

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

**Criminal Appeal No.393 of 2000
With
Criminal Application No.460 of 2015
And
Criminal Application No.461 of 2015**

Raju s/o Namdeo Magare,)
Age 27 years,)
Occupation : Koli Bodkha,)
Taluka Paithan,)
District Aurangabad.) .. **Appellant.**

Versus

The State of Maharashtra.) .. **Respondent.**

Shri. Sudarshan J. Salunke, Advocate, appointed for the
appellant.

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

Shri. H.P. Jadhav, Advocate, to assist the APP.

CORAM: T.V. NALAWADE, J.

Judgment reserved on : 12th February 2015.

Judgment pronounced on : 18th February 2015.

JUDGMENT:

1) The appeal is filed against the judgment and
order of Sessions Case No.132/1998 which was pending in

the Court of the Additional Sessions Judge, Aurangabad. The trial Court has convicted and sentenced the present appellant for offences punishable under sections 306, 498-A of the Indian Penal Code. Maximum sentence of imprisonment of three years is given and both the sentences are to run concurrently. Criminal Application Nos.460/2015 and 461/2015 are filed by the original complainant and the appellant. Submissions were made that the complainant has no grievance now and in the interest of the issues left behind by the deceased daughter of the complainant, the complainant is requesting for permission to compound the offences. In alternative, it was submitted that the sentence be reduced. Both the sides are heard. This Court has perused the record and proceeding.

2) Deceased Rekha was the daughter of the complainant Kerba. She was given in marriage to the appellant about 4 years prior to her death. The deceased has left behind one daughter and one son from the appellant.

3) It is the case of the State that after 3 years of the marriage ill-treatment was started to the deceased by the husband and his relatives. Few days prior to the date of incident, the appellant visited the house of the complainant and he demanded Rs.5000/-. He wanted to purchase a she-buffalo by using that amount. The complainant expressed his inability to give the amount as it was the big amount for him, he is a poor person. Due to refusal of the complainant to give the amount, the appellant gave more ill-treatment to the deceased. Allegations are made that the appellant used to harass and beat the deceased. On one more occasion the appellant visited the house of the complainant and demanded amount of Rs.5000/-. On that occasion he gave threat that if his demand is not met with, he will give divorce to the daughter of the complainant.

4) It is the case of the State that, the complainant and other relatives of the complainant had visited the matrimonial house of the deceased and they had tried to convince the husband and his relatives to behave well. The conduct of the husband and his relatives did not

improve. It is the case of the State that on many occasions the deceased was driven out of the matrimonial house and on every occasion they had somehow convinced the husband and his relatives to accept the deceased back in the matrimonial house.

5) It is the case of the State that on 12-5-1997 one Balu of the village of the appellant informed that Rekha was sick and she was suffering from pains. After receiving this message, the father and other relatives of the deceased went to the matrimonial house. They noticed that the deceased was lying outside of the matrimonial house and froth was coming from her mouth. In the bullock-cart of the appellant the complainant and other relatives of the complainant shifted the deceased to Pachod Rural Hospital and from there she was shifted to Government Hospital Aurangabad. Rekha died at about 2.00 hours of 13-5-1997 in Government hospital. The father gave report against the appellant and his relatives on 14-5-1997. Allegations are made in the report that due to the ill-treatment given to Rekha by the husband and his parents, Rekha consumed poison and committed suicide.

6) Crime came to be registered against the appellant and his relatives for the aforesaid offences. Poison was found to be consumed in the field of the appellant. One box of Endosulphan, a poisonous insecticide was recovered from the field of the appellant and it was seized. Post mortem was conducted on the dead body and viscera was sent for chemical analysis. In the viscera, "Endosulphan, Organo Chloro" insecticide was detected. The death took place due to this poison. Statements of witnesses came to be recorded and charge-sheet came to be filed against the appellant and his parents for the aforesaid offences.

7) In the trial Court the prosecution examined only father (PW 1) and mother (PW 3) of the deceased to prove the ill-treatment. Doctor who conducted the post mortem examination was examined and CA report was produced. The appellant did not dispute that death took place due to poison. The trial Court has believed both the witnesses and has held that presumption available under section 113-A of the Evidence Act need to be used against the appellant. The appellant took defence of total denial.

He only contended that the deceased had desire to shift to city place like Aurangabad, she had liking for city life and as he refused to shift, she probably committed suicide.

8) PW 1 and PW 3 have given evidence that after three years of the marriage, the ill-treatment was given to the deceased. They have deposed about the demand of Rs.5,000/- made by husband and have contended that the appellant wanted to purchase a she buffalo. They gave evidence that this demand of the appellant was not met with. The evidence shows that demand was made directly by the appellant to the parents of the deceased. They gave evidence that deceased used to disclose to them that appellant was giving ill-treatment to her and at the end the appellant started giving threat of giving divorce to the deceased if his demand was not met with. The deceased used to disclose that the appellant used to give beating to her. Specific evidence is given that about 3 days prior to the date of incident, the husband had come to the house of the complainant, he had made demand of aforesaid amount and he had given threats of aforesaid nature.

