

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.405 of 1996

Rajendra Balaji Mali
Age 25 years, residing at
Village Musalgaon,
Taluka Sinnar, Dist.Nashik

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mrs.Varsha Palav, Advocate for the appellant.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 12th JUNE, 2015

ORAL ORDER :-

1 This Appeal is directed against the judgment and order dated 13th June 1996 delivered by the Addl. Sessions Judge, Nashik in Sessions Case No.55/96, convicting the appellant who was the sole accused in the said case, of offences punishable under section 498A of the IPC and 306 of the IPC. The learned Addl. Sessions Judge sentenced the appellant to suffer RI for 2(two) years and to pay a fine of Rs.500/- on each of the said two counts.

2 The case of the prosecution as put forth before the trial court, in brief, be stated thus :-

Sarla, sister of Balu Shelar (PW2) was married to the appellant. The marriage had taken place in the year 1991. Sarla was initially treated well for some period after the marriage, but thereafter, the appellant wanted Sarla to bring money from her brother for purchasing a jeep. Sarla committed suicide on 9th April 1995 by jumping in a well along with her two daughters, one aged two years and the other of about four months. That a couple of days prior to the death of Sarla, the appellant had been to the house of Balu Shelar along with one Waman, and had demanded some money for purchasing some agricultural land. Balu did not pay the amount. When he learnt about the suicide by Sarla and about her having jumped in the well along with daughters of tender years, alleging that the appellant was treating Sarla with cruelty and that he had abetted commission of suicide by Sarla, Balu lodged a report with the police which was treated as the First Information Report in respect of the aforesaid offences, and investigation commenced. After investigation, a charge-sheet came to be filed pursuant to which the appellant was prosecuted, convicted and sentenced as aforesaid.

3 The prosecution examined six witnesses during the trial. The first witness for the prosecution is one Khandu Mali who is a panch in respect of the inquest panchnamas of the dead bodies and the spot panchnama. Balu Shelar – the First Informant – it has already been mentioned, was examined as the second witness for the prosecution and Jaibai – mother of Sarla was examined as the third witness for the prosecution. The fourth witness Suresh Shelar is another brother of Sarla. The fifth witness is Dr.Arvind Sukadu More, Medical officer who had conducted post mortem

examination on the dead body of Sarla. The sixth and last witness for the prosecution is the Investigating Officer Dhanraj Dayama, who at the material time, was attached to Sinnar Police Station as an Assistant Police Inspector.

4 The appellant did not examine himself as a witness. He, however, examined one Waman Shirsat as a witness in his defence.

5 I have heard Ms.Varsha Palav, the learned counsel for the appellant. I have heard Mr.Deepak Thakre, learned APP for the State. I have been taken through the entire evidence – oral and documentary – adduced during the trial. I have carefully gone through the impugned judgment.

6 It is contended by Ms.Varsha Palav, the learned counsel for the appellant that there was no satisfactory evidence to hold the appellant guilty of the alleged offences. It is contended that the allegations of cruelty were baseless. It is submitted that there is a variance between the evidence of Balu (PW 2) and Janabai, and that this renders their story doubtful. Mr.Deepak Thakre, learned APP on the other hand submitted that, that Sarla had committed suicide, could not be disputed, and that in the light of this undisputed fact, the evidence of Balu and Janabai about Sarla having been treated with cruelty, ought to be accepted. He contended that Sarla could not have taken the extreme step of putting an end of her life and that too, along with the life of her two daughters of tender years; and that, the very fact that she did take such a step, indicated that she was treated with cruelty.

7 From the reasoning of the learned Addl. Sessions Judge, as reflected from the judgment and the contentions raised by the trial court as well as before this Court by the prosecution, it appears that the theory of Sarla having been treated with cruelty is sought to be supported by the theory that she committed suicide. Similarly, the theory that she committed suicide is sought to be supported by the theory that she was being treated with cruelty. How far and in what circumstances, if at all, the inference of suicide can be drawn from the cruelty and vice-versa, shall certainly require discussion, which can be done later. What, however, must be observed here is that such process of reasoning would be permissible *only* when the fact from which another fact is to be inferred, must be independently proved. Thus, fact 'A' cannot be inferred *only* from fact 'B' and vice-versa, when neither fact 'A', nor fact 'B' can be proved without resorting to the inference to be drawn from the other fact.

