

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.897 OF 2003

The State of Maharashtra	)
through Shiva Aba Gharmode,	)
Age-62 years, Occ.Agriculture,	)
R/o Ekondi, Taluka-Kagal,	)
Dist. Kolhapur	)....Appellant
V/s.	
Nagoji Pandurang Patil	)
Age-38 years, Occ. Service,	)
R/o. Belavale Khurd, Tal. Kagal	)
Dist. Kolhapur.	)....Respondent

Ms.Pallavi Dabholkar APP for the appellant.
Mr.Abhishek R.Avachat for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 18.12.2019

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 30.4.2003 passed by the 4th Ad-hoc Assistant Sessions Judge, Kolhapur, acquitting accused of offences punishable under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) and section 306 (*Abetment of suicide*) of the Indian Penal Code (IPC).

2. It is the case of prosecution that one Sunita Nagoji Patil got married to accused Nagoji Pandurang Patil sometime in 1992. They had two children, both sons, one born in 1994 and other in 1996. It seems that after 5 or 6 months of the marriage accused started ill-treating Sunita demanding sum of Rs.1,00,000/- to be brought from her father so that accused could buy an agricultural land. It is prosecution's case that Shiva Aba Gharmode father of Sunita, who is the complainant as well as PW-2, gave about Rs.25,000/- sometime in 1998 or 1999 and made it clear to accused that he cannot afford to pay him the balance demanded amount. It is stated that accused therefore, continued to ill-treat Sunita. It is further alleged that at the time of Diwali in 2001 Sunita went to her parental home and has told her father that accused was demanding Rs.50,000/-. She has also alleged to have informed complainant and PW-4 Bhivaji Dattatraya Patil who was the neighbour of accused that accused used to beat her. Incidentally, PW-4 Bhivaji Patil is the son-in-law of the brother of complainant.

3. On 22.11.2002 complainant received a telephone call from PW-4 Bhivaji Patil that Sunita died as she fell in the Well. Complainant rushed to the matrimonial house of Sunita along with his sons and other family members when they saw the dead body of

Sunita. It is the case of prosecution that Sunita was fed up with the harassment by accused, constant demand of money by accused and cruelty, and thereby was driven to commit suicide. Learned APP states that therefore, accused is guilty of offences punishable under Sections 498-A and Section 306 of IPC.

4. After completion of investigation, Investigating officer PW-7 Abdul Gulab Sanadi submitted a charge-sheet in the Court of JMFC, Kagal who committed the case to the Court of Sessions in Kolhapur for trial as an offence charged under Section 306 of IPC is exclusively triable by the Court of sessions.

5. Accused pleaded not guilty and claimed to be tried. The defence was of total denial.

6. In order to establish the guilt of accused beyond reasonable doubt, prosecution examined 7 witnesses and also relied on various panchanamas and reports. The witnesses were PW-1 Dinkar Shripati Kotekar (spot panch witness) ; PW-2 Shiva Aba Gharmode (complainant) ; PW-3 Uttam Kerba Kambale (stamp vendor) ; PW-4 Bhivaji Dattatraya Patil ; PW-5 Ananda Dabu Gharmode (scribe of the stamp) ; PW-6 Dr.Mukund Mahadev Sadigale (Medical officer) and

PW-7 ASI Abdul Gulab Sanadi (I.O.). Prosecution has also relied on the inquest panchanama (Exh.10) ; Spot panchanama (Exh.13) ; Post mortem report (Exh.26) ; advance post mortem report (Exh.27) ; Stamp Exh.19 and Complaint Exh.20.

7. The trial Court, after considering the evidence, came to conclusion that prosecution has not proved the charges and acquitted accused.

8. Aggrieved by the order of acquittal, the prosecution has approached this Court by this appeal. I do not find any infirmity in the order of acquittal and the order impugned, in my view, does not warrant any interference.

