

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.371 OF 2013

1) VILAS S/O.SHIWAJI PAWAR	)
	)
2) SHIWAJI DATTU PAWAR	)
	)
3) SANTOSH SHIWAJI PAWAR	)
	)
4) SAU.CHHAYA SHIVAJI PAWAR	)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA	)...RESPONDENT
---------------------------------	-----------------------

Ms.N.S.K.Ayubi, Appointed Advocate for the Appellant.

Mr.Prashant Jadhav, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 20th MARCH 2018

ORAL JUDGMENT :

1 By this appeal, the appellants/accused persons nos.1 to 4 are challenging judgment and order dated 6th November 2012 passed by the learned Ad-hoc District Judge-1 and Additional

Sessions Judge, Vasai, in Sessions Case No.52 of 2011, thereby convicting them of offences punishable under Sections 498A, 306 read with 34 of the Indian Penal Code. For the offence punishable under Section 498A of the Indian Penal Code, all appellants/accused persons are sentenced to suffer rigorous imprisonment for 3 years apart from direction to pay fine of Rs.2,500/-, and in default, to undergo simple imprisonment for 3 months. For the offence punishable under Section 306 of the Indian Penal Code, they are directed to suffer rigorous imprisonment for 5 years apart from payment of fine of Rs.3,500/-, and in default, they were directed to undergo simple imprisonment for 6 months.

2 Briefly stated, the prosecution case is thus :

(a) Appellant/accused no.1 Vilas Pawar was husband, appellant/accused no.2 Shiwaji Pawar was father-in-law, appellant/accused no.3 Santosh Pawar was brother-in-law whereas appellant/accused no.4 Chhaya Pawar was mother-in-law of Dipali Vilas Pawar, who, according to the

prosecution case, died suicidal death on 21st November 2010.

- (b) It is case of the prosecution that appellant/accused no.1 Vilas Pawar married Dipali Srirang Salunkhe on 27th May 2005. After marriage, she started residing with all appellants/accused persons at her matrimonial house at Sativali, Vasai, District Thane. After few days from her marriage, appellants/accused persons used to beat Dipali Pawar. They used to coerce her to bring money from her parental relatives for redemption of mortgage of the house. Despite lapse of about five years from her marriage, Dipali Pawar was unable to conceive. The appellants/accused persons used to give taunts to her on this count.
- (c) The incident in question leading to death of Dipali Pawar took place on 17th November 2010. On that day, appellant/accused no.4 Chhaya Pawar had been to the parental house of Dipali Pawar for fetching the amount of Rs.30,000/- for

redemption of mortgage of their house. When she was at the parental house of Dipali Pawar, appellant/accused no.1 Vilas Pawar telephonically informed the parental relatives of Dipali Pawar that she sustained accidental burns due to flaring of stove. As appellant/accused no.1 Vilas Pawar had informed about accidental burns caused to Dipali Pawar, her mother PW1 Ahilya Salunkhe, her parental aunt PW2 Vidya Salunkhe as well as her uncle PW3 Ramesh Salunkhe rushed to the K.E.M. Hospital, Mumbai. It is case of the prosecution that Dipali Pawar indulged in self effacement because of cruelty inflicted on her by the appellants/accused persons. While taking treatment at the K.E.M. Hospital, Mumbai, Dipali Pawar succumbed to burn injuries on 21st November 2010. PW1 Ahilya Salunkhe, who happens to be mother of deceased Dipali Pawar, then lodged First Information Report (FIR) Exhibit 11 against the appellants/accused persons on 25th November 2010, which has resulted in registration of Crime No.451 of 2010 for offences punishable under Sections 498A, 306 read with 34 of the Indian Penal Code

with Police Station Manikpur. After conducting routine investigation, the appellants/accused persons were charge-sheeted.

