

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 463 OF 1992

1. Bibhishan Namdeo Khandekar	)	
age 26 years,	)	
2. Sugalabai @ Nagabi Namdeo	)	(Appeal of Appellant
Khandekar, age 53 years,	)	Nos. 2 & 3 abated as per
3. Namdeo Narsingh Khandekar	)	Court's order dated
age 60 years,	)	20.11.2012.)
All R/o. Hal-Chincholi Taluka	)	
South Solapur District Solapur.	)	.. Appellants
...		(Orig. Accused)
vs.		
The State of Maharashtra	...	Respondent

Mr. Sachin Dhakephalkar, Advocate for the appellant.
Ms. A.A.Mane, APP, for the Respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 18th November, 2015.

ORAL JUDGMENT :

1. Heard. The appeal stands abated as against appellant Nos. 2 and 3.
2. The appellant No.1 herein is original accused No.1 in Sessions case No.192 of 1990. By a Judgment and order dated 26.8.1992, the appellant herein is convicted for the offence punishable under Section 304B read with Section 34 of Indian Penal Code, alternatively under Sections 306

and 498A read with Section 34 of IPC and sentenced to undergo R.I. for seven years. No separate sentence was passed under Section 498A read with Section 34 of IPC by the Addl. Sessions Judge, Solapur. Hence, this appeal.

3. Such of the facts necessary for the decision of this appeal are as follows :-

(a) Appellant No.1 herein was married to Shobha daughter of PW-1 on 3.6.1987. On 4.4.1990, Baburao father of Shobha lodged a report at Taluka Police Station, Solapur alleging therein that at the time of marriage, there was a settlement between both families that the complainant would give a dowry of Rs.9,000/- and two tolas of gold to the bridegroom i.e. the present appellant and that the expenses of the marriage would be borne by the accused persons. He had reported to the police that at the time of marriage, Shobha was approximately 18 years and 6 months. She was residing in the joint family. After about 3 – 4 months of the marriage, the complainant had been to the house of the accused to fetch Shobha. At that time, the appellant and his parents had demanded remainder amount of dowry as well as two tolas of gold. The daughter disclosed to him that she

was being harassed and ill-treated by the accused on account of failure on the part of her father to pay the remainder amount. The complainant had then taken his daughter to his village i.e. at Village Chinchpur. After about 4 – 5 days, the appellant had been to the house of the complainant along with his maternal uncle to fetch his wife. The complainant had requested him to take her back after Mahalaxmi festival. Shobha was not willing to accompany her husband and, therefore, she was beaten in her maternal house in the presence of her father. He had intervened, but was pushed aside. The parents had not sent Shobha to her matrimonial house as she was being ill-treated. Four months thereafter the appellant again came to the house of the complainant to fetch his wife. Taking into consideration the conduct of the appellant, the complainant had no hopes that she would be treated well and therefore he had told them that he will not give the remainder amount of dowry and gold till Shobha has an issue and moreover only after his daughter assures him that she is happy in her matrimonial house. At the time of lodging the FIR the complainant had filed an Inland letter written by the brother of the appellant. Thereafter, the complainant had sent his relatives to fetch Shobha, but she was not sent since dowry amount had not been paid. Shobha had complained that she is being ill-treated by her husband and his parents for the remainder of the dowry

amount. On the second occasion also the complainant had sent other relatives but had returned without Shobha and informed the complaint that he should save her by paying the remainder amount. Thereafter he had learnt that Shobha and her husband along with his brother and wife were residing at the residential hut in their agricultural land at Mulegaon. On 3.4.1990, the complainant was informed by his cousin Sharnappa Chormale that Shobha had consumed poison and had died in Civil Hospital on 3.4.1990. The family members had already reached Civil Hospital, Solapur by then. The complainant went to the Civil Hospital at about 3.30 p.m. on 3.4.1990. Upon enquiries made by him, the accused had not disclosed the reason for consumption of poison by Shobha. The complainant had learnt that on Monday, i.e. 2.4.1990, at about 9.10 a.m., Shobha had consumed poison in the agricultural land at Mulegaon. On the basis of the report lodged by the complainant, Crime No.71 of 1990 was registered. In the FIR, the complainant had specifically stated that on the earlier occasion also he had approached Nagansur Police Station and lodged a report at the police station. The accused were arrested on 6.4.1990 in Crime No.71 of 1990. After completion of investigation, charge sheet was filed on 13.7.1990 for the offences punishable under Sections 498A and 304B read with Section 34 of IPC. The case was committed to the Court of Sessions

