

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

CRIMINAL APPEAL NO. 937 OF 2004

The State of Maharashtra

**... Appellant.
(Orig. Complainant)**

V/s

1. Santosh @ Krushnadeo Yogiraj Kapse

Age- 26 yrs.

Occupation – Agriculture.

2. Sou. Yashodabai Yogiraj Kapse

Age 45 yrs., Occu. Household,

Both R/o Kapsewadi, Tal. Madha

**... Respondents
(Orig. Accused).**

Mr. A.R. Patil, APP for the State-Appellant.

None for Respondents.

**CORAM : PRASANNA.B.VARALE &
V. G. BISHT, JJ.**

DATE : 24th November, 2020.

JUDGMENT (PER : V. G. BISHT, J.)

This Appeal is filed by the State challenging the judgment and order of acquittal dated 30th April, 2004 passed in Sessions Case No. 192 of 2003 by learned 1st Ad-hoc Additional Sessions Judge, Solapur for the offences punishable under Sections 498A, 306, 302 r/w 34 of the Indian Penal Code (for short “IPC”).

2 A few facts, leading to the present proceedings and necessary for disposal of the Appeal are:

(a) The informant's daughter namely, Manisha ('deceased' for short) was married to Santosh @ Krushnadeo Yogiraj Kapse (A-1) three years ago. After six months of the marriage when informant visited deceased's conjugal home, he found him unhappy and when enquired, she apprised that her mother-in-law- Yashodabai (A-2) and A-1 used to taunt her, harass her, make her starve by saying that she does not know how to cook the food. The informant persuaded deceased and as also the accused and requested them not to harass the deceased.

(b) The prosecution then contends that at the time of Diwali Festival when Manisha had been to her parental home, she was more disappointed, unhappy and informed that the accused always ask her to bring Rs.10,000/- from her father to construct a water tank and also harass and beat her regularly. She was also not given food. The informant later on dropped the deceased to her conjugal home and also requested the accused not to harass the deceased and expressed his inability to pay the amount because of her poor financial condition.

(c) Again after two months, the prosecution alleges, the deceased alone came to her parental home and started crying and told that accused had driven her out after beating and asked her not to return without fetching moneys for construction of water tank. Somehow, the informant managed Rs. 5,000/- and gave it to the accused with a further request not to harass his daughter. However, A-1 asked him to pay remaining amount of Rs.5,000/- within 15 days.

(d) The prosecution further alleges that after some days when the informant visited his daughter, she again repeated the complaint of harassment on the ground of remaining amount of Rs.5,000/-. He again requested the accused not to harass his daughter and returned.

(e) On 25/02/2003, at about 4-00 p.m., the informant came to know from one Suresh Uddhav Kapase, one of the relative of the deceased, that the deceased had died because of falling in a tank situated in the field. However, he told that since the deceased knew swimming it was not possible that she would have died by falling in a tank.

3 After the postmortem of the dead body of the deceased was over, the informant lodged the report against the accused alleging the physical and mental harassment and demand of Rs.10,000/- and that the accused abetted the death of the deceased.

4 On the basis of the report of the informant, Crime No. 09/03 under Sections 498A, 306 r/w 34 of IPC came to be registered by PSO Madha Police Station.

5 It appears from the record that PW-5 Investigating Officer visited the spot of incident and prepared spot panchanama besides preparing the inquest panchanama of the dead body. During the course of investigation, he also recorded the statements of witnesses and after completion of investigation forwarded the charge-sheet against the accused.

6 The prosecution in order to prove its case has examined as many as five witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of the Code of Criminal Procedure ('Cr.P.C' for short) about the incriminating evidence and

circumstances and they denied all of them as false. According to them, they have deposited Rs. 50,000/- in fixed deposit in the name of the deceased in D.C.C. Bank, Manegaon. The informant and others were demanding aforesaid amount from them after the death of deceased. Because of this they have deposed falsely against them.

7 Mr. Patil, learned APP, assailing the impugned judgment and order of acquittal submitted that the evidence of father and uncle, namely, PW-2 and PW-3 respectively is not properly considered in proper perspective by the learned trial Court. Moreover, there is ample evidence on record to prove cruelty at the hands of respondents-accused on the ground of demand of moneys. In short, the evidence on record is sufficient to connect the accused of the alleged offences and in such circumstances, the present Appeal deserves to be allowed, argued learned APP.

8 When the matter was called out, none appeared for the respondents-accused.

9 From the record and more particularly the Charge (Exh. 19) framed against the accused shows that apart from framing the charge

under Section 306 of IPC, alternatively, charge under Section 302 of IPC also came to be framed by the learned trial Judge against the accused. Since the charge under Section 302 of IPC is framed against the accused, it is desirable to find out from the evidence of Medical Officer, who carried out an autopsy as to the nature of death of deceased.

