

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

CRIMINAL APPEAL NO.1067 OF 2002

Tulshiram Bhagwant Gorde

.. Appellant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Abhaykumar Apte, Advocate for the Appellant.
Mr.V.V. Gangurde, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 10, 2019.

JUDGMENT :

Appellant has preferred this Appeal challenging the judgment and order dated 26th September, 2002, passed by Additional Sessions Judge, Pune in Sessions Case No.288 of 2001 convicting him for the offence punishable under Section 498-A of Indian Penal Code ("IPC" for short) and sentencing him to suffer Rigorous Imprisonment for three years and to pay a fine of Rs.500/- in default, to suffer Rigorous Imprisonment for six months and also convicting him for the offence punishable under Section 306 of IPC, for which he was sentenced to suffer Rigorous Imprisonment for a period of seven years and to pay fine of Rs.2000/-, in default further Rigorous Imprisonment for six months.

2 Appellant was arraigned as accused no.2 along with accused nos.1 and 3. Charge was framed against accused on 16th October, 2001 for the offences punishable under Section 498-A read with 34 of IPC, 302 read with 34 of IPC and in the alternate Section 304 B read with Section 34 of IPC.

3 The case of the prosecution as spelt out in the evidence of the complainant and the other witnesses is that deceased Manisha was married to accused no.1 Vijay Tulshiram Gorde on 5th May, 1995. Complainant Manohar Bhivaji Thorat (Appellant) is the father of the deceased. Accused no.2 is the father-in-law and accused no.3 is the mother-in-law of Manisha (deceased). The marriage was solemnize on 5th May, 1995. Victim joined the matrimonial home at village Shingave in Ambegaon Tahasil. Accused used to reside jointly along with Manisha. Out of the wedlock two daughters and a son was born. Accused no.1 was working as commission agent in the transport business. He sustained loss and hence demanding money from the parents of Manisha. The father-in-law of Manisha was in service in Britaniya Biscuit Company at Mumbai. After his retirement he came back to village Shingave. Deceased was ill treated in the house of her husband. Two months prior to the incident Manisha had came to

her parental home. At that time she had disclosed to her parents that the accused have demanded Rs.5000/-. The financial position of the father of the deceased was weak and he could not fulfill the demand. The father of the deceased then advised her and sent her back to her matrimonial home. After 15 days, Manisha returned back to her parental home and informed her father that her husband and mother-in-law were staying in Mumbai and her father-in-law and brother-in-law are harassing her. The father of the victim then dropped her to Mumbai at the house of the husband. Accused no.1 then brought the victim back to village Khondad and told the father of the victim to drop her at village Shingave. On 15th February, 2001, father of Manisha took her to village Shingave. On 18th February, 2001, accused no.2 (Appellant) brought Manisha in a tractor along with her children. She was lying unconscious and had sustained injuries on her face and knees and near the eyes. When she was taken to hospital, Doctor examined her and declared her dead. The report was lodged with police and investigation proceeded. Inquest panchanama was drawn. Statement of witnesses were recorded. The plastic can containing kerosene and a bottle containing poison were seized from her house. Said articles were sent for examination and report of the Chemical Analyser was received in

that regard. On completing investigation, charge-sheet was filed.

4 Prosecution has examined five witnesses in support of his case. Whereas at the instance of defence, two witnesses were examined. Thereafter, statement of the accused was recorded under Section 313 of Cr.P.C. After analyzing evidence, the trial Court acquitted accused nos.1 and 3 of all the charges. However, appellant (accused no.2) was convicted for the offence under Section 498-A and 306 of IPC. The appellant was sentenced to suffer imprisonment for a period of three years and seven years for the aforesaid charges.

5 P.W.1 is complainant and father of the deceased. He has deposed that the marriage between the deceased Manisha and accused no.1 was performed on 5th May, 1995. His daughter went to the house of the accused at village Shingave for cohabitation. Six months prior to the incident, the father-in-law of the deceased (appellant) retired from service and shifted his residence to village Shingave. For the first 2-3 years, the family life of Manisha was smooth. Three children were born out of the said wedlock. The accused no.1 is working as commission agent for transport. He insisted that Manisha should bring money from her parents as he sustained loss in the business. The father-in-law

and mother-in-law also harassed Manisha. She had informed about the harassment caused to her by the accused. On 15th February, 2001, Manisha came to Kodad and she has informed that accused used to assault her. The complainant took Manisha to Ghatkoper where accused no.1 was residing. Accused no.3 was also present at the said place. Thereafter, he returned to his village. On 16th February, 2001, accused no.1 brought Manisha to Khodad and told P.W.1 to drop her at village Shingave. On 18th February, 2001, accused no.2 brought Manisha in a tractor. She was unconscious. She had sustained injuries. She was taken to the hospital. She was declared dead. P.W.2 is the photographer who has taken photographs at the instance of P.W.1. P.W.3 is the cousin of P.W.1. he has reiterated the version of P.W.1. P.W.4 is the medical officer, who has conducted the Postmortem of deceased Manisha. He has stated in his evidence that Manisha had sustained external injuries viz. Right black eye (contusion due to blow), two contusions over both the cheeks 3 x 3 c.m., C.L.W. over the chin 5 c.m. Long x 1 c.m., contusion over the anterior aspect of left iliac crest, old scars over both the knee joints, and, contusion over anterior aspect of left shoulder. He further deposed that internal injuries were also noted on both the right and left frontal side of head, there is haematoma below the scalp.

