

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

CRIMINAL APPEAL NO.473 OF 2001

The State of Maharashtra
Through Public Prosecutor
High Court Bench at Aurangabad

.. Appellant
(Ori.Complainant)

Versus

1. Bhagirath Mahadeo Bhosale
Age-25 years,

.. Respondents
(Ori. accused)

2. Mahadeo Nagorao Bhosale,
Age-50 years,
*(Appeal abated against Resp. No.2
as per Court order dated 09.02.2007)*

3. Bibhishan Mahadeo Bhosale,
Age-30 years,

4. Sandipan Mahadeo Bhosale,
Age-32 years,

5. Sou.Chaturabai W/o. Mahadeo Bhosale,
Age-45 years,

All R/o. Wanjarkheda, Tq. & Dist. Latur.

Mr.S.D. Ghayal, APP for the appellant/State
Mr.A.M. Gaikwad, Advocate for resp.Nos.1,3 to 5 (absent)

**CORAM : T.V.NALAWADE &
S.M. GAVHANE, JJ.
DATED : 04.09.2017**

J U D G M E N T [PER:S.M. GAVHANE, J.]

. This appeal has been filed by the appellant/State against the judgment and order dated 27.07.2001 passed by the Additional Sessions Judge, Latur in Sessions Case No.123/1997 thereby acquitting the respondents/accused No.1 to 5 of the offences punishable under Sections 498-A, 306, 302 r/w 34 of the Indian Penal Code (for short the IPC) challenging the said acquittal. During pendency of the appeal respondent No.2/accused No. 2 died and therefore the appeal is abated against him as per Court order dated 09.02.2007 and as such it proceeded only against remaining respondents/accused.

2. Briefly stated facts of the prosecution case, giving rise to this appeal, are as under:-

A. The informant/complainant Vitthal Raut (PW-1) is resident of Mategaon, Tq. Renapur, Dist. Latur. He had three sons and two daughters namely Vimal and Shobha-the deceased and at the relevant time of the incident he was residing with his sons and wife Sarojbai (PW-3). His elder daughter Vimal was given in Jaygaon Tq. Majalgaon while deceased Shobha his younger daughter was married to accused No.1 Bhagirath who is resident of Wanjarkheda, Tq. & Dist. Latur, on 27.05.1994 and accused No.1 was

residing with his father accused No.2 (since deceased), mother accused No.5 and brothers accused Nos. 3 and 4 at the relevant time of the incident. In the marriage Vitthal Raut (PW-1) had given 5 gram gold and Rs.6,500/- for the expenses.

B. It is alleged that after the marriage the deceased was treated properly for four to five months and thereafter all the accused started harassing her on account of bringing Rs.5,000/- from her parental house for a shop and started assaulting her constantly. After coming to the parental house the deceased demanded money. Avinash (PW-5) son of the informant had given Rs.5,000/- in the year 1995 to accused No.1. However, again said accused continued harassment to the deceased saying her to bring money from her parental house and the informant could not give money.

C. Further it is alleged that one year prior to the incident the members of in-laws house of the deceased had beaten her. Therefore, the deceased was brought at Mategaon at her parental house by the informant and while she was at Mategaon accused No.1 had started coming to Mategaon intermittently and at Mategaon he and deceased started residing as husband and wife. Before three months of the incident accused No.1 had come to Mategaon and

said that he would properly maintain the deceased and said to send her with him at Wanjarkheda and therefore the deceased was sent with him. Thereafter, PW-1 had sent his son Avinash (PW-5) at Wanjarkheda on 18.04.1997 to see how the deceased is living and to bring her, but the deceased had refused to come as she had menstrual period. At that time Avinash had asked her whether everything is alright and she did not talk anything. Avinash told the same to PW-1. So also, he told about harassment caused to the deceased and that she was seen residing under pressure of the members of in-laws of her house.

