

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.755 OF 1997

Shri Chandrakant Bhikaji Zore,
Aged about 24 years, residing at,
Sharadadevi, Dhangarwadi,
Harcheri, Taluka and District
Ratnagiri. (At present on bail) ... **Appellant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.D.R.More with Mr.Nitesh Mohite, Advocate for the Appellant.

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

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CORAM : A.M.BADAR J.

DATED : 7th FEBRUARY 2019.

ORAL JUDGMENT :

1 On 22nd December 2018, this Court (Coram : N.J.Jamadar, J) was pleased to direct issuance ofailable warrant against the appellant/accused No.1. In pursuant to this Order,ailable warrant was executed and that is how the appellant/accused No.1 is present before this Court. This is how his appeal was required to be taken for final hearing.

2 By this appeal, the appellant/accused No.1 is challenging the Judgment and Order dated 14/11/1997 passed by

the learned Sessions Judge, Ratnagiri in Sessions Case No.11 of 1996 thereby convicting the appellant/accused No.1 of the offences punishable under Sections 306 and 498-A of the Indian Penal Code. For the offence punishable under Section 306 of the Indian Penal Code, the appellant/accused No.1 is sentenced to suffer rigorous imprisonment for two years apart from imposition of fine of Rs.200/- and default sentence of rigorous imprisonment for two months. For the offence punishable under Section 498-A of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for six months apart from imposition of fine of Rs.100/- and default sentence of rigorous imprisonment for one month. The learned trial Court had directed that the substantive sentences shall run concurrently.

3 Facts in brief leading to prosecution and resultant sentence of the appellant/accused No.1 Chandrakant Zore can be summarized thus :

- (a) Appellant/accused No.1 Chandrakant Zore was resident of Sharadadevi, Dhangarwadi, Taluka and District Ratnagiri. In May 1994, he married Sai Zore (since deceased). On that day itself brother of the appellant/accused No.1 Chandrakant Zore namely Baban also get married. After marriage, Sai Zore started cohabiting with appellant/accused No.1 Chandrakant Zore at village Sharadadevi, Dhangarwadi in Ratnagiri District. P.W.No.1 Dhondu Bhoje is father whereas P.W.No.2

Bhagirathi Bhoje is mother of Sai Zore. According to the prosecution case, soon after his marriage, Baban, who happens to be brother of appellant/accused No.1 Chandrakant Zore left Sharadadevi, Dhangarwadi and joined his service at Mumbai. He used to return to his house at the native place occasionally. Because of continuous absence of Baban, illicit relations between his wife and appellant/accused No.1 Chandrakant Zore were developed. Because of this illicit relations, appellant/accused No.1 Chandrakant Zore started ill-treating his wife Sai. He used to beat her. His parents also used to subject Sai to cruelty. She used to disclose harassment and cruelty suffered by her to her parents viz. P.W.No.1 Dhondu Bhoje and P.W.No.2 Bhagirathi Bhoje.

- (b) Ultimately, unable to bear with continuous torture of her husband and in laws, Sai Zore indulged in self-effacement by jumping in the well on 26/09/1995. P.W.No.3 Sushila saw Sai Zore drowning in the well. The incident was reported to P.W.No.1 Dhondu Bhoje by a villager. Therefore, he along with his wife P.W.No.2 Bhagirathi Bhoje went to village Sharadadevi, Dhangarwadi. They saw dead body of Sai Zore. Therefore, on 26/07/1995 itself, P.W.No.1 Dhondu Bhoje lodged report with Ratnagiri Rural Police Station which resulted in registration of Crime No.66 of 1995 for offences punishable under Sections 498-A and 306 read with Section

34 of the Indian Penal Code against appellant/accused No.1 Chandrakant Zore and his parents.

- (c) During course of investigation, the Investigating Officer took inquest notes and dead body was sent for postmortem examination. The spot was inspected and spot panchanama came to be recorded. Statement of witnesses were also recorded. On completion of investigation, appellant/accused No.1 Chandrakant Zore and his parents were charge-sheeted.
- (d) The learned trial Court framed the explained charge for the offences punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code to accused persons. They pleaded not guilty and claimed trial.
- (e) In order to bring home the guilt to appellant/accused No.1 Chandrakant Zore so also the co-accused, the prosecution has examined in all four witnesses. First Informant father Dhondu Bhoje is examined as P.W.No.1. The report lodged by him is at Exhibit 12. His wife Bhagirathi Bhoje is examined as P.W.No.2. Sushila Akhade is examined as P.W.No.3. Shivram Gurao, PSI, who has investigated the crime is examined as P.W.No.4. Exhibit 15 is the spot panchanama.
- (f) The defence of the appellant/accused No.1 Chandrakant Zore was that of total denial. He, however, did not enter in the defence.

