

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

CRIMINAL APPEAL NO.236 OF 1998

Sambhaji Shankar Naik	
Age: 30 yrs. Occ. Service,	
R/o. Vatangi, Tal. Ajara, Dist. Kolhapur.	.. Appellant
Versus	
State of Maharashtra,	
(Inspector of Police,	
Ajara Police Station, Kolhapur).	.. Respondent

Mr. S.R. Phanse, amicus curiae a/w. Mr. Sagar Tambe Advocate for the Appellant.

Mrs. M.R. Tidke, A.P.P. for the Respondent - State.

CORAM : P.N. DESHMUKH, J.

DATED : 1st SEPTEMBER, 2016.

ORAL JUDGMENT :

1 This appeal takes exception to judgment and order passed by the learned Additional Sessions Judge, Gadhinglaj, whereby appellant came to be convicted for the offence punishable under sections 498-A and 306 of the I.P.C. and is sentenced to suffer S.I. for 2 years and to pay a fine of Rs.500/- in default, to undergo S.I. for 6 months for the offence punishable under section 498-A of the I.P.C. and is sentenced to suffer S.I. for 3 years and to pay a fine of Rs.500/- in default, to undergo S.I. for 6 months for the offence punishable under section 306 of the I.P.C.. The appellant is acquitted of the offence punishable under section 304-B of the I.P.C.

2 In brief, it appears to be the case of the prosecution that P.W.3 Gaurabai, the complainant, is the mother of the deceased Sunita who was married to appellant about 2 to 3 years prior to the incident which took place on 14.08.1997, on which date Sunita committed suicide by setting her in person on fire in the house of the appellant. According to the case of the prosecution, though the deceased was living happily for a couple of years after her marriage, as the appellant started demanding cash for purchase of a plot that demand could not be satisfied she committed suicide. On the basis of report lodged by the mother of the deceased, offence came to be registered by P.W.4 Dilip Patil P.S.I., who had initially initiated investigation in A.D. No.13/97, after the death of the deceased. During the course of investigation in this crime, inquest panchnama Exh.8 and spot panchnama Exh.10 were drawn. Dead body was forwarded for its autopsy. After recording statements of neighbourers and relatives of the deceased, as involvement of appellant was revealed, he came to be arrested. On completion of investigation, chargesheet came to be filed before the Learned Magistrate's Court. In due course of time, case is committed to the Court of Sessions for trial.

3 Charges were framed against the appellant for the offence punishable under sections 498A, 306, 304B to which he pleaded not guilty and claimed to be tried. The defence of the appellant is of total denial and of false implication

4 To establish the charge levelled against the appellant, the prosecution has examined four witnesses and has commenced its evidence by examining P.W.1 Shankar Patil, P.W.2 Maruti Patil, both uncles of the deceased, P.W.3 Gaurabai, mother of the deceased and concluded its

evidence by examining PW.4 P.S.I. Dilip Patil, Investigating Officer.

5 Record reveals that since none appeared for the appellant for final hearing, at the request of this Court, Advocate S.R. Phanse gracefully accepted to act as amicus curiae. The said fact reveals from the order of this Court dated 22.06.2016.

6 Heard learned Counsel for both the sides. With the assistance of the learned counsel for the appellant and the learned A.P.P., I have scrutinized the evidence on record. The learned counsel for the appellant, with reference to the available evidence, has submitted that there is nothing on record to establish the alleged demand of Rs.10,000/- by the appellant. In fact, he has pointed out that the financial condition of the appellant was much better than that of the complainant. Committing upon the offence of P.W.2 uncle of deceased who has also acted as a mediator in settling the marriage of the deceased with the appellant, it is submitted that, had deceased would have really sustained harassment or cruelty, in any manner by appellant, for non-payment of dowry amount, he is expected to be the first person to whom the deceased would have made a complaint, however, there is no evidence on record to that effect. By inviting attention to the evidence of the complainant, it is pointed out that similar is the evidence of the complainant whose evidence is also silent on providing ill-treatment to the deceased by the appellant in any manner. It is thus contended that as it has come on record that one of the relations of the complainant was a police official attached to the concerned police station, after the incident, the complainant in consultation with such police officer Shri Khandagale has lodged a false report. It is, therefore, prayed that the appeal be allowed.

7 The learned A.P.P., on the other hand, has submitted that there is sufficient evidence to establish the charge levelled against the accused and has also contended that even otherwise presumption as to abetment as contemplated under section 113-A of the Evidence Act is attracted in the present case as the incident took place within 7 years of the marriage between the deceased and the appellant. Learned A.P.P. has, therefore, submitted that the appeal be dismissed.

