

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

CRIMINAL APPEAL NO.305 OF 2002

Ananta Laxman Pansare

Age – 52 yrs., Occ : Business,

R/at – Bunglow No.19,

Servant's Quarter Khadki, Pune-3.

... Appellant/

Orig. Accused

versus

The State of Maharashtra

(At the instance of

Khadki Police Station, Pune,

C.R.No.124/00)

... Respondent

.....

- Mr.Abhaykumar Apte, Advocate for the Appellant.
- Ms.Sharmila S. Kaushik, A.P.P. for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th MAY, 2018.

JUDGMENT :

1. The present Appeal is preferred by the Appellant challenging the Judgment and Order dated 07/02/2000 passed by the 8th Additional Sessions Judge, Pune, in Sessions Case No.515/2000.

2. By the said impugned Judgment and Order the learned Trial Judge has convicted the Appellant for the offence punishable u/s 498-A of the Indian Penal Code. The Appellant was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine, was sentenced to suffer simple imprisonment for one month. The Appellant was also convicted for the offence punishable u/s 306 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/- and in default of payment of fine to suffer simple imprisonment for one month. Both the sentences were directed to run concurrently and the Appellant was given benefit of set off u/s 428 of Cr.P.C. for the period, for which he was in jail during trial.

3. Charge was framed vide Ex.2/1 on 02/02/2001. It is mentioned in the charge that the Appellant was subjecting his wife Kavita Ananta Pansare (since deceased) to cruelty and ill-treatment on the ground that she was not able to cook properly

and she did not fulfill demand of Rs.1,000/- and that his acts were within the section of 498-A of IPC. The Appellant was also charged for the commission of offence punishable u/s 306 of IPC, as on 11/09/2000 Kavita committed suicide by pouring kerosene and setting herself on fire. The Appellant was charged for abetting her suicide.

4. In support of its case, the prosecution has examined five witnesses. P.W.1 Sushila Laxman Thite was the mother of the deceased Kavita and had lodged the FIR. P.W.2 Laxman Ganpat Thite was the father of the deceased Kavita. He was examined on the point of ill-treatment meted out to Kavita and P.W.3 Sampat Shankar Kadam, was the maternal uncle of Kavita. He was examined to corroborate the evidence of P.W.1 and P.W.2. Bhanudas Dhakuji More was examined as P.W.4. The said witness was the Pancha when the spot panchanama was conducted. P.W.5 PI Dattatraya Chandu Sonawane was examined as the Investigating Officer, who was attached to Khadki Police Station at the relevant time. Besides this oral

evidence, the prosecution has relied on the documentary evidence in the form of post-mortem notes, the spot panchanama and inquest panchanama. The post-mortem notes show that the deceased had suffered 96% burns.

5. The prosecution case has unfolded through the evidence of P.W.1 Sushila Thite. According to her Kavita got married to the Appellant in the month of March 2000. After marriage both of them started residing in the house of the Appellant at Khadki. According to her, it was the Appellant's second marriage. Sushila has further deposed that, initially in the first month after the marriage, the relations between the couple were good. But subsequently, the Appellant started ill-treating Kavita. Sushila has deposed that the Appellant was ill-treating Kavita on the ground that Kavita was not able to cook food properly. She has further deposed that the Appellant used to give abuses to Kavita. According to Sushila whenever Kavita visited her house, she used to disclose about such ill-treatment. On two occasions even Sushila visited their house to have a word with the Appellant. Even one month prior to the incident

