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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.571 OF 1995.

The State of Maharashtra] ... Appellant

V/s.

1. Ramchandra Sadashiv Koli	]	
age : 28 years, occn.agriculture	]	
r/o Talawade. Tal: Shirol	]	
Dist. Kolhapur	]	.. Respondents
	]	Ori. accused
2. Sou. Sakhubai Sadashiv Koli	]	Nos 1 & 2
Age: 45 years	]	
r/o Takawade, Tal. Shirol	]	
Dist. Kolhapur	]	

Mr. Rajesh More, APP for Appellant State

Mr. P. D. Dalvi, for the Respondents.

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

DATE : 30TH JULY, 2015.

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

1. The State has preferred this appeal challenging the acquittal of respondent Nos 1 & 2, for the offences punishable under Sections 498A, 306, 304-B read with 34 of the Indian

Penal Code, as recorded by the Additional Sessions Judge, Kolhapur, vide his judgment dated 6.1.1995 in Sessions Case No.147 of 1993.

2. Brief facts of the appeal can be stated as follows :-

The marriage of Kalpana, the daughter of P.W.1 Mahadeo, was performed with respondent No.1 Ramchandra on 7.3.1992. After the marriage, she went to reside in the house of respondents at Takawade. Respondent No.2 is the mother of respondent No.1. At the time of Nagpanchami festival, when Kalpana came to the house of her parents, she disclosed to them about her harassment for coercing her to meet the demands of cot, mattress, gold ring, wrist watch and good quality clothes. When her father-in-law came to take her back, her parents called the mediators of the marriage and tried to convince her father-in-law that they were unable to satisfy the demand. However, it was of no use.

3. At the time of Diwali, when Kalpana came to the house of her parents, she reiterated her harassment and illtreatment at the hands of respondents on the same count of

non-fulfilling their demand of various articles referred to above. At that time, her parents also noticed injury to her ear, which according to them, was caused on account of beating by respondent No.1. After giving medical treatment to her, she was sent by her father to the house of respondents.

4. Within few days thereafter, on 9.11.1992 P.W.1 Mahadeo, received message that Kalpana had sustained burn injuries and was admitted in Civil Hospital at Sangli. He rushed there and found that she was severely burnt and unable to talk. She succumbed to burn injuries on the same day. After postmortem, her dead body was handed over to respondents who performed funeral rites on her dead body. On the next day thereafter at 7.00 p.m. her father P.W. 1 Mahadeo lodged complaint against respondents at Shirol Police Station. On his complaint (Exh.11), P.W.8 PSI Sonawane, registered C.R.No.132 of 1992, for offences punishable under Sections 498A, 306, 304(B) read with 34 of the Indian Penal Code.

5. Meanwhile on 9.11.1992 itself A.D.No.64 of 1992 was registered in respect of her death and it was investigated by Head Constable Shaikh. The dying declaration of Kalpana

was recorded by P.W.2 Special Executive Magistrate Madhukar Koshti, on receipt of requisition from the police on 9.11.1992 at about 10.30 a.m. The said dying declaration Exh.30 was received by P.W.8 PSI Sonawane alongwith case papers of A.D. enquiry.

6. On registration of offence, PSI Sonawane carried out inquest panchanama (Exh.17) and sent the dead body for postmortem. The postmortem report is produced at Exh.16 which discloses cause of death as extensive burn injuries sustained by her. PSI Sonawane, then seized burnt clothes of the deceased under panchanama (Exh.18). He visited the spot of incident and seized kerosene mixed soil, the matchbox and kerosene can from the spot under panchanama Exh.17. All these seized articles were sent to Chemical Analyzer, vide requisition letter Exh.34.

7. During the course of further investigation, P.W.5, Virupaksha Koli produced one letter written by Kalpana to her friend Deepali which came to be seized under panchnama (Exh.23). The notebook in hand writing of Kalpana was also collected under the said panchanama and both the letter and

notebook were sent to Hand Writing Expert P.W.9 Shri.Dhotre, the Assistant Examiner of Documents. He gave his opinion (Exh.37) that the inland letter and note book were in the hand writing of the same person, namely Kalpana. On the receipt of the C.A. report (Exh.36) and further to completion of investigation, P.W.8 PSI Sonawane filed chargesheet in the Court against respondents.

