

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.452 OF 1997

1. Shrikant Appaso Jadhav.	]	
Age – 26 years,		
2. Smt. Vimal Appaso Jadhav,	]	
Age – 45,	]	
Both are residents of Ganesh Nagar,	]	
Ichalkaranji, Dist. Kolhapur.	]	... Appellants

Versus

State of Maharashtra.	]	... Respondent
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Mr. Prashant Badole for Appellants.
Ms. R. M. Gadhavi, APP for State.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 17 FEBRUARY, 2018

JUDGMENT :-

1. This is an Appeal preferred by the Appellants who were the original accused nos.1 and 2 against the Judgment and Order dated 07/08/1997 passed by the 4th Additional Sessions Judge, Kolhapur in Sessions Case No.9 of 1997 whereby both of them were convicted under Section 306 read with 34 of the IPC and were sentenced to suffer R.I. for five years and to pay fine of Rs.1,000/- and in default of payment of fine, to suffer further R.I. for one year. By the same Judgment, both the Appellants were also found guilty under

Section 498A read with 34 of the IPC and were sentenced to suffer R.I. for two years each and to pay fine of Rs.5,000/- each and in default to suffer R.I. for one year. Both of them, however, were acquitted from the charges for commission of the offence punishable under Section 304-B read with 34 of the IPC. The State has not preferred any appeal against the acquittal under Section 304-A read with 34 of the IPC.

2. The prosecution case pertains to the death of Ujwala who was the wife of the Appellant No.1 and the daughter-in-law of the Appellant No.2. The Appellant No.2 is the mother of the Appellant No.1. According to the prosecution case, the Appellant No.1 got married with the deceased in the year 1991. Initially, both of them were residing separately and in the year 1996, they along their two young children, started residing with the Appellant No.2 and the brother of the Appellant No.1. The incident occurred on 15/07/1996 when Ujwala committed suicide in their house by pouring kerosene on herself and setting herself on fire. At that time, no one was in the house. A neighbour came and extinguished the fire. The Appellant No.1 was informed by others and he gave his information to the police station which was registered as A.D.No.47 of 1996 at Ichalkaranji Police Station. The father of the deceased Ujwala was informed who reached Ichalkaranji late in the evening. In the night, last rites were performed and on the next day at about 5.45 p.m. the F.I.R. was lodged vide C.R.No.61 of 1996 at Ichalkaranji Police Station under Sections 498A, 306 read with 34 of the IPC. Before lodging of the

F.I.R., the police had already conducted the inquest panchanama and the spot panchanama. The post-mortem examination was also conducted which showed 100% burn injuries and the cause of death was given as death due to 100% burn injuries. Though the viscera was preserved, subsequently the analysis showed that there was no poison detected in the viscera and the cause of death was 100% burn injuries which Ujwala had suffered. After registration of the FIR, statements of witnesses were recorded. The usual investigation was conducted. The muddemal articles were sent for chemical analysis. The accused were arrested and after completion of investigation, the charge-sheet was filed and the case was committed to the Court of Sessions at Kolhapur.

3. The learned Trial Judge framed the charges under Sections 498A read with 34, 304-B read 34 and 306 read with 34 of the IPC. Both the Appellants denied the charges and claimed to be tried.

4. I have heard Mr. Prashant Badole, learned Counsel for the Appellants and Ms. R. M. Gadhavi, learned APP for State and with their assistance, I have perused the evidence and gone through the record and proceedings.

5. In support of its case, the prosecution examined 10 witnesses out of which PW 1 Ishwar Konte was the father of the deceased, PW 2 Sidram Konte was PW 1's brother and uncle of the

deceased, PW 6 Vikas Gaikwad was neighbour of PW 2. These three witnesses have deposed about the demand of Rs.3,000/- by the accused and the ill-treatment meted out to Ujwala on that count.

