

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

CRIMINAL APPEAL NO.210 OF 2008

The State of Maharashtra,
through Police Station Officer,
Police Station, Majalgaon,
Tq.Majalgaon, Dist. Beed

..Appellant
(prosecution)

Vs.

1. Dattatraya s/o. Narhari Ghule,
Age : 68 years, Occ. Pensioner
r/o. Shahunagar, Majalgaon,
Tq. Majalgaon, Dist. Beed.
2. Manohar s/o. Dattatraya Ghule,
Aged : 31 years, Occ. Business,
r/o. As above
3. Chandrashekhhar s/o. Dattatraya
Ghule, Aged 28 years,
Occ. Photographer,
r/o. As above
4. Sau. Pramilabai w/o. Dattatraya
Ghule, Age : 60 years,
r/o. As above
5. Swati w/o. Manohar Ghule,
Age : 27 years, Occ. Household,
r/o. As above

..Appellants
(orig. accused.)

Mrs.S.S.Raut, APP for appellant - State

Mr.Satej S. Jadhav, Advocate for respondents

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : SEPTEMBER 28, 2017

JUDGMENT (PER SANGITRAO S. PATIL, J.)

Heard.

2. The State/prosecution has assailed the judgment dated 25.10.2007 delivered in Sessions Case No.3 of 2007 by the learned Ad-hoc Addl. Sessions Judge, Majalgaon, whereby the respondents have been acquitted of the offences punishable under Sections 498-A and 304-B of the Indian Penal Code ("I.P.C.", for short).

3. The deceased Deepali was the daughter of the informant namely, Ashabai Dilip Chopde, resident of Jod-Hingni, Tq.Dharur, Dist.Beed. The deceased Deepali and respondent no.3 got married on 11.02.2004 at village Jod-Hingni. From this wedlock, Deepali delivered a daughter. She was pregnant for the second time at the time of the incident, which took place on

05.07.2006. Respondent no.1 is the father-in-law, respondent no.2 is the brother-in-law and respondent no.4 is the mother-in-law of the deceased Deepali. Respondent no.5 is the wife of respondent no.2.

4. It is alleged that the respondents used to subject the deceased Deepali to cruelty with a view to compel her to bring Rs.10,000/- and a motorcycle from her maternal home. They were ill-treating her because it was detected that she was developing a female fetus. Being fed up with the illtreatment meted out to her, the deceased Deepali set herself ablaze on 05.07.2006 at about 3.00 a.m. when she was residing at her matrimonial house.

5. On the report of respondent no.2, A.D. No.30 of 2006 was registered in Police Station, Majalgaon. The spot panchnama was prepared. Inquest panchnama of the body of the deceased was prepared. The burnt pieces of the clothes i.e. petticoat and saree, of the deceased Deepali, which were smelling of kerosene

and one match box, were seized from the spot of the incident. The dead body of Deepali was sent to Government Hospital, Majalgaon, for post-mortem. The Doctor opined that Deepali died of "cardio-respiratory arrest due to hemorrhagic shock due to 100% burns".

6. The informant - Ashabai lodged report against the respondents in Police Station, Majalgaon, on the day of the incident at about 11.10 a.m. On the basis of that report, Crime No.156 of 2006 came to be registered against the respondents for the offences punishable under Sections 498-A and 306-B of the I.P.C. The investigation followed. The statements of the witnesses were recorded and after completion of the investigation, the respondents came to be chargesheeted for the above-mentioned offences in the Court of the learned Judicial Magistrate, First Class, Majalgaon.

7. The case being triable by the Court of

Session, the learned Judicial Magistrate, First Class committed it to the Court of Session. The learned Ad-hoc Addl. Sessions Judge, Majalgaon framed charges against the respondents for the above-mentioned offences vide Exh.21 and explained the contents thereof to them in vernacular. The respondents pleaded not guilty and claimed to be tried. Their defence was that of total denial and false implication.

