

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 253 OF 2004

The State of Maharashtra,
Through Shrigonda Police Station.
Cr. No.I-138/2003.

...APPELLANT.

VERSUS

1. Bapu Baban Ghodke,
Age : 26 years,
2. Mirabai W/o. Baban Ghodke,
Age : 50 years,

Both R/o. Shrigonda,
Tq. Shrigonda. Dist. Ahmednagar.

...RESPONDENTS

...

Mr. S.J. Salgare, A.P.P. for appellant.

...

CORAM: S.S. SHINDE, J.

DATE : 09 MAY, 2017

JUDGMENT :

Heard.

2. This Appeal is directed against the judgment and order dated 19th December, 2003, passed by the 3rd Adhoc Assistant Sessions Judge,

Ahmednagar in Sessions Case No. 145 of 2003, thereby acquitting the Respondents from the offences punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code.

3. The respondents herein are the original accused, who were tried for the offences punishable under sections 498-A, 306 read with Section 34 of the Indian Penal Code (for short "I.P.C."). In short, the prosecution case is as follows :-

(A) Rahibai Dhondiba Kalewagh (PW-1) is original resident of Shrigonda but since last many years, she is residing at Bombay along with her four married daughters and one son. Marriage of Manda, who is younger daughter of PW-1, was performed with Bapu Baban Ghodke (accused no.1) on 11th May, 2001. Accused nos. 2 and 3 are parents and accused no.4 is uncle of accused no.1. After marriage, Manda went for cohabitation at

Shrigonda. As per prosecution case, she was properly treated for seven months after marriage. It is alleged that, thereafter the accused made demand of cooler, mattress and cupboard from the parents and brother of Manda. PW-1 tried to convince the accused that, they should not insist for the said article. Thereafter, Manda went to Mumbai in the month of May, 2002 and stayed there till October, 2002. During the said period, she begotten female child. Thereafter, in the month of December, 2002 Manda went to the matrimonial home. It is alleged that, there was further demand by the accused.

(B) It is further the case of prosecution that, on 24th June, 2003, the land of PW-1 and PW-2 situated within the limits of village Tandali Dumala, Tq. Shrigonda was sold to Mr. Mandhare for consideration of Rs.1,70,000/- with permission of all five sisters of PW-2 — Namdeo Dhondiba Kalewagh. It is further case of the prosecution

that, after sale of the said land, PW-1, PW-2 with other married daughters had been to the house of the accused. At that time, accused nos. 1 and 2 alleged to have demanded amount of Rs. 1,00,000/- for purchasing jeep for accused no.1. However, PW-1 and PW-2 assured the accused that, they will give amount after sale of another land. As per the prosecution case, there was quarrel between PW-2 and deceased Manda. Thereafter, PW-1, PW-2 along with other married sisters of PW-1 went back to Mumbai. Their visit to the house of accused was on 24th June, 2003.

(C) It is alleged that, on 25th June, 2003 in the morning PW-1 received phone call from Manda that, the accused are illtreating her on the ground of demand of articles and cash amount and PW-1 should come to Shrigonda. Thereafter, PW-1 went to Shrigonda and requested the accused to send Manda at Mumbai, however, accused refused to send Manda at Mumbai. On 25th June, 2003 itself

PW-1 went back to Mumbai.

On 26th June, 2003 PW-1 received phone call from Uddhav Bhailume and her brother Sevak Ghodke that, Manda committed suicide by hanging to roof of dwelling house and thereby lost her life. Thereafter, PW-1 and PW-2 along with their relatives went to Shrigonda and reached there at 4 p.m.. However, by that time dead body of Manda was sent to Rural Hospital for postmortem, after preparing inquest panchanama and spot panchnama. Only PW-1 was allowed to see dead body of Manda in postmortem room. Thereafter, the postmortem was carried out on the same day and F.I.R. was lodged by PW-1 at about 7.05 p.m. Thereafter, the investigation was carried out by the Investigating Officer. During investigation, he collected postmortem report and all other incriminating material, and Article 'A' chit written by Manda was also sent to the Handwriting expert to have his opinion. Thereafter, the charge-sheet came to

be filed and after full-fledged trial, the trial Court acquitted the Respondents – accused. Hence this Appeal.

