

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL REVISION APPLICATION NO.365 OF 2003**

|                                            |   |                 |
|--------------------------------------------|---|-----------------|
| Indrajit Dasharath Mohite.                 | ] |                 |
| Age – 28 yrs., Occupation – Agriculturist. | ] |                 |
| R/o. Sangvi, Mohite Vasti, Tal. Phaltan,   | ] |                 |
| Dist. Satara.                              | ] | ... Applicant / |
|                                            |   | Orig.Accd.No.1  |

Versus

|                           |   |                |
|---------------------------|---|----------------|
| The State of Maharashtra. | ] | ... Respondent |
|---------------------------|---|----------------|

Mr. Rahul S. Kate for Applicant.  
 Ms. S. S. Kaushik, APP for State – Respondent.

**CORAM :- SARANG V. KOTWAL, J.**  
**DATE :- 29 OCTOBER, 2018**

**JUDGMENT :-**

1. The Applicant was one of the co-accused in Sessions Case No.139 of 1996 before the learned V<sup>th</sup> Assistant Sessions Judge, Satara. By the Judgment and Order dated 02/09/1997, the learned trial Judge convicted the Applicant for the offence punishable under Section 306 of the IPC and he was sentenced to undergo R.I. for five years and to pay fine of Rs.1,000/- and in default of payment of fine, to suffer S.I. for one month. The Applicant was further convicted for

commission of offence punishable under Section 498A of the IPC and was sentenced to undergo R.I. for one year and to pay a fine of Rs.500/- and in default of payment of fine, to suffer S.I. for 15 days. The substantive sentences were directed to run concurrently. The Applicant was given set off for the period for which he was in jail. Along with the Applicant, his mother Tanubai Mohite had faced the trial. She was acquitted of both the charges.

2. The Applicant challenged his conviction and sentence by preferring Criminal Appeal No.57 of 1997 before the Court of Sessions at Satara. The III<sup>rd</sup> Additional Sessions Judge, Satara, vide the order dated 30/08/2003, dismissed the Appeal and the Applicant's conviction and sentence were upheld. The Applicant has challenged both these Judgments in the present Criminal Revision Application.

3. The prosecution case, in brief, is as under.

Deceased Asha was wife of the Applicant. She was married to the Applicant on 08/06/1993. After marriage, the couple started residing at the Applicant's house at Sangvi, Taluka Phaltan, District Satara. Asha was treated well for a few months and thereafter

in January 1994, the Applicant and his mother Tanubai (original accused no.2) started ill-treating her. It is alleged that the Applicant's mother Tanubai used to taunt Asha on account of not doing household work and agricultural work properly. It is the prosecution case that on Tanubai's instigation, the Applicant used to beat Asha. It was also alleged that Tanubai would harass Asha on the ground that the dowry paid to them was not sufficient and gold ornaments were not given in the marriage. It is further alleged that the accused started demanding Rs.35,000/- from Asha. The accused were forcing Asha to bring that amount from her parents. It is further alleged that after Asha gave birth to two daughters, the harassment increased as Asha did not deliver a male child. According to the prosecution case, in January 1996, Asha had gone to her parental house after birth of her second daughter Supriya. Asha narrated about the ill-treatment to her parents. Thereafter, the Applicant's brother went to Asha's parental house and returned with her to Applicant's house. The Applicant's brother assured Asha's parents that she would be treated properly. It is the further prosecution case that in the month of June 1996, Asha had gone to her parental house as Zirapwadi to attend her cousin's wedding. Even at that time, she complained about the ill-

treatment. She complained to her parents about the ill-treatment meted out to her. On 16/07/1996, Asha and her young daughter Supriya's dead bodies were found in the well of the Applicant. Asha's father was informed. He came to Sangvi with his relatives. After cremation of the dead bodies, Asha's father lodged his FIR with Phaltan Police Station vide C.R.No.117 of 1996 under Sections 498A and 306 read with 34 of the IPC. The investigation was conducted. Spot panchanama was carried out. The Applicant was arrested. Statements of the witnesses were recorded and at the conclusion of the investigation, charge-sheet was filed. The case was committed to the Court of Sessions for trial.

