

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.: 259 OF 2000

Sunil S/o Pralhad Metkar,
Age: 49 years, Occu.: Service,
R/o Pimprala, Tq. & Dist.
Jalgaon.

... **APPLICANT.**
[ORIGINAL ACCUSED]

VERSUS

The State of Maharashtra
Through its Public Prosecutor,
High Court of Judicature of
Bombay, Bench at Aurangabad.

... **RESPONDENT.**

Mr. Joydeep Chatterjee, Advocate for the Appellant.
Mrs. M. A. Deshpande, A.P.P. for the Respondent.

CORAM:- T. V. NALAWADE, J.
DATED:-
RESERVED ON:12th MARCH, 2015.
PRONOUNCED ON 17th MARCH, 2015.

JUDGMENT:

1. The appeal is filed against judgment and order of Sessions Case No.278 of 1994 which was pending in the Court of Additional Sessions Judge, Jalgaon. The trial Court has convicted and sentenced the Appellant for offences punishable under Sections 498-A and 306 of I.P.C. The sentence of R.I. for 5 years if given for the offence

punishable under section 306 of I.P.C. and both the sentences are made to run concurrently. Both the sides are heard.

2. Deceased Chhaya was daughter of complainant Devidas. She was given in marriage to the Appellant in the month of May, 1993. It is the case of the State that in the marriage, as per the agreement the dowry of Rs.10,000/- was given by the complainant to the Appellant. It is the case of the State that the deceased had visited to the house of her parents situated at Washi in the Tahsil Shahapur, District Thane on two occasions at the time of festivals after the marriage. The appellant is the resident of Pimprala.

3. It is the case of the State that the deceased had disclosed to her father that her husband, appellant is addicted to liquor and he was giving beating to her. She had also disclosed that the in-laws were also saying that they were in need of money and they were harassing her. It is the case of the State that the deceased had disclosed to the parents during her visit which took place after Diwali festival of 1993 that her husband had asked her to bring Rs.10,000/- from her parents. There was ill treatment to her on that count also. After hearing about this demand,

the complainant who is in service had advised the deceased to ask the appellant to make demand directly to him. On that occasion, the deceased was taken back to the house of the Appellant by brother of the Appellant.

4. The incident in question took place in the early hours of 1st February, 1994. When Appellant got up, he noticed that the deceased was not present in the house and she had left the matrimonial house without informing anything. The Appellant and the parents realised that deceased was missing. They called Ganesh, brother of the Appellant and asked him to do needful. Ganesh search for the deceased and during search he found that pair of Chappal of the deceased and one water pot were lying near a well. He attempted to find out as to whether the deceased was inside the water of the well but he could not trace her. He gave missing report to police on 1st February, 1994 itself. With the help of employees of fire fighting department of Jalgaon search was made in the well and then the dead body of the deceased was taken out from the well in the night time.

5. Information about the incident was given to the complainant in late hours of the night between 1st February, 1994 and 2nd February, 1994. The complainant

went to Jalgaon. He gave report to police. He was on deputation for training purpose at Chandrapur at the relevant time and he reached Jalgaon on 2nd February, 1994. He gave report against the husband and his parents and the crime came to be registered for the aforesaid offences.

6. During course of investigation, the spot Panchanama was prepared, inquest report was prepared and p.m. was conducted on the dead body. The statements of witnesses came to be recorded and charge sheet came to be filed against the husband and parents of the husband for aforesaid offences.

7. To the charge, all the accused pleaded not guilty. Prosecution examined three witnesses to prove the aforesaid offences. The defence admitted some documents which include the missing report given by Ganesh, the P.M. report, inquest Panchanama etc. The spot Panchanama came to be proved by examining a Panch witness. The trial Court has believed the witnesses but it has held that the evidence is not sufficient to convict the parents of the husband.

8. For proving the offence of cruelty under section 498-A of I.P.C. the prosecution has given evidence on so called

disclosures made by the deceased to the prosecution witnesses. To make that evidence admissible under section 32 of the Evidence Act, it is necessary for prosecution to prove that it is the case of suicide. For proving suicide, the prosecution has relied on the record like P.M. Report, Inquest Panchanama, Spot Panchanama and also some circumstances.

9. The spot Panchanama is proved in the evidence witness Ashok (P.W.3). The Panchanama dated 1st February, 1994 shows that the well had the depth of more than 25 ft. and the depth of the water was 25 ft. The water was at the distance of 4 ft. from the ground level and the well had the diameter of 10 ft. The well was taken by the side of a brook and there was free flowing water in the brook also. The incident took place in February and it can be said that there was water outside of the well also and it was possible to anybody to take water from the brook. The pair of Chappals was lying outside of the well. There was no arrangement to the well for lifting the water from the well. There was not even a rope which could have been used for taking the water from well by using a pot.

