

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.825 OF 2015

Suresh s/o Ananda Jadhav (Mali),
Age : 45 years, Occu Business
(Hotel Anand),
R/o Village Ner, Taluka
and District Dhule

**APPELLANT
(Orig. Accused No.1)**

VERSUS

The State of Maharashtra,
Through Dhule Taluka Police
Station, Taluka and
District Dhule

RESPONDENT

Mr.C.R. Deshpande, Advocate for the appellant
Mr.G.O. Wattamwar, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

RESERVED ON : 8th AUGUST, 2017

PRONOUNCED ON : 22nd AUGUST, 2017

JUDGMENT :

Heard the learned counsel for the appellant and
the learned A.P.P. for the respondent/State.

2. The appellant (original accused No.1) has
challenged his conviction and sentence for the offences
punishable under Sections 306, 498-A, 504 and 506 of the
Indian Penal Code ("IPC", for short), recorded in

Sessions Case No. 15 of 2013 by the learned Additional Sessions Judge, Dhule on 13th October, 2015.

3. The original accused No. 2 is the mother, while original accused No. 3 is the brother of the appellant. The accused were prosecuted for the offences punishable under Sections 306, 498-A, 323, 504 and 506 read with Section 34 of the IPC. It is alleged that the appellant and accused Nos. 2 and 3, in furtherance of their common intention, subjected the deceased Bharati, who was the wife of the appellant, to cruelty with a view to compel her to bring money from her maternal home, voluntarily caused hurt to her, intentionally insulted her, criminally intimidated her and ultimately abetted her to commit suicide on 30th August, 2012 at about 2.15 a.m. when she was residing with the appellant. The prosecution examined seven witnesses to prove guilt of the accused persons. The appellant examined two witnesses, who were the Gram Sevaks of village Ner and Bhadane, in his defence. After evaluating the evidence of the prosecution and that of the appellant, the learned Trial Judge acquitted accused Nos. 2 and 3 of the above mentioned offences and convicted the appellant for the said offences. The appellant has been sentenced

to suffer rigorous imprisonment for eight years, three years, six months and six months, besides fine amount, for the offences under Sections 306, 498-A, 504 and 506 of the IPC, respectively. The appellant has deposited the amount of fine before the Trial Court.

4. The State/prosecution has not challenged the judgment of acquittal passed in respect of accused Nos. 2 and 3. Thus, the said part of the judgment has got finality.

5. The case of the prosecution is based on the oral evidence of the informant, who is the brother of the deceased Bharati, Trupti (PW2), who is the daughter of the deceased Bharati and the reports/complaints made by the deceased Bharati before Varsha Borse (PW3), Police Head Constable (PHC) Sonawane (PW6) and in the Court of Judicial Magistrate, First Class at Sakri.

6. A.P.I. Raje (PW7) prepared the inquest panchanama (Exh-39) and spot panchanama (Exh-50) at the house of the appellant situate at village Ner, Taluka and District Dhule. The contents of these panchanamas about the house, where the deceased Bharati committed suicide, are not challenged. Though it has come in the

evidence of the informant that the house, where the deceased Bharati committed suicide, was that of Pandharinath Khalane or was by the side of the house of Pandharinath Khalane, since it is not the case of the appellant that the deceased Bharati committed suicide in the house of any other person than himself, the evidence of informant as to in whose name the said house was standing would not be of any consequence.

7. Dr. Choudhari (PW4) (Exh-35), who conducted post-mortem of the body of the deceased Bharati on 31st August, 2012, noticed ante-mortem ligature mark around the neck of the deceased Bharati. He opined that she died of asphyxia due to hanging. This evidence has remained unchallenged. It is not the case of the appellant that the death of the deceased Bharati was accidental or homicidal. It is, thus, clear that the death of Bharati was suicidal.