4. Learned A.P.P. appearing for the appellant/State invites my attention to the evidence of the prosecution witnesses, and in particular, evidence of PW-1, PW-2 and PW-3 and submits that, the evidence of these witnesses clearly demonstrates that, there was demand of cooler, mattress, cupboard and also Rs.1,00,000/- by the accused persons, as a result, Manda committed suicide. It is submitted that, the evidence of prosecution witnesses remained unshattered during their cross-examination. It is submitted that, during investigation, it is revealed that, Manda left with no option but to commit suicide and accordingly, she committed suicide in the matrimonial home, and therefore, the trial Court ought to have convicted the accused for the offences punishable under Sections

498-A, 306 read with 34 of the I.P.C.

5. I have carefully considered the submissions advanced by the learned A.P.P. appearing for the appellant/State. With his able assistance, I have perused the entire evidence and also the findings recorded by the trial Court. PW-1- Rahibai, the mother of Manda, in her deposition stated that, Manda was treated nicely for about first seven months after the marriage with accused no.1. Thereafter she was illtreated by accused nos.1 and 2 by asking her to bring cooler, mattress and cupboard from her parents. She was assaulted by the accused. Manda informed to her about the said illtreatment by telephonic message. Thereafter, PW-1 visited the matrimonial home of Manda and tried to convince the accused not to illtreat and harass her. Thereafter, Manda was taken to Mumbai in the month of May, 2002 for delivery. At that time, she was five months pregnant. In the month of October, 2002, she

begotten female child and in the month of December, 2002, she went to her matrimonial home.

6. PW-1 in her deposition stated that, in the month of February, 2003, her son Namdeo was sick, hence she decided to sale the land situated at village Tandali Dumala for consideration of amount of Rs.1,70,000/- and accordingly, on 24th June, 2003, she sold the said land. She visited the house of the accused on 24th June, 2003, at that time, accused nos.1 and 2 demanded Rs.1,00,000/- for purchase of Jeep for accused no.1. However, she informed that, she want the said amount for treatment of her son and assured the accused that, she will pay them after sale of another land. Then she went to Mumbai. On 25th June, 2003, after call from Manda about the illtreatment and harassmt at the hands of accused, again she came at Shrigonda at 1 p.m. and met accused persons and then again she went to Mumbai. On 26h June, 2003, she received message

about the incident of commission of suicide by Manda.

7. Upon perusal of her cross-examination, she stated that, first seven months after marriage, there was no grievance of accused against Manda and there was no demand of any amount by the accused. Even during the period from May, 2002 till December, 2002 Manda was taken at Mumbai and she was residing with PW-1. She specifically admitted in her cross-examination that, she used to visit the house of the accused and at that time, she saw T.V., Cupboard and Cot along with other household articles in their house. Those articles were there since before marriage of Manda and accused no.1. She specifically admitted that, there is no phone at her house at Mumbai. The suggestion was given to her that, Manda was hot tempered and sensitive, however, the said suggestion was denied by her. She received only one phone call from Manda

raising grievance about illtreatment and harassment by the accused. She admitted that, the cot, mattress and cooler can be purchased for Rs.2,000/-. She admitted that, the land, which was sold by her, the names of all five daughters including Manda were in the revenue record. Consent of all the daughters were required for sale of that land. There was oral agreement between her and daughters that, she will pay something to them out of sale consideration. The amount of share of Manda was demanded by Manda. It appears that, the suggestion was given to her that, since PW-1 and PW-2, who were present in the house of the accused on 25th June, 2003 denied to give money to Manda from her share, there was quarrel between PW-2 and Manda, however, PW-1 has denied that, there was any quarrel. She specifically admitted in her cross-examination that, the sale transaction of land was to be completed on 24th June, 2003. She admitted that, initially, she agreed to sale land to Kalewagh and