8 It would be necessary to subject the evidence of Balu (PW 2) Jaibai (PW 3) and Suresh (PW 4) to a thorough scrutiny as these are the only witnesses who speak about Sarla being treated with cruelty by the appellant.

9 Balu states that Sarla was treated well only for about a month, and thereafter, the appellant started demanding a sum of money for the purchase of a jeep. That, the money could not be paid as Balu did not have money, and as the money was not paid, Sarla was harassed and used to be beaten by the appellant. According to Balu, he could know about the cruel treatment given

to Sarla because she used to tell him about him whenever she would come to Balu's house. Balu further said that he used to passify Sarla saying that some day or the other her life would be happy and that she should go back to her husband and resume cohabitation. Thus, according to him, this harassment of Sarla was going on since about a month after the marriage which had taken place in 1991. The death of Sarla took place on 9th April 1995 i.e. after more than four years since the starting of the alleged continuous harassment and cruelty. However, it appears that according to Balu, that is not the cause of the suicide. Balu speaks of the incident of the appellant and Waman coming to his house *a couple of days before the death of Sarla* and telling him that they wanted a sum of Rs.20,000/- for purchasing an agricultural land. That, on 8th April 1995 (this could be a mistake on the part of Balu as circumstances indicate that it would be on 9th April 1995) in the evening, the appellant came to Balu and said that Sarla had angrily left the house. On the next day, Balu learnt about the death of Sarla from Waman Shirsat (DW1) and then he went to Musalgaon where Sarla was staying with the appellant. Thus, the cause of suicide of Sarla, according to Balu, seems to be something that had happened between Sarla and the appellant after Balu had expressed his inability to pay a sum of Rs.20,000/- to the appellant.

10 In the cross-examination, it has been revealed that the appellant owns about 8 acres of irrigated land. It is also revealed that Balu used to visit the house of appellant and Sarla once in four to five months, and that whenever he used to go, he used to have talks not only with Sarla, but also with the appellant, his

brothers and parents. Suresh (PW4), the other brother of Sarla also used to go to the house of the appellant and Sarla, but only about once in a year. It is also revealed in the cross-examination that Sarla used to visit the house of Balu where he used to stay with his mother, wife and sister on the occasion of some festivals, used to stay there for a day and then return back to her matrimonial home.

11 Balu was unable to give the date or month as to when Sarla had complained to him about the appellant having demanded money for purchase of a jeep. He however, revealed in the cross-examination that both the daughters were born to Sarla at Balu's house only, and that on both the occasions after the birth of children, the appellant had fetched Sarla with him, to the matrimonial house.

12 Jaibai (PW 3) states in her evidence that Sarla was married happily, but after about four months, the accused started treating her with cruelty because his demands for money for purchasing a jeep and agricultural land were not fulfilled by us. According to Jaibai (PW 3), the appellant himself had been to the house of Jaibai for demanding money. According to Jaibai, Sarla used to come to Jaibai's house once in a fortnight or so, and on those occasions, she used to tell Jaibai and her (Sarla's) sister about the cruel treatment given to her. Jaibai then states about the birth of two girls and further states that the accused had demanded an amount of Rs. One lakh for purchase of agricultural land. Jaibai is referring to the incident when the appellant had gone to her house along with Waman Shirsat (DW 1) which

admittedly, had happened a couple of days before the death of Sarla. According to Jaibai, she and Balu could not pay the amount, but told the appellant that they would pay the same within three to four days. Regarding the incident of death of Sarla, Jaibai states that the accused came to her house after midnight and inquired if Sarla was there. Jaibai does not state what she or Balu told the appellant, but says that the appellant told Jaibai that he had given two slaps to Sarla and had snatched the cash amount which she had. Jaibai again does not mention anything as to what she or Balu said on that, or how they reacted, but merely states that the appellant then left the house. That, Balu went to Sinnar next day in search of Sarla at the places of their relatives and in the afternoon, Balu returned and told Jaibai that Sarla had died. Jaibai claims to have gone to Musalgaon and have seen the dead body of Sarla.

