

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

Criminal Revision Application No. 192 of 2003

Sau. Sushilabai w/o. Natha Mali,
Age : 48 years,
Occupation : Household,
R/o. Janta Nagar, Sindkheda,
Taluka : Sindkheda,
District : Dhule.

.. Revision Applicant
(Original complainant)

versus

1. The State of Maharashtra,
Through P.S.O.,
Sindkheda Police Station,
Taluka : Sindkheda,
District : Dhule.

2. Chudaman Babulal Mahajan,
Age : 30 years,
Occupation : Agriculture,
R/o. Son-Shelu,
Taluka : Sindkheda,
District : Dhule.

3. Babulal s/o. Kautik Mahajan,
Age : 56 years,
Occupation : Agriculture,
R/o. Son-Shelu,
Taluka : Sindkheda,
District : Dhule.

4. Sau. Muktabai w/o. Babulal Mahajan,
Age : 51 years,
Occupation : Agriculture & Household,
R/o. Son-Shelu,
Taluka : Sindkheda,
District : Dhule.

.. Respondents
(Nos.2 to 4 -
Original accused
nos.1 to 3)

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Mr. Rajendra S. Deshmukh, Advocate, for the revision applicant.

Mr. U.S. Mote, Additional Public Prosecutor, for respondent no.1 - State.

Mr. D.J. Patil, Advocate, holding for Mr. N.B. Suryawanshi, Advocate, for respondent nos.2 to 4.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 26TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. R.S. Deshmukh for the revision applicant, learned APP Mr. U.S. Mote for respondent no.1 - State, and Adv. Mr. D.J. Patil h/f. Adv. Mr. N.B. Suryawanshi for respondent nos.2 to 4.
2. The applicant herein, being aggrieved by the judgment and order of acquittal recorded in favour of accused / respondent nos.2 to 4, by the learned 3rd Additional Sessions Judge, Dhule, in Sessions Case No. 16/2002, dated 25th November 2002, has filed the present revision application.
3. The applicant herein happens to be the mother of deceased Sangita. That, on 5-9-2001, the present applicant lodged a report at Sindkheda Police Station, alleging therein that her daughter Sangita was married to respondent no.2, who happens to be the son of respondent nos.3

and 4. Prior to one and half years of 5-9-2001, Sangita was treated properly for initial six months in her matrimonial home and thereafter she was being illtreated on account of non-fulfillment of demand of Rs. 50,000/- for purchasing rickshaw. That, she was being coerced to fetch the said amount from her parents. That, the complainant and her husband had informed the original accused no.1, that they would not be able to fulfill the said demand due to economic stringency. That, Sangita was being abused and assaulted since then. In the FIR, the first informant has given several instances of demand. That, on the occasion of Rakshabandhan, Sangita had come to her parental house and had informed her mother, that she was being illtreated on account of demand of Rs. 50,000/-. She stayed in her parental house for about 8 days and thereafter original accused no.1 had come to fetch her. The complainant had given an understanding to treat her properly. He assured that she would not illtreated. Thereafter, Sangita had returned to her matrimonial home. On 3rd September 2001, the complainant had been to Surat to meet her elder daughter. On 4-9-2001, son of the complainant, namely, Santosh informed the complainant that Sangita had committed suicide. Hence, she returned from Surat forthwith. The original accused no.1 had lodged report in respect of death of Sangita. Accidental Death was registered under Section 174 of the Code of Criminal Procedure. Subsequently, on 5-9-2001, the complainant had lodged report on the basis of which Crime No. 44/2001 was registered against the accused for offences punishable under Sections 306, 498A, 323, 504, 506, read with Section 34 of the Indian Penal Code, at Sindkheda Police Station. After completion of investigation, charge sheet was filed. The case was committed to the Court of Sessions and was registered as Sessions Case No. 16/2002.

4. The prosecution examined as many as 7 witnesses to bring home the guilt of the accused. The learned Additional Sessions Judge had observed that the complainant PW 1 has not deposed before the court, in respect of the overt act committed by the accused. Omnibus allegations have been made to constitute an offence under Section 498A of the IPC. The substantive evidence of PW 1 Sushilabai Mali stated that at the time of Rakshabandhan, Sangita had come to her parental house and had informed the complainant that she was being illtreated on account of amount of Rs. 50,000/-. It appears from the evidence, that 8 days after Rakshabandhan, original accused no.1 had been to the house of the complainant to fetch Sangita and at that time, the complainant and her brother had given an understanding to accused no.1. However, there is no evidence on record to indicate that thereafter also Sangita was subjected to any cruelty or illtreatment at the hands of the accused, in such a manner that she would be left with no option but to commit suicide.

5. The learned Counsel for the applicant submits that Sangita had committed suicide within 1½ years of marriage and, therefore, there is presumption under Section 113-A of the Indian Evidence Act, 1872. It is pertinent to note that Section 113-A of the Evidence Act contemplates presumption as to abetment of suicide by a married woman. To invoke Section 113-A, it would be incumbent upon the prosecution that there is evidence to the effect that her husband or such relative of her husband had subjected her to such 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. For the purpose of

drawing the said presumption, 'cruelty' would have the same meaning as is contemplated under Section 498-A of the Indian Penal Code. It would be incumbent upon the prosecution to discharge the initial onus of proving that she was subjected to such cruelty and illtreatment that she was driven to commit suicide. The persistent act has to be brought on record. In the present case, except an omnibus statement that when she visited her parental house on the occasion of Rakshabandhan, she had informed that she was being illtreated on account of demand of Rs. 50,000/-, there is no evidence on record that she was being continuously harassed or given illtreatment on the said count.

6. Section 498A of the Indian Penal Code reads thus :

" 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 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. "

In the present case, there is no evidence to that effect, to hold that the respondents herein had committed any offence under Section 498A of the IPC. To invoke the presumption under Section 113A of the Indian Evidence Act, the prosecution has to discharge the initial onus which has not been done so in the present case. There is no evidence to even remotely implicate respondent nos.3 and 4.

7. In view of this, the findings recorded by the learned Additional Sessions Judge, in acquitting the accused of all the charges levelled against them, cannot be interfered with. The learned Additional Sessions Judge has recorded sound and justifiable reasons to acquit the accused. In the absence of any material to prove the charge under Sections 306 and 498A of the IPC, the learned Additional Sessions Judge has rightly taken a view that the prosecution has failed to prove the offence with which respondent nos.2 to 4 were charged and hence, recorded an order of acquittal in favour of them. The reasons assigned by the learned Additional Sessions Judge do not warrant any interference.

8. In the result, the Revision Application is dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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