

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 164 OF 2003

The State of Maharashtra
through P.S.O. Tasgaon Police
Station, Sangli

**....Appellant
(Orig. Complainant)**

:V/S:

1. Sou. Nigrabi Sikandar Mulani,
40, Occ : Household

2. Sikandar Hasan Mulani, 45,
Agril,

3. Harun Sikandar Mulani, 23
Agril,

4. Hanif Sikandar Mulani, 18
Education,
All r/o. Dahivadi,
Tal. Tasgaon, Dist. Sangli

**...Respondents
(Orig. Accused
Nos. 1 to 4)**

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Mr. Ajay Patil, APP for State-appellant.

Mr. Shyamsunder Solanke i/by. Mr. Pratap Patil, Advocate for
the respondents.

Coram : Sandeep K. Shinde, J.

26th October, 2018.

JUDGMENT :

1. This appeal under Section 378(1) of the Code of Criminal Procedure, 1973 is preferred against the order of acquittal passed by the Assistant Sessions Judge, Sangli in Sessions Case No. 34 of 2000.

2. The accused were prosecuted for subjecting Afsana, (wife of accused no.3) to cruelty in furtherance of their common intention and abating her to commit suicide. Afsana (deceased) suffered suicidal death on 6th July, 1995. About 2 ½ years prior thereto, she got married with accused no.3. Accused nos.1 and 2 are mother and father-in-law and accused no.4 is the brother-in-law of Afsana. All the accused were residing at Dahiwadi, Taluka-Tasgaon. Afsana committed suicide by consuming poison.

3. Banubi, mother of the deceased (complainant) alleged that her daughter was recurringly harassed by the accused on one or other count and particularly for not gifting Hero Honda, motorcycle. Besides, her daughter was also harassed for not cooking the meals properly. It is her complaint that, the recurring harassment was to coerce her daughter to meet demand of Hero Honda motorcycle and it was of such a gravity, which led her daughter to commit suicide. On this expression, crime was registered against the accused under Sections 498A and 306 of the Indian Penal Code.

4. The Learned Trial Judge upon appreciating the evidence, acquitted all the accused of the offences punishable under Section 498A and 306 of IPC and thus, this Appeal.

5. Heard learned Additional Public Prosecutor for the State and learned Counsel for the accused.

6. Sub-clause (b) of Explanation to Section 498A does not make each and every harassment “cruelty”. The harassment has to be with a definite object namely to cause the harassment or any person related to her to meet any unlawful demand. Thus, mere harassment by itself is not cruelty. It is only when harassment is shown to have been committed for the purpose of forcing a woman to meet the demand, that is cruelty and is made punishable under Section 498A.

7. The prosecution in support of the charge, had examined mother of the deceased. In evidence, she deposed that, for six months soon after the marriage there were no complaints of any harassment or of unlawful demand, however, in January, 1999, mother-in-law of the deceased demanded Hero Honda motorcycle. There is nothing in her evidence to hold that the other accused had ever demanded any valuables from the deceased or coerced her for it. That even otherwise, the evidence of the mother of the deceased is

silent on the aspect that the mother-in-law persisted with the demand of motorcycle.

8. The prosecution has examined grandmother of the deceased. The evidence of these two witnesses has not proved the fact that they having failed to meet the alleged demand, the deceased was subjected to harassment. Therefore, even assuming that mother-in-law had demanded the motorcycle but this itself would not amount to cruelty unless it is shown, the deceased was harassed for the purpose of forcing her to meet the demand. In view of this, I do not see any reason to interfere with the findings arrived - at, and recorded by the learned Sessions Judge while acquitting the accused of the offence punishable under Section 498A of IPC.

9. It is admitted fact that, Afsana committed suicide by consuming poison. The accused were charged and tried for the offence punishable under Section 306 IPC. In the case in hand, the prosecution has not proved that deceased was

subjected to cruelty within the meaning of Section 498A. That even otherwise, if cruelty is by itself established and the fact of suicide is also established, it would not be sufficient to bring home the guilt of committing cruelty. Reasonable nexus has to be established between “cruelty” and “suicide”. Alternatively, cruelty has to be of such a gravity as is likely to drive a woman to commit suicide. If suicide is established, it is further to be established that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide.

10. In the case in hand, the evidence of P.W.3 has unfolded a fact that the deceased had consumed insecticide and the accused herein made all efforts to save her. It is unfolded in his evidence that, Dr. Attar from the same village was called immediately who had advised to removed deceased to the Miraj Hospital. Thus, the conduct of the accused has been correctly taken into consideration as one of the

circumstance by the learned Trial Judge.

11. The prosecution has not examined Dr. Attar nor any other independent witness to prove the charge of cruelty. The prosecution though had recorded the statements of neighbours, but they were not examined.

12. Thus, taking into consideration, the evidence on record, I hold that the judgment of the trial Court is founded on the dependable evidence. The learned Trial Court has taken a reasonable and a possible view and thus we see no reason to interfere with the same.

13. In the result, the Appeal deserves no consideration and is rejected accordingly.

(SANDEEP K. SHINDE, J)