

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

CRIMINAL APPEAL NO.675 OF 1999

Sanjay Dagadu Naikawadi.

Age : 33 years, Occ. Labourer.

R/o. Dhamani, Tal. Patan,

Dist. Satara.

..Appellant.

v/s.

The State of Maharashtra.

..Respondent.

Mr. Prasanna Shahane i/b. Milind Deshmukh, advocate for appellant.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 14, 2019.

JUDGMENT :

1 The appellant herein is convicted for the offence punishable under section 498A of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs. 200/- in default to suffer R.I. for 15 days. The appellant is also convicted for the offence punishable under section 306 of the Indian Penal Code and sentenced to suffer R.I. for five years andn to pay fine of Rs. 200/- I.d. to suffer R.I. for 15 days. By the Additional Sessions Judge, Satara vide Judgment and Order dated 21st April, 1999 in Sessions Case No. 246 of 1994.

Talwalkar

Hence, this appeal.

2 Such of the facts necessary to decide this appeal are as follows :

(i) The appellant herein was married to Hausabai, resident of village Kolekarwadi on 7th May, 1994. That on 30/9/1994 police patil of village Dhamani had lodged a report contending therein that on that day in the morning at about 6 a.m. father of the appellant had informed him that his daughter-in-law Hausabai had left the house in the morning. When they were searching for her, they had found her footwear near the public well and therefore, he suspected that in all probabilities, she had committed suicide.

(ii) The police patil had further reported that the well is deep and therefore, dead body cannot be seen. On the basis of the said report, A.D. No. 30/1994 was registered under section 174 of the Code of Criminal Procedure, 1973. The police patil had accompanied the police to the spot and with the help of police they had removed the dead body of Hausabai @Manisha from the well.

(iii) On the same day, the brother of Hausabai @ Manisha had lodged report at Dhebewadi police station alleging therein

Talwalkar

that on 10/9/1994 his sister had been to his house. She had informed her brothers that she was being harassed and ill-treated at the hands of appellant and his mother and that they were insisting upon her to get money from her brothers in Mumbai. The appellant, who was working as Coolie in Mumbai, had also taken his wife to Mumbai. She had also been to her brother to demand money. However, her brother had refused to give money. She had further informed that on the same night they had tied her legs and had assaulted her. She was insisting upon them to send her to her brother's house. However, they refused and that she was forcibly brought to village Dhamani.

(iv) Thereafter, Shripati Gaikwad, who was resident of Kolekarwadi and was working in Mumbai had also approached the brothers of the deceased and informed them that on 8/9/1994 he had seen the appellant pushing Hausabai into S.T. bus. After about one week, the appellant had been to the house of the informant and assured that he would not harass or ill-treat his wife and on the said assurance, she was sent to her matrimonial house and within 3 weeks thereafter, she had committed suicide.

(v) On the basis of the said report Crime No. 51 of 1994 was registered at Dhebewadi police station. Investigation was

Talwalkar

set in motion. The scene of offence panchanama was conducted on the same day in A.D. enquiry. It is indicated that the well in which she had fallen had parapet wall of about 4 to 5 feet above the ground level. That an electric motor was installed. The water was deep. After completion of investigation, charge-sheet was filed.

3 At the trial the prosecution has examined 6 witnesses to bring home the guilt of the accused.

4 P.W. 1 Khashaba Kolekar happens to be the brother of deceased Hausabai @ Manisha. He has deposed before the Court in consonance with the first information report which is marked at Exh. 19. He had categorically stated that the economic condition of their family was also poor and therefore, they could not fulfill the demands of the appellant. He has also stated that when the dead body of Hausabai was carried to Cottage Hospital, Karad, he enquired with the appellant as to why and when she had committed suicide. However, he had maintained silence. There is no effective cross-examination, which would shatter the witness. It appears from the tenor of the cross-examination that the defence of the accused was that the villagers used to go to the well in question for fetching water and that she must have fallen in the well while fetching

water.

5 P.W. 2 Shripati Gaikwad is the person who had witnessed the appellant pushing Hausabai in S.T. Bus of Mumbai on 8/9/1994. He had even intervened and questioned the appellant as to why Hausabai was being assaulted and thereupon, the appellant was of the opinion that he has no business to intervene between them. According to him, Hausabai was reluctant to board the bus and her husband and mother-in-law were forcing her to board the bus. The witness was also travelling in the same bus and he had disclosed to P.W. 1 immediately on the same day. That he had seen the appellant pushing her into the bus. The appellant had followed her to the village and in his presence, she had disclosed that she is being harassed and ill-treated at the hands of the appellant. She had stayed there for a week.

6 It is pertinent to note that in the cross-examination the witness was being suggested that his statement is not recorded under section 161 of the Code of Criminal Procedure, 1973. However, upon perusal of charge-sheet, it can be seen that his name is at Sr. No. 11 in the list of witnesses and the very fact that he has been cross-examined would sufficiently indicate that his statement under section 161 of the Code of

Criminal Procedure, 1973 was recorded. The accused has failed to shatter the testimony of the witness despite lengthy cross-examination.