D. It is alleged that after two days thereafter PW-1 was informed at 2.30 pm on 20.04.1997 that the accused murdered the deceased by hanging. Thereupon, he alongwith his wife and son Avinash went to Wanjarkheda village of the accused. After PW-1 and others went to the village of the accused they saw dead body in the house of the accused. The information in this respect was given to Police Station Gategaon. On the basis of said information accidental death AD case No.9/1997 under Section 174 of the Code of Criminal Procedure was registered. Thereupon, in the enquiry of the said AD case ASI Munde came to the house of accused on 21.04.1997 and prepared panchanama of spot of incident i.e. house of the accused between 07.00 am to 07.30 am. Thereafter, he prepared inquest

panchanama in the morning between 07.45 to 08.30. He then sent dead body to the General Hospital, Latur on the same day where Medical Officer Dr. Preeti Badade (PW-6) conducted the postmortem examination between 10.45 to 11.45 am and she issued the postmortem report (Exh.66). As regards cause of death she opined that death was caused due to Asphyxia due to hanging, and also issued provisional death certificate (Exh.64). After post-mortem examination Police Station Officer, Kulkarni seized the rope prepared with bag of the fertilizer produced by the Police Constable Shinde under panchanama (Exh.65). It appears that on the same day statement/complaint of PW-1 father of the deceased alleging harassment to the deceased as stated in earlier para and further alleging that on 20.04.1997 in their house the accused at about 13.30 hours caused death of the deceased by hanging her was recorded, by PSI Asafali Pathan (PW-8). Treating the said complaint as FIR crime No.22/1997 under Section 498-A and 302 r/w 34 of the IPC was registered in Police Station Gategaon against the accused and PSI Asafali Pathan started the investigation.

E. During investigation PSI Asafali Pathan recorded the statements of witnesses including the statements of mother (PW-3) and brother (PW-5) of the deceased and other witnesses. The accused were arrested

and subsequently they were released on bail. After completion of the investigation as PSI Asafali Pathan submitted charge-sheet against the accused in the Court of JMFC, Latur for the offences under section 498-A and 302 r/w Section 34 of the IPC. The learned JMFC, Latur committed the case to the Sessions Court, Latur as the offence under Section 302 of the IPC was exclusively triable by the Court of Sessions.

F. Learned II-Additional Sessions Judge, framed charge against all the accused for the offence punishable under Sections 498-A, 302 and alternatively under section 306 r/w Section 34 of the IPC to which accused pleaded not guilty and claimed to be tried. Their defence is denial. In the statement under Section 313 of the Code of Criminal Procedure the accused No.1 husband of the deceased stated that the deceased had gynec problem prior to her marriage. There used to be constant pain in her abdomen. She had trouble in the menstrual period. He had shown her to the Doctor at Latur and Murud. Dilip is the brother of Shobha the deceased. Dilip had taken Shobha to Mumbai for medical check-up and treatment. Doctors advised that she would not become a mother. Since then, she was annoyed. Moreover, from the cross-examination of father (PW-1), mother (PW-3) and brother Avinash (PW-5) brother of the deceased it appears that

according to the accused they have never ill -treated the deceased. In their defence accused have examined Sonerao Mane (DW-1) at Exh.91.

G. The prosecution examined in all eight witnesses to prove the charge against the accused and relied upon post-mortem report and panchanama referred to above. Considering the evidence adduce by the prosecution the trial Court held that the prosecution has failed to prove the offences under Section 498-A, 306 and 302 r/w Section 34 of the IPC against all the accused and acquitted them of the said offences by the impugned judgment. Therefore, this appeal by the State.

3. Learned APP appearing for the appellant/State submits that within seven years of her marriage the deceased died. There is evidence of PWs.1,3 and 5 regarding ill-treatment caused to the deceased by the accused for un-lawful demand. The trial Court should have accepted the same. Further he submits that evidence of Dr. Badade (PW-6) and Postmortem report show cause of death i.e. Asphyxia due to hanging and therefore considering above all evidence the trial Court should have convicted the accused at least for the offences punishable under Section 498-A, 306 r/w 34 of the IPC as requested in the appeal and as such prayed to allow the

appeal and convict the respondents/accused Nos. 1,3 to 5 of the said offences.

4. We could not hear the learned counsel appearing for the respondents/accused as he was absent.

5. We have carefully considered the submissions made by the learned APP and with his assistance we have perused the evidence adduced by the prosecution and the impugned judgment and order.

6. Since the appeal is against the acquittal before examining the evidence adduced by the prosecution it is necessary to see whether the acquittal of the accused is proper and the view taken by the trial Court was reasonable and probable or otherwise it is necessary to bear in mind the principle in this respect laid down by the Apex Court in the case of Murlidhar alias Gidda and another Vs State of Karnataka, 2014(4)Mh.L.J.(Cri)353 wherein in para No.12 the Apex Court has held thus:

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR

1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K, (1997) 7 SCC 677, Sambasivan Vs State of Kerala, (1998) 5 SCC 412, Bhagwan Singh Vs State of M.P., (2002) 4 SCC 85, Harijana Thirupala Vs Public Prosecutor, High Court of A.P., (2002) 6 SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka Vs K. Gopalkrishna, (2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, Chandrappa Vs State of Karnataka, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power

of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

7. Basically it is the case of the prosecution as per FIR (Exh.68) lodged by PW-1 father of deceased is that on 20.04.1997 at about 13.30 hours in their house the accused have in furtherance of their common intention caused death of his daughter the deceased by hanging her. Denying the same defence has come with the case that

death of the deceased is suicidal. In such circumstances considering the basic allegations of the prosecution regarding death of the deceased, it is necessary to see whether death of the deceased was homicidal or suicidal. To establish that death of the deceased was homicidal prosecution has mainly relied upon the evidence of Dr.Preeti Badade (PW-6), postmortem report (Exh.66) and the evidence of PWs. 1,3 and 5 respectively father, mother and brother of the deceased. The evidence of Dr. Badade is that on 21.04.1997 she performed postmortem examination on the dead body of Shobha at Civil Hospital, Latur between 10.45 to 11.45 am. Dr. Deshmukh was also present at the time of postmortem examination. She deposed that she noticed ligature marks around the right side of the neck extending from back of neck in center to anteriorly upto middle part knot on the left side of neck ecchymosis and bruise is present. She also noticed fracture to thyroid cartilage, lungs were egorged and deeply congested, swollen eyes, partially open tongue inside the mouth, oozing of saliva (reddish Coloured) from the right due of mouth. She deposed that postmortem report (Exh.66) was issued and it bears her signature and signature of Dr. Deshmukh and its contents are correct. To the question whether the injury noticed by her is possible by throttling the victim and then hanging her, Dr. Badade answered that in that case ligature marks

would be absent but signs of asphyxia occurred. As referred above Dr. Badade has stated that she noticed ligature marks around the right side of the neck extending from back of neck in center to anteriorly upto middle part knot on the left side of neck ecchymosis and bruise. Considering the same and answer given by the said Doctor to the above question and also on considering cause of death given in postmortem report (Exh.66) that death of the deceased was caused due to asphyxia due to hanging and signs of asphyxial death would be common in hanging, throttling etc. and injury given in paragraph No.17 of the postmortem report that ligature marks around the neck, it can be said that death of the deceased was caused due to hanging and in these circumstances possibility of her committing suicide cannot be ruled out. Thus, we hold that death of the deceased was suicidal.

8. The trial Court framed charge against the accused for the offence under Section 498-A and 302 r/w Section 34 of the IPC and alternative charge under Section 306 r/w Section 34 of the IPC. In such circumstances the trial Court was required to frame specific point as to whether the death of the deceased was homicidal or suicidal and he was required to record specific finding in this respect. But it had not framed

specific point in this respect and no specific finding was recorded that the death of the deceased was either homicidal or suicidal. It appears that trial Court had framed point Nos. 2 and 3 as to whether the accused in furtherance of their common intention abetted the deceased to commit suicide and committed her murder and both said points were answered in negative. In paragraph No.15 of the judgment it has been observed by the trial Court that possibility cannot be ruled out that because of frustration, despair or sensitiveness deceased committed suicide. We hold that in case of allegations of murder the trial Court is required to frame specific point regarding homicidal death and to record finding on it.

9. It is held that the prosecution has failed to prove that death of the deceased was homicidal and it is held that her death was suicidal. Therefore, it is necessary to see whether accused had abetted the deceased to commit suicide, so as to attract the offence under Section 306 r/w Section 34 of the IPC against them. Case of the prosecution is that the accused in furtherance of their common intention caused cruelty to the deceased within meaning of cruelty given under Section 498-A of the IPC and as such abetted her to commit suicide. To prove the said cruelty the prosecution has relied upon

the evidence of father (PW-1), mother (PW-3) and brother Avinash (PW-5) of the deceased.

10. Now coming to the evidence of above witnesses, the evidence of Vitthal Raut (PW-1) father of the deceased Shobha is that the marriage of the deceased was performed with accused No.1 on 27.05.1994. He had given 5 and 1/2 Tolas gold and Rs.6500/- as expenses. Shobha led peaceful and happy married life for a period of 4-5 months. Accused No.1 had sent her to her parents house. She had disclosed that accused were demanding Rs.5000/- for a shop. He told his son Avinash (PW-5) to hand over Rs.5000/- to the accused and accordingly PW-5 paid said amount to the accused. Further he deposed that again accused started ill-treating the deceased for bringing money from her parents and that he could not pay money because of his poverty. Accused ill-treated and beat deceased. He brought deceased to his house one year prior to her death. Accused No.1 used to come to his house to meet deceased Shobha. Some three months prior to the incident accused No.1 came to his house and promised that he would not ill-treat her. He then sent deceased alongwith accused No.1. After about 2 to 2 and 1/2 months he sent his son PW-5 to go to Wanjarkheda and see how Shobha was living. At that time accused No.5 mother-in-law of the deceased told PW-5 that Shobha was having

menstrual period and therefore she could not be sent to Mategaon. He deposed that Avinash (PW-5) told him that Shobha was under fear of the accused and she did not talk with him. He deposed that after two days he was informed that the accused had murdered Shobha by hanging. On the same day i.e. 20.04.1997 he reached to Wanjarkheda village of the accused. On the next day dead body was sent for postmortem examination to the Civil Hospital. Funeral was performed at Wanjarkheda. On 21.04.1997 he lodged the complaint i.e. FIR (Exh.68).

11. In the cross-examination PW-1 stated that, he stated before police that accused sent Shobha to his house some 4-5 months after the marriage. He had stated before the police, that Shobha disclosed him that the accused were demanding Rs.5000/- for a shop, that accused No.5 had refused to send Shobha with his son and that the accused had murdered Shobha by hanging. But he could not assign the reason of absence of above facts in the FIR (EXh.68). Thus the evidence of PW-1 in respect of above facts is material omission in his FIR (Exh.68)/statement before the police and improvement while deposing before the Court. Moreover, he has denied that the accused never demanded Rs.5000/- for a shop and that they never ill-treated deceased for non-payment of money. He has denied that he filed the complaint against the accused because

accused refused to pay Rs.50,000/- to him. Another aspect to be noted is that he has not stated when and how much amount was demanded by the accused after alleged amount of Rs.5000/- was paid to the accused by his son (PW-5). So also, it is seen from his evidence that the deceased was brought to his house some three months prior to the incident and when she was staying at his house accused No.1 used to come for meeting deceased Shobha. This shows that relation between deceased Shobha and accused were good and there was no ill-treatment to the deceased. Therefore, evidence of PW-1 referred to above is not sufficient to infer that the accused caused cruelty to the deceased.

12. The evidence of Sarojbai (PW-3) mother of the deceased is that after marriage Shobha was given good treatment for about 5-6 months. Accused No.1 told Shobha to bring Rs.5000/- from her parents for starting a shop. As amount was not paid accused No.1 started ill-treating and assaulting Shobha. Shobha came to Mategaon and told her that she should pay Rs.5000/- to her husband accused No.1 for starting a shop as accused No.1 was assaulting her. She stated that she told her son to go to the house of the accused and pay Rs.5000/- to accused No.1. She deposed that all accused were ill-treating and assaulting deceased for bringing money from her parents. But due to

poverty she could not pay money to the accused. Then she went to the house of the accused and brought Shobha to Mategaon. She stated that accused No.1 was visiting their house frequently when Shobha was residing with her. She stated that accused and deceased Shobha used to stay in their house as husband and wife and they were living happily. She stated that after Shobha went to the house of the accused with accused No.1 after two days she received message that accused have committed murder of Shobha by hanging.

13. In the cross-examination PW-3 stated that she does not remember when she had sent Rs.5000/- to the accused through PW-5 her son. She stated that she had stated before police that she had sent Rs.5000/- through PW-5 her son two years prior to the incident. She stated before police that Shobha disclosed that accused No.1 was assaulting her and that PW-5 told her that Shobha did not speak to him because of fear of the accused. She could not assign reason of absence of above facts in her statement before police. Thus, the evidence in respect of above facts of PW-3 amounts to material omission in her statement before police and improvement while deposing before the Court. From her evidence it appears that relation between deceased and accused No.1 were good as accused No.1 was residing at in-laws house with his wife

as husband and wife and they were living happily. The evidence of PW-1 shows that all accused were demanding Rs.5000/- for shop and evidence of PW-3 shows that accused No.1 was demanding Rs.5000/- for shop. So also, PW-1 says that he asked PW-5 to pay Rs.5000/- to the accused while PW-3 says that she asked PW-5 to pay Rs. 5000/- to the accused No.1. Thus, there is no consistency in the evidence of these two witnesses as regards role attributed to all the accused of ill-treating the deceased. The evidence of PW-3 as regards ill-treatment to the deceased by the accused is vague. Therefore, her evidence is not sufficient to infer that accused caused cruelty to the deceased.

14. The evidence of PW-5 Avinash who is brother of the deceased is that all accused behaved properly with deceased Shobha for 4-5 months. Then accused started demanding Rs.5000/- for starting a grocery shop whenever he visited Shobha told him that accused were demanding Rs.5000/- for starting grocery shop. He stated that Shobha disclosed about demand of Rs.5000/- for starting a grocery shop whenever she visited Mategaon. He stated that in 1995 he visited the house of the accused and paid Rs.5000/- to accused No.1. According to him accused Nos.1 to 5 have started demanding money from Shobha and for non-payment of money they were assaulting and ill-

treating Shobha.

15. In the cross-examination PW-5 has stated that he had stated before police that whenever Shobha met him she disclosed that accused were demanding money for starting a grocery shop, and so also he stated before police that when he visited the house of the accused on 18.04.1997 he noticed that Shobha was under fear of the accused but he could not assign reason of the absence of the above facts in his statement made before police. So also, he stated that he stated before police the accused were beating Shobha for payment of Rs.5000/-. He has not stated about day, month and year when all the accused started assaulting and ill-treating the deceased Shobha after he paid Rs.5000/- to accused No.1. From his evidence that accused No.1 came to their house and deceased was sent with him and that accused No.1 was visiting to their house it can be said that relation between accused No.1 and the deceased were good. Therefore, above referred evidence of PW-5 which is vague in nature is not sufficient to infer that the accused caused cruelty to the deceased.

16. For the above reasons the evidence of PWs.1,3 and 5 who are close relatives of the deceased is not sufficient to state that accused in furtherance of their

common intention caused cruelty within meaning of Section 498-A of the IPC to the deceased so as to state that cruelty was of such a nature that it had left no option before deceased than to commit suicide so as to say that accused abetted the deceased to commit suicide within the meaning of Section 306 of the IPC. Therefore, we hold that the prosecution has failed to prove offences under Section 498-A, 306 r/w 34 of the IPC against the accused.

17. Once it is held that death of the deceased was suicidal there is no question of causing death of the deceased by the accused and committing offence under Section 302 of the IPC. The evidence of PWs.1,3 and 5 shows that accused caused death of the deceased by hanging and their evidence is hearsay. Said evidence is not sufficient to state that the prosecution has proved alternative charge under Section 302 r/w 34 of the IPC against the accused. As such prosecution has also failed to prove alternative charge under Section 302 of the IPC against the accused. The trial Court has properly appreciated the evidence adduced by the prosecution and held that the prosecution has failed to prove offences under Section 498-A, 306 and 302 r/w Section 34 of the IPC against accused and rightly acquitted all the accused of the said offences by the impugned judgment. Thus, the said view taken by the trial Court is reasonably possible

view and it is not the case that the view taken by the trial Court is perverse or based on erroneous view of law. We therefore, hold that there is no ground to interfere with the impugned judgment and order. Thus, the appeal being devoid of merits, same is liable to be dismissed. Accordingly we dismiss the appeal. Bail bonds, if any, furnished by the accused stand canceled.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]