4. The trial was held before the learned V Assistant Sessions Judge, Satara, vide Sessions Case No.139 of 1996, against the Applicant and his mother Tanubai. The charges were framed under Sections 498A and 306 read with 34 of the IPC. During the course of the trial, the prosecution examined 7 witnesses. PW 1 Bapurao Jadhav was a pancha in whose presence the spot panchanama was conducted. PW 2 Shamrao Gunjawate was Asha's father who had lodged the FIR. PW 3 Dadaso Gunjawate was Applicant's nephew who

had taken a milk bottle to the agricultural field where deceased Asha was working. This witness had turned hostile and did not support the prosecution case. PW 4 Baburao Gunjawate was PW 2's brother who has deposed about the cruelty suffered by deceased Asha. PW 5 Indubai Gunjawate was the mother of deceased Asha and PW 6 Manisha Bongane was Asha's cousin. All these witnesses have deposed about the cruel treatment meted out to the deceased. PW 7 PSI Bajirao Bhosale was the Investigating Officer.

5. I have heard Mr. Rahul S. Kate, learned Counsel for the Applicant and Ms. S. S. Kaushik, learned APP for State. With their assistance, I have read the entire evidence. I have gone through the record and proceedings and I have read the impugned Judgments.

6. To substantiate the charges against the accused, the prosecution examined PW 2, PW 4, PW 5 and PW 6. PW 2 Shamrao Gunjawate was the father of deceased Asha who had lodged the FIR. According to him, after marriage on 08/06/1993, Asha was treated properly by the accused and after December 1994, they started harassing her. He has deposed that after December 1994 whenever

Asha came to his house, she told him that the accused no.2 Tanubai had started making complaints that sufficient ornaments were not given in marriage. PW 2 has further deposed that Asha used to tell him that both the accused were demanding Rs.35,000/- and they were telling Asha to bring this amount from PW 2 for purchasing land. According to PW 2, this fact was narrated to him in the month of January 1996. He has further deposed that the accused no.2 used to taunt Asha and the Applicant used to beat her. He has further deposed that after the birth of the second daughter, the accused started harassing Asha more by beating her. He has further deposed that because of his poor financial condition, he could not fulfill the demand of Rs.35,000/-. According to PW 2, in the month of January 1996, Asha had come to his house because the accused had beaten her and had ill-treated her. On that occasion, Asha resided with him for 15 days. She also reiterated the demand made by the accused for Rs.35,000/-. At that time, the Applicant's brother Ankush approached him and took Asha with him on the assurance that she would be treated properly. PW 2 has further deposed that on 28/06/1996, Asha's cousin got married at Zirapwadi and even at that time, Asha told PW 2 about the ill-treatment. On 16/07/1996, one Dilip

Gunjawate informed him that Asha had committed suicide and she had jumped in a well with her daughter. He then went to Sangvi and on 17/07/1996, he lodged his FIR.

7. PW 4 Baburao Gunjawate was Asha's uncle and PW 2's brother. He has deposed that at the time of festival of Sankrant before Asha's death, the Applicant had sent her to her paternal house. At that time, Asha had told him that the Applicant was demanding Rs.35,000/- for purchasing land and was telling her to bring the said amount from her father. On her refusal, the Applicant used to beat her. In his cross-examination, he has deposed that two months prior to death of Asha, for the first time, she told this witness that the accused were demanding money from her. That means his version that Asha told him about the ill-treatment during the festival of Sankrant which is in the month of January, could not be true. Asha met with her death in July 1996 and two months prior to July 1996 would be at the most April or May 1996. This witness has also stated that when he visited Sangvi after Asha's death, he found that the well had almost filled up with water.

8. PW 5 Indubai Gunjawate is the mother of the deceased Asha. She has deposed on the same lines as those of PW 2. However, in her cross-examination, she has stated that they learned about the ill-treatment meted out to Asha on account of non-fulfillment of demand for money and on account of not giving sufficient gold ornaments and dowry at the time of marriage, for the first time when after birth of Supriya, Asha had gone to their house at Zirapwadi. It is important to note that Supriya was the second daughter of the Applicant and Asha who was born about 7 months prior to the incident. That means, Asha had informed her parents about her ill-treatment for the first time mostly in the month of January 1996. This version is directly contradictory to the prosecution case and in particular, deposition of PW 2 who has stated that Asha had informed him about the ill-treatment right from January 1994.

