

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.588 OF 2010**

**KAMLESH SATYAPRAKASH AGARWAL )...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.R.V.Gupta, Advocate for the Appellant.

Mrs.M.R.Tidke, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 16<sup>th</sup> JUNE 2015.**

**JUDGMENT :**

1            This appeal is directed against the judgment and order dated 31<sup>st</sup> August 2010 passed by the Additional Sessions Judge, Greater Bombay, in Sessions Case No.700 of 2009 convicting the appellant, who was the accused no.1 in the said case, of offences punishable under Sections 498A, 304B and 306 of the Indian

Penal Code (IPC). The learned Additional Sessions Judge imposed a sentence of Rigorous Imprisonment for three years and a fine of Rs.1,000/- with respect to the offence punishable under Section 498A IPC, a sentence of Rigorous Imprisonment for seven years with respect to the offence punishable under Section 304B IPC, and a sentence of Rigorous Imprisonment for seven years and a fine of Rs.1,000/- with respect to the offence punishable under Section 306 IPC. The learned Additional Sessions Judge directed that the sentences would run concurrently. Being aggrieved by the said judgment and order of conviction and the sentence imposed upon him, the appellant has approached this court by filing the present appeal.

2           The appellant's father – Satyaprakash Girdharilal Agarwal, mother – Nilima Girdharilal Agarwal and brother – Yogesh Satyaprakash Agarwal were also accused in the said case as accused nos.2, 3 and 4 respectively. The learned Additional Sessions Judge, however, found them not guilty and acquitted them. The appellant and the other accused were also charged of

having committed the offences punishable under Sections 323, 504, 506 of IPC read with Section 34 thereof, but all of them, including the appellant, were acquitted of the said offences.

3           The prosecution case, as put forth before the trial court, be stated thus :

That, Kamini – daughter of Kailash Narayan Agarwal – married the appellant on 24<sup>th</sup> November 2008 at Lalitpur. The appellant was then working as an Assistant Scientist at Bhabha Atomic Research Center. He, along with his father, mother and brother – the said other accused, was residing in the residential accommodation provided to him at Anushakti Nagar. After marriage, Kamini came to stay there. Kailash Narayan Agarwal (PW2) – father of Kamini – had given an amount of Rs.One Lac and gold ornaments worth Rs.75,000/- as a gift at the time of marriage. He had also borne the expenses incurred on the marriage ceremony. That, the accused persons called Kailash Narayan in January 2009 at Mumbai and demanded an amount of Rs.5 Lac from him. Additionally, a demand was made that he

should purchase a house or land at Lalitpur or Jhansi, and give it to the accused persons. At that time, Kamini had complained to Kailash Narayan that her *in-laws were not treating her properly*, whereupon, Kailash Narayan had told her and the appellant that *they should ask the in-laws of Kamini for giving Kailash Narayan some time*. That, Kamini from time to time used to telephone to Kailash Narayan and ask him to give the amount of Rs.5 Lac and house or land as demanded by her in-laws at an early date, and that, because the needful was not being done, the appellant and the other accused used to abuse and beat her. Kailash Narayan had then told her that he would arrange for the necessary money and that everything would be alright. That, in March 2009, the appellant had gone to Lalitpur along with Kamini for the holi festival, but instead of going to the house of Kailash Narayan, he went to his native place at Jhansi, by dropping Kamini at Lalitpur Railway Station. Kamini came to the house from the station alone and she told Kailash Narayan and other members of her parental family that she was being harassed in her matrimonial house. Kamini also informed Kailash Narayan and others that she was

carrying, but her husband and in-laws were forcing her to carry out abortion. Kamini stayed with her parents for 2 to 3 days and then the appellant asked her to be dropped at Jhansi. Kailash Narayan, his wife, then went to Jhansi along with Kamini to drop her there, where the appellant and the other accused were present. Again a demand of Rs.5 Lac and of a house or land was made, and Kailash Narayan was threatened that if the demand would not be met, Kamini would have to terminate the pregnancy. Kailash Narayan again asked them to wait for sometime, stating that he did not have that much money at that time, and that, they should not insist on termination of pregnancy of Kamini. The appellant and the other accused were not in a mood to consider the pleas of Kailash Narayan. Kailash Narayan and his wife then came back to Lalitpur. Kamini stayed at Jhansi and later went to Mumbai. Thereafter also, Kamini had, from time to time, told Kailash Narayan and his wife telephonically about the cruel treatment that was being given to her by the appellant and other accused.

