

The State of Maharashtra

V/s.

- Both are residing at village Patan
Tal. Shindhkheda, Dist. Dhule

Respondents
Ori. accused
Nos 1 to 4.

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**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 2nd JULY, 2015.

ORAL JUDGMENT :[Per: Dr. Shalini Phansalkar-Joshi, J.]

1. The State has preferred this appeal against acquittal of respondent Nos 1 to 4, for the offences punishable under Sections 498A, 304-B, 306 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, as recorded by the learned Assistant Sessions Judge, Thane, vide his judgment and order dated 13.9.1993, in Sessions Case No.491 of 1991.

2. The facts, as are necessary, for deciding this appeal may be stated as follows :-

The marriage of Anita, the daughter of P.W.1 Sajan and P.W.2 Sulbha, was performed with respondent No.1 on 5.1.1987. Respondent No.2 is the brother-in-law of Anita and

respondent Nos 3 and 4 are father-in-law and mother-in-law of Anita, respectively. At the time of marriage itself, a demand of Rs.30,000/- was made by respondents which was tried to be satisfied by the parents of Anita by giving gold necklace and earrings to her and also by purchasing the clothes. Rest of the amount was given in cash. However, just two hours before marriage, respondent No.3 insisted for additional amount of Rs.15,000/- and the said demand was also satisfied.

3. After the marriage, at the time of Diwali festival, it was noticed that Anita was not having gold ornaments given to her in the marriage. When respondent No.1 was confronted about it, he replied that it was his right to take ornaments of his wife. He further demanded gold chain for himself. Anita's parents were unable to satisfy the said demand. Even then the said demand was repeated by respondent No.1 in the month of March and again in May, 1989 when in the marriage of their relatives, Anita and Respondent No.1 had come. Thereafter in November, 1990, Anita wrote a letter to her father, P.W.1 Sajan, requesting that the vacant plot at Dhule which was standing in

the name of her brother Devendra, be transferred in her name. Subsequent thereto, a demand of Rs.20,000/- was made by the respondent No.1 to the parents of Anita for purchase of property at Ulhasnagar where Anita and respondent No.1 were residing. Her parents failed to fulfill this demand. Hence some quarrel took place in the wedding of Anita's younger sister Sudha at Shegaon, Akola, about 15 days before her death

4. On 15.3.1990, P.W.1 received telephonic message that Anita and her son Abhijit have succumbed to burn injuries. He immediately went to Central Hospital at Ulhasnagar and they found burnt bodies of Anita and her son Abhijit. After performing funeral rites on their dead bodies, on the next day her father, P.W.1 Sajan lodged complaint Exh.19 against respondents. On his complaint P.W.9 ASI Chavan has registered C.R.No.27 of 1991 against respondents for the above said offences.

5. Meanwhile on 14.3.1991 itself, on the receipt of information that smoke was coming from the house of Anita, P.W.9 ASI Chavan, had visited there and had sent burnt bodies of

Anita and her son Abhijit to Hospital at Ulhasnagar and has registered A.D.No.9 of 1991. He also carried out panchanama of scene of the offence vide Exh.43 and recorded statements of 8 witnesses on that day. On registration of the crime, he again recorded statements of relatives of Anita and arrested respondent Nos 1 & 2 on 15.03.1991 and respondent No.3 on 16.03.1991. As respondent No.4 had obtained anticipatory bail from the Court, she was not arrested. On 18.03.1991 P.W.1 Sajan produced in all 8 letters written by Anita to him which were taken on record. Further to completion of investigation, P.W.9 ASI Chavan filed chargesheet in the Court against respondents.

6. On committal of the case to the Sessions Court, trial Court framed charge against the respondents vide Exh.10. Respondents pleaded not guilty and claimed trial, raising plea of false implication.

7. In support of its case, the prosecution examined in all 9 witnesses and on appreciation of their evidence, the Trial Court was pleased to acquit the respondents of all the charges

levelled against them. Being aggrieved by the said decision, this appeal is preferred by the State.

8. During the pendency of this appeal, respondent No.3 Narayan, the father-in-law of deceased Anita, has expired, hence the appeal stands abated against him.

9. In this appeal, we have heard learned APP for the State and learned counsel for respondents.

10. This being an appeal against acquittal, at the outset itself, learned counsel for respondents has sounded a note of caution, by placing reliance on the latest authority of Apex Court in **Madivallappa V. Marabad and others -vs- State of Karnataka, (2014) 12 SCC 448**; wherein the Apex Court had made reference of its earlier decision in **Rohtash v State of Haryana (2012) 6 SCC 589**. In para 27 of the said judgment, it has been held that,

“The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling

circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference”.

