

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.93 OF 2003

Subhash s/o Purandas Pawar,
Age-26 years, Occu:Nil,
R/o-Mordal Tanda, Dhule,
Dist-Dhule.

...APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. N.S. Ghanekar Advocate for Appellant.
Mr. R.V. Dhasalkar, A.P.P. for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 7TH JUNE,2016.

DATE OF PRONOUNCING JUDGMENT: 15TH JUNE, 2016.

JUDGMENT :

1. The Appellant - original accused has been convicted in Sessions Case No.36 of 2002 by Additional Sessions Judge, Jalgaon vide Judgment

dated 16th January 2003, under Section 498-A of the Indian Penal Code, 1860 ("IPC" in brief) and has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2000/-. In default of fine, he has been directed to suffer further rigorous imprisonment for six months. The accused came to be acquitted of offence under Section 306 of IPC with which also he was charged.

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

A). Contents of F.I.R. show that Sunita, the daughter of PW-1 Changdeo Tulshiram Rathod (here after referred as "victim") was married with the accused on 18th April 2000. After marriage, she went to reside with the accused at Mordad Tanda. Later on accused was appointed as teacher at Akadikheli, Tq-Nandurbar and the accused started residing at place called Mhaswad-Pimpri. On holidays he used to come down to Mordad Tanda. For

some time victim was treated well. In April 2001 victim came to the place of her father, complainant PW-1 Changdeo at Walthan Tanda. She told her father that her husband is required to go up and down between Mhaswad-Pimpri and Akadikheli and has been asking for Rs.50,000/- to buy motorcycle. She had come to her father for 2-3 times but did not ask for money and went back, because of which the accused had beaten her and was giving her physical and mental ill-treatment. The complainant explained to her and sent her back. Later on she came for delivery and at that time also she told about this fact. She delivered a son (Saurabh - another victim). When the accused came to take back victim Sunita, he demanded money from the complainant to buy motorcycle. Complainant told him that he does not have the money. As such the accused beat victim at his house. One Kantilal Rathod was present at that time. On 24th December 2001 victim Sunita along with victim Saurabh and accused came to the place

of the complainant Changdeo. On 25th December 2001 there was programme of "Nawas". Thereafter accused again asked for Rs.50,000/- to purchase motorcycle and picked up *argument*. Accused then started to go with the victim to Mordad Tanda. At that time complainant sent his son Sandeep PW-2 along with them. After going back home, accused again beat victim. On 26th December 2001 PW-2 Sandeep along with victim Sunita and Saurabh started to come by train to Walthan. Accused was also with them. At that time victim jumped from the running train and fell below bridge. In such act of hers, she and the infant Saurabh died. Thus the complaint was filed vide Exhibit 11.

B). Before the complaint was filed on 27th December 2011, on 26th December 2001 after the incident, Kotwal of village Jamada had filed Accidental Death (A.D.) Report (Exhibit 13) and A.D. 59 of 2001 was registered by PW-3 Yogiraj. PW-3 Yogiraj had gone to the spot and did inquest

panchnamas Exhibit 14 and 15 of the victims and spot panchnama Exhibit 16 was recorded. When FIR Exhibit 11 was filed, the offence came to be registered on 27th December 2001 in the afternoon. The offence was investigated by PW-3 A.P.I. Yogiraj and after investigation, charge-sheet came to be filed.

C). Charge was explained to the accused under Section 498-A and 306 of IPC. He pleaded not guilty. His defence is of denial.

3. In the trial Court, the prosecution examined complainant PW-1 Changdeo and his son PW-2 Sandeep. The investigating officer PW-3 Yogiraj was also examined. The documents of AD Report (Exhibit 13), inquest panchnamas Exhibit 14 and Exhibit 15, and spot panchnama Exhibit 16 were admitted by the accused and thus the documents were exhibited. The post-mortem reports were also not disputed and are at Exhibit 17 and Exhibit 18.

4. The trial Court considered the evidence which was brought and recorded findings that the prosecution failed to prove that the victim had committed suicide or that the accused had abetted the committing of suicide by the victim Sunita. It also held that it was not proved that Sunita was subjected to cruelty of such a nature which would drive her to commit suicide or to cause grave injury to herself. The trial Court, however, held that between April 2001 to 26th December 2001 victim Sunita had been harassed by the accused with a view to coerce her to meet unlawful demand of Rs.50,000/-. In support of such findings, trial Court recorded reasons and while trial Court acquitted the accused for offence under Section 306 of IPC, it convicted the accused under Section 498-A of IPC.

