

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 406 OF 2001

Vijay s/o Nagoji Pradhan,
Age : 21 years, Occu.: Laborer,
R/o.: Shivshankar Colony,
Aurangabad

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Ms.Varsha Ghanekar, Advocate holding for Mr.N.S.
Ghanekar, Advocate for Appellant
Smt.R.P. Gaur, A.P.P. for respondent/State

CORAM : SANGITRAO S. PATIL, J.

Reserved on : 13th JULY, 2017

Pronounced on: 27th JULY, 2017

JUDGMENT :

Heard the learned counsel for the appellant and
the learned A.P.P.

2. The appellant (original accused No.2) has been
convicted by the learned II Additional Sessions Judge,
Aurangabad on 29th September, 2001 in Sessions Case No.
118 of 1998 for the offences punishable under Sections
498-A, 304-B and 306 of the Indian Penal Code ("IPC",
for short). He has been sentenced to suffer rigorous

imprisonment for one year and to pay a fine of Rs. 200/- in respect of the offence under Section 498-A and rigorous imprisonment for seven years and a fine of Rs. 1000/- in respect of the offence under Section 304-B. No separate sentence has been awarded for the offence punishable under Section 306 of the IPC. The substantive sentences have been ordered to run concurrently. The said convictions and sentences have been challenged in this appeal.

3. Undisputedly, the deceased Ramabai and the appellant got married on 9th January, 1994. The deceased Ramabai begot two sons from this wedlock. The elder was aged about three years, while the younger was just of five days when Ramabai died.

4. It is the case of the prosecution that the appellant, his brother Raju and father Nagoji used to illtreat the deceased Ramabai with a view to compel her to bring Rs. 10,000/- from her maternal home for purchasing a Luna. They used to drive her out of their house. The informant namely Dhanaji Kishan Thorat, resident of Ramanagar, Aurangabad, who is the father of the deceased Ramabai, used to convince the appellant and the above mentioned inlaws of the deceased Ramabai for

treating her properly. Ramabai delivered her younger son in the Government Hospital and Training Institute ("GHATI", for short) at Aurangabad on 14th August, 1997. The informant took her to his house on 17th August, 1997. On that day, at about 1.30 p.m., the appellant went to the house of the informant under the influence of liquor and asked the deceased Ramabai to accompany him and reside at his house. The deceased Ramabai told him that she had delivered a child just before four days and requested him to allow her to reside at her maternal home for some more days. Thereon, the appellant got angry and started altercating with the informant as well as the deceased Ramabai. He threatened that in case the deceased Ramabai would not accompany him for going to his house, he would kill the newly born child. He was not in a position to listen to anybody. Considering the threat extended by the appellant, the deceased Ramabai decided to go with him. The appellant had threatened that he would see her after reaching his house. On the same day, the informant received a message that Ramabai had sustained burns and she was admitted in GHATI. He went to the GHATI and asked the deceased Ramabai as to what had happened to her, whereon she informed him that she was afraid of being beaten by the appellant and

therefore, she herself poured kerosene on her person and set herself ablaze. Ramabai died of the burn injuries on 19th August, 1997 at 4.25 a.m.

5. When the deceased Ramabai was admitted in GHATI, her dying declaration was recorded by the Special Executive Magistrate on 17th August, 1997 at 9.00 p.m. and thereafter, on the same day, another dying declaration was recorded by PSI Inamdar. In both of these dying declarations, she stated that she was brought by the appellant to his house after having altercations with her and that she was very much afraid of being beaten by him and therefore, she poured kerosene on her person and set herself ablaze.

6. After the death of Ramabai, the informant lodged report in Police Station, Jawaharnagar, Aurangabad, on the basis of which Crime No. I-194/1997 came to be registered against the appellant, his brother and father for the offences punishable under Sections 498-A, 304-B, 504, 506, 323 read with Section 34 of the IPC. The investigation followed. The inquest on the body of the deceased Ramabai was prepared. The post-mortem was conducted. The Autopsy Surgeon found that the deceased Ramabai had sustained 93% of burns. He

opined that she died of shock due to burns. The Spot Panchanama was prepared, the statements of witnesses were recorded. After completion of the investigation, the appellant, his brother and father came to be chargesheeted for the above mentioned offences.