10. It is not disputed that the death took place due to drowning. The missing report given by the brother of the

Appellant is admitted and it shows that to Ganesh it was informed that without informing anybody the deceased had left home. She had not informed that she was leaving house to answer nature's call. No evidence is given to show that the deceased used to go to that side to answer nature's call and the persons of that locality used to take water from that well. Even in the statements given under section 313 Cr.P.C. (Answer to question No.10) the Appellant has admitted that on that day deceased had left matrimonial house without informing to anybody and her destination was not known to the Appellant.

11. When the aforesaid record and circumstances show that the deceased was in the company of the Appellant on the night between 31st January, 1994 and 1st February, 1994 in view of the aforesaid circumstances it was necessary for the Appellant to say something as to why the deceased had left matrimonial house without informing anything to anybody. In view of these circumstances, this Court holds that evidence is sufficient to infer that the deceased had gone towards that well to commit suicide and she committed suicide by jumping into the well.

12. Devidas (P.W.1), the father of the deceased has given evidence that deceased was given in marriage to the

Appellant in the month of May, 1993. He has given evidence that by way of dowry he had given Rs.10,000/- to the appellant. His evidence shows that deceased had visited the parents house after two days of the marriage but on that occasion there was no disclosure of ill-treatment. His evidence shows that the second visit was for Diwali festival 1993 and on that occasion she had stayed in the house of her parents for about three months. He has given evidence that deceased disclosed on that occasion, that the appellant was addicted to liquor and he used to give beating to her and she was asked to bring Rs.10,000/- from her parents. His evidence shows that he had advised the deceased to ask Appellant to make the demand directly to him. The report given by P.W.1 is duly proved at Exhibit-31 and it is consistent with material points mentioned in the substantive evidence of P.W.1. It can be said that in cross examination, the so called omission about disclosure is not properly recorded. Even if there is a mention about the disclosure made at the time of Diwali festival, it is mentioned that the specific disclosure about his bad habits and giving of beating was not made by the deceased. The disclosure mentioned in FIR firstly was in respect of both the visits and so it cannot be said

that there was omission in respect of the ill treatment given to her.

13. Suman (P.W.3), mother of the deceased has given similar evidence. Her evidence is on the disclosures made by the deceased about the ill-treatment and illegal demand made by the Appellant. Her evidence shows that it is the brother of the husband who had come to their house to take back the deceased to matrimonial house after Diwali festival.

14. Sunanda (P.W.4), a sister of the deceased is a resident of Jalgaon. Her evidence is similar in nature. She has deposed that on one occasion the deceased had visited her house with brother Rajendra and on that occasion the deceased had disclosed that the husband was addicted to liquor and he was giving beating to her. Her evidence shows that the parents of the husband of deceased used to visit her house. Much was argued by the learned counsel for Appellant in respect of the evidence of Sunanda. It was submitted that she did not take steps to see that no ill-treatment is given to the deceased even when she was living in Jalgaon.

15. It can be said that there is evidence of close relatives of the deceased like parents and sister to prove the ill-

treatment. This Court has already observed that on that night the deceased was in the company of the Appellant. In view of the nature of defence of the Appellant that he does not know as to why the deceased had left his house, in the early hours, this Court holds that adverse inference needs to be drawn against the Appellant in view of the provisions of section 106 and 114 of Evidence Act. The incident took place in the month of February, i.e. after more than one month of her return to matrimonial house from parents house. The evidence on record shows that the Appellant was not showing interest in taking search of the deceased and it is Ganesh who did the needful. This conduct of the husband cannot be ignored. There is specific evidence that the husband was addicted to liuquor and such disclosure was made by the deceased. He used to give beating to her. She was from educated family and her father was working in Forest department. What amounts to cruelty depends on the facts and circumstances of each and every case. This Court has no hesitation to hold that the aforesaid evidence is sufficient to prove that there was ill-treatment to the deceased. The husband had made demand of Rs.10,000/- and he was addicted to liquor and he used to give beating to the

deceased. The prosecution has proved that the deceased committed suicide within seven years of the marriage.

