

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

CRIMINAL APPEAL NO. 53/2001

The State of Maharashtra

.. Appellant.

Versus

1. Prabhu Shreehari Lature
Age : 23 yrs, occu. : agri.,
R/o Bhada, Taluka AUSA,
District Latur.
2. Chaturabai w/o Shreehari Lature
(Died)

.. Respondents.
(Original accused)

Mr. S.B. Pulkundwar A.P.P. for State.
Mr. S.S. Chaudhari, Advocate for respondent No. 1
Appeal is abated against respondent No.2.

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL,JJ.**

DATED : 24.07.2017.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This appeal is directed against judgment and order of acquittal passed by Additional Sessions Judge, Latur in Sessions Case No. 65/1997, dated 22-09-2000 acquitting the

accused of the offences punishable under Sections 304-B, 306 and 498-A read with Section 34 of the Indian Penal Code.

2. Respondent No.1 is the original accused No. 1.

3. Prosecution case, in brief, is that Savita Hanmant Gawali was the daughter of informant Hanmant (PW-1) and her marriage was solemnized with accused No. 1 prior to two years of the incident. Family of the informant and family of accused lived in one and the same village i.e. Bhada. During cohabitation of Savita and accused No.1 after one year accused started ill-treatment to Savita on account of inability of the informant to present proper gift articles in the marriage of the sister of accused No.1. Original accused No.2 was the mother of accused No. 1. The parents of Savita tried to intervene, but no positive result could be achieved. Even at the occasion of the marriage of second sister of accused No.1, an amount of Rs. 5000/- was demanded by accused from the parents of Savita which could not be fulfilled. On that count also Savita was subjected to harassment which resulted into her suicidal death

due to consumption of poison on 17-05-1996 at the house of accused. Informant Hanmant Gawali (PW-1) lodged report to Police Station, Latur. In the result, Crime No. 34/1996 was registered against accused Nos. 1 and 2 under Sections 498-A, 306 and 304-B read with Section 34 of the Indian Penal Code.

4. During the course of investigation dead body of Savita was referred for postmortem examination and Medical Officer opined that the cause of death of deceased was “due to cardio-respiratory arrest due to asphyxia due to poisoning”. Inquest panchnama (Exh. 12) and spot panchnama (Exh.13) were prepared and poison container was seized from the house of accused persons. After completion of investigation, charge-sheet was submitted before the Judicial Magistrate, First Class, Latur. Offence punishable under Sections 304-B and 306 of the Indian Penal Code being triable by Court of Sessions, this case was committed to Sessions Court, Latur.

5. Charge (Exh. 3) was framed against accused Nos.1 and 2 under Sections 304-B, 306 and 498-A of the Indian Penal

Code. Contents of the charge were read over and explained to accused in vernacular. Accused pleaded not guilty and claimed trial. Defence of the accused is that of total denial.

6. After considering the evidence placed on record by prosecution, learned trial Court pleased to acquit the accused of the offences punishable under Sections 304-B, 306 and 498-A of the Indian Penal Code. Therefore this appeal arises.

7. Learned A.P.P. for the State submitted that the learned trial Court failed to consider truthful testimony of Hanmant (PW-1) and other prosecution witnesses regarding harassment at the hands of accused of Savita on account of demand of money. He pointed out that Savita died within the period of 7 years from the date of her marriage, and therefore, presumption is to be drawn that her death is dowry death and accused abated suicidal death of Savita.

8. In reply, learned defence counsel submitted that only because the death of wife within 7 years from the date of

marriage is established, conclusion cannot be drawn that it was dowry death or presumption cannot be drawn against accused that they abated the suicidal death of deceased. Learned defence Counsel pointed out that no material is placed on record by prosecution to prove that soon before the death of deceased she was subjected to ill-treatment within the meaning of Section 498-A of the Indian Penal Code, on account of demand of dowry, and therefore, presumption under Sections 113-A or 113-B of the Evidence Act cannot be drawn against the accused persons.

9. A bare glance of Section 304-B of the Indian Penal Code makes it clear that in order to seek conviction under Section 304-B of the Indian Penal Code against a person for the offence of dowry death, prosecution is obliged to prove that :

- (1) Death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances.
- (2) The deceased was subjected to cruelty or harassment by husband or by any relative of her husband.
- (3) Such cruelty or harassment should be for or in connection with any demand for dowry and
- (4) such cruelty or harassment to the deceased should have been subjected soon before her death.

10. In the case at hand, the death of deceased due to consumption of poison at the house of accused is an undisputed fact. However, the burden lies on the prosecution to establish that soon before the death of Savita she was subjected to cruelty in connection with any demand for dowry. In Explanation to Under Section 304-B of the Indian Penal Code it is provided that, *“For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961”*. In **Satvir Singh Versus State of Punjab (AIR 2001 SC 2828)** the Apex Court ruled that, “some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”. The dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage of deceased”.