8. The informant and Trupti (PW2) specifically state that the appellant used to ask the deceased Bharati to bring Rs.1,50,000/- from her father and used to beat and illtreat her with a view to compel her to bring that amount. They state that the appellant used to consume liquor and beat the deceased Bharati. It

has come in their evidence that prior to about six months of her committing suicide, the deceased Bharati had come to the house of her father at village Jaitane because of the illtreatment meted out to her by the appellant in connection with demand for money. She had lodged a report against the appellant in Police Station, Nizampur. PHC Sonawane (PW6) states that the deceased Bharati lodged report (Exh-44) in Police Station, Nizampur on 28th July, 2012. The report (Exh-44) bears the signature of the deceased Bharati.

9. It has further come in the evidence of the informant and Trupti (PW2) that eight days prior to the date of the incident, the appellant came to maternal home of the deceased Bharati. At that time also, he demanded money. He assured to treat the deceased Bharati properly and took her with him. However, on 30th August, 2012 i.e. one day prior to the date of the incident, the appellant came to village Jaitane at the maternal home of the deceased Bharati along with her and started demanding Rs.1,50,000/- from her father. He beat the deceased Bharati at that time. Then the appellant and the deceased Bharati went back to village Ner and in the night of 31st August, 2012, she committed suicide by

hanging herself in the house of the appellant.

10. In the cross-examination of the informant, the learned counsel for the appellant brought to his notice the complaint (Exh-28) filed by the deceased Bharati against the appellant and four others under the provisions of the Protection of Women from Domestic Violence Act, 2005 and also the application (Exh-29) filed by her daughters Trupti and Yogita and son Sudit against the appellant for maintenance under Section 125 of the Code of Criminal Procedure in the Court of the Judicial Magistrate First Class at Sakri on 14th May, 2012. The informant admits that the said complaints bear signatures of the deceased Bharati.

11. Relying on the evidence of the informant and Trupti (PW2), coupled with the report (Exh-44) dated 28th July, 2012 and the complaint/application (Exh-28) and Exh-29) filed by the deceased Bharati, the learned A.P.P. claims that the above mentioned offences have been duly established against the appellant.

12. On the other hand, the learned counsel for the appellant submits that Trupti (PW2) was residing at the house of the informant since the year 2009. He submits

that she was under the control of the informant. Therefore, she deposed against the appellant on the say of the informant. He submits that the informant visited the house of the appellant after receiving the message about the hanging of the deceased Bharati in the early hours of 31st August, 2012. He lodged Accidental Death (A.D.) report (Exh-107) in Dhule Taluka Police Station. In that report, he did not make any allegation against the appellant. However, after his father came to village Ner from Surat, the FIR (Exh-27) came to be lodged in the Police Station. He, therefore, submits that the FIR (Exh-27) is an outcome of concoction, deliberations and an afterthought.

13. I am not inclined to accept this contention. It seems that after seeing the deceased Bharati at about 4.00 a.m. to 4.30 a.m. On 31st August, 2012, the informant simply intimated the Police Station about her unnatural death. In the report (Exh-107), there is specific mention that the death of Bharati is suspicious. Thus, simply intimating about the suspicious death of Bharati to the Police Station would not throw a doubt on the case of the prosecution.

14. The evidence of the informant and Trupti (PW2) about the illtreatment meted out by the appellant to the deceased Bharati is quite consistent. Trupti (PW2) is none other than the daughter of the appellant. After suffering loss of her mother, she would not have deposed against the appellant to see him behind the bars and to get herself deprived of his love and affection also. Had there been no illtreatment given by him to the deceased Bharati, Trupti (PW2) would not have thought of deposing against him. The evidence of the informant and Trupti (PW2) has been corroborated by the contents of the complaint (Exh-28) and application (Exh-29) filed against the appellant by none other than the deceased Bharati. In these documents, there is detailed mention about the harassment and illtreatment given by the appellant to the deceased Bharati under the influence of liquor with a view to compel her to bring Rs.1,50,000/- from her father. The report (Exh-44) also runs on the same lines. It clearly depicts as to how the appellant was harassing and illtreating the deceased Bharati in connection with his demand for money. The complaint (Exh-28), application (Exh-29) and the report (Exh-44) contain the circumstances leading to her suicidal death. The contents of these documents would be admissible

under sub-section (1) of Section 32 of the Indian Evidence Act. Here, it would be necessary to reproduce the legal position relating to the admissibility of evidence under Section 32 (1) of the Evidence Act, from the judgment in the case of **Sharad Birdhichand Sarda Vs.**