13 In the cross-examination of Jaibai, and in the evidence of the Investigating Officer Dhanraj Dayama (PW 6), a number of omissions have been brought on record. Thus, though Jaibai claimed that she had stated before the police that the appellant had demanded a sum of Rs.One lakh, the omission to state so when her statement was recorded in the course of investigation has been duly proved through the evidence of Investigating Officer Dhanraj Dayama (PW 6). The omission to specify the sum of Rs.One Lakh was also proved. More significantly, the omission to state that the appellant had told Jaibai that he had slapped Sarla and had snatched the cash amount from her, was also proved.

14 The testimony of Jaibai is not in conformity with what Balu has stated. Jaibai evidently has made a number of improvements and is clearly not a reliable witness.

15 Mahadu Shelar (PW 3) who is another brother of Sarla stated that Sarla never complained to him (about any alleged ill-treatment by the appellant). According to Suresh, Sarla was happily married for about two years. However, he does not further state that thereafter, she was treated with cruelty. Interestingly, Mahadu inspite of being brother of Sarla was declared as hostile by the learned APP who was permitted to put questions in the nature of cross-examination to Mahadu. It is on the basis of leading questions put by the Addl. P.P that, that the appellant had demanded an amount of Rs.20,000/-, was elicited from him. The evidence of this witness is therefore, not of much value in assessing the evidence with respect to the alleged cruelty with which Sarla was treated by the appellant.

16 The appreciation of evidence in respect of the cruelty in cases where the accused persons are also facing charge of an offence punishable under section 306 of the IPC, and/or 304B of the IPC, needs to be carefully done as ordinarily, such evidence is of the near relatives of the victim herself. The evidence usually consists in the form of the alleged statements made by the victim to these relatives before her death, but the disclosure about having made such statements comes only after the death. The death of the victim in such cases always arouses a feeling of grief and such as the human nature is, the relatives are instinctively likely to entertain great bias and prejudice against the husband and in-laws

of the victim. Certainly, the evidence of such relatives cannot be discarded or disbelieved merely on the ground of their relationship with the deceased and the delay with which the allegations are levelled. However, the Court cannot be oblivious of the fact that the relative witnesses of a deceased woman in cases under section 306 IPC and 304 of the IPC are quite likely to entertain prejudices against the husband and in-laws of such deceased. While appreciating the evidence of such relative witnesses that there exists a possibility of such natural bias against the husband and in-laws of the deceased, needs to be kept in mind.

17 When the evidence of Balu, Jaibai and Mahadu is considered together, it becomes apparent that their testimonies are not consistent when compared with one another. Jaibai's evidence, as aforesaid, cannot be relied upon and Mahadu, as aforesaid, has stated certain facts against the appellant only after he was declared hostile and after leading questions were asked to him by the learned APP. The case of cruelty therefore, rests basically on the evidence of Balu. The story put forth by Balu is not very logical inasmuch as though he has stated about the cruelty that was being meted out to Sarla since about a month after her marriage, according to him, that was not the cause of the suicide. Cause of the suicide, according to Balu, is *'something that happened between the appellant and Sarla after Balu had refused or expressed his inability to pay a sum of Rs.20,000/-, which as aforesaid, was about two days prior to death of Sarla'*. Within these two days, Sarla had never met Balu, or Jaibai, or Mahadu, and admittedly, that *something must have been happened after Balu had refused to pay the sum of Rs.20,000/-*, is only an inference drawn

by Balu from the fact of the unnatural death of Sarla which was believed and accepted to be suicide. Balu's evidence however, makes one aspect of the matter clear i.e. *that when the appellant had come to his house reporting about Sarla being missing, Balu did not suspect that some foul play had taken place, or that Sarla might have committed suicide or might have been murdered etc.* He decided to go for searching Sarla at the houses of their relatives on the next day which means that he thought that Sarla might have left the matrimonial house in an angry mood, and had probably gone to some relatives.