6. PW 3 Sidram Konte was examined as a panch present when the spot panchanama was carried out in connection with A.D.R.No.47 of 1996. The spot panchanama shows that the incident had occurred inside the house of the Appellants. There were two rooms in the house. In one of the rooms Ujwala had poured kerosene on herself and set herself on fire. In the said room, police found one plastic can having capacity of 10 litres and containing 5 to 6 litres of kerosene. There was a matchbox nearby. These articles, along with some burnt clothes and the kerosene spread on the floor, were seized for the purpose of analysis. This evidence, along with the evidence of PW 5 Dr. Ramchandra Phadnis who has deposed that the deceased had suffered 100% burn injuries and that was the cause of death; shows that the deceased has committed suicide by pouring kerosene on herself and setting herself on fire by using matchstick. There is no serious challenge to this evidence by the Appellants. PW 4 Raghunath Mete was the neighbour of the Appellants and the deceased, who had rushed to their house on hearing the shouts and found that Ujwala was burning. He threw water on her to extinguish the fire. Even the accidental death report lodged by the Appellant No.1 which is on record at Exh.22/C shows that he was informed by others that the deceased had suffered burn injuries and his own case in the said A.D.R. is that the deceased had poured kerosene on herself and had

committed suicide. All these factors unerringly point to the fact that the deceased Ujwala had committed suicide.

7. The next crucial question remains to be decided is, as to whether the Appellants can be said to be responsible for the incident and the commission of suicide by Ujwala. Though the charges were framed under Section 304-B read with 34 of the IPC, the Trial Court had acquitted the Appellants from those charges and there is no appeal preferred by the State against such acquittal. In any case, the reasoning of the Trial Court in that behalf is correct because even as per the prosecution case, though the demand of Rs.3,000/- was made, it was not in connection with the dowry as defined under the Dowry Prohibition Act, 1961.

8. To prove that the Appellants were demanding Rs.3,000/- from the deceased and since the said amount was not paid, they were ill-treating the deceased; the prosecution has examined 3 witnesses. The first is PW 1 Ishwar Konte who was the father of the deceased, the second witness is Sidram Konte who is the brother of PW 1 and the third witness is PW 6 Vikas Gaikwad who was the neighbour of the PW 2.

9. PW 1 Ishwar Konte has deposed that the marriage between his daughter deceased Ujwala and the Appellant No.1 had taken place in the year 1991 and he had borne the expenses for the marriage. According to him, initially Ujwala and the Appellant No.1 stayed separately and only a few months prior to the incident, they

started residing with the Appellant No.2. It is his specific case that the Appellant No.1 treated Ujwala nicely during the period when they had stayed together. He has further deposed that 2.1/2 months prior to the incident dated 15/07/1996, the Appellant No.1 and Ujwala had been to his house asking for Rs.3,000/- to purchase a plot. He has deposed that after the Appellant No.1 had left, he had told Ujwala that he was willing to pay the said amount only if the plot was to be purchased in the name of the Appellant No.1 and not in the name of the Appellant No.2. It is his further case that after about 15 days, Ujwala again came to him and informed him that she was being ill-treated and harassed as the said amount of Rs.3,000/- was not paid. This time PW 1 advised Ujwala to go to PW 2 Sidram and ask for the said amount. PW 1 has further deposed that again after 15 days Ujwala came to him and repeated her grievance. PW 1 has further deposed that thereafter he went to his brother and requested him to tell the accused that PW 1 was not in a position to pay the money. Thereafter on 15/07/1996, he was informed about the incident. He went to Ichalkaranji and as mentioned before, after the last rites were performed, on the next day at about 5.45 p.m., lodged his F.I.R. In his examination-in-chief itself, he has admitted that the ornaments which were given to Ujwala were still on her person at the time of her death. He has also admitted that it was his opinion that Ujwala had committed suicide because she was ill-treated and harassed by the Appellants. If his evidence is read in the light of the F.I.R. which he has lodged, it can be seen that he mentions three occasions in his deposition when the deceased had visited him in connection with the

demand of Rs.3,000/-. The first of these visits was important because that was the first time when the amount of Rs.3,000/- was demanded. At that time, according to his F.I.R., she had alone visited him. There is no mention that she was accompanied by the Appellant No.1. So, the basic premise of allegation regarding the demand of Rs.3,000/- is not satisfactorily established by the prosecution. Thereafter, the F.I.R. does not make any reference to her subsequent two visits and at which time she had informed the PW 1 that she was being harassed and ill-treated by the Appellants as the demand of Rs.3,000/- was not fulfilled. Thus, the overall analysis of the evidence of this witness shows that his evidence is not reliable to hold firstly, that there was a demand of Rs.3,000/- and secondly, there was a ill-treatment or harassment caused to Ujwala because of non-fulfillment of the same.