That, on 30<sup>th</sup> April 2009, Kamini telephoned her mother at Lalitpur and told her that the harassment, that was being caused to her by her in-laws for the money and for the house or land, was increased. That, they were abusing and beating her, and that, they were forcing her to terminate the pregnancy. Kamini was crying for about half an hour on telephone and this fact was reported to Kailash Narayan by his wife.

On 2<sup>nd</sup> May 2009, Kamini again telephoned her mother at Lalitpur and again informed her that the harassment that was being caused to Kamini for the money and the house and / or land, had increased, and that, the in-laws were abusing and beating her and also insisting that she should terminate the pregnancy. Thereafter, the appellant also telephoned Kamini's mother and demanded the money. That, the appellant also threatened that *if the money would not be paid, Kamini would be beaten by him and the other accused, and that, her pregnancy would be terminated*. On the same day, the appellant had telephoned

Kamini's brother Pankaj also and had given the same threat. At about 10.00 p.m. on the same day, Kamini had again telephoned and informed that the appellant and the other accused were abusing and ill-treating her.

4           That, on 3<sup>rd</sup> May 2009, at about 2.00 a.m., the neighbour of the appellant telephoned to Kailash Narayan on his mobile telephone informing him that Kamini had committed suicide, and that, she had been declared dead on admission in the hospital. Kailash Narayan did not believe this, and therefore, insisted on speaking to the appellant on telephone, but the appellant confirmed that Kamini had indeed committed suicide. Thereafter, Kailash Narayan and Pankaj Agarwal (PW3) came to Mumbai. On the next day i.e. on 4<sup>th</sup> May 2009, the FIR, alleging the aforesaid facts, came to be lodged.

5           The prosecution examined six witnesses during the trial, two of whom – Kailash Narayan (PW2) and Pankaj Agarwal (PW3) – have already been referred to earlier. One Divakar Sing

Munda -neighbour of the appellant – was examined as the first witness for the prosecution (PW1), and one Arun Kumar Jain – neighbour of Kailash Narayan – was examined as the fourth witness for the prosecution (PW4). Gajanan Mhatre, Assistant Police Inspector, attached to Trombay Police Station at the material time, is the fifth witness for the prosecution (PW5), while Arvind Mane, also Assistant Police Inspector, attached to Trombay Police Station at the material time, is the sixth witness for the prosecution (PW6). Gajanan Mhatre had recorded the FIR. Arvind Mane had carried out further investigation and had submitted the charge-sheet against the appellant and others.

6            I have heard Mr.R.V.Gupta, the learned counsel for the appellant. I have heard Mrs.M.R.Tidke, the learned APP for the State. I have carefully gone through the record and proceedings. I have been taken through the entire proceedings adduced during the trial, as also the impugned judgment.

7           It is contended by Mr.R.V.Gupta, the learned counsel for the appellant, that the judgment of conviction as delivered by the learned Additional Sessions Judge is not proper or in accordance with law. It is submitted that the prosecution evidence was not at all satisfactory, and that, the evidence of Kailash Narayan and Pankaj Agarwal – which was the only evidence to establish the alleged cruelty – suffered from a number of infirmities. It is also contended that though the evidence against all the accused was the same, the learned Additional Sessions Judge has acquitted the other accused but has held the appellant guilty, only because the appellant happened to be the husband of the deceased Kamini. According to Mr.Gupta, there was no distinction between the case of the other accused, who have been acquitted, and that of the appellant; and that, if the case against the other accused was held as 'not proved', the case against the appellant also ought to have been held as 'not proved.' It is submitted that, why Kamini committed suicide was not clear to the appellant also, but, that she committed suicide because of the cruel treatment – allegedly given to her by the appellant and the

other accused – was not true, in as much as, she was not treated with cruelty at all.