8 In the background of the submission of evidence as aforesaid, on perusal of the evidence of P.W.1 Shankar reveals that deceased was married to the appellant in the year 1995 and in the marriage both the parties have decided to bear the equal expenses, as per custom. At the time of marriage, the appellant was working as a teacher. For a period of about 1-1/2 years the deceased was staying with the appellant and his parents in a matrimonial home at village Wattangi and during this period had visited her parental home at Umbarwadi. As per his evidence, on one such occasion the deceased stayed for about three months for delivery and was thereafter sent back to her matrimonial home. From the bare evidence of this witness as aforesaid, thus it reveals that during her stay with the appellant and her in-laws at village Wattangi, there was no ill-treatment or demand of any type made to the deceased. It is further material to note that it is even not the case of the prosecution that when the deceased was residing with her parents at Umbarwadi for delivery purpose, no complaint as aforesaid was made by her. Thus, it appears that as there was no ill-treatment or any demand for dowry made to her, there was no reason for the deceased to make any such complaint.

9 P.W.1 Shankar has further deposed that thereafter as relations between the appellant and his father became strained, he along with Sunita started residing at Ajara. On one occasion on receiving message from Sunita, he alongwith one Shivaji Kesarkar met her, when Sunita is alleged to have stated to him that as she wanted to purchase a plot, she was in need of money and had, in fact, demanded money from him. He has further deposed that he expressed his inability to pay Rs.10,000/- to Sunita, and had assured her to make such payment in future. He further claims that Sunita then told that for want of such amount she was harassed by the appellant.

10 It has further come in evidence of P.W.1 Shankar that the appellant has sent the deceased to Umbarwadi for collecting Rs.10,000/- and has stated that at that time Sunita told him to arrange the said amount, saying that she was otherwise harassed. From evidence of Shankar, as aforesaid, it is in fact noted that the deceased had requested him to pay her Rs.10,000/- as she wanted to purchase a plot to whom this witness has assured to make arrangement to pay in future. Except for above evidence, nothing has come on record from the evidence of Shankar about the alleged dowry demand or ill-treatment by the appellant for non-fulfillment of the demand. In fact it has come in the evidence that at the time of marriage, both the parties have decided to bear expenses equally and in the cross-examination, it is admitted that such expenses were to be borne by both the parties as per their ability. This witness has also admitted that a list to this effect was also prepared. Evidence of P.W.1 Shankar about the alleged demand does not appears to be convincing also for the reason that for a period of about 1-1/2 years after her marriage, she was residing with her in-laws and the appellant at Umbarwadi and,

thereafter, started residing with the appellant alone at Ajara and according to the evidence of P.W.1 Shankar, while her stay at Ajara, only on one occasion he had met the deceased. Even otherwise, according to him, at no occasion the appellant had personally made demand to him nor he had enquired about any such demand from the appellant, alleged to have been stated to him by deceased Sunita.

11 In the background of the above stated evidence when the evidence of P.W.3 Gaurabai, mother of the deceased is considered, she has stated on similar lines of the deceased initially staying with her parents and the appellant at Wattangi and, thereafter, staying with the appellant at Ajara where he was working as a teacher and has further stated that while at Ajara, she has visited the deceased when she had told her that the accused had insisted her to bring cash from her uncle to purchase a plot. From the evidence of the complainant as such it is found that the amount was to be brought as asked by the appellant from the uncle of the deceased. His evidence is not clear as to from which uncle of the deceased said amount was directed by the appellant to be brought by the deceased, while in the evidence of P.W.2 Maruti, it has come on record that he along with his brothers had meeting to discuss about the demand made by Sunita which evidence thus, establish, that P.W.1 Shankar was having other brothers apart from P.W.2 Maruti, who is his cousin. Moreover, from the above discussed evidence about P.W.1 Shankar and his brothers discussing about demand made to Sunita, in the absence of sufficient evidence establishing any monetary demand or dowry demand by the appellant, it appears that it was the deceased who was insisting her uncle to help her by providing amount of Rs.10,000/- for purchase of plot.

12 Thus, coming back to the evidence of Gaurabai, her evidence about deceased Sunita saying that the appellant was insisting her to bring cash, does not appear to be convincing, nor her evidence to the effect that the appellant for non-payment of monetary demand had asked her to take the deceased back with her. The evidence of P.W.3 Gaurabai in this aspect also does not inspire confidence as she has stated about such demand of the appellant to P.W.2 Maruti. As rightly pointed out, P.W.2 Maruti is silent about his getting an information of the alleged demand by the appellant from P.W.3 Gaurabai. As such, this material piece of evidence of Gaurabai, lacks of corroboration from the evidence of P.W.2 Maruti though he was examined. In the background of the above discussed evidence it is also material to note that though it is also the case of the prosecution as revealed from the evidence of P.W.1 Shankar that as he was called by Sunita, he visited her at Ajara along with his friend Shivaji Kesarkar where she demanded Rs.10,000/- from him for purchase of the plot, Mr. Kesarkar is not examined and no reason is put forth for non-examination of this witness.