and registered as Sessions Case No.192 of 1990. Charge was framed against the accused for the offences punishable under Section 498A read with Section 34, 304B read with Section 34, in the alternative, Section 306 read with section 34 of IPC.

4. The prosecution examined as many as 14 witnesses to bring home the guilt of the accused.

5. PW-1 is Nagnath who is the interpreter. The witnesses were not well-acquainted with Marathi language and, therefore, the learned Sessions Judge had availed the services of PW-1 who was well conversant with Kannada language and had acted as an interpreter for the Court.

6. PW-2 is Baburao who happens to be the father of the unfortunate Shobha who was married to the appellant on 3.6.1987. He has deposed before the Court in consonance with the first information report lodged by him which is at Exhibit 13. He has deposed before the Court that at the time of marriage, there was a settlement between both the families and it was agreed between them that PW-1 would give dowry of Rs.9,000/-. He had paid Rs.3,000/- at the time of marriage and had assured that he would pay the remainder of Rs.6,000/- subsequently and two tolas of gold. According to him, his daughter Shobha was being harassed in his

matrimonial house on account of failure on the part of PW-1 to pay the dowry at the earliest. He had visited the house of Shobha and had taken her along with him to her maternal house for the festival of Nagpanchami. 4 – 5 days thereafter, the appellant No.1 had been to the house of the complainant to fetch his wife. He had assaulted her in the presence of PW-1. Thereafter, PW-1 had called the relatives and had settled the matter. The accused persons had assured him that she would not be harassed in her matrimonial home and, therefore, he had allowed her to accompany her husband. After that on more than 2 occasions, he had sent his relatives to fetch his daughter, however, on every occasion, he had learnt that they had refused to send her to her maternal house till the remainder dowry was paid. He has also deposed before the Court that he had received a letter in the handwriting of Dayanand who happens to be brother of the appellant. He had categorically stated that he was well acquainted with the handwriting of Dayanand as he had seen him doing his home work when he had visited his daughter. The testimony of PW-1 not only appears to be truthful but inspires the confidence of the Court when he has specifically stated that he had refused to give the remainder of the amount of dowry until he was convinced by his daughter that she was happy in her matrimonial house. He has admitted that the accused No.1 had not seen Shobha before the

settlement of the marriage and he had never said that he did not like Shobha. It is pertinent to note that marriage was performed within 8 – 10 days after it was settled. He has also admitted before the Court that Shobha was desirous of giving birth to a child at the earliest. He has deposed before the Court about the meetings held between the relatives. It is elicited in the cross-examination that Halchincholi is about 30 kms. Away from Mulegaon. The way from Halchincholi to Mulegaon is only via Solapur. The defence has not been able to dent the sterling testimony of PW-1. By inference it can be said that PW-1 had proved that there was a demand of dowry on account of which Shobha was being harassed in her matrimonial house by all the accused.

7. PW-3 Ganpati Patil happens to be the person who was instrumental in settling the marriage. PW-3 Patil stated before the Court that after PW-1 had brought Shobha to his house. The accused had threatened that they would take her to her matrimonial house only after the amount of Rs.6,000/- and two tolas of gold as agreed would be paid to them. Some stray omissions are elicited in the cross-examination.

