

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1. Khobraji s/o. Munjaji Chalak,
Age : 23 years, Occ. Agri.,
r/o. Wadi (Kh), Tq. Palam,
Dist. Parbhani
 2. Munjaji s/o. Apparao Chalak,
Age : 60 years, Occ. Agri.,
r/o. As above
 3. Bhojaji s/o. Munjaji Chalak,
Age : 28 years, Occ. Agri.,
r/o. As above.
 - ④. Kausalyabai w/o. Munjaji Chalak,
Age : 57 years, Occ. Agri.,
r/o. As above
- ..Appellants
(orig. accused
nos.1 to 3,
- ..Appeal abated
against
appellant no.4
as per order
dt. 14.07.2017

The State of Maharashtra ..Respondent

Mr.S.B.Bhapkar, Advocate for appellants
Mrs.R.P.Gaur, APP for respondent

CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 03, 2017

The appellants, who were original accused nos.1 to 3 and 5 respectively, have preferred this

appeal against the judgment and order dated 13.12.2001 passed by the learned I Ad-hoc Addl. Sessions Judge, Parbhani in Sessions Case No.166 of 2000, whereby they have been convicted for the offences punishable under Sections 306 and 498-A of the Indian Penal Code ("the I.P.C.", for short).

2. During pendency of the appeal, appellant no.4 expired. The appeal stood abated against her as per order dated 14.07.2017.

3. Appellant no.1 is the husband, appellant no.2 is the father-in-law, appellant no.3 – is the brother-in-law, while appellant no.4 was the mother-in-law of the deceased Mahananda, who was the daughter of the informant namely, Ramrao Maroti Kshirsagar, resident of Adgaon, Tq. Loha, Dist.Nanded. Appellant no.1 and the deceased Mahananda got married on 29.03.2000. After marriage, the deceased Mahananda went to her

matrimonial house to cohabit with appellant no.1. She committed suicide by jumping into a well on 17.06.2000 i.e. within a period of 2 months and 20 days of her marriage.

4. It is the case of the prosecution that the deceased Mahananda was being subjected to cruelty by the appellants and other seven accused persons, who were the relatives of appellant no.1. The appellants used to ask the deceased Mahananda to bring Rs.10,000/- and one tola of gold from her maternal home. They used to ill-treat her with a view to compel her to fulfill that demand. Ultimately, being fed-up with that ill-treatment, she committed suicide on 17.06.2000.

5. The informant lodged a report against the appellants and other seven relatives of appellant no.1 in Police Station, Palam on 17.06.2000 at about 2:20 p.m. On the basis of that report, Crime No.49 of 2000 came to be registered against them

for the offences punishable under Sections 498-A and 306 of the I.P.C. The investigation followed. The statements of the witnesses were recorded. The report of the post-mortem of the deceased Mahananda was collected. After completion of the investigation, the appellants and their other seven relatives came to be charge-sheeted for the above-mentioned offences.

6. The learned trial Judge framed charges against the appellants and other seven accused persons for the above-mentioned offences vide Exh.34 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. According to the appellants, the deceased Mahananda had conceived a child prior to her marriage with appellant no.1. At the time of the incident, she was found to be pregnant of three months. When she realised that the said fact would be disclosed to the appellants and she would be

exposed, she committed suicide by jumping into a well.

7. The prosecution examined the informant, his cousin namely Vishwanath and one Prabhakar, who is the village-mate of the informant, to prove the alleged ill-treatment meted out to the deceased Mahananda at the hands of the appellants. After evaluating the evidence of the witnesses, the learned trial Judge found the appellants guilty of the above-mentioned offences. The other seven accused persons were not found guilty. Therefore, the learned trial Judge acquitted them of the above-mentioned offences. The learned trial Judge sentenced appellant nos.1 and 3 to suffer rigorous imprisonment for five years each and to pay a fine of Rs.2,000/- each for the offence punishable under Section 306 of the I.P.C. and to suffer rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each for the offence punishable under Section 498-A of the I.P.C. The learned trial Judge

sentenced appellant nos.2 and 5 to suffer rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each for the offence punishable under Section 306 of the I.P.C. and to suffer rigorous imprisonment for one year each and to pay a fine of Rs.500/- each for the offence punishable under Section 498-A of the I.P.C. Both the substantive sentences of imprisonment were directed to run concurrently. The appellants deposited the fine amount in the trial Court.