State of Maharashtra (1984) 4 SCC 116, as under:-

“(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or

the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a telltale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

15. In view of the above legal position, the contents of the complaint (Exh-28), application (Exh-29) and the report (Exh-44) would be admissible in evidence to establish the circumstances which led the deceased Bharati to commit suicide.

16. The learned counsel for the appellant submits

that even if it is accepted for a while that the deceased Bharati was being harassed by the appellant under the influence of liquor, that by itself would not amount to abetting her to commit suicide. He submits that there is no evidence to show that the appellant had intention to drive the deceased Bharati to commit suicide. He submits that there is no evidence to show any actual overt act committed by the appellant as a result of which the deceased Bharati was prompted to commit suicide. Therefore, according to him, the prosecution cannot be said to have established the offence under Section 306 of the IPC. In support of his contentions, he places reliance on the following cases:-

- (i) ***Gangula Mohan Reddy Vs. State of A.P.***
AIR 2010 SC 327
- (ii) ***Vijay @ Munna Bharat Gurkhude Vs.***
The State of Maharashtra
2016 ALL MR (Cri) 2566
- (iii) ***Ramesh s/o Shamrao Shinde Vs.***
State of Maharashtra
2016 ALL MR (Cri) 358 (Bombay)
- (iv) ***Raviraj Ramchandra Deshpande Vs.***
The State of Maharashtra & Anr.
2016 ALL MR (Cri) 1420 (Bombay)

17. In the case of ***Gangula Mohan Reddy*** (supra), the accused was alleged to have levelled allegations of

theft of ornaments against the deceased (his servant) and also had demanded advance paid at the time of his employment. The deceased appeared to be hypersensitive man. He consumed poison and committed suicide. In the circumstances, it was held that the accused was not liable to be convicted for the offence punishable under Section 306 of the IPC.

18. In the case of **Vijay @ Munna Bharat Gurkhude** (supra), the accused had filed an application under Section 482 of the Code of Criminal Procedure for quashment of the criminal proceedings instituted against him for the offence punishable under Section 306 of the IPC. The accused was alleged to have threatened the deceased to kill him in case the amount of loan of Rs. 20,000/- was not returned. It was the case of the deceased that he had repaid the total amount of Rs.30,000/- as against hand-loan of Rs.10,000/- and still, the accused was demanding Rs.20,000/- more. The deceased sent a complaint dated 15th February, 2013 against the accused to the Police Station and committed suicide on 19th February, 2013. There was no evidence to show that on or prior to the date of the incident of suicide, the accused committed any overt act against the

deceased. In the circumstances, it was held that in case of abetment of suicide, there must be proof of direct or indirect acts of incitement to commission of suicide. Merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of accused which led or compelled a person to commit suicide, the conviction under Section 306 of the IPC would not be sustainable.

19. In the case of **Ramesh s/o Shamrao Shinde** (supra), there was no evidence that on the date of commission of suicide, or somewhere nearby that, the accused had done such act by which the deceased was compelled to commit suicide. Therefore, it was held that a live link for commission of suicide in order to prove offence under Section 306 being absent, the accused was liable to be acquitted.

20. In the case of **Raviraj Ramchandra Deshpande** (supra), the deceased had named many persons, including the accused, alleging that he was cheated by them. It was the defence of the accused that the deceased committed suicide because he was heavily indebted due to huge losses suffered by him in his business. There was no evidence to show that the accused committed any

willful act/omission or had intentionally aided or instigated the deceased in committing suicide. In the circumstances, the accused was held to be not guilty under Section 306 of the IPC.