8           Mrs.Tidke, the learned APP, on the other hand, contended that the evidence of Kailash Narayan and Pankaj Agarwal was consistent and it proved the allegations of cruelty. It is submitted that since Kamini committed suicide, it supported the theory that she was being treated with cruelty. It is also submitted that the distinction drawn between the case of the other accused and that of the appellant by the learned Additional Sessions Judge was proper and justified.

9           That, Kamini committed suicide is not in dispute. The evidence of Divakar Munda (PW1) shows that at about 1.15 a.m. on 3<sup>rd</sup> May 2009, Smt.Nilima Girdharilal Agarwal (accused no.3) – mother of the appellant – knocked the door of his room, which is situated adjacent to the room of the appellant. This witness was sleeping at that time and he woke up because of the knock given on the door. He was told by accused no.3 (Smt.Nilima Girdharilal

Agarwal) that appellant's wife had been to bathroom and was not opening the door. Divakar and one Vijay Kumar, who was also in his room, went to the room of the appellant and the other accused, and found that the bathroom was closed from inside. There was no response, and thereafter, the appellant and Vijay broke opened the door of the bathroom. It was noticed that Kamini had hanged herself to the shower pipe in the bathroom, by a *dupatta*. The knot was untied. Kamini was brought to the front room. Security guard was called. Kamini was taken to BARC Hospital, where the doctor, on examining her, opined her to be dead.

10           Now, the evidence of this witness establishes that the door of the bathroom, in which the dead body of Kamini was found hanging, had been locked from inside. It, therefore, indicates that Kamini's death was suicidal. As a matter of fact, it is nobody's case that the death of Kamini was homicidal. Even Kailash Narayan or Pankar Agarwal have not expressed any such suspicion, either before the police, or while giving evidence before this court. Therefore, that Kamini indeed committed suicide is proved – rather, it is not a matter which is in dispute.

11           The points that need determination are (i) whether the appellant had subjected Kamini to cruelty as contemplated under Section 498A of IPC, and (ii) whether the commission of suicide by Kamini, was abetted by the appellant.

12           Kailash Narayan and Pankaj, both, have stated about the cruel treatment meted out to Kamini. According to Kailash Narayan, the appellant demanded an amount of Rs.5 Lac from him in the month of December 2008 *through Kamini*. He also stated that he transferred the amount of Rs.50,000/- in the account of Kamini. Kailash Narayan then spoke about his having gone to Mumbai in the third week of January 2009 and there the appellant and the other accused having demanded an amount of Rs.5 Lac from him for purchasing land or house. He then stated that he showed his inability to pay such huge amount and returned back home. According to him, *he used to receive* telephone calls from the accused persons *who used to demand* money and *who used to give threats* to cause harassment to Kamini. He then stated about the incident that had taken place in the month of March 2009

when the appellant and Kamini had travelled together from Mumbai, but appellant had dropped Kamini on the platform of Lalitpur station and he himself proceeded to Jhansi. This is suggested to be an act of cruelty. When Kailash Narayan was later called at Jhansi, and when he went there along with his wife, the appellant and the other accused who were present there, again demanded an amount of Rs.5 Lac from him and also asked him to convince Kamini, who was pregnant, to cause abortion. According to him, he, thereafter, convinced the appellant and the other accused that abortion should not be done, and that, he was unable to pay the huge amount demanded by the appellant and the other accused. He, then, returned to Lalitpur with his wife, and thereafter, the appellant and the other accused also came to Mumbai. According to him, thereafter, he used to receive telephone calls from the *appellant and his family members* demanding the amount and *threatening to cause the death of Kamini*, if she would fail to pay the amount, and cause abortion. Now, this is, clearly, an improvement, in as much as, there is no disclosure of such an important fact in the FIR.