4. PW-4 Gurushantappa Bagale happens to be the Deputy

Sarpanch of Grampanchayat of Chinchapur. He had attended the marriage of Shobha with Bibhishan. He has deposed before the Court that an amount of Rs.3,000/- was paid by PW-1 at the time of marriage and as his financial condition was not good, it was agreed that the remainder amount of dowry of Rs.6,000/- would be paid subsequently. He has also deposed that PW-1 had informed him earlier that his daughter is being harassed in the matrimonial house as he had not paid the remainder amount of dowry and gold. The witness has not been shattered in the cross-examination.

5. PW-5 Sharnappa Chormale happens to be the cousin of PW-1. He had been to fetch Shobha at the time of Padva festival at village Halchincholi as he was deputed by PW-1. All the accused had refused to send Shobha unless they receive the remainder of the dowry.

6. PW-6 Shankar Konade had also attended the marriage. He was present at the time of settlement of marriage in which it was decided that an amount of Rs.9,000/- would be paid as dowry. He has deposed before the Court that on the very first visit, Shobha had disclosed that she was being harassed in her matrimonial house.

7. PW-7 Chandrabhaga Khandekar happens to be the first deserted wife of the appellant. She has specifically deposed before the Court that she had cohabited with the appellant for hardly 2 – 3 months. She was harassed on account of demand of dowry and was constrained to leave the matrimonial house and since then she was living with her parents. It is pertinent to note at this stage that PW-1 has specifically stated in his cross-examination that he had learnt subsequently that the appellant was already a married man and his wife was driven out of the house. The said fact was suppressed by the accused persons as well as the persons who had settled the marriage. Hence, it is clear that there was suppression of facts. PW-7 has submitted before the Court that she did not lodge report with police about the harassment meted out to her in her matrimonial house only due to economic stringency and that her parents are very poor. She had not re-married thereafter.

8. PW-8 Mahadeo Rotte was attached to Solapur Taluka Police Station. On 2.4.1990 at about 12.45 p.m. He received message from Head Constable posted in Civil Hospital, Solapur. That Rajkumar had admitted Shobha in the hospital and that she was serious and unconscious. He had taken an entry in the station diary. He had deputed Head Constable More to

make enquiry and report. The report is at Exhibit 31. On 3.4.1990, at about 7 a.m., PW-8 had received telephonic information from Ward Dastgir that Shobha had died at about 6 a.m. in the hospital. On receipt of the said information, he had registered A.D. No.20 of 1990.

9. Upon perusal of the records, it is clear that A.D.No.20 of 1990 was registered under Section 174 of Cr.P.C. The scene of offence panchnama and the inquest panchanam were conducted in A.D. Enquiry. It is pertinent to note that the witnesses to the scene of offence panchnama are from village Bale, North Solapur. The panchas to inquest panchnama which was conducted in A.D. No.20 of 1990, are from proper Solapur i.e. Jodbhavi Peth, Solapur. Panch No.2 for the inquest panchnama is from village Chinchpur i.e. the village of PW-1. This aspect makes it amply clear that the relatives of PW-1 were present at the time of inquest panchnama on 3.4.1990. That the relatives had been to the hospital on 3.4.1990 itself. The panchas to the seizure panchnama of the clothes of the deceased are also from proper Solapur. It is clear that initially there was no grievance in respect of the death of the deceased Shobha. Only after arrival of PW-2, there was an enquiry with the accused about the cause of death of suicide. They could not give any satisfactory answer. PW-1 was well

aware that she had been harassed on account of demand of dowry. On the earlier occasion also he had approached Nagansur Police Station. Lack of knowledge of Marathi language or any other language, the other relatives could not approach the police station. PW-1 had therefore approached the police station on 4.4.1990. It cannot be said that there is delay in lodging FIR or that it is after-thought.

10. The post-mortem notes are at Exhibit 21. Column 9 of the post-mortem notes shows that there were marks of the teeth on the left hand of the deceased. Due to consumption of poison, there was cyanosis of finger nails. Stomach contents smelt of obnoxious substance like that of kerosene. Since the history of consumption of Organophosphorus compound was given at the time of admission of Shobha, the opinion given by Doctor shows suspected Organophosphorous poisoning. There is no doubt that Shobha had committed suicide while she was residing at Mulegaon in her matrimonial house.

