

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.152 OF 2003**

**THE STATE OF MAHARASHTRA )...APPELLANT**

**V/s.**

**1) RAJKUMAR CHANDRAKANT KAVADE )  
2) SMT.SHANTABAI CHANDRAKANT KAVADE)  
3) SMT.SHAILA SANJAY PATIL (MAGAR) )...RESPONDENTS**

Mr.Ameet Palkar, APP for the Appellant – State.

None for the Respondent.

**CORAM : A. M. BADAR, J.**

**DATE : 16<sup>th</sup> JUNE 2017**

**ORAL JUDGMENT :**

1 By this appeal, the State is taking exception to acquittal of respondents / original accused nos.1 to 3 of offences punishable under Sections 498A and 306 read with 34 of the Indian Penal Code recorded by the learned Ad-hoc Assistant Sessions Judge, Solapur, on 17<sup>th</sup> June 2002 in Sessions Case No.245 of 2001.

2 Case of the prosecution is thus :

(a) Ujwala Vitthal Pawar, resident of Jevali in Osmanabad district, married respondent no.1 / accused Rajkumar Chandrakant Kavade on 31<sup>st</sup> December 1990. Thereafter she started cohabiting with him at village Boramani in Solapur district. Respondent no.2 / accused Shantabai Kavade is mother whereas respondent no.3 / accused Shaila Sanjay Patil is married sister of respondent / accused no.1 Rajkumar Kavade. According to the prosecution case, at and about the time of the incident, respondent / accused no.3 Shaila was at her parental house, though she is a resident of village Boramani in Tulzapur taluka of Osmanabad district.

(b) It is the case of prosecution that after six months of her marriage, married life of Ujwala started facing rough weather. Accused persons started demanding Rs.25,000/- from her for repayment of loan. They used to beat her, abuse her and keep her without food on account of this

demand. She was asked to work in the agricultural field and they used to send her for grazing cattles. It is further alleged that at the time of Choli ceremony, accused person demanded a steel almirah and four tolas of gold from Ujwala. As that demand was not complied, they started threatening her.

(c) In the evening of 11<sup>th</sup> August 2001, PW1 Mangal Vitthal Pawar - mother of Ujwala received message that her daughter died due to drowning in the well. PW1 Mangal then went to village Boramani. On the next date, dead body of Ujwala was fished out from the well. On 15<sup>th</sup> August 2001, PW1 Mangal lodged First Information Report (FIR) against accused persons with Solapur Taluka Police Station, Solapur, which resulted in registration of Crime No.92 of 2001 for offences punishable under Sections 498A and 306 read with Section 34 of the Indian Penal Code. Wheels of investigation were then set in motion. Routine investigation followed, on completion of which, accused persons were

charge-sheeted. As the offence punishable under Section 306 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate was pleased to commit the case to the Court of Sessions.

(d) In order to bring home the guilt of accused persons, the prosecution has examined in all seven witnesses. Informant Mangal Pawar – mother of the deceased Ujwala is examined as PW1. PW2 Chandrakant Patil and PW3 Vinayak Patil are neighbours of PW1 Mangal Pawar. PW4 Dr.Suryakant Kambale is examined to prove report of postmortem examination of dead body of Ujwala Rajkumar Kavade. Channavir Kallaya Swami – panch witness to the spot panchnama is examined as PW5. PW6 Abdul Rashid Ibrahim Shaikh has recorded FIR lodged by PW1 Mangal. PW7 P.S.I. Rajkumar Kendre had conducted investigation of the crime in question. On completion of evidence of prosecution and on recording of statement of accused under Section 313 of the Code of Criminal Procedure, after hearing

the parties, the learned trial court by the impugned judgment and order was pleased to acquit all accused persons of charges leveled against them by holding that death of Ujwala Rajkumar Kavade was accidental and prosecution has failed to prove that she was subjected to cruelty by accused persons, and that, they abetted commission of suicide by her.