8. On committal of the case to the Sessions Court, trial Court framed charge against respondents vide Exh.2. The respondents pleaded not guilty and claimed trial raising defence of false implication.

9. 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 holding that none of the charges stand proved against them beyond reasonable doubt.

10. This judgment of the trial Court is challenged in this appeal by learned APP by submitting that dying declaration and the letter (Exh.13) written by deceased Kalpana to her

friend Deepali clearly go to prove that it was a case of suicide and the evidence of Kalpana's father P.W.1 Mahadeo and her sister's husband P.W.5 Virupaksha Koli go to prove that before her death she was subjected to illtreatment and harassment for coercing her to meet the unlawful demand of various articles. According to learned APP, therefore, there was sufficient evidence before the trial Court to draw presumption under Section 113A of the Evidence Act to hold guilt of the respondents as proved beyond reasonable doubt for the offences punishable under Section 498A, 304B and 306 read with 34 of the IPC. As the trial Court has not done so and instead acquitted the respondents, according to learned APP interference at the hands of this Court is clearly warranted in this case to prevent miscarriage of justice which has resulted on account of acquittal of respondents.

11. Per contra, learned counsel for respondents has supported the impugned judgment of trial Court, by submitting that the letter written by Kalpana to her friend Deepali does not contain even a whisper of the alleged harassment or illtreatment to her at the hands of respondents. As regards dying declaration, the evidence of Kalpana's father

P.W.1 Mahadeo clearly goes to prove that at the relevant time, she was unable to talk. The prosecution has not examined the Doctor in whose presence the alleged dying declaration was recorded. Hence, according to learned counsel for respondents, there is absolutely no evidence of alleged harassment and illtreatment. General allegations are made on that score. There are also inconsistencies in the evidence of P.W.1 Mahadeo and P.W.5 Virupaksha Koli. Hence, according to learned counsel for respondents, the view taken by the trial Court being borne out from the evidence on record and also being a possible and reasonable view of the matter, this Court should restrain itself from interfering in the said view while sitting in an appeal against acquittal.

12. On careful consideration of entire evidence and facts and circumstances brought on record, we find much substance in the submissions advanced by learned counsel for respondents. Though apparently this case appears to be based on strong evidence like dying declaration and the letter written by deceased Kalpana herself proving that she has taken extreme step of ending her life, the evidence on record is not convincing and reliable to show that she was

constrained to take such step due to alleged harassment and illtreatment, at the hands of respondents.

13. Coming first to the evidence relating to the demand and illtreatment, as per evidence of P.W.1 Mahadeo, after marriage when Kalpana came to his house for the first time, for Nagpanchami festival, she informed that she was harassed in her in-law's house as they were not respected properly in the marriage and they were demanding cot, mattress, gold ring, wrist watch and some good quality clothes. He has deposed that when Kalpana's father-in-law came to take her back, he called two mediators viz Maruti Koli and Vasagade and they persuaded her father-in-law not to harass Kalpana.

14. In respect of this complaint of illtreatment and harassment made by Kalpana at the time of Nagpanchami festival, the prosecution has not examined these two witnesses namely Maruti Koli and Vasagade, who had tried to persuade Kalpana's father-in-law. Their evidence was of significance as it was independent and also available on record which is sometimes not available.

15. As per further evidence of P.W.1 Mahadeo, at the time of Deewali also when Kalpana came to his house, she reiterated her complaint of harassment in her in-law's house and told him to purchase these articles. At that time she had injury to her ear and was unable to hear. Therefore, after giving her treatment, he sent her back. However, as regards this injury to ear, in the evidence before the Court, he has not deposed that Kalpana has attributed this injury to the beating at the hands of respondents.

16. In cross-examination, her father P.W.1 Mahadeo has given some vital admissions to the effect that his daughter Kalpana was brought up in urban area and after marriage she was residing in rural area like village Takawade. He has further admitted that respondent No.1 was doing business of supplying milk and his economical condition was poor. He has further admitted that Kalpana was desirous of marrying in a better family, but since his financial position was not good, he was unable to find out match for her from better family. In his cross-examination, omission is elicited to the effect that he has not stated before the police that his daughter Kalpana told him about harassment at the time of Nagpanchami

festival. Further omission is elicited that he has also not stated in his previous statement that when her father-in-law came to take her, the mediators Maruti Koli and Vasagade were called and they persuaded him to treat Kalpana properly.