8. The prosecution examined seven witnesses to establish guilt of the respondents for the above-mentioned offences. The learned Trial Judge scrutinised the said evidence and held that no offence is established against the respondents. He, therefore, acquitted them of the said offences as per the impugned judgment and order.

9. The learned A.P.P. submits that there is sufficient, positive and dependable evidence on record to show that the deceased Deepali was being

ill-treated by the respondents with a view to compel her to bring Rs.10,000/- and a motorcycle from her maternal home. During her second pregnancy, a sex determination test was conducted by the respondents, which disclosed that she was carrying a female fetus. On that count also, she was being ill-treated. Ultimately, being fed up with the said ill-treatment, Deepali committed suicide within a period of 2½ years of her marriage with respondent no.3. Since Deepali died under unnatural circumstances, the presumption under Section 113-B of the Indian Evidence Act would be against the respondents and they would be presumed to have committed dowry death punishable under Section 304-B of the I.P.C. According to the learned A.P.P., the learned Trial Judge did not appreciate the facts as well as the evidence on record properly and wrongly acquitted the respondents.

10. As against this, the learned Counsel for the respondents submits that a false case came to be

lodged against the respondents. According to him, there was no reason for the mother of the deceased Deepali to lodge report against the respondents. However, after demise of Deepali, the parents of the deceased Deepali demanded money from them. Since they refused to pay anything, a false report came to be lodged against them. He submits that the financial condition of respondent no.3 was quite sound. As against this, the financial condition of the parents of the deceased Deepali was poor. Therefore, there was no question of demanding any money by the respondents from the maternal house of the deceased Deepali. There is absolutely no evidence to establish that the deceased Deepali was ill-treated by the respondents either on the day of the incident or prior to that. The hearsay and afterthought evidence coming through the interested witnesses, who are the maternal relations of the deceased Deepali, has rightly been disbelieved by the learned Trial Judge. He submits that no offence was established

against the respondents. He supports the impugned judgment and order.

11. The informant — Ashabai (PW 1)(Exh.38) is the mother, while Dilip (PW 3)(Exh.42) is the father of the deceased Deepali. Pralhad (PW 2)(Exh.40) is the brother, while Vijay (PW 5)(Exh.44) is the cousin of the informant Ashabai. Dilip (PW 3)(Exh.42) is the maternal cousin of Kishor (PW 4)(Exh.43) and Tukaram (PW 6). Pralhad (PW 2)(Exh.40), Vijay (PW 5) and Kishor (PW 4) are the residents of Majalgaon. The respondents are also residents of Majalgaon.

12. It has come in the evidence of the informant, Pralhad (PW 2), Dilip (PW 3), Kishor (PW4), Vijay (PW 5) and Tukaram (PW 6) that the amount of Rs.50,000/- was fixed as dowry at the time of marriage of respondent no.3 and the deceased Deepali. An amount of Rs.40,000/- was paid at the time of the marriage and remaining Rs.10,000/- was to be paid after one month of the marriage. According

to these witnesses, whenever Deepali used to meet them, she used to say that the respondents were ill-treating her as the remaining amount of Rs.10,000/- was not paid. It has come in the evidence of Dilip (PW 3) and Pralhad (PW 2) that the remaining amount of Rs.10,000/- was paid to the respondents in the presence of Kishor (PW 4) on 21.04.2006. However, Kishor (PW 4) states at Exh.43 that the said amount of Rs.10,000/- was paid after one year of the marriage i.e. in or about February, 2005. The informant states at Exh.38 that the said amount was paid to the respondents prior to about one year of the death of Deepali i.e. in or about July, 2005. Vijay (PW 5) deposes that Dilip (PW 3) paid the amount of Rs.10,000/- to the respondents before about 2 to 4 months of the death of Deepali. Thus, the evidence of these witnesses about payment of the alleged remaining amount of Rs.10,000/-, out of dowry fixed at the time of the marriage, is not at all consistent. Even if it is accepted that the amount of

Rs.10,000/- was paid by Dilip (PW 4) to the respondents, then the very reason for subjecting the deceased Deepali to cruelty for that amount of Rs.10,000/- would not survive anymore and consequently, there would be no illtreatment to the deceased Deepali on that count.