9) Father (PW 1) has given evidence that on the next day of the visit of appellant to the house, PW 3 visited the house of the appellant to convince him to behave well. He has deposed that PW 3 returned and informed that the husband was still giving such threats. He has added that, the husband was asking the deceased to consume poison if she was not ready to take divorce. According to him, the last incident of ill-treatment took place on Saturday and the incident in question took place on Monday. Similar evidence is given by PW 3. It can be said that there is no specific mention in FIR that the last incident took place three days prior to the date of incident in question but not much can be made out from this omission. The FIR if read as a whole shows that husband was insisting to give amount and on one occasion, probably the last occasion, he had said that the amount needs to be given immediately to him.

10) In the cross-examination of PW 3 the defence has brought on the record that on the date of the incident in question there was a marriage of a son of the brother of the accused No.3 at Dawarwadi situated at a distance of

12 kilometers from the place of the appellant. It is brought on the record that the accused Nos.2 and 3, parents of the husband had gone to the village to attend the marriage. Thus the husband is admitting that he had not left the station. A suggestion was given by the defence counsel that when poison was consumed by the deceased, the husband was not present and he had gone to graze the cattle. This suggestion is denied. The evidence shows that when the parents of the deceased reached the house of the appellant, the appellant was at his house and the deceased was lying outside of the matrimonial house. The evidence is sufficient to infer that on that date the deceased and the appellant were together and at the residential place of the appellant the deceased consumed poison.

11) Suggestions are given by the defence counsel to the aforesaid witnesses that the deceased was not happy in the matrimonial home as she wanted to shift to Aurangabad, she wanted to shift to the city like Aurangabad. This suggestion is denied. The evidence of PW 1 and 3 shows that the deceased cohabited for about 4

years in the village, the native place of the appellant. She gave birth to two issues. They were living at Koli Bodkha, Tahsil Paithan. Even the parents of the deceased had not lived in Aurangabad and they are residents of Murma, Tahsil Paithan. Thus no probability is created by the husband that the deceased was not happy in the village and she wanted to shift to Aurangabad and the husband had refused to do so and due to that the deceased committed suicide.

12) In the year 1997 amount of Rs.5000/- was big amount and particularly for the parents of the deceased. It is not disputed that they are poor persons. No other probability is created by the husband and so the PW 1 and PW 3 need to be believed.

13) The evidence of PW 3, mother of the deceased shows that only after arrival of the parents of the deceased she was shifted to hospital and the bullock cart of the appellant was used. No material omission is found in respect of this version of PW 1 and PW 3. No explanation is given by the appellant as to why he had not

taken immediate steps for shifting the deceased to the hospital after he had noticed that the deceased had consumed poison. When the deceased was at home and when the appellant was present at the time of the incident, it was necessary for him to explain as to what had happened on that day due to which the deceased consumed poison to commit suicide. Thus, on one hand there is evidence of PW 1 and PW 3 that there was ill-treatment to the deceased from the appellant, which included beating and giving threat of divorce and it is a fact that the wife of the appellant committed suicide by consuming poison. On the other hand, no explanation at all is offered by the husband with regard to the aforesaid circumstances. As no explanation is offered, provisions Sections 106 and 114 of the Evidence Act need to be used against the husband and non explanation can be considered as one more circumstance against the husband. The trial Court has considered all the aforesaid circumstances.

14) The learned counsel for the appellant has placed reliance on the following reported cases.

- (1) **(2001) 9 SC 618 (Ramesh Kumar v. State of Chhattisgarh);**
- (2) **(2009) 13 SCC 330 (Manju Ram v. State of Assam).**

15) There cannot be dispute over the propositions made in the aforesaid cases. Presumption made available under section 113-A of the Evidence Act is a discretionary presumption and it can be drawn having regard to all circumstances of the case even if there is the evidence on cruelty. This Court has considered the evidence of cruelty and all the circumstances of the case. This Court has no hesitation to hold that this is a fit case where presumption under section 113-A of the Evidence Act needs to be drawn. In a recently decided case in **Criminal Appeal No.827/2008 (Dasin Bai @ Shanti Bai v. State of Chhattisgarh)** Apex Court has discussed circumstances in which the provision of section 106 of the Evidence Act can be used against the husband.

16) The aforesaid evidence is sufficient to prove that there was cruelty as defined in Section 498-A, Indian Penal Code. The evidence is sufficient to infer that due to

cruelty Rekha committed suicide. The presumption under section 113-A of the Evidence Act needs to be used against the appellant. The trial Court has sentenced the appellant with imprisonment of three years when imprisonment upto seven years can be given. Though prayer is made by the father of the deceased, the complainant to allow him to compound the offence, the offence is not compoundable. It can be said that the incident took place in the year 1997 and the two issues left behind by the deceased must have now grown up. It appears that the husband has married second wife and the complainant is interested to see that the issues from his daughter get share in the property of the appellant. For that he has filed such application in favour of the appellant. As the wife of the appellant committed suicide, due to the conduct of the appellant, not much can be made out due to the circumstances like application moved by original complainant in favour of the present appellant. The trial Court has given minimum sentence possible in such a case and so this Court holds that it is not possible to reduce the sentence further. The fear of the complainant that the appellant may not give share in the

property to the issues from the first wife has no base as he cannot deny the share to them in the property. There is no possibility of interference in the decision given by the trial Court. In the result, following order.

17) The appeal is dismissed. The appellant to surrender to the bail bonds for undergoing the sentence. Both the applications stand rejected.

18) The learned counsel was appointed for the appellant. His fees is quantified at Rs.4,000/- (Rupees Four Thousand only).

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

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