

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

Criminal Appeal No.299 of 2001

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| 1) | Balasaheb s/o Kundlik Shinde, |) | |
| | Age 30 years, |) | |
| | Occupation : Agriculture, |) | |
| | R/o Pattiwadgaon, |) | |
| | Taluka Ambajogai, District Beed |) | |
| | |) | |
| 2) | Kundlik s/o Rangnath Shinde, |) | |
| | Age 48 years, |) | |
| | Occupation : Agriculture |) | |
| | R/o As above. |) | |
| | |) | |
| 3) | Kausalyabai w/o Kundlik Shinde, |) | |
| | Age 45 years, |) | |
| | Occupation & R/o As above. |) | .. Appellants. |

Versus

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| * | The State of Maharashtra. |) | .. Respondent. |
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Shri. N.L. Jadhav, Advocate, for appellants.

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

CORAM: T.V. NALAWADE, J.

Judgment reserved on : 13th MARCH 2015.

Judgment pronounced on : 17th MARCH 2015.

JUDGMENT:

1) The appeal is filed against judgment and order of Sessions Case No.89/1999 which was pending before the Additional Sessions Judge, Ambajogai, District Beed. The trial Court has convicted and sentenced the appellants for offences punishable under sections 498-A, 306 read with section 34 of the Indian Penal Code. Sentence of rigorous imprisonment of two years and three years respectively is given and both the sentences are made to run concurrently. Both the sides are heard.

2) Deceased Mangal was daughter of original complainant Babu Narwade. She was given in marriage to appellant No.1 about four years prior to her death. The deceased has left behind one daughter aged about 7 months. Appellant Nos.2 and 3 are the parents of appellant No.1. It is the case of the State that all the appellants were living in the same house where the deceased cohabited with appellant No.1.

3) It is the case of the State that ill-treatment was given to the deceased by husband and the parents of the husband as their demand of gold ring of 10 grams was not fulfilled. In the past the deceased had given a complaint to police and case was filed by the police for offence punishable under section 498-A of the Indian Penal Code against the husband and his parents. During pendency of the said case a compromise took place and as the husband gave undertaking in writing to behave well, Mangal returned to matrimonial house.

4) The deceased was brought to the house of her parents for first delivery about 6 to 7 months prior to her death. During her stay in the house of the parents, the deceased disclosed that husband and his parents were harassing her by saying that they were required to spend Rs.10,000/- on previous litigations like criminal case and the maintenance proceeding. It is the case of the State that the deceased disclosed that the husband and the parents were acting as per advice given of their Guru, accused No.4 and they were harassing her to make her to bring Rs.10,000/- from her parents. They were teasing her

and they were giving abuses to insult her. The deceased delivered a female child in the house of her parents. Due to aforesaid disclosure made by Mangal, the complainant was not ready to send her to the matrimonial house. The husband then came with some relatives and again gave undertaking that he will not give ill-treatment and so Mangal was sent to her matrimonial house and that was about 2 months prior to the death of Mangal.

5) After the deceased returned to the matrimonial house she sent one postcard to her father and informed her father that still there was ill-treatment to her. She informed that she was frustrated due to the conduct and approach of the husband. About 8 to 10 days prior to the death of Mangal, the complainant sent his son to the house of the appellants to bring Mangal to parents' house. The husband and his parents refused to send Mangal to the house of her parents on that occasion.

6) It is the case of the State that Mangal committed suicide due to ill-treatment given to her by her husband and parents of the husband and she jumped into

well of one Vajinath Raosaheb Shinde to commit suicide. The husband gave report after noticing the dead body and AD came to be registered in police station. Post mortem examination was conducted on 8-6-1999. Funeral was done on the dead body in the village of the complainant and the father of the deceased gave report to police on 10-6-1999. Crime was registered for the aforesaid offences. After completion of investigation charge-sheet came to be filed. The accused pleaded not guilty. The prosecution examined witnesses to prove its case and the defence examined some witnesses. The postcard which was lastly written by the deceased to her father was produced and it was proved. The trial Court acquitted accused No.4, the so called Guru but convicted the husband and his parents.

7) The case of the prosecution shows that the prosecution wants to prove the ill-treatment on the basis of so called disclosures made by the deceased. In view of this circumstance it becomes necessary for prosecution to first prove that Mangal committed suicide. The husband had given AD report (Exhibit 56) dated 7-6-1999. He had informed to police that the deceased had gone to the well

to fetch water and she accidentally fell in the well. The AD report was given at 23.30 hours.