11. PW-11 Dr. Subhashchandra Sardar has proved the contents of the post-mortem notes. Since it is established that Shobha died because of consumption of Organophosphorous compound

12. PW-12 is Dr. Prabha Shinde was officiating Medical Officer in Civil Hoispital, Solapur. She has deposed before the Court that on 2.4.1990 at about 12.15 p.m., Rajkumar (brother of the present appellant) had admitted Shobha in the Hospital. She was unconscious at the time of admission and had not regained consciousness in the course of her treatmment. That Shobha had died at about 6 a.m. On 3.4.1990.

13. PW-13 has proved the contents of Exhibit 45 i.e. the medical case papers of the deceased Shokbha. PW-13 is Dr. Sanjay Raut who is the medical practitioner. He was on duty in the Medical College at Solapur on 2.4.1990 when Shobha was admitted in the hospital. The witness has deposed that Shobha had not regained consciousness throughout the period when she was hospitalized.

14. PW-14 Bhau Sinnerkar is the Investigating Officer. According to him, since he was busy with the investigation of another offence, the investigation was carried out by A.S.I. Kazi i.e. PW-10. The witness was confronted with the first information report. It was suggested to him that there was interpolation in the FIR and the said suggestion was denied. The

accused was examined under Section 313 of Cr.P.C. He had denied the charges levelled against him. The defence of the accused-appellant is that after his marriage, his brother's wife had given birth to three issues. That Shobha was anxious to have a child and would take recourse to any mode to have it. That he had tried to convince her but to no avail. According to him, PW-2 had taken Shobha to her maternal house just for a day and after 3 to 4 months, Shobha died in Civil Hospital. According to the accused-appellant, he had been to Solapur to watch a movie and at that time, he had learnt from his brother Rajkumar that in his absence Shobha had consumed poison. According to him, he had been to the hospital, but he was not allowed to go inside. On the same night, he had been to Mulegaon as there was no arrangement to sleep in the civil hospital on the next day, he returned at about 8 a.m. And found his relatives were weeping and at that time, he had learnt that Shobha had succumbed to the poison in the early hours at 6 a.m. The body of Shobha was cremated by her parents. According to the accused-appellant, they had not taken his permission.

15. Perused the records. Heard the learned counsel for the appellant.

16. According to the learned counsel for the appellant, the prosecution has failed to prove that there was any settlement between the parties for

demand of dowry of Rs.9,000/-. To substantiate his submission, the learned counsel submits that the witness PW-2 has not given the names of the material witnesses who were present at the time of settlement of marriage, more particularly PW-3. According to him, since there was no settlement for payment of dowry, there was no question of demanding the remainder amount and therefore according to him, charge under Section 304B would fail as it is not a case of dowry death. It is also submitted that in fact the absence of the accused as narrated in the statement under Sec. 313 of Cr.P.C. should be considered.

17. As against this, the learned APP rightly submits that the prosecution has established demand of dowry beyond reasonable doubt. All the witnesses have categorically deposed before the Court that there was a settlement for demand of dowry of Rs.9,000/- and that PW-2 had paid the dowry of Rs.3,000/- at the time of marriage itself. The learned APP however submits that this is a fit case where the presumption under Section 113B of Indian Evidence Act be drawn as the wife of the appellant has died in her matrimonial house within seven years of the marriage. That the accused-appellant has not offered any explanation regarding the cause of death of his wife as contemplated under Section 106 of Evidence Act. The learned APP also submits that the insensitivity of the appellant is writ large

on the face of the record. That in his statement under Sec. 313 of Cr.P.C. the appellant has deposed before the Court that on 2.4.1990, he was at Solapur. That he had been for watching a movie. That after he learnt that his wife was admitted in the hospital, he had returned to village Mulegaon since there was no arrangement for sleeping in the hospital. The learned APP further submits that the accused-appellant had no concern for the well-being of his wife and, therefore, the issue whether the plea of alibi should be considered or not is out of question. She vehemently supports the judgment of conviction under Sections 304B and 498A of IPC and prays that the conviction and sentence be upheld as it has been recorded in accordance with law.

