and sister-in-law Mangalabai and all of them were torturing her. At the time of Diwali festival Shivkanta came to her parental house and told all these facts to her parents and others but then some how she was given understanding and she went back to her matrimonial house. Again after eight days of Diwali demand of Rupees Two Lakhs was made for establishment of garage and she was asked as to what was done about said amount when Reshmaji told Accused No.1 Sambhaji that he had already spent huge amount in the marriage and had a loan liability also and

therefore he was unable to pay amount of Rupees Two Lakhs and requested not to torture his daughter Shivkanta. At that time Shivkanta had come to the house of complainant Reshmaji and Accused No.1 Sambhaji told that unless an amount of Rupees Two Lakhs is paid to him, he would not take Shivkanta to his house for cohabitation. At that time complainant Reshmaji, Ramrao Kolhe and Balaji Kolhe convinced Sambhaji and finally sent Shivkanta for cohabitation with him. After reaching the matrimonial house, all the Appellants started giving mental and physical torture to Shivkanta by asking her why she has not brought the amount. Shivkanta informed her parents about the ill-treatment that was being given to her and therefore complainant Reshmaji, Govardhan Jadhav, Ramrao Kolhe, Uttam Dakhore and Girmaji Kolhe went to Ambanagar, Nanded at the house of the Appellants/accused and a meeting was held. In the meeting Accused No.1 Sambhaji again made demand of Rupees Two Lakhs. The complainant Reshmaji showed

is inability to satisfy the demand and after giving understanding to the Appellants, they returned back. However on 27th November 2011 at about 1.00 p.m. complainant Reshmaji received phone call from his son Tukaram that he had received message from Accused No.1 Sambhaji that Shivkanta committed suicide by pouring kerosene on her person. All relatives rushed to the house of Accused and found dead body of Shivkanta in burnt condition in bathroom. Crime was registered by the police station officer vide Crime No.31 of 2011. Investigation was handed over to PSI Pawar. He arrested all the accused persons, recorded statements of the witnesses, seized articles, made Spot Panchnama, completed investigation and filed charge-sheet in the Court. Trial was held. Defence of the Appellants was of total denial. Learned trial Judge heard the evidence tendered by the prosecution and thereafter convicted the Appellants as above. Hence, this Appeal.

ARGUMENTS:-

3. In support of the Appeal, Mr. Choudhari, learned counsel for the Appellants vehemently argued that the evidence itself shows that Shivkanta was treated very well till Diwali after the marriage and therefore there is absolutely no reason why suddenly after Diwali the demand would be made and Shivkanta would be murdered by the Appellants as alleged by the prosecution. According to him, deceased Shivkanta herself committed suicide for no reasons and therefore the charge of murder for which the Appellants have been convicted was not at all proved by the prosecution. He submitted that evidence is totally insufficient and merely because Shivkanta suffered burn injuries in the house of Appellants, the Appellants could not be convicted for the offence of murder. He then submitted that the conviction under Section 304-B as well as 498-A of the Indian

Penal Code also could not have been recorded. The reason is that it is a prosecution evidence itself that till Diwali, Shivkanta was treated very well and therefore it is highly improbable to believe that immediately after Diwali or eight days after Diwali she would be ill-treated. Had there been any intention to demand money as alleged by the prosecution, the same could have been made immediately after the marriage or some time thereafter. But, on the contrary evidence goes to show that Shivkanta was treated very well till Diwali, which clearly falsifies the case of the prosecution. He then submitted that the evidence thus smacks of revengeful attitude of the witnesses towards Appellants merely because Shivkanta died in suspicious condition. But that does not mean that Appellants had caused her death. The ingredients for the offence under Section 304-B and 498-A of the Indian Penal Code are not at all satisfied, rather the evidence tendered by the prosecution in that context is

highly improbable, unbelievable and will have to be rejected. He then submitted that perusal of the evidence will show that the witnesses are tutored and the evidence is like parrot. He therefore, prayed for acquittal of all the accused persons.

