

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

CRIMINAL APPEAL NO. 500 OF 2001

- 1) Swarupchand Ramsing Balwane,
Age; 31 years, Occ; Agriculturists,
- 2) Dharamchand Ramsingh Balawane,
Age; 42 years, Occ; Agriculturists,
- 3) Gorabai w/o Ramsing Balawane,
Age; 72 years, Occ; Household,

All residents of Kusali, Tq. Badnapur,
District ; Jalna.

Appellants.

VERSUS

The State of Maharashtra
(Copy to be served on the Public
Prosecutor, High Court, Bench at
Aurangabad).

Respondent.

Mr. V.S. Bedre, Advocate for the appellants.
Mr. R.V. Dasalkar, A.P.P. for the State/respondent.

CORAM : SUNIL K. KOTWAL,J.

**Reserved on : 13th March, 2018.
Pronounced on : 20th March, 2018.**

JUDGMENT :

- 1) This appeal is directed against the judgment and order of conviction passed by *Ad hoc* Additional Session Judge, Jalna in Sessions Case No. 124/1999, sentencing accused Nos. 1 and 2 to suffer rigorous imprisonment for three years and to a pay fine of Rs. 1,000/- each for the offence punishable under section 306 read with

Section 34 of the Indian Penal Code (hereinafter referred to as "I.P.C.") and sentencing accused No. 3 to suffer simple imprisonment for one year and to a pay fine of Rs. 500/- for the offence punishable under 306 read with Section 34 of the I.P.C. Accused Nos. 1 and 2 were also convicted for the offence punishable under Section 498-A read with Section 34 of I.P.C. and they were sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- each. Accused No. 3 is sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 500/- for the offence punishable under Section 498-A read with Section 34 of the I.P.C.

2) Prosecution case in brief is that Informant Ramabai Dalsingh Barwal is resident of village Talkhed Taluka Majalgaon District Beed and she has one son Dhansingh and two daughters namely Aklabai and Deokabai. Deokabai married with accused No. 1 before 13 to 14 months prior to the death of Deokabai. After marriage Deokabai cohabited with accused Nos. 1 to 3 at Mauje Kusali, Taluka Badnapur District Jalna. However, whenever Deokabai visited her parental home at the eve of Rakhi, Diwali and Padva festival, she informed her parents that she was subjected to ill treatment by accused Nos. 1 to 3 for the demand of Rs. 25,000/- from her parents to dug Well in their field. When accused No. 1 came to fetch his wife Deokabai, that time he was also given

understanding that demand of the accused could not be fulfilled due to weak financial condition of parents of Deokabai. Accused was requested not to ill treat Deokabai for demand of money. However, on 19/06/1999 parents of Deokabai received message that Deokabai was admitted in the hospital for ailment. When informant Ramabai (PW-1) rushed to Civil Hospital with her son and another relatives she found that Deokabai was dead. When dead body of Deokabai was referred for postmortem examination, Medical Officer, Civil Hospital, Jalna, opined that, cause of death of Deokabai was due to 'cardio-respiratory arrest due to organ phosphorous compound poisoning'. On 22/06/1999 Ramabai (PW-1) lodged FIR (Exh. 28) to Police Station, Badnapur. In the result, Crime No. 97/1999 was registered against all accused persons under Sections 498-A and 306 read with Section 34 of I.P.C. P.S.I. Rajkumar Dongre (PW-6) conducted investigation of this crime, drew spot panchanama (Exh. 36) and after completion of investigation filed charge-sheet against accused Nos. 1 to 3 in the court of Judicial Magistrate, First Class, Badnapur.

3) Offence punishable under Section 306 of I.P.C. being exclusively triable by the Court of Sessions, this case was committed to Sessions Court, Jalna.

4) Charge (Exh. 19) was framed against accused Nos. 1 to 3 for the offences punishable under Sections 306, 498-A read with

34 of I.P.C. They pleaded not guilty and claimed to be tried.

5) Defence of the accused is of total denial.

6) Prosecution examined total seven witnesses. After considering the evidence of prosecution witnesses, the learned trial court pleased to convict accused Nos. 1 to 3 for the offences punishable under Sections 306 and 498-A read with Section 34 of the I.P.C. Therefore, this appeal arises.

