

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.116 OF 2005

Appasaheb s/o Gorakhnath Kakade
Age 25 years, Occ. Agril.,
R/o Kate Pimpalgaon, Tq. Gangapur
District Aurangabad ... APPELLANT

VERSUS

The State of Maharashtra
(Copy served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad) ... RESPONDENT

.....
Shri A.S. Barlota, Advocate for appellant
Shri P.N. Kutti, A.P.P. for respondent/ State
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CORAM: A.I.S. CHEEMA, J.

DATED: 8th June, 2016.

Date of reserving judgment : 29th April 2016
Date of pronouncing judgment : 8th June, 2016.

J U D G M E N T :

1. The appellant - accused (hereafter referred as accused) is husband of deceased Usha, and has been convicted by 4th Adhoc Sessions Judge, Aurangabad in Sessions Case No.79/2004 for offence punishable under Sections 498-A and 306 of the Indian Penal Code, 1860 (I.P.C. in brief). He has been

sentenced to suffer rigorous imprisonment for three years under Section 498-A and to suffer rigorous imprisonment for five years under Section 306 of the Indian Penal Code. There are orders of fine also. He came to be acquitted of offence under Section 304-B of I.P.C. His co-accused - parents accused No.2 Gorakhnath and accused No.3 Kamlabai came to be acquitted. Thus this appeal.

2. In brief, the case of prosecution is as under :

- (a) On 27.12.2003, at 6.15 p.m., complainant Ratnabai Ramdas Ahire, the mother of Usha (hereafter referred as victim) filed F.I.R. with Police Station, Silegaon, Tq. Shrirampur, which was registered as Crime No.137/2003. She reported as follows :

She is first wife of Ramdas Ahire (P.W.3). The husband resides with his second wife Shobhabai at Pathre (Kh.), Tq. Rahuri. She is working as Anganwadi Madatnis at Takli Bhan. She resides at Takli Bhan. She has son Sunil and victim who was her daughter, aged about 19 years. The victim was married to the accused No.1 Appasaheb on 7.6.2002. The marriage was brought about by her and her

husband. As per the settlement at the time of marriage, Rs.20,000/- cash was to be paid as dowry. At the talks, her husband, her brother Jalindhar (P.W.4) and one Bhausahab were present. As per the said talks, Rs.5000/- was paid in advance to the accused Appasaheb and Rs.10,000/- was paid at the time of marriage. Balance Rs.5000/- was to be paid after marriage. Accordingly, Usha got married and went to reside at the place of accused at Kate Pimpalgaon. She was treated well for about six months. Victim used to come to the complainant as well as she used to go to her father at Pathre (Kh.). After six months, the three accused (as were arrayed in the trial Court) started asking for the balance Rs.5000/-. The victim told this to the complainant. She called for her husband and told him but as they had no money, they could not pay. As the money was not paid, the victim was beaten by accused No.1 Appasaheb and the mother-in-law was also troubling and father-in-law used to abuse after consuming liquor. This was told by the victim.

At the time of earlier Diwali, the accused Appasaheb went to the husband of complainant to

ask for the money. At the time of current Diwali the accused came along with the victim to Takli Bhan, but the victim was not allowed to come to the house of complainant. As money had not been paid, the husband was not letting victim come to the mother. 15 days before the filing of F.I.R., the accused Appasaheb had come at Takli Bhan and told complainant that Rs.5000/- of dowry and for service Rs.25,000/- be paid to him. In presence of the mother of complainant and her brother, accused told that if the money is not paid, he will not send the victim to them and she would not be seen. Complainant still could not pay.

On 24.12.2003, a phone call was received at the place of Rambhau Pundlik Naik at Takli Bhan from the place of accused that the victim has died. Consequently, complainant with relatives went to Kate Pimpalgaon. The post mortem has been performed and thereafter last rites had been performed. Thus, the complaint that due to the ill-treatment the victim had consumed poisonous medicine on 24.12.2003 and had died.

(b) The crime was registered and thereafter P.S.I. Sanjay

Mahadeo (P.W.5) investigated the matter. Before the offence was registered, already A.D. No.36/2003 had been registered about the unnatural death of victim. A.S.I. Borade had enquired about the same. He recorded spot panchanama (Exh.11) and had prepared inquest (Exh.12). The investigating officer P.S.I. Sanjay obtained the post mortem report (Exh.13). Statements of witnesses were recorded. Vicera was collected and sent to Chemical Analyser. C.A. reports were obtained. Charge sheet came to be filed after the investigation was over.

3. Trial Court framed charge against all the three accused under Section 498-A, 304-B and in the alternative, under section 306, all read with Section 34 of the Indian Penal Code. The accused pleaded not guilty. Their defence in the trial Court was of denial. It was claimed that, while working at the field, the victim had accidentally consumed insecticide which was being sprayed.

