

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.750 OF 2001

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

**1) SOU.SUMEETA ASHOK BERDE)
2) LAXMAN BALU MANDAVKAR)
3) KRISHNA LAXMAN MANDAVKAR)...RESPONDENT**

Ms.Anamika Malhotra, APP for the Appellant – State.

None for Respondents.

CORAM : A. M. BADAR, J.

DATE : 16th JUNE 2017

ORAL JUDGMENT :

1 This is an appeal by the State challenging acquittal of respondents / original accused of offences punishable under Sections 498A and 306 read with Section 34 of the Indian Penal Code recorded by the learned Additional Sessions Judge, Ratnagiri, in Sessions Case No.102 of 2000 on 18th July 2001.

Respondent no.1 was original accused no.1. She is sister-in-law of deceased Prabha alias Kalyani. Respondent no.2 Laxman is father-in-law whereas respondent no.3 is husband of the deceased.

2 Facts leading to the prosecution of respondents/ accused persons projected from Police Report can be summarised thus :

Prabha @ Kalyani was daughter of first informant Jaywanti G. Shibe, resident of Village Shiravali in Khed Taluka of Ratnagiri. On 12th March 1997, she married respondent / accused no.3 Krishna Laxman Mandavkar. Krishna used to stay at Tardeo area of Mumbai as he was working at Mumbai for earning his livelihood. After marriage, Prabha @ Kalyani started residing at the house of accused persons at Village Rukhi in Dapoli Taluka of Ratnagiri district. It is the case of prosecution that respondent / accused no.1 Sumeeta used to ill-treat Prabha @ Kalyani in respect of domestic reasons as well as agricultural work. The prosecution further alleged that respondent / accused no.2 Laxman – father-in-law used to cast an evil eye on Prabha @

Kalyani and on some occasions he had entered on the bed of Prabha @ Kalyani. PW1 Ganpat Shibe is father of Prabha @ Kalyani. He also used to reside and work at Mumbai for earning his livelihood. PW2 Jaywanti Shibe is mother of Prabha @ Kalyani and she used to reside at Village Shiravali in Khed Taluka of Ratnagiri district. According to the prosecution case, Prabha @ Kalyani used to visit her parental house and used to disclose her woes and sufferings to her mother as well as her father. Ultimately, meetings were convened at Mumbai for settling matrimonial dispute. At that time, Praba @ Kalyani, who by then was staying with her mother, refused to go to Village Rukhi for residing with accused sister-in-law and father-in-law. She stayed at Mumbai with her husband i.e. accused no.3. Ultimately, according to the prosecution, Prabha @ Kalyani committed suicide by jumping in the well at Village Rukhi on 11th June 2000 because of ill-treatment and cruelty to her by accused persons. On 13th June 2000, her mother PW2 Jaywanti Shibe lodged First Information Report (FIR) against accused persons which resulted in registration of Crime No.53 of 2000 for offences punishable

under Section 498A and 306 read with Section 34 of the Indian Penal Code with Police Station Dapoli.

3 Routine investigation followed. Dead body of Prabha @ Kalyani was fished out from well and was subjected to autopsy, after recording inquest note. Statement of witnesses came to be recorded and on completion of investigation, accused were charge-sheeted before the learned Judicial Magistrate First Class. As the offence punishable under Section 306 of the Indian Penal Code is exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions at Ratnagiri.

4 The learned Additional Sessions Judge, Ratnagiri, framed Charge for offence punishable under Sections 498A and 306 read with 34 of the Indian Penal Code against respondents / accused persons who abjured their guilt and claimed trial. In support of its case, prosecution has examined in all three witnesses. PW1 Ganpat Shibe – father of the deceased is examined at Exhibit 19. The first informant – mother PW2

Jaywanti Shibe is examined at Exhibit 20. Investigating Officer Sanjay Kurudkar, P.S.I., Dapoli, is examined as PW3 at Exhibit 27. Reliance is placed on documentary evidence such as inquest notes, postmortem reports, Chemical Analysis Report etc. After hearing the parties, by the impugned judgment and order dated 18th July 2001 passed in Sessions Case No.102 of 2000, the learned Additional Sessions Judge, Ratnagiri, was pleased to acquit respondents / accused of alleged offences by holding that evidence against them is vague and the prosecution has suppressed the initial version about the incident. However, dissatisfied by this acquittal, the State is in appeal.