18 The learned counsel for the appellant has while arguing about the unreliability of the evidence of Balu, Jaibai and Mahadu drew my attention to a document that was tendered in evidence and marked as Exhibit-14. This is a letter dated dated 12th April 1995 written by Balu addressed to the Sub-Inspector of Police, Sinnar. In this letter, an allegation has been levelled that Sarla and her daughters were murdered by the appellant and five others who are relatives of the appellant. The letter states that Sarla was earlier assaulted by these persons, then her daughters were tied around her body and then, Waman Shirsat had thrown her in the well. The letter also states that in order to ensure that nobody should peep inside the well, the well was covered by a jute cloth (बारदान). The letter also states that there were marks of injuries of having tied – and of having given a beating – on the dead body of Sarla. Suspicion is expressed about the correctness of the notes of post mortem examination and the spot panchnama.

19 The very fact that such a letter was written shows that Balu and relatives of Sarla entertained a bias against the appellant, and proceeded to make the most serious allegations which were based only on the suspicion felt by them. It is clear that what had happened was not known to them at all, and the 'facts' stated on suspicions which are contrary to what was observed in the post mortem examination and the Inquest Panchnama, obviously, cannot be accepted. This letter cannot be viewed as a factor establishing the unreliability of Balu as a truthful person, *but what needs to be clearly understood is that what really happened, is not known to Balu, and that, the inferences drawn by him from the fact of the unnatural death of Sarla are being put forth as statements of fact by him.* Obviously, therefore, his evidence has to be scrutinized with greater care.

20 The evidence of cruelty is vague and general. Not even one specific instance of cruelty has been quoted either by Balu or Jaibai and all that they have said is about the general and omnibus statements of cruelty allegedly made by Sarla to them. The concept of 'cruelty' was in existence in matrimonial law, but such a concept did not exist in criminal law till by the criminal law (Second Amendment) Act, 1983 and by the Dowry Prohibition (Amendment Act 1986) certain sections were inserted in the Indian Penal Code, and the Indian Evidence Act. Though under the Matrimonial Statutes, the necessity of defining the term 'Cruelty' was not felt, such necessity was obvious when cruelty was sought to be made an offence punishable under the Indian Penal Code. Obviously, Criminal liability could not be fastened on the

basis of a vague or varying concept, and therefore, the term 'Cruelty' could not be left undefined. The subjective element involved in the concept of cruelty has been reduced to the minimum by defining the said term in the explanation appended to section 498A of the Indian Penal Code which reads as under :-

(Explanation. For the purpose of this section, cruelty means –

- (a) any willful 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 to her to meet such demand.

21 The terms 'willful conduct', 'likely to' and 'injury' as used in Clause (a) and the terms 'harassment' and 'unlawful demand' as used in Clause (b) emphasize the scope, import and the ambit of the said clauses. It is not every type of cruelty that is made punishable under section 498-A of the Indian Penal Code. The conduct, which is alleged to be cruel must be willful, and it must be of such a gravity as is likely to drive the woman to commit suicide, or to cause grave injury to the life, limb or health. The word 'likely' has been interpreted to show probability and stands on a higher footing than a mere possibility. When such is the position, the finding of cruelty cannot be arrived at without knowing the specific instances of cruelty and only on the basis of

general and omnibus statements allegedly made by Sarla to her relatives. It is because in the absence of specific instances, it would not be possible to judge whether the acts were such as were likely to drive Sarla to commit suicide.

22 As regards the suicide, Balu and Jaibai attribute the suicide to something that '*must have been done by the appellant*' as a result of Balu's inability to pay an amount of Rs.20,000/- demanded by the appellant two days before Sarla's death. In this regard, there is no claim that Sarla ever said so to Balu or anybody else – there was no time gap between these two incidents – and this is admittedly an inference drawn by Balu. Now, the question is whether the inference of cruelty can be drawn from the proof of the fact of suicide by Sarla. Such a course would not be impermissible, as the logical relevancy of these two aspects cannot be denied. *Thus, it would be permissible, in a given case, to draw the inference of cruelty from the fact of suicide and vice-versa, but only where atleast one of these facts is satisfactorily and independently established.* In other words, where there is some evidence of cruelty and the fact of suicide is satisfactorily proved, it would add strength to the evidence of cruelty. This would be useful where the real question will be only of judging the *extent of cruelty*. Similarly, when there would be undoubted evidence of cruelty, the unnatural death, in case of some doubt, might be inferred to be suicidal. It is, however, plain that just because suicide has been committed, inference of cruelty cannot be drawn. Similarly, even if cruelty is proved, there may be circumstances where the suicide would not be attributable to the cruelty, but to something else.

