

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

Criminal Appeal No.355 of 2000

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| 1) | Rajkumar Baban Muthe, |) | |
| | Age 22 years, |) | |
| | Occupation : Driver. |) | |
| | |) | |
| 2) | Baban Chimaji Muthe, |) | |
| | Age 49 years, |) | |
| | Occupation : Service. |) | |
| | |) | |
| 3) | Chandrakala Baban Muthe, |) | |
| | Age 40 years, |) | |
| | Occupation : Household, |) | |
| | All R/o Bhoirepathar, |) | |
| | Taluka Nagar, |) | |
| | District Ahmednagar. |) | .. Appellants. |

Versus

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| * | The State of Maharashtra. |) | .. Respondent. |
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Shri. R.N. Dhorde, Senior Advocate, holding for Shri. B.T. Bodkhe, Advocate, for appellants.

Shri. A.V. Deshmukh, Additional Public Prosecutor, for respondent.

CORAM: T.V. NALAWADE, J.

Judgment reserved on : 19th January 2015.

Judgment pronounced on : 17th February 2015.

JUDGMENT:

1) The appeal is preferred against the judgment and order of Sessions Case No.82/1997 which was pending in the Court of the 3rd Additional Sessions Judge, Ahmednagar. The appellants are convicted and sentenced for offences punishable under sections 304-B, 306, 498-A, 34 of the Indian Penal Code. Maximum sentence of imprisonment of 7 years is given to each of the appellant for offence punishable under section 304-B of the Indian Penal Code but no separate sentence is given for offence punishable under section 306 of the Indian Penal Code. Both the sides are heard.

2) The deceased Pushpa was a daughter of complainant, Raghu. She was educated up-to 8th Standard. She was given in marriage to appellant No.1, Rajkumar (accused No.1) on 2-5-1996. Appellant Nos.2 and 3 (accused Nos.2 and 3) are the parents of appellant No.1. Appellants are residents of village Bhoirepathar and the complainant is resident of Kamargaon. The distance between the two villages is around 4 kilometers if shortcut road is used.

3) According to the complainant, dowry of Rs.20,000/- was given by him to the appellants at the time of marriage. It is his case that after three months of the marriage, the appellants started making demand of Rs.10,000/- and they were saying that they wanted to purchase a cross-breed cow by using this amount. There was ill-treatment to the deceased on this count and the deceased used to disclose about the ill treatment. After knowledge of the ill-treatment the complainant went to the place of the appellant and he promised them to give the amount after 5 to 6 months when he was likely to get some money after harvesting the crop. He tried to convince them to behave properly with the deceased.

4) After one month of the aforesaid incident, the deceased again visited the house of her parents and disclosed that the ill-treatment was continued to her as the demand of Rs.10,000/- was not met with. She disclosed that the appellants were giving beating to her, they were starving her and they were harassing her by giving abuses. The complainant again visited the house of the appellants and promised to give the amount in near

future and tried to convince them not to give ill-treatment to the deceased. The deceased visited the house of her parents on 2 to 3 more occasions and on every occasion she disclosed that still there was ill-treatment to her. Nandu, son of the complainant, visited the matrimonial house of the deceased and on that occasion also the deceased disclosed to him about the ill-treatment.

5) On 12-2-1997 the deceased lastly visited the house of her parents at 12.00 noon she disclosed that the accused had asked her to bring Rs.10,000/- immediately from her parents as they wanted to purchase a cow. She disclosed that beating was given to her and she was sent to them to bring the money. She stayed in the house of her parents on that day. On 13-2-1997 Nandu reached the deceased to her matrimonial house. The complainant had asked Nandu and the deceased to inform the appellants that the promise will be fulfilled within one month.

6) The incident in question took place on the night between 13-2-1997 and 14-2-1997. Appellant No.1 visited the house of the complainant on the morning of 14-2-1997 and informed that the deceased had left the matrimonial

house at 6.00 a.m. for answering nature's call but she had not returned to home. Appellant No.1 had come there in search of the deceased. He informed that he had already searched for the deceased in his village, Bhoirepathar.

