

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 105 OF 1999

1. Nizar Razzakali Panjwani
 2. Nadir Razzakali Panjwani (expired)
 3. Roshanbhai Razzakali Panjwani (expired)
 4. Parwin Nadir Panjwani
res. at Roshan Manzil
Bhoi Galli, House No. 3606,
Nasik, Maharashtra.
- .. Appellants

v/s.

State of MaharashtraRespondents

Mr.R.A.Shaikh a/w. Mrs. Swati Margi for the Appellants
Mr.P.H.Gaikwad APP for the respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
JUDGMENT RESERVED ON : 25th September, 2017.
JUDGMENT PRONOUNCED ON : 12th JANUARY, 2018.**

JUDGMENT:

1. The aforesaid appellants, who were the accused in Sessions Case No.120 of 1996 and who shall be hereinafter referred to as the accused, have challenged the judgment dated 7th January, 1999 whereby the learned Additional Sessions Judge, Nashik has convicted

and sentenced them for offence under Section 498A r/w. 34 of the Indian Penal Code.

2. Factual matrix, as emerges from the record, is that the deceased Rachana was married to the accused no.1 on 2nd April, 1995. The deceased, accused nos.2 and 3 and the accused no.4 are the family members of the accused no.1. Rachana and the accused no.1 initially resided at Mumbai. They later shifted to Nashik and were residing along with the other family members. Rachana and accused no.1 were blessed with a baby girl on 4th January, 1996.

3. It is the case of the prosecution that Rachana had informed her parents that she was being subjected to cruelty and that the accused were demanding dowry. She had even addressed letters to her parents informing them about such demands and cruelty. On 14th March, 1996 Rachana called her parents and informed them that she was being harassed and requested them to take her back. On receipt of the said information, PW3, PW11 who are the parents of Rachana and her uncle-PW12 went to the house of the accused and

brought her back to their house at Nashik. It is alleged that the accused no.1 had refused to hand over the custody of the minor child to Rachana.

4. It is alleged that on 18th April, 1996, said Rachana had gone to meet the accused no.1 to bring back her two months old child. After she returned home, she informed her grand-mother PW10 Kasturibai that the accused no.1 had given her a soft drink mixed with poison. Rachana was in critical condition and was taken to the hospital. She expired on 19th April, 1996. PW6 Dr. Subhash conducted post-mortem over the body of Rachana and opined that the death of Rachana was due to asphyxia as a result of unknown poisonous substance. Viscera was preserved and was forwarded for forensic examination.

5. PW3 Dnyaneshwar More, the father of Rachana went to Panchwati Police Station and lodged the FIR at Exhibit 45. The said report was recorded by PW8 Shaikh Nazir, who at the relevant time was the PSO on duty at Panchvati Police Station. He forwarded the

said report to Bhadrakali Police Station since it pertained to their jurisdiction. On receipt of the said report, API Choudhari registered Crime No. 86 of 1996 against the accused for offences under Section 302, 498A r/w. 34 of IPC. Further investigation was conducted by PW15 PSI Pandurang Sahane. He arrested the accused, recorded statements of the witnesses and seized all the incriminating material including three inland letters allegedly written by Rachana to her parents. He obtained admitted handwriting of Rachana and forwarded the said letters and the admitted writing to the handwriting expert and the other incriminating material for chemical analysis. The viscera of Rachana tested positive to Gafbamate insecticide propoxur (baygon) and petroleum hydrocarbons. The handwriting expert also opined that writing in the letters (disputed writing) tallied with the writing on the pages, stated to be the admitted handwriting of Rachana. Upon completion of investigation, PW15 submitted the charge sheet against the accused for offences under Section 302 and 498A r/w. 34 of IPC.

6. On the case being committed to the Court of Sessions, trial

court framed the aforesaid charge to which the accused pleaded not guilty and claimed to be tried. In support of its case, prosecution examined 15 witnesses. The statements of the accused were recorded under Section 313 of Cr.P.C. The trial court upon appreciation of the oral as well as documentary evidence, acquitted all the accused of offence under Section 302 r/w. 34 of IPC, but held them guilty of the offence under Section 498A r/w. 34 of IPC. The learned Sessions Judge sentenced the accused no.1 to undergo imprisonment for three years with fine of Rs.2000/-. Deceased accused nos.2 and 3 were sentenced to undergo imprisonment for two years with fine of Rs.2000/- and three months with fine of Rs.1000/- respectively, and the accused no.4 was sentenced to undergo imprisonment for one year with fine of Rs.2000/-. Being aggrieved by this conviction and sentence, the accused have preferred this appeal.

7. The accused nos.2 and 3 have expired during the pendency of the appeal. Hence, the appeal stands abated against these two accused.

