

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.2 OF 2016
WITH
CRIMINAL APPLICATION NO.1271 OF 2016
IN
CRIMINAL APPEAL NO.2 OF 2016**

Dinesh Ganpat Bondre,
Age : 34 years, Occupation : Serivce,
residing at Bondrepada, Village Kharade,
Taluka Shahapur, District Thane.
(Presently at Kalyan Gramin Jail) ... **Appellant/Applicant**
V/s.
The State of Maharashtra,
Through Kinhavali Polcie Station,
Taluka Shahapur, District Thane.
(C.R.No.I-10/2009) ... **Respondent**

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Mr.M.K.Kocharekar i/b. D.S.Pagare, Advocate for the
Appellant/Applicant.
Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 17th APRIL 2017.

ORAL JUDGMENT :

1 Bail application bearing No.20 of 2016 filed by the
applicant/accused came to be withdrawn and while permitting
withdrawal of the said application, this Court had granted liberty

to mention the matter after preparation of the paper book. The matter could not be listed and ultimately fresh bail application came to be filed and during the course of hearing of fresh bail application bearing No.1271 of 2016, the learned Advocate appearing for the appellant/accused No.1. submitted that arguments advanced by him may be considered for deciding the appeal itself. That is how the appeal is being decided after hearing both parties.

2 The appellant/accused No.1 along with his parents, two brothers and a sister-in-law were put up for trial for offences punishable under Sections 302, 498-A, 304-B of the Indian Penal Code (“the IPC” for the sake of brevity). Except the appellant/accused No.1 Dinesh Bondre, rest of accused persons came to be acquitted by the learned trial Court. The appellant/accused No.1 Dinesh came to be convicted of offence punishable under Section 304-B and 498-A of the IPC vide Judgment and Order dated 22/12/2015 by the learned Additional Sessions Judge, Kalyan in Sessions Case No.144 of 2009. For the offence punishable under Section 304-B of the IPC, he is sentenced to suffer rigorous imprisonment for seven years apart from payment of fine of Rs.3,000/- and in default he is directed to undergo further simple imprisonment for nine months. For the offence punishable under Section 498-A of the IPC, the appellant/accused No.1 is sentenced to suffer rigorous

imprisonment for three years apart from directing to pay fine amount of Rs.2000/- and in default to undergo further simple imprisonment for six months. Feeling aggrieved by this conviction and sentence, the instant appeal.

3 Briefly stated facts leading to the prosecution of the appellant/accused No.1 are thus :

(a) Tai @ Dipika – daughter of P.W.No.1 Hari Jayram Gharat resident of Hingbud, Taluka Shahapur, District Thane married the appellant/accused No.1 on 04/03/2008. After marriage, she started cohabiting with the appellant/accused No.1 and his family members at village Bondrepada, Shahapur Taluka, Thane District. After three to four months of her marriage, matrimonial life of Tai @ Dipika suffered rough weather. According to the prosecution case, the appellant/accused No.1 and his relatives started subjecting her to cruelty on account of their demand of dowry amounting to Rs.50,000/-. This demand of money was allegedly for purchase of a jeep. Because of his poor financial condition, P.W.No.1 Hari Gharat was unable to meet this unlawful demand of money by the appellant/accused No.1 as well as his relatives. According to the prosecution case, on account of this demand, Tai @ Dipika was subjected to cruelty by accused persons with a view to coerce her to meet their demand of Rs.50,000/-.

(b) According to the prosecution case, unable to bear with constant harassment and torture at hands of accused persons, Tai @ Dipika died unnatural death at her matrimonial house on 12/03/2009. The appellant/accused No.1 did not inform about this incident to parents of Tai @ Dipika. However, someone from village Bondrepada informed this incident telephonically to P.W.No.1 Hari Gharat and, therefore, along with relatives P.W.No.1 Hari rushed to the hospital at Shahapur in order to check what happened to Tai @ Dipika. He could not trace her out at the hospital at Shahapur and then he came to know that Tai @ Dipika died and her dead body was at her matrimonial house. P.W.No.1 Hari then went to matrimonial house of Tai @ Dipika at Bondrepada and immediately lodged report (Exh.16) with Kinhavali police station, which has resulted in registration of accidental death case No.11 of 2009 under Section 174 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for the sake of brevity). Dead body of Tai @ Dipika was then sent for autopsy to the Civil Hospital, Thane and the Autopsy Surgeon concluded that Tai @ Dipika died because of cardio-respiratory failure due to asphyxia. Thereafter, P.W.No.1 Hari Gharat on 13/03/2009 lodged FIR (Exh.17) against accused persons alleging that they committed murder of Tai @ Dipika after subjecting her to cruelty on account of their demand of Rs.50,000/- for purchase of the jeep. This has resulted in registration of Crime No.I-10/2009 for the offence punishable under Sections 302, 498-A read with

Section 34 of the IPC against accused persons with Police Station, Kinhavali, District Thane.

