

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.117 OF 2013

1. Ramesh Dulaji Jadhav

2. Smt. Priti Pandurang Jadhav ... **Appellants**

V/s.

The State of Maharashtra ... **Respondent**

Ms. Nasreen S. K. Ayubi Appointed Advocate for the appellants.

Mr.S.V. Gavand, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 27th FEBRUARY 2018.

ORAJ JUDGMENT :

1. By this appeal, the appellants/accused, are challenging the Judgment and Order dated 15th December, 2012 passed by the learned Additional Sessions Judge, Sindhudurg, Oras in Sessions Case No.20 of 2011, thereby convicting both of them of offences punishable under Sections 498(A) and 306 read with Section 34 of Indian Penal Code (hereinafter referred to as “the IPC” for the sake of brevity). For the offence punishable under Section 306 read with Section 34 of the IPC, both the appellants/accused sentenced to suffer Rigorous Imprisonment

for 5 years apart from imposition of fine of Rs.2,000/- and default sentence of simple imprisonment for four months. For the offence punishable under Section 498(A) read with Section 34 of the IPC, both the appellants/accused sentenced to suffer Rigorous Imprisonment for 3 years apart from imposition of fine of Rs.1,000/- and default sentence of simple imprisonment for two months.

2. The brief facts leading to prosecute the appellants/accused can be summarized thus:

- (a) Rekha @ Reshma Bhandare married to the appellant/accused no.1, Ramesh Dulaji Jadhav on 4th July, 2010. Thereafter, she went to reside with her husband i.e. appellant/accused no.1 Ramesh Jadhav at village Madkhol, Harjanwadi, Sawantwadi Taluka of Sindhudurg District. The appellant/accused no.2 Priti Jadhav is sister of appellant/accused no.1 Ramesh Dulaji Jadhav. She alongwith their mother was residing at village Madkhol.
- (b) It is the case of the prosecution that for earning his livelihood, the appellant/accused no.1 Ramesh Jadhav was working in Bakery at Kolhapur whereas his wife Rekha @ Reshma Jadhav (since deceased) alongwith appellant/accused no.2 Priti Jadhav as well as mother of the appellants/accused were residing at

village Madkhol.

- (c) According to the prosecution case, after one month of marriage, married life of Rekha @ Reshma Jadhav started witnessing rough weather. Both the appellants/accused started subjecting her to cruelty. They were not providing enough food to her. Proper medicines were not given to her. She was not allowed to talk with her husband – appellant/accused no.1 Ramesh Jadhav by appellant/accused no.2 Priti Jadhav. The appellants/accused were not allowing Rekha @ Reshma to visit her parental house nor she was allowed to join the company of her husband at Kolhapur. She was asked to do all household work by herself. Rekha @ Reshma Jadhav used to narrate her woes and suffering to her parental relatives by making telephone calls.
- (d) It is the case of the prosecution that fed up with constant harassment and cruelty inflicted by the appellants/accused, Rekha @ Reshma indulged in self effacement within five and half months of her married life. On 21st December, 2010, she jumped into a well of the locality and died suicidal death.
- (e) PW1 Laxman Baragade police patil of village Madkhol was informed the fact of death of Rekha @ Reshma Jadhav by her husband i.e. the appellant/accused no.1 Ramesh Jadhav on 21st

December, 2010 itself. PW1 Laxman Baragade police patil then lodged report (Exh.11) of the accidental death of Rekha @ Reshma Jadhav which are resulted in registration of AD Case No. 55 of 2010 under Section 174 of Cr.P.C. with police station Sawantwadi.

(f) On the very next day i.e. 22nd December, 2010, PW2 Pradip Bhandare, brother of the deceased Rekha @ Reshma Jadhav lodged FIR (Exh.13) against both the appellants/accused which has resulted in registration of Crime No.107 of 2010 for the offences under Sections 498(A), 306 read with 34 of the IPC against both the appellants/accused at the police station Sawantwadi. Wheels of investigation were then set in motion. The appellants/accused came to be arrested. Autopsy report of the deceased was collected, the statement of witnesses came to be recorded and on completion of routine investigation, the appellants/accused were charge-sheeted.