23 It would now be proper to examine the evidence of suicide. Admittedly, no statement of Sarla which could serve as a dying declaration, is available to show that Sarla had committed suicide. No suicide note was left by Sarla. Thus, that Sarla committed suicide is simply an inference drawn from the fact of cruel treatment given to her as alleged.

24 Considering the evidence in that regard, it appears to me extremely doubtful as to whether the death of Sarla was indeed suicidal. Undoubtedly, the death has taken place as a result of drowning, but whether such drowning was suicidal or accidental, cannot be satisfactorily determined. The evidence shows that Sarla had tied her two daughters of tender years around her person by a cloth as per the usual practice followed by villagers as a convenient way of carrying children. It was quite unlikely for Sarla to put an end to the lives of her daughters of tender years also, merely because she was being treated with cruelty. As aforesaid, there is no specific instance of cruelty and, at any rate, no extreme cruelty of a type that would make Sarla desire to put an end not only to her own life, but also to the lives of her daughters of tender age, is even alleged.

25 The evidence of Khandu Mali, a panch in respect of the spot panchnama and the Inquest panchnama shows that the well in which dead bodies were found was about 35 – 40 feet deep with the water level about 6 – 7 feet. The well is not constructed – meaning that there is no wall. It is revealed from the evidence of this witness that this well is situated at a distance of 3 – 4 kms

from the house of the appellant; and that, there is a well belonging to the appellant which is situated at a distance of about 300 feet from his house. That well is constructed and filled with water. Admittedly, a footpath passes from the well in which the dead bodies were found. Admittedly, the way to the house of the appellant from village Manegaon passes from near the well and way to village Kondewadi also passes from near the well in which dead bodies were found.

26 A careful consideration of the prosecution case and the evidence adduced during the trial makes the following factors clear. There is a vague, bald and general allegation about cruelty, but even as per the prosecution case, that cruelty has not led to the suicide. Sarla had not left any suicide note so as to indicate the death to be suicidal. What had happened immediately before the death of sarla which is supposed to be the cause of her committing suicide, is not known to anyone and does not find any place in the evidence. It is the inference of Balu that something might have happened after he had expressed his inability to pay the amount of Rs.20,000/- to the appellant, two days before the death of Sarla. These facts are totally insufficient to draw an inference that Sarla indeed committed suicide. The possibility of the death being accidental is certainly not ruled out. This is particularly so because it is more likely than not that Sarla would not think of putting an end to the lives of her daughters also even if she was being treated with cruelty. The evidence shows that she had links with her parental place, was on visiting terms with her mother and brothers, and could have made some arrangements for the daughters. Even otherwise, there is no evidence that the

daughters were being treated by the appellant without affection or that he had no love for them.

27 I have carefully gone through the impugned judgment to examine how the learned Judge has held the fact of suicide to be proved. The relevant discussion finds a place in paragraph nos.9 and 10 of the impugned judgment. The learned Judge, while noting that a footpath passes by the well and the contention that the fall of Sarla in the well could be accidental, observed that :

“Even if there is any footpath as it is in the evidence then such footpath cannot be definitely said to be just adjacent to the well in question and no one would take the risk of going to the well if he had no purpose to go towards the well”.

28 There is no basis for coming to the conclusion that the footpath is not close or adjacent to the well as no such fact is found in the evidence. It is the surmise of the learned Judge that the footpath could not be 'definitely said' to be just adjacent to the well in question. Again, that Sarla *had no purpose to go to the well* just seems to be an assumption made by the learned Judge.