4 On conclusion of investigation, accused persons including the appellant/accused No.1 were charge-sheeted and on committal of the case, charges for offences punishable under Sections 302, 498-A and 304-B read with Section 34 of the IPC came to be framed. Accused persons abjured their guilt and claimed trial.

5 In order to bring home the guilt to accused persons, the prosecution has examined ten witnesses. After hearing the parties, by the impugned Judgment and Order, the learned trial Court was pleased to convict the appellant/accused No.1 and sentenced him as indicated in opening paragraph of this Judgment.

6 I heard the learned Advocate appearing for the appellant/accused No.1 at sufficient length. He argued that the autopsy surgeon has come to the conclusion that the death was not homicidal. He further argued that there is no evidence to demonstrate that Tai @ Dipika was subjected to cruelty and harassment by accused persons soon before her death. It is further argued that for attracting presumptive provisions of Section 113-B of the Indian Evidence Act, it is incumbent on the part of the

prosecution to establish that there was cruelty or harassment to the married woman and that cruelty and harassment was soon before her death. With this, reliance is placed by the learned Advocate on evidence of P.W.No.1 Hari Gharat – father of the deceased to demonstrate that during her last visit to her parental house, Tai @ Dipika had behaved in normal manner. It is further argued that stray and isolated incidents in a matrimonial life of a married woman cannot be construed as cruelty to her.

7 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction by contending that few days before her death, Tai @ Dipika had been to her parental house and at that time she informed her parents including P.W.No.1 Hari about harassment and cruelty to her on account of payment of Rs.50,000/- for purchase of jeep by accused persons. The learned Additional Public Prosecutor further argued that evidence of P.W.No.2 Baban Gharat and P.W.No.3 Pandurang Gharat, who are uncles of the deceased shows that deceased Tai @ Dipika was not willing to go to her matrimonial house at that time, but she was convinced to go to her matrimonial house. The learned Additional Public Prosecutor further argued that deceased Tai @ Dipika was exclusively in the company of accused persons and as such, it was necessary for accused persons to explain how she died while in their company at her matrimonial house. The learned Additional Public Prosecutor further demonstrated

conduct of the appellant/accused in not even informing parents of the deceased about the factum of death of deceased Tai @ Dipika.

8 I have carefully considered the rival submissions and also examined Record and Proceedings made available to me including depositions of witnesses and the impugned Judgment and Order. Some facts seem to be undisputed. It is not in dispute that after her marriage with the appellant/accused No.1 on 04/03/2008, Tai @ Dipika started cohabiting with the appellant/accused No.1 and his relatives at village Bondrepada in Shahapur Taluka, Thane District. Undisputedly, Tai @ Dipika died on 12/03/2009 at her matrimonial house. With this admitted position on record, it is established that death of Tai @ Dipika was within one year and one month from her marriage with the appellant/accused No.1.

9 Now let us examine whether Tai @ Dipika died in unnatural or abnormal circumstances. For that purpose, evidence of her matrimonial relatives so also that of the Autopsy Surgeon is relevant. P.W.No.1 Hari Gharat – father of the deceased has stated in his evidence that he found that Tai @ Dipika was bleeding from mouth and her eyes were swollen. He claims to have noticed injury on her back and right thumb of the dead body of Tai @ Dipika. P.W.No.2 Baban Gharat – uncle of deceased Tai @ Dipika claimed that there was swelling on neck and eyes of