9. PW-1 is a panch witness who was called when the spot panchanama was prepared. He states that the Well in which Sunita had fallen did not have a parapet wall (kathada) and the well was full of water upto mouth. He also says that the land around the well had become slippery as it was wet. I have to mention here that before the complaint was filed, accused had lodged FIR with the police, in which it is stated that the accused had gone out at 7.00 a.m., to fetch fodder, to his field and when he came back at 8.00 a.m., he did not find

Sunita and Sunita was to visit some relatives with their sons. Accused therefore, told the sons and one lady in the house to look for Sunita. They came back and stated that Sunita was not to be seen. Therefore, accused asked his sister-in-law to go and look for Sunita. Sister-in-law came back saying that in the well she found floating some fodder and also a slipper of Sunita but Sunita was not seen. Accused therefore, with 3 others went to the well and those 3 persons jumped into the well and found the body of Sunita at the bottom of the well. Those persons took the body out of the well and body was later brought inside the house. Statements of these 3 persons have been recorded by the police and they have also been listed as witnesses but strangely they were not called to depose. Even the said sister-in-law's statement has been recorded but has not been called to give evidence.

10. PW-2 Shiva Aba Gharmode who is the complainant states that accused was demanding Rs.1,00,000/- from him for purchasing a plot of land and he came to know about this because Sunita used to tell him. He also says that accused used to beat Sunita and would not give food to Sunita. PW-2 says, 3 years before the death of Sunita, he has given Rs.25,000/- to accused and he told accused that he cannot give any money. Due to constant harassment, Sunita used to stay with complainant PW-2 but then accused went over and promised to keep

Sunita well and took her back. While taking her back, it is the case of PW-2 that accused executed a good conduct undertaking and promised not to harass Sunita in a Rs.10 stamp paper, which is at Exh.19. The scribe of Exh.19 is PW-5 Ananda Gharmode and there were 3 witnesses who have signed, Bhivaji D.Patil PW-4, Piraji Dattu Gharmode and N.A.Khodre. The last two have not deposed. Relying on this document at Exh.19, prosecution states that accused used to harass and treat Sunita with cruelty, demanding money.

11. In the examination-in-chief, PW-2 Shiva Aba Gharmode also states that his nephew, i.e., PW-4 Bhivaji Patil informed him on 22.11.2002 that Sunita has died because of falling in the well. In his cross-examination also he says that when he went to the house of Sunita after hearing about her death along with his sons and brother, he inquired with the villagers as to how Sunita died and at that time he learnt that on that day at about 7.00 a.m. when Sunita had gone to bring fodder, "she fell in the well by slip of legs". He also states that he had informed the police that he had no objection to give the dead body to the in-laws of Sunita and he, his sons, brothers and other family members were present at the time of cremation.

12. PW-4 Bhivaji Patil also says that he learnt from his house that Sunita died as she fell in the well. He also says that when he heard about the death of Sunita, he went to the place and he saw about 50 persons from the village had gathered near the well while taking the dead body of Sunita.

13. The doctor who conducted the post mortem, PW-6 Dr.M.M.Sadiwale says Sunita was averagely built and nourished and he found in the stomach of Sunita little quantity of partially digested food. According to doctor, food leaves the stomach after 2 to 3 hours and in this case little quantity of food was present in the stomach. This would mean that Sunita had eaten food in the morning hours before she fell. Would somebody eat before committing suicide, I wonder. The person would be in such mental trauma or turmoil before and while taking the drastic step.

14. As regards Section 306 of IPC, there is no evidence to speak off. Here is the case of abetment by instigation. The word 'instigate' means to goad or urge or forward or to provoke, incite, or encourage to do an untoward act which that person would have otherwise not done. It is also well settled that in order to amount to abetment, there must be *mens rea*. Without knowledge or intention, there can be no

abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct incitement to do the culpable act. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation, (*Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh*)¹. There is no evidence to suggest or indicate that the accused knew or had reason to believe that deceased would commit suicide or for that matter instigated Sunita. Even if any acts or words uttered by the accused or their conduct are sufficient to demean or humiliate the deceased and even to drive the deceased to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the accused intended by their acts that the deceased must commit suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide. As held by the Kerala High Court in *Cyrias, s/o Devassia and another vs. Sub-Inspector of Police, Kaduthuruthy and another*², it is not what the deceased 'felt', but what the accused 'intended' by his act which is more important in this context.

1 (2002) 5 SCC 371

2 2005 SCC Online Ker 346

15. There is no evidence to show that Sunita had committed suicide. It looks more like an accidental death.

16. Thus there is a fundamental defect in the prosecution's case itself. It does not spell out any offence punishable under Section 306 of IPC.