dated 11/09/2000, Sushila along with her brother Sampat Kadam had gone to meet the accused to tell him to behave properly. P.W.1 Sushila further deposed that on 10/09/2000 there was a Pooja at her residence, when Kavita had visited her. At that time Kavita told her that the Appellant was demanding Rs.1,000/- for taking a room on rent. Sushila expressed her inability and Kavita returned back to her house. P.W.1 Sushila further deposed that, on 11/09/2000 at around 12.00 p.m. the Appellant called her on telephone and asked for Rs.1,000/- for taking a room on rent. Even at that time P.W.1 Sushila declined as she did not have that much amount. On that day itself at about 02.00 p.m. Sushila received a telephonic call that Kavita had sustained burn injuries. P.W.1 Sushila then went to Sassoon Hospital and found that Kavita had succumbed to her burn injuries. Thereafter Sushila went to the Police Station and lodged her FIR. The FIR is on record at Ex.14. The FIR was registered vide C.R.No.124/00 at Khadki Police Station u/s 498-A and 306 of IPC. P.W.2 Laxman Thite and P.W.3 Sampat Kadam have deposed on similar lines.

6. In the cross-examination of P.W.1 the defence has brought on record, the fact that, one month prior to the date of incident of commission of suicide, Kavita had left the house of the Appellant without informing him and was not traceable for two days. Finally she was brought by P.W.3 Sampat Kadam to P.W.1's house. Subsequently P.W.1 Sushila has admitted in her cross-examination that Kavita had refused to accompany the Appellant to their house and that Kavita had refused to divulge her whereabouts when she had gone missing.
7. P.W.2 Laxman Thite had denied that Kavita had left the Appellant's house without informing him. This witness has admitted in his cross-examination that he has not stated before the police that prior to 10/09/2000 Kavita disclosed to him that Appellant had demanded the amount from her.
8. P.W.3 Sampat Shankar Kadam has deposed that the Appellant used to beat her and used to tell her to bring amount

from her parents. However, in his cross-examination he has admitted that he had not stated before the Police that since the date of marriage the Appellant was ill-treating Kavita and that he was beating her on the count of demand of money. He has also admitted that he has not told the police as to when Kavita had visited his house.

9. P.W.4 Bhanudas Dhakuji More, who was examined as a Panch for spot panchanama has produced the spot panchanama on record at Ex.24. The spot panchanama describes the place of incident which was in one of the servant quarters of Bungalow No.19/1, Hansbari Road, Khadki. A stove and a match box was found on the kitchen platform. It was a residential quarter consisting of only one room. A white colour Can without lid, having some kerosene, was seized from the spot. Some burnt pieces of clothes were also seized. The deceased was found in burnt condition in the same room. P.W.4 Bhanudas More, however in his cross-examination has admitted that the police had written the panchanama at the Police Station and he signed

on the panchanama as he was told by the police. He has also admitted that he had acted as a Panch on three occasions.

10. P.W.5 PI Dattatraya Chandu Sonawane has deposed about the investigation carried out by him. He has recorded statements of witnesses, had arrested the accused, had conducted the spot panchanama, had collected the post-mortem notes and had finally submitted the charge-sheet. He admitted in the cross-examination that he did not seize the stove.

11. The Appellant took a defence of total denial and did not state anything specifically to throw light on the incident.

12. The learned Trial Judge after recording the evidence, and the statement of the Appellant and after considering the submissions made on behalf of the parties, recorded his findings. The learned Judge convicted and sentenced the Appellant as mentioned earlier.

13. The learned Trial Judge mainly relied on the evidence of P.W.1, P.W.2 and P.W.3 and reached a conclusion that the prosecution has sufficiently proved its case. The learned Trial Judge was satisfied that the evidence led by the prosecution clearly establishes the case u/s 498-A as well as under section 306 of IPC. The learned Judge also referred to the presumption u/s 113-A of the Indian Evidence Act. Thus, after considering these aspects, the learned Judge has passed the impugned Judgment and Order.

14. I have heard learned Counsel Mr. Abhaykumar Apte for the Appellant and Ms. Sharmila S. Kaushik, A.P.P. for the State of Maharashtra.