(g) Upon hearing the parties, the learned trial Court by the impugned Judgment and Order was pleased to hold that the appellant/accused No.1 Chandrakant Zore subjected Sai Zore to cruelty and he had abetted her to commit suicide. The learned trial Court has observed that appellant/accused No.1 Chandrakant Zore had kept illicit relations with wife of his brother and on that count, he must have ill-treated Sai. By holding that death of Sai took place within seven years of her marriage with appellant/accused No.1 Chandrakant Zore, the learned trial Court raised presumption as envisaged by Section 113-A of the Indian Evidence Act to hold that the appellant/accused No.1 Chandrakant Zore is guilty of the offence punishable under Section 306 of the Indian Penal Code. Accordingly, appellant/accused No.1 Chandrakant Zore is sentenced as indicated in the opening paragraph of this Judgment.

4 I heard the learned Counsel appearing for the appellant/accused. He drew my attention to evidence of P.W.No.1 Dhondu Bhoje and argued that evidence of this witness that not only Baban, but the appellant/accused No.1 Chandrakant Zore was also residing at Mumbai and they both were doing work as Vendor by selling bananas on the handcart. Therefore, in submission of the learned Counsel for the appellant/accused No.1 Chandrakant Zore, the prosecution has failed to prove the alleged

illicit relations or subjecting Sai to cruelty by appellant/accused No.1 Chandrakant Zore. By placing reliance on judgments in the matter of *Pinakin Mahipatray Rawal v. State of Gujarat*¹ and *K.V.Prakash Babu v. State of Karnataka*², the learned Counsel argued that mere extra-marital relations *per se* would not amount to cruelty as defined by *Explanation* to Section 498-A of the Indian Penal Code. Similarly, presumption as prescribed under Section 113-A of the Indian Evidence Act cannot be raised unless and until cruelty to a married woman is proved and all other circumstances of the case are considered.

5 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction as well as resultant sentence by pointing out evidence of prosecution witnesses and contending that Sai died suicidal death within the span of one and half year of her marriage with the appellant/accused No.1 Chandrakant Zore and evidence of prosecution shows that she was subjected to cruelty by her husband.

6 I have considered the submissions so advanced and also perused the Record and Proceedings including oral as well as documentary evidence.

7 Explanation to Section 498-A of the Indian Penal Code defines the term 'cruelty'. It reads thus :

1 (2013) 10 Supreme Court Cases 48.

2 (2017) 11 Supreme Court Cases 176.

“ Explanation.- For the purpose of this Section, “cruelty” means -

(a) any willful 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 demands 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 The question whether the act complained of amounts to cruelty as explained in Section 498-A of the Indian Penal Code has to be determined from the whole facts and relationship between the parties. The expression 'cruelty' postulates such a conduct as to cause reasonable apprehension to the mind of wife that her living with in-laws will be harmful and injurious to her life. In other words, the term cruelty implies harsh and harmful conduct of such an intensity and persistence. Subjecting a wife to unbearable, continuous, repeated or persistent unprovoked vexatious attacks amounts to cruelty. However, Section 498-A of the Indian Penal Code will not come into play in every cases of harassment and cruelty. The prosecution, in order to make out the offence punishable under Section 498-A of the Indian Penal Code, is required to prove willful conduct of such a nature as is likely to

propel or compel a married woman to commit suicide or to cause grave injury or danger to life, limb or health. In the offences of the present nature under Sections 498-A and 306 of the Indian Penal Code, allegations are very easily made and once made it is very difficult to dislodge them. Generally in such cases, evidence comes from the mouth of near and dear ones of the deceased, who are naturally hostile towards the accused. Therefore, such evidence is required to be scrutinized strictly and if it fails to inspire confidence, then it becomes necessary to search for corroboration to such evidence from some independent sources. On this backdrop, let us examine what is evidence appearing against the appellant/accused in respect of offence with which he is charged.

9 The report of the incident of suicidal death of Sai Zore was lodged by her father P.W.No.1 Dhondu Bhoje on the date of commission of suicide by Sai Zore. The prosecution has neither adduced evidence of Autopsy Surgeon, nor it had got the report of postmortem examination of the dead body of Sai Zore proved, still I am of the considered opinion that suicidal death of Sai is proved by the prosecution through evidence of P.W.No.3 Sushila Akhade and that of P.W.No.1 Dhondu Bhoje. It is in evidence of P.W.No.3 Sushila Akhade that in the morning of the day of incident she fetched the water from the well and was returning to her house. At that time, she saw Sai Zore at the well. As per version of this

witness, she immediately heard sound of something felling in the water of the well. She, therefore, immediately rushed at the well to see Sai drowning in the water of the well. P.W.No.3 Sushila Akhade deposed that she shouted and, therefore, villagers gathered and they took out the dead body of Sai from the well.