7 P.W. 3 Ramesh Kolekar is the brother of the deceased who is residing at Mumbai and is engaged in embroidery work. He had visited his sister on Rakshabandhan festival and his sister had disclosed to him at that time also that she is being harassed by her husband and according to her husband, they were aggrieved by the fact that the brothers had offered artificial ornaments in marriage and that she was demanding golden ornaments for peaceful married life. According to P.W. 3, demand was also made to another brother who is residing in Mumbai prior to Rakshabandhan. On that day, she had disclosed to the witness that she was brutally assaulted by tying her hands and legs, because both the brothers had refused to fulfill the demand. That she had been to her house alongwith her husband and the witness had also attempted to pacify the couple. His sterling testimony has not been shattered in cross-examination.

8 P.W. 4 Kisan is another brother of deceased who is residing in Goregaon, Mumbai and he has corroborated the evidence of P.W. 3.

Talwalkar

9 P.W. 5 Dattu Gaikwad is police patil of village Dhamani, on the basis of whose report, A.D. was registered and has set law into motion. He has specifically stated that there is water tap connection in every house, since water supply scheme was introduced in the said village 20 years ago and therefore, there was no question of going to the well to fetch water. In the cross-examination, he has specifically stated that the provision of “Rahat” is made applicable, whenever there was a failure of water supply. It was only when there was failure of electricity that the villagers had to go to well to fetch water. In any case , it is not the defence of the accused that there was no electricity on that day and therefore, she had to go to the well to fetch the water.

10 P.W.6 Kashinath Krishnaji Katte is the Investigating Officer. He has deposed before the Court about the steps taken by him in the course of investigation.

11 It is pertinent to note that in the statement under section 313 of the Code of Criminal Procedure, 1973, the accused/appellant has stated that his wife was not behaving properly. She used to leave house without his permission and that he is innocent. In fact, charge was framed under section

304(B) of the Indian Penal Code, since the wife of the accused/appellant had died within 6 months after her marriage and the Court had rightly drawn presumption under section 113(A) of the Indian Evidence Act.

12 In fact, this is a case of custodial death and it was incumbent upon the appellant/accused to dislodge the onus under section 106 of the Indian Evidence Act, which reads as under :

“106. Burden of proving fact especially within knowledge
When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

It is a matter of record that at the threshold itself father of the appellant had expressed that Hausabai had committed suicide. Moreover, her footwear were found near the well. Even when the witnesses had enquired with the appellant about the suspicious circumstances in which Hausabai had purportedly committed suicide. He had maintained his silence.

13 Learned Counsel for the appellant has vehemently submitted that the prosecution has failed to prove all the ingredients of section 306 of the Indian Penal Code and therefore, the accused deserves to be acquitted of the charge under section 306 of the Indian Penal Code.

Talwalkar

14 The deceased was married to the appellant hardly 6 months before incident. She was taken to Mumbai. She was forced to demand money and ornaments from both of her brothers who were residing in Mumbai. P.W. 2 has stated that just 3 weeks prior to the incident, he had seen the accused persons forcing her into the bus. He had travelled in the same bus and as soon as she returned to her village, she had disclosed in the presence of her husband that she is being ill-treated at the hands of her husband and mother-in-law. She had even tried to leave her matrimonial house on 2 occasions. However, due to poverty, her brothers could not fulfill the demands and she was sent back to her matrimonial house on assurance given by the appellant. Moreover, in the morning at 6 a.m. itself, her father-in-law was sure that she had committed suicide. All circumstances, if taken cumulatively, would clearly establish the fact that Hausabai had no other alternative, but to commit suicide since she could not take the harassment and ill-treatment beyond a particular point. Sub-clause (a) of Section 498A of the Indian Penal Code reads thus :

“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 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”

15 The learned Counsel for the appellant upon instructions submits that the appellant has got remarried in the year 1999 itself and he has 3 children to look after and there is nobody to look after them. He has therefore, prayed for leniency. The appellant was in custody from 30/9/1994 to 21/10/1994. He was taken into custody on 21st April, 1999 i.e. on the date of the Judgment and was enlarged on bail under section 389 of the Code of Criminal Procedure, 1973 by this Court vide order dated 17/1/2000. The appeal was not being attended by the learned Counsel for the appellant and therefore, the Court was constrained to issue non-bailable warrant, which could not be served for a long time and thereafter, he was arrested and produced before this Court on 3rd October, 2019 and he was sent to judicial custody on the same day. It is not a case where leniency can be shown. However, since the appellant has undergone approximately 10 months in custody, he deserves some leniency in the sentence.

16 Hence, following order is passed :

ORDER

(i) The appeal is partly allowed.

(ii) The conviction of the appellant for the offence punishable under section 498A and 306 of the Indian Penal Code passed vide Judgment and Order dated 21st April, 1999 in Sessions Case No. 246 of 1994 by additional Sessions Judge, Satara is hereby maintained. However, order of sentence is modified. The appellant is sentenced to suffer R.I. for 4 years. Sentence of fine is maintained.

(iii) Writ be issued forthwith.

17 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]