13. The informant has come with two more reasons prompting respondent no.3 to harass/illtreat the deceased Deepali. She states that all the respondents started ill-treating the deceased Deepali for want of motorcycle and that she was carrying a female fetus in the womb.

14. Had the deceased Deepali been subjected to cruelty on the ground that she was carrying a female fetus, the said fact certainly would have been conveyed either by the deceased Deepali or the informant to Dilip (PW 3), being father of the deceased Deepali. Dilip (PW 3) does not state that the respondents were ill-treating the deceased

Deepali on the ground that she was carrying a female fetus. When the said fact was not even disclosed by the deceased Deepali to Dilip (PW 3), the version of Pralhad (PW 2), who is a distant relative as compared to Dilip (PW 3), that the deceased Deepali told him that the respondents were suspecting that she would deliver a female child and therefore, they were insisting for abortion and subjecting her to cruelty, does not stand to reason. Kishor (PW 4), Vijay (PW5), who were also the close relatives of the deceased Deepali, did not at all state that the deceased Deepali was being illtreated by the respondents on the ground that she was about to deliver one more female child. Tukaram (PW 6) states that the parents of the deceased Deepali told him that she had conceived a female child again and therefore, the respondents had again started ill-treating her. This is totally a hearsay evidence. Moreover, when Dilip (PW 3) himself does not state about this ground, the version of this witness that the parents of the

deceased Deepali informed him about that ground of illtreatment cannot at all be accepted.

15. So far as the demand of motorcycle on the part of the respondents is concerned, the evidence of the informant and Dilip (PW 3) is not corroborated by the evidence of Pralhad (PW 2), Kishor (PW 4), Vijay (PW 5) and Tukaram (PW 6), who were residing at Majalgaon, where the deceased Deepali also was residing. They state that the deceased Deepali used to tell them about the harassment given to her by the respondents. They do not state that the respondents were ill-treating the deceased Deepali in order to fulfil their demand for motorcycle. Moreover, the evidence of the informant and Dilip (PW 3) in respect of the demand of motorcycle, is not at all natural and probable. It has come in the evidence of Dilip (PW3) that he is working as a casual Ward-boy in Government Hospital at Ambejogai and earning Rs.100/- per day. He has no other source of income. This shows the poor financial condition of the parents of

the deceased Deepali. The informant deposes that respondent no.1 is a retired teacher, respondent no.2 is running a cloth shop at Majalgaon since long and respondent no.3 (husband of the deceased Deepali) is running a photo studio since prior to his marriage. She further deposes that respondent nos.2 and 3 are having their own motorcycles. The family of the respondents own a FIAT car. The informant admits that the financial condition of the respondents is better than that of Dilip (PW 3) and herself. She further states that respondent no.3 had come to her house in FIAT car to take the deceased Deepali after she delivered for the first time. If this evidence is considered, the version of the informant and Dilip (PW 3), which is not supported by any independent evidence, that the deceased Deepali was being harassed in connection with the demand of a motorcycle, cannot at all be accepted.

16. None of the above-named six witnesses, states that either of the respondents ever ill-

treated the deceased Deepali in their presence at any particular point of time. They state that whenever Deepali used to meet them, she used to tell them about the alleged illtreatment meted out to her by the respondents. The prosecution, thus, has relied on the hearsay evidence of these witnesses to establish the fact that the deceased was subjected to cruelty by the respondents in connection with the demand for money or motorcycle and on the ground that she was going to deliver one more female child. This evidence would not come within the ambit of sub-section (1) of Section 32 of the Evidence Act, since it does not pertain to the cause of her death or to any of the circumstances which resulted in her death. Therefore, the evidence of these witnesses would not be helpful to establish that the respondents subjected the deceased to cruelty in connection with any illegal demand for money or motorcycle.