17. Now coming to the charge of Section 498-A of IPC, learned APP relied upon Exh.19 to drive home the point that Exh.19 was proof of accused making illegal demands and physically and mentally treating Sunita with cruelty. Learned APP submitted that in Exh.19 accused has admitted that he has received Rs.25,000/- from PW-2, and PW-2 used to help accused from time to time. Despite PW-2 giving him lot of things and helping and expressing regret for his acts, accused used to ill-treat Sunita and he assured that he would mend his ways and will not ill-treat Sunita.

18. If I have to blame accused relying on Exh.19, it has to be proved that Exh.19 was actually executed by accused and I also have to believe the testimony of PW-4 Bhivaji Patil and PW-5 ananda Dadu Gharmode. In the testimony of PW-2 and PW-4 they have also tried to make out a case that accused was demanding money and he used to

physically and mentally abuse Sunita.

19. PW-3 Uttam Kerba Kambale who was the stamp vendor, in his examination-in-chief says that he sold the stamp paper to Shiva Aba Gharmode, i.e., PW-2 through accused on 13.12.1999. He says he has obtained signature of accused on the register as well as on the stamp paper for having sold it. In the cross-examination, he agrees that he cannot tell positively that the person whose name appears as Nagoji Pandurang Patil to whom he sold the stamp paper is accused or any other person. Therefore, the evidence of PW-3 that he sold the stamp paper through accused is not reliable.

20. PW-5 Ananda Dadu Gharmode who is the scribe states that he wrote contents of Exh.19 and it is his handwriting. He says that he has written on the stamp paper as Dastur but does not know what is meant by Dastur. Though in his examination-in-chief he says what is written in Exh.19 was on the say of accused and after writing the contents were read over to accused and the witnesses who all signed, he also identifies the signature on Exh.19 to be that of accused. He admits that when statement was recorded by the police, he did not mention that he had obtained signature of accused in the stamp paper. He also states that the police asked him to copy the contents in Exh.19

in another paper but in that also he has not stated that it bears the signature of accused. PW-5 happens to be nephew of complainant and certainly an interested witness. If one read the statements of PW-2, PW-4 and PW-5, they are almost identical and they are all interested parties. It is possible that in his testimony PW-5 has only improvised.

21. Coming to the evidence of PW-4 Bhivaji Dattatraya Patil he states Sunita used to tell him whenever she went to her house that there was a dispute with accused because of his constant demand of Rs.1,00,000/- for purchasing land. He also states about Exh.19 and according to him it bears signature of accused and he identified the signature. According to him at 7.00 a.m. Sunita had gone to his house on the fateful day, i.e., 22.11.2002 and she was crying and her eyes were swollen. Post mortem report does not indicate any swelling. In the cross-examination, he admits that the scribe of Exh.19, i.e., PW-5 did not write the name of accused. He also admits that he has tick marked the signature against which name of Ananda Dadu Gharmode i.e., scribe is written. He also admits that he has not stated before the police that accused has signed the stamp paper. He also says he did not tell the stamp vendor to sell the stamp paper in the name of accused. There was also a signature encircled in red ink on the stamp paper which is similar to signature of accused. But PW-4 says he

cannot identify that signature which is encircled in red ink. He says that on 22.11.2002 Sunita told him that on that day she was beaten and she was given fist blows and kicks but as he did not have time, he did not go to the house of accused to inquire why he was beating Sunita. He says that when he went after hearing about the death of Sunita to the well, about 50 persons of the village had gathered near the well while taking out the dead body of Sunita. He admits that he did not tell those persons that on that day Sunita was beaten in the morning and also did not tell the Police Patil that on that day Sunita was beaten and she was crying. Therefore, this witness also does not give the confidence as a believable witness. PW-2 in his cross-examination also agrees that he did not inform the police when his statement was recorded that the accused had signed the stamp paper. PW-2 also admits that even though according to him, he gave only Rs.25,000/- against the alleged demand of Rs.1,00,000/-, accused had already purchased land sometime in 1998. Therefore, it is not believable that accused was wanting money from PW-2 to purchase land. It also shows that accused had money on his own to buy land. Accused was also working as a Kotwal in village. I am told by the learned APP that Kotwal is a person who normally assists the Talathi (revenue officer in-charge of the village).

22. Considering the evidence of these witnesses, I am unable to gather myself to believe that accused was treating Sunita with cruelty or harassing her with unlawful demand. So charge under Section 498-A of IPC also cannot stick.

23. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court observed that prosecution had failed to prove its case.

24. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

25. Appeal dismissed.

(K.R.SHRIRAM,J)