dead body of Tai @ Dipika. P.W.No.3 Pandurang – another uncle of deceased Tai @ Dipika has stated that there were injuries on both sides of neck of Tai @ Dipika. P.W.No.2 Baban is a panch witness to inquest notes. Perusal of inquest notes at Exh.21 goes to show that reddish fluid was oozing from the nostrils of the dead body and fluid was oozing from the mouth of the dead body. Instead of this, nothing abnormal or external injuries were noticed while preparation of inquest notes after inspecting the dead body. Upon dispatch of dead body to Civil Hospital, Thane, P.W.No.8 Dr.Netaji Mulik, Medical Officer had conducted postmortem examination on dead body of Tai @ Dipika. Version of this witness shows that he had noticed conjunctival and sub-conjunctival haemorrhage on the dead body. Tongue of dead body was found swollen inside the mouth and darkish brown blood and whitish froth was noticed coming out of the mouth and the nostrils of the dead body by the Autopsy Surgeon. The Autopsy Surgeon also noted brownish red colour, multiple haemorrhage, petechial particularly like lesion measuring .25 x 1 cm. irregular in size on upper part of the chest of the dead body. Except this no other injuries were noticed on dead body of Tai @ Dipika by the Autopsy Surgeon. Cross-examination of this witness shows that lesion marks can be found present in case of small pox or Tuberculosis. In the case in hand, as seen from the evidence of P.W.No.2 Baban Gharat – uncle of the deceased Tai @ Dipika had suffered small pox during her childhood and scars of small pox

were on her face. As such, petechial haemorrhage on chest and shoulder of the dead body can be attributed to the small pox suffered by the deceased in her childhood. The Autopsy Surgeon had ruled out possibility of death by hanging as no ligature mark was found on the neck of the dead body. No symptoms of homicidal death of Tai @ Dipika were noticed by the Autopsy Surgeon. However with the finding of oozing of blackish and brownish fluid from mouth and nostrils of the deceased coupled with other signs found on the dead body, the Autopsy Surgeon has shown cause of death of Tai @ Dipika as cardio-respiratory failure due to asphyxia.

10 Deceased Tai @ Dipika was a young lady whose married life was just one year and one month old. Medical evidence produced on record by the prosecution as such goes to show that Tai @ Dipika died in unnatural and abnormal circumstances at her matrimonial house. There is no evidence on record to come to the conclusion that death of Tai @ Dipika was either accidental or natural, nor there are any such suggestions to the witnesses examined by the prosecution from the side of the appellant/accused. Hence, I find no infirmity in the finding of the learned trial Court on the aspect of the death of Tai @ Dipika was otherwise than in ordinary circumstances at her matrimonial house.

11 Now let us examine whether the prosecution has established offences punishable under Sections 498-A and 304-B of the IPC. Section 304-B of the IPC which deals with Dowry death which reads thus :-

“304B. Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

*Explanation.—*For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

12 Similarly, Section 113-B of the Indian Evidence Act is also relevant for deciding the case in hand. Section 113-B of the Indian Evidence Act so also Section 304-B of the IPC were inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the menace of dowry death. Section 113-B of the Indian Evidence Act reads thus :

“113-B.Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any

demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).”

13 Perusal of these provisions shows that if a married woman dies in unnatural and abnormal circumstances within seven years of her marriage and if it is shown that she was subjected to cruelty or harassment by her husband or in-laws for and on account of demand of dowry, immediately preceding her death, then the offence punishable under Section 304-B of the IPC is made out. Penal provision of Section 304-B of the IPC applies not only when death of a married woman is caused by her husband or his relatives, but also when death occurs unnaturally, whosoever from them might have caused it. As such, death of a married woman is fastened on the husband and the in-laws by creating fiction. In the case in hand, undisputedly, deceased Tai @ Dipika died within seven years of her marriage with the appellant/accused No.1 and her death is proved to be a unnatural one which took place at her matrimonial house. Perusal of Section 304-B of the IPC further shows that cruelty or harassment must be shown to be soon before the death of a married woman meaning thereby that interval of the time between inflicting cruelty and the resultant death should not be much. Proximate and live link between the cruelty on account of demand of dowry and the resultant death of married woman is required to be established. Remote and stale allegations about cruelty are of no consequences

in an offence punishable under Section 304-B of the IPC. The expression “soon before her death” is not defined by the IPC and it is left for the discretion of the Court and such determination is always dependent on facts and circumstances of each case. With this, now let us examine whether the next ingredients of harassment or cruelty to Tai @ Dipika soon before her death by the appellant /accused No.1 is established by the prosecution.

14 Explanation to Section 498-A of the IPC defines the term "cruelty". It 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.”