9. PW 6 Manisha who was Asha's cousin, has deposed that the Applicant used to beat Asha on instigation of the accused no.2. She has deposed that Asha told her about the ill-treatment when she had gone to Zirapwadi one year after her first daughter Gauri's birth. This witness has deposed that she had heard about the demand of

Rs.35,000/- when Asha was telling the same to her father. That means, Asha had not directly told her about the demand of Rs.35,000/-. Importantly, this witness has admitted that the police never recorded her statement.

10. PW 7 PSI Bhosale had conducted the investigation. He had recorded the statements of two persons from Mohite Vasti around the spot where the incident had occurred. However, none of these witnesses was examined by the prosecution.

11. Apart from the oral evidence, the prosecution also produced documentary evidence on record in the form of the post-mortem notes in respect of the examination conducted on the dead bodies of the deceased which are produced on record at Exh.15 and Exh.16. The cause of death of both Asha and Supriya is given as 'Asphyxia due to drowning'. There are no external injuries on either of them. The spot panchanama is produced on record at Exh.20. PW 1 Bapurao Jadhav was the pancha in whose presence the spot panchanama was done. This witness has admitted that deceased Asha was his relative. The spot panchanama shows that the well is situated

in the land of Applicant's father. The well had a wall which was made with stones. Importantly, the height of such wall is not mentioned either in the panchanama or in the oral evidence. It is further mentioned in the spot panchanama that at a distance of 4 ft. there was a piece of cloth and two pairs of slippers in the field. It is also mentioned in the spot panchanama that about 600 ft. on the eastern side, a mat, a sickle and a milk bottle were lying in the crops. Beyond this, the spot panchanama does not reveal much.

12. Mr. Kate, learned Counsel for the Applicant, submitted that since the accused no.2 is acquitted on the basis of the same evidence, both the Courts below should have extended the same benefit to the Applicant herein. He further submitted that the possibility of accidental death is not ruled out. According to him, the prosecution witnesses are not consistent in deposing about the cruelty and in any case, the cruelty alleged against them was not sufficient to attract either Section 498A or 306 of the IPC. He further submitted that the material witnesses from the locality were not examined and Dilip Gunjawate who had pointed out the spot the police, was not examined. He has emphasized that the allegations of demand was

made against both the accused. The accused no.2 was acquitted and since no appeal was filed by the State challenging her acquittal, it had attained finality. He further submitted that even the present Applicant was entitled to be given the same benefit of reasoning.

13. On the other hand, Ms. Kaushik, learned APP for State, submitted that the prosecution witnesses have spoken about the ill-treatment meted out to the deceased and there was no reason to discard their evidence. She further submitted that both the Courts below have properly considered their evidence. She further submitted that since there are concurrent findings on fact, this Court should not interfere. However, she conceded that the offence of Section 306 of the IPC was not made out. She pressed for conviction only under Section 498A of the IPC.

14. Having considered the reasons offered by both the Courts below, it can be seen that both the learned Judges have come to a conclusion that the prosecution witnesses' deposition against the accused no.2 were not sufficient to bring home guilt against her. As far as the evidence of PW 2, PW 5 and PW 6 is concerned, they have

made allegations against both the accused in equal measures. It is their case that the Applicant was ill-treating the deceased on the instigation of the accused no.2. The ill-treatment started as the accused no.2 always taunted Asha that the dowry was not sufficient and the ornaments offered in the marriage were not enough. The accused no.2 had allegedly always scolded the deceased for not doing the household work and agricultural work properly. On perusal of the evidence, it can be seen that the allegations against the accused no.2 and accused no.1 i.e. the present Applicant, are inseparable and therefore, if the benefit of doubt is given to the accused no.2, there is no reason as to why the said benefit could not have been extended to the Applicant as well.

15. The prosecution evidence is also not consistent as to when exactly Asha had started informing her parents about the ill-treatment meted out to her. PW 5 has deposed in her cross-examination that they came to know about the ill-treatment to Asha for the first time when after birth of Supriya, Asha had gone to their house at Zirapwadi. Supriya was the second child who was born around December 1995 and therefore from this admission, it appears that

Asha made a grievance for the first time in and around January 1996. This runs contrary to the prosecution case and in particular, the case of PW 2 that right after December 1994, Asha was making grievance about the ill-treatment.