7) The complainant, Nandu, Raosaheb (nephew of the complainant) and others went to Bhoirepathar, the village of the appellants. They made search in the water reservoir of the village and there they found the dead body of the deceased. The dead body was sent for post mortem examination. The deceased was not knowing swimming. The death took place due to asphyxia due to drowning. The report came to be given to police at 7.35 p.m. and the crime came to be registered for aforesaid offences.

8) AD report was given by Raosaheb and during inquiry of AD case, spot panchanama was prepared by police. One sleeper and one tin pot having half liter of water were found on the eastern bank of the reservoir. They came to be seized under spot panchanama. Depth of the water was measured and it was found that at the centre the depth was more than the depth on the banks

and the dead body was recovered from the centre of the reservoir.

9) A.P.I. Shri. Avhad of Police Station Nagar made investigation of the crime. He recorded statements of aforesaid persons and other witnesses. He collected post mortem report. He filed charge-sheet for the aforesaid offences. When charge was framed and plea of the accused was recorded, the accused pleaded not guilty.

10) The record like spot panchanama, inquest panchanama and panchanama of the house of the accused is admitted by the defence. All the witnesses examined to prove the ill-treatment given to the deceased and to prove illegal demand of Rs.10,000/- have stuck to the versions given before police and they are believed by the trial Court. The accused took defence that the deceased had gone towards the side of the reservoir to answer nature's call and she probably fell in the water accidentally. They denied the allegations of ill-treatment made against them and the allegation that they had made illegal demand of Rs.10,000/-.

11) To ascertain as to whether the deceased committed suicide or she accidentally fell in the water, the evidence of spot panchanama, map of the scene of offence and the conduct of the accused need to be seen. Shri. Gorakhnath Gade (PW 6), the surveyor prepared the map, Exhibit 29. His evidence shows that the wall of the reservoir is on north side of the water and it is in east west direction. The wall had the length of 16 meters and the width of the wall on the top was 0.65 meter. The height of the wall on other side, at north was 2.40 meters. The houses of the villagers including the house of the accused were situated at the distance of more than 100 meters from the reservoir and they were towards west side of the reservoir. To North side of the reservoir there was village road.

12) The spot panchanama Exhibit 26 was prepared on 14-2-1997 and it is proved in the evidence of Gulab (PW 5). This document needs to be given more importance as the level of the water was measured on 14-2-1997. Though Gulab (PW 5) is cross-examined by learned APP as he gave some admissions in the cross-examination in

favour of the accused, the evidence on the spot panchanama cannot be discarded. The things which are noticed on the spot are required to be mentioned in the panchanama and more weight needs to be given to the description of the things recorded in the document than the oral evidence given after many months. It can be said that the panch witness tried to speak something more which is not mentioned in the spot panchanama and those things would have been mentioned if they were really there. Such evidence of the panch witness can be safely ignored. Further there is evidence of Investigating officer (PW 7) on the things which are described in the spot panchanama.

13) The spot panchanama (Exhibit 26) shows the description of the water reservoir. This document is consistent with the evidence of the surveyor. The depth of the water was 3.5 ft at the eastern and western banks of the reservoir on 14-2-1997. When the spot panchanama was prepared, the depth of the water was 7 feet at the centre of the reservoir. One sleeper and one tin pot having half liter of water were found on the eastern bank of the

reservoir. The houses are situated towards western side of the reservoir. On the eastern of the reservoir there was standing crop of wheat and on the western side there were fields but no standing crops were there in those fields.

14) Nandu (PW 3), brother of the deceased has given evidence that it is Balasaheb Sathe, who entered the water to search the deceased. According to him, Balasaheb noticed something at his feet and so he had dragged it outside and it was the dead body of deceased Pushpa.

15) Raosaheb (PW 4) is also relative of the complainant and he has given similar evidence.