5. I have heard learned counsel for the Appellant-accused. According to the learned

counsel, the trial Court found that the death of the victim Sunita and infant Saurabh was due to accidental fall. According to him, the evidence did not show that the victim had jumped from the train. Rather it was a case of accidental fall. According to the counsel, when Section 306 of IPC was held as not proved, the evidence of PW-1 and PW-2, who were interested witnesses, regarding what Sunita had told them, was not admissible and on the basis of such evidence the trial Court could not have held the accused guilty. The learned counsel relied on the case of **Bhairaon Singh vs. State of M.P., AIR 2009 Supreme Court, 2603**. Learned counsel submitted that if what Sunita informed her father and brother was ignored, what remains is evidence of the father that the accused had at times asked for Rs.50,000/- to buy motorcycle. According to the counsel, only because money was asked would not be reason to conclude that the same was being asked as dowry or to brand it as illegal. According to

him, PW-1 Changdeo did not depose that the victim was harassed because the amount was not paid. The evidence of PW-2 Sandeep claiming that the victim was beaten at the house of her parents when the amount was not paid, was not corroborated by PW-1 Changdeo. There was also delay in filing F.I.R. Thus, according to the counsel, there was no sufficient evidence to hold the accused guilty.

6. Against this, the learned A.P.P. submitted that the trial Court itself in the Judgment referred to the evidence of PW-2 Sandeep along with the recitals in the spot panchnama which showed that on 26th December 2001 itself PW-2 Sandeep had told the police official that the victim had committed suicide by jumping from the train and still the police did not take down his statement as FIR and thus delay in filing of the FIR till 27th December 2001 was explained and could not be said to be fatal to the prosecution. According to the learned A.P.P., the trial Court

has given sufficient reasons for holding the accused guilty under Section 498-A of IPC. There was evidence that the accused was asking for money from his father in law. Thus, according to the learned A.P.P., the Appeal deserves to be dismissed.

7. Before discussing the evidence, it would be appropriate to refer to the question which had come up for consideration before the Hon'ble the Supreme Court in the matter of **Bhairaon Singh vs. State of M.P. (supra)**. The question recorded by the Hon'ble Supreme Court in the above Judgment in Para 2 is as under:-

"2. The question that arises for consideration in this appeal by special leave is : in a case where accused has been acquitted of the offence punishable under Sections 304-B and 306, IPC, and the death of wife is neither homicidal nor suicidal but accidental, whether the oral evidence of witnesses about what the deceased had told them against the accused about the treatment meted out to her is admissible under Section 32(1) of the Evidence Act to sustain conviction under Section 498-A IPC?"

. The Hon'ble Supreme Court then dealt with the provisions under Section 32(1) of the Indian Evidence Act, 1872 and the concerned law on the subject and after referring to the evidence of the brothers of the victim in that matter, observed in Para 11 as under:

"11. The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated under Section 498-A, IPC. In our considered view, the evidence of PW-4 and PW-5 about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32(1) of the Evidence Act and such evidence cannot be looked into for any purpose. Except Section 32(1) of Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstances of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW-4 and PW-5 has no connection with any circumstance of transaction which resulted in her death. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498-A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such

offence. In that situation Section 32(1) of the Evidence Act does not get attracted."

8. In view of the above observations of the Hon'ble the Supreme Court, it is clear that what victim told PW-1 and PW-2 against the accused about the alleged demand and harassment would be inadmissible evidence under Section 32(1) of the Indian Evidence Act and the said evidence cannot be looked into as here also death appears to be accidental. In the present matter, the trial Court recorded reasons and in Para 19 of the Judgment came to the conclusion that the prosecution had failed to disclose existence of any act which would prompt victim Sunita to end her infant son's life. Trial Court also concluded that uncorroborated evidence of PW-2 Sandeep that the victim jumped from the train and committed suicide could not be believed. Trial Court found that probability of accidental death of Sunita from the door of the train cannot be ruled out. In Para 20 of its Judgment, trial Court held that the

evidence adduced by the prosecution was not sufficient to come to the only conclusion that the victim Sunita committed suicide when the train was passing over bridge. The prosecution has not challenged these findings or the acquittal under Section 306 of IPC by filing Appeal. Reasons recorded by the trial Court for acquittal under Section 306 of IPC appear to be in order. Thus suicide has not been proved. This being so, I have to proceed further to see if there is acceptable evidence under Section 498-A of IPC.