13 As such it is found that except for two uncles and the mother of deceased, no independent witness are examined by prosecution while Evidence of those witness does not inspire confidence at all as from further evidence of P.W.1 Shankar it has come on record that after receiving information of the death of Sunita, he reached the hospital at Ajara where postmortem was yet to be performed and thus, instead of waiting in the hospital, he along with his brother went to Ajara police station where he claims that their statements came to be recorded. This witness does not claim that in the statements they have implicated the appellant, in any manner. Though, according to him, after recording the statement, his

signature was obtained upon it and from the police station, he then went to the hospital and had never gone to the police station thereafter. P.W.1 Shankar has admitted that he know one Khandagale, Police Constable as he is his relative and at the time of the incident he was attached to Ajara Police Station and has admitted that on that day, he was present in the police station. P.W.1 Shankar appears to have obtained instructions from this Police Constable as to what should be the line of action after the death of Sunita.

14 Further evidence of P.W.3 Gaurabai reveals that when she visited the police station, P.W.1 Shankar arrived there and according to her, police enquired with Shankar and recorded his statement and thereafter her statement was recorded. No reason is put forth by the prosecution with regard to P.W.3 who admittedly is complainant in this case, and had waited till arrival of P.W.1 Shankar though she reached the police station prior to him. In that view of the matter, I find much substance when it is suggested to P.W.1 Shankar, and to P.W.3 Gaurabai that they have lodged false report against the appellant, with the assistance of police Constable Khandagale after the death of the deceased though, they denied the same. Admittedly, it has come in the evidence of P.W.1 Shankar that when he visited the police station, Shri Khandagale was present there. From the evidence of P.W.4 Patil, Investigating Officer, it has come on record that from the statements of the relatives, he found that they all had grievance against the appellant and thus, according to him, considering the statement of Gaurabai, the offence came to be registered. It is further material to note that though it is the case of the prosecution that the deceased was in need of Rs.10,000/- for purchase of the plot and for that purpose, it was the appellant who was harassing her to arrange for such amount from her relations, no

investigation is carried out on this line if any plot was agreed to be purchased by deceased or the same was agreed to be purchased for the amount of Rs.10,000/-. In fact, as Investigating Officer has admitted to have not carried out any such investigation.

15 In the background of evidence as discussed above and with regards to provision of section 113-A of Indian Evidence Act, I find it useful to refer to the case of *Ramesh Kumar vs. State of Chhattisgarh*¹ (referred Supra) wherein in paragraph 12 of the judgment, it has been held as under:-

“8 “This provision was introduced by Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relative of her husband. The Parliament had chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression "may

1 (2001) 9 SCC 618

presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression-'The other circumstances of the case' used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113A is defined in Section 4 of the Evidence Act, which says-'whenever it is provided by this Act that Court may presume a fact, it may either regard such act as proved, unless and until it is disproved or may call for proof of it.'

Similarly,

(10) The legal position as regards [Sections 306 IPC](#) which is long settled was recently reiterated by this Court in the case of [Randhir Singh v. State of Punjab](#) (2004) 13 SCC 129 as follows in paras 12 and 13:

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under [Section 306 IPC](#).

13. In [State of W.B. v. Orilal Jaiswal](#) this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and

the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty." 14.

16 Thus, by now law in this aspect is well settled, that before holding an accused guilty of an offence under [Section 306](#) IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of [Section 306](#) IPC is not sustainable.

17 In order to bring a case within the purview of [Section 306](#) of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain

act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under [Section 306 IPC](#).

18 In view of the above stated legal position, together with evidence as discussed aforesaid, no case either under section 498-A or under section 306 of the I.P.C. is established by the prosecution. In the result, the Appeal is liable to be allowed. Hence, following order :-

ORDER

The appeal is allowed. The impugned judgment and order dated 16.12.1997 passed by the learned Additional Sessions Judge, Gadhinglaj, is hereby quashed and set aside. The appellant is acquitted of the charges under sections 498A and 306 of the I.P.C. Fine amount, if any, paid be refunded back.

19 Before parting with the judgment, I wish to place on record my appreciation to the learned counsel for the appellant who has ably assisted the Court for the purpose of conducting this Appeal.

(PN. DESHMUKH, J.)