3           I have heard the learned APP appearing for the appellant / State. He vehemently argued that the spot panchnama does not show any marks to substantiate theory of accidental death. According to the learned APP, the spot panchnama does not reflect any floating vessel in the well water and therefore, the learned trial court erred in concluding that death of Ujwala was accidental. He further argued that evidence of PW1 Mangal – mother of the deceased goes to show that initially there was demand of Rs.25,000/- from deceased Ujwala for repayment of loan and she was subjected to cruelty on account of failure to meet with that demand. He further argued that

evidence of PW1 Mangal further shows that on account of Choli ceremony, there was demand of a steel almirah and four tolas of gold from Ujwala and again she was subjected to cruelty on account of this demand. With this, the learned APP argued that prosecution has established cruelty to a married woman by accused persons and therefore, their acquittal needs to be reversed.

4           None appeared for respondents / accused persons.

5           I have perused the record and proceedings including deposition of witnesses and documentary evidence adduced by the prosecution. In the case in hand, Ujwala Kavade, a married woman, undisputedly died within twenty months of her marriage with accused no.1 Rajkumar Kavade. Section 113A of the Evidence Act deals with presumption as to abetment of suicide by a married woman. The presumption under Section 113A of the Evidence Act can be drawn when it is proved that suicide has been committed by a married woman within seven years of her

marriage, and that, her husband and his relatives had subjected her to cruelty. However, such presumption is required to be raised by having regard to all other attending circumstances of the case. This is a rebuttal presumption. It is required to be raised only when the prosecution establishes its initial onus of proving cruelty to a married woman by accused persons as defined by Explanation to Section 498A of the Indian Penal Code. To establish cruel treatment to a married woman, the prosecution is enjoined to establish that married woman was subjected to such a treatment, so as to drive her to commit suicide or to cause grave injury or danger to her life, limb or health. Such conduct is required to be wilful. Similarly, harassment of a married woman with a view for coercing her or any person related to her to meet any unlawful demand for property or valuable security also amounts to cruelty as defined by Explanation to Section 498A of the Indian Penal Code. Let us, therefore, examine whether evidence of the prosecution meets this requirement.

6           Considering the nature of charge and the witnesses examined by the prosecution, fate of the prosecution case to a large extent hinges on testimony of informant mother – PW1 Mangal Vitthal Pawar. She has stated in her evidence that after six months of her marriage, accused no.1 Rajkumar Kavade and accused no.2 Shantabai Kavade started demanding Rs.25,000/- from Ujwala for repayment of loan and on this count, they used to beat her, keep her without food and insisted her to work in the field. The Informant further deposed that at the time of Ganeshchaturthi of last year, accused persons decided to perform Choli ceremony of her daughter Ujwala and at that time, demanded a steel almirah and four tolas of gold. They were informed that it is not possible to give those articles. PW1 Mangal deposed that, then accused persons had threatened to “see her”. Ujwala was then harassed by accused persons. As per version of PW1 Mangal, four days thereafter, she received message that Ujwala died due to drowning in the well, and therefore, she went to Boramani. This witness further stated that she lodged FIR 2 - 3 days after the death of her daughter.

7           Now let us see what the neighbours of PW1 Mangal are stating about the incident of ill-treatment to Ujwala by accused persons. As per version of PW2 Chandrakant, when Ujwala came to village Jevali, he heard from Ujwala that accused persons asked her to go to the field by carrying tiffin and she was harassed for this work. This witness further heard that Ujwala was making grievance that responsibility of household work was kept on her by accused persons. As per version of this witness, Ujwala told that she was harassed by accused persons on account of demand of Rs.25,000/-, so also on account of demand of cupboard and gold.

8           PW3 Vinayak – another neighbour of parental house of Ujwala deposed that he heard from Ujwala that accused persons were harassing her by abusing and by asking her to do work of agricultural. He further deposed that accused persons were asking her to bring one tola gold and cupboard at the time of Choli ceremony and on this count, they were harassing her.