11. Hence, according to learned counsel for respondents, this Court cannot interfere in the judgment of the trial Court unless there are compelling circumstances and unless the judgment in appeal is found to be perverse. Bearing in mind this legal position, we proceed to re-appreciate the evidence on record as under:-

To prove its case, prosecution has relied upon the oral evidence of the parents of Anita, coupled with the evidence of other relatives as to the demand of cash amount on the part of respondents, which is termed by them as demand of “dowry”. The prosecution has to prove two ingredients to prove its case of dowry demand and dowry death. First, that there was demand of

cash or any valuable security and second that the said demand falls within the definition of “dowry”.

12. As per evidence of P.W.1 Sajan and P.W.2 Sulbha, the parents of Anita, when marriage of Anita was settled with respondent No.1, at that time itself, dowry in the form of ornaments, cash and clothes of the bride-groom was demanded. P.W.1 was asked to purchase one gold necklace and ear-ring for his daughter and locket and gold ring for respondent No.1. According to P.W.1 Sajan, he has totally spent Rs.17,500/- for purchase of gold ornaments; an amount of Rs.5,500 to 6,000/- for purchasing clothes and gave hard cash of Rs.7,000/- to respondent No.3, the father-in-law of Anita. However, at the time of marriage, further amount of Rs.15,000/- was demanded by respondent No.3. As P. W. 1 Sajan was not having cash at that time, he sold gold bangles of his wife and paid an amount of Rs.13,500/- to respondent No.3 in presence of relatives. Accordingly receipt of Rs.13,500/- was executed by respondent No.3 vide Exh.16.

13. At the time of Deewali festival, respondent No.1 demanded gold chain of 10 grams to him. However, he was unable to fulfill the said demand. The said demand was again repeated on 8.3.1989, when Anita and respondent No.1 had come to attend the marriage of cousin sister of respondent No.1 which was celebrated at Patan. That demand was further repeated on 27th May, 1989 in the marriage of respondent No.1's sister. According to P.W.1 Sajan, respondent No.1 has prevented and obstructed him from meeting or talking with Anita till his demand was met.

14. As to this first demand made by respondent No.1, in the evidence of parents of Anita, as the trial Court found that there is no consistency and there was, therefore, no reliable evidence on record. Though the evidence of P.W.1 Sajan is consistent with F.I.R. lodged by him, it is not consistent with receipts Exh.16 and 23 and the oral evidence of P.W.4 Shalivahan Hire. The receipt Exh.16 goes to show that out of the amount of Rs.30,001/-, Rs.13,000/- was paid in cash whereas as per F.I.R. and evidence of P.W.1 Sajan, an amount of Rs.7,000/- was paid in

cash. Receipt Exh.16 further reveals that an amount of Rs.6150/- was spent for purchasing clothes, whereas the oral evidence and F.I.R. shows that an amount of Rs.5,500/- was spent for purchasing clothes. Receipt Exh.16 shows that an amount of Rs.11,000/- was again spent for purchasing clothes. But the evidence of P.W.1 and the F.I.R. is silent about it. Exh.23 further reveals that out of the amount of Rs.30,001, Rs.13,000/- was paid in cash, Rs.6,500/- was spent for purchase of clothes and remaining amount was spent for purchase of gold.

15. Thus, as per receipt Exh.16 no amount was spent for purchasing gold ornaments either for Anita or for respondent No.1; whereas according to evidence of P.W.1, an amount of Rs.17500/- was spent for purchasing gold. Receipt Exh.23 is silent as to how much amount was spent for purchase of gold. It is pertinent to note that no receipt of purchasing gold ornaments or even of purchase of clothes is produced on record. In view of these apparent inconsistencies, the evidence relating to purchase of gold ornaments and giving cash as per demand of respondent No.1, does not stand proved. It is also pertinent to

note that though P.W.4 Shalivahan Hire, who claims that he was representing side of parents of Anita during talks of settlement of marriage, has not uttered a single word either about demand of Rs.30,000/- by the respondents, at the time of settlement of marriage or about actual payment of said amount either in cash or in kind to the respondents, at the time of performance of marriage.

16. Moreover though evidence on record proves that some amount was spent by parents of Anita towards purchase of clothes and marriage expenses, said expenses in view of Section Section (3) (2) (b) of the Dowry Prohibition Act do not fall within term "dowry". As per said proviso, the presents that are made by and on behalf of the bride or any person related to bride, which are of customary nature and value thereof is not excessive, having regard to the financial status of the person by whom or on whose behalf presents are given do not fall within the prohibited demand of "dowry".