(g) The charge for the offences punishable under section 489(A) and 306 read with 34 of the IPC came to be framed and explained to the appellants/accused. They abjured their guilt and claimed trial. In order to bring home guilt to the appellants/accused, the prosecution has examined as many as nine witnesses. The defence of the appellants/accused was that of total denial.

(h) After hearing the parties, by the impugned Judgment and Order , the learned Additional Sessions Judge, Sindhudurg, Oras, held that the prosecution is successful in proving the offence alleged against the appellants/accused and ultimately they were convicted and sentenced as indicated in the opening paragraph of this judgment.

3. Heard Ms. Ayubi, learned Advocate from the panel of Legal Aid of this Court appointed to represent the appellants/accused. She argued that the conviction is basically recorded by relying on evidence of PW3 Anandi Kamble and PW 7 Vastala Bhandare. Even if the evidence of both these witnesses are accepted in toto then also it falls short of making out the alleged offence and, therefore, the appellants/accused are entitled for acquittal.

4. The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction by contesting that the married woman died suicidal death within five and half months of her marriage with the appellant/accused no.1 and therefore by applying presumption as envisaged under section 113(A) of the Indian Evidence Act, the appellants/accused are rightly convicted by the learned trial Court.

5. I have carefully considered the rival submissions and also perused the Record and Proceedings including oral as well as documentary evidence adduced by the prosecution.

6. The allegations against the appellants/accused being the husband and sister-in-law of the deceased Rekha @ Reshma Jadhav are to the effect that they subjected her to extreme cruelty and thereby abetted the commission of suicide by her. Therefore, at the out set, the prosecution is enjoined to establish the fact that the Rekha @ Reshma Jadhav died suicidal death. This fact is not in much dispute. The defence has admitted autopsy report (Exh.19) which shows that Rekha @ Reshma Jadhav died due to asphyxia due to drowning. PW1 Laxman Baragade police patil of Village Madkhol immediately reached at the spot of the incident soon after the incident. The evidence shows that on 21st December, 2010, when he went to the well situated at the Harjanwadi, he saw the pair of chappal kept near the well and dead body of Reskha @ Reshma Jadhav was found to be lying in the well. The finding of the pair of footwear besides the well rules out the possibility of accidental death because of accidental fall in the well. On the contrary, it indicates that Rekha @ Reshma Jadhav consciously took decision of suicide by jumping in the well. With this evidence, the

fact of suicidal death of Rekha @ Reshma Jadhav is proved by the prosecution.

7. Now let us examine whether it is proved by the prosecution that deceased Rekha @ Reshma Jadhav was subjected to cruelty by the appellants/accused or any of them and whether they had abetted deceased to commit suicide. In order to appreciate the evidence adduced by the prosecution in proper perspective, it would be advantageous to put on record the definition of the term cruelty as found in explanation to section 498(A) of IPC which reads thus:

“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.”

8. If the definition of the term cruelty is perused then it becomes clear that the cruelty as defined in section 498(A) of IPC implies harsh and harmful conduct of certain intensity and persistence. It covers acts causing both physical and mental agony as well as torture or tyranny.

To make out the case of cruelty, the prosecution must establish that the married woman was treated to cause her intense miseries by constant acts of physical or mental torture, strongly stirring up her feelings that life is not worth living and she should die the same being the only option left. The cruelty envisaged in section 498(A) of IPC is to such an extreme extent that the subject must be dragged to commit suicide or to cause grave injuries or danger to her life, limb or health. Similarly, harassment of woman with a view to coercing her to meet any unlawful demand for any property also amounts to cruelty. In the case in hand there are no allegations to the effect the deceased Rekha @ Reshma Jadhav was being harassed for meeting any unlawful demands towards the property or valuable security, by the accused.