18. Upon perusal of records, it is clear that Shobha had committed suicide in her matrimonial house as she could not take the ill-treatment and cruelty meted out to her by the accused persons. In fact, the husband is duty-bound to look after the welfare of his wife. He cannot simply take the defence that he had not harassed her on account of demand of dowry and it was his parents and other relatives who had harassed her. PW-2 has categorically stated that the appellant herein had assaulted Shobha in her maternal house in the presence of relatives only because she had refused to

accompany him to the matrimonial house at the time of Malaxmi festival. This evidence is sufficient to hold that the appellant has committed an offence punishable under Section 498A of IPC. The accused-appellant had the audacity to assault his wife in the presence of her parents. By this, it is clear that she was physically assaulted in her matrimonial house also where she was without any security or any moral support. It is unfortunate that she was constrained to commit suicide by consuming poison. The conduct of the accused needs to be appreciated under Section 8 of the Indian Evidence Act. In fact, the first wife of the accused-appellant had to withdraw herself from her matrimonial house as she was harassed on account of demand of dowry. She was poverty-stricken and therefore could not approach the police station or initiate prosecution against the accused-appellant. The accused-appellant had cheated upon PW-2 as well as his deceased wife Shokbha.

19. Life of a woman is taken for granted by the husband and his relatives. It is assumed by such people that girls are married only to fulfill the vicious demands of her husband and his relatives. She is treated as material object. Due to illiteracy and inefficiency to earn, the wife is constrained to commit suicide. Due to economic stringency of the parents the girl does not wish to be a burden on her parents. Moreover, she has to

carry the social stigma just like PW-7 (first wife of the appellant) in the present case. In the present case, it appears that no charge was framed under the provisions of the Dowry Prohibition Act. However, charge was framed under Section 304B of Indian Penal Code. The Explanation to section 304B of IPC is as follows :-

“Explanation – For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961”

20. Section 2(a) of Dowry Prohibition Act defines -

“any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before [or any time after the marriage] (in connection with the marriage of the said parties, but does not include) dower or Mahr in the case of persons to whom Muslim Personal Law applies.:

In the present case, it can be safely inferred that the accused-appellant deserves to be convicted under Section 4 of the Dowry Prohibition Act, 1961 also.

21. Section 222 of the Code of Criminal Procedure, 1973 reads as under :-

“222 When offence proved included in offence charged – (1)

When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.”

Taking into consideration the facts and circumstances of the present case and the records, this Court is of the opinion that although the accused-appellant was not charged under Section 4 of the Dowry Prohibition Act, he deserves to be convicted for the same and hence he is acquitted of the offence under Section 304B of IPC and is being convicted under Section 4 of the Dowry Prohibition Act which is a minor offence.

22. The learned counsel for the appellant submits that the demand was made by the parents of the present appellant against whom the appeal

stands abated and therefore the present appellant cannot be convicted under Section 4 of the Dowry Prohibition Act. This Court has already held that it is the responsibility of the husband to protect his wife. Her safety and security shall be the sole responsibility of the husband. In any case, there is specific evidence that all the accused were demanding remainder of the dowry and were harassing Shobha for non-fulfillment of the said demand. Section 4 of the Dowry prohibition Act, 1961 contemplates penalty for demanding dowry. In the eventuality that the prosecution succeeds to prove the offence, the accused shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees. In the present case, the accused-appellant deserves to be convicted under Section 2 of the Dowry Prohibition Act, this Court would take recourse to the proviso to Section 4 for imposing a sentence of imprisonment of less than six months. The reason being that the incident is of the year 1990. The conviction was recorded in 1992 and the appeal is of the year 1992. After 23 years of filing of the appeal, this Court is of the opinion that the accused should not be sentenced to substantive sentence. The Advocates representing the appellant had taken adjournments on several occasions. The learned counsel for the appellant submits that the special reasons prayed for in not

awarding substantive sentence is that in these 23 years, the appellant has re-married. He is a father of three sons and one daughter. That his children have attained majority and therefore after 23 years it would not be appropriate to remand the accused to jail.