7) Heard Shri V.S. Bedre Advocate for appellants and learned A.P.P. for the State.

8) Learned Counsel for the appellants pointed out that accused No. 2 died during the pendency of the appeal and proceeding against him is already abated. Learned Counsel for the appellant assailed the judgment of trial court on the ground of unexplained delay in lodging the F.I.R. He pointed out that no explanation is given by prosecution for inordinate delay in lodging F.I.R. which is lodged after three days from the date of offence.

9) Next limb of the argument of learned counsel for the appellant is that only mother (PW-1), father (PW-2) and brother (PW- 3) have deposed before the Court regarding ill treatment to the deceased for demand of money on account of digging of new Well in the field. He submitted that on the cross examination of the witnesses, it has been brought on record that already Well is in existence in the field of the accused, and therefore, the reason for

demand of money alleged by prosecution witnesses is obviously false.

11) According to learned counsel for the appellants, no attempts were made by parental relatives to mediate the matrimonial dispute in between deceased and accused persons, which is somewhat abnormal conduct on the part of parental relatives of the deceased. He submitted that in the circumstances without corroboration by other circumstantial evidence, on the basis of tainted testimonies of related witnesses conviction cannot be based. He placed reliance on "**Mithailal Jagram Gupta Vs. State of Maharashtra**" [(2003) (2) Mh.L.J. 78] wherein her Ladyship observed that,

"In order to prove the charge of abetement, accused must have instigated the person to commit suicide. Prosecution has to prove that, accused intentionally aided the deceased to commit suicide".

12) In reply, learned APP for the State submitted that suicidal death of the deceased is admitted by defence. According to APP, PW-1 to PW-3 are consistent regarding ill treatment to the deceased on account of demand of money by accused. He submitted that in such cases examination of independent witnesses is impossible. He has pointed out that as the deceased died within seven years from the date of her marriage, in the back ground of proof of ill treatment to the deceased at the hand of accused,

presumption under Section 113-A of the Indian Evidence Act can be drawn that accused abetted the suicide alleged to be committed by the deceased.

13) In the case at hand, accused No. 2 died during pendency of the appeal and proceeding against him is abetted. Therefore, I have to examine correctness of conviction only against accused Nos. 1 and 3. Spot panchanama, inquest panchanama and postmortem report is admitted by defence. Even learned Counsel for the appellants fairly conceded that suicidal death of the deceased due to consumption of poison is an admitted fact. Therefore, I have to examine whether the testimonies of PW-1 to PW-3, who are the parents and brother of the deceased, are trustworthy or not. If the testimonies of these witnesses are trustworthy and inspire confidence, then only because they are closely related witnesses, their testimonies cannot be discarded. It cannot be ignored that in the cases of ill treatment to the newly married bride, the incidences usually occur inside four-wall of the house. Therefore, normally no independent witness is available to the prosecution for corroboration. However, at the same time, Court has to adopt very conscious approach because many times due to sudden death of the newly married daughter, the parental relatives may bent upon to make even false allegations to teach lesson to the husband and his relatives. Therefore, I have to scrutinize the evidence of these three

parental relatives very carefully.

14) Ramabai (PW-1) and Dalsingh (PW-2) are parents and Dhansingh (PW-3) is the brother of the deceased. These three witnesses have consistently reproduced one and the same story that after marriage of Deokabai when she visited the parental home at the eve of Rakhi, Diwali and Padva festival, that time she informed that five months after her marriage, all accused assaulted her for the demand of Rs. 25,000/- for digging Well. According to Deokabai, accused also used to allege that Deokabai did not know agricultural work.

15) No doubt, mere making allegations against newly married wife that she does not know agricultural work or household work properly, does not amount ill treatment within the meaning of Section 498-A of the I.P.C. On the other hand, routine wear and tear minor dispute in between family is the sign of normal married life.

