

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

CRIMINAL APPEAL NO. 343 OF 2003

Deepak Kishanrao Narwade
Age : 26 years, occu.: service
R/o Anmal, Taluka Mahur,
District Nanded.

Appellant.

Versus

The State of Maharashtra
Through Incharge of Police
Station, Mahur, District Nanded.

Respondent.

Mr. P.V. Mandlik, Advocate for the appellant.
Mr. Y.G. Gujarathi, A.P.P. for the State/respondent.

CORAM : SUNIL K. KOTWAL,J.

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

JUDGMENT :

1. Original accused No. 1 in Sessions Case No.156/2001 has taken exception to the judgment and order of conviction under Section 498-A and 306 of the Indian Penal Code (hereinafter referred to as "I.P.C.") passed by 3rd Additional Sessions Judge, Nanded. Respondent is State of Maharashtra.

2. Facts leading to institution of this appeal are that Chokhoba Madhavrao Sarpate was the father of six daughters and one son. He resided at Digras, Taluka Ardhapur, District Nanded. Deceased Sheela was one of his daughter, who married accused

No.1 Deepak Kisan Narwade, resident of village Anmal, Taluka Mahur, District Nanded, prior to two years before the death of Sheela. One of the daughter of Chokhoba namely Chhaya also resided at village Anmal with her husband Sarinath and her house was near the house of accused No.1.

3. Prosecution case in brief is that after marriage of deceased Sheela, she cohabited with accused No.1, his parents and other family members. For the period of one year the matrimonial life of Sheela was happy and normal. However, thereafter whenever Sheela came to her parental home at the eve of festivals, she used to inform her parents that her husband ill treated her by doubting her character. Sheela also complained against her in-laws and other family members that they ill treated her because she was not able to do household properly and because Sheela was elder than her husband. Six months before the incident when Chokhoba Sarpate (PW-1) paid visit to the house of accused persons at Anmal, all accused asked him to take Sheela with him to her parental home as she was not able to do household work properly. Therefore, Chokhoba (PW-1) took Sheela to her parental home at Digras. However, again four months thereafter brother-in-law of Sheela came to the house of Chokhoba Sarpate (PW-1) at Digras and asked him to send Sheela at Anmal. Therefore, Chokhoba (PW-1) took Sheela to the house of accused at Anmal.

4. On 02.03.2001 one Avinash Sampatrao Narwade informed Chokhoba (PW-1) that Sheela had consumed insecticide, and therefore, on next day morning he rushed to Anmal. However, by that time Sheela passed away. On the same day i.e. on 03.03.2001 Chokhoba Sarpate (PW-1) lodged F.I.R. (Exh.27) to Police Station, Mahur. In the result, Crime No.8/2001 was registered against the accused for the offences punishable under Sections 498-A, 306 read with Section 34 of the I.P.C.

5. When dead body of deceased Sheela was referred for postmortem examination, Medical Officer, Mahur opined that cause of death of Sheela was "cardio-respiratory failure due to insecticide poisoning". A.P.I. Bamne conducted initial part of the investigation and prepared inquest panchnama of the dead body, spot panchnama (Exh.37) and seized tin box of insecticide as well as one steel pot having smell of insecticide from the spot of the incident. After completion of the investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class at Mahur.

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

7. Charge (Exh.18) was framed against the accused Nos.1 to 6 for the offences punishable under Section 498-A and 306 read

with Section 34 of I.P.C. Accused pleaded not guilty and claimed trial.

8. Prosecution examined total 9 witnesses. Defence of the accused is of total denial. No defence witness is examined by accused.

9. After considering the evidence placed on record, the learned trial Court pleased to acquitt accused Nos.2 to 6 of all charges. However, accused No.1 was convicted for the offence punishable under Sections 498-A and 306 of the I.P.C. and he was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2000/- for the offence punishable under Section 498-A of I.P.C. and rigorous imprisonment for three years and fine of Rs. 5,000/- for the offence punishable under Section 306 of the I.P.C. Therefore, this appeal arises.