16) The evidence of the father (PW 1), Nandu (PW 3) and Raosaheb (PW 4) shows that accused No.1 had come to them on 14-2-1997 in early morning and he had informed that the deceased was not at home since 6.00 a.m. On that day the dead body was taken out from the reservoir at 12.00 noon. The admitted document, PM

report (Exhibit 14) shows that there was watery fluid of 300 ml in the stomach of the deceased and there was gas in small intestine and large intestine. The death took place due to asphyxia due to drowning. Thus no food was found in the digestive system at any place.

17) The incident took place in February when sun rises late. The panchanama of the house of the accused (Exhibit 31) shows that there was separate room for the accused and the deceased. If the deceased had left the matrimonial house early in the morning it was within the knowledge of the husband only. If the defence taken by the accused and the information supplied by the accused to the complainant was correct, then in ordinary course the husband and the relatives would have rushed to the reservoir and they would have made search for the deceased. This did not happen. No explanation is given by the husband as to why he did not go towards the side of the reservoir before approaching the parents of the deceased. The distance between the locality and the reservoir was not much and things could have been manipulated. The post mortem report discussed above

shows that it was necessary for the husband to explain many things but the explanation is not given by the husband. There is clear possibility that the deceased had not taken meal on the previous night.

18) Considering the depth of the water at the banks of the reservoir which was hardly 3.5 feet and the fact that person who entered the water to search the deceased found dead body at distance from bank shows that it was not possible that the deceased accidentally fell the water.

19) The water had spread upto the distance of 150 feet from the wall of reservoir and the reservoir was constructed on a small stream let. The depth was more only at the center. All these circumstances rule out the possibility of accidental fall. The aforesaid conduct of the husband shows that he is hiding something. Burden to explain the aforesaid things was on the husband. It was unnatural death though the possibility of suicide is more. In such cases provisions of Sections 106 and 114 of the Evidence Act can be used at least against the husband. On this point reliance can be placed on a recently decided

matter by the Apex Court i.e. **Criminal Appeal No.827/2008 (Dasin Bai @ Shanti Bai v. State of Chhattisgarh)**. No such explanation is offered.

20) To prove that there was illegal demand made by the husband and to prove that there was ill-treatment to the deceased, the prosecution has placed reliance on the evidence of PW 1 to PW 4. PW 1, father of the deceased, has given evidence that he had given dowry at the time of marriage. His evidence shows that there was demand of Rs.10,000/- made by the accused after three months of the marriage and they wanted to purchase cross-breed cow. He has given evidence that the deceased disclosed about the demand and also the ill-treatment and then he made inquiry directly with the accused and he tried to convince them not to give ill-treatment to the deceased. He has given evidence that the accused were not providing food and they were giving beating and they were insulting the deceased. The last incident had taken place 2 days prior to the date of incident in question. The deceased had disclosed that beating was given to her. Nandu, brother of the deceased has given evidence on the last incident and

there is evidence of Raosaheb also. Amount of Rs.10,000/- was not the small amount in the year 1996. In the cross examination PW 1 has admitted that accused had informed that on that morning the deceased had left the matrimonial house for answering nature's call and after that she had not returned. He has deposed that the depth of the water was 7 feet at the centre but it was 3 feet at the banks. There is no such mention in the FIR. However, this Court has discussed the spot panchanama on this point. In the examination-in-chief he has tried to say that there was pipeline upto the house of the accused and there was no need for them to go to the reservoir. This narration was not in the FIR. He has deposed about the distance between the reservoir and the house of the accused when there is no such mention in the FIR. However, this Court has discussed the evidence of the map of scene of offence. It is suggested by the defence that the family of the accused own agricultural land and they were having cows. This circumstance cannot make much difference. The FIR gives corroboration to the version of the complainant on all material points.

21) Ashok Sathe (PW 2), brother of the deceased is educated and working as teacher. He has given evidence that there was demand of Rs.10,000/- from the accused and such disclosure was made to him by the deceased. He has given evidence that on account of the demand there was ill-treatment to her and even beating was given to her. Though he was staying at other station, the place of his service, he used to visit the village on holidays and there is evidence that he had met the deceased after the marriage. In the cross examination he could not answer some questions about the age of the younger brother and sister of appellant No.1 and other family details of the appellants. However, these circumstances cannot make difference in view of the other facts and circumstances of the case.

