

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 391 OF 2015

CHHAGAN S/O JALINDDAR KARDILE
VERSUS
KAILAS AASARAM SHINDE & OTHERS

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Advocate for Appellant : Mr. N.C. Garud
APP for Respondents: Miss. R P Gour

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: November 16, 2015

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PER COURT :-

1. The accused are charged for an offence punishable under section 304-B, 498-A read with section 34 of the Indian Penal Code on account of death of wife of accused no.1-Ujwalla. Accused have been acquitted by the Sessions Court. Aggrieved thereby the complainant has filed the present appeal.

2. Mr. Garud, the learned counsel for appellant strenuously contends that, the evidence on record is sufficient to establish the offence punishable under section 498-A and 304-B of the Indian Penal Code. Death of deceased Ujwalla is within seven years of the marriage. As such, presumption arises when an unnatural death occurs that it is a dowry death and that deceased was being harassed and treated cruelly.

3. The learned counsel submits that the Sessions Court has not properly appreciated the evidence of PW1, PW5 and PW 3 Manda, so also has not properly dealt with the inquest panchnama and evidence of doctor. According to the learned counsel, witnesses have consistently deposed that accused no.1 was paid dowry of Rs.50,000/- (Rs. Fifty thousand) at the time of marriage and subsequently also demand of dowry was made. Accused were demanding Rs.10,000/-for medical expenses of accused no.1. Evidence in this regard of the uncle of the deceased and brother is consistent. However, said aspect has not been considered by the learned Sessions Judge.

4. Learned counsel for the appellant further submits that even PW 3 Manda has deposed that on the body of the deceased blackish marks were visible. Said aspect has not at all been considered by the Sessions Court. Death is an unnatural death. Blackish marks are visible on the body of the deceased which certainly supports theory of the unnatural death. Learned counsel also submits that the Doctor who had conducted postmortem report was not examined. Other doctor was examined i.e. PW 8. He has proved the postmortem report. However, the same has been erroneously discarded by the Sessions Judge. According to

the learned counsel, evidence of the witnesses is required to be scanned considering the presumption available in the Evidence Act as death had occurred within seven years of the marriage and there is evidence on record to suggest demand of dowry, so also, payment of dowry. Inquest panchnama and evidence of PW 3 Manda who is witness to that panchnama is also required to be considered, same would be a corroborative piece of evidence.

5. We have also heard the learned APP for the State.

6. We have considered the record and proceedings, depositions on record. Mr. Garud, learned counsel for the appellant has taken us through the depositions of the witnesses.

7. There cannot be any dispute with the proposition of the law regarding presumption as is available in case an unnatural death occurs within seven years of the marriage coupled with allegations of dowry and ill-treatment.

8. PW 1 who is uncle of the deceased has adduced his evidence. Said witness has categorically admitted that after the birth of Shreyas relations of deceased Ujwalla with her

in-laws were cordial and the in-laws were visiting Ujwalla, were offering gifts and sweets to deceased Ujwalla. Accused have also gifted clothes.

9. It is also admitted by PW 1 that accused no.1 Kailash, husband of deceased had met with an accident and was admitted in the hospital for about 3 and half months. During that period, 4-5 operations were conducted upon him. PW 1 has admitted that since operations till the incident of deceased Ujwalla's death due to drowning, said accused No.1 Kailash was not in a position to walk and to perform work. It would be worthwhile to reproduce the deposition in this regard of PW 1 Chhagan Jalindar Kardile (Exh.27).

