

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.589 OF 2003

The State of Maharashtra,
Through Namdev s/o Vithalrao Jadhav,
Age-34 years, R/o-Karewadi, Tq-Parali,
Through Police Station, Ambajogai,
Dist-Beed.

...APPELLANT

VERSUS

1) Sharad s/o Dashrath Sawre,
Age-30 years, Occu:Agriculture,
R/o-Chanai, Tq-Ambajogai,
Dist-Beed,

2) Dashrath s/o Vitthalrao Sawre,
Age-55 years, Occu:Agriculture,
Resident-As Above.

...RESPONDENTS

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Mr.A.D. Namde, A.P.P. for Appellant.
Mr.Satej S. Jadhav Advocate for Respondent
Nos.1 and 2.

...

CORAM: S.S. SHINDE, J.

DATE : 8TH MAY 2017

ORAL JUDGMENT :

1. This Appeal is directed against the

Judgment and Order passed by the Ist Ad-hoc Additional Sessions Judge, Ambajogai in Session Case No.83 of 2001, decided on 30th May, 2003.

2. The brief facts of the prosecution case are as under:-

A) PW-4 Namdev Vitthalrao, Jadhav, resident of village Karewadi, Tq-Parali-Vaijnath lodged First Information Report alleging therein that deceased Smita was his sister. Her marriage was solemnized with accused No.1 before five years from registering the First Information Report. She had begotten one child out of the said wed-lock. She was properly treated and stayed happily for six months in the matrimonial house. Thereafter accused Nos.1 and 2 started ill-treating and beating her, and harassing on the count of domestic reasons. It is alleged that accused used to ill-treat Smita to bring the money to satisfy the domestic expenses. Whenever Smita used to

visit the parents house, she used to disclose about the ill-treatment and harassment at the hands of the accused.

B) It is further alleged that in the summer season before the death of Smita, when the informant went to Alandi to do the work as mason (Mistri), Smita and accused No.1 came at Alandi for doing the labour work. They stayed there for 5 to 6 days. Thereafter accused demanded Rs.7,000/- to satisfy domestic expenses. Accused No.1 threatened the informant that in case said amount is not paid, he will kill his wife Smita by burning. Accused No.1 in presence of the informant at Alandi, beat Smita on account of non payment of Rs.7000/- by the informant. Due to fear of accused No.1, informant paid Rs.2,000/- to him. Thereafter accused No.1 with Smita left Alandi and went to Chanai. Accused No.1 sold golden ornaments of Smita and started beating her after consuming the liquor.

C) It is further alleged that 2 to 3 days before Rakhi Pournima, brother of the informant, namely Pandurang had gone to Chanai to meet Smita. In his presence accused beat Smita and asked Pandurang to pay remaining amount and refused to send Smita to the parents house. Before the said incident, informant and some villagers from his village, had gone to Chanai and persuaded accused No.1 not to ill-treat or harass Smita but he continued the ill-treatment and harassment to Smita.

D) It is further alleged that on 4th August, 2001, one jeep came to Karewadi from Chanai and one person from the said jeep informed that Smita is no more. Thereafter informant and his family members rushed to Ambajogai and when came to the hospital, they came to know that Smita consumed poison at about 4.00 p.m. on 4th August, 2001 due to ill-treatment by both the accused and died at

about 5.30 p.m.

3. On 5th August, 2001, the informant lodged First Information Report at Police Outpost at S.R.T.R. Hospital. Said crime was registered and after investigation charge-sheet was filed. After framing charge, full-fledged trial was conducted and the Respondents were acquitted. Hence this Appeal filed by the State.

4. Learned A.P.P. appearing for the State invites my attention to the evidence of PW-4 Namdev Jadhav (informant), PW-5- Pandurang Jadhav (brother of informant) and PW-6 Vitthal Jadhav (father of informant) and submits that if their evidence is read in its entirety, then it unequivocally indicates that there was ill-treatment and harassment to Smita at the hands of the accused. It is submitted that evidence of PW-3 Dr. Kachre, Medical Officer clearly shows that Smita committed suicide due to instigation and

abetment by accused No.1 - Sharad Dasharath Sawre. He submits that there was no reason for Smita to commit suicide other than ill-treatment and harassment at the hands of the accused. Therefore, he submits that the Appeal may be allowed.

5. On the other hand, learned counsel appearing for Respondents/accused, relying upon the findings recorded by the trial Court, submits that plausible view has been taken by the trial Court. He submits that there was no endeavour on the part of PW-4, PW-5 or PW-6 to lodge First Information Report when they noticed alleged ill-treatment and harassment or beating to Smita before her death. It is only after she committed suicide, First Information Report is lodged. He submits that there was delay in lodging the First Information Report. He also invites my attention to the evidence of DW-1 Usha Balasaheb Survase and submits that she was residing in the vicinity of house of the accused at Chanai and she has

categorically deposed that there was no any abetment/ instigation or act within proximity of alleged commission of suicide by Smita. Therefore, he submits that since the plausible view is taken by the trial Court, this Court may not cause interference in the order of acquittal.