The CA report indicate that the death was caused due to poisoning. P.W.5 is the investigating officer who conducted investigation and filed charge-sheet. The defence has examined two witness P.W.1 Shankar Khilani and P.W.No.2 Ganesh Bhiwade. The said witnesses refers to their visit to village Shingave and to the fact that they were present with the appellant, they heard weeping of the child of victim and when they entered into the house they noticed that victim Manisha was lying unconscious.

6 Learned counsel for the appellant Mr.Apte submitted that the prosecution has not established the charges. The trial Court has convicted the appellant only on the basis inferences without any cogent evidence to support the charges. The prosecution has failed to prove that the appellant has caused any harassment to the victim, which has resulted in act of commission of suicide by her. He further submitted that there was no motive to commit the crime. The prosecution case proceeded on the basis that all the three accused has caused harassment to the victim. However, the trial Court has acquitted accused nos.1 and 3 on the ground that their presence is not established at the scene of the offence. It is submitted that there was no reason to convict the appellant for the charges for which the other accused

were acquitted by the trial Court. The trial Court has based its conclusions on the basis of the inference that the appellant was present in the house and has allegedly assaulted the victim, which has compelled her to commit suicide. However, there is no substantive evidence to support the said allegations. It is submitted that the defence witnesses examined by the appellant has clearly established that at the time the incident had occurred, the appellant was not in the house, and, therefore, the overtact of causing any injuries to the victims were not attributed to the appellant. He submitted that although the defence witnesses have been examined by the prosecution, the evidence deposed by them was not shaken in any manner. It is submitted that the trial Court in the judgment itself has indicated that demand of dowry has not proved and has acquitted the accused for the offence punishable under Section 304-B of IPC. The parameters which were used for acquitting accused nos.1 and 3 qua Section 498-A of IPC were not applied to the appellant. It is submitted that the duty was cast upon the prosecution to establish that the applicant was instrumental for causing injuries to the deceased which has resulted in commission of suicide. P.W.1 and P.W.3 has referred to the harassment caused by all the accused. However, the appellant was convicted for causing cruelty to the victim. He further

submitted that the trial Court proceeded with the charge that the accused were instrumental in committing murder of deceased Manisha. However, trial Court proceeded to convict the appellant for the offence under section 306 of IPC. He submitted that no charge under Section 306 of IPC was framed against the appellant. It is therefore submitted that the appellant deserves to be acquitted.

7 Learned APP submitted that the deceased was in custody of the appellant. There were injury marks on the person of the deceased. The injuries were ante-mortem. There is evidence of P.W.No.1 and P.W.3 which establishes the harassment and cruelty caused to the victim by the appellant. Prosecution has established the factum of cruelty caused by the appellant and hence he was convicted for an offence punishable under Section 498-A of IPC. He further submitted that in addition to the cruelty meted out to the deceased, the injury sustained by her on the date of the incident establishes the fact that she was compelled to commit suicide on account of the harassment and the assault caused by the appellant. His presence has been established by the prosecution at the place of incident. The evidence of the defence witness is doubtful and no reliance can be placed on the

same. The defence has not been able to discard the evidence of the witnesses in the cross-examination. The CA report show that the liquid consumed by the deceased was poison. The evidence of P.W.4 viz-a-viz external injuries and internal injuries appearing on the person of the deceased and the cause of death is not shaken in any manner through the cross-examination conducted by the defence. He therefore submitted that the prosecution has been able to establish its case and hence, the judgment of the trial Court deserves to be confirmed.

8 Having heard both the sides. I have analysed the evidence on record. Admittedly the marriage between the accused no.1 and the deceased Manisha was solemnized on 5th May, 1995. The alleged incident had occurred on 18th February, 2001. To establish the alleged cruelty meted out to the victim the prosecution has relied upon the evidence of P.W.1 and P.W.3. P.W.1 is the father of the victim and P.W.3 is her uncle. The said witnesses in their evidence have stated that all the accused were harassing her. Accused no.1 was working as commission agent and on account of loss, he was demanding money. There is reference of demand of Rs.5,000/-, by the accused. Thus, the case proceeds on the basis that all the accused caused harassment to