10. The second witness i.e. PW 2 Sidram Konte is the uncle of the deceased Ujwala and brother of PW 1. According to him, Ujwala had been to his house and had informed him that the Appellants were demanding Rs.3,000/- for purchasing a plot and since the money was not paid, they were beating her. He has further deposed that 15 days prior to her death, Ujwala had come to his house and had informed him that she was being ill-treated and harassed by the Appellants as the said amount of Rs.3,000/- was not paid. According to him, he tried to tell the Appellants not to ill-treat her. He has further deposed that on the day of the incident, he got the information about the incident. His brother PW 1 arrived at about 8.00 to 8.30 p.m. In his cross-examination, he has denied that he wanted his own daughter to

get married with the Appellant No.1 and the Appellant No.2 was opposed to such alliance and therefore he held a grudge against the Appellants. He has admitted that before lodging the F.I.R., they had met office bearers of 'Mahila Dakshata Committee'.

11. Through the evidence of PW 10, API Suryavanshi, the defence has brought out omissions from this witness's evidence. It was brought on record that this witness PW 2 Sidram Konte had not narrated in his statement before the police that Ujwala had visited him 15 days prior to her death. This witness also conceded that his police statement does not mention that Ujwala had demanded money from him to pay the accused. The prosecution has tried to corroborate evidence of this witness by the evidence of PW 6 Vikas Gaikwad who was a neighbour of PW 2. According to PW 6 Vikas Gaikwad, one month prior to the incident, Ujwala had approached the PW 2 in his house and had informed about the demand of Rs.3,000/- and the ill-treatment meted out to her on non-fulfillment of the same. According to him, he was present in the house when Ujwala had disclosed this fact to PW 2. PW 2 Sidram himself had not mentioned about the presence of this witness when Ujwala had told PW 2 about her grievance. Moreover, the contradictions in his evidence which are brought on record vide Exh.32 and Exh.33 show that he had made contrary statements before the police and the date of visit of Ujwala to the house of PW 2 had varied from two months to three months and thus his evidence was not clear in respect of as to when Ujwala had actually met PW 2 and had put forth her grievance. Thus, reading the

evidence of PW 2 and PW 6, it appears that their evidence is not cogent. In my opinion, the evidence of PW 2 and PW 6 is not satisfactory and the prosecution case is not proved through their evidence. It is significant to note that PW 2 was residing just 4 to 5 kms away from the house of the deceased and therefore, if the ill-treatment or the instances of ill-treatment were so severe, she could have easily reached him on every occasion to put forth her grievance before him. There is no evidence to suggest that the Appellants had stopped Ujwala from visiting him. Thus, the prosecution has not proved that Ujwala was being ill-treated or was being harassed by the Appellants on account of non-payment of Rs.3,000/-.

12. The Appellants, through their Written Statement u/s 313 of Cr.P.C., have produced Sale Deed dated 25/04/1996 which appears to be the root cause of the entire controversy and the incident. It can be seen tht the said document was already executed on 25/04/1996 itself by making payment and there was no occasion to make the demand for payment for the purpose of purchasing the said plot. The prosecution, on its own, has not brought any evidence on record in respect of the said transaction or to show that the Appellants were short of money or were in dire need of money for purchasing of such plot.

13. There is no doubt that Ujwala had committed suicide but it is difficult to connect her suicide with the alleged ill-treatment given to her on account of non-payment of Rs.3,000/-.

