

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

CRIMINAL APPEAL NO.185 OF 2003

Navnath s/o Kacharu Gule,
Age.25 yrs. Occ. Agril.,
R/o Safiyabadwadi, Tq. Vaijapur,
Dist.Aurangabad ... APPELLANT
(Ori.Accused No.1)

VERSUS

The State of Maharashtra
(Police Station Shivoor Tq.
Vaijapur, Dist.Aurangabad) ... RESPONDENT

Mr.S.G.Thombre, Advocate for the appellant
Mr.P.G.Borade, APP for the respondent/State.

**CORAM : S.M.GAVHANE, J.
RESERVED ON : 22.10.2018
PRONOUNCED ON : 29.10.2018**

J U D G M E N T :-

1. The appellant/accused No.1 has challenged the judgment and order dated 26.02.2003 in Sessions Case No.262 of 2000 passed by the IInd Additional Sessions Judge, Aurangabad whereby he has been convicted for the offences punishable U/ss 498-A and 304-B of the Indian Penal Code (For short IPC) and sentenced to suffer rigorous imprisonment for one

year and to pay a fine of Rs.500/- and in default of payment of fine, further sentenced to suffer rigorous imprisonment for three months for the offence punishable U/s 498-A of the IPC and sentenced to suffer rigorous imprisonment for Seven years and to pay a fine of Rs.2000/-, in default of payment of fine, further sentenced to suffer rigorous imprisonment for One year for the offence punishable U/s 304-B of the IPC. Both the substantive sentences were ordered to run concurrently. The period undergone by the appellant was given set-off against the sentence recorded against him.

2. Facts leading to the institution of this appeal, in short are as under:-

(A) One Chhaya alias Shantabai daughter of the complainant Anna Abadeo Jadhav (PW-1) resident of Savkhed Phata, Tal. Vaijapur was married accused No.1 on 29.03.2000. After marriage she went to the house of accused No.1 to cohabit with him, while he was residing in the joint family with his parents accused

Nos.2 and 4 and brother accused No.3. Chhaya died on 30.04.2000 due to cardio respiratory failure due to asphyxia secondary to drowning. Accidental death case No.15/2000 was registered. The Inquest panchnama was prepared. Post mortem examination was conducted at Primary Health Centre Vaijapur and post mortem report (Exh.34) was issued stating cause of death as above.

(B) On 01-05-2000 PW-1 the father of the deceased lodged complaint (Exh.36) in Police Station Shivoor stating that the deceased was married to accused No.1 resident of Safiyabadwadi on 29.03.2000. It is alleged that in the marriage an amount of Rs. 30,000/- was agreed to be given to accused No.1 as a dowry in presence of his (complainant's) brother Gangadhar Aabadeo Jadhav, his brother-in-law Kachru Malu Nikam resident of Tunki (PW-4) and husband of his sister-in-law Narayan Mahale. On the date of marriage dowry amount of Rs.20,000/- was given in cash to accused No.1 and balance dowry amount of Rs. 10,000/- was agreed to be given after one year.

Further it is alleged that the persons from in-law's house of the deceased treated her properly for 8 days and thereafter her father-in-law, mother-in-law, her husband and husband's brother started beating and harassing the deceased saying her to bring balance dowry amount of Rs.10,000/- from her parental house. After marriage whenever the deceased had come to his (PW1's) house she had disclosed aforesaid harassment to her, to him and his other family members and she had specifically told that people from her in-law's house are harassing her by assaulting her and on asking her to bring balance dowry amount of Rs. 10,000/-. Thereupon he had told the deceased that he would give money to the people from her in-law's house whenever he would get money. However, the people from her in-law's house were harassing her by assaulting her.

(C) It is alleged that on 29.04.2000 in the evening accused No.1 had come to the house of PW-1 the complainant to take the deceased to his house. At

that time PW-1 had told him not to harass and assault the deceased for dowry and convinced him. The deceased was sent along with him to her in-law's house. On the next day i.e. on 30.04.2000 while the complainant was in the weekly market at Shivoor he came to know that the deceased died due to fall in the well. Thereupon PW-1 went to Safiyabadwadi in the Government hospital. It is alleged that the deceased committed suicide by jumping in the well.

(D) On the basis of abovesaid complaint Crime No.32/2000 was registered against husband, in-law's and brother of husband of the deceased i.e. accused Nos.1 to 4 for the offences punishable U/ss 498-A and 304-B read with Section 34 of the IPC in Shivoor Police Station and PSI Dilpak (PW-5) carried the investigation.