4. Per contra, the learned A.P.P. for State supported the impugned Judgment and Order and submitted that under Section 106 of the Indian Evidence Act, the prosecution having discharged the burden of proof and Shivkanta being in the custody of the Appellants, it was for the accused persons to disclose how she died. But the Appellants chose to keep quiet and did not at all explain as to how she died. Learned A.P.P. for the State therefore, submitted that there is consistent evidence of number of witnesses including independent witness and therefore conviction recorded by the trial Judge for offences punishable under Sections 302, 498-A, 304-B read with 34 of the Indian Penal Code is

legal, correct and proper and therefore Appeal is required to be dismissed.

CONSIDERATION:-

5. We have heard learned counsel for the rival parties at length. We have seen carefully the entire evidence tendered by the prosecution. With the assistance of the learned counsel for the rival parties, we have seen the reasons recorded by the trial Judge for recording the conviction.

6. At the outset, we find that insofar as conviction for offence under Section 302 read with 34 of the Indian Penal Code ("IPC" in short) is concerned, the learned trial Judge has based the conviction by drawing inferences from the Spot Panchnama, Inquest Panchnama etc. The learned trial Judge drew the inferences on his own saying as to how the Appellants could be held guilty of offence of murder of Shivkanta. We quote the

reasons in Paras 27 and 28, which read thus:-

"27. It is not in dispute that the accused have admitted the spot panchnama Exh.25. Even when PW-4 and 6 for the first time had gone to the house of the accused after the alleged incident, they noticed the dead body of Shivkanta in bathroom, it was open, the walls of the bathroom were not blackened. Further more, if one minutely perused the spot panchnama Exh.25, and photographs Exh.49 which were taken by PW-8 with digital camera, the area of bathroom is admeasuring 2 $\frac{1}{2}$ X 4 ft. wherein one plastic can was found. The spot panchnama shows except the burn dead body of Shivkanta the plastic can and other articles were not burnt, they were in good condition. If Shivkanta could have committed suicide in the bathroom by pouring kerosene on her person and setting her on fire, under such circumstances, naturally some of the Articles in the bathroom and plastic can should have some burns or at-least could have blackened, however, the same is seen it is original position as it was kept. Even 1 - liter

acid can was found there in good condition. Panchnama did not show that the floor and walls of bathroom were smelling kerosene. Naturally, when dead body is 100% burn then she should have taken kerosene bath. Burn hairs and burn pieces of clothes and ash was found in the bathroom. At the same time, if one have a dead body is found lying along with the plastic can, which had no burn signs. At the same time, the panchnama Exh. 25 shows that outside the bathroom the half burn garlic was noticed.

28. Thus, it appears that first the accused have put to death to Shivkanta by pouring kerosene on her person and setting her on fire, thereafter they brought her dead body and kept in the bathroom to show that she committed suicide."

7. Upon perusal of the above reasons, which are only reasons for recording conviction under Section 302 of IPC, we find that the trial Judge erred in drawing his own inferences to hold that offence under Section 302 read with 34 of IPC i.e.

offence of murder was proved. There is no other evidence except the Spot Panchnama, photographs and the condition of the dead body etc. as described by the learned trial Judge as above. We think that it would be too risky to convict the Appellants for offence of murder by drawing inferences from above documents and giving reasons as above. We are not in agreement with the reasons given by the trial Judge for convicting the appellants for the offence of murder, which is serious charge. Prosecution has to satisfactorily prove that it is the Appellants who committed the murder. By such evidence the accused persons cannot be held guilty of the offence of murder. We therefore disagree with the trial Judge for recording the conviction under Section 302 read with 34 of the IPC against the Appellants and will have to set aside the conviction under Section 302 read with 34 of IPC, which we do hereunder.

8. That insofar as offences under Section

304-B and 498-A of IPC are concerned, we have again carefully examined the evidence of prosecution witnesses. We find that there is evidence of PW-1 Reshmaji who had lodged the FIR Exhibit 24. We have perused Exhibit 24 and his evidence. We quote paras 2, 3 and 4 from his evidence, which read thus:

"2. After the marriage Shivkanta had gone for cohabitation at Nanded at her husband's house. She was residing along with her husband, parent-in-law and sister-in-law Mangalabai. She was maintained properly till Deepwali festival. She had come for Deepwali and told that her husband Sambhaji, father-in-law Nanarao, mother-in-law Chimabai, and sister-in-law Mangalbai asked her to bring an amount of Rs. 2 lacs from her parents for installing garage and assaulted her. However, she was given understanding.