17. Thus, the customary presents, the value of which is not

excessive, they do not fall within the definition of term “dowry”. Here in the case the amount which is alleged to be spent by P.W.1 for marriage of his daughter Anita, cannot be called as of excessive nature, having regard to the financial status of the parties. As the said amount is spent by him for purchase of clothes of Ania and her husband, then it has to be held that those presents are of customary nature. Hence as regards first instance of demand of Rs.30,000/-, we are of the opinion that the trial Court has rightly held that the prosecution has not proved the same beyond reasonable doubt so as to fall it within the four corners of the offence under Sections 3 and 4 of the Dowry Prohibition Act or under Section 304-B of the Indian Penal Code.

18. As regards instance of second demand of gold chain and gold ring, as made by respondent No.1, as per evidence of P.W.1 Sajan, this demand was made for the first time at Chalisgaon Railway station, when respondent No.1 had come there to attend marriage ceremony of his cousin sister. The said demand was repeated again in the marriage ceremony of sister at Latur. There is no other corroborating evidence except

testimony of P.W.1 Sajan on this aspect.

19. Moreover, the evidence relating to this demand has to be appreciated in the light of factual position prevailing at the relevant time and the contents in the letter Exh.17, written by respondent No.1 to P.W.1 Sajan. The said letter is written in the month of April, 1988 and contents thereof go to reveal that respondent No.1 was not at all happy about orthodox conduct of family of P.W.1. He was not allowed to enter their house and was also insulted and compelled to stay at Chalisgaon railway station. Nobody from the family of P.W.1 had talked with him. There is also reference in the letter that he was beaten by P.W.1 Sajan. The said letter, however, reveals love of respondent No.1 for his wife Anita. The contents of this letter further reveal that the relations between respondent No.1 and P.W.1 Sajan were strained at the time, as respondent No.1 was not allowed to enter the house when he had come there to meet his wife Anita. In view thereof, we are of the opinion that the trial Court has not committed any error in disbelieving evidence relating to the demand of gold chain alleged to be made by respondent No.1 to

P.W.1 Sajan at Chailsgaon railway station.

20. P.W.1 Sajan and P.W.2 Sulbha have deposed about demand made by Anita in respect of open plot of land at Dhule which was standing in the name of Anita's brother. The only piece of evidence in respect of this alleged demand is the letter written by Anita to her father P.W.1 Sajan, vide exh.18. Plain reading of the letter, however, goes to show that there was some talk between Anita and her father and her father has assured to give the said plot to Anita. The prosecution is silent so far as this earlier talk of handing over of the plot at Dhule to Anita. P.W.2 Sulbha, Anita's mother, has stated that Anita was compelled to write such letter. In the absence of any evidence to that effect, it becomes difficult to accept such contention, unless prevailing circumstances mentioned in the said letter are explained by the prosecution witnesses. Similarly as to alleged request made by Anita in the said letter to her father to transfer said open plot in her name, it cannot be said that it has any connection with her marriage to make it a demand of "dowry".

21. The last instance of demand is in respect of Rs.20,000/- for purchase of property at Ulhasnagar. As per evidence of P.W.1 Sajan, this amount of Rs.20,000/- was demanded by the parents of respondent No.1, when they had been to Chalisgaon in the month of December, 1991. The prosecution has also brought on record the evidence of P.W.7 Asanand Chhabrani, the owner of the said property who was intending to sell it to respondent No.1 for consideration of Rs.95,000/-. The oral agreement to that effect was also executed between them. The prosecution has further examined P.W.8 Devendra Wankhede, who was working in Sales Tax Office, where respondent No.1 was employed. He has deposed that respondent No.1 has applied for loan of Rs.20,000/- with Credit Society in the year 1991. Amount of loan was sanctioned to him on 27.2.1991. It was paid to him on 14.3.1991. This witness has also stood surety for said loan.

22. As per evidence of P.W.1 Sajan and P.W. 2 Sulbha the parents of Anita, P.W.3 Dinkarrao Patil the father-in-law of Anita's Sister Sudha, P.W.4 Shalivahan, relative of P.W.1, this demand of

Rs.20,000/- was made at the time of marriage of Sudha. P.W.1 Sajan the father of Anita has expressed his inability to fulfill the demand. Hence respondent No.1 threatened to jeopardies the life of Anita. Moreover, immediately after the marriage, respondent No.1 left the said place alongwith Anita. When Anita's brother Devendra attempted to pacify him, respondent No.1 slapped him and left with Anita. That was the last meeting of her parents with Anita. 12 to 15 days thereafter Anita succumbed to burn injuries.

