

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

CRIMINAL APPEAL NO. 679 OF 2004

THE STATE OF MAHARASHTRA
through Vasudeo Ramrao Shinde,
Tq. Arani, Tq. & District Osmanabad.

Appellant
(Orig complainant)

VERSUS

HANUMANT DAMODHAR GARAD
age 32 yrs, R/o Jagji,
Tq. & Dist. Osmanabad.

Respondent
(orig. accused.)

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APP for Appellant : Mr. S P Tiwari
None present for Respondent/accused.

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CORAM : V.K. JADHAV, J.

Dated: February 17, 2018

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ORAL JUDGMENT :-

1. This is an appeal preferred by the State against the judgment and order of acquittal dated 28.6.2014 by the Adhoc Additional Sessions Judge, Osmanabad, in Sessions Case No.159/1999.

2. Brief facts, giving rise to the present appeal, are as

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follows :-

a] Deceased Sunita was given in marriage to accused Hanmant on 1.6.1998 and after marriage, deceased Sunita had gone to her matrimonial home for her cohabitation. Thereafter, parents of the deceased Sunita had sent one Bibhishan to bring Sunita for 'Yetijati', however, she was not sent. Thereafter, brother of deceased Sunita namely Hanmant was sent and accordingly, deceased Sunita had come alongwith him. On arrival, deceased Sunita disclosed to her parents that her husband used to ill-treat her for the reason that proper 'Karni-Dharni' (i.e. Exchange of the items) at the time of marriage was not performed and clothes and fan were not given in the marriage. Further, her mother-in-law i.e. accused no.2 also giving ill-treatment to her on the count that 'Potzakani' (saree) was not given to her in the marriage. However, after 8 days, Sunita was sent back for further cohabitation. Again, at the time of Panchami festival, deceased Sunita was brought to her parents house and that time she disclosed to her parents that her husband and mother in law ill-treated

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her and further insisted her to bring Laxmi (cash/gift items) for Laxmi festival. She had resided with parents for about 8 days and again she was sent for cohabitation. On 28.8.1998, deceased Sunita had consumed poison. The prosecution claims that deceased Sunita had committed suicide on account of the ill-treatment extended to her by both the accused and as such they have abetted the commission of her suicide.

b] On the basis of the complaint lodged by father, crime No.95/1998 came to be registered in the concerned police station. Before that, A.D. was also registered. After due investigation, the investigating officer has submitted charge sheet against both the accused persons. The learned Additional Sessions Judge, Osmanabad has framed charge against both the accused. Both the accused pleaded not guilty to the charge. Prosecution has examined in all four witnesses to substantiate the charges levelled against accused. Learned Adhoc Additional Sessions Judge, Osmanabad,

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by impugned judgment and order dated 28.6.2004 acquitted both the accused. Hence, this appeal.

3. Learned A.P.P. submits that, deceased Sunita died in her matrimonial home within two and half months after her marriage. Learned APP submits that, deceased Sunita had disclosed about the ill-treatment being extended to her by the accused on account of certain demands. Prosecution has examined father and mother of deceased Sunita as P.W. 1 and P.W. 2 respectively and thus proved the charge of cruelty as defined under section 498-A of the Indian Penal Code. Learned APP further submits that, the prosecution has proved the cruelty as defined under section 498-A of IPC and since deceased Sunita died within seven years of her marriage, presumption under section 113-A of the Evidence Act squarely applies and as such, it is necessary to be presumed that the accused abetted the commission of suicide of deceased Sunita. Prosecution has, thus, proved both the charges levelled against accused. Appeal is thus deserves to be allowed and

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both the accused may be convicted for the offence punishable under section 498-A, 306 read with section 34 of the Indian Penal Code.

4. None present for the respondent/original accused persons.

5. On careful perusal of the record and proceeding and impugned judgment and order passed by the learned Additional Sessions Judge, Osmanabad, I find that prosecution has examined PW 1 Vasudev, who happened to be the father of deceased Sunita and P.W. 2 Yashoda, who is the mother of deceased Sunita on the point of cruelty. It appears from the evidence that, deceased Sunita was brought to her parents house for 'Yetijati'. In the rural area of this region, soon after the marriage, newly married girl is brought to her parents home for Yetijati purpose. However, both the witnesses have failed to give exact dates as to when deceased Sunita was brought to their house. PW 1 Vasudev deposed that deceased Sunita on her arrival started

weeping and further stated that her husband and mother in law used to ill-treat her on the count that even fan was not given to him in the marriage. PW 1 further deposed that, at the same time, deceased Sunita also told to her that mother in law also told her that in the marriage Potzakani (saree) was not given and therefore, she was subjected to ill-treatment. PW 1 Vasudev has further deposed that at the time of Panchami festival, Bibhishan had gone to bring Sunita. Deceased Sunita at that time told to him that her husband used to ill-treat and assault her on the account of Karnidharni and also demanded amount on account of festival of Laxmi-Pooja. However, she was again sent back for cohabitation. PW 2 Yashoda has, however, deposed that at the time of first visit of deceased Sunita after marriage she disclosed about ill-treatment by her husband on account of clothes and fan and further deceased Sunita told to her that mother in law ill-treated her as 'Potzakani' was not given to her. PW 2 Yashoda has deposed that at the time of Panchami festival, Sunita disclosed to her that husband and

mother-in-law used to ill-treat her. PW 2 Yashoda has kept silence about the demand of cash amount at the time of Laxmi festival further ill-treatment extended to her by the accused on that count.

6. It appears that there are no details as to the nature of the ill-treatment being extended to deceased Sunita. In terms of provisions of Section 498-A of the Indian Penal Code, cruelty means : (a) any willful 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 demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

7. In the instant case, there is no evidence satisfying the requirement of section 498-A of the Indian Penal

Code. Further span is very short. As per prosecution story, within two and half months after marriage, deceased Sunita had committed the suicide by consuming poison. After the marriage, twice she had been to her parents house. Had the allegations been so severe, the parents would have gone to her matrimonial home to give understanding to the accused persons. On the other hand, they have sent deceased Sunita to her matrimonial home for further cohabitation without any hitch. Prosecution evidence is silent about the manner of the ill-treatment being extended to deceased Sunita in her matrimonial home. Evidence of PW 3 appears to be vague. There are no details as to when he actually went to the matrimonial home of deceased Sunita and witnessed the incident. Prosecution thus miserably failed to prove the cruelty as defined under section 498-A of the Indian Penal Code against accused persons.

8. It is well settled that, presumption under section 113-A of the Evidence Act can be made applicable only in the event that prosecution proves the charge of

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cruelty as defined under section 498-A of the Indian Penal Code and a woman died within seven years of her marriage. In the instant case, since prosecution has failed to prove the charge under section 498-A of IPC, the presumption under section 113-A of the Evidence Act cannot be made applicable. There is absolutely no evidence about the abetment of suicide of deceased Sunita on the part of the accused persons. Consequently, the charge under section 306 of the Indian Penal Code is also not proved. I do not find any perversity in the judgment and order of the acquittal passed by the learned Additional Sessions Judge, Osmanabad. There is no substance in the appeal. Appeal is liable to be dismissed. Hence, following order.

O R D E R

1. Criminal appeal is hereby dismissed.
2. If any action as directed under section 390 of Criminal Procedure Code is taken, and if the accused furnished surety, same shall stand cancelled.

3. Appeal is accordingly disposed of.

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(V.K. JADHAV, J.)

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