9. The term abetment is defined in Section 107 of IPC. Abetment does not involve the actual commission of crime but is a crime apart. Abetment involves active complicity on the part of the abettor at a point of time prior to or at the time of commission of offence. Abetment is complete when any other person is instigated to commit an act of offence. In order to establish, the charge for the offence under Section 306 of IPC, the prosecution must prove that there was instigation, provocation, incitement or encouragement by the appellants/accused

to deceased Rekha @ Reshma Jadhav to commit suicide.

10. Section 113A of the Indian Evidence Act, 1872 provides for presumption as to abetment of suicide by a married woman. If a married woman commits suicide within a period of seven years from the date of her marriage, and if it is proved that her husband or his relatives had subjected such a married women to cruelty, then the Court can presume, having regard to all other circumstances of the case that such suicide has been abetted by her husband or his relatives. This presumption is discretionary and depending on all other circumstances of the case.

11. Keeping in mind all these legal requirement, let us re-appreciate the evidence adduced by the prosecution to establish cruel treatment to the deceased which was held by the learned trial Court to be abetment to commit suicide by the deceased for convicting both the appellants/accused. The entire evidence against the appellants/accused for the alleged offence is coming on record from near and dear ones of the deceased. Therefore, if such evidence fails to inspire confidence, then it is necessary to look for corroboration to the prosecution case from some independent sources. Let us therefore see what nearest

relatives of the deceased are stating about cruel treatment to the deceased. The learned trial Court has primarily relied upon the evidence of PW3 Anandi Kamble elder sister of the deceased and that of PW7 Vastala Bhandare, aunt of the deceased for convicting the appellants/accused. Both these witnesses had visited matrimonial house of the deceased in November 2010, i.e. just a month prior to suicidal death of Rekha @ Reshma Jadhav. Other witnesses, such as PW2 Pradip Bhandare and PW4 Kishor Bhandare who are brothers of the deceased Rekha @ Reshma Jadhav, PW8 Shalan Bhandare mother of the deceased are reiterating what they heard from PW3 Anandi Kamble and PW7 Vastala Bhandare about the treatment given by the appellants/accused to deceased Rekha @ Reshma Jadhav and as such their evidence is not a direct evidence against the appellant/accused.

12. PW3 Anandi Kamble deposed that in the month of November 2010, she herself as well as PW7 Vastala Bhandare visited the house of deceased Rekha @ Reshma at village Madkhol. Cross-examination of these witnesses shows that the said stay was only a night halt meaning thereby that both these witnesses stayed at the house of the deceased only for a night. This witness PW3 Anandi Kamble deposed in the

following words as to what deceased Rekha told them during that stay:

“.....My sister Rekha told me that the accused are not providing sufficient food to her and they are also not providing medicines to her. At relevant time my sister was pregnant for a period of three months. My sister told me that accused no.2 did not allowing her to make phone call to her husband. My sister told me that accused No.1 & 2 were giving mental and physical tortures to her. My sister told me that her husband is not taking away her at Kolhapure along with him. My sister told me that accused No.2 was also not willing to send her to Kolhapure along with her husband....”

13. PW3 Anandi Kamble further deposed that hearing narration of her deceased sister Rekha @ Reshma Jadhav she herself and her uncle Bhimrao went to the house of the appellant/accused no.1 at Kolhapur and told him that he should take his wife i.e. Rekha @ Reshma to Kolhapur for cohabitation with him.

14. Evidence of PW3 Anandi Kamble as well as evidence of relatives of the deceased reveal that the appellant/accused no.1 was residing at Kolhapur for earning his livelihood by working in Bakery whereas wife Rekha @ Reshma was residing at his native place i.e. village Madkhol alongwith his mother and his sister i.e. appellant/accused no.2 Priti Jadhav.