17. It is further brought out on record that after coming to know about her death due to burn injuries, he has not lodged complaint immediately, but he has lodged it on the next day at about 7.00 p.m. The funeral rites on her dead body were performed by respondent No.1 which he did not attend.

18. This evidence of P.W.1 Mahadeo, is required to be taken into consideration in the context of evidence of P.W.5 Virupaksha Koli, who is husband of Kalpana's sister. According to him, Kalpana had been to his house on 16.6.1992 for festival of Bendur and stayed for four days. During said period she told him that her husband and in-laws were harassing her and they were demanding cot, mattress, wrist watch, good quality clothes and gold ring of half tola. According to his evidence, thereafter he went to house of P.W.1 Mahadeo (Kalpana's father) and told him about this harassment and demand. At that time P.W.1 Mahadeo told him that on

account of economical difficulty, it was not possible for him to meet the demands immediately; however, he would try to make some arrangement at the time of Diwali. As per evidence of P.W.5 Virupaksha Koli, he then personally went to the house of Kalpana and tried to convince her mother-in-law by informing her about the assurance given by P.W.1 Mahadeo that some arrangement would be made at the time of Diwali and told them not to harass her.

19. This part of evidence of P.W.5 Virupaksha, however, is not at all corroborated by evidence of P.W.1 Mahadeo. Evidence of P.W.1 Mahadeo is conspicuously silent about Kalpana's visit to the house of Virupaksha Koli at the time of Bendur and then P.W.5 Virupaksha Koli coming to him and informing about the harassment to Kalpana and then his giving assurance. If at all any such incident has happened, definitely P.W.1 Mahadeo would have deposed about the same. Thus, the evidence of both these witnesses stand on independent footing without corroborating each other.

20. Most material evidence as regards alleged harassment and illtreatment would have been that of P.W.6

Deepali Patil, who was Kalpana's friend and to whom Kalpana has written inland letter (Exh.13) which is proved to be in the hand writing of Kalpana, in view of report and evidence of Hand Writing Expert P.W.9 Dhotre, but Deepali has however not uttered a single word about Kalpana informing her in respect of alleged illtreatment and harassment. The stoic silence on the part of Deepali about such disclosure is curious, especially because, if Kalpana can write letter to her expressing her mental condition, it was expected that when they met at the time of Deepali's delivery in her parent's house, Kalpana should have disclosed about said illtreatment. However, Deepali has not stated anything about the same.

21. Even the letter (Exh.30) does not speak at all about the alleged harassment and illtreatment, though it speaks loudly and clearly that Kalpana was not at all happy with her life. In the letter she has stated that she was not intending to return to the house of her in-laws. It would have been better if her father pushed her in the well or river instead of sending her to the house of her in-laws. She has further stated in the letter that she was in a confused state of mind as to what to do and what not to do. Her parents were not

providing any help to her. Nobody was there to support her; neither her maternal home nor her matrimonial place. Hence there is no meaning in her life; for whom she should live and for what she should die, is her mental condition. She has further stated that she was writing this letter behind the back of all members in the family and therefore Deepali should tear the letter after reading. Thus, in this letter Kalpana has not attributed the cause of her miserable state of mind to respondents alone or to their demand and harassment, but both to her parents and in-laws' house, finding that she has no support from any source.

22. Curious aspect about this letter is that it is not produced by P.W.6 Deepali, but it is produced by P.W.5 Virupaksha Koli. According to him, he got this letter from Deepali's father Hari Patil. The letter does not bear date. However, postal stamp thereon bear date as 20.8.1992 i.e. much prior to the incident of her death. It is apart that, otherwise also letter is not speaking anything about harassment and illtreatment by respondents.

23. In addition to this evidence, much reliance is placed

by prosecution on dying declaration of Kalpana, recorded by P.W. 2 Special Executive Magistrate Koshti. According to him, at 10.30 a.m. on 9.11.1992, on receipt of requisition letter (Exh.13), he had been to the hospital. There, he recorded statement of Kalpana, in presence of the Doctor who was on duty. After examining Kalpana, Doctor opined that she was conscious and was in a position to give statement. The endorsement to that effect was made by Doctor on her statement also. Then he recorded her statement as per narration. He had read over it to her. She admitted it to be true. Then her thumb impression was obtained on the statement.