7. The father of the appellant died prior to framing of the charges by the learned Trial Judge. Hence, the case abated against him. The case proceeded against the appellant and his brother. The learned Trial Judge framed charges against them vide Exh-3 for the offences punishable under Sections 498-A, 304-B and 306 of the IPC and explained the contents thereof to them in vernacular. They pleaded not guilty and claimed to be tried. Their defence is that of total denial.

8. The prosecution examined in all seven witnesses to establish guilt of the appellant and his brother for the above mentioned offences. After evaluating the evidence on record, the learned Trial Judge found sufficient evidence to bring home guilt to the appellant for the said offences. He, therefore, convicted and sentenced the appellant as stated above. The learned Trial Judge did not find any evidence to connect the brother of the appellant with the above mentioned

offences. Hence, the brother of the appellant came to be acquitted of the said offences.

9. The learned counsel for the appellant submits that the evidence produced on record is not sufficient to establish guilt of the appellant for the offences for which he is convicted. She submits that there is absolutely no evidence to show that the appellant had demanded money from the maternal home of the deceased Ramabai. It is not even in her dying declarations or in the evidence of the informant that on the day of the incident, the appellant had made any demand of money. Therefore, the alleged incident cannot be connected with the demand of money/dowry. She further submits that after the incident, the appellant tried to extinguish fire in which he also sustained burns. He took the deceased to GHATI for treatment. These facts clearly show that he had no intention to drive the deceased Ramabai to commit suicide. According to her, the appellant neither instigated, intentionally aided or facilitated the deceased Ramabai to commit suicide. She submits that no cruelty as explained under Section 498-A of the IPC has been established on the part of the appellant. According to her, the mother of the deceased

Ramabai was not at her maternal home. Therefore, the appellant asked her to come to his house. Since the deceased Ramabai was taken by the appellant to his house against her wish, she committed suicide. The learned counsel submits that the appellant has been wrongly convicted by the Trial Court.

10. As against this, the learned A.P.P. submits that previously also, the informant as well as the deceased Ramabai had lodged reports against the appellant on the allegations of illtreatment. The appellant is a drunkard. He used to beat the deceased Ramabai under the influence of liquor. On the day of the incident, the appellant had consumed liquor. He quarrelled with the informant and the deceased Ramabai and took her to his house though she had delivered a child hardly before about four days. Considering the previous conduct of the appellant, the deceased Ramabai was very much wandering under a great fear that she would be severely beaten by the appellant. Therefore, she was left with no alternative but to finish her life by committing suicide. She submits that the informant has specifically stated that the deceased Ramabai was illtreated by the appellant with a view to compel her

to bring Rs. 10,000/- from her maternal home for purchasing a Luna. According to her, the learned Trial Judge has rightly appreciated the evidence and rightly held the appellant guilty of the above mentioned offences. She submits that the impugned judgment and order call for no interference.

11. The informant specifically states that on the day of the incident, when the deceased Ramabai was at his house after undergoing delivery prior to about four days in GHATI at Aurangabad, the appellant came there after consuming liquor and insisted upon the deceased Ramabai to accompany him for going to his house. When he asked the appellant to allow the deceased Ramabai to reside at his house at least for five days after delivery, the appellant threatened the deceased Ramabai that he would kill her newly born child if she did not accompany him. He further states that while leaving the house, the appellant threatened the deceased Ramabai that he would see her after reaching his house. It was the time of about 4.45 p.m. to 5 p.m. when the appellant took the deceased Ramabai with him from the house of the informant. He states that on the same day, at about 6.00 p.m. to 6.45 p.m., he received a message that

Ramabai had sustained burns and she was admitted in GHATI. He went to GHATI and enquired with the deceased Ramabai about the incident, whereon she told him that the appellant beat her on the way while going to his house and due to fear of more beating, she poured kerosene on her person and set herself on fire. He states that the deceased Ramabai had told him that she was fed up of the illtreatment meted out to her by the appellant.