11. However, in the case at hand, the Investigating Officer Shaikh Ayub (PW-4) has admitted in his cross-examination that it was transpired in investigation that there

was no demand of Aher of Rs. 5,000/- in connection with marriage of accused No.1 with Savita, either before the marriage or after the marriage. Otherwise also, it is neither the contention of informant Hanmant (PW-1) nor any prosecution witness that accused demanded any amount or valuable security in connection with the marriage of Savita with accused No.1. On the other hand, from the evidence of Hanmant (PW-1) as well as F.I.R. (Exh. 17) only the grievance of the informant was that, because he could not fulfill the demand of Aher i.e. presentation article at the eve of marriage of sister of accused No. 1, the deceased was subjected to ill-treatment. Therefore, otherwise also in any case prosecution cannot prove that the death of Savita was dowry death within the meaning of Section 304-B of the Indian Penal Code.

12. Another main aspect is that, according to Hanmant (PW-1), his daughter was subjected to harassment and ill-treatment by accused persons by beating her because he could not give "Aher" (gift) in the marriage of sister of accused No. 1. According to this witness, Savita was assaulted near upper

portion of her right eyebrow by accused No. 1 by inflicting stick blow and he came to know about the assault from Savita. The second contention is that, at the eve of marriage of second sister of accused No.1 he demanded amount of Rs. 5,000/- from this witness which could not be fulfilled and on that count also Savita was subjected to ill-treatment. However, from his cross-examination it emerges that accused No.1 was holder of 10 Acres irrigated land and the informant was holder of only 15 Acres dry crop land. Thus, certainly accused No. 1 was more financially sound than the informant. From his cross-examination it also emerges that in the marriage of first sister, accused No. 1 had given dowry of Rs.41,000/- and utensils of worth Rs. 10,000/- to the bride and bridegroom. He also admitted that at the occasion of this marriage, he himself had given Aher and he also accepted Aher from accused No. 1. Therefore, there was no question of displeasure on account of inadequate Aher to the sister of accused No. 1. Thus, the contention of the father of deceased regarding displeasure of accused No. 1 on account of insufficient Aher and ill-treatment to Savita for that reason, is not at all probable.

13. As per the contention of Hanmant (PW-1), before the death of Savita she had visited to her parental house and that time his wife was informed by Savita regarding ill-treatment to her by accused No. 1 on account of inadequate Aher. Thereafter Savita returned back and committed suicide. However, the important witness i.e. the mother of Savita is not examined by prosecution. Thus, the evidence in respect of disclosure by Savita regarding her harassment at the hands of accused, soon before her death, is totally missing. Otherwise also, the testimony of Hanmant (PW-1) regarding beating to Savita or injury to her eye due to stick blow by accused No. 1 is proved to be material omission. Though according to Hanmant (PW-1), on the date of incident he noticed wheel marks on the back and buttock of Savita, no such wheel marks were noticed by Medical Officer at the time of postmortem examination. On the other hand, in the postmortem notes, in column No.17, Medical Officer has specifically mentioned that 'no remarkable injury' was found on the body of Savita. From the cross-examination of Hanmant (PW-1) it also becomes clear that he was not present at the house when Savita informed her mother

regarding demand of Rs. 5,000/- by accused persons. In the circumstances, in absence of evidence of mother of Savita, in any case prosecution cannot be establish that on account of demand of money or any valuable security, accused subjected Savita to cruelty or ill-treatment in any manner.

14. Sadashiv (PW-2) is relative of informant and his evidence is relevant only regarding intervention at the time of harassment of Savita by accused persons. According to this witness, after knowing the ill-treatment to Savita by accused, he went to the house of accused persons alongwith Hanmant (PW-1). This witness claimed that, that time he saw injury on the right eye of Savita. However, the contention of this witness regarding injury to Savita on her right eye is proved as material omission. So also, he has admitted in his cross-examination that he is near relative of the informant and distant relative of accused. Therefore, on the basis of such vague testimony, prosecution cannot establish ill-treatment or harassment to deceased by accused for demand of money or any valuable security.

15. Lajubai Gawali (PW-3) tried to corroborate the testimony of Hanmant (PW-1) regarding harassment to Savita by accused on account of demand of money and Aher. However, from her cross-examination it becomes clear that her statement regarding ill-treatment to Savita and disclosure by Savita to this witness is nothing but a material improvement. She is the sister-in-law of informant, and therefore, such type of evidence of near relative is of no help to the prosecution to establish the guilt of accused. Accordingly, we do not find any substance on record which is sufficient to establish that at any time accused persons ill-treated Savita on account of demand of money or for demand of any valuable article. Therefore, the prosecution cannot establish the offence against any accused under Section 498-A of the Indian Penal Code.

16. No doubt, suicidal death of Savita is established by the prosecution. However, as no ill-treatment to Savita within the meaning of Section 498-A of the Indian Penal Code is proved by the prosecution. Thus, the presumption will not be available against accused that they abated the suicidal death of

Savita. As observed above, no material is available to connect the accused persons with the suicidal death of Savita. Accordingly, after careful consideration of the material placed on record as well as the reasons assigned by the learned trial Court while acquitting the accused, we have come to the conclusion that the view taken by learned trial Court cannot be terms as impossible view which calls for interference by this Appellate Court. It follows that this appeal fails. Hence, the following order.

ORDER

Appeal is dismissed.

Sd/-
(**SUNIL K. KOTWAL**)
JUDGE

Sd/-
(**T.V. NALAWADE**)
JUDGE

vdd/