8) The spot panchanama (Exhibit 21) is proved in the evidence of Chandrakant (PW 2). It was drawn on 8-6-1999 between 9.30 hours and 10.15 hours. This document shows that the well had depth of 32 feet and the depth of the water was 20 ft. The well had 11 steps for getting inside from the ground level. However the document does not show as to whether the steps were upto the bottom, upto the water level or they were not upto the water level. The diameter was 25.5 feet. The dead body was floating on the water of the well and one pot was also floating on the water. The names mentioned on the pot shows that the pot was given by Shesherao Nivrutti to Namdeo Mahadeo Narwade (probably from the side of parents of deceased). There was a pair of chappal lying outside of the well. This well of Shinde was situated at a distance of 400 to 500 feet from the field of the appellants.

9) In the cross-examination of some witnesses including the panch witnesses, the defence has made an

attempt to bring on the record that there are no steps to the well of the accused. There is well in the field of the accused as per the defence taken by them. Such admission is given by the witness in the cross-examination. The accused did not dare to enter into witness box to give evidence or even photographs of the well are not produced. There are more circumstances against the accused with regard to the incident in question.

10) If there is well in the field of the accused, they must have made some arrangement for lifting water. The arrangement can be of electrical or diesel pump or they could have fixed a rope which can be tied to the pot for taking out water. Considering the distance between the field of the accused and the well where the dead body was found, it does not look probable that the deceased had gone to fetch water.

11) If ordinarily the members of family of the appellants used to fetch water from this well, they could have examined the owner of the well to give evidence in

that regard. If the deceased had gone to this well on that day in the noon time and she had not returned within reasonable time, husband or others who were present in the field ought to have made enquiry or search. If the articles like chappal were lying and the water pot was floating on the water of the well and it was known to the accused that she had gone there to fetch water, in ordinary course after seeing these articles, the husband would have immediately searched for the deceased in the well. A.D. report was given by the husband at 23.30 hours on 7-6-1999. However, the panchanama was made on the next day and the dead body was still in the well. Thus there was much time with the husband to manipulate the things and he has not given any explanation as to why he did not approach police immediately on that date. Provisions of Sections 106 and 114 of the Evidence Act can be used at least as against husband in this case. Evidence of Babu (PW 5) also shows that in late hours of night on 7th and 8th June 1999 message was given to him. In view of these circumstances, this Court holds that inference needs to be drawn that it is a case of suicide.

12) Babu (PW 5), father of the deceased, has given evidence that there was ill-treatment to the deceased and that was started 4 to 5 months of the marriage. He has given reason for the ill-treatment that there was demand of gold ring of 10 grams and this demand was not met with. He has given evidence that on occasions the deceased was driven out of matrimonial house and also the husband used to give beating to the deceased. He has given evidence that in the past due to the conduct of the accused, report was given to police and police had filed case against the accused for offence under section 498-A of the Indian Penal Code. The deceased had lived in the house of her parents due to the previous disputes for many months. The husband has admitted that such case was filed against him. Statement given by the husband under section 313 of the Code of Criminal Procedure shows that he admitted that he had given undertaking to behave well though he has contended that such undertaking was obtained by making false representation to him. The record like maintenance proceeding filed under section 125 Cr.P.C. and judgment delivered in the case filed for offence under section 498-A of the Indian

Penal Code is produced. This record shows that the deceased had started living separate from the husband from 31-1-1996 and compromise in the case had taken on 21-5-1996. Copy of the proceeding filed under section 125 Cr.P.C. shows that even after settlement of the dispute and filing of compromise pursis in the criminal case, the husband had again driven the deceased out of matrimonial house on 27-5-1997. This record is consistent with the version of the complainant and the case of the prosecution. This record shows that deceased wanted to cohabit with the husband and even after filing two proceedings she had returned back to the matrimonial house.

13) Complainant Baburao (PW 5), father of the deceased, has given evidence that the deceased was brought to his house for first delivery. He deposed that during her stay, the deceased disclosed to him that the accused were asking her to bring Rs.10,000/- from her parents as such amount was spent by them on aforesaid litigations. The complainant has given evidence that the deceased gave birth to a female child and after delivery

she stayed in his house for many months as he was not ready to send her back to the accused due to the disclosures of ill-treatment made by the deceased. He gave evidence that the husband came to his house with mediators and assured that he will not act as per guidance of Tatyarao, accused No.4, the so called Guru. He has given evidence that due to this assurance he sent the deceased to matrimonial house.

14) Evidence of the complainant (PW 5) shows that after two months or so of the return of the deceased to the matrimonial house, she sent to him a letter and again made complaint about the ill-treatment which she was receiving in the matrimonial house. He has given evidence that he sent his son Tukaram to the house of accused. He has given evidence that Tukaram returned and disclosed that accused had given severe beating to the deceased. He has deposed that 8 days after return of Tukaram from the house of the accused the incident in question took place.