(E) During investigation PSI Dilpak recorded the statements of witnesses and arrested accused Nos.1 to 3 on 01.05.2000 and accused No.4 on 02.05.2000. The

accused were then released on bail. After completion of investigation police submitted charge-sheet against the accused in the Court of JMFC, Vaijapur, who then committed the case to the Sessions Court Aurangabad for Trial as the offence under Section 304-B of the IPC was triable by Sessions Court.

(F) Charge was framed against all the accused Nos.1 to 4 for the offences punishable U/ss 498-A and 304-B of the IPC to which the accused pleaded not guilty and claimed to be tried. Their defence is denial and that death of the deceased is accidental as according to them she was slipped and fell into the well when she had gone to the well for washing the cloths. Accused have not adduced evidence in defence.

(G) To prove charge against the accused prosecution has examined five witnesses and relied upon panchnamas and post mortem report referred earlier.

(H) Considering the evidence adduced by the prosecution the Trial Court held that the prosecution has proved both the offences U/ss 498-A and 304-B of the IPC against the appellant/accused No.1 beyond reasonable doubt and it has failed to prove said offences against the accused Nos.2 to 4. Accordingly by impugned judgment and order, the accused No.1 was convicted and sentenced for the aforesaid offences as mentioned earlier in the opening paragraph of this judgment and accused Nos.2 to 4 were acquitted of the aforesaid offences. Therefore this appeal by the appellant/accused No.1 challenging conviction and sentence recorded against him.

3. The appellant/accused No.1 was released on bail as per order dated 24.03.2003 in Criminal Application No.529 of 2003. Thereafter he was absent and hence bailable warrant was issued against him. As bailable warrant could not be executed non bailable warrant was issued against him. Said non bailable warrant was executed and appellant/accused No.1 is in

jail since 13.04.2017.

4. Mr.Thombare, learned counsel for the appellant/accused No.1 submitted that there is no consistency in the evidence of PW-1 father, PW-2 mother and PW-4 maternal uncle of the deceased as regards dowry amount allegedly agreed to be paid, dowry amount paid and the dowry amount to be paid after marriage to the appellant/husband of the deceased on which ground allegedly appellant/husband of the deceased and others caused cruelty to the deceased. Therefore, their evidence is not believable. It is submitted that the incident of death of the deceased is dated 30.04.2000 and PW-1 father of the deceased states that he lodged complaint in the Police Station on 02.05.2000. Thus, there is delay of three days in lodging the complaint against the accused which is fatal to the prosecution case. According to the learned counsel the complaint was lodged after thought and the accused have been falsely implicated. He also invited my attention to

the evidence of the Investigating Officer PSI Dilpak (PW-5) to point out that the Investigating Officer had seen steel pot, steel bucket having clothes for washing, chappal pair of the deceased and one bucket with rope for fetching water and submitted that the deceased had gone to the public well for washing the clothes and accidentally she fell in to the well and as such death of the deceased was accidental. Therefore according to the learned counsel the findings recorded by the Trial Court that the prosecution has proved offences of cruelty to the deceased and that death of the deceased is a dowry death respectively punishable U/ss 498-A and 304-B of the IPC against accused No.1 are not correct. He also submitted that even PW-4 maternal uncle of the deceased who was present to the funeral of the deceased on 30.04.2000 has not lodged complaint on the same day. Thus, learned counsel submitted that the prosecution has failed to prove offences U/ss 498-A and 304-B of the IPC against the accused No.1 beyond reasonable doubt and hence the impugned

judgment and order convicting and sentencing the accused No.1 for the aforesaid offences is liable to be quashed and set aside and the appellant/accused No.1 deserves to be acquitted of the said offences by allowing the appeal.

5. On the other hand Mr. Borade, learned APP appearing for the respondent/State has submitted that the deceased was married to accused No.1 on 29.03.2000. Thereafter she went to the house of accused for cohabitation. Accused treated her properly only for 8 days and thereafter they started ill-treating her for balance dowry amount of Rs. 10,000/-. As per prosecution case on 30.04.2000 possibility of the deceased ending her life by jumping in the well cannot be ruled out as observed by the Trial Court. Learned APP further submitted that Exh.32 spot panchnama discloses that the well is a public well constructed in stones having parapet wall to it and at a distance of 4 feet from the well, steel handa, steel bucket having clothes for washing,

chappal pair and bucket with rope for fetching water were found and therefore it cannot be said that the deceased fell in the well accidentally while fetching the water. Thus, according to the learned APP death of the deceased was caused otherwise than under normal circumstances within 32 days of her marriage with the appellant/accused No.1 on 29.03.2000. Therefore the Trial Court has rightly held that it is a case of dowry death punishable U/s 304-B of the IPC and further rightly held that the prosecution has proved offence U/s 498-A of the IPC against the appellant/accused husband of the deceased. It is submitted that the findings recorded by the Trial Court are in accordance with the evidence adduced by the prosecution and there is no reason to interfere with the findings recorded by the Trial Court and as such appeal being devoid of merits the same is liable to be dismissed.

