

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1582 OF 2004**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Deelip Dhondiram Pol,
Age about 44 years, Occ.: Salesman

2. Sau. Chaya Deelip Pol,
Age about 35 years, Occ.: Household

3. Sunil Dhondiram Pol,
Age about 28 years, Occ.: Service

All R/at : Jawaharnagar, Bijli Chowk,
Kolhapur.

....Respondents
(Orig. Accused Nos.1 to 3)

Ms. P.N. Dabholkar, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATED : 14th DECEMBER 2020.**

ORAL JUDGMENT :

1. This is an appeal against the impugned order and judgment dated 4th September, 2004 passed by the 4th Ad-hoc Assistant Sessions Judge, Kolhapur acquitting the accused (Respondents) of offence punishable under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306 (*Abetment of suicide.—If any person commits suicide*) of the Indian Penal Code.

2. It is the case of the prosecution that one Vanita, who later committed suicide on 13/10/2003, was married to Accused No.3 – Sunil

resident of Kolhapur. Vanita's sister Lalita also was residing at Kolhapur after marriage. Lalita and Vanita resided in Kolhapur in the same lane at a distance of five minutes walk from each other. Complainant (PW. 1) is mother of Lalita and Vanita. Accused No.1 is brother of Accused No.3 and Accused No.2 is wife of Accused No.1.

3. It is alleged that the accused after initial period of one month of marriage started ill treating Vanita on petty grounds. The accused is alleged to have ill treated Vanita constantly by taunting her for not able to cook properly or for excess use of oil while cooking, she was drinking one full cup of milk instead of tea, and that she used more soap. It is alleged that Vanita informed her sister Lalita who is PW. - 2 about the ill treatment and also PW. 1 – mother and other family members over telephone. In the month of Ashad, accused demanded from Vanita to bring a sum of Rs.50,000/- from her parents so that Accused No.3 could be made permanent in his job. Vanita told her family members about the demand when she went in the month of Ashad to Mumbai where her parents residing. Her parents somehow collected Rs.30,000/- and paid to accused, despite which the ill treatment continued. About ten days before diwali, complainant PW.1 had gone to Kolhapur to visit her daughter at which time Vanita informed the complainant as well as Lalita P.W. 2 that her life had become unbearable due to the ill treatment by accused. The complainant pacified Vanita by telling her that she will take Vanita to Mumbai during

diwali which was due in few days. To the shock of complainant and others in the family Vanita committed suicide the following day by hanging herself.

4. The complainant P.W. 1 and the entire family was in a state of shock due to sudden death of Vanita because of which they did not file complaint immediately. A complaint came to be filed after four months on 25/02/2004 and an offence was registered and investigation commenced. Charge-sheet was filed before the J.M.F.C. who committed the case to Sessions Court as the offence under Section 306 of the Indian Penal Code had to be tried. Charges were framed and the accused pleaded not guilty and claimed to be tried.

5. To prove its case, prosecution examined five witnesses namely Sunanda Ramesh Shinde (P.W. 1) mother of Vanita, Lalita Tulshidas Khandare (P.W. 2) sister of Vanita, Surendra Ramesh Shinde (P.W. 3) brother of Vanita, Shanta Maruti Sonavane (P.W. 4) neighbour of P.W. 2 (declared hostile) and Rabhaji Laxman Gayakwad (P.W. 5). Inquest panchanama, Spot panchanama and Postmortem Report were admitted by the defence. Therefore, the fact that Vanita committed suicide by hanging herself on 13/10/2003 was not an issue. Even the fact that Vanita was married to Accused No.3 on 10/05/2003 and thus death was within seven years from the date of marriage attracting presumption under Section 113-A of the Indian Evidence Act was also not an issue.

6. The complaint which is at Exh.15 more or less corroborates testimony of P.W. 1 – Sunanda. But what is pertinent to note is in the complaint there is no mention about Accused No.3, husband of Vanita was also ill treating Vanita. In fact it is mentioned that Sunil, i.e., Accused No.3 and his mother behaved properly with Vanita.