24. Said statement/dying declaration is at Exh.14 in which Kalpana has stated that after marriage, her mother-in-law used to harass and abuse her. She was constantly asking to bring cot, mattress and other articles. As the financial position of her parents was poor, they could not fulfill the demand of her mother-in-law. Hence her mother-in-law was torturing her. Her husband was also torturing her, but mother-in-law was giving more harassment.

25. This dying declaration no-doubt implicates respondents. However, the real question posed before us is, whether in the absence of evidence of Doctor in whose presence dying declaration is alleged to be recorded, reliance can be placed thereon or not. The evidence of the Doctor becomes material in this case because P.W.2 Special Executive Magistrate Koshti, who has recorded her dying declaration has admitted in his cross- examination that he has not mentioned in the statement as to whether he was satisfied that Kalpana was in a condition to depose. Therefore, satisfaction of the person who has recorded dying declaration is not reflected either in his evidence or in the dying declaration. Secondly P.W.2 Special Executive Magistrate Koshti has admitted that when he reached to the hospital, her condition was serious and she was lying silent on the bed groaning with pain.

26. At this stage the evidence of her father P.W.1 Mahadeo also becomes relevant, because as per his evidence, he has also reached in the hospital at about 11.30 a.m. when according to P.W.2 Special Executive Magistrate Koshti, he has reached there to record dying declaration of Kalpana at 10.30 a.m. P.W.1 Mahadeo in his cross

examination admitted that at about 10.30 to 11.00 a.m. he came to know that Kalpana was admitted in the hospital and he immediately went to the hospital. It took him about one hour to reach hospital. There, she was kept in Intensive Care Unit. The Nurses who were on duty told him that Kalpana was unable to talk. When he went to see her, she was lying silent. She was not screaming. He could see her, only from the door and therefore, he cannot say even what was her actual condition. Nobody was allowed to see her.

27. In our considered opinion, this evidence of her father that she was unable to talk and lying silent at the time when alleged dying declaration is stated to be recorded creates serious doubt about her fitness to give such statement, especially in the absence of evidence of Doctor who was alleged to be present at the time of recording her dying declaration.

28. In order to hold that the conviction can stand on the basis of dying declaration, it is utmost essential that such dying declaration is proved to be made by the deponent when she was in fit physical and mental condition to give such

statement. As the dying declaration is not made before any Court, it is neither made on oath nor in the presence of accused and therefore, not tested by cross-examination on behalf of the accused; it is utmost essential that for its reliability, the status of dying person is required to be proved. Important test for reliability of dying declaration is that the deponent must be proved to be in a fit state of mind and body to give the statement. It is true that even in the absence of medical evidence, court can arrive at conclusion of the fitness of deponent, provided the person who has recorded dying declaration must be satisfied that the deponent was in fit state of mind and making conscious and voluntary statement, with normal understanding. Such satisfaction has to be reflected from the evidence.

29. Here in the case P.W.2 Special Executive Magistrate Koshti, who has recorded dying declaration of Kalpana, has not stated about his satisfaction that Kalpana being in a fit state of mind at the relevant time to give statement. Hence in the face of evidence of her father that at the relevant time she was not in a position to talk, but was lying silent creates substantial doubts about the fitness of Kalpana to give such

statement.

30. In our considered opinion, therefore, if the dying declaration (Exh.14) is excluded from consideration, as it has failed to satisfy one of the important tests for its admissibility, then there is no other convincing and cogent evidence on record to prove that cause of Kalpana's death, which was in the nature of suicide, was alleged harassment and illtreatment at the hands of respondents to coerce her to meet their demands.

31. In the instant case, therefore, though the prosecution has succeeded in proving that Kalpana's death has occurred within few months from her marriage and her death was unnatural due to burns and pointing towards her act of suicide; in the absence of evidence proving that soon before her death she was subjected to harassment and illtreatment and that was only the cause for her to end life, the benefit of doubt has to be extended to respondents.

32. On re-appreciation of entire evidence on record, therefore, we are of the opinion that the view adopted by the

trial court while acquitting respondents, being borne out from the evidence on record and being a possible view of the matter, it does not call for the interference. The appeal, therefore, deserves to be dismissed and accordingly stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K.TAHILRAMANI, J.]