5 Heard the learned APP appearing for the appellant / State. She vehemently argued that evidence of first informant – mother PW2 Jaywanti Shibe categorically states about the harassment to a married woman at her matrimonial house by accused persons. The learned APP submitted that accused no.2 Laxman – father-in-law was casting an evil eye on the deceased who was residing at Village Rukhi in company of accused nos.1

and 2. She drew my attention to the evidence of PW1 Ganpat Shibe and PW2 Jaywanti Shibe in order to demonstrate that because of ill-treatment and harassment to her, Prabha @ Kalyani died suicidal death at her matrimonial village on 11th June 2000. With this, according to the learned APP, the prosecution is successful in bringing home the guilt to accused persons, and therefore, their acquittal needs to be upset by this court.

6 None appeared for respondents / accused.

7 With the assistance of the learned APP, I have carefully perused the record and proceedings including deposition of witnesses as well as the documentary evidence placed on record. In the case in hand, Prabha @ Kalyani undisputedly died within three years and three months from her marriage with respondent / accused no.3 Krishna Mandavkar, and as such, if the prosecution is successful in establishing cruelty to her by accused persons, then considering the entire circumstances as brought on record, a presumption as envisaged by Section 113A of the

Evidence Act can be invoked in order to infer abetment to a married woman to commit suicide. Let us, therefore, examine evidence of prosecution in order to ascertain whether it has proved that the deceased was subjected to cruelty by accused persons. The term cruelty is defined in Explanation to Section 498A of Indian Penal Code which reads thus :

“Explanation — For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

8 By now it is well settled that cruelty implies harsh and harmful conduct of certain intensity and persistence. The routine

bickering in married life and domestic quarrels does not amount to cruelty. Keeping in mind these aspects, let us initially examine what father of the deceased is stating in his evidence.

9 PW1 Ganpat Shibe has deposed that his daughter Prabha @ Kalyani used to visit him after her marriage and she used to tell him that accused no.1 Sumeeta and accused no.2 Laxman were ill-treating her on account of household and agricultural work. He further deposed that, because of a letter from his wife PW2 Jaywanti Shibe, he returned from Mumbai to their house at Village Shiravali. As per his version, there he found his daughter Prabha @ Kalyani present in his house. She informed him that her husband was not ready to accept her proposal to take her for cohabitation with him at Mumbai. PW1 Ganpat Shibe further deposed that, at that time, his daughter Prabha @ Kalyani told him that accused no.2 Laxman (father-in-law) keeps illicit relations with her, and therefore, she is not willing to reside in the house of accused persons at village Rukhi in Dapoli Taluka. PW1 Ganpat Shibe further deposed that, then a

meeting was convened in which his daughter Prabha @ Kalyani disclosed that accused no.2 Laxman used to commit sexual intercourse with her, and therefore, she is not ready to go with accused no.3 Krishna (husband). Cross-examination of this witness reveals that mother of accused no.1 Sumeeta and accused no.3 Krishna and wife of accused no.2 Laxman is very much alive and she used to reside with accused persons at village Rukhi. This witness further admitted that at village Rukhi, his daughter Prabha @ Kalyani used to sleep in a room where accused no.1 Sumeeta – daughter of accused no.2 Laxman used to sleep. As per version of this witness, on 12th June 2000 when he along with his relative went to village Rukhi to see dead body of his daughter Prabha @ Kalyani, police were present there and their statements were recorded by police on 12th June 2000 itself. To appreciate evidence of PW1 Ganpat Shibe in proper perspective, it is necessary to put on record what his wife PW2 Jaywanti says about the events of matrimonial life of her daughter i.e. deceased Prabha @ Kalyani.