12. In paragraph No. 10 of the cross-examination of the informant, he states that he had stated to the police while lodging the report (Exh-16) that when the appellant had taken the deceased Ramabai to his house, he had threatened her to see after reaching his house. He further states that he had stated before the police that when the deceased Ramabai was in the house, she had disclosed that she was beaten by the appellant on the way while going to his house and that she was fed up with the illtreatment that was meted out to her. He states that he cannot assign any reason for non-mention of these facts in the report (Exh-16). Though these facts do not find place in the report (Exh-16), the fact that these facts were stated by this witness before the

police has not been denied. Even it was not asked to PHC Chavan (PW5), who recorded the report (Exh-16), whether the informant had stated the said facts before him. Thus, these omissions have not been proved. Therefore, the appellant cannot get any benefit of these omissions. On the contrary, from the evidence of the informant, it can be said that though he stated these material facts before the police, they were not recorded by the police. This evidence of the informant clearly shows as to how the appellant illtreated the deceased Ramabai while taking her to his house from the house of the informant and what was the mental stress suffered by the deceased Ramabai because of the said illtratment.

13. The evidence of the informant about the behaviour and conduct of the appellant when he visited the house of the appellant on the day of the incident is corroborated by Govind (PW2) (Exh-9), who is the neighbour of the informant. He also states that on that day, the appellant came to the house of the informant, picked up quarrels with the deceased Ramabai and took her with him. He further states that the appellant was addicted to drinks. He then states that the appellant had beaten the deceased Ramabai after consuming liquor

many times in his presence and had taken her away with him to his house. It has come in his cross-examination that prior to the date of the incident, the appellant had quarrelled with the deceased Ramabai and taken her to his house on 1st May, 1997. This positive statement that has been brought in the cross-examination of this witness also makes it clear as to how the appellant was illtreating the deceased Ramabai.

14. It has come in the cross-examination of Govind (PW2) that he had not given statement to the police and that he disclosed about the above mentioned incidents for the first time in the Court. It seems that this witness was not made clear about the act of giving statement to the police. As a matter of fact, his statement recorded by PSI Rathod (PW6) is on record. PSI Rathod (PW6) specifically states that he recorded statements of the neighbours of the informant. There is no dispute that this witness is the neighbour of the informant. It is likely that since the statement before the police is not required to be signed by the witness, this witness must have denied of having given any statement before the police. In the circumstances, his evidence cannot be discarded on that count. He

corroborates the evidence of the informant on the point of the cruel conduct and behaviour of the appellant with the deceased Ramabai.

15. Gulab Khan (PW4) (Exh-17) states that after getting it verified from the Medical Officer about the conscious state of mind as well as fitness to give statement of the deceased Ramabai, he recorded her dying declaration on 17th August, 1997 at 9.00 p.m. in GHATI. The said dying declaration is at Exh-18. In that dying declaration, the appellant has specifically stated that on that day, the appellant quarrelled with her for compelling her to go with him to his house and forcibly took her with him. She states that the appellant had consumed liquor on that day. She further states that the appellant some times used to consume liquor and beat her. She was very much afraid that the appellant would beat her on that day. Therefore, under the fear of being beaten by the appellant she poured kerosene on her person and set herself ablaze.

16. PSI Inamdar (PW7) (Exh-28) also states that he recorded the dying declaration (Exh-29) of the deceased Ramabai on 17th August, 1997 after Gulab Khan (PW4)

recorded her dying declaration. He states that he had given a letter to the Medical Officer seeking his opinion as to whether the deceased Ramabai was in a fit condition to give statement. The Medical Officer permitted him to record the statement of Ramabai. Thereafter, he recorded her statement. In that statement also, the deceased Ramabai stated almost all the facts which were stated by her in her dying declaration (Exh-18). She further added that the appellant was habituated to drinks and she poured kerosene on her person and set herself ablaze under the fear of being beaten by the appellant.

