

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

CRIMINAL APPEAL NO. 474 OF 2002

Sambhaji s/o. Raosaheb Manal .. Appellant
Age. 23 years, Occ. Agri.,
R/o. Wahegaon, Tal. Gangapur,
Dist. Aurangabad.

Versus

The State of Maharashtra .. Respondent

Mr. N.K. Kakade, Advocate for the appellant.
Mrs.R.K. Ladda, A.P.P. for respondent/State.

CORAM : A.V.NIRGUDE, J.

DATED : 01.03.2016

ORAL JUDGMENT :-

1. This appeal challenges judgment and order dated 22.08.2002 passed by the learned Second Additional Adhoc Sessions Judge, Aurangabad, in Sessions Case No. 46 of 2000 in which there were five accused out of which accused NO.1-Sambhaji is convicted for offence punishable under section 498-A and 306 of the Indian Penal Code. Rest of the accused were acquitted. Accused No.1-Sambhaji has filed this appeal. The parties would be referred to by their designation in the lower Court.

2. The prosecution alleged that all the accused demanded Rs.5000/- from Kalpana – newly wedded bride of accused No.1 and harassed her over such demand. On

01.12.1999 Kalpana's dead body was found in a well, which was situated in agricultural land of accused No.1. The prosecution asserted that Kalpana committed suicide and her suicide was abetted by the accused.

3. The prosecution depended on in all eight witnesses. Out of which P.W.1-Rambhau, P.W.2-Govind and P.W.3-Madhukar are father and brothers of victim Kalpana. They tried to prove that Kalpana was subjected to harassment over demand of dowry.

4. P.W.1-Rambhau stated that on 29.04.1999 Kalpana was married to accused No.1. At that time of wedding, he paid Rs.22,000/- to the accused as dowry. After the marriage Kalpana and her husband accused No.1 started to reside separately from the joint family. After 2 to 4 months from the date of marriage, accused started demanding Rs.5000/- from Kalpana suggesting her that she should demand this amount to her father. Kalpana came to his house and told about this demand. He told her that after harvesting cotton, he would arrange some amount. Kalpana after staying for 2-4 days with him went back to her husband's house. Her brother P.W.2-Govind and her cousin P.W.3-Madhukar went with her up to her matrimonial house. P.W.2-Govind and P.W.3-Madhukar came back and told him that they had occasion to see accused No.1, when

they reached Kalpana at her matrimonial house. Accused No.1 asked them whether they brought Rs.5000/-, which he had demanded earlier. P.W.2-Govind pleaded with him that they had no money at that time but they would arrange the same after cotton harvesting. Soon thereafter he learnt that Kalpana fell in the well and drown to death. Hearing this noise, he went to Police Station and lodged complaint with police station.

5. P.W.2-Govind and P.W.3-Madhukar reiterated what P.W.1-Rambhau stated in his deposition. They reiterated that they had occasion to meet accused No.1, who demanded Rs.2000/- to them etc.

6. P.W.4 is one Digambar. He said that after marriage, Kalpana used to visit his house and had informed him that her in-laws and her husband were harassing her for demand of Rs.5000/-.

7. P.W.5 Padmakar is police patil of the village. He stated that he had submitted report to Gangapur Police Station about Kalpana's death.

8. P.W.6-Pandharinath is panch of scene of occurrence panchanama. Said panchanama is at Exh.20 and would throw light on the situation of the well. The

contents of said panchanama are important and relevant. It says that on 01.12.1999 at about 9 p.m., there arose alarm of people near the well in question. The people found Kalpana's footwear (sleepers) floating on the water of well. They suspected that Kalpana had drowned in the well. Soon thereafter villagers sent anchor to the bottom of the well and succeeded in bringing dead body of Kalpana at the upper level of water. Soon, thereafter, a report was sent. The location is further described as under :-

. The well was not developed with parapet wall. It was on the ground level. The debris removed at the time of digging of well was spread around bank of the well. On the Northern side, there was a small foot-path coming towards the well. On Eastern side of the well, there was a hut belonging to Machindra-accused No.2 i.e. brother of accused No.1. In one corner, there was a berry tree. The post-mortem report clearly indicated that this was a case of death by drowning. Mud was found in the fist of the dead-body.

