

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 455 OF 2012**

The State of Maharashtra,  
(Through P.S.O. Kapurbawadi  
Police Station)

....Appellant.

Vs.

- 1 Vinod Dhanaji Bhoir,  
Age 32 years,
- 2 Santosh Dhanaji Bhoir,  
Age 30 years,
- 3 Santoshi Santosh Bhoir,  
Age 25 years,

All R/a. Behind Parvati Niwas,  
Balkum Pada No.2,  
Thane.

....Respondents.

Mr. S.S. Hulke APP, for the Appellant.  
Mr. Raju Yamgar for the Respondents.

**CORAM : A. S. GADKARI, J.**  
**DATE : 18<sup>th</sup> DECEMBER, 2020.**

**ORAL JUDGMENT:-**

The Appellant-State of Maharashtra, has impugned Judgment and Order dated 4<sup>th</sup> January, 2011 passed by the learned II<sup>nd</sup> Additional Sessions Judge, Thane in Sessions Case No.436 of 2009, acquitting the Respondents from the offence punishable under Sections 498-A and 306 of

the Indian Penal Code (for short, "*the IPC*").

2           Heard Mr. Hulke, learned APP for the Appellant-State and Mr. Yamgar, learned counsel for the Respondents. Perused entire record.

3           The record reveals that, the marriage of deceased Mrs. Dhanashree was solemnized with Respondent No.1-Vinod Bhoir, on 10<sup>th</sup> May, 2009. Respondent No.1 and Mrs. Dhanashree were residing separately from 10<sup>th</sup> June, 2009, from Respondent Nos. 2 and 3. The Respondent No.2 is younger brother of Respondent No.1 and Respondent No.3 is wife of Respondent No.2. The deceased Mrs. Dhanashree was happy in her married life for about two months. That, on 28<sup>th</sup> July, 2009, in the afternoon, Mrs. Dhanashree committed suicide by hanging to the hook of ceiling fan with an Odhani/Dupatta, at her matrimonial house. The door of the house was latched from inside. At that time, Respondent No.1 was not present in the house.

After returning home of Respondent No.1, he broke-open the latch of the door and found Mrs. Dhanashree hanging to the hook. Information about the said incident was given to the police by Mr. Kishor Madhavi, a neighbour of Respondent No.1. Initially, the deceased Mrs. Dhanashree was taken to Omkar Hospital, where she was declared dead on arrival. Autopsy on the dead body of Mrs. Dhanashree was performed on 28<sup>th</sup> July, 2009 by Medical Officer, attached to the Civil Hospital, Thane. A Postmortem Report (Exh-26) was accordingly issued by the concerned

Medical Officer. The cause of death mentioned in the Postmortem Report is '*Death due to asphyxia due to hanging*'.

4           After completion of investigation, police submitted charge-sheet in the Court of Judicial Magistrate, First Class, Thane. Learned Judicial Magistrate, First Class, Thane, committed the present case to the Court of Sessions.

The Trial Court framed Charge below Exh-3 under Sections 498-A and 306 read with Section 34 of the IPC. The contents of the charge were read over and explained to the Respondents in vernacular to which, they pleaded not guilty and claimed to be tried. Their defence was of total denial.

The prosecution, to substantiate charges framed against the Respondents, examined in all six witnesses namely, Aadesh M. Shilkar, (P.W.No.1), maternal uncle of deceased Mrs. Dhanashree; Smt. Kalpana C. Salunke (P.W.No.2), maternal aunt of deceased; Ramakant K. Patil (P.W.No.3) cousin grand-father of deceased; Smt. Poonam A. Phadtare (P.W. No.4), neighbour of deceased; Anil K. Shinge (P.W. No.5), neighbour of deceased and Ramchandra D. Mahakal (P.W. No.6), the Investigating Officer of the present crime.

5           It is the prosecution case that, deceased Mrs. Dhanashree was subjected to cruelty as she could not cook the meal properly; the Respondent No.1 was having suspicion over her fidelity and the

Respondents used to demand her share in the property from her father.

It is an admitted fact on record that, from 10<sup>th</sup> June, 2009 the Respondent No.1 and deceased Mrs. Dhanashree had started residing separately from the Respondent Nos.2 and 3. It further appears from the record that, the Respondent Nos.2 and 3 have no direct role in demanding property from the deceased and/or causing cruelty to her.

6 Evidence on record indicates that, P.W. No.1 in his testimony has admitted that, during the first month of marriage, deceased Mrs. Dhanashree was happily residing with the Respondent No.1. That, Respondents were not his relatives and he was not knowing the Respondent Nos. 2 and 3 prior to marriage. He has admitted that, he was not aware of any of the properties of deceased Mrs. Dhanashree.

P.W. No.2 has admitted that, she has no knowledge about ancestral property of deceased Mrs. Dhanashree. The married life of deceased Mrs. Dhanashree was good for about one month. She was not knowing anything about the suspicion which was being raised about the fidelity of the deceased by the Respondent No.1.

P.W. No.3 has admitted that, his house was situated just 10 to 15 houses away from the house of deceased Mrs. Dhanashree, where she was residing last. He has further admitted that, though he had asked deceased, on whom the suspicion was being raised about her character, she did not tell him anything.

P.W. Nos. 4 and 5 i.e. the neighbours of the deceased Mrs. Dhanashree, have not supported the prosecution case at all. However, P.W. No.5 in his cross-examination has admitted that, on 28<sup>th</sup> July, 2009, he along with Respondent No.1 broke-open the door of the house and at that time Mr. Kishor Madhavi, also helped them. That, Respondent No.1 Vinod Bhoir took the deceased down from the hook and thereafter all of them took her to the hospital.

It is thus clear that, there is no evidence of any witnesses which substantiate the claim of the prosecution regarding demand of dowry and/or any other property and causing cruelty for the same to the deceased by Respondents.

7           Mr. Hulke, learned APP submitted that, the deceased committed suicide within a period of 2½ months of her marriage and therefore, the presumption under Section 113-A of the Evidence Act will be applicable to the present case. He submitted that, the Trial Court has failed to appreciate this vital aspect in the present case and therefore, the acquittal of the Respondents from the charges, is erroneous.

8           The Hon'ble, Supreme Court in the case of *Mangat Ram Vs. State of Haryana* reported in (2014) 12 SCC 595, in paragraph Nos. 30 and 31 has held as under:-

“30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the

*Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.*

- 31 *In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana (2004) 12 SCC 257 : 2004 SCC (Cri.) 217, wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word ‘cruelty’ in Section 498-A IPC.”*

It is clear from the evidence on record that, the prosecution could not substantiate beyond reasonable doubt the fact that, the deceased

was subjected to cruelty for non-fulfillment of demand of dowry by the Respondents and therefore, the presumption under Section 113-A of the Indian Evidence Act, will not be attracted in the present case.

9           From the evidence on record, it can safely be inferred that, the deceased Mrs. Dhanashree, ended her life by hanging herself and the Respondents did not cause cruelty to her or abetted her to commit suicide.

In view of the above and after minute perusal of entire evidence available on record, this Court is of the opinion that, the view adopted by the Trial Court is probable in the facts and circumstances of the present case. The Trial Court has not committed any error either in law or on facts while passing the impugned Judgment and Order.

There are no merits in the Appeal.

Appeal is accordingly dismissed.

**(A.S. GADKARI, J.)**

Sanjiv S.  
Mashalkar  
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