15) The complainant (PW 5) has given evidence that message was given to him by the accused in late hours of the night on 7th and 8th June 1999. He has given evidence that he and other relatives went to the well and in their presence dead body was taken out. He has given evidence that nobody from the side of the husband was present in the hospital where the dead body was taken. Inquest panchanama shows that the dead body was identified by the parents side of the deceased. There is also receipt of the dead body showing that the dead body was handed over to the parents and not to the husband. These facts are not disputed by the defence.

16) The report, F.I.R., at Exhibit 27 is consistent with the version of PW 5 on material points. The FIR was given on 10-6-1999. PW 5 has given explanation that due to untimely death of Mangal he suffered mental shock and delay is caused in giving of the report. Post mortem was conducted on 8-6-1999 and funeral was done in the village of the complainant after the post mortem examination.

17) The cross-examination of PW 5 shows that he was in the company of police when he had gone to the well to see the dead body. It is suggested to him that the husband is illiterate and due to illiteracy he had given undertaking to behave well in the past. Much was argued on the basis of these circumstances by the learned counsel for the appellants.

18) It is brought on record that 5 to 6 months after the delivery, the deceased was taken to the matrimonial house by the husband and after that the deceased had not visited the house of the parents. However, the evidence of Tukaram shows that he had visited the house of the appellant and Tukaram had noticed that there was ill-treatment to the deceased. Further, one letter sent by the deceased is duly proved in which there is disclosure about the ill-treatment given to the deceased. The evidence of Dagdubai (PW 7), the mother of the deceased, is consistent with the evidence of PW 5 on material points. To this witness in the cross-examination it is suggested by defence counsel that deceased wanted to live in Latur and as the husband refused to shift to Latur she was not happy

in the matrimonial house. This suggestion is denied. The record shows that even after filing of two proceedings, the deceased had returned to the matrimonial house. Suggestion is also given that the husband and his parents were residing separately. But this suggestion is denied.

19) Tukaram (PW 8), brother of the deceased, has given evidence that 8 to 10 days prior to the incident in question he had visited the house of the appellants. He has given evidence that in his presence beating was given to the deceased by the appellants and there was demand of Rs.10,000/- from them. He has given evidence that the appellants refused to send the deceased with him to her parents house. The defence has brought on record that he had not stated in his statement under section 161 of the Code of Criminal Procedure that in his presence beating was given and this omission is duly proved.

20) Navnath (PW 9), brother-in-law of complainant Baburao, has given evidence that he had brought the deceased to his house from the house of PW 5 when the deceased had gone there for delivery. He has given

evidence that the deceased had disclosed to him that the accused were demanding Rs.10,000/- and there was ill-treatment to her for the aforesaid reason. He has given evidence that the deceased was reluctant to go to the matrimonial house due to the ill-treatment after her delivery and only due to the assurance given by the husband she was sent back to the matrimonial house. The evidence of this witness gives general support to the versions of the parents of the deceased.

21) The letter sent by the deceased to the complainant was seized under panchanama and it was sent for handwriting expert. The handwriting expert has given opinion that it was in the handwriting of the deceased. Sanjay (PW 13) is the handwriting expert. His opinion is at Exhibit 53 and the statement of the reasons is at Exhibit 54. The evidence shows that the handwriting of the deceased was collected from her school and it was sent to the expert along with the postcard for opinion. Further, there is evidence of the father (PW 5) that the postcard is in the handwriting of the deceased. In the statement given under section 313 of the Cr.P.C. the

appellant, husband, has contended that the deceased had given false information to her father in this letter. In view of the evidence and the nature of defence taken by the husband there is no need to discuss in detail the evidence on proof of the document and the case that it was written by deceased.

22) The postcard was sent by the deceased in April 1999 and the deceased had disclosed in this letter the ill-treatment and grievances. The sub and substance of it is as under :-

"That, parents of the deceased had committed a serious mistake in giving her in marriage in the family of the appellants. She had expressed that it could have been a better decision if she was given in marriage to a beggar. She expressed that if she was wife of beggar she would not have felt hurt that she is a wife of beggar and she would have lived happily with the beggar. She had mentioned that her parents should not visit her matrimonial house. She requested that nobody should attend her funeral. She disclosed that she was feeling that family of the appellants is a butcher. She had expressed that she was feeling that there was no meaning in her life."

23) The deceased died due to drowning on 7-6-1999, within two months of the aforesaid letter. If the evidence of Tukaram is considered, it can be said that the last disclosure was 8 to 9 days prior to her death. Even if the exaggeration about the incident of beating is ignored, there is no reason to disbelieve Tukaram in respect of his last visit to the house of the accused.