6. Upon careful perusal of the evidence of PW-3 Dr. Rajesh Vijaykumar Kachre, in his evidence he stated that cause of death of Smita was organo chloro insecticides (Endulsulpan) and accordingly he had issued final cause of death certificate. Upon perusal of his findings, death of Smita was suicidal and the prosecution case also is that Smita committed suicide. PW-3 in his evidence stated that there was no external injury except intra cardiat injection marks on the chest. On internal examination of head, the brain was congested and odematous. It has come on record that accused No.1 attempted to commit suicide by consuming poisonous substance and on same day

after accused No.1 consumed poison, Smita also consumed poison. In respect of this, there is discussion by the trial Court in Para 40 of the impugned Judgment. Said discussion is on the basis of Exhibit 37 and 38.

7. Upon careful perusal of the evidence of PW-4 Namdev, it is true that there are allegations of ill-treatment, harassment and occasional beating by accused No.1 to Smita. However, in his cross-examination he stated that though he stated to the concerned Police Officer that he brought Smita to Diwali at parents house and she told him about the demands at the hands of the accused, those facts have not been mentioned in the First Information Report. He has specifically stated that, he did not say to police that he had gone to his sister at the time of Rakhi Pournima, and accused No.1 demanded money. Though it is stated in the deposition before the Court that accused No.1 threatened Namdev that in case amount of

Rs.7,000/- is not given to accused No.1 he will kill Smita, even the said allegations are not mentioned in the First Information Report. Further, the allegations of beating at the hands of accused No.1 to Smita, are also missing in the First Information Report. Therefore, the trial Court, so as to find out the truthfulness of the statement of PW-4 Namdev before the Court, perused the contents of the First Information Report and found that, allegations of extending threat or beating to Smita by accused No.1 are not stated in the First Information Report. Upon careful perusal of evidence of PW-5 - Pandurang and PW-6 Vitthal, it appears that their evidence is hear-say. PW-6 Vitthal, after coming to know that Smita died, went from Alandi to Ambajogai. It is true that delay in lodging First Information Report itself is not relevant factor in every case. However, in the facts of the present case, it has come on record that after alleged incident when PW-4 to PW-6 found that Smita is no more, they discussed

and deliberated with each other and thereafter belatedly the First Information Report is lodged on 5th August, 2001. Therefore, in the facts of the present case, it cannot be said that delay in lodging the First Information Report was not fatal to the prosecution case. Admittedly, marriage of Smita was solemnized with accused No.1 five years prior to date of alleged incident. During said period of five years, no complaint/ First Information Report was lodged either by PW-4, PW-5 or PW-6. If really there was alleged ill-treatment started after six months of marriage of Smita with accused No.1, in that case natural conduct of the relatives/ PW-4 to PW-6 would have been to lodge First Information Report or complaint, as the case may be. It is only after the alleged incident of suicide by Smita, First Information Report was lodged by PW-4. Therefore, the alleged ill-treatment or harassment or as per the version of PW-4, alleged beating at the hands of accused No.1, would be remote to connect the alleged

incident of commissions of suicide by Smita. It further appears that out of the wed-lock of Smita with accused No.1, the couple was blessed with one child and therefore the allegations of ill-treatment, harassmt or beating, belatedly after more than four years from starting point of alleged harassmt and ill-treatment, have rightly been disbelieved by the trial Court.

8. It would be relevant to make reference to the evidence of DW-1 Usha Balasaheb Survase. In her deposition, she stated that she knew accused No.1 and Smita since they were residing as her neighbours. She noticed that prior to the said incident couple was residing happily. She further stated that first accused No.1 - Sharad Dashrath Sawre consumed the poison and thereafter when accused No.1 was taken to the hospital, Smita consumed the poison. Thereafter DW-1 informed about the said incident to one Sarjerao and others. She further stated that her relations with

Smita were cordial and good. On perusal of her cross-examination, her version in the examination-in-chief is not shattered. Therefore, her evidence assumes importance in as much as, she has stated that actual incident of consuming poison by accused No.1 took place first and at that time she was present in her house and thereafter also she was present there. She has not stated about any ill-treatment, harassment or beating at the hands of accused No.1 to Smita prior to the incident of consuming poison by accused No.1 or by Smita. Therefore, within proximity of alleged suicide by Smita, there was no any positive act attributable to accused No.1 in the nature of abetment, instigation or intentional aid so as to attract the provisions of Section 107 of the I.P. Code and consequently to convict him for the offence punishable under Section 306 of I.P. Code. As already observed, alleged ill-treatment, harassment or beating which is not believed by the trial Court, is too remote to connect with the

alleged incident of suicide by Smita.

9. The Supreme Court in the case of S.S. Chheena V/s Vijay Kumar Mahajan and another¹, in 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 accused 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. Code 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.

¹ (2010) 12 SCC 190

10. 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 therein was working as driver under the Ex. Officer i.e. appellant therein. The said driver allegedly committed suicide due to harassment 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.

² 2010 AIR SCW 5101

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 by Smita and any of the alleged acts on the part of the accused Nos.1 and 2. There is no proximity either.

11. 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."

12. In the light of discussion herein above, I am convinced that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such. The view taken by the trial Court is plausible view. Even if it is assumed for a moment 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.

13. Therefore, in the light of discussion, herein above, the Appeal filed by the State stands dismissed.

[S.S. SHINDE, J.]