

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

CRIMINAL APPEAL NO. 65 OF 2002

Pandurang Chandrakant Gadakh
Age : 34 years, occu.: agri.,
R/o Paregaon Gadakh, Tal.Sangamner,
District Ahmednagar.

Appellant.

Versus

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

Respondent.

Mr. S.T. Shelke, Advocate for the appellant.

Mr. P.G. Borade, A.P.P. for the State/Respondent.

CORAM : SUNIL K. KOTWAL,JJ.

**Reserved on : 5th February, 2018.
Pronounced on : 12th February, 2018.**

JUDGMENT :

1. This appeal is directed against the judgment and order of conviction of the appellant/accused No.1 for the offences punishable under Sections 498-A and 302 of the Indian Penal Code (For short "I.P.C."), passed by Ad hoc Additional Sessions Judge, Sangamner in Sessions Case No.161/2000.

2. Appellant is the original accused No.1. Respondent is the State of Maharashtra.

3. Facts leading to institution of this appeal are that accused Nos.1 to 4 were prosecuted for the offences punishable under Sections 498-A and 305 read with Section 34 of the I.P.C. The prosecution case, in brief, is that the deceased Nanda is the daughter of informant Sopan Genu Aher (PW-1). Nanda married the appellant on 10.05.1999. All accused used to reside at village Paregaon Gadakh, Taluka Sangamner jointly in one house. After the marriage, initially cohabitation of Nanda with the appellant at Paregaon was normal. Thereafter accused persons started demanding an amount of Rs. 30,000/- from the father of Nanda for construction of a new house. On that count she was subjected to ill-treatment by the accused persons. Whenever Nanda had been to her parental home, she made disclosure before her parents regarding demand made by accused and harassment to her.

4. On 27.07.1999, brother-in-law of the deceased went to the house of the informant and informed him that Nanda left her house at about 6.00 p.m. and thereafter she did not come back. On the same day at midnight the parents of Nanda and their relative Popat Rambhau went to Paregaon and joined hand with the accused in search of the deceased. They found that Slippers of Nanda were floating in the well water situated in the field of the accused. On 30.07.1999 i.e. on the next day morning, with the help

of the police dead body of Nanda took out from the well water. When her dead body was referred to postmortem examination, by submitting postmortem notes (Exh.22), the Medical Officer opined that the cause of death of Nanda was "asphyxia due to drowning". After funeral of the deceased, on the next day i.e. on 31.07.1999 informant Sopan (PW-1) lodged F.I.R. (Exh.24) against the accused persons. In the result, Crime No. 128/1999 was registered against the accused persons at Sangamner Police Station under Sections 498-A and 306 read with Section 34 of the I.P.C. During A.D. inquiry, inquest panchnama (Exh.24-A), spot panchnama (Exh.19) were prepared by A.P.I. Ramesh Shinde (PW-3). During the course of investigation, all accused were arrested and after completion of investigation, charge-sheet was submitted against all the accused persons in the Court of Judicial Magistrate, First Class, Sangamner.

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

6. Charge was framed against accused Nos.1 to 4 for the offences punishable under Sections 498-A and 306 read with Section 34 of the I.P.C. Contents of the charge were read over to the accused. They pleaded not guilty and claimed trial.

7. Prosecution examined three witnesses. After considering the oral and documentary evidence placed on record, the learned trial Court convicted only accused No.1 (the present appellant) for the offences punishable under Sections 498-A and 306 of the I.P.C. and he was sentenced to suffer rigorous imprisonment for three years and fine of Rs. 5,000/- for the offence punishable under Section 498-A of the I.P.C. and rigorous imprisonment for three years and fine of Rs. 1000/- for the offence punishable under Section 306 of the I.P.C. Accused Nos.2 to 4 were acquitted of all the charges levelled against them.

8. Against the judgment of acquittal of accused Nos.2 to 4, no appeal is preferred by the State. Only the appellant has challenged the order of conviction by filing the present appeal.

9. Heard Shri S.T. Shelke, learned Counsel for the appellant and learned A.P.P. for the State.

10. Learned Counsel for the appellant submits that except the oral disclosure by deceased regarding demand of money and ill-treatment at the hands of the accused persons to her parents (PW-1 and PW-2), no other evidence has been placed on record by the

prosecution. He submits that the spot panchnama (Exh.19) indicates that the well in which the dead body of the deceased was found, was newly dug without having parapet wall around it. He pointed out that as per the recitals of the spot panchnama (Exh.19), water streamlet was passing in the said well at the time of preparation of panchnama. Those were the days of heavy rain in the month of July, and therefore, the possibility of accidental fall of the deceased in the said unprotected well, cannot be ruled out by the prosecution.