16. The learned counsel for the Appellant placed reliance on many reported cases like **1993 CRI.L.J. 3019 [Ravindra Pyarelal Bidlan and others V/s State of Maharashtra]. AIR 2007 S.C. 2045 [Bhagwan Das V/s Kartar Singh and others], AIR 2011 SC 1238 [M. Mohan V/s State Represented by the Deputy Superintendent of Police], SCC 2002-2-619 [Gananath Pattnaik V/s State of Orissa], 2007 (2) SBR 47 [Devender Singh V/s State of Haryana], 2008 (5-6) SBR 253 [Sohan Raj Sharma V/s State of Haryana], 2009 (3) SBR 280 [Anand Kumar V/s State of M.P.] 2007 (8) SBR 260 [Dr. Hazarilal V/s State of M.P.], 2009 (11-12) SBR 178 [Amalendu Pal @ Jhantu V/s State of West Bengal], 2009 (1) SBR 41 [State of Andhra Pradesh V/s M. Madhusudhan Rao], 2013 ALL SCR 1181 [Atmaram S/o Raysingh Rathod V/s State of Maharashtra], and 2001 AIR (SC) 3837 [Ramesh Kumar V/s State of Chhattisgarh].**

17. On the other hand, the learned A.P.P. placed reliance on two cases of the Apex Court like decision in **Criminal Appeal No. 2146 of 2009 [Bhim Singh and Anr. V/s**

State of Uttarakhand] and decision given in ***Criminal Appeal No. 134 of 2000[Gulab S/o Madhukar Ghorpade V/s The State of Maharashtra]***. The observations made by High Courts and the Apex Court show that even if presumption under section 113-A of Evidence Act is made available, the presumption can be drawn by the Court after considering all other circumstances of the case as the circumstance may strengthen the presumption or may dictate the conscious of the Court to abstain from drawing the presumption. It is laid down that the presumption is discretionary and it is rebuttable one. There cannot be any dispute over this proposition. However, there is also one more presumption available i.e. under section 114 of Evidence Act if the explanation is not given in a case which is covered by section 106 of Evidence Act.

18. This Court has discussed the law in Criminal Appeal No.134 of 2000 (supra) and the observations are as under:

“26. From the wording of Section 113-A of Evidence Act, (the word may) it can be said that the presumption under Section 113-A is not mandatory presumption. The provision further shows that such presumption can be drawn after having regard to all other circumstances of the case. In the case reported

as “Ramesh Kumar V/s State of Chhattisgarh” (AIR 2001 SC 3837) the Apex Court has laid down that the term “all other circumstances of the case used in Section 113-A of Evidence Act requires cause and effect relationship between cruelty and suicide needs to be established before drawing the presumption. It is further laid down by the Hon'ble Apex Court that presumption is rebuttable in nature.

27. The provision of Section 498 (A) of Indian penal Code runs as under :-

“498-A - Husband or relative of husband of a woman subjecting her to cruelty. -- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term who may extent to three years and shall also be liable to fine.

Explanation. -- For the purpose of this section, “cruelty” means --

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

28. In the case reported as Girdhar Tawade Vs State of Maharashtra (2003 Bom. C.R. (Cri.) 575) the Hon'ble Apex Court has made following observation:

“The basic purport of the statutory provision in Sec. 498-A is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislature : Whereas explanation (a) involved three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical and thus involving a physical torture or atrocity. In explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislature intent expressed is equally heinous to snatch the physical injury ; whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of section 498-A.”

It is further observed by the Apex Court at para Nos.16, 17 and 18 that in order to bring home guilt for offence u/sec. 498-A of IPC., willful act or the conduct of the Accused which have direct relations to the death, need to be established.

29. In Explanation to Section 498-A Indian Penal

Code, there are two words like “willful” indicating the intentional conduct of the accused and “likely” indicating that the accused is supposed to anticipate the effect of his conduct. The word shows that the accused being husband or relative of husband, if they are involved in such of case, they can not be allowed to say that they had not anticipated such reaction, of suicide of the deceased due to their conduct of the ill-treatment. They are the best persons who know what kind of ill-treatment deceased was receiving and at the relevant time what actually happened. It is already observed that the provisions of Sections 106 and 114 of Evidence Act can be used against such accused and so both the words - “willful” and “likely” need to be read together. In the result the word “willful” cannot be taken in strict sense of “intention” in such cases.”

19. This Court has already discussed the substantive evidence and relevant circumstances. This Court has no hesitation in observing that in view of the facts and circumstances of the present case presumption under section 113-A of Evidence Act needs to be drawn at-least against the husband. The prosecution has proved that there was ill-treatment as defined under section 498-A of I.P.C. and the deceased committed suicide within 7 years of the marriage. The trial Court has property appreciated the

evidence of the case. This Court see no reason to interfere in the conviction given against the Applicant. On the point of penalty it can be said the imprisonment of 5 years is on lower side and so there is no possibility of interference on the point of penalty also. Thus, there are no merits in the appeal and therefore appeal stands dismissed. Appellant is to surrender to the bail bonds for undergoing sentence.

[T. V. NALAWADE, J.]

Dated:17/03/2015.
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