

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 97 OF 2002

Ashok s/o Kaduba Patil,
Age : 24 years, occu.
R/o Pahur, Tq. Jamner,
District Jalgaon

APPELLANT
(Orig. Accused No.1)

VERSUS

The State of Maharashtra,
through the P.S.O.,
Pahur Police Station
Tq. Jamner, Dist. Jalgaon

RESPONDENT

Mr. S.H. Jagiasi, Advocate holding for Mr. M.V.
Deshpande, Advocate for the Appellant
Mr. P.N. Kutti, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

JUDGMENT RESERVED ON : 28th JULY, 2017
JUDGMENT PRONOUNCED ON : 3rd AUGUST, 2017

JUDGMENT :

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

2. The appellant (original accused No.1), being
aggrieved by the conviction and sentence recorded
against him for the offence under Section 306 of the

Indian Penal Code ("IPC", for short) by the learned 1st Adhoc Additional Sessions Judge, Jalgaon on 21st February, 2002 in Sessions Case No. 177 of 1999, has preferred this appeal.

3. The appellant and the deceased Urmila got married on 20th April, 1999. Original accused nos.2,3 and 4 are the father, mother and uncle, respectively of the appellant. The appellant and accused Nos.2 to 4 were prosecuted for the offences punishable under Sections 498-A and 306 read with Section 34 of the IPC. Accused No.4 was further charged with the offence punishable under Section 203 of the IPC.

4. It is the case of the prosecution that the appellant and accused Nos.2 to 4, in furtherance of their common intention, subjected the deceased Urmila to cruelty with a view to compel her to fulfill their unlawful demand of Rs.25,000/- and further abetted the deceased Urmila to commit suicide by consuming poisonous substance on 4th August, 1999 when she was residing at her matrimonial house. It was alleged that accused No.4 gave false information to the father and other relatives of the deceased Urmila that she suffered an attack and

therefore, was admitted in the hospital, though, in fact, she had died of poisoning.

5. The prosecution examined 11 witnesses to establish guilt of the appellant and accused Nos. 2 to 4 for the above mentioned offences. After scrutinizing the evidence produced by the prosecution, the learned Trial Judge came to hold that the prosecution failed to establish guilt of accused Nos. 2 to 4 for all the offences with which they were charged and therefore, acquitted them of all those offences. The learned Trial Judge further held that the prosecution failed to establish that the appellant subjected the deceased Urmila to cruelty and acquitted him of the offence punishable under Section 498-A of the IPC. However, the learned Trial Judge held the appellant guilty of the offence punishable under Section 306 of the IPC and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for one month. The appellant deposited the fine amount in the Trial Court.

6. The acquittal of accused Nos. 2 to 4 of all the offences and that of the appellant of the offence

punishable under Section 498-A of the IPC, has not been challenged by the prosecution. Thus, the judgment and order of the Trial Court in respect of that acquittal has attained finality. The appellant has challenged his conviction and sentence for the offence under Section 306 of the IPC in this appeal.

7. The prosecution mainly relied on the evidence of Vithal (PW1) (the informant), Nirmalabai (PW6) and Prakash (PW7), who are the father, mother and maternal uncle, respectively of the deceased Urmila to connect the appellant with the offence of abetting the deceased Urmila to commit suicide. The prosecution has further examined one Ramrao (PW8), who happened to be one of the relatives of the deceased Urmila. He was residing at Pahur itself where there was her matrimonial home.

8. There is no dispute that the appellant and the deceased Urmila got married on 20th April, 1999. She was residing at her matrimonial house. She died of poisoning on 8th August, 1999 when she was at her matrimonial home. According to the appellant, the deceased Urmila was a fair looking person. She wanted to marry to the son of her aunt. Therefore, she was not happy in

cohabiting with the appellant and ultimately, she committed suicide. It is denied by the appellant that either his family members or himself ever demanded any cash amount from the father of the deceased Urmila or subjected her to cruelty.