agreement to sale was executed by accepting Rs.25,000/-. Accused no.1 was mediator for that transaction. However, the land was not sold to Kalewagh and was sold to Mandhare. She admitted that, earnest money of Rs.25,000/- was demanded by Kalewagh from accused no.1. She tried to give Rs.25,000/- to Kalewagh, however, he refused to accept the said amount and insisted for sale of land in his favour as per the agreement. The suggestion was also given to her that, the accused hold 30 to 35 acres irrigated agricultural land, she admitted that, the accused were running grocery shop since before marriage of Manda and they continued to run the same. The suggestion was also given to her that, in order to avoid liability of paying earnest money of Rs.25,000/- to Kalewagh and share of Manda in the consideration of land which was sold, she falsely implicated the accused by lodging the F.I.R., however, the said suggestion was denied by her.

8. Therefore, it is clear from her evidence that, Manda was happy for seven months from the date of marriage and she was nicely treated by the accused. Thereafter from the month of May, 2002 to December, 2002, Manda stayed with her and give birth to female child during the said period. Thereafter she visited the house of accused on 24th June, 2003. There was agreement with Kalewagh and middle man was accused no.1 – Bapu Ghodke and an amount of Rs.25,000/- was paid by said Kalewagh for purchasing the land of PW-1. He refused to accept the said amount. It is also admitted by her that, T.V., cupboard and cot was already there in the house of the accused. They were running grocery shop also.

9. Upon perusal of the evidence of PW-2 – Namdeo Dhondiba Kalewagh, who is brother of Manda and also Karta of the family, he was not aware about the alleged demand of mattress, cooler and cupboard by the accused. He admitted in his cross-

examination that, on 24th June, 2003, there was quarrel between him and Manda, on account of refusal of the amount towards Manda's share in the land, which was sold and consideration of Rs.1,70,000/- was received by PW-1. In his examination-in-chief, he stated that, the amount of Rs.1,00,000/- was demanded by accused no.1 for purchase of Jeep and for his business on 24th June, 2003. However, the said amount required for his treatment. He has also stated other details, as stated by PW-1 about illtreatment and harassment by the accused persons to Manda. However, in cross-examination he admitted that, he had no personal knowledge about the demand of cooler, mattress and cupboard by the accused. The suggestion was also given to him that, the accused persons have 30 to 35 acres irrigated land, however, he stated that, the financial position of the accused is not good.

10. Upon considering the evidence of PW-1 and

PW-2 in its entirety, it does not inspire confidence, in as much as, their evidence shows that, on 24th June, 2003, there was quarrel between Manda and Namdeo Dhondiba Kalewagh (PW-2) on account of non-payment of consideration amount to Manda since Manda had share in the property, which was sold for consideration of Rs.1,70,000/-. Manda got annoyed due to such refusal of paying the amount of consideration. As already observed, all these articles Mattress, Cooler and cot etc., were already in the house of the accused. The trial Court on comparison of evidence of prosecution witnesses found that, their version is inconsistent so far demand is concerned. On the contrary, it is observed that, it has come on record that, Manda got annoyed on 24th June, 2003 for not receiving the amount towards her share in the property, which was sold by PW-1.

11. It is also relevant to mention that, the chit Article 'A', which was found under blouse of

Manda, was sent to the Handwriting expert. Except her signature, her handwriting was not tallied. Upon careful perusal of the contents of the said chit, it does not appear that, the same was written by Manda. It has come in the evidence of PW-1 that, she studied upto 9th standard. However, the alleged contents of the chit, if read, even an illiterate person could have written better. Be that as it may, since Handwriting expert has not stated that, handwriting of the said chit is of Manda on comparison of her other handwriting, it is not necessary to go into greater length of the said aspect.