23. As regards to evidence of P.W.3 Dinkarrao on this point, in his cross-examination an omission is elicited that in his statement recorded by police there is no mention of his witnessing the demand of Rs.20,000/- by respondent No.1. Moreover, when respondent No.1 has already applied for loan and his loan was sanctioned, it becomes difficult to accept that he will make such demand of Rs.20,000/- from the parents of Anita, especially in the light of strained relations between the parties. Moreover, the said demand, as held by the trial Court, cannot fall within the definition of "dowry" as it is not in

connection with the marriage.

24. Learned counsel for the respondents has in this respect made useful reference to the judgment of our own High Court, in **Arjun Dhondiba Kamble and ors -vs- State of Maharashtra, (1993 Mh. L.J. 1007** wherein it was held that, in the sense of definition of “dowry” under Dowry Prohibition Act, the demand for property or valuable security should have an inextricable nexus with the marriage. In other words, it must have some connection with the marriage. If it is a post marriage expectation and the performance thereof, it does not amount to “dowry”. It was further held in this judgment that, for attracting offence under Section 304-B of IPC there must be demand of dowry within the definition of section 2 of Dowry Prohibition Act.

25. In the instant case the alleged demand of Rs.20,000/- as held by the trial Court, cannot be treated as “dowry demand”, as it has no connection or inextricable nexus with the marriage. It also appears from the evidence led by prosecution itself, in the form of letter Exh.20 written by Anita to her parents in

December 1990, demanding Rs.20,000/- from her father that Anita has written this letter without the knowledge of respondent No.1 and his family members. She has further written in the said letter that she was ready to pay interest on the said amount, if advanced by her father and amount will be refunded when her National Saving Certificates would mature. This letter, therefore, proves that amount was demanded by Anita, as she wanted the property to be purchased by her husband. It has no connection with the marriage between her and respondent No.1 as such.

26. This brings us to the evidence relating to death of Anita and her son Abhijit. The prosecution has examined in this respect P.W.6 Kisan Tolaram, who was having shop in front of residential house of Anita and Respondent No.1. According to him on 14.3.1991 at about 1.00 p.m. when he was present in the shop, he noticed smoke emitting from the house of respondent No.1. Hence he went there and found that Anita and her son were lying on the bed in totally burnt condition. The door of the house was partly open. Respondent No.1 was not present in the house. He was in his office. Hence, this witness has given

telephonic information to respondent No.1 about the said incident. He has also informed the police and then P.W.9 ASI Chavan, has visited the spot and removed the dead bodies to the hospital. Postmortem report of Abhijit Exh.45 and of Anita Exh.46, which are admitted in evidence by defence under Section 294 of Code of Criminal Procedure, prove that both of them had sustained 100% burns all over body which ultimately resulted into their death on the spot itself.

27. It is true that the circumstances in which Anita's death has occurred cannot be called as natural. However, mere unnatural death of married woman, due to burns, cannot be sufficient to prove the offence either under Section 304-B or u/s 306 of IPC. The prosecution has to prove further that soon before her death, she was subjected to the cruelty which was in connection with demand of dowry. The prosecution has, however, failed to prove this material ingredient of the offence. Conversely, letter written by Anita herself to her parents vide Exh.28, goes to prove that Anita was very much happy in the house of respondent No.1. She has expressed her love and

affection for him and his parents.

28. Admittedly, respondent Nos 3 and 4 were not residing with her. They were residing at their native place and respondent No.2 was visiting her place occasionally. Her letter reveals that she had absolutely no grievance against them, but was very happy with her husband respondent No.1. She is calling herself fortunate to have such husband and parents-in-law. Her letter, therefore, falsifies the prosecution case that she was subjected either to harassment, illtreatment or cruelty at the hands of respondents. There is no other evidence brought on record by prosecution to show that there was any harassment or illtreatment to Anita at the hands of respondent No.1. Though prosecution has examined P.W.6 Kisan Tolaram, who was having shop in front of Anita's house, he has not stated anything about the alleged harassment or illtreatment. Even her parents and other relatives like P.W.3 Dinkarrao Patil or P.W.4 Shalivahan, have not deposed that Anita has ever complained to them about illtreatment or harassment at the hands of respondents. In the conspicuous absence of such evidence on record, though the

death of Anita and her son Abhijit are proved to be un-natural and had occurred in suspicious circumstances, which can be called as most unfortunate, respondents cannot be held guilty of the offences charged against them.

29. Thus, on entire re-appreciation of evidence on record, in our considered opinion, the view taken by the trial Court being probable view and no perversity being found in the appreciation of evidence by the trial Court, no interference can be made by this Court in the said judgment. Consequently, appeal stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]