15 Terms “cruelty” and “harassment” used in Section 304-B of the IPC will have to be considered with reference to the explanation to Section 498-A of the IPC which defined the term “cruelty”. “Cruelty” postulated in explanation to Section 498-A of the IPC as such implies harsh and harmful conduct of certain intensity and persistence. It covers acts causing both physical as

well as mental agony and torture or tyranny. What amount to cruelty differs from person to person as well as strata of the society from which parties are hailing. If victim of cruelty is put to intense miseries and woes strongly stirring up her feeling that life is not worth living, then “cruelty” as explained in Section 498-A of the IPC is established. It envisages intention to drag or force the woman to commit suicide or to cause grave injury or danger to her life, limb or health. Ill-treatment is required to be of such intensity or extent. Similarly, harassment of a woman with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security also amounts to cruelty. Explanation to Section 498-A of the IPC is not defining the term “harassment”. However, subjecting someone to unbearable continuous or repeated or persistent and unprovoked demands and resultant brutality or tyranny may amount to harassment to such a person. Here also, intention is relevant. Keeping in mind these factors as well as the fact that the concept of cruelty varies from place to place and individual to individual according to the socio-economic status of parties, let us examine whether in the case in hand, the prosecution has established cruelty and ill-treatment to Tai @ Dipika.

16 P.W.No.1 Hari Gharat – father of deceased Tai @ Dipika has deposed that after four months of married life of deceased Tai @ Dipika, accused persons started demanding Rs.50,000/- from her for purchasing a jeep and on account of that

demand, they used to inflict physical as well as mental harassment to Tai @ Dipika. From version of this witness on 05/03/2009 Tai @ Dipika came to his house and told him about harassment and demand of Rs.50,000/-. This witness further deposed that on 07/03/2009, the appellant/accused No.1 came to his house and took Tai @ Dipika back to his house. Cross-examination of this witness reveals that in fact, Tai @ Dipika came to her parental house on 04/03/2009 along with appellant/accused No.1 Dinesh. She then went back to her matrimonial house along with appellant/accused No.1 Dinesh on 07/03/2009. Thus the appellant/accused was at the house of his in-laws during this period. What happened during this period is also brought on record from cross-examination of P.W.No.1 Hari Gharat. Though the appellant/accused was very much available at his house, P.W.No.1 Hari Gharat had not even inquired from him as to why money is needed for purchase of jeep. It is not in dispute that the appellant/accused No.1 was working with Caterers. If really his daughter was subjected to intense cruelty by accused persons, then a normal father in ordinary circumstances would have certainly inquired from his son-in-law as to the reason for demanding an amount of Rs.50,000/- from his daughter. This did not happen. To crown this all, version of P.W.No.1 Hari reflected from his cross-examination shows that deceased Tai @ Dipika was behaving like a normal married woman during her last stay at her parental house for the period from 04/03/2009 to 07/03/2009.

17 P.W.No.2 Baban Gharat is the uncle of deceased Tai @ Dipika. He has deposed that after four months of marriage, accused persons started demanding Rs.50,000/- from Tai @ Dipika for purchasing a jeep and for this purpose they started ill-treating her by taunting and beating her some time. This witness has admitted in cross-examination that the appellant/accused No.1 was working as a Caterer and he was not engaged in any other occupation. P.W.No.3 Pandurang is another uncle of deceased Tai @ Dipika. In his examination-in-chief, he has deposed about cruelty to deceased Tai @ Dipika. In cross-examination, he stated that Tai @ Dipika was telling him about all ill-treatment to her.

18 P.W.No.6 Sunita Rasal is aunt of deceased Tai @ Dipika. In her evidence, this witness has stated that after four months of her marriage, Tai @ Dipika was suffering ill-treatment on the point of demand of Rs.50,000/- for purchasing a jeep.

19 This is all what is adduced as evidence by the prosecution to establish cruelty and harassment to deceased Tai @ Dipika by the appellant/accused No.1. The prosecution case rests solely on evidence of witnesses who are close relatives of deceased Tai @ Dipika and as such, naturally, who are hostile towards the appellant/accused. The prosecution has not collected nor had adduced any evidence of neighbours of deceased Tai @ Dipika,

who would have thrown some light on the treatment which might have been given. If the allegations of serious ill-treatment were true, she would have certainly talked about it with her neighbours. Though this aspect is not conclusive, this is a fact which needs to be taken into account in such type of matters. This is particularly so because of evidence available against the appellant/accused No.1 here is coming from the near and dear once of deceased Tai @ Dipika and there is not a single piece of disinterested evidence. Therefore, as no other evidence is available on record for deciding veracity of evidence of interested prosecution witnesses, their statements need to be tested carefully by comparing them in order to find out whether they are reflecting cruelty or harassment as envisaged by explanation to Section 498-A of the IPC.