17. The contents of the memorandum (Exh.30) of post mortem of the deceased Deepali have not been

disputed on behalf of the respondents. Column no.17 thereof shows that she had sustained 100% of burns. There is specific mention in the said column that there was no evidence of injury around neck or other parts of the body. This fact shows that there was no physical torture to the deceased Deepali prior to her death. This fact also negatives the case of the prosecution that the deceased Deepali was subjected to cruelty on the day of the incident.

18. As seen from the evidence of Tukaram (PW 6) and the spot panchnama (Exh.46), the incident took place in the kitchen in the house of the respondents. The map of the house of the respondents shows that it is comprising of a sitting room, a bed room, an additional room, kitchen, *varandah* and open space. Respondent nos.1 to 5 are residing jointly in that house. There is nothing on record to show that the deceased Deepali was in the company of any particular respondent out of respondent nos.1 to 5 in the kitchen of the house at the time of the incident.

Since it was not the place where respondent no.3 would have gone to sleep, Deepali cannot be said to be in the custody of respondent no.3 at the time of the incident. In the circumstances, even the presumption under Section 106 of the Evidence Act would not come to the help of the prosecution for placing burden on the respondents to explain the circumstances under which Deepali got burnt.

19. There is absolutely no independent evidence coming before the Court to show that the respondents ever illtreated the deceased Deepali on any count. No neighbor has been examined to show that they ever heard or watched any quarrel between the deceased Dipali on one hand and the respondents on the other at any point of time. The above-named witnesses examined by the prosecution are interested witnesses. Here, reference may be made to the evidence of Dilip (PW 3), wherein he admits that when he saw the dead body of Deepali, he got annoyed against the respondents. There was a specific suggestion put to

him by the learned Counsel for the respondents before the trial Court, that after seeing the dead body of Deepali, he got annoyed and at the instance of his relatives from Majalgaon, he lodged a false report against the respondents in the name of his wife Ashabai. The learned trial Judge recorded the demeanor of Dilip (PW 3). It is stated that though this question was again and again asked to Dilip (PW3), he did not reply. This demeanor of Dilip (PW3) indicates probability in the suggestion that was put to him on behalf of the respondents.

20. As stated above, there is no evidence to establish that the respondents subjected the deceased Deepali to cruelty in connection with any unlawful demand for money or any other Article (i.e. dowry). Therefore, the presumption under Section 113-B of the Evidence Act would not get attracted to the facts of the present case. On the same ground, the presumption under Section 113-A of the Evidence Act also would not be helpful to the prosecution, even if it is to

be assumed that the deceased Deepali committed suicide by pouring kerosene on her person and setting herself ablaze. The prosecution has totally failed to establish the existence of proximity between the effect of cruelty based on dowry demand and her death. It seems that being annoyed after seeing the dead body of the deceased Deepali, her mother i.e. Ashabai (PW 1) lodged the report against the respondents merely on suspicion.

21. The prosecution failed to establish guilt of the respondents for the above-mentioned offences. The learned trial Judge rightly appreciated the facts of the case as well as the evidence on record and rightly held the respondents not guilty of the said offence. The view taken by the learned trial Judge is quite plausible and acceptable one. We concur with the findings recorded by the learned trial Judge. The impugned judgment and order need no interference. The appeal is devoid of any substance. It is liable to be dismissed. In the result, we pass the

following order:-

O R D E R

- (i) The appeal is dismissed.
- (ii) Bail bonds of the respondents are cancelled.
They are set at liberty.
- (iii) The appeal is accordingly disposed of.

[SANGITRAO S. PATIL, J.]

[SUNIL P. DESHMUKH, J.]

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