15. Mr.Apte submitted that the prosecution has miserably failed to prove its case. He submitted that none of the prosecution witnesses has given cogent evidence to explain the nature of ill-treatment or harassment meted out to deceased Kavita and therefore the allegations fell much short of the

requirements of section 498-A of the IPC. He submitted that having failed to prove its case u/s 498-A, consequently even the offence under section 306 of IPC is not established. He submitted that assuming the prosecution case was true, Rs.1,000/- was demanded by the Appellant as a help to acquire the residential room for himself and deceased Kavita. Therefore this demand cannot be termed as unlawful demand falling within the meaning of section 498-A of IPC. Mr.Apte further submitted that the Appellant's first marriage was not an issue in this case and it was nobody's case that because of his first marriage or suppression thereof, the victim had committed suicide.

16. Per contra Ms.Sharmila S. Kaushik, A.P.P. for the State, submitted that the prosecution has fully established its case beyond reasonable doubt. The prosecution witnesses have consistently deposed about the cruelty meted out to the deceased right after one month of the marriage till her commission of suicide in September 2000. She submitted that

the victim committed suicide within six month of her marriage, therefore presumption u/s 113-A of the Evidence Act was clearly attracted as the Appellant has failed to discharge his burden. She submitted that there was an unlawful demand of Rs.1,000/-. She further submitted that there was a phone call at around 12.00 p.m. on 11/09/2000 by the Appellant to P.W.1. At that time, the P.W.1 had refused to pay amount and within two hours of that phone call, the victim had committed suicide and therefore the incident was too proximate to that phone call. Thus, according to Ms.Sharmila S. Kaushik, Addl.P.P., the Appellant was the perpetrator of the crime and should be held liable for the commission of suicide by the deceased Kavita.

17. I have gone through the entire record and proceedings with the assistance of both the learned Counsel. P.W.1, P.W.2 and P.W.3 are close relations of the deceased Kavita. They are natural witnesses, who would know mental state of the deceased. According to P.W.1, till one month after the marriage, which took place in March 2000, the relations between the

couple were cordial. Thereafter the Appellant started ill-treating Kavita, on the ground that she was not able to cook properly and on that ground the Appellant used to give abuses to her. P.W.1 has stated that this fact was told to her by Kavita, whenever she used to visit her house. This witness thereafter refers to the demand of Rs.1,000/- which was made by the victim Kavita at the behest of the Appellant on 10/09/2000. In respect of such demand P.W.1 has not stated in her deposition that on her refusal to meet this demand, the deceased was harassed or ill-treated on that specific count. On the next date i.e. on 11/09/2000 there was a phone call by the accused reiterating the said demand, but even thereafter there is absolutely no evidence as to whether the Appellant had harassed the deceased on the ground that P.W.1 had refused to meet such demand.

18. P.W.2 has specifically admitted that he had not disclosed to the police that Kavita had told him that the Appellant was demanding money from her and on that ground

she was being harassed. Insofar as the demand of Rs.1,000/- is concerned, it was made by Kavita to P.W.1 and therefore in that behalf evidence of P.W.1 carries more weightage. Even P.W.3 has admitted that he had not stated before the police that the Appellant was beating Kavita on the ground of demand of money. Thus, there is no evidence to show that the Appellant was ill-treating the deceased on the ground that his unlawful demand for money was not fulfilled. There are no allegations that for non-payment of Rs.1,000/- specifically Kavita was harassed or ill-treated at any point.

19. The Appellant had called the P.W.1 at about 12.00 p.m. on 11/09/2000. There is no evidence to show as to from where he had made this phone call. The prosecution has not led any evidence to show that after this phone call was made, the Appellant had met the deceased or had conveyed the refusal of P.W.1 to her. There is absolutely no evidence to show what transpired from 12.00 p.m. to 02.00 p.m. The prosecution has not led any evidence of any neighbour or any other

independent evidence to show that there was any further discussion between the Appellant and the deceased after P.W.1 had refused to pay amount when the Appellant had made that phone call at 12 O'clock.