- (d) The learned trial court framed Charge for offences punishable under Sections 498A, 306 read with 34 of the Indian Penal Code against the appellants/accused persons. As they pleaded not guilty, in order to bring home the guilt to the accused persons, the prosecution has examined in all five witnesses. First Informant Ahilya Salunkhe – mother of deceased Dipali Pawar is examined as PW1. PW2 is Vidya Salunkhe. She is parental aunt of deceased Dipali. PW3 Ramesh Salunkhe is husband of PW2 Vidya Salunkhe. The Autopsy Surgeon, Dr.Madhura Kuchekar, Medical Officer with K.E.M. Hospital, Mumbai, is examined as PW4. Investigating Officer Srikant Patil, Assistant Police Inspector, is examined as PW5. The defence of the appellants/accused persons was that of total denial. According to them, Dipali sustained burns accidentally because of flaring of the stove.

(e) Upon hearing the parties, by the impugned judgment and order, the learned trial court was pleased to convict the appellants/accused persons for offences punishable under Sections 498A, 306 read with 34 of the Indian Penal Code and they are accordingly sentenced, as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Nasreen Ayubi, the learned advocate appointed to represent the appellants/accused persons, at the cost of the State. She argued that in the case in hand, the prosecution has miserably failed to prove the suicidal death of Dipali Pawar, and therefore, the Charge for the offence punishable under Section 306 of the Indian Penal Code fails. The evidence adduced by the prosecution witnesses is not sufficient to hold that the Charge for the offence punishable under Section 498A of the Indian Penal Code is proved by the prosecution. Hence, in submission of the learned advocate for the appellants/accused persons, they are entitled for acquittal.

4 As against this, according to the learned APP, the deceased died because of burn injuries, within seven year from her marriage with appellant/accused no.1 Vilas Pawar and that too, at her matrimonial house. Therefore, by drawing presumption under Section 113A of the Evidence Act, the appellants/accused persons 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.

6 Before appreciation of evidence of the prosecution witnesses. Let us put on record undisputed facts. The defence has not disputed that appellant/accused no.1 Vilas Pawar married Dipali Pawar on 27th May 2005. Relationship of the appellant/accused no.1 Vilas Pawar with deceased Dipali Pawar is not disputed. The defence has also not disputed the fact that after her marriage Dipali Pawar started residing with them. Undisputedly,

Dipali Pawar sustained burn injuries at the house of appellants/accused persons on 17th November 2010 and she died because of burn injuries on 21st November 2010.

7 Death of Dipali Pawar because of burn injuries sustained by her is also established by the prosecution from evidence of Autopsy Surgeon PW4 Dr.Madhura Kuchekar, Medical Officer, working with K.E.M. Hospital, Mumbai. This Autopsy Surgeon has stated that on 21st November 2010, dead body of Dipali Vilas Pawar was brought for conducting postmortem by Police Station Bhoiwada. She conducted autopsy on the dead body. As per version of this witness, dead body of Dipali Pawar was having 90% ante-mortem burn injuries and she died because of Septicemia as a result of burn injuries. In cross-examination, this witness admitted that because of sudden flare of stove, it is possible to sustain burn injuries, as were found on the dead body of Dipali Pawar. Thus, with this evidence of PW4 Dr.Madhura Kuchekar, which is corroborated by contemporaneous report of postmortem examination Exhibit 28, the prosecution has

established the fact that Dipali Pawar died unnatural death because of sustaining burn injuries.

8 Death of Dipali Pawar occurring because of burn injuries sustained at the house of the appellants/accused persons was certainly within seven years of her marriage with appellant/accused no.1 Vilas Pawar. According to the prosecution case, she was subjected to cruelty by them. Section 113A of the Indian Evidence Act, 1872, prescribes presumption as to abetment to suicide by a married woman. As per provisions of this Section, if it is shown that a married woman committed suicide within seven years of her marriage and if it is established that her husband or his relatives had subjected such married woman to cruelty, then the court may, having regard to all other circumstances of the case, presume that such suicide had been abetted by her husband or by relatives of her husband. It is clear from perusal of Section 113A of the Evidence Act that the mere fact of suicidal death of a married woman within the period of seven years from her marriage, is not sufficient to attract

presumption as envisaged by Section 113A of the Evidence Act. For drawing this presumption, primary fact of subjecting the married woman to cruelty is required to be established by the prosecution and that alone is not sufficient. The court is then supposed to keep in mind all other attending circumstances of the case for drawing such presumption that the suicide had been abetted by her husband and his relatives.