"8. It is true that in the Month of May, 2013 Kailash again met with an accident near Chand Bibi Mahal, on Nagar Pathardi Road. It is true that in the said accident he suffered fracture of his leg and seriously injured. It is true that he was admitted in Pathak hospital Nagar. It is true that as per advise of Doctor he was shifted to Shelke Hospital after about 4 days. It is true that he was admitted in Shelke Hospital for about 3.1/2 months. It is true that during that period 4 to 5 operations were conducted on his fracture wound. It is true that since then till the happening of incident about Ujwala he was not in condition to walk and to perform any work. It is true that since

he was seriously injured and operated he was visiting hospital during interval of about 8 days. It is not true that Kailash was again admitted in Shelke Hospital from 3.10.2013 to 9.12.2013. It is true that during that time I along with my family members used to visit him. It is true that he was bed ridden and Ujwala was taking his all care. It is true that in order to meet the expenses of Kailash, his parents had sold out their agriculture land. I inquired with parents of Kailash about the expenses incurred by them and they disclosed that it was around Rs.2,00,000/- to 2,50,000/-. It is true that since Kailash was bed ridden Ujwala had not visited our house at the time of Diwali of that year. It is true that as Ujwala was busy in looking after her husband and her small kid, her father in law and mother in law were looking after cattles and agriculture work.

9. It is not true that on 29.12.13 Kailash made phone call to me and informed me to took Ujwala with me for 8 days as she had not visited us due to her busy schedule on event of any festival. It is true that therefore, I along with my nephew visited Pargaon. It is true that residential house of Kailash is situated in agriculture field at some distance from village. It is true that when we visited house, her mother in law father in law were present and barber was called for cutting hairs of Kailash. It is true that at that time we had a tea. It is true that thereafter Ujwala showed her willingness to come with us. It is true that looking condition of Kailash I advised her not to come with us and to look after

Kailash. It is true that thereafter, we returned back to our village after meeting Shreyas. During that visit I had not visited my brother in law Gangadhar. It is true that Kailash made phone call to me as Ujwala was not seen even at the time of event. It is true that he also inquired with me as to whether I took Ujwala with me and also called us. It is true that after reaching in their house we all discussed about her missing and then tried to find her. At that time we hired jeep of Ganesh Kardile when visited Ujwala's house. We returned back to our village at about 10.00 p.m. It is true that while searching Ujwala I visited house of Gangadhar and Ashok Shinde, Pradip Shinde etc. but she was not found and therefore, I returned back. It is true that since it was night time and crop of Jawar was standing in the field it was not possible to search there. It is true that but still we called name of Ujwala loudly but there was no response. It is true that for about 2 days we all relatives inquired at every possible place but she was not found. It is true that as she was not found on 30.12.13 missing complaint was lodged by her father in law in Nagar Taluka PS, after discussing with me and my relatives. It is true that though the complaint was lodged but still we all were searching her in near by area and also in the wells situated in the said vicinity. It is true that during said search we had also searched Ujwala in a day time the well from which her dead body was recovered but we had not seen her in the said well. It is true that said well is not having its own source of water. But the water is filled in the said well from the other two bore wells. It is true

that said two bore wells are situated at the distance of about 500 fts and 1000 fts respectively from the said well and pipe line is provided to the said well. When we searched Ujwala in the said well, on first occasion there was 1-2 fts. of water level was therein the said well. It is true that towards north-south side stream let is situated near well. It is true that big trees are situated on both sides. It is true that the other side of stream let is not visible from the one side due to big trees. It is true that around the well there was crop of Jawar standing having height of about 7 to 8 fts. It is true that house of Kailash is situated at the distance of about 1500 fts on southern side. It is true that one road is situated behind house of Kailash. It is true that opening of the said house is at north side. It is true that from the house of Kailash at about 250 fts. One residential area is situated and at a distance of 500 fts. another residential area is situated. It is true that in the well from which dead body of Ujwala was recovered, one electric motor was there which was tied with iron wire and rope etc and electric supply was also provided.

10. *While recording my complaint I narrated to the police that dowry of Rs.50,000/- was given at the time of marriage and that it was given as per demand made by her in laws and husband. I had also narrated to police that she was not properly treated by accused since beginning, cannot assign any reason as to why it is not so mentioned. While recording my complaint I narrated that I had already given dowry of Rs.50,000/- as her father*

i.e. no more from where I should give amount to them. I cannot assign any reason (omission is only "dowry of Rs.50,000") as to why it is not so mentioned in my complaint.