24) The aforesaid evidence is considered by the trial Court. It appears that there was delay caused in giving of the report. But the aforesaid circumstances show that the deceased committed suicide in the matrimonial place. As per the custom that follows, funeral takes place at the matrimonial place. But in the present case the funeral took place at the village of the parents of the deceased. Though there was some delay in giving of the report, the explanation given is plausible. In view of the other circumstances of the case and the ring truth found in evidence, it can be said not much can be made in favour of the accused due to delay caused in giving of the report.

25) The appellants have examined three defence witnesses. Trimbak Shinde (DW 1) is the cousin of the husband of the deceased. He has given evidence that he knew that there were litigations between the deceased and accused No.1. He has given evidence that there was no ill-treatment to the deceased. He has given evidence that the well of the appellants had no steps. Vishwanath (DW 2) is the neighbour of the appellants. He has deposed that he attended the funeral of the deceased. He has given evidence that the appellants were present with the dead body. In view of the aforesaid circumferences, this Court sees no reason to disbelieve the complainant in this regard. Bhagwan (DW-3) has given evidence that, Rupabai, sister-in-law of the complainant lives in his village. It was suggested that said sister-in-law could have been better witness. Though the said witness could have been examined, non examination of the said witness cannot affect the case of the prosecution due to the facts and circumstances of the case.

26) Learned counsel for the appellants has placed reliance on the following reported cases :-

- (1) **(2001) 9 SCC 618 (Ramesh Kumar v. State of Chhattisgarh);**
- (2) **(2010) 12 SCC 190 (S.S. Chheena v. Vijay Kumar Mahajan);**
- (3) **(2010) 3 SCC(Cri) 1048 (Madan Mohan Singh v State of Gujarat);**
- (4) **2010 Cr.L.J. 3560 (Devesh Dattabhau Pathrikar v. State of Maharashtra).**

27) This Court has carefully gone through the observations made in the cases. It is observed in the case of Ramesh Kumar (supra) that presumption under section 113-A of the Evidence Act can be drawn only after considering all other circumstances of the case. It is observed that only because offence under section 498-A is made out, the drawing of the presumption on that basis is not possible. There cannot be any dispute over these propositions. In the case of S.S. Chheena (cited supra) charge of abetment of suicide was framed and name of the accused was not mentioned in the FIR. The facts were different. It is observed that temperament of the person committing suicide needs to be considered. In the said case the deceased was hypersensitive. There cannot be any dispute over the propositions made by the Apex

Court. Facts and circumstances of every case are always different. This Court has quoted and considered the relevant material of the present case. The case of Madan Mohan Singh (cited supra) is on the power of High Court under section 482 of the Code of Criminal Procedure. The facts of the case of Devesh Pathrikar (cited supra) were altogether different.

28) The evidence discussed by this Court is sufficient to hold that the prosecution has proved the offence punishable under section 498-A IPC at least as against the husband. The other circumstances of the case are such that this Court has no hesitation to hold that presumption available under section 113-A of the Evidence Act needs to be used at least against the husband. The record of the case and particularly the AD report given by the husband shows that the husband was present in the village and the parents of the husband were out of station. The deceased was having a daughter aged about 5 to 6 months at the relevant time and nothing is stated by the husband as to where the daughter was kept by the deceased on that date when she had gone towards

well. This Court has made some observations with regard to giving of the AD report late to police and not taking out the dead body or making attempt to search the deceased in the well by the husband. In view of aforesaid circumstances it was necessary for the husband to explain the aforesaid things which the husband has not done. This is additional circumstance against the husband and provisions of Sections 106 and 114 of Evidence Act need to be used against him. The husband did not inform to the parents of the deceased also immediately about the incident. There is evidence that he had given undertaking to behave well at least on two occasions but in spite of such undertaking the incident took place. The written disclosure made by the deceased also needs to be considered under section 32 of the Evidence Act. She described the husband as butcher. In view of these circumstances this Court holds that there is more than sufficient evidence to convict the husband for offences punishable under sections 498-A and 306 of the Indian Penal Code. However, due to absence of the parents of the husband from the village and the aforesaid circumstances, this Court holds that benefit of doubt

needs to be given to them. On the point of penalty given to the appellant husband this Court holds that it is already on the lower side. In the result, following order.

29) The appeal of appellant No.1 - Balasaheb Kundlik Shinde is dismissed. He is to surrender to his bail bonds to serve the remaining sentence.

30) The appeal of appellant No.2 - Kundlik Rangnath Shinde and appellant No.3 - Kausalyabai Kundlik Shinde is allowed. The judgment and order of conviction and sentence passed against them is set aside and they stand acquitted of the offences for which they were charge sheeted and tried. Fine amount, if any, paid by them is to be returned to them. Their bail bonds stand cancelled.

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

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