9. Vithal (PW1) deposes that the deceased Urmila was treated well at her matrimonial house for about a month or so. Then after about eight days thereof, she visited his house and at that time, informed that she was being illtreated by the appellant and her mother-in-law and that they were asking her to bring Rs.25,000/- from her maternal home. Nirmalabai (PW6), the mother of the deceased Urmila, also states that for the initial period of 1 and 1¼ month, the deceased Urmila was treated well at her matrimonial house. Then she came to her maternal home and at that time, she informed that all the accused persons were illtreating her. The appellant was asking her to bring Rs.25,000/- from her father and her father-in-law used to taunt and illtreat her. The evidence of these witnesses, besides being scanty, vague and general, is not consistent to each other. Vithal (PW1) states that the deceased Urmila had

informed him that all the accused persons had asked her to bring Rs.25,000/- from him, whereas Nirmalabai (PW6) states that the appellant only had asked her to bring Rs.25,000/-. Vithal (PW1) states that the deceased Urmila had informed him that she was being illtreated by the appellant and her mother-in-law (original accused No.3). However, Nirmalabai (PW6) states that the deceased Urmila had informed her that her father-in-law (original accused No.2) used to taunt and illtreat her. She does not state that the deceased Urmila had informed her that the appellant, at any point of time, in any particular manner, illtreated her. In view of this inconsistent scanty, vague and general evidence, the learned Trial Judge rightly held that the prosecution failed to establish that the deceased Urmila was subjected to cruelty by the appellant and the other accused persons.

10. It has come in the evidence of Vithal (PW1) that the appellant and the other accused persons own 80 to 90 acres of land. They possess a big building. Their financial condition is quite sound. He states that his own financial condition is weak. Vitthal (PW1) and Nirmalabai (PW2) specifically state that there is no

custom in their community of giving and taking dowry. If this evidence is considered, the case of the prosecution that the appellant or his parents were asking the deceased Urmila to bring Rs.25,000/- from Vithal (PW1) does not stand to reason. The case of the prosecution that the deceased Urmila was being harassed with a view to compel her to bring Rs.25,000/- from her maternal home, in the circumstances of the case, cannot be believed.

11. It has come in the evidence of Vithal (PW1), Nirmalabai (PW6) and Prakash (PW7) that once the deceased Urmila was driven out of her matrimonial house after removing the ornaments from her person and after beating her. They state that at that time, she had gone to the house of Prakash (PW7), her maternal uncle, who is residing at village Pimpalgaon, at the distance of about 5 kms. from Pahur. Nirmalabai (PW6) states that on receiving the message from Prakash (PW7) about arrival of the deceased Urmila to his house, she had gone to the house of Prakash (Pw7). It has come in the evidence of Nirmalabai (PW6) and Prakash (PW7) that they reached the deceased Urmila to her matrimonial house at

Pahur and convinced the appellant and his parents that the father of the deceased Urmila was not in a position to pay money and came back. Both these witnesses could not give the details of the above mentioned incident. Moreover, they do not state that they protested before the appellant and his parents for illtreating the deceased Urmila. Had the deceased Urmila been illtreated as claimed by these witnesses, they certainly would have questioned the appellant and his parents for extending illtreatment to her. However, nothing of that sort is stated to have been done by them.

12. Ramrao (PW8) is one of the relatives of the deceased Urmila. He is residing at Pahur. He states that before about 8 days of the incident, the deceased Urmila was going along the road from near his house. He asked her as to where she was going, whereon she replied that she was going to the place of her maternal uncle. He states that at that time she was under tension. It has come in his cross-examination that his house is not situate on the way from the matrimonial home of the deceased Urmila to the bus stand. Therefore, there was no question of seeing him Urmila along the road from

near his house. Moreover, the facts that Urmila was going along the road, that he asked her as to where she was going and that she replied that she was going to her maternal uncle, have not been stated by him in his statement before police. These material omissions have been proved through API Bahure (PW11), who had recorded his statement. The evidence of Ramrao (PW8) is not at all natural, probable and acceptable. He is a got up witness. His evidence is of no use to the prosecution to prove guilt of the appellant.