16. Even PW 4 Baburao has deposed that two months prior to Asha's death, for the first time, she told him about the demand made by the accused. That means, at around April or May 1996, for the first time, they came to know about the ill-treatment. All this is inconsistent and thus, the prosecution witnesses are not truthful in deposing about the grievance made by Asha. PW 6 Manisha has admitted that her statement was not recorded by the police. That means, she was making the allegations against the Applicant for the first time in August 1997 when her deposition was recorded. Thus, the prosecution has not led reliable evidence in respect of the ill-treatment meted out to Asha.

17. Another crucial aspect of the matter is whether the prosecution has been able to prove that Asha had committed suicide by jumping in the well along with her child Supriya. In this

connection, the post-mortem notes show that both Asha and Supriya had died because of 'Asphyxia due to drowning'. The question remains as to whether the drowning was accidental or suicidal. The prosecution, in this case, has not led sufficient evidence to rule out the possibility of accident. The spot panchanama was not conducted in a clear manner. The nature of the wall surrounding the well and in particular height of the wall, was not mentioned either in the spot panchanama or in the deposition of PW 1 Bapurao who was the spot pancha. The defence had requested the trial Judge to conduct inspection of the well, however, that application was rejected. In my opinion, considering the insufficient evidence led by the prosecution in respect of the position of the well and in particular, the wall surrounding the well, it would have served the interest of justice had the spot inspection been carried out. Be that as it may, the evidence led by the prosecution in respect of the spot of the incident does not throw light on the possibility as to whether it was suicide or accident. The record shows that the well was almost full with water and it was just 4 ft. below the ground level. The spot panchanama shows that the wall was made by stack of stones. According to the defence, there was a small opening on the eastern side from where there was a

possibility to fetch water for drinking purpose. Though the Investigating Officer has denied the said position, the record itself does not clearly spell out as to whether the water in the well was used only for irrigating the field or was used for drinking purposes also. The Applicant, in his written statement filed under Section 313 of the Cr.P.C., has taken a defence that there was a possibility that Asha had fallen accidentally in the well in an attempt to fetch water for drinking purpose. The prosecution has not clearly established that the pair of slippers which was near the spot, belonged to the deceased. The sickle, the milk bottle and the mat found in the crop also does not indicate anything to enable the Court to conclude that it was either suicide or accident.

18. In this view of the matter, in my opinion, the prosecution has failed to prove that the death was a result of suicide committed by Asha. The prosecution has not ruled out the possibility of accidental fall in the well. Asha had met her parents on 28/06/1996 as is deposed by PW 2. There is no evidence as to what transpired from 28/06/1996 to 16/07/1996. Therefore, it is difficult to conclusively hold that, firstly, Asha had committed suicide and secondly, she had

committed suicide because of the ill-treatment meted out to her by the accused.

19. Mr. Kate was right in his submission that since the accused no.2 was acquitted on consideration of the same evidence, even the present Applicant deserves to be treated in the same manner. The evidence shows that all the allegations are made against both the accused and therefore, if benefit was given to one of the accused, there is no reason as to why the same benefit could not have been extended to the present Applicant as well.

20. Though the incident had occurred during the 7 years of marriage, the prosecution cannot take recourse to Section 113-A of the Indian Evidence Act. It was necessary for the prosecution to show that the deceased had committed suicide and then question arises whether the suicide was committed as a result of ill-treatment at the hands of the accused. Since the prosecution has not crossed the first hurdle of proving the case of suicide, the said presumption does not arise. Both the Courts below have not considered all these aspects discussed above in their proper perspective and therefore, in my

opinion, this is a fit case calling for interference by extending benefit of doubt to the Applicant. Hence, the following order.

**ORDER**

- (i) The Revision Application is allowed in terms of prayer clause (b).
- (ii) The Applicant is acquitted from all the charges against him.
- (iii) The Applicant is on bail. His bail bonds shall stand discharged.

**(SARANG V. KOTWAL, J.)**