6. I have carefully considered the submissions made by the learned counsel for the appellant and the

learned APP. With their assistance I have perused the record and proceeding and evidence in Sessions case No.262 of 2000. So also, I have gone through the impugned judgment and order.

7. There is no dispute that the deceased Chaya alias Shantabai was daughter of the complainant(PW-1) who is resident of Savkhed phata, Tal. Vaijapur and she was married to the appellant/accused No.1 on 29.03.2000 and after marriage she went to the house of said accused while he was residing with his parents and brother accused Nos.2 to 4 at Safiyabadwadi, Tal. Vaijapur, District Aurangabad. There is no dispute that on 30.04.2000 deceased was found dead in the public well at village Safiyabadwadi in the afternoon and she was declared dead by the Medical Officer at about 1.00 p.m. on that day. On the same day she was cremated at the village of the accused.

8. As regards death of deceased it is the case

of the prosecution that due to cruelty caused to her by the accused she committed suicide and as such her death is otherwise than under normal circumstances and the defence of the accused is that her death is accidental. Therefore in the first place it is necessary to see whether death of the deceased is accidental or suicidal. On perusal of the post mortem report (Exh.34) it is clear that the deceased died due to the cardio respiratory failure due to asphyxia secondary to drowning, which report is admitted by the accused. Similarly in the inquest panchnama (Exh. 33) it is mentioned that death of the deceased was caused due to drowning. Thus, it is certain that death of the deceased was caused due to drowning. There is no dispute that dead body of the deceased was found in the public well at village Safiyabadwadi around 12.00 p.m. on 30.04.2000. The Investigating Officer (PW-5) had prepared panchnama of spot of incident (Exh.32) which is admitted by the accused. This panchnama shows that the well is a public well constructed in stones. Further it shows that at a

distance of 4 feet from the parapet wall of well i.e. 'railing', steel handa, steel bucket having clothes for washing, chappal pair of a lady, one bucket with rope for fetching water were found. Ashok Eknath Jadhav (PW-3) police Patil of village Safiyabadwadi has also stated that he had seen pot of washing cloths on the well and ladies of village Safiyabadwadi used to go to said public well for washing cloths. It is pertinent to note that as per defence version the deceased fell in to the well while fetching the water for washing the cloths and as such her death is accidental. As mentioned above bucket with rope which is being used for fetching water from the wall was found at a distance of 4 feet from the well. Had it been the case that the deceased would have fallen in the well while fetching the water with the help of bucket having rope she would have fallen in the well with bucket having rope. But it is nobody's case that bucket having rope was found in the well. Therefore when bucket having rope was not found in the well and it was at a distance of 4

feet from the well case of the defence that the deceased was suddenly fallen due to slip while fetching the water from the well is not acceptable. Another aspect to be noted is that as mentioned earlier the well in question was constructed in stones and there was parapet wall i.e. 'railing' to it. If there was parapet wall to the well it does not stand to reason that there was possibility of falling the deceased in the well while fetching the water from the well as per the case of the defence. Moreover nobody has seen the deceased falling in the well while fetching the water from the well. In such circumstances simply because PW-3 police Patil in his report says that he came to know that the deceased was fallen in the well while fetching the water is not sufficient to state that deceased was fallen in the well accidentally. Thus, from the above circumstances on record it can be said that the deceased went to the well with cloths for washing and at that time she had committed suicide. As such her death is not accidental but her death is suicidal and

otherwise than under normal circumstances. The Trial Court has rightly appreciated the evidence and came to the conclusion that death of the deceased was suicidal and otherwise than under normal circumstances.