21. The facts of the present case are totally different and distinguishable from the facts of the above mentioned cases. In the present case, there is specific oral evidence of the informant and the daughter of the appellant himself that one day prior to the incident, he had beaten the deceased Bharati. The evidence of these witnesses in respect of the earlier harassment and illtreatment given by the appellant to the deceased Bharati in connection with his demand for money has been fully supported by the previous statements of the deceased Bharati herself recorded by her in the complaint (Exh-28), application (Exh-29) and the report (Exh-44).

22. Undisputedly, the deceased Bharati was in the company of the appellant in the night of the incident. Since the marriage of the appellant and the deceased Bharati had taken place prior to about fourteen years of the date of the incident, the presumption under Section 113A of the Evidence Act was not applicable to the facts

of the present case. However, the provisions of Section 106 of the Evidence Act would be very much applicable thereto. The appellant only was the best person to explain the circumstances under which the deceased Bharati committed suicide when she was in his company in the night of the incident. He was having special knowledge about that fact. Though he was not supposed to prove his defence beyond doubt, he was under an obligation to explain the probable circumstances leading to her death. He did not examine himself as a witness. Even in his statement under Section 313 of the Code of Criminal Procedure, he did not give any explanation as to what made the deceased Bharati to commit suicide.

23. The defence of the appellant that the father of the deceased Bharati wanted to grab the house property standing in the name of the deceased Bharati, he was compelling her to record that house in his name and therefore, she committed suicide, ex facie is not natural, probable and acceptable. The defence witnesses examined by him viz. Sanjay Deore (DW1) (Exh-78) and Sunil Desale (DW2) (Exh-91), who were serving as Gram Sevaks of villages Ner and Bhadane, respectively, would not probabalize the defence of the appellant. Sanjay

Deore (DW1) states that after the demise of Bharati, her father filed an application for recording the names of the daughters and son of the deceased Bharati in the village panchayat record in respect of house No. 2698. Accordingly, their names were recorded. When the said house was standing in the name of the deceased Bharati, her daughters and son were bound to be substituted for her in the village panchayat record in respect of the said house. By no stretch of imagination, it can be said that by recording the names of the daughters and son of the deceased Bharati in respect of the said house, her father was going to reap any benefit for himself. Generally speaking, no father would expect his daughter to transfer any property belonging to her in his favour and would compel her to commit suicide for that purpose. Thus, the defence suggested in the cross-examination of the informant is totally baseless and unbelievable.

24. It has come in the evidence of PHC Sonawane (PW6) that after receiving the report (Exh-44), he called the deceased Bharati and the appellant. Accordingly, they appeared before him on 27th August, 2012. By that time, the deceased Bharati had started

residing with the appellant. This witness recorded statement of the appellant, which is at Exh-45. After understanding the contents of the report (Exh-44), the appellant stated before this witness that the deceased Bharati had started residing with him pursuant to amicable settlement. He assured that he would not harass her thenceforth. The contents of the statement (Exh-45) of the appellant show that he had not challenged the allegations made by the deceased Bharati against him in the report (Exh-44) and further had assured to treat her properly.

25. The prosecution examined Varsha Borse (PW3) (Exh-31), who happened to be the Manager of 'Virangana Gramin Mahila Swayamsiddha Sangh, Nizampur'. The said Sangh was running a Bachat Gat and a Women Counselling Centre. She deposes that the deceased Bharati approached her on 27th July, 2011 with a complaint against the appellant. After registering her complaint, she asked the deceased Bharati to come back on 14th September, 2011. She issued notice to the appellant to appear on that day. However, the appellant did not appear before her on 14th September, 2011. Then the next date was given as 14th October, 2011, but on that day,

neither the deceased Bharati nor the appellant appeared. She produced complaint (Exh-32) that was given by the deceased Bharati. This complaint also contains the allegations about harassment and illtreatment given by the appellant to the deceased Bharati. This is an additional piece of evidence to show as to how the appellant was illtreating the deceased Bharati.