8. I have perused the records and considered the submissions advanced by Shri R.A.Shaikh, the learned Counsel for the accused and Mr. Gaikwad Patil, the learned APP for the State. Before advertng to the appreciation of evidence and submissions made by the learned Counsels for the respective parties, it is necessary to state certain undisputed facts. The deceased-Rachana and the accused no. 1, who professed different religions, were in love with each other. Rachana left her parental house and got married to the accused No.1 on 5th April, 1995 against the wishes of her parents and the other family members. After the marriage, Rachana and the accused No.1 stayed in Mumbai and a couple of months later they returned to Nashik and started residing alongwith the other family members of the accused No.1. Rachana and the accused No.1 were blessed with a baby girl on 4th January, 1996. The parents of Rachana had brought Rachana to her parental home on 14th April, 1996, while the two months old child of Rachana continued to be with the accused No.1. Said Rachana was admitted in the hospital on 18th April, 1996 and she expired on 19th April, 1996. The cause of death was stated to be

asphyxia due to poison.

9. PW3 Dnyaneshwar More, the father of Rachana had alleged that the accused had demanded money from Rachana and subjected her to cruelty. There were specific allegations that the accused no.1 had administered poison to Rachana. The learned Trial Court disbelieved the allegations made by the parents of Rachana that the accused No.1 had administered poison to Rachana. The Trial Court held that the prosecution had failed to establish that the death of Rachana was homicidal. The learned Trial Court therefore acquitted the accused of the offence under Section 302 of the IPC, to which there is no challenge. The evidence of prosecution witnesses has to be appreciated bearing in mind the background of marriage and aforesaid circumstances.

10. It is the case of the prosecution that Rachana had phoned her family members and informed them that the accused were demanding dowry and were subjecting her to cruelty. It is further alleged that Rachana had also addressed letters to her parents informing them about such cruelty. On 14th April, 1996, Rachana

phoned her parents and informed them that she was being assaulted. Rachana requested them to come and take her back. The parents and the maternal uncle of Rachana (PW3, PW11 and PW12) went to the house of the accused and brought her back. In support of the said case, the prosecution principally relied upon the evidence of PW3 and PW11, the parents of Rachana, PW10 and PW12, the maternal grandmother and uncle of Rachana. The prosecution has also relied upon the testimony of PW2. Subhash Gulve, a neighbour, in addition to the evidence of PW14 Vishwas Ranjangaonkar, the handwriting expert.

11. PW3 had stated in his examination in chief that he had received several telephone calls from Rachana demanding money varying from Rs.10,000/- to Rs.60,000/- to purchase a rickshaw for the brother of the accused No.1 and Rs.1,00,000/- for the marriage of the sister of the accused No.1. However, in his cross-examination he has stated that Rachana had never told him that the accused were demanding money and were harassing her for not meeting the demands.

12. PW11 Sangita More, the mother of Rachana has deposed that after Rachana had started residing at her matrimonial home at Nashik, she had phoned her and told her to meet her near CBS, Nashik. Rachana had come to meet her at CBS, Nsshik but the accused No.1 followed her and took her back in a rickshaw. She has stated that two days later Rachana once again phoned her and told her that the accused were demanding Rs.15,000/- towards the expenses of her delivery. Rachana also told her that the accused were harassing her and demanding Rs.10,000/- to purchase a rikshaw for the brother of the accused No.1 and Rs.1,00,000/- for the marriage of the sister of the accused No.1. She has clarified that she had received the first phone call about 2/3 days after Rachana had returned to Nashik. PW11 has admitted that she had not stated in her statement under section 161 Cr.P.C. that Rachana had called her to CBS Nashik. She had also not stated that Rachana had come to CBS to meet her and that the accused No.1 had quarreled with Rachana and taken her back. She had also not stated that after the said incident Rachana had once again phoned her and told her about

the demand of money and ill-treatment meted out to her by the accused. As rightly held by the learned trial judge these material omissions are sufficient to discredit and discard the evidence of this witness that Rachana had phoned her and told her about demand of money and ill treatment.

13. PW11 had also stated that she and her mother i.e. PW10 had visited Rachana in the hospital after her delivery and that Rachana had told her that the accused were demanding money to purchase a rickshaw for the brother of the accused No.1 and for the marriage of the sister of the accused No.1. However, the evidence of PW11 indicates that the accused No.1 and his mother were present in the hospital and hence, Rachana could not talk to them freely. The evidence of PW11 does not corroborate that Rachana had complained to her mother about any such demands or cruelty by the accused.

14. PW10-Kasturbai Patil, the maternal grandmother of Rachana also does not claim that Rachana had told her that the accused had

demanded money from her or her family members. She has deposed that Rachana had told her family that she was in need of Rs.15,000/- for her delivery. Her statement that she had not talked to Rachana prior to her delivery clearly indicates that she was not personally aware about any such demands. She has deposed that parents of Rachana were unable to pay the said amount. The testimony of this witness therefore does not help the prosecution in proving that the accused had compelled Rachana to demand money from her family or that they had subjected Rachana to cruelty for not meeting the said demand.