8. The learned Counsel for the appellants submits that a false report was lodged by the informant roping as many as 11 persons. The trial Court acquitted the other seven accused persons since there was absolutely no evidence against them. He submits that the informant was not knowing the names of some of the accused persons, however, he mentioned their names in the F.I.R. He submits that the said F.I.R. was lodged to harass the appellants and their relatives. According to him,

there is no positive and clinching evidence on record to establish that the appellants harassed the deceased Mahananda at any particular point of time in any manner. He submits that the medical evidence shows that at the time when the post-mortem on the body of the deceased Mahananda was conducted, a fetus of three months was noticed. He submits that the deceased Mahananda had come to reside at her matrimonial house after 29.03.2000 but she was found to be pregnant even prior to the date of the marriage. He submits that when the deceased Mahananda realised that she would be exposed, she committed suicide. He submits that there is absolutely no evidence on record to show that the deceased Mahananda sustained injury at any point of time. He submits that when there is no evidence to show that the appellants subjected the deceased Mahananda to cruelty, the presumption under Section 113-A of the Evidence Act, would not be attracted. According to him, the prosecution

totally failed to prove the above-mentioned offences against the appellants. He, therefore, prays that the appellants may be acquitted of the said offences.

9. On the other hand, the learned A.P.P. submits that the evidence of the informant, that the appellants were subjecting the deceased Mahananda with a view to compel her to fulfill their demand of Rs.10,000/- and 1 tola of gold, is quite natural and probable. It is corroborated by the evidence of his cousin Vishwanath (PW 3). There was no reason for the deceased Mahananda to commit suicide, had she been treated properly by the appellants. She submits that the trial Court has rightly considered the evidence on record and rightly held the appellants guilty of the above-mentioned offences.

10. The informant deposes that after the marriage, the deceased Mahananda resided at her

matrimonial house for about eight days and thereafter, came to his house at Adgaon. She resided there for about fifteen days and thereafter, the informant took her to the house of the appellants. She resided at the matrimonial house for about fifteen days and then the informant brought her to his house. She resided there for about fifteen days. During that period, she told the informant that the appellants and the members of their family were asking her to bring Rs.10,000/- and 1 tola of gold. Then, after fifteen days, he took the deceased Mahananda to the house of the appellants. He assured the appellants that he would pay Rs.10,000/- and 1 tola of gold in Diwali. He then states that on 11.06.2000, Prabhakar (PW 4)(Exh.49) had gone to the village Wadi where sister of Prabhakar was residing. After he came back from village Wadi, he told the informant that the deceased Mahananda met him at Wadi and asked him to tell the informant that she

had called the informant to her matrimonial house. Therefore, on 14.06.2000, his cousin namely, Vishwanath (PW 3) and himself went to the matrimonial house of the deceased Mahananda. On seeing them, she started weeping and told that appellant no.1 had beaten her. At that time, appellant nos.1 and 2 asked the informant, as to why the amount of Rs.10,000/- and 1 tola of gold were not given. He assured that he would pay that amount and give 1 tola of gold in Diwali. He asked the appellants to send the deceased Mahananda with him but they refused to send her on the say that it being sowing operation, he might take her to his house after some days. He then came back to his house and then on 17.06.2000, he came to know about suicide by the deceased Mahananda.

11. The evidence of the informant will make it clear that there was no demand of money or gold from the side of the appellants till the deceased Mahananda visited his house twice after the

marriage. Though it is stated that when she resided at the house of the informant for about fifteen days when she came to visit her maternal home for the second time, she told that the appellants asked her to bring Rs.10,000/- and 1 tola gold. However, she did not tell that the appellants were harassing or ill-treating her in connection of that demand. When the informant visited the matrimonial house of the deceased Mahananda on 14.06.2000, for the first time, she told that she was beaten by appellant no.1. It has come in his cross-examination that the fact that the deceased Mahananda told him that appellant no.1 had beaten her, was not stated by him in the report Exh.47 lodged by him. It is, thus, clear that this is a material omission. It has further come in his cross-examination that he had informed the police that appellant nos.1 and 2 had asked him whether he had brought Rs.10,000/-, however, the said fact was not mentioned in the report Exh.47.

12. A.P.I. More (PW 5) (Exh.52), who recorded the report Exh.47, states in paragraph 4 of his deposition that the informant had not stated before him that appellant nos.1 and 2 had asked him whether he had brought Rs.10,000/- and therefore, the said fact was not mentioned in the report Exh.47. This is also a material omission in the FIR Exh.47. Thus, the informant has shown his tendency to improve his version. Though he implicated other seven relatives of appellant no.1, there is nothing in his evidence that any of them had ill-treated the deceased Mahananda at any point of time. Thus, the informant tried to implicate the persons who were totally innocent. In the circumstances, it would be highly risky to rely on the sole uncorroborated testimony of the informant. It was necessary for the prosecution to bring some independent evidence in support of the version of the informant.