9 Similarly, for making out the Charge for the offence punishable under Section 306 of the Indian Penal Code, the prosecution is enjoined to establish the fact that the victim had died suicidal death. Apart from that, the prosecution is also duty bound to establish that there was instigation, provocation, incitement or encouragement by accused persons to the victim of the offence to commit suicide. The prosecution is required to indicate some active suggestion or some support or stimulation by the accused to the victim in commission of suicide by such victim. Section 107 of the Indian Penal Code requires mensrea and without knowledge or intention, there cannot be abetment and

the knowledge and intention must relate to the crime. Keeping in mind these prerequisites, let us examine at the outset itself as to whether the prosecution has established that death of Dipali Pawar occurred on 21st November 2010 because of burn injuries sustained by her on 17th November 2010 was a suicidal death. On this aspect, the prosecution is heavily relying on evidence of her mother PW1 Ahilya Salunkhe as well as her other relatives viz. PW2 Vidya Salunkhe and PW3 Ramesh Salunkhe. Apart from these three witnesses, no other independent witness is examined by the prosecution either to prove the suicidal death, cruelty and abetment to the deceased for committing suicide by the appellants/accused persons. In other words, there is not a single piece of disinterested evidence adduced by the prosecution in order to make out the offence. True it is that there is no presumption in law that the relatives of victim are bound to make false statements, but then as it is observed in *Dilip Singh vs. State*¹ as well as in *Sharad vs. State*² such persons, although they would not protect the real culprit, still, would naturally have a tendency

1 AIR 1953 SC 364

2 AIR 1984 SC 1622

to exaggerate or add facts even unconsciously making it absolutely necessary to scrutinize their evidence with great care and caution. Evidence of such witnesses is required to be accepted only if it stands scrutiny with more than ordinary case.

10 It is seen from evidence of PW1 Ahilya Salunkhe, PW2 Vidya Salunkhe and PW3 Ramesh Salunkhe that on 17th November 2010 i.e. the day on which the incident of sustaining burns to Dipali Pawar had occurred, appellant/accused no.4 Chhaya Pawar had been to their house. Evidence of PW1 Ahilya Salunkhe shows that after appellant/accused no.4 Chhaya Pawar – mother-in-law of deceased Dipali Pawar reached their house, PW1 Ahilya Salunkhe got a telephonic call from her daughter Dipali Pawar. During the course of that telephonic call, as seen from evidence of PW1 Ahilya Salunkhe, Dipali told her to give an amount of Rs.30,000/- to appellant/accused no.4 Chhaya Pawar for getting the house released from mortgage. Dipali Pawar also requested her mother to extend hospitalities to her mother-in-law – appellant/accused no.4 Chhaya Pawar. PW3 Ramesh Salunkhe

has also spoken about visit of appellant/accused no.4 Chhaya Pawar to their house on 17th November 2010 and consequent telephonic call of Dipali Pawar to him requesting him to pay an amount of Rs.30,000/- to appellant/accused no.4 Chhaya Pawar. Both these witnesses have not stated that during that telephonic call Dipali Pawar had informed them that she was being subjected to harassment or ill-treatment on account of payment of Rs.30,000/-. Evidence of PW1 Ahilya Salunkhe, PW2 Vidya Salunkhe and PW3 Ramesh Salunkhe shows that during the course of visit of appellant/accused no.4 Chhaya Pawar to their house, they got another telephonic call from appellant/accused no.1 Vilas Pawar. By that telephonic call, appellant/accused no.1 Vilas Pawar had informed them that Dipali Pawar sustained burn injuries and she is admitted at K.E.M. Hospital. Evidence of these three witnesses further shows that then they all rushed to K.E.M. Hospital and saw Dipali Pawar in burnt condition.