3. After 8 days of Deepwali son-in-law Sambhaji had come to take Shivkanta and told to complainant and Shivkanta that he had made demand of Rs.2 lacs for installation of garage what happened about it. I told him that much

amount is spent in the marriage and the said amount is to be repaid and not able to pay Rs.2 lacs. Thereafter Sambhaji told unless an amount of Rs.2 lacs is given, he will not take Shivkanta for cohabitation. Therefore, I myself, Ramrao Kolhe, and Balaji Kolhe gave him understanding and sent Shivkanta for cohabitation along with Sambhaji.

4. On arrival of Shivkanta at her matrimonial home husband Sambhaji, father-in-law Nanarao, mother-in-law Chimabai and sister-in-law Mangalabai started ill-treatment for the reason that as to why she has not brought an amount of Rs.2 lacs from her parent. She informed this fact on telephone, therefore, I myself, Govardhan Jadhav, Uttamrao Dakhore, Ramrao Kolhe and my brother Girmaji had gone to the house of Shivkanta at Ambanagar, Nanded. We had a meeting therein Sambhaji, her parents and his sister made demand of Rs. 2 lacs. At that time, we told them that we are not able to pay the said amount and not to harass Shivkanta and we returned home."

9. We have also perused the evidence of other witnesses, namely PW-2 Balaji Kolhe, PW-3 Uttam Dakhore, PW-4 Tukaram Reshmaji Kolhe, PW-5

Sushilabai w/o Reshmaji Kolhe and PW-6 Ramrao Tatyerao Kolhe. It is true that all these witnesses are closely related to Shivkanta i.e. deceased and are interested witnesses. But then the law is trite that the Court should carefully scrutinize the evidence of interested witnesses. Keeping in mind the said parameters, we have carefully examined the evidence of these witnesses to find out whether offences under Section 498-A and 304-B of IPC are proved or not. The evidence quoted by us from PW-1 Reshmaji is also to be found in the deposition of other witnesses quoted above by us. We have perused the cross-examination of all these witnesses so also of PW-1 Reshmaji. We find that the above evidence which we have quoted in Paras 2, 3 and 4 from PW-1 Reshmaji has not at all been shaken in the cross-examination. Similar is the evidence of all other witnesses which we have named above, and the same is also not at all shattered in the cross examination. The evidence is consistent, clear and trustworthy. The

evidence clearly shows that till Diwali Shivkanta was treated properly but then the husband Sambhaji wanted to establish a garage for himself and therefore all the Appellants started torturing Shivkanta asking her to bring an amount of Rs.2 Lakhs and were assaulting her after Diwali. The above evidence, to our mind, clearly shows that Accused No.1 Sambhaji had come to the house of Reshmaji PW-1, to take Shivkanta and then and there told Reshmaji that he wanted Rs.2 Lakhs to which PW-1 answered that he was unable to pay. At that time Accused No.1 Sambhaji stated that he would not take Shivkanta with him for cohabitation. Then Reshmaji and other persons convinced Sambhaji and sent Shivkanta for cohabitation with him. On her arrival all the Appellants started ill-treating Shivkanta by stating that as to why she has not brought the amount of Rs.2 lakhs from her father. Then the meeting was held, in which it was clearly told that PW-1 Reshmaji was unable to pay Rs.2 Lakhs.

After the meeting, everybody left home and thereafter on 27th January 2011 the news of burning of Shivkanta was received by PW-1 Reshmaji through his son Tukaram.

10. The submission made by learned counsel Mr. Choudhari that evidence is unbelievable that till Diwali, Shivkanta was treated well and she was ill-treated thereafter is improbable, impossible, does not appeal to us. The reason is, pre-Diwali or after Diwali the husband Sambhaji wanted to settle garage for himself and therefore he required an amount of Rs.2 Lakhs. His family members i.e. all the other Appellants joined him to make the demand of Rs.2 lakhs to Shivkanta and then were pressurizing her to get that amount from her father. Upon refusal, they started ill-treating her. We, therefore reject the submission made by learned counsel for the Appellants.