15. PW4-Nanak Rani, who is the neighbour of the first informant claims that Rachana was staying with her parents about a month and a half prior to her death. During the said period she had visited his house. She appeared to be very quiet and on being questioned, she told that her husband and his family members were harassing her and were compelling her to bring money from her parents. The evidence of this witness cannot be believed for a simple reason that it is not the case of the prosecution that Rachana had stayed with her

parents since about one and a half month prior to the incident. On the contrary, the evidence on record reveals that Rachana having married against the wishes of her parents had not been visiting their house.

16. It is the case of the prosecution that Rachana had written letters to her parents and informed that the accused were demanding money and that they were ill treating her. PW3 had handed over these three letters to PW15-Pandurang Shahane and the same were attached under Panchanama at Exh.72 drawn in presence of PW-7 Ashok Gaikwad and Yasim Shaikh. PW15 also instructed PW3 to provide writing of Rachana. Accordingly PW3 gave some pages from a note book, which were allegedly the handwritten notes of Rachana. The evidence of PW15 reveals that he had collected admitted handwriting of Rachana from the first informant and forwarded the same to the handwriting expert. The said disputed writing was examined by PW14-Vishwas Ranjangaonkar and he has opined that the disputed writing tallies with the writing forwarded to him as admitted writing.

17. The evidence of the expert witness at the most proves that the letters (disputed document) and the handwritten notes, which were stated to be admitted documents, were written by a same person. The evidence of this witness does not carry forward the case of the prosecution that these letters were written by Rachana. In order to prove this fact, it was obligatory on the part of the prosecution to prove that the writing in the letters tallied with the admitted writing of Rachana. In other words, the comparison had to be between the disputed handwriting and the admitted handwriting of Rachana. In the instant case, the investigating officer had not attempted to procure admitted handwriting of the deceased Rachana but he had called upon the first informant to furnish admitted handwriting of Rachana. The writing provided by the first informant (PW3) was forwarded to the FSL for comparison without even verifying and ascertaining that the said writing furnished by the first informant was in fact the admitted hand writing of Rachana. This material discrepancy is sufficient to discard the case of the prosecution that the said letters were in the hand writing of Rachana. In such

circumstances, the learned Trial Judge in my considered view has erred in relying upon the said letters.

18. As stated earlier, the evidence on record clearly reveals that Rachana had married the accused No.1 against the wishes of her parents. Hence, there was no demand of dowry by the accused No.1 and his family members either before the marriage or at the time of the marriage. The complaints of ill-treatment and demand for money were allegedly made after Rachana started living with the accused at Nashik. It is to be noted that Rachana as well as her parents were residing at Nashik despite which Rachana did not visit her parents. The parents of Rachana also did not visit her after receipt of the letters. They did not complaint to the police that the accused were ill-treating Rachana. They did not feel the need to visit her even during her pregnancy or to bring her home after her delivery. The aforesaid circumstances indicate that all was not well between Rachana and her parents and in this background; it is difficult to believe that Rachana would write letters to her parents and complain about the accused.

19. PW3 and PW11 have claimed that Rachana had phoned them on 14th April, 1996 and told them that she was being assaulted and requested them to take her back. Accordingly, PW3, PW11 and PW12 visited the house of the accused. PW3 claims that he had gone to the house of the accused alongwith PW10 and PW12. He claims that there was some altercation between them and the accused. He further claims that the accused had snatched the child from the hands of Rachana. PW3 has stated that he got an impression that Rachana was severely assaulted; hence, he brought her home. It is pertinent to note that PW3 had not lodged any complaint against the accused for having assaulted Rachana. He had also not provided any medical aid to Rachana. It is also to be noted that testimony of PW11 and PW12 does not indicate that PW3 had entered the house of the accused. The evidence of these witnesses is that PW3 and PW11 had waited outside while PW12 had gone to the house of the accused to bring Rachana. PW12 had stated that when he entered the house, Rachana hugged him and told him that the accused were assaulting her and requested him to take her back. He has admitted

in his cross examination that he had not stated the said fact in his statement under Section 161 of Cr.P.C. This is a material omission, which is sufficient to discredit his version before the Court.

20. The charge against the accused is under section 498A IPC. Having analyzed and appreciated the evidence, in my considered view, the prosecution has failed to establish that the accused had subjected the deceased Rachana to harassment or cruelty. The prosecution has therefore failed to prove the essential ingredients of the offence under Section 498 A of the IPC. Hence, the conviction and sentence imposed against the accused by the impugned judgment cannot be sustained.

21. Under the circumstances and in view of discussion supra, the appeal is allowed. The impugned judgment is set aside. The accused are acquitted of offence under Section 498 A r/w. 34 of the IPC. Fine amount, if deposited be refunded to the accused. Their Bail bond stand discharged.

(ANUJA PRABHUDESSAI, J.)