22) Nandu (PW 3) other brother of the deceased, has given evidence that, the ill-treatment was started to the deceased after 3 months of the marriage. He is the person who had reached the deceased on the previous day of the incident to her matrimonial house. He has given specific occasions when the disclosures of ill-treatment

were made. His evidence shows that he had direct talk with the appellants. He has given evidence that the husband was giving beating and the in-laws were not speaking properly with the deceased. His evidence shows that on 13-2-1997 he had tried to convince the accused to treat the deceased properly and so more importance needs to be given to his evidence. His evidence is also on the point of search taken by them in the water reservoir. He has given evidence that every month the deceased used to come to her parents house and she was disclosing about the ill-treatment. He has tried to say that specific promise was given at the time of Diwali that the amount would be given after harvesting Jawar crop. He tried to say that on 12-2-1997 the deceased had disclosed that every now and then the accused were making demand. He deposed that on 13-2-1997 he had promised the accused to meet their demand. The defence tried to bring on record the aforesaid omissions in the statement given by this witness before police. However the evidence as a whole needs to be considered.

23) Raosaheb (PW 4) is the cousin of the deceased and nephew of the complainant. His evidence is of similar nature. He gave AD report which is at Exhibit 22. Though in the AD report there were no allegations, considering the purpose behind the AD report not much can be made out about this circumstance.

24) The evidence discussed above shows that the last disclosure was made by the deceased on the previous day of the incident. There is no reason to disbelieve the aforesaid witnesses. The death took place within 9 months of the marriage. Provision of section 113-A of the Evidence Act reads as under :-

“113-A Presumption as to abetment of suicide by a married woman.-- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-- For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860)".

25) The learned counsel for the appellants placed reliance on the following reported cases :"

- (1) **AIR 2007 SC 763 (Appasaheb v. State of Maharashtra);**
- (2) **2013 ALL SCR 1485 (Vipin Jaiswal v. State of A.P.);**
- (3) **2013 Cri.L.J. 2052 (Bakshish Ram v. State of Punjab);**
- (4) **2009 Cri.L.J. 3034 (Raman Kumar v. State of Punjab).**

26) Submissions were made that presumption under section 113-A of the Evidence Act is discretionary in nature and in view of the circumstances of the case it is up to the Court to decide as to whether the discretion needs to be used. There cannot be any dispute over these propositions. However, there is also conviction for offence punishable under section 304-B IPC. On this point there is a case recently decided by the Apex Court in **Bhim Singh v. State of Uttarakhand (Criminal Appeal No.2146 of 2009).**

27) The Apex Court has laid down that even such demand, demand made after solemnization of marriage, can be treated as downy and in such case conviction is possible for offence punishable under section 304-B, IPC and for that presumption under section 113-B of the Evidence Act can be drawn.

28) The husband was working as driver of four wheeler. In view of aforesaid circumstances, it cannot be said that financial condition of the appellants was very sound and they were not in need of money at all. The demand was made in the year 1996 and the submissions made show that the appellants were having some cows and they wanted more cows for expanding milk business. It cannot be said that the accused had not made demand. Burden was on the husband to explain the things and the circumstances which are already quoted by this Court. The circumstances already discussed point finger to the husband. It can be said that benefit of doubt can be given to the parents.

29) In the result this Court holds that there is no possibility of interference in the decision given by the trial Court as against the husband. There is also no possibility of interference in the sentence awarded to the appellant No.1. But benefit of doubt needs to be given to appellant Nos.2 and 3.

30) In the result, appeal of appellant No.1 husband is dismissed. He is to surrender to the bail bonds.

31) The appeal of the appellant Nos.2 and 3 is allowed. The judgment and order of conviction and sentence given against them is hereby set aside. They are acquitted of the offences for which they were charged. Their bail bonds stand cancelled. Fine amount if paid be returned to them.

Sd/-
(T.V. NALAWADE, J.)

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