9                Cross-examination of PW1 Mangal goes to show that accused no.1 Rajkumar Kavade is an agriculturist by occupation. This witness accepted the fact that her daughter Ujwala and accused no.1 Rajkumar Kavade were going to the agricultural field daily and that Ujwala was also doing agricultural work in the field of her husband. They both used to return back to the house in the evening after working in the field for the whole day.

10              It is pertinent to note that in the case in hand, evidence regarding cruelty and ill-treatment to the deceased Ujwala is coming on record from the mouth of her mother as well as her neighbours from the parental house. Her parental house is situated at village Jevali in Osmanabad district whereas, her matrimonial house was situated at a far off place i.e. at village Boramani in Solapur district. Married life of deceased Ujwala was hardly of twenty months. Evidence of prosecution is not explaining as to on how many occasions Ujwala came to village Jevali from her matrimonial house at village Boramani. This fact assumes importance because her neighbours from parental house

namely PW2 Chandrakant and PW3 Vinayak have categorically accepted the fact that their statements were not recorded by police under Section 161 of the Code of Criminal Procedure. Both these witnesses have stated that whatever they had stated before the court is their first version about the incident and their police statements were never recorded. When statements of both these witnesses were not recorded during the course of investigation, evidence of both these witnesses and their statements before the court on the very first occasion becomes doubtful. The learned trial court has disbelieved version of both these witnesses and rightly so, on this count. I do not find any illegality in disbelieving version of both these witnesses by the learned trial court.

11           Now comes the question of appreciation of evidence of PW1 Mangal. Though this witness has stated about ill-treatment and cruelty to her daughter Ujwala on account of demand of Rs.25,000/- for repayment of loan and on account of failure to meet demand of four tolas of gold and a steel cupboard on occasion of Choli ceremony, this witness is not giving any further

details about such demand. In case of such a nature and in such type of offence, it is very easy to level allegations and once they are leveled, it is very difficult to dislodge them, as such allegations are made by near and dear ones of the deceased. Therefore, the court is expected to apply strictest scrutiny and evidence of such witness is required to be considered strictly with close circumspection. If really her daughter was used to be subjected to such type of ill-treatment and cruelty by not providing food to her and by beating her on account of illegal demand, then nothing prevented PW1 Mangal to lodge report about such behaviour of accused persons during lifetime of Ujwala. This did not happen. Even after death of Ujwala, though PW1 Mangal immediately went to her matrimonial house, the report was not lodged with promptitude. The incident of death of Ujwala due to drowning was made known to PW1 Mangal on 11<sup>th</sup> August 2001. On next day she had seen dead body of her daughter Ujwala. However, the FIR came to be lodged by her on 15<sup>th</sup> August 2001. A married sister of accused no.1 Rajkumar Kavade – husband of the deceased is also arraigned as an accused. If really Ujwala was subjected to

ill-treatment by accused persons, then after coming to know about her death because of cruel treatment by accused persons, nothing prevented PW1 Mangal from lodging report against accused persons. However, PW1 Mangal did not lodge report immediately and waited for about three days for lodging report. This fact coupled with her vague evidence regarding the ill-treatment, prompted the learned trial court to hold that the prosecution has failed to prove cruel treatment to deceased Ujwala by accused persons and consequent abetment to her for committing suicide. Such finding is perfectly in consonance with evidence on record and needs no interference.

12           The learned trial court has also held that death of Ujwala Rajkumar Kavade is accidental. However, considering the fact that evidence of the prosecution does not establish any provocation or incitement to the deceased to commit suicide and as alleged cruel treatment to her is not established, I do not propose to dwell upon this aspect of the matter. Suffice to state that considering admission given by PW5 Channavir Swami –

panch witness that a vessel was found floating in the well when the spot panchnama was conducted as well as the fact that report of accidental death registered by police shows that Ujwala had gone for fetching water from the well having steps and she was subsequently found missing, the learned trial court is perfectly justified in coming to such conclusion.

13            In the result, the appeal fails, and therefore the order :

i) The appeal is dismissed.

**(A. M. BADAR, J.)**