13. As stated above, the demand of Rs.25,000/- from the side of the appellant and his parents does not appear to be natural and probable considering their sound financial condition and weak financial condition of Vithal (PW1). Moreover, no action was taken by these witnesses against the appellant or his parents in respect of that incident of illtreatment. The evidence of these witnesses in respect of that incident also is very vague and general. It does not inspire the confidence.

14. Once it is held that the deceased Urmila was not subjected to cruelty, the presumption laid down in

Section 113-A of the Indian Evidence Act would not come to the aid of the prosecution because for application of that presumption, it has to be established that the husband or the relatives of the husband had subjected the woman to cruelty.

15. As seen from the evidence of Dr. Gajre (PW9), who conducted post-mortem on the body of the deceased Urmila, she died of asphyxia due to poisoning. Her viscera was preserved and sent to the Chemical Analyst for analysis and report. The Chemical Analyst reported that the viscera formed organo chlogo insecticide indosalphan (Thiodan). It is, thus, clear that the deceased Urmila consumed this poisonous substance and died as a result thereof. The post-mortem report (Exh-40) shows that there was absolutely no external injury on the body of the deceased Urmila. This fact also would indicate that there was no illtreatment to the deceased Urmila prior to her consuming poisonous substance. It is, thus, clear that the deceased Urmila at her volition consumed poisonous substance.

16. As per Section 306 of the IPC, if any person commits suicide, whoever abets the commission of such

suicide, is liable to be punished as mentioned in that Section.

17. The `abetment', as explained in Section 107 of the IPC, is as under :-

107. Abetment of a thing. - A person abets the doing of a thing, who-

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

18. The learned counsel for the appellant submits that the appellant has been acquitted by the Trial Court

of the offence punishable under Section 498-A of the IPC with a specific finding that the appellant did not subject her to cruelty. He then submits that Vithal (PW1) and Nirmalabai (PW6) admit that in their community, there is no custom of giving and taking dowry in marriage. He then submits that the evidence on record shows that the financial condition of the appellant was very sound, whereas that of Vithal (PW1) was poor. Therefore, there was no question of demanding a sum of Rs.25,000/- by the appellant. He then submits that the evidence on record is not natural, probable and believable in respect of the alleged demand of Rs.25,000/- by the appellant. There were no external injuries on the body of the deceased Urmila as seen from the evidence of Dr. Gajre (PW9). He submits that there is absolutely no evidence to show that the appellant intentionally aided or instigated the deceased Urmila to commit suicide. On the contrary, he has come with a plausible explanation that the deceased Urmila was interested in getting married with the son of her aunt and that she was not interested in cohabiting with him and therefore, there is possibility of her committing suicide. The learned counsel submits that in the

absence of any evidence to indicate that the appellant instigated or aided the deceased Urmila to commit suicide, he could not and should not have been convicted for the offence punishable under Section 306 of the IPC.

19. On the other hand, the learned A.P.P. submits that the defence of the appellant is not at all probable. He submits that had the deceased Urmila been not inclined to cohabit with the appellant, she would not have resided at her matrimonial house 1 and 1½ month after the marriage. He submits that the appellant has not assigned any plausible reason being the suicidal death of Urmila. He, therefore, supports the conviction and sentence passed by the learned Trial Judge against the appellant.

20. As stated above, once the appellant is held to be not guilty of the offence of subjecting the deceased Urmila to cruelty, as contemplated under Section 498-A of the IPC, Section 113-A of the Indian Evidence Act would not assist the prosecution in raising the presumption as to abetment of suicide to the deceased Urmila by the appellant. There is no positive and dependable evidence on record to show that the deceased

Urmila was harassed by the appellant either for coercing her to bring Rs.25,000/- from her maternal home or for any other reason. If the appellant had harassed the deceased Urmila on that count, she would not have cohabited with him for 1 and 1¼ month after the marriage. It seems that it is only after the death of Urmila, the theory of demand of Rs.25,000/- and harassment to the deceased Urmila at the hands of the appellant has been developed. The deceased Urmila died on 4th August, 1999. However, the FIR (Exh-26) has been lodged on 6th August, 1999 at 4.45 p.m. The deceased Urmila was cremated at Pahur itself. Vithal (PW1) states that Police Station is in front of the house of the appellant. If that be so, there was no reason for Vithal (PW1) to lodge the report in that Police Station after two days of the death of Urmila. The delay in lodging FIR has not at all been explained. This unexplained delay indicates that the FIR has been lodged by way of an afterthought after due deliberations and discussions. This delay in lodging the FIR itself creates a strong doubt about the case of the prosecution.