16) However, demanding money and assaulting the wife to get fulfilled the demand is certainly objectionable and it will amount to cruelty within meaning of Section 498-A explanation (a) of the I.P.C. It is to be noted that in the case at hand, the reason behind demand of Rs. 25,000/- from the deceased is for digging of Well in the field of the accused. However, from the cross-examination of Balasaheb Tathe (PW-4) who is resident of village Kusali, it emerges that Well is already in existence in the field of accused No. 1 and

cotton plants in his field are irrigated from the water of that Well. In the circumstances, when already Well is in existence in the field of accused, the reason assigned by prosecution witnesses for the demand of Rs. 25,000/- by accused is proved to be false. The above referred falsity pointed out by learned Counsel for the appellant, has definitely created some doubt regarding truthfulness of these parental relatives.

17) Another important aspect is that from the cross-examination of Ramabai (PW-1), it emerges that criminal case is pending against her son Dhansingh (PW-3) for pelting stones at accused No. 1 in the Civil Hospital, Jalna, when his parental relatives met accused No. 1 for the first time after the death of deceased Deokabai. Even Dhansingh (PW-3) has admitted that such criminal case is pending in the Court of Magistrate, Jalna. Therefore, possibility cannot be ruled out that because accused No.1 lodged report against Dhansingh (PW-3) on account of causing injury to him due to pelting stone, as counter blast, on third day after death of Deokabai, Ramabai (PW-1) lodged false report.

18) Though Ramabai and her family members had knowledge regarding death of Deokabai on 19/06/1999, the F.I.R. (Exh. 28) was lodged on 22/06/1999 at 4.15 p.m. No reason is assigned by the prosecution for delay in lodging F.I.R. Thus, in the background of pendency of counter criminal case against

Dhansingh (PW-3) at the instance of accused No. 1, the clouds of doubt over the prosecution case have become more darker.

19) The most important aspect is that Dhansingh Barwal (PW-2) is the father of deceased. He has admitted in his cross-examination that despite knowledge regarding ill treatment to his daughter for demand of money by accused, neither he approached Sarpanch or other respectable persons from the village of accused to make complaint regarding mis-behavior of the accused, nor he tried to mediate the said matrimonial dispute with the help of village Panchyat. This conduct of the parental relatives of the deceased is also abnormal because in ordinary course after knowledge of such harassment of their daughter at hands of her husband and in-laws, the parents would definitely try to mediate such dispute through village Panchas or some respectable persons from the both families.

20) In the circumstances, considering the falsity of the allegations regarding demand of money for digging Well, abnormal behaviour of parental relatives of the deceased as well as pendency of counter criminal case at the instance of accused No. 1 and unexplained delay in lodging F.I.R., I have no hesitation to hold that the testimonies of the above three parental relatives of deceased is not trustworthy to base the conviction of the accused for the offences punishable under Sections 306 and 498-A read with Section 34 of the I.P.C.

21) Accordingly, my conclusion is that the conviction of the accused recorded by Ad hoc Additional Sessions Judge, Jalna in Session Case No. 124/1999 for the offences punishable under Sections 498-A and 306 read with Section 34 of I.P.C. being bad in law, deserves to be set aside by allowing this appeal.

22) Hence the following order :

ORDER

- 1) Criminal Appeal No. 500 of 2001 is allowed.
- 2) Conviction of accused No. 1 Swarupchand Ramsingh Balawane and accused No. 3 Gorabai Ramsingh Balawane for the offences punishable under Sections 306, 498-A read with Section 34 of the I.P.C. and sentence imposed by Ad hoc Additional Sessions Judge, Jalna in Sessions Case No. 124/1999 is set aside.
- 3) Accused Nos. 1 and 3 are acquitted of the offences punishable under Sections 306 and 498-A read with Section 34 of I.P.C.
- 4) Bail bonds of the appellants stand cancelled. They are set at liberty forthwith if not required in any other crime.
- 5) Fine amount deposited by accused Nos. 1 and 3 before Trial Court be refunded to them and fine amount deposited by accused No. 2 be refunded to accused No. 3 Gorabai w/o Ramsingh Balwane, after the period of appeal is over.
- 6) Under Section 437-A of the Code of Criminal Procedure, accused No.1 Swarupchand Ramsing

Balawane and accused No.3 Gorabai Ramsing Balawane shall furnish before the trial Court the bail bonds with surety for the amount of Rs. 5,000/- (Rupees Five Thousands) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

sbm/