9. As regard the offence U/s 498-A of the IPC, to prove the same prosecution has relied upon the evidence of father (PW-1), mother (PW-2) and maternal uncle (PW-4) of the deceased. The evidence of PW-1 is that in the marriage of the deceased dowry of Rs. 30,000/- was agreed to be given by him to the accused No.1. However in marriage Rs.20,000/- were given to accused No.1 in cash. The balance dowry of Rs. 10,000/- was due to him and it was agreed to be given after one year of the marriage. His evidence further shows that after marriage his daughter the deceased had been to the house of the accused No.1 for cohabitation at village Shivoorwadi. Accused No.1 was residing in joint family with his parents and brother accused Nos.2 to 4. After 8 days of the marriage

accused Nos.1, 2 and 4 started beating deceased, on the count of demand of dowry of Rs.10,000/-. After two days of accused No.1 left deceased Chaya at his house, Chaya disclosed them beating to her on the count of demand of dowry and she told that he should arrange for dowry of Rs.10,000/- and he told her that he would make payment of dowry within 8 days. He stated that on third day of it accused No.1 came to fetch the deceased at his house and he gave understanding to him not to beat the deceased and that he would arrange for dowry amount of Rs. 10,000/-. Accused No.1 was insisting him that he should send deceased immediately at his house and he told him that he should take away her on the next day morning as it was 7 p.m., he was insisting to take away her immediately. Accused No.1 took the deceased at his house. He stated that he came to know that the deceased died due to fall in the well and he lodged complaint (Exh.36) in Police Station.

10. In the cross examination PW-1 has stated

that he had stated to police in his complaint that after 2-3 days of beating to deceased she was brought by accused No.1 at his house and after 2-3 days of her stay accused No.1 had been to his house to fetch her and insisted to take her immediately. He could not assign reason why the same is not found in his complaint (Exh.36). No suggestion in this respect was specifically put up to the investigating officer (PW-5) who recorded complaint (Exh.36) to prove omission as above. Even if it is said that omission as above in Exh.36 is proved said omission is not material. It is well settled that purpose of filing FIR or complaint to police about the offence is to set the criminal law in motion and it is not expected to mention each and everything in the FIR. PW-1 has denied that no dowry of Rs.30,000/- was agreed to be given to the accused No.1 and that he has not paid dowry of Rs.20,000/- to the accused No.1. So also, he has denied that dowry of Rs.10,000/- was not due to him as deposed by him. Thus, nothing is found in favour of the accused in the cross examination of

PW-1.

11. The above referred evidence of the complainant father of the deceased as regards cruelty to her is corroborated by PW-2 mother and PW-4 maternal uncle of the deceased as PW-2 has stated that after 8 days of marriage accused No.1 was insisting the deceased to bring balance dowry of Rs. 10,000/- and after 10 days of marriage the deceased had been to her house alongwith his son (son of witness) and the deceased disclosed them that she requires dowry amount. Deceased also disclosed to her that her husband requires said amount. She stated that they had shown their inability to pay the amount. PW-2 further stated that the deceased also told her that on the count of dowry demand her husband is ill-treating her. Deceased stayed at her house for 4-8 days and thereafter her husband had come to take her. They told her husband that they would pay amount after some days. Then they received message of death of the deceased on the day of month

of marriage. So also, PW-4 has stated that after marriage the deceased had been to the house of accused No.1 for cohabitation and he was residing in joint family with other accused. After 10-12 days the deceased was brought at the house of her parents. At that time he had been to the house of father of the deceased. The deceased told him that accused No.1 was insisting for payment of dowry of Rs.10,000/- and that they should pay it. So also, she told him that on that count accused Nos.1,2 and 4 are harassing her. She also told him that accused No.1 was beating her and she did not tell them as to what was the ill-treatment given by accused Nos.2 to 4. Though both PWs 2 and 4 have been cross-examined, their aforesaid evidence has not been shattered. They are respectively mother and maternal uncle of the deceased. Therefore, it was quite natural for the deceased to tell them about the ill-treatment caused to her by accused No.1 for demand of balance dowry amount of Rs.10,000/- out of dowry amount agreed at the time of marriage.

12. Thus, on the basis of evidence of PWs 1,2 and 4 it can be said that accused No.1 started harassing the deceased after 8 days of her marriage to fulfill unlawful demand of balance dowry of Rs. 10,000/- and caused cruelty to her within the meaning of explanation (b) to section 498-A of the IPC. The Trial Court has rightly held so.