11 What happened subsequently is stated differently by all these three witnesses, who are mother, paternal uncle and

paternal aunt of deceased Dipali Pawar. As per the version of her mother PW1 Ahilya Salunkhe, at the K.E.M. Hospital, Dipali Pawar told her that in the morning hours of 17th November 2010, appellant/accused no.1 Vilas Pawar had beaten her by belt and therefore, she committed suicide by pouring kerosene on her person. PW2 Vidya Salunkhe who had accompanied PW1 Ahilya Salunkhe to the K.E.M. Hospital has not spoken anything about cause of sustaining burn injuries by Dipali Pawar. Her evidence is conspicuously silent about utterances of Dipali Pawar at the K.E.M. Hospital, Mumbai. As against this, PW3 Ramesh Salunkhe – husband of PW2 Vidya Salunkhe and brother-in-law of PW1 Ahilya Salunkhe, has stated that at K.E.M. Hospital, Mumbai, he saw Dipali in burnt condition and she was unable to speak. He asked Dipali as to whether she had set herself ablaze and upon that, by gestures, Dipali communicated to him that she did not commit suicide.

12 Considering this nature of evidence regarding suicidal death coming on record from chief-examination of these three

witnesses themselves, let us scrutinize the contemporaneous spot panchnama as it is well said that the witnesses may lie but circumstances do not. The spot panchnama at Exhibit 31 is an undisputed document. It was prepared by the Investigator on 17th November 2010 itself i.e. on the day of the incident. Perusal of the spot panchnama reveals the situation prevalent on the spot of the incident. The spot panchnama shows that the house of the appellants/accused persons was a one room house of size 10 feet x 15 feet. On the kitchen ota in that room, there was a kerosene stove. The spot panchnama reflects that the stove flared up and because of this flare, the stove was found in burnt condition. The nearby wall had also turned to blackish in colour because of the fire caused by the flaring of the stove. If one perused the FIR lodged by PW1 Ahilya Salunkhe, then also it is seen that appellant/accused no.1 Vilas Pawar had immediately communicated to her that Dipali Pawar sustained burn injuries because of flaring of the kerosene stove. It is, also seen from evidence of PW3 Ramesh Salunkhe that Dipali communicated to him that she did not indulge in self effacement. The spot

panchnama is reflecting the flaring of the stove indicating accidental burns. Evidence of PW3 Ramesh Salunkhe is to the effect that Dipali was not in a position to speak when he visited the K.E.M. Hospital. PW1 Ahilya Salunkhe had visited the K.E.M. Hospital along with her relatives namely PW2 Vidya Salunkhe and PW3 Ramesh Salunkhe. She, however, is stating that Dipali had spoken with her and told her that the appellant/accused no.1 Vilas Pawar had assaulted her by means of a belt and therefore, she had committed suicide by pouring kerosene on her person. The prosecution has failed to seize half burnt clothes, if any, of deceased Dipali in order to demonstrate that they are found to be having traces of kerosene on them for inferring suicidal death of Dipali. In view of these reasons, it cannot be stated with certainty that Dipali Pawar had died suicidal death by dousing herself with kerosene and then by setting herself on fire. Thus, by granting benefit of doubt to the appellants/accused persons, I hold that the prosecution has failed to establish the fact that Dipali died suicidal death on 21st November 2010 because of sustaining burns on 17th November 2010. As such, the Charge for the offence punishable

under Section 306 read with 34 of the Indian Penal Code must fail.

