

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 211 OF 2002

The State of Maharashtra,
Through Police Station Bhadgaon,
District Jalgaon.

....Appellant.

Versus

1. Sanjay Mohan Badgujar,
Age 26 years,
2. Hiralal @ Vijay Mohan Badgujar,
Age 24 years,
3. Smt. Radhabai wd. Mohan Badgujar,
Age 65 years,
4. Rambhabai w/o. Vishwanath Pawar,
Age 32 years,

Residents of Pimparkhed Police
Station Bhagdaon Dist. Jalgaon.

....Respondents.

Mr. S.J. Salgare, APP for appellant/State.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

DATED : September 07, 2017.

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed by the State to challenge the decision of acquittal given by the learned 2nd Additional Sessions Judge, Jalgaon in Sessions Case No. 229/1998. The respondents/accused were tried for the offences punishable under sections 498-A, 304-B, alternatively section 306 r/w. 34 of Indian Penal Code ['IPC' for

short] and section 4 of Dowry Prohibition Act. Both the sides are heard.

2. Deceased Ujwala was daughter of first informant Pratap Badgujar. She was given in marriage to respondent No. 1 - Sanjay on 21.4.1998. Pratap hails from village Sakali and respondents hail from village Pimparkhed, Tahsil Bhadgaon. It is the case of prosecution that in the marriage dowry amount of Rs. 41,000/- was given to the husband by the first informant and gold and silver ornaments were gifted as Stridhan [स्त्रिधन] to the deceased. It is contended that household articles and one steel cabinet were also given.

3. Respondent No. 1 - Sanjay is husband of deceased, respondent No. 2 is brother of Sanjay, respondent No. 3 is mother of Sanjay and respondent No. 4 is married sister of Sanjay. It is the case of State that after the marriage on 3-4 occasions deceased had visited the house of parents and she had disclosed that the husband was asking her to bring Rs.25,000/- as he wanted to develop his cloth business. It is the case of State that the deceased had disclosed that the husband was asking for this amount as dowry and so, the first informant had informed that entire dowry amount was given. It is the case of State that the deceased used to disclose that

all the accused were harassing her and on petty counts they were giving abuses to her and they were giving beating to her. On last occasion the deceased was brought to parents' house on 7.8.1998 for Rakshabandhan and on that occasion also deceased had disclosed that respondents were asking her to bring Rs.25,000/- from her parents. She had disclosed that even the sister of husband was harassing her and she was giving instigation to others after coming to the place of her husband occasionally. The deceased had expressed that fear was developed in her mind that accused would do something to her life. The deceased was taken back to matrimonial house on 12.8.1998 by Vijay, brother of accused No. 1. The first informant had informed to Vijay that they were trying to make arrangement of some money and they should not give illtreatment to the deceased. When the deceased was returning to matrimonial house, she was crying.

4. On 18.8.1998 at about 4.00 p.m. the first informant received message that Ujwala was dead. The first informant went to Pimperkhed with his relatives. The dead body was lying in the matrimonial house and there was smell of poison to dead body and particularly to the mouth. When P.M. was conducted and last rites on the dead body were completed, the first informant went to police and gave report on 19.8.1998. The crime at C.R. No. 61/1998 for

aforesaid offences was registered in Bhadgaon Police Station. The death took place due to poison endosulfan. The boxes of two insecticides, endosulfan and monocrotophos were found in the matrimonial house of the deceased. The statements of relatives of the deceased on parents' side and others came to be recorded and the chargesheet came to be filed for aforesaid offences. The prosecution examined as many as eight witnesses including the Investigating Officer. The defence also examined some witnesses to create a probability that the deceased had consumed the insecticides accidentally. Some record like letters written by the deceased and her relatives on parents' side are produced by defence and they are at Exhs. 65 to 70. The letters were produced to show that there was no harassment to the deceased and at no time, there was correspondence showing that the demand of Rs. 25,000/- was made by the accused persons from the parents of the deceased. The Trial Court has considered all this material. The Trial Court has held that the demand of dowry is not proved and the illtreatment is also not proved.

5. It is not disputed that the death took place due to poisoning. There is C.A. report and there is also P.M. Report. The case of the accused that the deceased probably consumed insecticide in the field on that day does not appear to be probable in

nature as the boxes of insecticides were recovered from the residential place and the evidence is given by prosecution to show that the deceased was present alone in the house when one witness of prosecution had visited the matrimonial house of the deceased on 18.8.1998. In view of these circumstances and as the death took place within few months of the marriage, it was necessary for the prosecution only to prove that there was illegal demand of dowry from the accused persons and there was illtreatment to force that demand.