4. In the trial Court, prosecution brought on record evidence of five witnesses. Trial Court considered the evidence, and while discussing the evidence, found that, offence was

established under Sections 498-A and 306 of the I.P.C. against the accused No.1. However, it did not find that offence under Section 304-B was established as cruelty "soon before the death" was not brought on record and the last evidence regarding cruelty was of incident 15 days before the death. The trial Court acquitted accused Nos.2 and 3, parents as it found that the evidence brought on record did not establish that they had also subjected the victim to cruelty. It observed that, they may have been witness to the treatment to the victim and may be they could have stopped the accused No.1, but only because of such omission offence could not be said to be established against them.

5. Against the conviction, present appeal is filed and it is argued by the counsel for the appellant - accused that, in the matter only interested witnesses have been examined and no independent witness is available. Although prosecution witnesses were consistent on the demand of dowry, no exact particulars of ill-treatment were brought on record. Reliance is placed on the case of **Mangat Ram Vs. State of Haryana** reported in **AIR 2014 SC 1782** to submit that, the victim was just 19 years of age and she may have been immature and may have accidentally come in contact with the insecticide. According to the counsel,

the evidence is that, there were consistent demands, but it would be unreasonable that because of such demands the victim would commit suicide. The learned counsel submitted that, the evidence, when read as a whole, does not inspire confidence and accused should be acquitted.

6. Against this, learned A.P.P. submitted that, the marriage took place on 7.6.2002 and the victim expired on 24.12.2003 within one and a half year. She was in custody of the accused No.1, and under Section 106 of the Evidence act also the accused would have to explain as to what happened. Looking to the fact that the matter relates to settlement of dowry and dowry demand, it was within the family and if outsider witness is not examined, that cannot be fatal as there may not be any such witness. The evidence needs to be appreciated that at the time of Diwali of 2003, although the accused came with the victim to the village where complainant was living and stayed with one of relatives, the victim was not allowed to meet the complainant as amount was not paid. It is claimed that, this amounts to cruelty and may have left the victim shattered. The A.P.P. supported the judgment of the trial Court.

7. The learned counsel for the accused, in reply to

Section 106 of Evidence Act, claimed that, the victim may have accidentally consumed the insecticide, which had been sprayed and she may have been immature at the age of 19 years. The counsel claimed that, in the facts and circumstances of the matter, benefit of Probation of Offenders Act be given to the accused. The counsel relied on the case of **Ramaiah alias Rama Vs. State of Karnataka**, reported in **AIR 2014 SC 3388** to submit that there was delay in filing of F.I.R. and the case of prosecution should be rejected.

8. Now the evidence needs to be considered to see if impugned judgment is maintainable or not.

The complainant Ratnabai (P.W.2) deposed that, the victim was married to the accused on 7.6.2002. Her evidence is that, they had agreed to pay dowry of Rs.20,000/- to the accused and before marriage, Rs.5000/- were paid and at the time of marriage Rs.10,000/- were paid. Her evidence is that, they could not pay the remaining amount of Rs.5000/- and it was agreed to pay the same later on. She is supported by her husband Ramdas, who has also given similar evidence as well as the evidence of P.W.4 Jalindhar, who is brother of the complainant Ratnabai. There is also evidence of P.W.1 Bapu,

who is brother of the father of the victim. All these witnesses are consistent with regard to this evidence.

9. Complainant deposed that, after marriage, victim went to live with the accused at Kate Pimpalgaon. The victim was treated well initially for six months and thereafter accused started demanding unpaid dowry of Rs.5000/- and further claim was made of Rs.25,000/- to find job for the accused. She deposed that, they were asking the victim to bring the money from her parents. The evidence of complainant is that, the victim was being physically and mentally ill-treated. In the English version of her evidence, an important sentence is missing, which has come in the Marathi recording. In the Marathi version, after the above sentence regarding mental and physical ill-treatment, it is recorded that the victim was being beaten. Complainant deposed that, when the victim was coming to her, she was demanding the money, but as they did not have the money, the victim would go back empty handed. Her evidence is that, she was informing all this to her husband.