9. P.W.7 is A.P.I.-Muley, who took over the investigation after he received complaint from witness No.1, in which it was alleged that Kalpana had committed suicide.

10. P.W.8 is Baban, but this witness is not important for deciding this appeal.

11. The learned Judge of the trial Court after appreciating the evidence came to the conclusion that the prosecution could prove that it was accused No.1 who demanded money and harassed his wife Kalpana. He also held that Kalpana committed suicide and it was accused No.1, who abetted such suicide.

12. After hearing submissions and perusal of record, the following questions are required to be decided :-

i. Whether prosecution could prove that accused No.1 treated victim Kalpana with cruelty as contemplated under section 498-A of the Indian Penal Code?

ii. Whether prosecution could prove that the victim committed suicide?

iii If answer to question No. (ii) is in affirmative, whether the prosecution could prove that accused No.1 abetted such suicide?

13. P.W.2-Govind and P.W.3-Digambar clearly proved the fact that within few months of the marriage, accused No.1 started demanding Rs.5000/- from Kalpana and treated her with cruelty. She was compelled to inform this fact to her father who could have helped her in such difficult situation. P.W.2-Govind and P.W.3-Digambar further proved

direct demand made by accused No.1, when they met him in the last week of November, 1999. They clearly stated that they met accused No.1 at his house and it was he who demanded Rs.5000/- from them. The situation was quite difficult for Kalpana to deal with. From one side she was treated with cruelty by her husband and on the other hand, her father was sending her back to accused No.1. The treatment meted out to Kalpana was harassment with a view to force her or her father to meet the unlawful demand. Accused No.1, thus, is found guilty for the offence punishable under section 498-A of the Indian Penal Code. I, therefore, confirm the conviction of the appellant under section 498-A of the Indian Penal Code. I also confirm quantum of sentence awarded to him on such count.

14. Now the question is – whether it is proved that Kalpana committed suicide? The well in question, from the description given in the scene of occurrence panchanama, appears to be a dangerous place. There was no protective wall around the well and therefore this place was quite accident-prone. No witness came forward to suggest that Kalpana had no reason to go near the well and yet she found drowned in the well. No one mentioned that Kalpana's coming towards well was an unusual move for her. No one saw Kalpana coming towards the well and

no one explained as to why Kalpana could not have gone to the well except for the purpose of committing suicide. On the other hand, it has come on record that well in question is property of her husband – accused No.1. Very close to this well, house of Kalpana's brother-in-law is situated. This could, therefore, be a place where she had some reason to go. A case of drowning cannot be further classified as suicidal drowning or accidental drowning. Therefore, it was for the prosecution to prove beyond reasonable doubt that Kalpana died due to suicide and not due to accident. As said above, there is no evidence on record to suggest that Kalpana must have committed suicide. Therefore, there always remains a possibility, though remote, that Kalpana could have accidentally fell into the well. I am, therefore, not inclined to hold that Kalpana died due to suicide. When Kalpana's dead body was found, it was reported to be accidental death. Till 03.12.1999, the police did not register any offence. It was on 03.02.1999, because the father of Kalpana alleged that Kalapna committed suicide, everyone started believing that she died due to suicide. Unfortunately, P.W.1-Kalpana's father did not reside in the village. He had no knowledge as to what was Kalpana's routine and why she could not have gone to the well where her dead body was found. In my view, the prosecution could not prove that this was a case of suicide. In view

of this, there is no possibility of convicting accused No.1 for the offence of abettment of said suicide. Hence, following order is passed :-

- i. The Criminal Appeal is partly allowed.
- ii. The conviction and sentence awarded to the appellant under section 306 of the Indian Penal Code is set aside and the appellant is acquitted for the said offence.
- iii. The conviction and sentence awarded to the appellant for the offence punishable under section 498-A of the Indian Penal Code is confirmed.
- iv. The appellant shall surrender to bail within one week from today. If the appellant does not surrender to bail within one week from today, arrest warrant be issued against him.
- v. The appellant is entitled to set-off for the period for which he was in the custody.
- vi. Fine amount deposited for the offence punishable under section 306 of the Indian Penal Code if paid by the appellant, be refunded to him.

[A.V.NIRGUDE, J.]