11. Learned counsel for the Appellants also

contended that Appellant No.4 Mangalabai - sister-in-law had no role to play in the house as she was already married and residing at some other place. This submission was carefully examined by us and what we find that though Mangalabai was married, she was residing at the same place and used to come to the house of Appellant Sambhaji. The evidence of the witnesses is clear that Appellant No.4 Mangalabai also joined hand with her mother, father and brother i.e. Sambhaji for ill-treating and assaulting deceased Shivkanta for the demand of Rs.2 Lakhs. It is therefore, not correct to say that Mangalabai was residing at far away place as contended. We, therefore find that soon before the death of Shivkanta, there was a demand for an amount of Rs.2 Lakhs and not once but repeatedly coupled with threat not to take Shivkanta in her matrimonial house. Appellant No.1 Sambhaji made demand on the face of the complainant PW-1 Reshmaji for the amount of Rs.2 Lakhs and was required to be convinced. Meeting was held and all

attempts were made to convince him not to torture Shivkanta. After the meeting concluded and every body had gone home, again Shivkanta was being ill-treated for the demand of Rs.2 Lakhs by all the Appellants. Thus, in our opinion, the prosecution has proved and discharged the initial burden of proof that there was a demand of amount of Rs.2 Lakhs for which Shivkanta was assaulted, harassed, tortured by the Appellants together. There was no justification for the Appellants to torture her and demand an amount of Rs.2 Lakhs. We also find that the presumption under Section 113-A of the Indian Evidence Act can clearly be raised against the Appellants in view of the fact that the marriage had taken place before seven years and rather in this case Shivkanta died within one year. We thus find that offences under Section 304-B and 498-A read with 34 of the IPC have been proved by the prosecution beyond any doubt and there is no reason to disbelieve the consistent evidence in that behalf. We, therefore must uphold

the conviction of the Appellants for the offences punishable under Sections 304-B, 498-A read with 34 of IPC.

12. The next question is about the sentence under Section 304-B read with 34 IPC. We find that the trial Court has imposed imprisonment for life to all the Appellants. It is true that Section 304-B of IPC was brought into the Statute Book with a view to prevent dowry deaths. But then the said Section provides for minimum sentence of seven years and fine. Taking in view the age of the Appellants so also the other circumstances on record, we think the award of sentence of life imprisonment to all the Appellants would be disproportionate, harsh and therefore sentence of seven years minimum would serve the interest of justice. We therefore modify the sentence awarded by the learned trial Judge for the offence punishable under Section 304-B of IPC.

13. In the result, we find that the Appeal deserves to be allowed in part. We therefore make the following order:-

O R D E R

1] Criminal Appeal No.226 of 2012 is partly allowed.

2] The Judgment and order, dated 1.3.2012, passed by the learned 4th Additional Sessions Judge, Nanded, in Sessions Case No.115 of 2011, convicting the Appellants for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentencing them to imprisonment for life and fine of Rs.5,000/- is set aside and the Appellant Nos. 1 to 4 are held not guilty of the offence punishable under Section 302 read with 34 of the Indian Penal Code and Appellant Nos. 1 to 4 are

acquitted of the said charge.

3] The Appellant Nos. 1 to 4 are held guilty for the offence punishable under Section 498-A read with 34 of the Indian Penal Code and the sentence awarded to them by the learned trial Judge therefor is confirmed.

4] The Appellant Nos. 1 to 4 are held guilty for the offence punishable under Section 304-B read with 34 of the Indian Penal Code, but the sentence awarded to them by the learned trial Judge to suffer life imprisonment is set aside and modified by sentencing all the Appellant Nos. 1 to 4 to suffer Rigorous Imprisonment for seven years and fine of Rs.1,000/- (Rupees One Thousand) each, in default to suffer Rigorous Imprisonment for one month each.

5] All Appellant Nos. 1 to 4 are entitled to set off under Section 428 of the Code of Criminal Procedure.

6] The direction No.4 in the impugned Judgment about payment of compensation of Rs.30,000/- to the complainant is set aside.

7] All the sentences of the accused/ Appellant Nos. 1 to 4 shall run concurrently.

8] The Appellants on bail to surrender within eight weeks.

[INDIRA K. JAIN, J.]

[A.B CHAUDHARI, J.]