10. Heard Shri P.V. Mandlik learned Counsel for appellant and learned A.P.P. for the State.

11. Learned Counsel for the appellant assailed the judgment of conviction on the ground that prosecution has examined only Chokhoba (PW-1) who is father of deceased and Sheshabai Sarpate (PW-3) who is the mother of deceased. He pointed out that though Chokohba (PW-1) deposed regarding harassment of the deceased at the hands of accused No.1 on account of doubt

regarding her character, mother Sheshabai (PW-3) has not whispered a single word regarding ill treatment to the deceased at the hands of any accused. Learned Counsel for the appellant submitted that mother Sheshabai (PW--3) was the person who should have disclosed regarding harassment of the deceased at the hands of accused, because normally mother is closely associated with her daughter. He submitted that in view of total silence on the part of Sheshabai (PW-3) regarding ill treatment at the hands of accused to the deceased, the sole testimony of Chokhoba Sarpate (PW-1) is not sufficient to convict accused No.1 for the offence punishable under Sections 498-A and 306 of I.P.C. He placed reliance on **"Gurucharan Singh Vs. State of Punjab" [2017 (1) Mh.L.J. (Cri.) 243]**, **"Ramesh Kumar Vs. State of Chhattisgarh" [2002 Bom C.R. (Cri.) 433]**, **"Dattatraya and another Vs. State of Maharashtra" [2015 (4) Bom C.R. (Cri.) 165]** and **"Kishor Jadhav and others Vs. State of Maharashtra" [2017 (2) Bom C.R. (Cri.) 128]**.

12. In reply, learned A.P.P. for the State submitted that only because Chokhoba Sarpate (PW-1) is parental relative of deceased, his testimony cannot be discarded if otherwise it is trustworthy. According to A.P.P. though mother Sheshabai (PW-3) has not whispered a word regarding ill treatment at the hands of accused, the father of deceased namely Chokhoba (PW-1) has categorically

deposed on oath that whenever the deceased visited her parental home at the eve of festivals, she informed her parent regarding her harassment at the hands of the accused on account of doubt of her character and her inability to do household work. Learned A.P.P. placed reliance on "**Pawan Kumar Vs. State of Haryana**" [1998 (3) SCC 309].

13. I have gone through above-cited authorities relied on by rival parties. The legal principles which can be culled out, are as under :-

- (a) *Cruelty or harassment within the meaning of Section 498-A of the I.P.C. need not be physical and it can be mental also.*
- (b) *Continuous quarrel between husband and wife coupled with repeated dowry demand from her husband and his other family members constitute abetment for commission of suicide by wife.*
- (c) *To attract offence under Section 306 of I.P.C. there must be positive act on the part of the person who is said to have abetted the commission of suicide. The person must have played an active role either to instigate or to facilitate the commission of suicide by person committing suicide.*
- (d) *There must be proof of direct or indirect act of incitement to the commission of suicide.*
- (e) *Simply because wife had committed suicide, conclusion cannot be drawn that it was committed on account of ill treatment at the hands of husband and his relatives.*
- (f) *If course of conduct amounting to cruelty is established, leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A of I.P.C., it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.*

- (g) *Teasing by husband and ill treating her for mistakes which could have been pardonable and turning out of house does not amount to cruelty within the meaning of Section 498-A of I.P.C.*
- (h) *Presumption under Section 113-A of the Evidence Act is not mandatory. It is only permissive. Before drawing presumption Court shall have to have regard to "all the other circumstances of the case". The presumption is rebuttable one.*
- (i) *The evidence of physical and mental torture has come from mother, brother and other close relatives, such deposition by close relations need not be discarded simply on the score of absence of corroboration by independent evidence. It is not expected that physical torture by husband and mother in law should be made in such a way as to be noticed by tenants living in the adjoining portion of the house or by neighbours.*

14. In view of above-referred legal principles, if the evidence of prosecution witness is analysed carefully, it emerges that in the case at hand the suicidal death of the deceased Sheela is an admitted fact. Even at the stage of arguments, the learned Counsel for the appellant has fairly conceded that appellant does not dispute the suicidal death of deceased Sheela. Therefore, I have to only consider the evidence of father of deceased Chokhoba Sarpate (PW-1), mother of deceased Seshabai Sarpate (PW-3) and Sarinath Lone (PW-6) who is brother in law of deceased Sheela.