11. His next limb of the argument is that though the dead body of deceased was found on 30.07.1999, the F.I.R. (Exh.24) was lodged on 31.07.1999 i.e. after an inordinate delay of one day, which is not at all explained by the prosecution. He has drawn my attention towards the admissions given by Sopan (PW-1) that on 30.07.1999 after the funeral, many relatives of the informant stayed at his house for a night halt and there was discussion in between them about the occurrence. Learned defence Counsel submitted that in view of this admission, possibility concoction of false case against the accused persons cannot be ruled out. Therefore, only on the basis of oral information given by the deceased to her parents, even the appellant cannot be convicted for the offences punishable under Sections 498-A and 306 I.P.C. He placed reliance

on the judgment in the case of “**Ravindra Pyarelal Bidlan Vs. State of Maharashtra**” reported in **MHLJ 1994 (1) 553** wherein this Court has only defined what is cruelty within meaning of Section 498-A- explanation (a) and (b) of I.P.C.

12. Learned A.P.P. supported the judgment passed by the learned trial Court on the ground that the parents of the deceased had no reason to falsely implicate the appellant in such a criminal case. According to the learned A.P.P., due to old age of Sopan Aher (PW-1), the F.I.R. was lodged after reasonable delay of one day. Learned A.P.P. pointed out that in the postmortem notes, one healed abrasion has been noted by the then Medical Officer.

13. The next limb of the argument of learned A.P.P. is that the well in which the dead body of the deceased was found, is in the field of the accused persons at the distance of 250 ft. from their residence and even then no action was taken by the accused persons to search the deceased. He also pointed out that no water container was found on the spot to show that while going to answer the call of nature, the deceased accidentally fell in the well water.

14. In the case at hand, except the oral disclosure by the deceased before her parents regarding demand of money and ill-

treatment at the hands of accused persons, no other evidence is available against the accused persons. Such oral disclosure by deceased before her parents is relevant only under Section 32 (1) of the Indian Evidence Act, as to cause of her death or as to any circumstances of the transaction which resulted in her death, in the case in which cause of her death comes into question. Thus, unless the prosecution proves that the death of deceased is suicidal death, her disclosure statement complaining against the accused persons before her parents, will not be admissible with the aid of Section 32 (1) of the Indian Evidence Act.

15. Undisputedly, no eye witness is available who had seen the deceased while jumping in the well water to commit suicide. The entire prosecution case regarding suicidal death of the deceased depends on only the circumstantial evidence. The A.D. report (Exh.18), admitted by defence, shows that on 30.07.1999 the brother-in-law of the deceased informed Sangamner Police Station that the deceased Nanda was missing since 29.07.1999 from 6.45 p.m. and also informed that the Slippers of the deceased were found floating on the well water situated in the field of the accused persons. Therefore, on 30.07.1999 the police visited the spot and took out the dead body of deceased from the well water by taking help of the hook. It means that the family members of the accused

persons immediately informed the Police Station, Sangamner when the deceased was found missing and her Slippers were found floating in the well water. Thus, it cannot be said that the accused did not take any action when the deceased was missing from 29.07.1999 since 6.45 p.m. Even from the cross-examination of Sopan Aher (PW-1) it emerges that accused had taken part in search of deceased on 29.07.1999 at midnight, when this witness visited the house of accused, after receiving information regarding his missing daughter.

16. The spot panchnama (Exh.19), which is also admitted by defence, makes it clear that the well in which the dead body of deceased was found, was newly dug well in the field of accused persons and no parapet wall was constructed around it. The spot panchanama (Exh.19) also indicates that from the western side of the well, a water streamlet was flowing inside the well. Thus, it is clear that the said well was absolutely unprotected well which cannot be noticed at evening hours. As per the prosecution case itself, on 29.07.1999 the deceased left her house at about 6.00 p.m. The month of July is of rainy season, and therefore, at about 6.00 p.m. in natural course only twilight would be available. Thus, considering the spot i.e. newly dug unprotected well, in which the streamlet water was flowing and availability of only twilight and the

undisputed fact that due to recent marriage she was new person in that area, who was not well aware about newly dug unprotected well, the possibility of accidental fall of the deceased in the well with water pot in her hand, cannot be ruled out.