17. The evidence of Gulab Khan (PW4) and PSI Inamdar (PW7) that they got it verified from the Medical Officer that the deceased Ramabai was in a fit state of mind to give statement and thereafter, they recorded her statements, has not been denied/challenged in their cross-examinations taken on behalf of the appellant. This unchallenged evidence, therefore, will have to be accepted and accordingly accepted. Both these dying declarations, disclosing the circumstances under which the deceased Ramabai set herself ablaze, are consistent. Though there is mention in these dying declarations that

she had no illtreatment from the side of the appellant, it seems that the deceased Ramabai wanted to save the appellant keeping in view the future of her two sons who were going to be placed at the mercy of the appellant after her demise. But even after saying that she had no illtreatment from the appellant, she again reiterated that she set herself ablaze due to the fear of being beaten by the appellant. Consequently, the part of the statement, which tends to exonerate the appellant, would not have any adverse effect on the case of the prosecution that because of the illtreatment at the hands of the appellant, the deceased Ramabai had got fed up and on the day of the incident, due to fear of being beaten by the appellant, she set herself ablaze.

18. As per Explanation (a) under Section 498-A of the IPC, "cruelty" means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Thus, even mental torture or abnormal behaviour of the husband may amount to cruelty and harassment as contemplated under Section 498-A of the IPC. In the present case, the deceased Ramabai had one son aged

about three years. She had delivered another son just prior to four days of the incident. One can imagine the pressure created by the appellant on the mind of the deceased Ramabai by his conduct and harassment meted out to her after consuming liquor, that she took an extreme decision to forget her tie of love and affection to her lovely kids and embrace death to avoid the torture at the hands of the appellant. She specifically states that the appellant was in the habit of consuming liquor and that he was torturing her under the influence of liquor. On the day of the incident, the appellant quarrelled with her for compelling her to accompany him for going to his house though she had delivered a child just before four days. Had there been good intention on the part of the appellant in taking her away from her maternal home, she happily would have gone with him. She wanted to reside at her maternal home even though her mother was not there. That shows that even in the absence of her mother, she would have been more comfortable at her maternal home. Therefore, the contention of the learned counsel for the appellant that because the mother of the deceased Ramabai was not present at her maternal home for taking her care, the appellant wanted to take her to his house, cannot be

said to have any substance. Had the appellant been so caring husband of the deceased Ramabai, she would not have thought of staying even for a minute at her maternal home and would not have decided to finish her life after going to the house of the appellant.

19. It has come in the evidence of the informant that he had lodged a report to Police Station, Jawaharnagar on 7th August, 1995 against the appellant. The copy of non-cognizable case registered on the basis of that report is at Exh-22, wherein it is mentioned that on 7th August, 1995, at 8.00 p.m., the appellant hurled abuses against the informant because the deceased Ramabai had been to his house. PSI Rathod (PW6) has produced the extract from Station Diary in respect of non-cognizable case No. 562 of 1995 registered against the appellant on the basis of the report lodged by the deceased Ramabai wherein it is stated that the appellant, on 13th October, 1995 at about 8.00 a.m., hurled abuses and beat the deceased Ramabai by fist and kicks at her maternal home. These reports reflect on the conduct and torturous behaviour of the appellant. These previous reports support the case of the prosecution that the appellant was illtreating the deceased Ramabai.

20. From the facts and circumstances of the case, it is clear that the appellant had created fear psychosis in the mind of the deceased Ramabai by his torturous conduct. She was under a great mental pressure. Because of the mental pressure created by the appellant by such torturous behaviour, the deceased Ramabai was left with no other option except to commit suicide. As such, the prosecution established beyond doubt that the appellant subjected the deceased Ramabai to cruelty which drove her to commit suicide.