13           Kailash Narayan also stated that in April 2009 he received a missed call on his mobile phone and then he called on the calling number and spoke to Kamini. That, Kamini was alone in the house at that time and she told him on telephone that the 'accused persons' were demanding money, and that, if their demands would not be fulfilled, they would kill Kamini. Now, this is clearly an improvement, in as much as, no such version is reflected in the FIR lodged by Kailash Narayan. This omission has been duly proved. Apart from the fact that this is an improvement, the story itself is somewhat absurd. If indeed Kailash Narayan had been receiving threats from the appellant and the other accused that they would *cause death of Kamini*, if she failed to get the amount, and cause abortion; and if Kamini had also stated so to him, then Kailash Narayan would not have kept quite, and would have done something for the safety of Kamini. In any case, after learning about her unnatural death, he would have immediately suspected that Kamini had been murdered as per the threats given by the appellant. When Kamini also had allegedly told him that the accused were threatening to

cause her death, he would not have accepted that Kamini had committed suicide, but he would have certainly made a claim, or atleast expressed a suspicion that Kamini had been murdered by the appellant. However, as aforesaid, no such suspicion was felt or expressed by him at any stage.

14           In the cross-examination, Kailash Narayan claimed that he had stated before the police 'that he used to receive telephone calls from the accused persons, and that, the accused persons used to demand money and used to give him threats to cause harassment to Kamini.' He also stated 'that, that he received a missed call in the month of April 2009, and that, thereafter, he had made a call on that number and had a talk with Kamini, and that, at that time Kamini had told him that the accused persons were demanding money, and that, if their demands were not fulfilled, they would cause her death', was stated by him to the police. However, the omission to state so has been brought on record in the evidence of Gajanan Mhatre (PW5), who recorded the FIR.

15           Coming to the evidence of Pankaj Agarwal (PW3) – brother of Kamini, it must be clearly understood that he does not stay with Kailash Narayan. He stays at Pilani, Rajasthan. He has narrated the incident said to have taken place in March 2009, where Kamini had been dropped at platform of Lalitpur Railway Station and the appellant had proceeded therefrom to Jhansi. According to Pankaj, he was at Lalitpur at that time, and that, Kamini told him that the accused were demanding an amount of Rs.5 Lac and also a plot at Lalitpur or Jhansi, and that, the accused persons used to beat her, harass her and ill-treat her. According to him, Kamini had also told him that the accused were insisting that she should terminate her pregnancy. According to Pankaj, *he used to receive* telephone calls from Kamini, wherein, *she used to tell* him about the demands from the accused persons and the ill-treatment given to her. That, on 2<sup>nd</sup> May 2009, he received a telephone call from Kamini at 3.00 p.m. and she told him that the accused were demanding cash of Rs.5 Lac and also a plot at Lalitpur or Jhansi, and were also insisting on the termination of her pregnancy. Pankaj further stated that he received telephone call from the appellant on

2<sup>nd</sup> May 2009 wherein the appellant repeated the same demands, which fact was communicated by him to his father Kailash Narayan. In the cross examination, it was revealed that he is a well educated person, being M.Tech degree holder, having passed his examination from NIT Kurukshetra. A number of photographs were shown to have this witness in the cross examination, apparently for showing that when Kamini and appellant had gone to Lalitpur for the Holi festival, they were in a joyous mood. From his evidence, it is revealed that Kamini had passed her M.Sc. and B.Ed. Examination from Gwalior, and that, before the marriage she used to stay at Gwalior, as a paying guest. She used to visit Lalitpur occasionally during this period. Pankaj had made several improvements, and the omission on his part to state some of the significant things to the police when his statement was recorded, has been brought on record in the evidence of A.P.I. Gajanan Mhatre (PW5), who had recorded the statement of Pankaj in the course of investigation. Thus, Pankaj had not stated about his receiving telephone calls from Kamini and Kamini telling him about the demand from the accused persons and the harassment etc.

16           The evidence of Kailash Narayan and Pankaj Agarwal is sought to be supported by the evidence of Arun Kumar, who is a neighbour of Kailash Narayan. His evidence is to the effect that when Kamini had been to Lalitpur in March 2009, she had been to his house, and that, at that time, she had told that the accused persons were demanding cash amount, plot etc. from her parents. In the cross-examination it was revealed that the statement of this witness was recorded about five months after the incident. It appears that in the month of October 2009 he was brought to Mumbai by Kailash Narayan and taken to the police station, where his statement was recorded. Not much turns on the evidence of this witness.

17           While appreciating the evidence of Kailash Narayan and Pankaj, it must be kept in mind that such evidence by the close relatives of the victim, needs to be examined with great caution, as it would be easy for them to make such accusation after the death of the victim. *The claim that the victim used to tell them about the harassment, ill-treatment and cruelty meted out to*

*her, after the death of the victim, when the victim would not be available for challenging the same or confronting her with such evidence, is quite easy to be made.* While it cannot even be suggested that, the witnesses being closely related to the deceased their evidence ought not to be relied upon, the possible dangers in such evidence must be kept in mind. As observed earlier, such evidence can easily be concocted on the death and the tragic end of that the victim. Moreover, in such tragic cases, the near ones of the victim, genuinely start believing that her husband or the in-laws are the cause of the death, and therefore, there would be a tendency to modify the facts suitably to see that some how the husband and the in-laws are booked. In the instant case, applying the well settled parameters for judging the reliability of evidence, it is impossible to come to a conclusion that the evidence of Kailash Narayan and / or Pankaj can be safely accepted. There are very obvious and material improvements in their evidence, but, what is further important to note is that, the allegations of cruelty, as reflected from their evidence, are vague and general. It must be understood that cruelty contemplated by Section 498A of the

IPC is different from the concept of cruelty that is recognized in matrimonial matters. The explanation appended to Section 498A of IPC is important in this context. It makes it clear that cruelty means '*any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman.*' The words '*wilful conduct*' and '*likely*' are significant and indicate that the *wilful conduct* must be of such a nature, as would be likely to drive a woman to commit suicide or to cause grave injury to her life, limb or health. Whether the *conduct* was of such a gravity, can be inferred only from the fact of suicide, shall be discussed later, at an appropriate place, but that there are no incidents of cruelty reflected in the evidence of Kailash Narayan or Pankaj, even if the other weaknesses in their evidence are ignored, is significant and needs to be mentioned here itself. Interestingly, there is only one specific incident with respect to the act of cruelty and that is 'dropping of Kamini by the appellant at Lalitpur railway station platform (instead of dropping her at her parents' house) and his proceeding further to his parents' house at Jhansi.

It appears that the appellant and Kamini had travelled from Mumbai together, and that, the appellant wanted to go to Jhansi and Kamini wanted to go to Lalitpur. It also appears that Lalitpur falls between Mumbai and Jhansi, and therefore, the appellant dropped Kamini at Lalitpur railway station platform, and then went ahead by the same train to Jhansi. This incident, which is the only specific incident of cruelty, cannot be said to establish cruelty as contemplated under Section 498A of the IPC. Infact, no importance to this aspect has been given by the learned Additional Sessions Judge also – and rightly so – in my opinion. The learned Additional Sessions Judge, in that regard, noted that Kamini was well educated, and that, she was well acquainted with the locality, and that, her parental house was hardly at a distance of fifteen minutes from station, and that, as such, no wrong was committed by the appellant by leaving her at Lalitpur railway station platform, and proceeding to Jhansi.

18            In my opinion, the evidence of cruelty, as adduced by the prosecution, was unreliable and consisted only of vague and

general assertions of Kailash Narayan and Pankaj that the deceased used to tell them so. What the deceased used to tell them, as claimed by these witnesses, is also of a vague and general nature. Moreover, as aforesaid, it is difficult to rely on the evidence of Kailash Narayan and Pankaj, when it is seen that they have made a number of improvements, and that, in their anxiety to implicate the accused persons, Kailash Narayan had even gone to the extent of saying that just before the death of Kamini, the accused persons had threatened him that they would be killing her and that Kamini had also told Kailash Narayan on telephone that she would be killed. As aforesaid, interestingly, inspite of this, even after learning about the unnatural death of Kamini, neither Kailash Narayan nor Pankaj suspected the same to be homicidal. The telephonic contacts or atleast the crucial one, as per the claim of this witnesses, could have been easily established during the investigation, but admittedly, such evidence was not obtained and adduced before the court. It is, therefore, not possible to accept that, that Kamini was being treated with cruelty by the appellant and the other accused, was satisfactorily established.