17. Even from the evidence of Investigating Officer (PW-3), it reflects that at the time of preparation of spot panchnama he did not pump out well water to examine whether water container or pot is available inside the well. Therefore, it cannot be said that on the spot of incident water pot was not available. I do not find any substance in the objection raised by learned A.P.P. regarding absence of water pot near the well.

18. From the evidence of Sopan Aher (PW-1) it emerges that on the date of incident at evening hours the deceased left her house to answer the call of nature towards water streamlet. Thus, taking into consideration the possibility of accidental fall of the deceased in the well water, I have no hesitation to hold that the prosecution fails to prove that the death of deceased was suicidal death.

19. When the death of deceased is not suicidal death, then the disclosure statement of the deceased before her parents

complaining against the accused persons regarding ill-treatment to her for demand of money, will be inadmissible in evidence even under Section 32 (1) of the Indian Evidence Act.

20. Otherwise also, though Sopan Aher (PW-1) and his wife Thakubai Aher (PW-2) depose before the Court that they came to know from their daughter i.e. the deceased that for demand of Rs. 30,000/- accused persons used to harass the deceased by beating her, from the cross-examination of Sopan (PW-1) it emerges that he performed marriage of the deceased with the appellant because sufficient income was available to the appellant out of tailoring business. In the circumstances, it is improbable that only after one month from the marriage, the accused persons would demand a meager amount of Rs. 30,000/- for construction of a new house. Otherwise also, from the cross-examination of Sopan Aher (PW-1) it becomes clear that the house of the accused persons consists of three rooms and the accused Abasaheb and his wife used to reside in one room, the second room was occupied by deceased and the appellant and the parents of appellant occupied the third room. Thus, there was no scarcity of accommodation to the accused persons. In the circumstances, otherwise also, a demand of Rs. 30,000/- by accused persons for construction of a new house appears to be improbable.

21. The last fatal blow to the prosecution case is that the dead body of deceased was taken out from the well on 30.07.1999 and though P.S.I. Shinde (PW-3) was available to the informant on the spot when he prepared spot panchnama on 30.07.1999, the informant did not submit complaint with the said Police Officer. From the cross-examination of Sopan Aher (PW-1) it also emerges that one Police Outpost is situated at village Talegaon Dighe which is at the short distance from village Nilwande where the informant resides. Though this Police Outpost was available at very short distance from the residence of informant, he had not taken pains to immediately inform the police at least after finding of dead body of his daughter.

22. Additional damaging circumstance on record is that Sopan Aher (PW-1) has admitted in his cross-examination that on the date on which dead body of deceased was found in the well, about 100 persons including the relatives of the informant reached on the spot and they were annoyed as the accused persons demanded money from the deceased. The situation was so tense that police kept the accused persons in the house of some third person from their safety point. This witness also admits that after funeral of the deceased, his relatives had a night halt at the residence of informant and there was discussion in between them

and only thereafter F.I.R. was lodged on 31.07.1999. These admissions on record clearly indicate that there was every possibility of concoction of false case against the accused persons as per ill advice of the relatives. Even informant Sopan Aher (PW-1) admits that his relative Sopan also narrated the contents of F.I.R. to police alongwith the informant. Thus, it is absolutely certain that the parental relatives of the deceased had taken every active part at the time of lodging report. Considering all these circumstances, inordinate delay of one day in lodging F.I.R. without any reasonable explanation on the part of the prosecution is definitely sufficient to extend benefit of doubt in favour of the appellant. I hold that considering the possibility of false implication of the appellant at the instance of relatives of informant Sopan Aher (PW-1), benefit of doubt deserves to be extended in favour of the appellant.

23. However, learned trial Court totally ignored these circumstances and erroneously convicted the appellant for the offences punishable under Sections 498-A and 306 of the I.P.C. I hold that this appeal deserves to be allowed.

24. Hence, the following order.

ORDER

1. Criminal Appeal No. 65 of 2002 is allowed.

2. Conviction of the appellant in Sessions Case No.161/2000 for the offences punishable under Sections 498-A and 306 of Indian Penal Code is set aside.
3. Appellant Pandurang Chandrakant Gadakh is acquitted of the offences punishable under Sections 498-A and 306 of the Indian Penal Code. His bail bonds and surety bond shall stand cancelled.
4. The fine amount deposited by appellant before the trial Court be refunded to him after the period of appeal is over.
5. Under Section 437-A of the Code of Criminal Procedure, the appellant shall furnish before the trial Court the bail bonds with surety for the amount of Rs. 10,000/- (Rupees Ten Thousands) to appear before the Supreme Court as and when notice is issued to him 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**