13. As regards offence U/s 304-B of dowry death as referred earlier it has come in the evidence of PW-1 father of the deceased that at the time of marriage of the deceased with accused No.1 dowry of Rs.30,000/- was agreed to be given to accused No.1 and Rs.20,000/- were given to accused No.1 at the time of marriage and balance dowry amount of Rs. 10,000/- was agreed to be given after one year. Said evidence is not shattered in the cross-examination of PW-1. The evidence of PW-1 regarding dowry as above is corroborated by PW-4 his brother-in-law and maternal uncle of the deceased as he has stated that marriage of deceased with accused No.1 took place on

29.03.2000, it was agreed to pay dowry of Rs.30,000/- to accused No.1. PW-1, Narayan Mahale and he were present at the time of fixing the dowry amount in the marriage. Rs.20,000/- were paid to accused No.1 and balance amount of Rs.10,000/- was due to PW-1. His evidence is also not shattered in the course of his cross examination. Thus, on the basis of evidence of PWs 1 and 4 it can be said that dowry of Rs.30,000/- was agreed to be paid to accused No.1 in the marriage of deceased, out of said dowry amount an amount of Rs.20,000/- was paid to him at the time of marriage and balance dowry amount of Rs.10,000/- was to be paid to accused No.1 by PW-1 the father of the deceased after one year of the marriage. As said earlier for balance dowry amount of Rs.10,000/- the accused No.1 caused cruelty to the deceased.

14. As mentioned earlier there is no dispute that the deceased was married to accused No.1 on 29.03.2000 and she died on 30.04.2000. It is held that her death is not accidental and her death is

suicidal and it was caused otherwise than under normal circumstances. Therefore presumption U/s 113-B of the Evidence Act can be drawn in favour of the prosecution. Said Section 113-B of the Evidence Act regarding presumption as to dowry death is that, '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 had been subjected by such persons 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.' In the present case as discussed above soon before death of the deceased accused No.1 subjected her to cruelty in connection with balance amount of dowry of Rs.10,000/- and therefore it can be said that accused No.1 has caused dowry death which offence is punishable U/s 304-B of the IPC. In the above circumstances the argument advanced by the learned counsel for the appellant/accused No.1 that the evidence of PWs 1,2 and 4 is not believable is not accepted.

15. Learned counsel for the appellant submitted that the incident took place on 30.04.2000. The father, mother and maternal uncle of the deceased attended funeral of the deceased on 30.04.2000 at the village of accused. They have not made complaint on the same day. The complaint/FIR (Exh.36) is made on 01.05.2000 and PW-1 states that it was made after two days of death. Thus, there is delay of two days in lodging the complaint and the said delay is not explained by the prosecution. Thus, according to the learned counsel said delay is fatal to the prosecution case and hence possibility of falsely implicating the accused by the complainant-father of the deceased cannot be ruled out and hence the case of the prosecution is not acceptable. There is no dispute that the deceased died on 30.04.2000. She was cremated at the village of the accused on the same day after post mortem examination at 3.45 p.m. The complaint/FIR (Exh.36) shows that it was filed by the father of the deceased on 01.05.2000 i.e. on the next day of death of the deceased and it was filed at

17.10 hours i.e. 05.10 p.m. in Police Station, Shivoor. PW-5 the investigating officer has also stated the same and he denied that the complaint was made on 02.05.2000 and in collusion with parents of deceased he mentioned the date on complaint as 01.05.2000. Thus, in my view when immediately on the next day of incident the FIR was filed, infact it cannot be said that there is delay in lodging the FIR. Even if it is said that there is a delay of one day in lodging the FIR, it cannot be said to be fatal to the prosecution when PW-1 father of the deceased stated that he was mentally shocked due to death of the deceased. For the reasons discussed above the evidence of father, mother and maternal uncle i.e. PWs 1,2 and 4 of the deceased is cogent and consistent as regards cruelty caused to the deceased and the evidence of PWs 1 and 4 is consistent as regards dowry demand made by the appellant/accused No.1 from the deceased and there is no reason to disbelieve the said evidence as discussed earlier. Therefore, argument advanced by the learned counsel

for the appellant that due to delay in lodging the FIR, there is a possibility of falsely involving accused is not accepted.

16. For the reason discussed above, I hold that the prosecution has proved offences U/ss 498-A and 304-B of the IPC beyond reasonable doubt against the accused No.1. The Trial Court has rightly held that the prosecution has proved said offences against the accused No.1. Considering the punishment provided for the said offences, the Trial Court has properly sentenced the accused No.1 for the offences U/ss 498-A and 304-B of the IPC with fine as per the impugned judgment and order. There is no error committed by the Trial Court in appreciating the evidence and holding the appellant/accused No.1 guilty for the offences U/ss 498-A and 304-B of the IPC. Therefore conviction and sentence recorded by the Trial Court for the said offences is confirmed. There is no ground to interfere with the impugned judgment and order. As such appeal being devoid of merits, the

same is liable to be dismissed. Accordingly the appeal is dismissed.

17. Appellant/accused No.1 is in jail. The record and proceedings in Sessions Case No.262 of 2000 be sent to the Trial Court forthwith for further necessary compliance.

[S . M . GAVHANE , J .]