10 By cross-examining this witness, the defence has attempted to show that death of Sai can be an accidental death and not suicidal one. It has come on record that the entire well is not surrounded by the parapet wall and some portion of it was without parapet wall. However, by this material on record, it cannot be inferred that Sai Zore died accidental death. It was time of about 8.00 a.m. Evidence on record does not suggest that Sai had been to the well for fetching water. Neither pot of water was found lying by the side of the well nor in the well water. Same position is reflected from the spot panchanama (Exhibit 15). This evidence gives a natural inference that Sai had been to the well with an intention to commit suicide and that is how she jumped in the well for indulging in self-effacement. Evidence of her father P.W.No.1 Dhondu Bhoje, who rushed Sharadadevi, Dhangarwadi on the very same day shows that he saw dead body of his daughter Sai. Even otherwise, death of Sai is not disputed by the defence. With this evidence, it needs to be put on record that the prosecution has proved factum of suicidal death of Sai Zore on 26/09/1995.

11 Now, let us examine whether it is proved that Sai Zore was subjected to the cruelty by the appellant/accused No.1 Chandrakant Zore and he thereby abetted commission of suicide by her which occurred within seven years of her marriage with the appellant/accused No.1 Chandrakant Zore. It is in evidence of P.W.No.1 Dhondu Bhoje that soon after his marriage, Baban-brother of appellant/accused No.1 Chandrakant Zore left the house and went to join his work at Mumbai. This has resulted in developing illicit relations between appellant/accused No.1 Chandrakant Zore and wife of Baban. This fact is deposed to by P.W.No.1 Dhondu Bhoje on the basis of recitals made to him by deceased Sai during her visit to parental house. This witness has stated that during her visits, Sai used to tell them about beating by appellant/accused No.1 Chandrakant Zore and ill-treatment by her parent-in-laws. He stated that fifteen days prior to her suicidal death, Sai came to his house and told them that appellant/accused No.1 Chandrakant Zore beats her and her parent-in-laws are not providing food to her. P.W.No.1 Dhondu Bhoje has further stated that he advised Sai to go to her matrimonial house. P.W.No.1 Dhondu Bhoje further testified that two days before the incident he had been to the house of accused persons for bringing Sai to her parental house. But accused persons refused to send her. As per his version, they all told him to take her back forever. They even rushed to beat Sai as she want to accompany her father.

12 From cross-examination of this witness, it is brought on record that appellant/accused No.1 Chandrakant Zore and his brother Baban were doing work as Vendor at Mumbai by selling bananas on handcart. P.W.No.1 Dhondu Bhoje admitted that Baban was not having permanent job at Mumbai. He used to stay at his native place for few days and used to go to Mumbai for few days. Similarly, as per version of this witness found in the cross-examination, he had not disclosed ill-treatment to his daughter at the hands of accused persons at any point of time. He admitted that in Dhangar community to which he belongs, there is Gaonkuti, where disputes are resolved. He stated that he had not even disclosed his ordeal to this Gaonkuti at any point of time. P.W.No.2 Bhagirathi Bhoje is mother of the deceased. In a similar line, she has also deposed that the appellant/accused No.1 Chandrakant Zore was having illicit relations with wife of his brother Baban and, therefore, he was beating Sai. She has also spoken about ill-treatment given to Sai by appellant/accused No.1 Chandrakant Zore prior to fifteen days of her death. Despite of her narrations, P.W.No.2 Bhagirathi Bhoje stated that she sent Sai back to her matrimonial house. From her cross-examination, it is brought on record by the defence that Sai never disclosed to her that she is not willing to cohabit with appellant/accused No.1 Chandrakant Zore.

13 Entire case of prosecution so far as cruelty and abetment to the deceased rests on the evidence of these two

interested witnesses, who are close relatives of deceased Sai. The prosecution has not sought to collect or had not adduced evidence of neighbourers, who might have throw some light on the treatment which was meted out to deceased Sai by appellant/accused No.1 Chandrakant Zore. Though, this is not conclusive, but this is a fact which can be taken into account. P.W.No.3 Sushila Akhade was resident of a village where Sai was residing. Her evidence is conspicuously silent about ill-treatment, if any, given by accused persons to Sai. On this backdrop, conduct of parents of deceased Sai for sending her back to her matrimonial house even claiming to have heard her narrations about subjecting her to cruelty assumes importance. If really the deceased was subjected to cruelty as envisaged by Explanation to Section 498-A of the Indian Penal Code, natural conduct of parents would have been to insist her to stay at the parental house. No such insistence is seen from the evidence of both these witnesses. On the contrary, in examination-in-chief itself, they have stated in unison that they sent Sai back to her matrimonial house. Similarly, during entire married life of Sai which was for about one year and five months, none of her parent lodged complaint about conduct of accused persons to the Gaonkuti where such disputes used to be solved. Explanation as to why Sai was not permitted to go to her parental house two days before the incident has come on record through cross-examination of P.W.No.1 Dhondu Bhoje. It was new moon day (*amavasya*) and that day was considered to be

inauspicious for sending the married woman back to her parental house. Evidence of P.W.No.1 Dhondu Bhoje that on that day, accused persons rushed on person of Sai to beat her as she was also desirous to coming to her parental house has come on record by way of omission. This evidence in respect of this incidence goes to show that though the First Informant father had been to the house of the accused persons for fetching Sai, it being the day of new moon (*amavasya*), she was not sent back to her parental house. This cannot be considered as subjecting a married woman to cruelty.