19           Interestingly, the learned Additional Sessions Judge  
has also not believed this aspect of the matter. It is, therefore,  
that, she has acquitted the other accused. She categorically  
observed that the evidence of Kailash Narayan and Pankaj was not  
specific in respect of the other accused, and that, there were only  
vague allegations against them. Some of the observations may be  
reproduced here :

“It is true that there is no specific allegation  
against the parents of accused no.1.”  
(paragraph 32)

“However, the evidence of PW-02 and PW-03  
is not specific in respect of accused nos.2, 3  
and 4. There are vague allegations against  
them. Whatever allegations are made about  
the demand or asking the deceased for causing  
abortion is as stated by PW-02 and PW-03  
from accused no.1.” (paragraph 38)

39. The evidence on record clearly goes to  
show that there is no specific allegation or  
evidence to prove that accused nos.2, 3 and 4

have demanded money or any other amount from the father of the deceased. There is also no specific evidence to show that at any point of time, they have subjected the deceased to cruelty. No specific incident has been alleged or brought in evidence. Therefore, the evidence of PW-02 and PW-03 is only in respect of accused no.1 except the incident at Zhansi that when PW-02 went in house of accused they have demanded Rs.5 lakhs. Except that sentence, there is no evidence against accused nos.2, 3 and 4 either in respect of the demand of money or in respect of any harassment mental or physical against the deceased. Therefore, the accused nos.2, 3 and 4 are entitled to the acquittal.

20           The learned Judge, however, was of the view that the allegations made against the appellant were specific. It is not possible to agree with her in this regard. Infact, the allegations that have been levelled by Kailash Narayan and Pankaj are against all the accused and if they were vague and general with respect to the other accused, that was so, even with respect to the appellant.

A reading of the evidence does not show that any specific act constituting cruelty, *not attributed to the other accused*, was attributed to the appellant, by the witnesses. The cruelty consists of making a demand for Rs.5 Lac and on insisting that Kamini should terminate her pregnancy. This demand and this insistence, has been, (if the witnesses are to be believed) from all the accused, and not only the appellant.

21           I have, therefore, carefully examined the impugned judgment to see what made the learned Additional Sessions Judge to hold that so far as the evidence against the appellant was concerned, it was not vague and general, but was specific. I do not find that the learned Additional Sessions Judge has discussed in her judgment as to what was the precise evidence against the appellant, which was not available against the other accused. While observing that the allegations against the other accused were vague and general, the learned Additional Sessions Judge has not specified what were the specific allegations levelled by the witnesses against the appellant. The learned Additional Sessions

Judge has attempted to draw a distinction between the case of the appellant and the other accused on the basis that 'insisting a pregnant woman to carry abortion would amount to causing mental cruelty to her.' However, as per the prosecution case and the evidence adduced in support thereof, such insistence was from all the accused and not only from the appellant. The learned Additional Sessions Judge appears to have been influenced by the fact that Kamini had indeed committed suicide and apparently was of the view that such suicide must have been caused because of the cruel treatment given to her. Though the evidence of cruelty was held to be vague as against the other accused, the same evidence apparently has been accepted to hold the appellant guilty, only on the basis that the appellant was the husband of the deceased. Beyond this, there does not seem to be any distinction between the case of the appellant and that of the other accused, who have been acquitted.

22            In this context, an important and rather interesting aspect of the matter may be discussed, and that is, *whether cruelty*

*can be inferred only from the fact of suicide.* In other words, whether 'when the fact of suicide is proved, and when cruelty is alleged, whether it should be held as proved merely from the fact of suicide, though the evidence with respect to the cruelty is vague, general and unreliable' is the question. It is not uncommon to seek the inference of cruelty to be drawn from the proof of the suicide, and it is not uncommon to hear an argument as to '*why otherwise she would commit suicide.*' I had an occasion to discuss this aspect in some other case wherein I had expressed my view as follows :

“14. Though, the evidence of cruelty would be relevant in determining whether the death could be suicidal and the evidence of death being suicidal would be relevant in judging the existence or extent of cruelty, these aspects would not be conclusive. It is because there are a number of factors, which may lead to a person deciding to take his own life. Causes of suicide is a matter of study for the psychologists. Experience shows that the people who suffer severe and great miseries and sorrows do not end their lives, but people,

who are required to undergo comparatively minor sufferings do, at times, commit suicide. The level of tolerance of various persons differs and further, the causes of depression, which leads to suicide may be very many. Therefore, the conclusion of cruelty cannot be drawn merely from the fact that suicide has in fact been committed, and conversely, the conclusion that the death was suicidal also can not be drawn, merely from the fact that some cruelty was meted out to the deceased. Though these aspects may be relevant, they certainly would not be conclusive.