14. Mr. Badole, learned Counsel for the Appellants, has relied on the Judgment of the Hon'ble Supreme Court in the case of ***Kishori Lal Vs. State of M.P.***¹ In the said Judgment, the Hon'ble Supreme Court has considered the definition of abetment as given under Section 107 of the IPC and has laid down the requirements for proving the case of abetment of suicide. The Hon'ble Supreme Court, in paragraph nos.6 and 7, has held thus :

6. *Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.*

7. *In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. [See Mahinder Singh v. State of M.P.² 1995 AIR SCW 4570].*

¹ (2007) 10 Supreme Court Cases 797

² 1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157 : 1995 AIR SCW 4570

Merely on the allegation of harassment conviction in terms of Section 306 IPC is not sustainable. There is ample evidence on record that the deceased was disturbed because she had not given birth to any child. PWs. 8, 10, and 11 have categorically stated that the deceased was disappointed due to the said fact and her failure to beget a child and she was upset due to this.”

15. Mr. Badole also relied on the Judgment of this Court in the case of ***Abdul Jabbar S/o Abdul Razzaq & Ors. Vs. The State of Maharashtra***³ wherein this Court has observed thus :

“28. The prosecution case is that due to ill-treatment and harassment Shaheen committed suicide and, therefore, charge U/Sec. 306 was added subsequently. The Trial Court has convicted the accused/appellants U/Sec. 306, 498-A r/w Sec. 34 of I. P. Code. As stated earlier the entire evidence of the prosecution witnesses does not lead to the only conclusion that due to alleged harassment and ill-treatment by the appellants/accused to deceased Shaheen, she committed suicide. Language of Sec. 498-A is very clear, unless it is established that the cruel treatment and harassment given to the victim is of such a nature that, it would drive the woman to commit the suicide, then only conviction U/Sec. 306 can be sustained. In the instant case, at the cost of repetition, it is to be stated that, the omnibus statement is made by each witness that there was demand of Rs.2,000/- on two occasions and Rs.25,000/- on one occasion without giving any particulars that which accused has demanded this amount and on which date and for what purpose. If the accused are convicted with the aid of section 34, in that case it is necessary to attribute overt act to each accused/appellant. It should be brought on record that there was meeting of mind before the occurrence.

³ Criminal Appeal No.463 of 1999, decided on 11/02/2011

29. *Even if the prosecution case is considered on the basis of the evidence brought on record that, the Shaheen committed suicide because of ill-treatment or harassment by the appellants/accused. The abetment contemplated U/Sec. 306 of the I. P. Code has to be of such a nature that, act of the accused is such which instigated to commit the suicide or they were engaged in any conspiracy in the doing or forcing the victim for commission of suicide or they have intentionally aided in the said commission of offence. The prosecution has not brought anything on record that soon before the commission of suicide, there was abetment of things which forced the Shaheen to commit suicide. To attract provisions of Sec. 306, it is necessary to show that cruelty meted out to victim had in fact induced her to end the life by committing suicide. There should be intention to provoke incite or encourage committing of an act by the accused. In order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life, there should be convincing, clinching and cogent evidence on record. Unless there is a proof of direct or indirect act of incitement to the commission of suicide, merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which lead or compelled the person to commit suicide, conviction in terms of Section 306 of the I. P. Code is not sustainable. This position has been stated by the Hon'ble Supreme Court in case of Amalendu Pal @ Jhantu cited supra. In case of Randhir Singh cited supra, the Supreme Court held that abetment involves a mental process of instigation a person or intentionally aiding that person in doing of a thing.....”*

The ratio laid down in both these Judgments are applicable to the facts of the present case. In the present case, the prosecution has not proved that ill-treatment or harassment was of such a nature that

deceased Ujwala was driven to commit suicide. There are only general allegations that she was ill-treated and harassed. Even those allegations are not proved by the prosecution satisfactorily. Therefore, though the incident has taken place within seven years of marriage, the prosecution has failed to prove that the deceased was treated with cruelty as envisaged under Section 498A of the IPC. The presumption u/s 113A of the Evidence Act will not be helpful to the prosecution in the present case.

16. As a result of the above discussion the Appeal deserves to be allowed. Hence, the following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The Judgment and Order dated 07/08/1997 passed by the 4th Additional Sessions Judge, Kolhapur in Sessions Case No.9 of 1997, is set aside.
- (iii) The Appellants are acquitted of all the charges.
- (iv) Their bail bonds shall stand discharged.

(SARANG V. KOTWAL, J.)