10. Now if the evidence of the father of victim P.W.3 Ramdas is perused, he deposed that, after six months of the marriage, ill-treatment of the victim started because the victim

could not bring the unpaid dowry amount of Rs.5000/-. According to P.W.3 Ramdas, the victim had told him that the accused were asking her to bring the amount from her father or mother. He deposed that, she told this when she had come for her first Diwali. This would be of 2002. The father claimed that, he sent back the victim to the matrimonial home giving her understanding. According to him, when he thereafter went to Takli Bhan, he came to know from the complainant that the victim was being ill-treated. His evidence is that, the accused No.1 came to Pathre at the time of second Diwali (This would be in 2003) and asked him for the unpaid amount of Rs.5000/-. P.W.3 told him that he would pay when he has the amount. According to him, he went thereafter to Kate Pimpalgaon to meet the victim, but the accused did not let him meet as he had not taken the amount and he had to come back. P.W.3 has further given another instance that, thereafter accused No.2 had come to Pathre asking for Rs.25,000/- for getting service and had threatened that he would not let the victim come to his house or see him. He claims that, he had no money and still could not pay. 15 days after this incident, it is claimed that, the news regarding death of victim came on 24.12.2003.

11. P.W.4 Jalindhar is the brother of complainant and his

evidence is that, his house is adjacent to the house of complainant. From his evidence, it appears that, when the victim had gone to Takli Bhan, the place of her mother, she had told even this uncle about her ill-treatment for the amount of Rs.5000/-. This witness deposed that, 15 days before the death of victim, accused No.1 Appasaheb had come to his house, which is adjoining complainant and had said that, he should be paid Rs.25,000/- including the unpaid amount of Rs.5000/- to find a job. This P.W.4 claims that, the accused had told that if he was not paid the money, he would not let the victim meet her mother.

12. There is further corroboration regarding the ill-treatment from the evidence of P.W.1 Bapu Sadashiv Ahire, who resides at Pathre (Kh.) where the father was residing. This witness deposed that, at the time of Navratri after the marriage, he had gone to the house of accused and as per custom taken sweets and eatables. The victim, at such occasion, told him that, for the remaining amount of dowry she is being harassed. This witness being paternal uncle, the victim may have told him about her plight.

13. I have gone through the evidence of these P.Ws.1 to

4 regarding the ill-treatment and read the same with the evidence of P.W.5 P.S.I. Sanjay. It can be seen that, no material contradictions or omissions have been proved in the evidence of P.Ws.1 to 4 although some questions were put to these witnesses regarding their police statements. The suggestions made to these witnesses denying their evidence regarding ill-treatment had been denied by the witnesses. Thus, they are unshattered. It appears from the evidence of these witnesses that, they are having poor background. The complainant herself has been living separate from her husband P.W.3 and independently earning, although meagre amount.

14. It was suggested to P.W.4 Jalindhar in cross-examination and he deposed that, he did not know whether dowry was paid at the time of marriage of his three sisters as he was school going boy at the relevant time. He denied the suggestion that there was no practice of dowry in Bhil community. Thus, the accused tried to show that in Bhil community there is no practice of dowry.

The system of dowry has its own evil, which is not limited by caste and communities. It is individual greed of many people which never dies even if they are well of.

15. It is argued that, there was delay in filing of the F.I.R. The learned counsel for the accused submitted that, the victim died on 24.12.2003 and the F.I.R. came to be filed only on 27.12.2003. According to him, the delay should be held against the prosecution and benefit should be given to the accused. Reliance was placed on the case of "Ramaiah" referred above. I have gone through the said judgment. The Hon'ble Supreme Court discussed the facts as were available in that matter and the fact that in that matter when the victim had died, the mother and other witnesses were informed about accidental fall in the well and the P.Ws.1 to 3 in that matter, accepted the version of accused and participated in the last rites. The Hon'ble Supreme Court, on such facts, observed that, it was only after period of three days that the complaint came to be filed regarding alleged demand of dowry and harassment. In para 28 of the judgment, the Hon'ble Supreme Court in that case, found the delay to be fatal. The Hon'ble Supreme Court observed that at many times in such types of cases, there can be reasons for keeping quiet at the given time and not reporting the matter immediately. As such, it would be necessary to consider facts of the present matter.

The spot panchanama Exh.11, which was admitted by the accused, shows that, the spot was pointed out by Navnath, the brother-in-law of the victim, which was in the field Gat No.59, belonging to accused No.2 Gorakhnath. As per the spot panchanama, the brother-in-law informed that on 24.12.2003 in the afternoon at about 3.00- 3.30 p.m., when he went to that field where cotton was sown, he saw the victim lying in the crop and she had vomited, and did not respond and it appeared that, she had consumed some poisonous medicine. The police saw the spot where the crop was trampled where the victim may have grappled after consuming the insecticide. At some distance in the same field, a bottle of 250 ml. capacity Monokitofas, an insecticide was found, in which there was little liquid left. The same came to be seized. Then there is post mortem report Exh.13, which concluded that the victim had died due to insecticide poisoning. In the stomach, approximately 200 cc of brownish liquid with abnormal smell was found. The brain matter was congested and oedomous. In the larynx trachea and broncho and bronchi, white froth was found. This post mortem appears to have been completed at 4.05 p.m. of 25.12.2003. The evidence is that, after this, the funeral was conducted. In the cross-examination of complainant, she accepted that, after funeral of the victim, the relatives came to Takli Bhan. She,

however, denied the suggestion that the report was lodged after thinking over all night. She denied the suggestion that victim died due to spray of insecticide because of carelessness.