15. It is to be noted that Sarinath Lone (PW-6) is the husband of the Chhaya, who is real sister of deceased Sheela. Sarinath (PW-6) is resident of village Anmal and his residence is near the house of accused person and the deceased. Sarinath (PW-6) merely deposes that he came to know that on petty reasons

such as household work quarrel took place in between deceased and the accused persons and those quarrels were resolved and thereafter everything was going on well. No doubt, learned A.P.P. cross-examined this witness at length, however, nothing could be elicited in his cross-examination to dispute his above-referred version.

16. In addition to this, Seshabai Sarpate (PW-3), who is the mother of deceased Sheela, deposes that after the marriage of Sheela she was treated properly for the period of two years. According to Seshabai (PW-3) accused used to say that Sheela doesn't know household work properly. Making such complaint by husband and in-laws regarding newly married wife and daughter in law certainly does not amount to cruelty within the meaning of Section 498-A of the I.P.C. On the other hand, such type of minor wear and tear dispute in the family is the sign of live married life and it cannot be treated as harassment of the wife or daughter in law. Thus, the evidence placed on record by prosecution shows that the mother, who is generally close to her married daughter, has nowhere whispered single word that whenever Sheela paid visit to her parental home, she made any complaint regarding ill treatment at the hands of her husband on account of doubt of her character or for any other reason.

17. In the circumstances, when mother of the deceased and husband of the sister of deceased, who is resident of same village, have nowhere whispered a word regarding ill treatment to Sheela at the hands of the accused, merely on the basis of deposition of Chokhoba Sarpate (PW-1) that Sheela used to inform him that her husband ill treated her on account of doubt of her character, accused cannot be convicted for the offence punishable under Section 498-A and 306 of the I.P.C. On the other hand from the cross-examination of Chokhoba (PW-1) it emerges that during the stay of Sheela at her matrimonial home, she never sent any letter or message to her father regarding ill treatment to her at the hands of her husband or in-laws. From the cross-examination of Chokhoba (PW-1) it emerges that though he was informed by his daughter regarding ill treatment to her at the hands of her husband, he did not try to arrange the meeting of Village Panchas, to give any understanding to the accused persons. In natural course, had the deceased made any such complaint to her parents against her husband and in-laws, certainly initially they would have tried to give understanding to the husband and in-laws of their daughter for their misbehaviour and thereafter they would have taken the help of marriage mediator or some respectable villagers from their village, to mediate in the matter. However, total inaction on the part of Chokhoba (PW-1) despite knowledge regarding ill treatment to his

newly married daughter, create doubt regarding trustworthiness of this witness on account of his absolutely abnormal behaviour. Therefore, I hold that in the background of total silence by mother and brother-in-law of deceased regarding ill treatment to the deceased by any accused and total abnormal conduct of Chokhoba (PW-1), the sole testimony of Chokhoba (PW-1) is not sufficient to establish guilt of accused No.1 beyond reasonable doubt under Section 498-A and 306 of the I.P.C. I hold that benefit of doubt goes in favour of the accused.

18. In the result, my conclusion is that the conviction recorded by learned trial Court against accused No.1 for the offences punishable under Sections 498-A and 306 of the I.P.C. as well as sentence imposed for these offences is bad in law and deserves to be set aside, by allowing this appeal.

Hence, the following order.

ORDER

1. Criminal Appeal No. 343 of 2003 is allowed.
2. Conviction of the accused Deepak Kishanrao Narwade for the offences punishable under Sections 498-A and 306 in Sessions Case No.156/2001 recorded by 3rd Additional Sessions Judge, Nanded, is set aside.
3. Accused Deepak Kishanrao Narwade is acquitted of the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

4. His bail bonds shall stand cancelled. He be set at liberty forthwith if not required in any other offence.
5. Fine amount deposited by accused be refunded to him after the period of appeal is over.
6. Under Section 437-A of the Code of Criminal Procedure, accused Deepak Kishanrao Narwade shall furnish before the trial Court the bail bonds with surety for the amount of Rs. 5,000/- (Rupees Five 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**

vdd/