14 In order to come to the conclusion that treatment meted out to a married woman amounts to cruelty as explained under Section 498-A of the Indian Penal Code, evidence of prosecution must consist of all factual data in respect of the treatment meted out to the married woman by her in-laws. In the case in hand, P.W.No.1 Dhondu Bhoje and P.W.No.2 Bhagirathi Bhoje vaguely stated that because of illicit relations with his sister-in-law, appellant/accused No.1 Chandrakant Zore used to beat Sai. Except bare words of these two interested witnesses, there is no iota of evidence put on record to infer that appellant/accused No.1 Chandrakant Zore was having illicit relations with his sister-in-law. On the contrary, cross-examination of P.W.No.1 Dhondu Bhoje shows that appellant/accused No.1 Chandrakant Zore along with brother Baban used to do work of vending bananas on handcart in Mumbai. They both used to stay in Mumbai for some

period and occasionally they used to return to their native place. This evidence casts a serious shadow of doubt on the prosecution case that the appellant/accused No.1 Chandrakant Zore was having illicit relations with wife of his brother Baban. The basic fact of illicit relations cannot be said to be proved with such vague evidence. Therefore, it cannot be said that for this reason, appellant/accused No.1 Chandrakant Zore used to subject his wife with cruelty to such an extent to drive her to commit suicide. How and in which manner appellant/accused No.1 Chandrakant Zore used to beat his wife is not come on record from evidence of P.W.No.1 Dhondu Bhoje and P.W.No.2 Bhagirathi Bhoje. To crown this all, cross-examination of P.W.No.2 Bhagirathi Bhoje shows that her daughter Sai never shown any reluctance to reside with appellant/accused No.1 Chandrakant Zore. Net result of foregoing discussion requires me to hold that the prosecution has failed to prove the fact that the deceased was subjected to cruelty by appellant/accused No.1 Chandrakant Zore.

15 The learned trial Court has also held appellant/accused No.1 Chandrakant Zore guilty of the offence of abetting the commission of suicide by his wife Sai. Presumption as envisaged under Section 113-A of the Indian Evidence Act can be applied only when a married woman commit suicide within seven years of her marriage and when the prosecution establishes the fact that she was subjected to cruelty by accused persons. This by itself is not enough. The Court is bound to have regard to other

circumstances of the case and then only presumption regarding abetment to commit suicide can be raised by resorting to provisions of Section 113-A of the Indian Evidence Act. As the prosecution has failed to establish the fact that the deceased was subjected to cruelty, aid of this provision cannot be taken for inferring guilt of the accused. Allegations made against the appellant/accused No.1 Chandrakant Zore, as seen from the evidence of P.W.No.1 Dhondu Bhoje and P.W.No.2 Bhagirthi Bhoje are not of such a nature as would drive a married woman to commit suicide. They are not of sufficient gravity in the light of the fact that the alleged illicit relations between appellant/accused No.1 Chandrakant Zore and his sister-in-law are not proved by adducing evidence of the quality required in the criminal trial. Allegations against appellant/accused No.1 Chandrakant Zore coming on record from the mouth of parents of the deceased are not of sufficient gravity. Therefore, it cannot be said that appellant/accused No.1 Chandrakant Zore had instigated, conspired or intentionally aided the deceased to commit suicide. Suicide of deceased Sai cannot be said to be a common course of events and natural result of normal conduct. Therefore, the offence punishable under Section 306 of the Indian Penal Code cannot be held to be proved against appellant/accused No.1 Chandrakant Zore. The impugned Judgment and Order of the learned trial Court, as such, cannot be sustained. Therefore, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Judgment and Order of conviction and resultant sentence qua appellant/accused No.1 Chandrakant Zore dated 14/11/1997 passed by the learned Sessions Judge, Ratnagiri in Sessions Case No.11 of 1996 is quashed and set aside.
- (iii) Appellant/accused No.1 Chandrakant Zore is acquitted of the offences punishable under Sections 306 and 498-A of the Indian Penal Code.
- (iv) Fine amount, if paid, be refunded to appellant/accused No.1 Chandrakant Zore.
- (v) The Appeal is accordingly disposed of.

(A.M.BADAR J.)