10 PW-4 Dr. Ramchandra Maruti Mohite states in his evidence (Exh. 30) that on 25/02/2003 he was attached to PHC Madha as Medical Officer. A dead body of one Manisha Santosh Kapase (deceased) was forwarded to PHC Madha by PI Madha Police Station. He conducted the postmortem. It is his further evidence that he did not notice any external injury. According to him, the probable cause of death was asphyxia due to drowning. He then proved the postmortem report at Exh. 31.

11 In the cross-examination this witness admits that the death in question may be accidental and that in case a person is killed and thrown in tank of water, then there would be external signs and symptoms on the body.

12 Before we dwell on the nature of death, we will also have to keep in mind from the contents of FIR that the deceased was well-versed in swimming. The postmortem report also does not show any kind of external injuries found on her body. Rather, in the opinion of the concerned Medical Officer, the death may be accidental. Now, the question is whether the death was accidental or suicidal or for that matter the deceased was thrown into the well, in the light of charge framed under Section 302 of IPC, we have to ascertain from the evidence of prosecution witnesses.

13 PW-2 Dharmaraj Pandurang Nikam, informant and father of deceased states in his substantive evidence (Exh. 14) that after six months of marriage when he visited the deceased at her matrimonial home, he found her gloomy, started crying and disclosed that accused taunts her over household work and say that she cannot cook food properly and clean utensils properly. She was also made to starve by them. Then, during festival of Diwali, the deceased came to his house. She used to sit alone and cry. On being enquired, she told that the illtreatment still continuous at her matrimonial home and that accused are also demanding Rs.10,000/- for construction of water tank in their field. After Diwali, he along with his brother went to accused and

requested that he is unable to fulfill their demand on account of his poverty as he had incurred large amounts for marriage expenses of deceased. However, the accused replied that if the demand is not fulfilled then A-1 will not co-habit with deceased.

14 It is his further evidence that after 3-4 months of his said visit, the deceased visited his house alone and told about said demand of moneys and also that she has been asked not to return without amount. Somehow, he collected Rs.5000/- and gave to accused but then A-1 again asked to pay remaining amount of Rs.5000/- within 15 days. His evidence further shows that after one or two months he again visited deceased, his daughter started crying and told that she is being assaulted by accused over demanding of Rs.5000/-.

15 His evidence lastly shows that on 25/02/2003 he came to know from Suresh Uddhav Kapse that his daughter had drowned in a water tank situated in the field. He and his family members immediately rushed and on way he found relatives of accused persons were removing dead body of deceased by a jeep. They then intercepted and on being questioned, A-1 told as to how deceased died by falling in a water tank

while she was washing clothes. However, he replied that since Manisha was knowing swimming, she could not have died by falling in a water tank. Later on, he lodged the complaint. He then proved his complaint at Exh. 15.

16 In view of the aforesaid evidence, we think it appropriate to refer to Section 498A of the IPC. The said provision reads as follows:-

“498-A – 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 purposes of this section, “cruelty” means

(a) Any wilful 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 demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

17. The said provision came up for consideration in **Giridhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177 : (AIR 2002 SC 2078)** where the Apex Court dwelling upon the scope and purport of Section 498-A IPC has held thus:-

“ The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures: Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.”

- 18 The aforesaid analysis of the provision clearly spells out how coercive harassment can have the attributes of cruelty that would meet the criterion as conceived of under Section 498-A of the IPC. Thus, the emphasis is on any wilful conduct which is of such a nature that is likely

to drive the woman to commit suicide. The mental cruelty which is engraved in the first limb of Section 498-A of the IPC has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and dependent upon the conduct of the person concerned.

19 In the case in hand, the prosecution has come with two fold accusations: one, harassment meted out to the deceased, more precisely as defined in clause (a) of the Explanation to the Section 498-A of the IPC. Two, unlawful demand of Rs.10,000/- as explained in clause (b) of the Explanation of the said section.

20 As regards the mental cruelty, the evidence and the FIR suggest that the harassment started after six months of the marriage when the accused started finding that the deceased was not cooking and cleaning the utensils properly. This is in our considered opinion which is commonly present in the Indian society and more particularly, from the class which the accused and the deceased belong to, will not in any manner constitute abetment. Its only later on when the accused allegedly started demanding Rs.10,000/- in order to construct a water

tank, the harassment allegedly grew more.