9. The trial Court discussed the evidence relating to cruelty from Para 21 of its Judgment. It discussed the evidence of PW-1 and PW-2 and in the process, discussed the evidence as to what the victim had been telling regarding the alleged cruelty. Keeping in view the Judgment in the matter of **Bhairaon Singh vs. State of M.P.**, discussed above, I proceed to refer to the evidence of PW-1 and PW-2, but I will ignore what

these witnesses stated as far as regards information received from victim Sunita before the incident relating to the train took place.

10. The evidence of PW-1 Changdeo earlier refers to the marriage taking place and then there is reference regarding what Sunita had been telling. Then the evidence is that after delivery of Sunita, accused had come to the house of PW-1 Changdeo and accused had told PW-1 that he required money to purchase motorcycle. According to PW-1, he told accused that he does not have money and he requested accused to take victim Sunita with him. PW-1 deposed that accused picked up quarrel with him and told victim Sunita to immediately proceed along with him. PW-1 has then deposed that after about a month of delivery of Sunita, she had gone to the house of the accused. Later on, on 24th December 2001 she came to the house of this witness along with child and the accused. On 25th December 2001 it appears that

there was a ceremony of the Nawas of the child of the accused at the house of PW-1 Changdeo. The evidence shows that for such Nawas (ceremony to fulfill promise made to deity on fulfillment of wish made earlier), the accused had arranged for goat. According to PW-1, after the ceremony the accused again asked for Rs.50,000/- for purchasing motorcycle immediately. He deposed that he sent the victim Sunita along with the accused, and his son had also gone to the house of the accused. Thus, regarding the alleged demand made by the accused, this is the evidence of PW-1.

11. Now, if the evidence of PW-2 Sandeep is considered, his evidence also refers to what Sunita had been telling. He then deposed that victim Sunita had come for delivery to their house and after the delivery, the accused came. According to this witness, accused told parents of PW-2, to provide him money and his father (PW-1) told accused that he is not having money. This

witness deposed that while at his house, the accused beat victim Sunita. The further evidence of PW-2 is that after the *Nawas* on 25th December 2001, the accused again demanded money from parents of PW-2 and that accused beat the victim and also threatened father of the witness. The learned counsel for the Appellant-accused has rightly submitted that although PW-2 Sandeep claims that on both the occasions when the accused was at the house of his father-in-law and made demand, accused beat the victim, the complainant PW-1 himself did not depose that the accused had beaten victim Sunita in the house of her own parents or that accused had threatened the father- in-law. PW-2 in fact in the cross-examination even claimed that victim Sunita had been beaten in presence of her parents. However, PW-1 did not depose that the victim was beaten by the accused in his presence.

12. Looking to the above evidence, the only

material which was brought on record by the prosecution which is admissible evidence, is that the accused had made the demand of money. PW-1 claimed that the accused had, in this context quarreled, but no particulars of the alleged quarrel are mentioned by PW-1. No material has been brought that for non-fulfillment of such demand the victim was subjected to any particular harassment in the presence of PW-1 and PW-2. This being so, after ignoring the inadmissible evidence, the evidence which can be relied on, is not sufficient to conclude offence under Section 498-A of IPC. I thus find that I am not able to maintain conviction as recorded by the trial Court. The Judgment of the trial Court needs to be interfered with as not maintainable. The same is substantially based on inadmissible evidence.

13. For the reasons recorded above, I pass the following order:-

O R D E R

(I) The Appeal is allowed.

(II) The impugned Judgment and order of conviction and sentence as passed against the Appellant - accused under Section 498-A of the Indian Penal Code, 1860 is quashed and set aside.

(III) The Appellant - accused is acquitted of the offence under Section 498-A of the Indian Penal Code, 1860.

(IV) The bail bonds of the Appellant are cancelled.

[A.I.S. CHEEMA, J.]