13 Now let us examine whether deceased Dipali was subjected to cruel treatment by the appellants/accused persons or any of them. As per version of PW1 Ahilya Salunkhe after some days from her marriage, accused persons started beating and abusing Dipali for trivial reasons. They used to ask her to fetch money from her parents for getting the house released. This witness further stated that appellants/accused persons were ill-treating Dipali because she was unable to conceive. As against this, PW2 Vidya Salunkhe has deposed that after marriage, relations of appellants/accused persons with Dipali were not cordial and they were ill-treating her because she was unable to conceive. PW2 Vidya Salunkhe further deposed that house of appellants/accused persons was mortgaged and for redemption of that mortgage, they were demanding money through Dipali. PW3 Ramesh Salunkhe has deposed that after marriage, the appellants/accused persons told Dipali to fetch Rs.30,000/- for

redemption of mortgage of their house. He deposed that after every 2 to 3 months, the appellants/accused persons used to raise dispute and therefore, Dipali used to stay with them for a period of about fifteen days.

14 As stated in the foregoing paragraphs, when on the day of the incident, appellant/accused no.4 Chhaya Pawar was in the house of these three prosecution witnesses, Dipali had communicated with them, but had not disclosed to any of them that an amount of Rs.30,000/- should be paid or else she would be subjected to cruelty by the appellants/accused persons. PW2 Vidya Salunkhe has not stated that on account of demand of money, Dipali used to be subjected to cruelty by appellants/accused persons. Evidence of PW1 Ahilya Salunkhe is as vague as it can be. She has not deposed what were the abusive words, what were the trivial reasons and who was beating Dipali and how she used to be beaten by the appellants/accused persons. What was the nature of her alleged ill-treatment at the hands of the appellants/accused persons is also not disclosed by PW1

Ahilya Salunkhe. So far as evidence of PW3 Ramesh Salunkhe is concerned, he has spoken about disputes. What was the nature of such disputes is also not stated by this witness. In other words, this court has no data to assess the ill-treatment which Dipali was allegedly getting from the appellants/accused persons, in order to draw inference as to whether it is falling within the Explanation to Section 498A of the Indian Penal Code defining the term “cruelty.” Thus, with such nature of evidence, it is difficult to infer that Dipali was subjected to cruelty by the appellants/accused persons.

15 The incident of sustaining burns by Dipali took place on 17th November 2010. It was immediately communicated by appellant/accused no.1 Vilas Pawar to her parental relatives, who promptly visited the K.E.M. Hospital on the very same day to see Dipali in burnt condition. During the course of her medical treatment, Dipali succumbed to burn injuries on 21st November 2010. If really Dipali was used to be subjected to ill-treatment or cruelty by the appellants/accused persons, then under normal course, these near and dear ones of Dipali would have lodged

report against the appellants/accused persons immediately after the incident. Similarly, even after death of Dipali on 21st November 2010, no report came to be lodged against the appellants/accused persons. The FIR against them was ultimately lodged on 25th November 2010 by PW1 Ahilya Salunkhe. The evidence of PW1 Ahilya Salunkhe is conspicuously silent about this delay in lodging the FIR. Why police were not approached is not explained by either PW2 Vidya Salunkhe or her husband PW3 Ramesh Salunkhe during the course of their examination.

16 In the result, I hold that the prosecution has failed to prove willful conduct of such a nature by appellants/accused persons as is likely to compel Dipali to commit suicide or to cause grave injury or danger to her life, limb or health. It is not proved that she was subjected to harassment by the appellants/accused persons with a view to coerce her or prosecution witnesses PW1 Ahilya Salunkhe, PW2 Vidya Salunkhe and PW3 Ramesh Salunkhe to meet their unlawful demand of money. In the result, the appeal needs to be allowed, and therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment and order of conviction of the appellants/accused persons for offences punishable under Sections 498A, 306 read with 34 of the Indian Penal Code passed on 6th November 2012 by the the learned Ad-hoc District Judge-1 and Additional Sessions Judge, Vasai, in Sessions Case No.52 of 2011 between the parties is quashed and set aside.
- iii) All appellants/accused persons are acquitted of offences punishable under Sections 498A, 306 read with 34 of the Indian Penal Code.
- iv) Fine amount, if any paid by them, be refunded to them.

(A. M. BADAR, J.)