21. There is absolutely no direct or circumstantial evidence to indicate that the appellant abetted the deceased Urmila to commit suicide. The defence of the appellant that the deceased Urmila was not interested in cohabiting with him, in the circumstances of the case, appears to be probable.

22. The learned counsel relied on the judgments in the following cases:-

- (i) ***Kamlesh Satyaprakash Agarwal Vs.
State of Maharashtra
2015 (9) LJSOFT 288***
- (ii) ***Dattatraya Havanna Vanjare & another Vs.
State of Maharashtra
2015 (11) LJSOFT 84***
- (iii) ***Vikas s/o Jayram Date Vs.
State of Maharashtra
2016 (10) LJSOFT 26***
- (iv) ***Balasaheb Ganpati Jadhav & others Vs.
State of Maharashtra
2016 (11) LJSOFT 102***
- (v) ***Ramesh s/o Shamrao Shinde Vs.
State of Maharashtra
2016 (4) LJSOFT 69***
- (vi) ***Bibhishan s/o Eknath Shinde Vs.
State of Maharashtra
2017 (3) LJSOFT 162***
- (vii) ***Namdeo s/o Bhauraoji Nagpure Vs.
State of Maharashtra
2016 (3) LJSOFT 123***

(viii) ***Sambhaji Chandrabhan Nalawade Vs.
State of Maharashtra
2015 (12) LJSOFT 101***

23. In all the above mentioned cases, the accused were convicted for the offence punishable under Section 498-A of the IPC also, besides the offence punishable under Section 306 of the IPC and in some cases, for the offence punishable under Section 304-B of the IPC. Even then, after considering the facts and circumstances of those cases, the accused were acquitted of the said offences. The said cases have been decided mainly on the facts and circumstances existing therein. In view of the distinguishing facts of this case, the said decisions would not be of much help to the appellant. However, in the case of ***Balasaheb Ganpati Jadhav and others*** (supra), there is reference of paragraph No.13 of the judgment in the case of ***Amalendu Pal alias Jhantu Vs. State of West Bengal (2010) 1 SCC 707***, wherein the Hon'ble the Apex Court observed as under:-

"(13) In order to bring a case within the purview of Section 306 of IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have

abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

24. The prosecution has failed to establish beyond reasonable doubt that the appellant abetted the deceased Urmila to commit suicide. The learned Trial Judge wrongly appreciated the evidence and wrongly held the appellant guilty of the said offence though he acquitted the other accused of that offence on the basis of the same evidence. Moreover, the learned Trial Judge acquitted the appellant of the offence punishable under Section 498-A of the IPC. When the appellant is held to be not guilty of subjecting the deceased Urmila to cruelty, in the absence of any strong evidence to establish that the appellant did any overt act on the day of the incident which compelled the deceased Urmila to commit suicide, the appellant was not liable to be convicted for the offence punishable under Section 306 of the IPC. The impugned judgment convicting the

appellant of the offence punishable under Section 306 of the IPC is not at all sustainable. In the result, I pass the following order:-

O R D E R

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment and order, convicting and sentencing the appellant of the offence punishable under Section 306 of the Indian Penal Code are quashed and set aside.
- (iii) The appellant is acquitted of the offence punishable under Section 306 of the Indian Penal Code.
- (iv) The bail bonds of the appellant are cancelled. The appellant is set at liberty.
- (v) The fine amount deposited by the appellant be refunded to him.
- (vi) The appeal stands disposed of accordingly.

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