10 PW2 Jaywanti – informant mother deposed that after marriage, her daughter Prabha @ Kalyani used to come to her at village Shiravali and used to tell her that accused no.1 Sumeeta and accused no.2 Laxman are ill-treating her. As per version of PW2 Jaywanti, Prabha @ Kalyani disclosed her that at the time of Dassera festival accused no.2 Laxman had been to her bed. Evidence of this witness shows that for some period her daughter Prabha @ Kalyani stayed at parental house and then she started cohabiting with accused no.3 Krishna at Mumbai.

11 PW2 Jaywanti had lodged report of the incident on 13th June 2000. In this FIR at Exhibit 21, averments are to the effect that accused no.2 Laxman had entered on the bed of Prabha @ Kalyani on two occasions.

12 This is the evidence recording cruelty and harassment to a married woman by accused persons. At the outset itself, it needs to be put on record that PW1 Ganpat and PW2 Jaywanti

have not spoken about any cruel treatment to deceased Prabha @ Kalyani by her husband accused no.3 Krishna. So far as accused no.1 Sumeeta (sister-in-law) is concerned, the evidence is to the effect that she used to trouble Prabha @ Kalyani over the issue of domestic and agricultural work. As far as accused no.2 Laxman – father-in-law is concerned, averments are regarding casting an evil eye on his daughter-in-law i.e. deceased Prabha @ Kalyani. PW1 Ganpat has exaggerated his version by deposing that his daughter Prabha @ Kalyani disclosed him that accused no.2 Laxman was keeping illicit relations with her. However, PW2 Jaywanti – the first informant has only stated that her daughter Prabha @ Kalyani has disclosed to her that accused no.2 Laxman had entered in her bed at the time of Dassera festival. Cross-examination of both these witnesses goes to show that wife of accused no.2 Laxman, who according to the charge-sheet, is an old aged person of 70 years, used to reside with him at village Rukhi. Cross-examination of PW1 Ganpat further goes to show that deceased Prabha @ Kalyani used to sleep with accused no.1 Sumeeta - her sister-in-law, in a separate room. With this

evidence, the learned Additional Sessions Judge was pleased to hold that evidence against accused persons is discrepant and vague. Evidence on record also shows that deceased Prabha @ Kalyani was not happy in staying at her matrimonial house at village Rukhi, as her husband accused no.3 Krishna was staying at Mumbai. She was desirous of joining company of her husband at Mumbai.

13 On this factual backdrop, the learned Additional Sessions Judge has held that the prosecution has failed to establish cruelty as envisaged by Explanation to Section 498A of the Indian Penal Code. Upon re-appreciation of the entire evidence adduced by the prosecution, it is not seen that the prosecution has established cruel treatment by accused persons to a married woman which resulted in commission of suicide by her. So far as evidence of Investigating Officer is concerned, it explains the line of investigation conducted by him, and as such, is of no assistance to infer cruelty.

14 Record shows that the FIR came to be lodged on 13th June 2000. Evidence of PW1 Ganpat – father of the deceased, shows that he rushed to village Rukhi on 12th June 2000 itself when he came to know that his daughter Prabha @ Kalyani died. His cross-examination candidly shows that on 12th June 2000 itself police recorded his statement. His cross-examination indicates that statement of his wife, his brother and other persons from village Shiravali were also recorded on that day i.e. on 12th June 2000. With this evidence on record, learned Additional Sessions Judge observed that statements of these material witnesses recorded on 12th June 2000 are suppressed by the prosecution prohibiting the trial court from ascertaining what was the first version of the incident by prosecution witnesses who are near and dear ones of the deceased. On this count also, evidence of the prosecution was rightly rejected by the learned Additional Sessions Judge.

15 It is well settled that when two views are equally probable, one which leans in favour of acquittal and one which

leans in favour of conviction, then a probable view leaning towards acquittal taken by the court below cannot be interfered with.

16 In the result, the appeal is devoid of merit and the same is dismissed.

(A. M. BADAR, J.)