13. The prosecution examined Vishwanath (PW 3) (Exh.48), who is the cousin of the informant. He states that when the deceased Mahananda came for the second time to her maternal home after the marriage and resided for fifteen days, she informed him that the appellants were asking her to bring Rs.10,000/- and 1 tola of gold from her maternal home. He further added that, the deceased Mahananda told him that appellant no.1 was saying that she was not liked by him being of black complexion. It seems that this witness tried to add something which is not even stated by the informant. It is not at all the case of the informant that appellant no.1 used to dislike Mahananda on the ground that she was of black complexion. It seems that being the cousin of the informant, he stated against the appellants at the instance of the informant.

14. It has further come in the evidence of Vishwanath (PW 3) that on 12.06.2000, Prabhakar (PW4) told the informant and himself that he had

gone to village Wadi, where the deceased Mahananda met him and told him that he should ask the informant to visit village Wadi. Therefore, he went to village Wadi to the matrimonial home of the deceased Mahananda with the informant on 14.06.2000. At that time, the informant and himself convinced the appellants that they would pay Rs.10,000/- and 1 tola of gold after Diwali and then came back to village. This witness does not state that on seeing them, the deceased Mahananda started weeping and told that appellant no.1 had beaten her. He does not state that appellant nos.1 and 2 had asked as to why they had not brought Rs.10,000/- and 1 tola of gold. Thus, the evidence of this witness does not at all support the version of the informant in respect of the fact that the deceased Mahananda started weeping on seeing them on 14.06.2000 and further, appellant nos.1 and 2 asked them as to why the amount of Rs.10,000/- and 1 tola gold were not brought.

15. Prabhakar (PW 4) states that he met the deceased Mahananda on 11.06.2000 at about 5.00 p.m. At that time, she asked her to inform the informant to visit village Wadi. This evidence would be of no help to the prosecution to show that the deceased Mahananda was ill-treated by the appellants. This witness does not state that the deceased Mahananda told him about any ill-treatment at the hands of the appellants on or prior to that day in connection with any demand for money or gold. Had she been ill-treated by the appellants, this witness could have read that fact from the face of the deceased Mahananda. He does not even state that the deceased Mahananda was looking unhappy from her appearance. Thus, the evidence of this witness makes it clear that there was no harassment or ill-treatment to the deceased Mahananda exhibited from her appearance on the day when she met him.

16. As stated above, there is no evidence worth believing to show that the deceased Mahananda

was being ill-treated by the appellants with a view to compel her to bring Rs.10,000/- and 1 tola of gold. Even the evidence of Dr.Bhalerao (PW 1), who conducted post mortem of the deceased Mahananda on 17.06.2000 between 3.30 p.m. and 4.30 p.m., makes it clear that no external injuries were found on her body. Column no.17 of the post-mortem report Exh.42 shows that there was no external injuries. Had the deceased been subjected to cruelty prior to committing suicide, external injuries would have been certainly found on her body. Thus, the medical evidence also rules out the possibility of subjecting her to cruelty by the appellants.

17. Since the prosecution failed to adduce the believable evidence on record to show that the deceased Mahananda was being subjected to cruelty by the appellants, the presumption under Section 113-A of the Evidence Act would not be applicable to the facts of the present case. If it is established that the husband or relatives of the

husband of a woman had subjected her to cruelty and if she commits suicide within seven years from the date of marriage, then the said presumption would be available to the prosecution.

18. The evidence on record is very scanty, vague and general. It is not sufficient to establish the guilt of the appellants for the above mentioned offences. As seen from the evidence of Dr.Bhalerao (PW 1), the deceased Mahananda was found carrying of three months on the day of the incident. There is no dispute that she had not completed even the period of three months of her stay with appellant no.1 after marriage. This fact indicates that she had conceived a child even prior to the marriage. In the circumstances, the defence that under the fear of being exposed, the deceased Mahananda committed suicide, being natural and probable, will have to be accepted and accordingly accepted.

19. The learned trial Judge did not appreciate the evidence on record correctly and properly and wrongly held the appellants guilty of the above-mentioned offences. The appeal is liable to be allowed and the appellants are liable to be acquitted of the above-mentioned offences. The fine amount deposited by the appellant nos.1 to 3 will have to be ordered to be refunded to them.

20. In the result, I pass the following order :-

O R D E R

- (i) The appeal is allowed.
- (ii) The impugned judgment and order are quashed and set aside.
- (iii) Appellant nos.1 to 3 are acquitted of the offences punishable under Sections 306 and 498-A of the Indian Penal Code.
- (iv) Bail bonds of appellant nos.1 to 3 stand cancelled. They are set at liberty.

(v) The appeal stood abated against appellant no.4.

(vi) Fine amount deposited by appellant nos.1 to 3 be refunded to them.

[SANGITRAO S. PATIL, J.]

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