

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

CRIMINAL APPEAL NO. 442 OF 2000

Subhash Dadabhau Kale

Age : 25 Yrs., Occ. :Agriculturist,

R/o : Sarola Kasar, Taluka Nagar,

Dist. Ahmednagar.

.... APPELLANT/

[ORIGINAL ACCUSED]

V E R S U S

The State of Maharashtra

.... RESPONDENT/

[ORIGINAL COMPLAINANT]

.....

Mr. N.V.Gaware, Advocate for Appellant.

Mr. V.H.Dighe, A.P.P. for Respondent-State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 8th JULY, 2015

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JUDGMENT :

1. Present Appeal is directed against the Judgment and Order of conviction passed by the learned Extra Joint

District and Sessions Judge, Ahmednagar dated 17/11/2000 in Sessions Case No. 63/1999.

By the said Judgment and order of conviction, appellant is convicted for the offence punishable u/s 304-B,498-A of the Indian Penal Code. Learned Court below directed that the appellant shall suffer Rigorous Imprisonment for a period of seven years and to pay fine of ₹ 2000/- and in default to suffer simple imprisonment for six months. Though the appellant is convicted for the offence punishable u/s 498-A of the Indian Penal Code, no separate sentence is awarded on that count.

2. The prosecution case is in narrow compass. It is stated herein under :

Chandrakant Nivrutti Jadhav [P.W.6] was serving as Head Constable at Nagar Taluka police station. On 14/12/1998, when he was on duty in the police station, Police Constable Syed informed on telephone, on the basis of the information received from Doctor that one Padma Subhash Kale, resident of Sarola was admitted in the hospital due to the lock of her jaw and prior to her admission in the hospital, she was dead. Chandrakant Jadhav reduced the

said information in writing [Exh.12]. Entry to that effect was also taken in the station diary and accidental death proceedings were registered and he took the investigation of the same to himself. He went thereafter to the Civil hospital and conducted Inquest [Exh.13] over the dead body. He also visited spot at Sarola in presence of two panchas and spot panchanama [Exh.21] was also drawn. Two small packets containing insecticide powder were seized from the spot. He recorded statement of Mohan Kale, Dnyandeo Kale and Ganesh Kale.

3. Shrikrishna Rajdeo, Police Sub Inspector [P.W.8] was attached to Nagar Taluka police station. On 14/12/1998, when he was on duty, Shrimant Jadhav [P.W.1] came to the police station and lodged Complaint, in respect of which accidental death proceedings were already registered. Oral complaint of Shrimant Jadhav was reduced into writing by P.S.I. Rajdeo. He also obtained the signature of the complainant. The Complaint is at Exh. 15. P.S.I. Rajdeo noticed that the Complaint was disclosing the commission of cognizable offence, therefore, the offence was registered vide Crime No. 131/1998 u/s 304-B read with 34

of the Indian Penal Code against the persons named in the said complaint. He himself took the investigation of the said crime.

On 14/12/1998, accused persons were arrested. P.S.I. Rajdeo also recorded statements of the relatives of the deceased on the same date. On 19/12/1998, he also recorded statements of some other witnesses. Seized articles were sent under his requisition [Exh.35] to the Chemical Analyzer. After the completion of investigation, he submitted charge sheet in the Court.

4. After the committal, the case was registered as Sessions Case No. 63/1999 and was allotted on the file of Extra Joint District and Sessions Judge, Ahmednagar. Learned Judge of the Court below on 29/06/1999 under Exh. 5 framed Charge against the appellant and his parents Dadabhau Kale and Shakuntala w/o Dadabhau Kale. They were charged for the offences punishable u/s 304-B and 498-A read with 34 of the Indian Penal Code. All accused persons denied the charge and claimed for their trial.

In order to bring home the guilt of the accused, eight prosecution witnesses entered into witness box. Certain

documents like spot panchanama, seizure panchanama, postmortem notes and Chemical Analyzer's report were also relied by the prosecution during the trial.

5. Learned Judge of the Court below after full dressed trial, on 17/11/2000 acquitted the original accused Nos. 2 and 3, parents of the present appellant from all the charges. However, learned Judge of the Court below found the appellant guilty for the offences punishable u/s 498-A, 304-B of the Indian Penal Code.

6. Heard Mr. N.V.Gaware, learned counsel for the appellant and Mr. V.H.Dighe, learned A.P.P. for respondent – State. Both of them took me through the record and proceedings of Sessions Case No. 63/1999 minutely. They also submitted their respective submissions in support of their prayers. Mr. N.V.Gaware, learned counsel relied upon following reported cases :-

[i] 2007 AIR SC (S.C.) 763,

Appasaheb & Anr. Vs. State of Maharashtra.