12. At this stage, it is necessary to make reference to defence taken by accused nos.1 to 4. It is stated in the said statement that, in order to avoid payment of Rs.25,000/-, which was given as an advance amount by Kalewagh for purchasing the land of complainant, false case is filed against accused. Manda was of hot tempered and

sensitive woman. It is further stated in the said statement that, one day prior to the date of incident, Smt. Rahibai (PW-1) and Namdeo (PW-2) and sisters of Manda came to the house of accused. Already the land in the name of PW-2 was sold for consideration of Rs.1,70,000/-. Prior to selling the said land, there was earlier agreement between PW-1, PW-2 and Manda that, after sale of that land, Manda will be given consideration amount received of her share. When Manda asked for amount of her share out of the sale consideration of Rs.1,70,000/- received by PW-1 and PW-2, PW-2 refused to give the amount towards her share, and on the contrary he stated that, he has incurred expenditure for marriage of Manda, and therefore, she has no right to claim her share in the amount of consideration received by PW-2. There was quarrel between Manda, Namdeo (PW-2) and thereafter PW-1 and PW-2 went to Mumbai without giving share to Manda. The said incident of quarrel and also refusal of giving amount of her

share Manda felt very bad and since she was of sensitive and hot tempered woman, she could not tolerate such behaviour of PW-1 and PW-2 and therefore, she committed suicide. It is further stated in the said statement that, since PW-1 did not want to return the amount of Rs.25,000/- taken from Kalewagh through accused no.1 towards advance of agreement of selling the land. However, the land was not sold to Kalewagh and PW-1 did not intend to return the amount of Rs.25,000/-, she lodged false complaint. Accused never demanded Rs.1,00,000/- or any other articles from Manda and her parents. Accused no.4 was already residing separately before marriage of accused no.1 and Manda. In the name of accused, irrigated land to the extent of 2 H 47 R is on record and accused are financially sound. Therefore, there was no question of demand of any article or money from PW-1, PW-2 or Manda.

13. If the evidence of PW-1, PW-2 and also

other evidence is considered in its totality, it does not inspire confidence to hold that, the accused persons illtreated, harassed and assaulted Manda on non fulfillment of demand of cooler, cupboard and mattress etc., and Rs. 1,00,000/-, as alleged by the complainant. On the contrary, if the entire evidence brought on record by the prosecution is considered, it clearly emerges that, there was quarrel between Namdeo (PW-2) and Manda on 24th June, 2003, on account of refusal of amount to Manda received towards consideration of sale of land, to the extent of her share. Therefore, Manda got annoyed. If the evidence of prosecution is considered in its entirety, within proximity of alleged incident of commission of suicide of Manda, there was no instigation or abatement or intentionally aiding commission of suicide of Manda on the part of accused.

14. The trial Court after appreciating the entire evidence on record has reached to the

correct conclusion that, the prosecution has utterly failed to prove the illtreatment, harassment or any other form of cruelty, which would attract the ingredients of provisions of Section 498-A of the I.P.C., and granted benefit of doubt in favour of the accused.

15. On independent scrutiny of the evidence, this Court is of the opinion that, the evidence of the prosecution witnesses do not inspire confidence to hold that, the accused have committed offence punishable under Section 498-A of the I.P.C., which lead for commission of suicide by Manda. As already observed, there was no abatement, instigation or intentional aiding and intending commission of suicide by Manda at the behest of the accused.

16. The Supreme Court in the case of **S.S. Chheena V/s Vijay Kumar Mahajan and another**¹, in

¹ (2010) 12 SCC 190

para 25 observed that, the abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the respondents to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 of the I.P.C. there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he/she committed suicide.