15. So far as the PW7 Vastala Bhandare is concerned, she has deposed about her visit alongwith PW3 Anandi Kamble to the house of deceased Rekha @ Reshma and narration of deceased to them in following words:

“The deceased Rekha told us that she was being properly treated only for the one month after the marriage. The deceased has told us that accused No.2 is not providing sufficient food to her and accused no.2 was insisting her to do entire work of the house including washing clothes and cleaning utensils. Deceased Rekha has told us that accused No.2 was not allowing her to make phone call with her husband. At relevant time, deceased was pregnant. The deceased has told that the medicines has also not been provided in time. The deceased Rekha told us that accused No.2 is not allowing her to go at Kolhapure for cohabitation alongwith her husband.”

16. This is all about the alleged cruelty and consequent abetment to a married woman coming on record through the evidence of prosecution witnesses. Minute scrutiny of evidence of prosecution goes to show that infact appellant/accused no.2 Priti Jadhav is married sister of appellant/accused no.1 Ramesh Jadhav. She was not at all residing at Village Madkhol because in his cross-examination PW2 Pradeep Bhandare/the first informant who is brother of the deceased Rekha @ Reshma Jadhav has candidly accepted the fact that the appellant/accused no.2 was residing at Village Ugale. On this aspect,

evidence of the police patil of village is very clear. PW1 Laxman Baragade, Police Patil in his cross-examination has stated that the appellant/accused no.2 was co-habiting with her husband at Village Ugale. If really the appellant/accused no.2 Priti Jadhav who is married sister of the appellant/accused no.1 Ramesh Jadhav was residing at her matrimonial house at village Ugale, then her non-availability at Village Madkhol casts shadow of doubt on interested version of PW3 Anandi Kamble and PW7 Vastala Bhandare who are reciting the alleged narration of the deceased to the effect that the appellant/accused no.2 was not allowing the deceased Rekha @ Reshma Jadhav to make phone calls, that her husband was not providing her sufficient food or medicines. The appellant/accused no.2 as such is certainly entitled for benefit of doubt on this aspect, as she seems not to be staying with deceased Rekha @ Reshma Jadhav at Village Madkhol. Even otherwise, not providing sufficient food, not providing medicines or not allowing to make phone calls to her husband, in my considered opinion, does not amount to cruelty to a married woman as defined by explanation to section 498(A) of IPC. Similarly, there is no sufficient evidence against the appellant / accused no.1 to reflect cruelty by him to the deceased. Such a conduct of the accused as disclosed by the prosecution witnesses even if accepted to be true does not amount to a

wilful conduct of such a nature as is likely to propel or compel the married woman to commit suicide or to cause grave injuries or danger to her life, limb or health. As such the prosecution has failed to establish cruelty by the appellants/accused to the deceased and, consequently, abetment by any of them to her to commit suicide. Evidence of the prosecution lacks assurance which is required in the criminal trial, to establish the offence of the present nature. Other prosecution witnesses are only speaking about what was heard from PW3 Anandi Kamble and PW7 Vastala Bhandare about the treatment meted out to the deceased by the appellants/accused and as such their evidence is hearsay evidence.

17. In the result, the prosecution has failed to establish the charges levelled against the appellants/accused and therefore the following order:

:: ORDER ::

- (i) The appeal is allowed.
- (ii) The impugned Judgment and Order dated 15th December, 2012 passed by the learned Additional Sessions Judge, Sindhudurg, Oras in Sessions Case No.20 of 2011 convicting the appellants/accused of offences punishable

under sections 498(A), 306 read with 34 of IPC is quashed and set aside.

(iii) The appellants/accused are acquitted of the offences alleged against them. They be set at liberty, if not required in any other case.

(iv) Fine amount, if any, paid by them be refunded to the appellants/accused.

(v) The appeal is accordingly disposed of

(A.M.BADAR J.)