[ii] **2005 ALL M.R. (Cri.) 2636,**

Aftab Alam Abdul Hamid Ansari Vs.

State of Maharashtra.

7. Name of the deceased is Padma. Her marriage was performed with the appellant prior to six months of the incident.

Shrimant Jadhav [P.W.1] and Nandu Jadhav [P.W.2] are father and brother of the deceased. Eknath Bothe [P.W.7] was the mediator of the marriage.

Rajendra Khobare [P.W.2] was one of the panchas, in whose presence spot panchanama [Exh.21] was drawn. Likewise, Tukaram Shelke [P.W.3] was panch in respect of the seizure of the clothes of the deceased under seizure panchanama [Exh.25].

8. Dr. Sharad Patil [P.W.4], was the Medical Officer at Ahmednagar on 14/12/1998. On the said date, he received requisition from Nagar Taluka police station for conducting postmortem on the dead body of deceased Padma. The requisition is at Exh. 27. As requested, Dr. Sharad Patil [P.W.4] along with Dr. Mrs. Barawkar conducted

autopsy over the dead body. They found no surface wound on the dead body. Postmortem notes [Exh.28] were drawn. At the time of conducting postmortem, Dr. Sharad Patil reserved his opinion in respect of the death. He preserved viscera. Viscera was sent to Chemical Analyzer. Chemical Analyzer's report in respect of viscera is at Exh. 29. It shows detection of Organo Phosphorous Insecticide Phorate [Thimate] in the viscera. On the basis of the Chemical Analyzer's report, Dr. Sharad Patil opined that death of Padma was due to Cardio Respiratory failure due to pulmonary Odema due to organo Phosphorous poison.

9. Undisputedly, Padma died unnatural death. It is the specific case of the prosecution that Padma committed suicide on 14/12/1998.

10. The question which falls for consideration of this Court is, whether the appellant could be held responsible for suicidal death of Padma ?

11. It is not in dispute that marriage of deceased was performed with the appellant prior to six months of the

incident.

12. It would be useful to reproduce the provisions of Section 498-A and 304-B of the Indian Penal Code and also Section 113-B of the Indian Evidence Act.

“ S. 304-B.(1) : Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation : For the purposes of this sub-section, “dowry” shall have the same meaning as in S. 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to

imprisonment for life ”.

“ S.498-A. 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 which may extend to three years and shall also be liable to fine.

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

(a) any wilful 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 ”.

“ S. 113-B. Presumption as to dowry death : - When the question is whether a person has committed the dowry death of

a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death ”.

13. The plain reading of Section 113-B of the Indian Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with the demand of dowry, then only presumption can be drawn that a person has committed the dowry death of a woman.

14. In one of the recent authoritative pronouncement of the Hon'ble Apex Court in Major Singh & another Vs. State of Punjab reported in AIR 2015 Supreme Court 2081, the Hon'ble Apex Court in para No. 15 of the said authoritative pronouncement has observed as under,

“ To attract conviction under Section 304-B, IPC, the prosecution should adduce evidence to show that “ soon

before her death ”, the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of Hira Lal & Ors. Vs. State (Govt. of NCT) Delhi (2003) 8 SCC 80 : (AIR 2003 SC 2865), in paragraph (9), it was observed as under :

“ 9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B, IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before ” is very relevant where Section 113-B of the Evidence Act and Section 304-B, IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a

relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B, IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114, Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession ". The determination of the period which can come within the term "soon before" is left to be determined by the Courts,

depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence ”.

15. It would be the reiteration of the dictum laid down by various judicial pronouncements that while enacting Section 304-B of the Indian Penal Code, Legislature also enacted Section 113-B of the Indian Evidence act for drawing of presumption about causing dowry death. But, for drawing such presumption, it has to be shown that “soon before” the death of woman, she had been subjected by such person to cruelty or harassment for or in connection with the demand of dowry.

16. Following has to be proved by the prosecution in view of the settled position of law, as settled by the Hon'ble Apex Court and by this court in respect of the raising presumption u/s 113-B of the Indian Evidence Act :-

- [i] Deceased was subjected to cruelty or harassment by her husband or his relatives.
- [ii] Such cruelty or harassment was for or in connection with any demand for dowry. Such cruelty or harassment was “soon before” the death.

Conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Indian Penal code shows that in the prosecution case there must be material to show that “soon before” her death, the victim was subjected to cruelty or harassment. Therefore, merely because a death has occurred within seven years of marriage, it can not be a ground to presume against the accused unless the aforesaid test is satisfied by the prosecution by adducing cogent and consistent evidence in that behalf.