23. The evidence of PW-2 is more than sufficient to convict the accused under Section 498A of Indian Penal Code. The submission of the learned APP demonstrating insensitivity of the accused-appellant to return to Mulegaon after he learnt that his wife had consumed poison and was admitted in the civil hospital would also reflect upon the conduct and sensitivity of the accused which is being considered under Section 8 of the Indian Evidence Act. The accused-appellant therefore deserves to be convicted under Section 498A of Indian Penal Code. That punishment contemplated for the offence punishable under Section 498A of IPC is rigorous imprisonment which may extend to three years and shall also be liable to pay fine. In the present case, the learned Sessions Judge has not imposed a separate sentence for the offence punishable under Section 498A of IPC since the accused are convicted under Section 304B of IPC. However, taking into consideration the evidence adduced by the prosecution, the accused-appellant also deserves to be convicted for the

offence punishable under Section 498A of IPC. The appellant was in custody for more than three months during the pendency of the trial as well as during the pendency of the appeal and therefore for the offence punishable under Section 498A of IPC he deserves to be sentenced for the period already undergone. However, he is liable to pay fine amount of Rs.10,000/-.

24. The prosecution has not brought on record the exact date and time when the demand of dowry was made. The learned counsel for the appellant submits that there is no proximity between the demand of dowry and the death of deceased Shobha and, therefore, the appellant deserves to be acquitted under Section 304B of IPC.

25. As against this, the learned APP submits that ever since the marriage was performed, Shobha was being harassed and ill-treated on account of non-fulfillment of the remainder of the amount of dowry and therefore, there is no question of the proximity between demand and the death of deceased Shobha.

26. Section 304B of IPC contemplates as follows :-

“304B. Dowry death - Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within sever 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.”

In the present case, it cannot be said that Shobha had died due to burns, bodily injury or in suspicious circumstances. There is positive evidence that she had consumed poison on 2.4.1990 in the agricultural field. There is also no evidence that soon before the date of incident she had met her parents or relatives and had informed that she was being continuously harassed. However, it is clear that due to the fact that she was subjected to cruelty beyond her level of tolerance she has committed suicide and therefore the accused-appellant would be held liable to be punished under Section 306 of IPC. The appeal against the accused has been abated. The prosecution has not examined any independent witness who can throw light upon prelude to the incident or any incident prior to the death of deceased Shobha and therefore, the present accused-appellant cannot be convicted under Section 306 of IPC.

27. For the reasons stated above, the following order is passed :-

- (i) The Appeal is partly allowed.
- (ii) The conviction of the appellant for the offence punishable under Section 498A of Indian Penal Code is confirmed.
- (iii) The appellant is acquitted of the offence punishable under

Sections 304B and 306 of Indian Penal Code and is instead convicted under Section 4 of the Dowry Prohibition Act. The accused-appellant is sentenced for the period already undergone on both counts.

(iv) The appellant shall pay fine of Rs.10,000/- for the offence punishable under Section 498A of Indian Penal Code. The appellant shall also pay fine of Rs.10,000/- for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961. The amount of fine to be deposited in Sessions Court, Solapur within six weeks from today.

(v) In the eventuality that the find amount is not deposited within six weeks from today, the Sessions Court shall issue non-bailable warrant against the accused and take him into custody under Section 390 of Code of Criminal Procedure and the Sessions Court shall send compliance report to this Court.

(vi) The bail bonds of the appellant stand cancelled.

Appeal is accordingly disposed of.

(SMT.SADHANA S.JADHAV, J.)