21. There is one more factum which strengthens the case of the prosecution about abetment on the part of the appellant to the deceased Ramabai to commit suicide. The marriage of the deceased Ramabai and the appellant was performed on 9th January, 1994. She set herself ablaze on 17th August, 1997 and succumbed to the burn injuries on 19th August, 1997. Thus, she committed suicide within a period of seven years from the date of her marriage. Here, reference may be made to Section 113-A of the Indian Evidence Act, 1872, which reads as under:-

"113-A. Presumption as to abetment of suicide by a married woman. -

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

22. The presumption contained in section 113-A is fully applicable to the present case. The appellant has not rebutted the said presumption by showing any other reason for the deceased Ramabai to commit suicide than the reason given by her in her dying declarations that because of the fear of being beaten by the appellant, she set herself ablaze. It is clear that the appellant created such circumstances which compelled the deceased Ramabai to commit suicide. Thus, the prosecution has established guilt of the appellant for the offence punishable under Section 306 of the IPC.

23. So far as offence punishable under section 304-B of the IPC is concerned, except a single sentenced uncorroborated evidence of the informant that the accused persons (i.e. the appellant, his father and

brother) had demanded money for purchasing a Luna, nothing is on record to establish such demand for money/dowry. Even the informant does not state that either on the date of the incident i.e. 17th August, 1997 or prior to that, the appellant had demanded money. There is nothing in the dying declarations of the deceased Ramabai also about the so called demand of money by the appellant. In the circumstances, the finding of the learned Trial Judge that there was demand of money and the deceased Ramabai was being illtreated by the appellant in connection with that demand, cannot be upheld. The prosecution has failed to establish guilt of the appellant for the offence punishable under Section 304-B of the IPC.

24. Though it was necessary to pass a separate sentence, the learned Trial Judge has not passed separate sentence against the appellant for the offence under Section 306 of the IPC since according to him, the appellant has been sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for six months for the offence under Section 304-B of the IPC. As stated above, the offence punishable under

Section 304-B of the IPC is not established against the appellant. However, he is liable to be sentenced for the offence under Section 306 of the IPC. In my view, considering the facts and circumstances of the case and particularly the fact that the period of about 20 years has been elapsed after the date of the incident, it would be just and proper to sentence the appellant for the offence under Section 306 of the IPC with rigorous imprisonment for five years and to pay a fine of Rs. 1000/-, in default to suffer rigorous imprisonment for six months.

25. The learned Trial Judge has sentenced the appellant for the offence under Section 498-A of the IPC with rigorous imprisonment for one month. This sentence does not call for interference.

26. The appellant is liable to be acquitted of the offence punishable under Section 304-B of the IPC.

27. The appellant was in jail from 10th September, 1997 to 20th September, 1997. He was further taken into custody on 29th September, 2001 (on the date of decision of the Trial Court) and was released on bail by this

Court vide order dated 26th November, 2001. He is liable to get set off in respect of the said period. In the result, I pass the following order:-

O R D E R

- (i) The appeal is partly allowed.
- (ii) The impugned judgment convicting the appellant for the offences punishable under Sections 498-A and 306 of the Indian Penal Code is confirmed.
- (iii) The order of sentence passed by the learned Trial Judge against the appellant in respect of the offence punishable under Section 498-A of the Indian Penal code is confirmed.
- (iv) The appellant is sentenced for committing the offence under Section 306 of the Indian Penal Code with rigorous imprisonment for five years and to pay a fine of Rs. 1000/-, in default rigorous imprisonment for six months.
- (v) The impugned judgment and order, convicting the appellant for the offence punishable under Section 304-B of the Indian Penal Code, is

quashed and set aside.

- (vi) The appellant is acquitted of the offence punishable under Section 304-B of the Indian Penal Code.
- (vii) The substantive sentences of imprisonment shall run concurrently.
- (viii) The appellant shall be given set off for the period from 10th September, 1997 to 20th September, 1997 and from 29th September, 2001 till the date he was actually released on bail.
- (ix) The appellant shall surrender to his bail bonds by appearing before the Trial Court on or before 3rd August, 2017 for suffering the sentence of imprisonment.
- (x) In case the appellant fails to surrender as stated above, the Trial Court shall issue coercive process to secure his presence.
- (xi) The Criminal Appeal is disposed of accordingly.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE