

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

CRIMINAL APPEAL NO. 532 OF 2001

Yuvraj S/o Chango Kale,
Age : 28 years, Occu. Agriculture,
R/o. Moykheda Digar, Tq. Jamner,
Dist. Jalgaon.

... the Appellants

VERSUS

The State of Maharashtra.

... the Respondent

.....
Mr R. S. Shinde, Advocate for the appellant
Mr M. M. Nerlikar, APP for respondent/State
.....

CORAM : A. M. DHAVALA, J.
DATE : 12TH SEPTEMBER, 2017.

ORAL JUDGMENT :-

1. Vide the Judgment and Order dt. 09.11.2001 passed by the learned IInd Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 10/1996, the appellant was convicted and sentenced for the offences punishable under Sections 306 and 498A of the Indian Penal Code (hereinafter referred to as "IPC"). For offence punishable u/s 306 of the IPC, he was sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs. 500/-, in default of payment of fine, to suffer simple imprisonment for one month and for offence u/s 498A of the IPC, he was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default of payment of fine, to suffer simple imprisonment for one month.

2. Deceased Yunubai was sister of the informant PW1-Bhagwan. She had married to the appellant Yuvraj about five years before the incident. As per FIR, dowry of Rs. 4,000/- was paid at the time of marriage. Yunubai lived with her husband at Moykheda Digar, Tq. Jamner, for two and half months. Thereafter, the appellant complained about insufficient dowry and about his dislike of Yunubai and made further demand of Rs. 5,000/-. As the maternal relatives of the Yunubai were unable to meet the demand, Yunubai was constrained to reside at her maternal house for a period of three years. After Diwali in 1994, the maternal relatives of Yunubai took help of some Mediators and reached Yunubai to her matrimonial house. The informant Bhagwan and his mother had visited the matrimonial house of Yunubai on 2-3 occasions and that time Yunubai was complaining about ill-treatment to her and dowry demand of Rs. 5000/- by her husband, parents in-laws and sisters-in-law. In FIR, it is alleged that, on 26.05.1995 at 3:00 PM, Yunubai came to her maternal house at Jamner and informed her brother that her in-laws and husband had demanded dowry of Rs. 5,000/- from her. PW1 Bhagwan persuaded her to resume cohabitation. It is alleged that, her sisters-in-law i.e. Latabai & Anita were visiting her house and were scolding her on account of insufficient dowry and were making dowry demands. On 06.10.1995 at about 4:30 pm when PW1 was in the school, he received message that Yunubai has

died. When he went to her matrimonial house, he found that Yunubai died due to consumption of poisonous insecticide. Froth was oozing from her nostrils and mouth. PW1 accordingly lodged FIR on the next date i.e. 07.10.1995 at Jamner Police Station and the crime was registered at C.R. No. 280/95 u/s 306, 498A r/w 34 of the IPC. The same was investigated into. The statements of material witnesses were recorded. Inquest & spot panchanama was drawn. PM was conducted on the dead body. After conclusion of trial, the charge-sheet was submitted in the court. In due course, the case was committed to the court of Sessions. Charge was framed at Exh. 53 against the appellant Yuvraj, his parents and his sisters for offences u/s 306, 498A r/w 34 of IPC. The prosecution examined 7 witnesses. The accused denied all the allegations and came with the case of accidental death by inhaling the insecticide.

3. After considering the evidence on record, the learned IInd Ad-hoc Addl. Sessions Judge, Jalgaon convicted accused No. 1 - Yuvraj for the offences punishable u/s 306 and 498A r/w 34 of IPC and awarded sentences as referred to above. Rest of the accused were acquitted. Hence this appeal against conviction.

4. Shri. R. S. Shinde, learned counsel for the appellant argued that, there is no evidence to show that the appellant had subjected

the deceased to cruelty or to dowry demands. The evidence of PW1, 3 & 5 in this regard is not reliable. There are vague allegations. There is no material to show that the act of the appellant amounted to abetment as defined u/s 107 of the IPC. It is also argued that, it was not a case of suicide but it was accidental death by inhaling the insecticide. He argued that the allegations are extremely vague and those cannot be relied upon.

5. Per contra, Mr Nerlikar, learned APP strongly supported the Judgment of the trial Court. He argued that there was persistent dowry demand and ill-treatment which built pressure on the deceased and she was left with no alternative but to commit suicide. He pointed out that, deceased was deserted within 2.5 months after the marriage on account of non payment of dowry and she had to reside at her maternal house for three years. Thereafter, due to persuasion of mediators she had resumed cohabitation but even thereafter ill-treatment continued to her. Her mother had visited her house and that time she had narrated the story about ill-treatment being meted out to her at the instance of the appellant and her in-laws. Besides, on 26.09.1995 i.e. 10 days before the incident, the deceased had been to her brother's house at Jamner and again narrated the story about dowry demands and ill-treatment. The accused have taken a false defence of accidental death which is ruled

out by the evidence of Medical Officer. The deceased has committed suicide within a period of 7 years from the date of marriage. The appellant has not given satisfactory explanation for her committing suicide. Hence, the evidence of PW1 & PW5 should be believed and the appeal should be dismissed.

6. The points for my consideration with my findings thereon are as follows:

Sr. No.	Points	Findings
(I)	Whether the deceased committed suicide?	In the Affirmative
(II)	Whether the appellant abetted the deceased to commit suicide by persistently subjecting her to cruelty and ill-treatment?	In the Negative
(III)	Whether the appellant subjected the deceased to ill-treatment and cruelty as defined u/s 498A of IPC?	In the Negative
(IV)	What order?	As per final order.

REASONS

7. **As to points No. 1:** - There is evidence of brother and mother of deceased that the deceased met with death due to poisonous insecticide. Froth was oozing from her nostrils and mouth. Her dead body was sent for post-mortem and PW2-Dr. Yusuf has

conducted the Post-mortem. He has found symptoms of poisoning by insecticide. He found 50 ML of semi ductile fluid with mucus membrane congested. The viscera was preserved and the stomach contained organophosphorous poison. CA report to that effect is at Exh. 65. It was argued that, such poisoning is possible by accidentally inhaling the poisonous substance. The Medical Officer has not accepted this position. Besides, in accidental inhaling, there could not have been any semi fluid found in the viscera as was found in the stomach contents of the deceased - Yunubai. It is also to be noted that, Yunubai was from a farmer's family and after marriage also, she was cohabiting with a farmer and it can be assumed that the farmers and their relatives are aware about the dangerous effects of the insecticide kept inside the house. Therefore, there is no possibility of deceased accidentally inhaling the insecticide. I, therefore, find that it was a case of committing suicide by deceased - Yunubai. Admittedly, it is committed within 7 years of marriage. Point No. 1 is thus answered in the affirmative.

8. **As to points No. 2 & 3** : As per Section 113(A), the presumption as to abetment of committing suicide by married woman can be drawn when the bride has committed suicide within seven years of the marriage and there is evidence to show that her husband or relatives of her husband had subjected her to cruelty. Section

113(A) discloses that it is a discretionary presumption and the court has to take into consideration all the circumstances of the case for drawing such presumption.

9. It is well settled that, mere death of a bride within seven years of marriage or even within a very short period after the marriage, is by itself not indicative of any dowry demands or ill-treatment to her at the instance of the husband or in-laws. In **State of West Bengal v Orilal Jaiswal & another 1994 CRI. L. J. 2104 (SC)**, it is held that, the prosecution has to rule out the possibility of sensitive bride committing suicide on account of ordinary petulance or discord in the married life of husband and wife occurring in day to day activities.

10. Since there is no direct evidence, the prosecution has relied on the fact that Yunubai was telling to her maternal relatives about the dowry demands and ill-treatment to her by her husband and in-laws.

11. The prosecution has examined seven witnesses, out of which PW1 Bhagwan is the brother and the informant while PW5 Narmadabai is the mother of the deceased. From the nature of FIR and the evidence on record, one can guess about the financial

condition of both the families. It is alleged that, dowry of Rs. 4,000/- was demanded at the time of marriage but subsequently it has come on record that this dowry was paid by consent and it included the marriage expenses which were borne by the accused.

12. PW1 Bhagwan and PW5's evidence show that after the marriage Yunubai cohabited with her husband merely for 2 and ½ months. During this period, she was subjected to further demand of Rs. 5,000/- and she was also subjected to taunting that she was not liked by her husband and in-laws. After 2.5 months, she was brought to her maternal house and the appellant declined to cohabit with her unless the dowry was paid. Therefore, she resided at her maternal house for three years. There is evidence of PW1 & PW5 that, after Diwali in 1994, with the help of Mediator Bhaskar Palve, Daulatrao and Govind Kapse, the appellant and his relatives were persuaded and deceased Yunubai resumed cohabitation. Thereafter she cohabited with the appellant till her death on 06.10.1995 (for a period of one year).

13. PW1 has stated that, during this cohabitation period, he and his mother had visited the matrimonial house of deceased to make inquiry of her well-being. At that time Yunubai told them about the persistent dowry demands and about dislike by her

husband and in-laws. This fact was expressed by her to her brother and mother. She also used to tell them that she was beaten. PW1 stated that, on 26.09.1995 about 10 days before suicide, at around 3.00 PM, deceased Yunubai had been to his house and told him that her husband and in-laws were demanding dowry of Rs. 5,000/- and if the amount would not be paid, she would not be allowed to stay. PW1 stated that, she also told that her two sisters in-law had visited her matrimonial house and had taken away sarees given to her by her brother and they were also complaining about insufficient dowry received by their brother.

14. In cross-examination, it is brought on record that, during the period of three years, when his sister was residing with him, no notice was issued by the accused nor any complaint was made to the police. His evidence that, with the help of Mediator i.e. Ramkrushna, he had persuaded the accused in order to resume cohabitation with his sister, is by way of omission.

15. PW5 Narmada has also deposed about her daughter Yunubai returning to her house about 2.5 months after marriage and about dowry demands of Rs. 5,000/- as a condition precedent to resume cohabitation put by the appellant. She stated that, since the amount was not paid, her daughter remained with her for three

years. Thereafter, efforts were made to resume cohabitation and Yunubai started cohabiting with the appellant. She stated that, once about 2.5 months after the marriage, she had gone to the house of the accused, that time Yunubai had told her that she was being ill-treated, beaten and starved. There was demand of Rs. 5,000/- and there was threat that she would be divorced. Her remaining evidence is regarding the incidents after she received the news of death of Yunubai.

16. PW3 is a panch witness and neighbour of PW5. Apart from deposing facts about spot panchanama, he has also deposed that deceased Yunubai was his maternal sister and he had met her at her maternal house after her marriage and that time she was complaining about ill-treatment to her at the hands of the accused. He had also learnt about dowry demand of Rs. 5,000/- made from her which was disclosed by him to Yunubai's brother.

17. On careful consideration of the evidence, I find that the allegations regarding ill-treatment are vague. The words like abusing, beating are used without date, time and place. Even at many places the names of persons who had beaten her are not disclosed. The material fact is that, as per evidence of PW1, on 26.09.1995, Yunubai had been to the house of her brother and made

complaint of ill-treatment, dowry demand etc. but her mother is totally silent about the same. It was argued that, her mother was residing at different place. Still in the light of the facts stated earlier, PW1 ought to have given information to his mother and ought to have discussed the further plan. The allegations further disclose that she was taunted on account of her looks. There is also evidence that, there was demand of dowry of Rs.5,000/-. PW5 stated that she had gone to the house of Yunubai and that time Yunubai complained to her about dowry demand & ill-treatment.

18. The previous and subsequent conduct of the parties is very much relevant to determine the credibility of the evidence. It is true that, for three years, deceased stayed at her maternal house and thereafter resumed cohabitation. Considering the fact that the dowry of only Rs. 4,000/- was demanded at the time of marriage and that too inclusive of the expenses of the marriage, it is difficult to accept that the appellants were subjecting deceased to ill-treatment on account of not meeting the dowry demands. I find that, the evidence regarding ill-treatment is extremely vague. Such vague evidence does not inspire confidence. The conduct of PW1, PW5 and deceased-Yunubai is not in conformity with the allegations of dowry demand & ill-treatment. Unfortunately Yunubai has committed suicide within 7 years from the date of her marriage but the reason for her suicide

remains shrouded in the mystery. In this situation, it cannot be said that as the accused has failed to explain the reason of suicide, the reason put forth by the maternal relatives of deceased can be accepted.

19. If there was persistent dowry demand, there would have been some efforts at least to pay some amount or there could have been some attempt to persuade the appellant and his relatives by expressing inability of PW1 & PW5 to pay dowry, but the subsequent conduct does not disclose any such situation. As far as stay of the deceased at her maternal house for 3 years is concerned, surprisingly PW1 & PW5 did not take any steps for 3 years to resolve the dispute and persuade the appellant to resume cohabitation. Even after the incident dt. 26.09.2015, PW1 did nothing to safeguard the life of his sister. I, therefore, find that the evidence regarding dowry and ill-treatment does not inspire confidence. There was similar evidence against the appellant as well his parents and sisters. The ld. trial Judge for the reasons best known to her discarded the same evidence as against the parents and sisters while accepted the same against the appellant.

20. There is no material to show that the accused created a situation for the deceased Yunubai whereby she was left with no

option but to commit suicide. Therefore, the conviction of the appellant is not sustainable. Hence, the points formulated by me are answered in the negative. Hence, the following order.

ORDER

1. The appeal presented by appellant – Yuvraj S/o Chango Kale is allowed.
2. The Judgment and Order dt. 09.11.2011 passed by the learned IInd Adhoc Additional Sessions Judge, Jalgoan in Sessions Case No. 10/1996 convicting and sentencing the appellant for the offences punishable under Sections 306 and 498A of the Indian Penal Code is set aside.
3. The bail bonds of the appellant stand forfeited. The appellant-accused shall furnish fresh bail bonds of Rs. 10,000/- with one surety in the like amount u/s 437A of the Code of Criminal Procedure.

[A. M. DHAVALE]
JUDGE