17. At this juncture, it would be useful to make a reference to the Judgment of the Supreme Court in the case of **Madan Mohan Singh V. State of Gujarat and another.**² In said case, the deceased

² 2010 AIR SCW 5101

therein was working as driver under the Ex.Officer i.e. appellant therein. The said driver allegedly committed suicide due to harassmt and insulting behaviour by the appellant therein. He left the suicide note alleging therein that, the appellant therein asked the driver to keep the keys of the vehicle on the table and not to take away them. It was further stated that, "I am going to commit suicide due to his functioning style. Alone M.M. Singh, D.E.T. Microwave Project is responsible for my death. I pray humbly to the officers of the department that you should not cooperate as human being to defend M.M. Singh has acted in breach of discipline disregarding the norms of discipline. I humbly request the Enquiry Officer that my wife and son may not be harassed. My life has been ruined by M.M. Singh."

. The Supreme Court in the facts of aforesaid case, while explaining the scope of Sections 306 and 294 vis-a-vis, the facts of that

case in para 9 held thus:-

"It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature."

. In the facts of the present case also,

there is no nexus between so called suicide and any of the alleged acts on the part of the respondents. There is no proximity either. Even if the evidence on record is read in its entirety, the same would not even remotely suggest that, the respondents abetted, intentionally aided or instigated in an alleged suicide by Manda.

18. In the case of **Tushar s/o Mahadeorao Arsul vs. State of Maharashtra and another (Criminal Application No.3683 of 2012)** decided on 26th November, 2012, the Division of the Bombay High Court, Bench at Aurangabad, in para 6 of the Judgment observed that:

"We are of the considered view that the act or acts of accused to insult do not by themselves constitute abetment. It has to be shown from a statement in the complaint that these accused have actually instigated and aided in the victim's act of committing suicide. In absence of any such description, the FIR is liable to be viewed

as a text which does not contain the ingredients of offence."

19. In the case of **Dilip s/o Ramrao Shirasao and others vs. State of Maharashtra and another (Criminal Application No.332 of 2016)** decided on 5th August, 2016, the Division Bench of the Bombay High Court, Bench at Nagpur considered the various Judgments of the Supreme Court and the High Court and in Para 20 of the Judgment, held thus:

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the

offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear *mens rea* to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse or process of law."

20. The Supreme Court, in recent Judgment in the case of **Heera Lal and another vs. State of**

Rajasthan (Criminal Appeal No.790 of 2017) decided

on 24th April, 2017, in Para 6 to 10 held thus:

"6. Having heard the learned counsel appearing for the parties and having gone through the evidence, we are of the opinion that Section 113A of the Indian Evidence Act requires three ingredients to be satisfied before it can be applied i.e. (i) that a woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage and (iii) the husband or his relatives who are charged had subjected her to cruelty.

7. This Court in an illuminating Judgment in Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618 has stated the law as follows:-

"This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her

husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression - "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause - and - effect. Relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says - "Whenever it is provided

by this Act the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

8. We find that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498A, the third ingredient for application of Section 113A is missing, namely, that the relatives i.e., the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in-laws to assist the victim to commit suicide.

9. In the absence of this vital link, the mere fact that there is a finding of harassment would not lead to the conclusion that there is "abetment of suicide".

10. On the facts, therefore, we find, especially in view of the fact that the appellants have been acquitted for the crime under Section 498 A of the Code, that abetment of suicide under Section 306 is not made out."

21. Therefore, keeping in view the exposition of law in the afore mentioned Judgments, in the present case in absence of any material suggesting any instigation, abetment or intentional aid on the part of the respondents in commission of suicide by Manda, it will have to be held that so far as the respondents are concerned, the alleged offence under Section 306 of the I.P.C. is not disclosed.

22. In the light of discussion in foregoing paragraphs, in my considered view, the prosecution has utterly failed to prove the case against the respondents. The view taken by the trial Court is a plausible and in consonance with the evidence brought on record. Even if for a moment it is

assumed that, an another view is possible on the strength of evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal when plausible view has been taken by the trial Court.

23. In the light of discussion in forgoing paragraphs, an inevitable conclusion is that, the Appeal filed by the State shall fail. Accordingly, the Criminal Appeal stands dismissed.

[S.S. SHINDE, J.]