23           In this case, indeed, that Kamini committed suicide, is satisfactorily established, but the allegations with respect to the cruelty are not satisfactorily established. Therefore, simply because suicide has, infact, been committed, cruelty cannot be inferred. The argument '*why otherwise she would commit suicide*' as is often advanced, is not very scientific. This could be replied in a number of ways by referring to the opinions of the psychologists and by referring to the scientific data that would be available, but

a proper reply thereto is found in a decision rendered by Kerala High Court in the case of **State of Kerala vs. Mohanan Pillai**<sup>1</sup>. The Kerala High Court, in that case, dealt such an argument by making the following observations :

“Vagaries of human mind cannot be fathomed with precision, and one may act on sudden impulses, and suicidal proclivities cannot be explained in many cases. If the accused failed to explain as to what else would have prompted his wife to end her life in a jiffy, it is no premise to presume that she would have chosen to adopt the extreme step as she was subjected to any humiliation or illtreatment by her husband.”

24           It is true that the appellant and the other accused have chosen to remain silent and have not advanced their version of the happenings. Though in a criminal trial, the burden of proving its case – and that too beyond reasonable doubt – is wholly on the prosecution, and that, the accused persons need not say anything in their defence, when suspicious circumstances are brought on

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<sup>1</sup> 1991(1) KLJ 359

record, which could be explained by the accused persons, the absence of any explanation by the accused might add strength to the prosecution case. Infact, in view of the presumptions contained in Section 113A and 113B of the IPC, in a given case, it might be quite dangerous and risky for the accused persons not to offer any explanation about what might have led the deceased to commit suicide, or what had happened on the fateful day. The silence of the accused persons in such cases, will strengthen the suspicion against them. However, that by itself would not be fatal. In this case, it appears to be the prosecution case that the appellant had admitted before PW1 Divakar that there was a quarrel between the victim and the appellant for some trivial matter on the fateful day, but no such evidence was adduced. The appellant and the other accused simply remained silent on that aspect. However, even proceeding on the basis that *something must have happened on that day*, it cannot be presumed that, 'that something' *itself* amounted to cruelty and constituted abetment to commit suicide, when otherwise, there is no satisfactory evidence of cruelty.

25           To sum up, in the first place, the evidence of Kailash Narayan and Pankaj, as also the evidence of Arun (PW4) is not of a quality, so as to place reliance thereon. Corroboration could have been obtained with respect to the evidence of Kailash Narayan and Pankaj with respect to the telephone contacts, but no such corroboration was obtained. The unreliability of the evidence of Kailash Narayan is more evident because of his claim that the appellant and the accused persons had threatened him that they would kill Kamini, but that, though Kamini died an unnatural death, immediately thereafter, he did not suspect that she had been murdered. When the evidence of cruelty was not satisfactory, cruelty cannot be inferred only because suicide had, infact, been committed. Since there was nothing to show that it was the cruelty meted out to Kamini that led to her suicide, the appellant and the accused persons cannot be said to have abetted the commission of suicide by her. Lastly, and quite significantly, when the evidence was disbelieved with respect to the accused nos.2, 3 and 4, the same evidence could not have been relied upon with respect to the appellant.

26           The conclusion that the appellant was guilty of the offences in question, as arrived at by the learned Additional Sessions Judge, is not in accordance with law. This was a case where the appellant, like the other accused, should have been acquitted.

27           The Appeal is allowed.

The impugned judgment and order of conviction and the sentences imposed upon the appellant are set aside.

The appellant is acquitted.

His bail bonds are discharged.

Fine, if paid, be refunded to him.

**(ABHAY M. THIPSAY, J.)**