11. It is true that on 29.12.13 phone call was made by Kailash to Ashok and not to me. Ujwala was not possessing mobile. It is true that prior to lodging of complaint I had not disclosed to any one about the ill-treatment given to Ujwala by all accused. It is true that even her mother or any of her relatives had not lodged complaint about said ill-treatment. During the period of 29.12.13 till finding of dead body of Ujwala, I along with all my relatives were visiting Pargaon daily. It is true that while proceeding to my village from Pargaon, Kawadgaon is the first village on that route on Nagar Pathardi road. I am not aware that police chawky situated is on the said road at Kawadgaon. It is true that while lodging report I had not disclosed to the police that to whom I had handed over Rs.50,000/- at the time of marriage. It is not true that I incurred the said expenses of Rs.50,000/- in marriage. I informed about ill-treatment and harassment of Ujwala by all accused to Gangadhar but I cannot tell the date, time and month. But no joint meeting was called. It is not true that I have falsely deposed that since beginning all accused were ill-treating her on account of offering gifts to them in village (manpan in marriage) and on account of Rs.50,000/- as dowry. It is not true that at the time of settling marriage it was decided that both parties shall

bear their own expenses of marriage. It is not true that I have falsely deposed that accused demanded Rs.50,000/- towards dowry amount. It is not true that accused never demanded the dowry amount and I have never paid. It is not true that I have falsely deposed about incident dt. 29.12.13 that accused mother in law and sister in law badly beaten Ujwala in my presence and demanded Rs.10,000/- for medical expenses of Kailash.

It is true that on 1.1.14 my all relatives were present till conducting postmortem and funeral. It is true that during all this time police were also with us. Funeral was conducted at 7.00 p.m. It is true that during that time we all relatives discussed the issue and decided to lodge complaint of the incident and accordingly, I lodged the complaint. It is not true that I lodged false complaint against all accused after discussing the issue with my relatives. It is not true that Ujwala was happily residing in her matrimonial home. It is not true that she was never ill treated by her in laws on account of demand of dowry.

10. Evidence of PW 3 Manda may not be of much assistance as what has been stated by her does not find place in the postmortem report. There is no mention about the scars in the postmortem report.

11. Evidence of brother of deceased Ashok Baban Kardile i.e. PW 4, if perused, it is clear that there are omissions, relevant portion of the deposition is as under :-

“15. While recording my statement I had not narrated that my maternal aunt Chandrakala Shidore had also given money to accused no.1. I had also not narrated that husband of accused no.4 demanded Rs.1,00,000/- from us. But I narrated that my maternal uncle Subhash had given Rs.1,00,000/- to the accused No.3. I cannot assign any reason as to why such portion is not appearing in my statement.

16. I cannot tell the exact day, month and year when the amount was demanded by accused and handed over by us. I even cannot tell the date, month and year when my maternal uncle and maternal aunt had handed over the amount to the accused persons. I cannot tell the exact date, month and year when my maternal uncle handed over Rs.1,00,000/- to accused no.3.

17. It is true that prior to the marriage of Ujwala with Kailash, marriage of his both sisters was performed and both of them were residing at their matrimonial houses. It is true that within 1 years after marriage accused no.1 had suffered with accident. It is true that due to the two accidents suffered by Kailash he incurred expenses of Rs.7 yo 8 lakhs in hospitalization and medical treatment.

18. It is true that till recording of my statement on 2.1.14 had not narrated about the demand made by

accused and ill treatment offered to my sister to any one. I had also not lodged any complaint to that effect. It is true that my mother, my maternal uncle and my maternal aunt had also not lodged any complaint to any one till recording of their statement on 2.1.14.”

12. PW 8 i.e. Doctor has categorically admitted that he cannot say that in the well if water level of around 2 fts or up to knee level is there, there is no possibility of causing death of any person due to drowning. Doctor who conducted postmortem report could not be examined as he was already dead.

13. Sessions Court has considered the said aspect properly. It is trite that if the judgment of the Sessions Court acquitting the accused is based on sound reasoning and is a plausible view the same shall not be interfered by the Appellate Court. The view adopted by the Sessions Court is possible view.

14. In light of above discussion, appeal is dismissed. No costs.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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