17. In light of the above, let us scrutinize the evidence of the prosecution.

18. It is established through cross examination of Shrimant Jadhav [P.W.1] that there exist 2 – 3 houses of Kale family in the locality of the house of appellant and though there statements were recorded by Chandrakant Jadhav [P.W.6] during the accidental death proceedings. The evidence of Investigating Officer [P.W.8] Shrikrishna Rajdeo also shows that statement of witnesses other than relatives of deceased were recorded. These independent witnesses are not examined by the prosecution.

19. In order to prove that deceased was subjected to cruelty on account of demand, prosecution has examined only the father of the deceased Shrimant Jadhav [P.W.1] and her brother Nandu Jadhav [P.W.5].

20. Merely because the father and brother of the deceased, who are her close relatives are examined by the prosecution, that itself is not sufficient to view the prosecution case with tainted glasses. Evidence of close

relatives can not be rejected only on the said count.

While appreciating the evidence of interested or close relatives, the Court has to be on guard. Their evidence if inspires confidence and is corroborated on vital aspect and is free from embellishment, can be a foundation to secure the conviction.

21. Complaint dated 14/12/1998 [Exh.15] discloses that at the time of marriage, complainant Shrimant Jadhav [P.W.1] agreed to pay ₹ 21,000/- [Rupees Twenty One Thousand] and one wrist watch. According to the F.I.R. itself, ₹ 21,000/- were paid, however, only wrist watch was remain to be given to the appellant. F.I.R. Further proceeds that after the marriage of deceased, on 2-3 occasions Padma had been to her parental house. F.I.R. is completely silent that when she came on first 2 occasions, she disclosed any illtreatment, harassment, any demand to her by the present appellant.

However, according to F.I.R., on 05/12/1998 when deceased had been to the first informant's house, that time she disclosed that she is subjected to cruelty at the hands of her husband, the appellant and her parents-in-law

[acquitted accused] on account of wrist watch and sugarcane seeds. As per the F.I.R., for these two demands, she was subjected to beating, starvation and threat that if these two demands are not fulfilled, then she will be thrown on railway track. F.I.R. further states that on 09/12/1998, appellant with one Aba Kale and two others went to the house of first informant, that time, as per the F.I.R., first informant pleaded that Padma should not be illtreated at the hands of appellant. Upon that appellant stated,

“ तेव्हा त्यांनी मला मग कायमचीच तुमचेकडे ठेवा
असे वाकडे बोलला ”.

F.I.R. further states that on 11/12/1998, first informant's son Nandu reached Padma to her matrimonial house. After reaching her, when he came, he disclosed that appellant demanded ₹ 50,000/- for purchasing Tempo. F.I.R. is not a substantive piece of evidence. It can be used for the purpose of corroboration or contradiction.

The maker of F.I.R. [Exh.15] is Shrimant Jadhav [P.W.1]. His evidence would reveal that the said is completely silent in respect of the allegations made in the F.I.R. about :

- [i] beating
- [ii] abuses
- [iii] starvation; and
- [iv] disclosure to him by Nandu about demand of ₹ 50,000/- to him by appellant for purchasing Tempo.

If the evidence of Shrimant Jadhav [P.W.1] is analyzed, it shows that after the marriage, on three occasions deceased Padma had been to her parental house.

Firstly, she came to her parental house after four days of her marriage. That time, she stayed for 7-8 days.

Her second visit to her parental house was after two and half months.

Her last visit was after three months and that time she stayed for 2-3 days.

22. If the evidence of P.W. 1 Shrimant Jadhav [P.W.1] is scanned, then it is clear that during her first visit and during her stay for 7-8 days, she had not disclosed anything about demand or anything about any type of illtreatment to her.

In so far as second visit is concerned, as per the

evidence of Shrimant Jadhav [P.W.1], that time she complained that appellant was asking for wrist watch as well as sowing seeds of sugarcane. However, evidence of Shrimant Jadhav [P.W.1] is completely silent that during this second visit, Padma narrated any sort of illtreatment to her father on account of the alleged demand by the present appellant.

Deceased Padma's third visit to her parental house, as claimed by Shrimant Jadhav [P.W.1], is also corroborated by Nandu Jadhav [P.W.5].

Evidence of Shrimant Jadhav [P.W.1] in respect of the disclosure by deceased Padma about the demand from the appellant for wrist watch and sowing seeds of sugarcane, has no corroboration from Nandu Jadhav [P.W.5].

Claim of Shrimant Jadhav [P.W.1] that on her second visit, deceased Padma disclosed about the demand for wrist watch and seeds of sugarcane, is the uncorroborated version of the said prosecution witness.

23. As per the prosecution case, Padma's last visit to her parental house was after three months of her second visit. F.I.R. alleges that, that time it was disclosed to the maker of

the F.I.R. that deceased was subjected to cruelty like beating, putting her on starvation and extending threat that if the demands are not fulfilled, she will be thrown on railway track.