29 It is apparent that the learned Judge realised that the contention that the accidental death was not ruled out, or at any rate, was not easy to refute, and therefore made vague statements in his judgment which are as follows :

“The facts and circumstances on record coming in the evidence on the other hand, speak much more to indicate that death of Sarla, Pramila and Priya was not accidental, but was suicidal”.

The learned Judge did not discuss what were the circumstances to rule out the possibility of accidental death and concluding that the death must have been suicidal. The learned Judge observed as follows :-

“This conclusion can definitely be drawn from the fact that the deceased Pramila and Priya were found tied together at the waist by means of a piece of cloth. A piece of cloth called 'PHADKI' according to the witness Waman for the accused, is used for putting the child therein and tying the ends of the cloth for the purposes of carrying the child on the back. Still there is no evidence on record to show that both the deceased children were kept together in the said piece of cloth. On the other hand, Pramila and Priya were found tied together in the waist region when their dead bodies were found floating on the surface of the well water, and at the time the dead bodies of these children were taken out of the well. This very fact that Pramila and Priya were found tied together at the waist by means of a piece of cloth

definitely indicate that it was with a definite purpose and act of someone and the use of the cloth was not certainly for carrying the children on the back. There are, therefore, grounds and the reasons to show that the deceased Sarla must have tied the children together and jumped into the well with them with a definite purpose and intention of drowning oneself to death.”

30 All these observations are simply untenable and show that the learned Judge has proceeded on the basis of assumption of guilt, and has failed to view the evidence objectively. How the fact that the children were tied to the person of Sarla by a cloth, would rule out the possibility of accidental death, and how this tying of these children by cloth to her body, would indicate suicide, is impossible to understand. The learned Judge also observed that the Medical Officer found that the injury on the knee of deceased Sarla could be due to a deep dip in the well, and her touching the bottom of the well. From this, the learned Judge concluded that Sarla must have jumped in the well and not fallen down. The observations made by the learned Judge in paragraph no.10 of the impugned judgment indicate that his view was that it is only if a person jumps in the well with force, he would be able to go to the bottom of the well, and if a person falls in the well, he would not go that deep. These are nothing but surmises drawn by the learned Judge without any evidence. As a matter of fact, the learned Judge himself has noted that the well was 47 feet deep and the water level was only about 12 feet. That the water level was 12 feet does not appear to be correct as the evidence of

Khandu Mali (DW 1) which is unchallenged shows the water level to be 6 – 7 feet. Why a person who had fallen from a height of about 47 feet cannot go to the bottom of the water which is about 6 – 7 feet (or even 12 feet), and why that would happen only if such person jumps in the well, is impossible to understand. Apparently, the water level has been mentioned as '12 feet' by the learned Judge in his anxiety to suggest the improbability of a person falling in the well, going down upto the bottom with that level of water, when actually, as per the evidence, the water level was only about 6 -7 feet. In any case, there is no scientific basis for coming to a conclusion that how deep a person would go inside the water depends on whether he falls in the well, or whether he jumps in the well, and that the distance to which he would go down would depend on these factors.

31 In my opinion, clearly, the prosecution had failed to exclude the possibility of death of Sarla being accidental. The fact that Sarla had indeed committed suicide, was not satisfactorily proved. Therefore, certainly, 'weight of the suicide' cannot be thrown into the evidence alleging cruelty, which as aforesaid, is itself not satisfactory.

32 This was a case where neither the charge of cruelty was satisfactorily proved, nor the charge of having abetted suicide had been satisfactorily proved.

33 The reasoning adopted by the learned Addl. Sessions Judge shows that he has proceeded on the presumption of the guilt of the appellant, and then has considered the evidence so as

to examine whether it rules out the possibility of the accused being guilty. This was contrary to law.

34 The impugned judgment and order of conviction being not in accordance with law, needs to be interfered with.

35 The Appeal, therefore, succeeds.

36 Appeal is allowed.

37 The impugned judgment and order is set aside.

38 The Appellant is acquitted.

39 His bailbonds are discharged.

40 Fine, if paid, be refunded to him.

(ABHAY M.THIPSAY, J)