26. From the evidence of the informant and Trupti (PW2) as well as the contents of the complaint (Exh-28), application (Exh-29) and the report (Exh-44), it is clear that the appellant was harassing and illtreating the deceased Bharati under the influence of liquor with a view to compel her to fulfill the demand for money. Had there been good treatment to the deceased Bharati at the hands of the appellant, she would not have thought of ending her life at the cost of love and affection of her two daughters and one son. It is clear that the appellant created such circumstances which left no option before the deceased Bharati but to commit suicide. This amounts to cruelty as explained under Section 498-A of the IPC. Because of such cruelty, the appellant drove the deceased Bharati to commit suicide. There is positive and dependable evidence of the

informant and Trupti (PW2) that the appellant frequently beat the deceased Bharati. In the circumstances, the case of the prosecution that the appellant committed the offences punishable under Section 306 and 498-A of the IPC, will have to be held as proved beyond reasonable doubt.

27. So far as the offences punishable under Sections 504 and 506 of the IPC are concerned, there is no specific and clinching evidence about the abusive words allegedly used by the appellant against the deceased Bharati. Likewise, there is no sufficient and dependable evidence on record to establish that the appellant criminally intimidated the deceased Bharati with intent to cause alarm to her. The evidence on record in respect of these two offences is insufficient and scanty. The prosecution cannot be said to have established guilt of the appellant for the said offences. The findings of the learned Trial Judge holding the appellant guilty of the offences punishable under Sections 504 and 506 of the IPC, being not supported by sufficient, cogent and dependable evidence, cannot be upheld. So far as the findings in respect of the offences punishable under Sections 306 and 498-A of

the IPC are concerned, I fully subscribe thereto and hold that the prosecution established beyond reasonable doubt that the appellant committed the offences punishable under Sections 306 and 498-A of the IPC.

28. Relying on the judgment in the case of **Ghan Shyam Singh Vs. State of U.P. 2016 ALL MR (Cri) 4057 (S.C.)**, the learned counsel for the appellant submits that the appellant has undergone imprisonment for a period of two years and therefore, he may be sentenced for the period of imprisonment which he has already undergone. I am not inclined to accept this contention considering the facts that because of his misdeeds, the appellant abetted the deceased Bharati to commit suicide, he deprived her daughters and son of her love and affection forever, the daughters and son of the appellant are residing at the mercy of their maternal uncle and grandfather and considering the serious consequences of the acts of the appellant, he cannot be imposed sentence of imprisonment of about two years only which he has already undergone. He does not deserve for more leniency than that has been shown to him by the Trial Court.

29. In the above circumstances, the appeal is

liable to be allowed partly. The conviction and sentence recorded against the appellant for the offences punishable under Sections 306 and 498-A of the IPC are liable to be confirmed. The conviction and sentence recorded against the appellant for the offences punishable under Sections 504 and 506 of the IPC are liable to be set aside. The direction given by the learned Trial Judge for running of the substantive sentences for the offences punishable under Sections 306 and 498-A of the IPC concurrently, is liable to be maintained as it is. The appellant would be entitled to get set off vide Section 428 of the Code of Criminal Procedure. In the result, I pass the following order:-

O R D E R

- (i) The Criminal Appeal is partly allowed.
- (ii) The impugned judgment and order, convicting and sentencing the appellant for the offences punishable under Sections 306 and 498-A of the Indian Penal Code, are maintained as they are.
- (iii) The impugned judgment and order, convicting and sentencing the appellant for the offences punishable under Sections 504 and 506 of the Indian Penal Code, are

quashed and set aside.

(iv) The appellant is acquitted of the offences punishable under Sections 504 and 506 of the Indian Penal Code.

(v) The substantive sentences of imprisonment, passed against the appellant for the offences punishable under Sections 306 and 498-A of the Indian Penal Code, shall run concurrently.

(vi) The appellant shall be given benefit of set off vide Section 428 of the Code of Criminal Procedure in respect of the period of detention he has already undergone.

(vii) The appeal stands disposed of accordingly.

Sd/-
[SANGITRAO S. PATIL]
JUDGE

npj/CRIAPL825-2015