16. In present matter, the facts regarding the condition of the victim are required to be kept in view. The victim clearly was daughter of P.W.3 Ramdas, who had entered into second marriage and gone away to reside at Pathre (Kh.) in another taluka while the victim lived with mother complainant Ratnabai (P.W.2) at Takli Bhan. It is quite clear from the post mortem report as well as the C.A. reports available that, the victim died due to consumption of insecticide. The quantity consumed appears to be fatal. She had died in about one and half year of her marriage. The father and mother were residing separate and the complainant may have been required to take decision on her own regarding filing of complaint. Thus, I find that, the delay after the funeral may be ignored. What may have been the plight of the complainant for having just lost her recently married young daughter of 19 years of age is matter of appreciation. With different educational, personal and social backgrounds, different people may react differently.

17. I have gone through the judgment of the trial Court

and it can be seen that, the trial Court duly discussed all the evidence which was brought before it. It found that, there was no reason to disbelieve that the dowry was settled at Rs.20,000/-, of which Rs.5000/- had remained to be paid. It observed that, the ill-treatment made started after six months as by that time the accused must have realised that due to the poor condition of the parents of the victim, it would be hard to get the money and so, he started pressurising and went on demanding from the parents as well as making complaints to other relatives. Trial Court discussed the evidence which showed that when the accused came to Takli Bhan at the time of Diwali, he did not let the victim meet her own mother. Trial Court discussed the mental condition of the victim in such situation. Trial Court, however, ignored the evidence regarding further demand of Rs.25,000/- stating that it was difficult to believe that when the accused had not been successful to get the earlier Rs.5000/- agreed, he would expect another Rs.25,000/-. Trial Court considered the evidence of post mortem report as well as C.A. reports to hold that the victim had committed suicide by consuming major contents of the 250 ml. bottle of Monokitofas in the field. The facts were considered that the accused was continuously harassing parents of the victim for the amount of Rs.5000/- and the victim was aware that her parents do not have

the capacity and thus, the trial Court appreciated the mental condition of the victim. It concluded that, it was such conduct of the accused No.1 which drove the victim to commit suicide. The trial Court considered the objections raised regarding delay and concluded that although there is some delay in lodging the F.I.R., it could not be said to be fatal.

18. Going through the material, I also find that, there is unshattered evidence of P.Ws.1 to 4 regarding the ill-treatment which was meted out to the victim by accused No.1. There is evidence also that the victim was beaten. There is evidence that the accused went on demanding the unpaid dowry from P.W.2 Ratnabai and her husband P.W.3 Ramdas. He further subjected that the victim to mental cruelty by not letting her go and meet her in the same village Takli Bhan where they had gone to his relatives. The evidence clearly shows that, due to such treatment, the victim must have lost all hopes of happiness and committed suicide by consuming insecticide. By putting the victim in such condition that she would have no other hope to escape the ill-treatment except by suicide, would amount to abetment to commit suicide. The trial Court has rightly convicted the accused under Section 498-A as well as under Section 306 of I.P.C. There is no substance in the defence that the victim

accidentally consumed insecticide which was being sprayed. Trial Court rightly discarded this defence observing that from the spot no instrument for spraying of insecticide was found.

19. Prosecution has proved foundational and structural facts of the offence. The victim was in the custody of accused No.1 and the onus on him has not been discharged as required by Section 106 of the Indian Evidence Act. He has not given any satisfactory explanation regarding how and why death of the victim took place. Looking to the fatal amount of contents found in the body of the victim, it cannot be a case of accidental consumption of insecticide or accidental spray.

20. There is no substance in the arguments raised by the learned counsel for the accused. The ruling relied on in the matter of "Mangat Ram" had also its own facts. There the victim was required to be left at the village because of the job of the husband and that was held to be not cruelty. In present matter, the facts are different. Here the victim was not allowed to meet her own mother although the couple came to the village of her mother. It was done as the balance amount of dowry had not been paid. The present facts are quite different.

21. I find that, the judgment of the trial Court is well reasoned and trial Court has properly appreciated the evidence which has been brought on record to convict the accused No.1 Appasaheb. I have also independently gone through the evidence and do not find any reason to interfere with the conviction and sentence. There is no substance in the appeal.

22. The appeal is dismissed. Accused to surrender to his Bail Bonds. Trial Court to ensure execution of sentence as was passed vide impugned judgment.

(A.I.S. CHEEMA, J.)