20. In this background, it is necessary to consider and analyze section 498-A of the Indian Penal Code.

498A – Husband or relative of husband of a woman subjecting her to cruelty -

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section, “cruelty” means -

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person*

related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

21. Insofar as the allegations of ill-treatment are concerned, from the evidence it appears that the prosecution witnesses have not described any specific instance or specific nature of ill-treatment. P.W.1 has merely stated that the Appellant used to harass Kavita because she was unable to cook properly and that he used to give abuses to her. This conduct by itself will not fall within the meaning of explanation (A) u/s 498-A, where the term “Cruelty” is explained. In the fact of this case, it cannot be said that this conduct of the Appellant was of such a nature that it was likely to drive Kavita to commit suicide or to cause grave injury or danger to her life, limb or health. The allegations fall much short of the requirements of explanation (a) to section 498-A.

22. Insofar as the demand of Rs.1,000/- is concerned, as

mentioned earlier, there are no allegations that on that count specifically Kavita was harassed. Therefore even explanation (b) where “Cruelty” is explained u/s 498-A is not attracted in the present case. Even as per the prosecution case, the Appellant was seeking financial help to secure a room on rent. Considering the Appellant's poor financial condition, such request for help cannot be termed as 'unlawful demand.' There is no evidence to show that the deceased was ill-treated because the amount of Rs.1,000/- was not paid.

23. Ms.Kaushik submitted that since the deceased Kavita had committed suicide within six month of marriage, section 113-A of the Indian Evidence Act, is attracted. The Court was required to raise the presumption against the accused. The burden shifted on the Appellant to prove his defence. In this context it is necessary to consider section 113-A of the Indian Evidence Act, which reads thus;

“113-A – Presumption as to abetment of suicide by a married woman -

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

24. In this case it is true that the deceased Kavita had committed suicide within six months of marriage. But the crucial question remains as to whether the prosecution has been able to discharge its initial burden of showing that her husband had subjected her to cruelty. For the purpose of this section again reference is made to the explanation to section 498-A of IPC where 'cruelty' is explained. As discussed hereinabove, I have already reached the conclusion that the prosecution has not been able to prove that the Appellant had treated the deceased

with cruelty within the meaning of section 498-A of IPC. In my opinion, therefore section 113-A is not attracted.

25. For applying section 113-A of the Evidence Act, it is not sufficient for the prosecution to show that the deceased committed suicide within seven years of marriage. It is equally necessary for the prosecution to show that the deceased was treated with cruelty by such accused.

26. In the instant case there is a strong indication that the prosecution witnesses are suppressing material facts from the Court. Those facts are brought out only in cross-examination of the witnesses. As can be seen from their cross-examination, the deceased Kavita had left the house of the Appellant one month prior to the incident of commission of suicide. The prosecution witnesses have deliberately avoided to mention this fact either before police or in their depositions. P.W.3 had in fact told Kavita not to divulge her whereabouts to the Appellant when she had gone missing. This evidence shows that Kavita was very

reluctant to accompany the Appellant after she had left his house one month prior to the incident. P.W.1 and P.W.3 had almost forced her to go and reside with the Appellant against her wish. Mr.Apte submitted that this can be one of the reasons for her commission of suicide as she was forced to reside with the Appellant against her wish. The accused has to prove his defence only on the touch stone of probabilities and in my opinion, the Appellant in the instant case has sufficiently probabalized his defence to that extent.

27. In this background, therefore, none of the acts of the Appellant can be said to be falling within the meaning of section 107 of IPC, where abetment is defined. In this view of the matter, the Appellant cannot be held liable for commission of offence punishable u/s 306 of the IPC as his act does not fall within the definition of abetment as given u/s 107 of IPC. There is no evidence to show that the Appellant either instigated or aided the deceased in commission of suicide.

28. Thus, taking overall view of the matter as mentioned hereinabove I am of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. The Trial Court has not considered this aspect correctly. With the result, the Appeal is allowed. The Judgment and Order dated 07/02/2000 passed by the 8th Additional Sessions Judge, Pune, in Sessions Case No.515/2000 is set aside. The Appellant is acquitted from all the charges. The Appellant's bail bonds stand discharged.

(SARANG V. KOTWAL, J.)