However, when the maker of the F.I.R. namely Shrimant Jadhav [P.W.1] was in witness box, he was completely silent about the serious allegations such as beating, putting deceased on starvation and throwing her on the railway track if the demands were not fulfilled.

On the contrary, his evidence would disclose that during the said visit, Padma stayed for 2-3 days and that time she disclosed that appellant was insisting her to bring wrist watch as well as sowing seeds of sugarcane, otherwise she should not reside at their house. His evidence also shows that on that count, she had illtreatment from all the accused persons. However, as observed, Shrimant Jadhav's evidence is silent about the specific serious allegations.

Further, evidence of Nandu Jadhav [P.W.5] is also silent about deceased Padma being kept on starvation.

24. Evidence of Nandu Jadhav [P.W.5] discloses that at the time of third visit of Padma, all the accused used to

beat her for their demand of wrist watch and seeds of sugarcane. His evidence also discloses that all the accused persons used to give threat to her that if the demands were not fulfilled, she would be thrown on the railway track.

As observed in the preceding paragraph, the maker of the F.I.R. namely Shrimant Jadhav [P.W.1] is completely silent in his evidence about the allegations made therein regarding throwing the deceased on railway track and beating. Thus, it is clear that the version of Nandu Jadhav [P.W.5] about beating and threat to throw the deceased on railway track, does not find support and corroboration from his father Shrimant Jadhav [P.W.1].

25. Further, Shrikrishna Rajdeo, the Investigating Officer [P.W.8] has stated that Nandu Jadhav did not state before him that when his sister was brought at his house at third time prior to 8-9 days of the incident, that time she was complaining against the accused that they used to beat her, used to tell that she should bring sowing seeds of sugarcane and wrist watch, otherwise she would be thrown on railway track.

Thus, the version of Nandu Jadhav [P.W.5] is not

only uncorroborated version but also to be found an improvement.

Evidence of Nandu Jadhav [P.W.5] does not disclose that lastly when he reached his sister to the house of appellant and after his return, he disclosed to his father Shrimant Jadhav [P.W.1] that when he had been to the matrimonial house of his sister, that time there was demand of ₹ 50,000/- for purchasing Tempo.

Though there is a reference of the same in the F.I.R., however, the author of the F.I.R. Shrimant Jadhav [P.W.1] is completely silent in that behalf during his evidence.

26. Thus, the evaluation of the prosecution case clearly shows that :-

[i] The author of the F.I.R. Shrimant Jadhav [P.W.1] is silent during his evidence about the serious accusations made therein.

[ii] Evidence of Shrimant Jadhav [P.W.1] and Nandu Jadhav [P.W.5] is not corroborating with each other on material

aspect.

[iii] Evidence of the prosecution witnesses is not trust worthy nor it inspires confidence that Padma was subjected to cruelty or harassment by the appellant.

[iv] Neither the quality of the evidence as available in the prosecution case discloses that deceased was subjected to cruelty and harassment in respect of the demand of dowry.

[v] The quality of the evidence in the prosecution case does not disclose that deceased Padma was subjected to cruelty and harassment soon before her death.

27. Though the version of independent witnesses were available and though their statements were recorded during the course of the investigation, they were not examined by the prosecution during trial.

28. In that behalf, it would be useful to have passing reference to the evidence of Eknath Bothe [P.W.7]. Admittedly, this witness was a mediator of the marriage. If

his evidence is to be believed, he stated that wrist watch remained to be given to the appellant. His evidence would disclose that as soon as he received telephonic message about the admission of Padma in the hospital when he was at village Walgi, he along with his wife and his daughter immediately came to Buradgaon, whereat the funeral of Padma was performed. His presence along with his family members and the fact that he was mediator, clearly discloses that he was close to Shrimant Jadhav [P.W.1]. Evidence of Eknath Bothe [P.W.7] is completely silent that anything was disclosed to him about the illtreatment. Normally, it would have been natural on the part of Shrimant Jadhav [P.W.1] or Nandu Jadhav [P.W.5] to disclose illtreatment to this mediator of the marriage.

29. The upshot of the aforesaid evaluation of the prosecution case leads me to pass the following order.

ORDER

- (i) Criminal Appeal No. 442 of 2000 is allowed.

- (ii) The Judgment and Order of conviction passed by the learned Extra Joint District and Sessions Judge, Ahmednagar dated 17/11/2000 in Sessions Case No. 63/1999 is hereby quashed and set aside.
- (iii) Appellant Subhash Dadabhau Kale is acquitted for the offences punishable u/s 304-B and 498-A of the Indian Penal Code.
- (iv) The bail bonds of the appellant stands cancelled.
- (v) Fine amount, if any, paid by the appellant, be refunded to him.

[V.M.DESHPANDE, J.]