victim Manisha. P.W. in his cross-examination has stated that the financial possession of the accused was somewhat better due to service of accused no.2. Financial position was sound. He has also stated that prior to six months of the incident, he went to Mumbai. He was on visiting terms at the house of the accused. Accused nos.1 and 2 have never demanded amount directly from him. His financial position was weak. He also admitted that the accused no.1 had given a bicycle to him. The evidence of P.W.3 also refers to the alleged harassment caused by the accused. He has also referred to the fact that the brother-in-law of the deceased was also residing with accused. In the cross-examination, he has stated that he had visited the matrimonial home of the deceased only once. At that time her mother-in-law and brother-in-law were present. He had visited her house after one and half year after marriage. For about four years after the marriage, the victim was given good treatment. Thus, from the evidence of the aforesaid witnesses, it is apparent that the marriage was performed on 5th May, 1998 and atleast for a period of about four years, there was no harassment as deposed by P.W.3. The evidence on record does not establish that the alleged harassment caused to the victim was to the extent that she was compelled to commit suicide. The trial Court in the judgment

itself mentioned that the demand of dowry was not proved. There is reference of demand of Rs.5,000/-, in the evidence of the witnesses. Apparently, after the marriage, the victim was residing with the accused. There are no previous complaint. On the ground that there is no proof of demand of dowry, trial Court has acquitted the accused under Section 304(B) of IPC.

9 The case of the prosecution is that the appellant has taken the deceased to her parental home after she has consumed poison and than she has taken to hospital. There are some ante-mortem injuries on the person of the deceased. The appellant by examining defence witnesses has established that he was present outside the house along with D.W.1 and D.W.2 and after hearing the weeping sound, he went to the house and noticed that the victim was lying unconscious and that she had consumed poison. The prosecution has not established by cogent evidence that the appellant is the author of the injuries sustained by the victim. It is not established beyond doubt that at the time of the incident the appellant was in the house. The case of the prosecution proceeded with the charge of murder. It was alleged that the accused had administered poison to the victim, however, the prosecution could not establish the said charge by any cogent

evidence. The trial Court in the judgment has categorically stated that the charge under Section 302 of IPC could not be established. However, considering the fact that harassment was caused to the victim, appellant was convicted for the offence for abetment to commit suicide. Charge under Sections 302 and 306 are distinct in nature. Charge was framed against all the accused that since 1998 to 15.02.2001 and on 18.02.2001 subjected Manisha to cruelty by harassing her and ill-treating her and making unlawful demand of money from her parents, which was of such a nature as was likely to drive her to commit suicide or cause grave injury to her life, limb, health, physical or mental and committed offence under Section 498-A read with Section 34 of IPC. On 18.02.2001, the accused did commit murder of Manisha and committed offence under Section 302 of IPC. The case proceeded on the basis that poison was administered to victim by accused and that she was assaulted causing injuries. The allegation of harassment were also attributed to accused nos.1 and 3. The trial Court has given a finding that no harassment was caused by accused nos.1 and 2. Their presence was also not established at the scene of offence. On the basis of inference that injuries on the person of the deceased were caused by the appellant, he was convicted for the offence punishable under

Section 498-A and 306 of IPC. In paragraphs 24 and 25 of the impugned judgment, it is observed by the trial Court that in the instant case, no motive is brought on record to show that the accused had any intention to kill Manisha. However, the evidence on record show that Manisha was subjected to cruelty atleast by her father-in-law, who was residing with her. There is no direct evidence available on record to show that the appellant had administered poison to Manisha. However, it appear that he had assaulted Manisha, and, thereafter, she consumed poison. It is also observed that there is sufficient evidence to show continuous ill-treatment to the victim, which forced her to commit suicide and thus the charge under Section 498-A of IPC, is attracted. There is evidence of ill-treatment against accused no.2 (appellant) and that there is also evidence that Manisha has committed suicide by consuming poison. However, on analysing the evidence, as stated above, it cannot be said that there is sufficient evidence to establish the charge under Section 498-A or 306 of IPC against the appellant. Although accused nos.1 and 3 were also charged with the same offences, the trial Court appears to have convicted the appellant on the basis of the reasoning that he was in the house when the incident of suicide had occurred and that he has ill-treated her. The reasoning of trial Court is

apparently murder is ruled out by abetment to commit suicide is established. There is no cogent evidence to prove the said charge. The prosecution must establish its case beyond all reasonable doubts and on scrutiny and analysis of the evidence, I do not find that the prosecution has succeeded in establishing the charges beyond doubt. In view of the above, the impugned judgment and order convicting the appellant is required to be set aside.

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Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal No.1067 of 2002, is allowed;
- (ii) The impugned judgment and order dated 26th September, 2002, passed by Additional Sessions Judge, Pune, convicting the appellant for an offence punishable under Section 498-A of Indian Penal Code and Section 306 of Indian Penal Code, and sentencing him to imprisonment and fine, is quashed and set aside and appellant is acquitted of these charges;
- (iii) Criminal Appeal stands disposed of.

(PRAKASH D. NAIK, J.)