21 Whether indeed the accused were in need of Rs.10,000/- only to construct a water tank having regard to their financial status has been sufficiently answered by none other than by informant-father himself in his cross-examination. Before that we would like to note here that the prosecution has also examined PW-3 Ganesh Pandurang Nikam, who is younger brother of PW-2 informant. Although, the examination-in-chief (Exh. 17) of this witness also shows that he was also informed by the deceased when she visited first Diwali festival after her marriage about illtreatment at the hands of accused but his version does not get support from PW-2 elder brother. His evidence also shows that the accused had asked the deceased not to come back for co-habitation unless she brings the moneys from her parental home. In this regard it is worth mentioning that the FIR alleges that the deceased was driven after a beating and with a warning not to come back without bringing Rs.10,000/- from her father. The evidence of this witness is totally silent as to aspect of beating. Therefore, except the version of PW-2 informant-father there is nothing to corroborate his version.

22 Reverting to the cross-examination of informant-father, we find significant admissions which prompt us to question the alleged demand of Rs.10,000/-. The informant-father admits that father of A-1 is having irrigated land and A-1 is his only son. He further admits that as her daughter was smart and good looking, she was immediately approved by A-1 after seeing her. He further admits that the entire expenditure of solemnization of marriage was borne by accused persons and there were no disputes at the time of marriage regarding giving or taking of gifts. He lastly admits that his financial position is very weak and he is required to do manual work on daily wages.

23 In the light of this cross-examination, if we weigh the status of informant-father and that of accused, we find that accused are quite well off financially and status-wise. It must be borne in mind that the informant is only a labour, who is required to do manual work in order to earn his livelihood. The reason for solemnization of marriage with the deceased by A-1 was that at the first sight the deceased being smart and good looking was immediately approved by A-1. Otherwise there was no match between the status of informant and that of the accused persons. It is also significant to note here that all the marriage expenses were borne by accused persons. So also there was no demand of any

kind from the side of accused at the time of marriage. This being the emerging position, we are not convinced to believe that there was demand of Rs.10,000/- from the side of the accused.

24 We also do not find encouraging evidence from record to hold that because of the alleged harassment the deceased became desperate and gloomy. There is also no evidence to show that the deceased was nurturing forlorn hope vis-a-vis matrimonial life. There is also no evidence on record to show because of this symptom she ever reflected her pensive mood to do something untoward with her life or limb or health.

25 Having regard to the evidence discussed so far all we can say is that the prosecution has not been able to establish the cruelty as defined in Explanation appended to Section 498-A of the IPC.

26 Section 306 refers to abetment of suicide which says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide

is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. The same evidence which is required to be considered for the purpose of Section 498A of IPC will have to be looked into for the purpose of proving the offence under Section 306 of IPC. We have already discussed the aspect of cruelty here-in-above.

27 There is something more. PW-1 Dasharath Bhimrao Latake, who is a panch witness over spot panchanama, states in his cross-examination (Exh.11) that the edge of water tank was slippery and there was slush around the water tank. PW-2 informant admits in his cross-examination that Suresh Uddhav Kapse had also told him that his daughter while washing clothes on tank fell down in the tank and died. Even the accused also told him the said fact.

28 What is to be remember here is that according to informant the deceased was knowing swimming and rather according to him and his

brother (PW-3), the deceased was murdered. We have already noted from the postmortem report that the cause of death was asphyxia due to drowning. Assuming for the sake of argument that the deceased was well-versed in swimming then there was no reason for her to commit suicide by jumping into a water tank since she was well-versed in swimming. This in itself goes to show that the deceased was not well-versed with the art of swimming. The prosecution has also not contested the claim that the deceased at the relevant time was not washing the clothes at or around water tank. The evidence of PW-1, spot panch, clearly shows that the area around the water tank was slippery and slushy and therefore, the possibility of deceased slipping into the well cannot be ruled out. Thus seen from any angle it does not appear to us that the accused abetted the death of deceased.

29 About lodgment of F.I.R. The lodgement of FIR also needs a comment or two. The informant-father admits in his cross-examination that when he had been to police station to lodge the complaint, his mental condition was not sound. He further admits that his relatives and villagers were instructed police while is complaint was being recorded by the police. Thus, this candid admission goes to show that the contents of the FIR were narrated and dictated by the relatives and

the villagers of the informant and not by him inasmuch as cause of death of the deceased, his mental condition was disturbed. How much of significance in the circumstances can be attached to the FIR is a matter of guess.

30 On re-appreciating the evidence on record, it clearly emerges that the evidence of informant and his brother is not inspiring and reliable. The learned trial Court has considered aforesaid legal and factual aspects in its proper perspective. As such, the impugned judgment and order does not warrant interference and deserves to be maintained.

31 In the result, we find no merit in the Appeal and accordingly, the Appeal stands dismissed.

(V. G. BISHT,J.)

(PRASANNA.B.VARALE, J.)