6. Pratap (PW 1), father of the deceased has given evidence on the disclosures made by the deceased and the F.I.R. is proved in his evidence as Exh. 39. Though he has tried to say that there was demand of Rs.25,000/- from the accused, his evidence in cross examination shows that he has tried to avoid to admit many things. It is suggested to him that he had taken hand loan from one Dattu Badgujar and wife of Dattu Badgujar is elder sister of his wife. It is suggested to him that Dattu Badgujar used to ask the deceased to convey message to first informant - Pratap and probably, Dattu Badgujar had harassed her. Pratap has admitted that he had taken hand loan from Dattu. But he has denied other suggestions. He did not give explanation as to why he did not report the incident to police on the same day i.e. on 18.8.1998.

7. The evidence of Pratap and admitted circumstances show that every time, whenever parents of deceased had requested the accused to send the deceased to parents house to attend some function or for other reasons like illness in the family, the accused had sent the deceased to the parents house. She had stayed there on every occasion for few days and this happened during short period of married life of four months. If as per Pratap, he had given entire dowry amount, there was no question of accused asking amount as a dowry. In the cross examination, he has admitted that the accused own 12-15 Acres of irrigated agricultural land and they were taking crops like Jawar, cotton and other crops. Thus, on one hand, he was required to take loan from relative Dattu for marriage expenses and on the other hand, the financial condition of the accused was good as they were having huge agricultural land which had facility of irrigation. It can be said that as the deceased had taken poison, Pratap being father, must have had some suspicion and so, he made allegations of aforesaid nature against the accused persons. There can be many reasons for consuming poison, committing suicide. When a girl aged about 19 years is given in marriage and she finds that she is not able to cope herself with the new conditions of life or is not able to adjust in the family of husband and the parents insist that she should live there, such thing

can happen. The circumstance that the deceased was crying when she left the parents' house for matrimonial house a week prior to the date of incident creates such probability.

8. Gumfabai (PW 2), mother of deceased is examined by prosecution and her evidence is similar to the evidence of Pratap. Ratnabai (PW 7) is sister of Gumfabai. She is resident of Pimperkhed, village of respondents. Her evidence shows that she used to see Ujwala by visiting her matrimonial house. Her evidence shows that on 18.8.1998 as mother in law of deceased and this lady were to go to the place of relative she had visited the matrimonial house of the deceased at 11.00 a.m. She has deposed that the deceased was present in the house, but she was alone and her mother in law had gone to the field. Thus, at about 11.00 a.m. she had met Ujwala, but she did not notice anything strange or abnormal. If some incident had taken place on 18.8.1998 in which harassment was caused to the deceased, the deceased would have narrated such incident to this witness. This did not happen. Other evidence given by this witness is similar to the evidence given by parents of deceased.

9. The remaining evidence of prosecution shows that accused No. 1 immediately contacted Police Patil of village and then

the report was given to police station about the incident. The steps which are expected from family members were taken by accused and even the news was reached to the parents of deceased. This conduct of the accused cannot be ignored. It can be said that on 18.8.1998 no action was taken by Pratap due to such conduct.

10. In the evidence of defence witness Dattu Badgujar (DW 3), it is brought on the record that there was correspondence between him and Pratap. He is friend of Pratap. He has produced and proved the letters sent by Pratap to accused No. 1 as Exhs. 65 and 66. There is one more letter which was sent to accused No. 1 by Pratap which was admitted by Pratap himself in his evidence at Exh. 42. This letter shows that the first informant had no grievance and he was believing that his daughter was also happy in the matrimonial house. There is a letter of deceased at Exh. 67 which is proved in the evidence of DW 3. It is addressed to mother. In this letter she had expressed that she was happy in the matrimonial house. There is more correspondence of the relatives at Exhs. 68, 69 and 70 and this correspondence also does not show that there was problem for deceased from the accused. On the contrary, Exh. 68, shows that family members of Pratap had admitted that Dattu had helped them by giving money and his family owed money to Dattu.

11. In view of the aforesaid circumstances, the Trial Court has held that there is no convincing evidence to prove that there was demand of dowry from the accused and for that, there was illtreatment. Due to these circumstances, it is not possible to draw inference that it is a suicide committed due to the illtreatment or it is a dowry death. It is not possible to use the provisions of sections 113-A and 113-B of the Evidence Act in the present matter. This Court holds that the Trial Court has not committed any error in giving the decision of acquittal. In the result, the appeal stands dismissed.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

ssc/