20 P.W.No.1 Hari Gharat had rushed to the matrimonial house of his deceased daughter Tai @ Dipika on the day of the incident i.e. on 12/03/2009 itself. All prosecution witnesses are consistently deposing that after four months of her married life, Tai @ Dipika started suffering from harassment and cruelty at the hands of appellant/accused No.1 and his relatives. Tendency to exaggerate or add facts is also seen from version of prosecution witnesses, who are near relatives of the deceased, as noted in foregoing paragraphs. All of them have stated about finding several injuries on the dead body of Tai @ Dipika including those

on neck of the dead body though such type of injuries were not at all noticed in the inquest notes or in the postmortem examination of the dead body. As such, prosecution evidence will have to be appreciated with great care and caution. In this context, conduct of P.W.No.1 Hari Gharat is material. Immediately, on 12/03/2009 after noticing dead body of his daughter, he lodged report to police station Kinhavali, which is at Exh.16. In this report at Exh.16 on the basis of which accidental death case came to be registered, P.W.No.1 Hari Gharat has not pointed accusing finger towards any of accused persons including the appellant/accused No.1/husband. If really he had heard about ill-treatment and cruelty to his daughter Tai @ Dipika after four months of her marriage with the appellant/accused, then as a prudent father, on the very first available opportunity he would have certainly disclosed harassment in the matrimonial life of Tai @ Dipika to police. Ultimately he had seen dead body of his daughter at the house of her husband. However, the very first report at Exh.16 lodged by P.W.No.1 Hari immediately after seeing dead body of his daughter is not making any allegations against the appellant/accused No.1/husband of deceased Tai @ Dipika. Apart from this, scrutiny of his evidence goes to show that whatever had stated by him about suffering of deceased Tai @ Dipika is “physical and mental harassment”. What is meant by “physical and mental harassment” is not further elicited from his evidence by the Prosecutor. As noted above, concept of cruelty varies from

place to place and individual to individual and in this context, it was necessary to bring on record what were instances of physical and mental harassment to Tai @ Dipika from the mouth of her father P.W.No.1 Hari. However, evidence of P.W.No.1 Hari is conspicuously silent on this aspect. Therefore, this Court is unable to test whether alleged “physical and mental harassment” amounts to cruelty or harassment as explained by explanation of Section 498-A of the IPC. Similar is the evidence of P.W.No.3 Pandurang, who has described suffering of Tai @ Dipika as “ill-treatment”. What ill-treatment means to him cannot be gathered from his evidence. In his chief-examination, this witness has not even deposed about so called ill-treatment to Tai @ Dipika. Similarly is the version of P.W.No.6 Sunita Rasal aunt of the deceased. She has only stated that there was “ill-treatment” to Tai @ Dipika. What she understand by ill-treatment is not explained by P.W.No.6 Sunita and as such, it is not possible to test the same in order to ascertain whether such conduct amount to cruelty or harassment to the married woman. The only evidence which now remains is that of P.W.No.2 Baban Gharat who has deposed that accused persons were taunting and beating Tai @ Dipika on account of demand of money from her. Considering the fact that this statement about taunting and beating is unsupported by evidence of other prosecution witnesses, this evidence is doubtful and the same is not sufficient to infer that the deceased was subjected to cruelty and harassment by the appellant/accused. In the offence

like this, allegations are very easy to make and once made it is very difficult to dislodge them. If evidence fails to inspire confidence, then it cannot be acted upon to base conviction. In the case in hand, a stray sentence of P.W.No.2 Baban to the effect that accused persons used to taunt or beat Tai @ Dipika occasionally is not sufficient in absence of other corroborating evidence to hold that the deceased was subjected to cruelty or harassment, soon before her death for and on account of demand of dowry from her. What were the taunts to her is also not brought on record by the prosecution. Though the prosecution has established that deceased Tai @ Dipika died otherwise than in normal circumstances within seven years of her marriage with the appellant/accused, it is not proved beyond reasonable doubt by the prosecution that the appellant/accused had subjected her to cruelty soon before her death on account of demand of dowry.

21 In the result, the appellant succeeded and, therefore, the order :

- (i) The Appeal is allowed.
- (ii) The impugned Judgment and Order of conviction of the appellant/accused No.1 for offences punishable under Sections 498-A and 304-B of the IPC and the resultant sentence recorded by the learned Additional Sessions Judge, Kalyan in Sessions Case No.144 of 2009 is quashed and set aside.

(iii) The appellant/accused No.1 is acquitted of offences punishable under Sections 498-A and 304-B of the Indian Penal Code. He be released forthwith if not required in any other case.

(iv) Fine amount, if any, paid by the appellant/accused No.1 be refunded to him.

22 Consequently Criminal Application bearing No.1271 of 2016 stands disposed of.

(A.M.BADAR J.)