7. The complainant P.W. 1 had also alleged about demand of Rs.50,000/- by accused so that the job of accused Sunil could be made permanent and that a sum of Rs.30,000/- was paid at that time by Vanita's father. The complaint Exh.15, however, is silent about demand of Rs.50,000/- by the accused and payment of Rs.30,000/- by the father of Vanita to the accused.

8. P.W. 5 - Rabhaji Laxman Gayakwad, Investigating Officer in his cross-examination states that a sudden death case was registered after Vanita's death and the statement of complainant P. W. 1 was then recorded by one PSI Bhokare on 13/10/2003. As noted earlier Vanita had committed suicide by hanging herself on 13/10/2003. P.W. 5 admits that complainant P.W. 1 had not made any grievance against any of the accused in that statement. The complaint was then lodged after four months on 25/02/2004 and in the complaint allegations have been made only against Accused Nos.1 and 2. The complaint, as noted earlier, mentions that Accused No.3 Sunil and his mother treated deceased Vanita properly.

Supplementary statement of complainant P.W. 1 and others were recorded on 13/03/2004. From the cross-examination of witnesses it is obvious that complainant and other witnesses for the first time made out a case of demand of Rs.50,000/- by accused and payment of Rs.30,000/- out of that by the father of Vanita to accused. It is rather obvious that complainant and the witnesses seem to have changed their stand slowly and gradually from the time of enquiry till the time of recording of their supplementary statement on 13/03/2004.

P.W. 2 in her evidence admits that in her statement recorded by police, she has not mentioned about accused beating Vanita accusing her of not able to cook food properly or applying excess oil to chapati or her drinking a full cup of milk. P.W. 2 also admits that her statement recorded on 25/02/2004 does not mention that Accused No.3 – Sunil used to beat Vanita and demanded money. P.W. 2 also states that the portion marked “A” in her statement dated 25/02/2004 which reads “*tasecha tila ticha navara va sasucha kahi tras navhata*” was not stated by her. But the statement says that Vanita was not given any trouble by Accused No.3 or mother of Accused No.3. P.W. 2 also admits that her statement recorded on 25/02/2004 does not contain that Vanita told her that life had become unbearable for her and she pacified Vanita by stating that their father would come in the month of Ashad and they would discuss with father. P.W. 2 further admits that in the statement dated 25/02/2004 it is not recorded that after returning from the house of accused her father informed her that accused had demanded

Rs.50,000/- or that her father somehow collected Rs.30,000/- and paid it to accused or that even after payment accused continued to ill treat Vanita. P.W. 2 also admits that her statement dated 25/02/2004 does not mention about Vanita going to her house on Sunday afternoon and informed her that accused beat her the previous night and demanded that she brought Rs.6,000/- with dress and one tola gold ring from her parents.

9. Similarly, there are omissions in the statement recorded by the police of P.W. 3 which indicates that the witness only improved his case while giving evidence.

10. P.W. 4 was declared hostile. P.W. 4 states that Vanita never told her about ill treatment by accused or that her life was unbearable or accused demanded Rs.6,000/- with dress and one tola gold ring. P.W. 4 states that her statement which was recorded by the police on 25/02/2004 in which she is stated to have told the police about accused being her neighbour or deceased Vanita saying her about ill treatment by the accused were never stated by her to police.

11. P.W. 5 – Investigating Officer in his cross-examination has admitted that P.W. 1 complainant's statement was recorded on 13/10/2003 by PSI Bhokare and complainant had not made any grievance against any of the accused in that statement. P.W. 5 also states in his cross-examination

that said PSI Bhokare after going through Postmortem notes and Inquest panchanama even sent record of his enquiry for granting “B” Summary. “B” Summary means no offence is detected. P.W. 5 also confirms that complainant P.W. 1 or P.W. 2 had not mentioned about demand of Rs.50,000/- or Accused No.3 beating Vanita or their constant complaint about Vanita not able to cook properly, using excess oil for chapati and drinking full cup of milk was ever stated. He also states that in the statement recorded by him on 25/02/2004 there is no mention of Vanita collecting Rs.30,000/- and giving it to accused. There are similar such omissions highlighted by P.W. 5 during his cross-examination.

12. Therefore, after deciding entire evidence and factoring omissions, delay in lodging the complaint etc., the Trial Court in its wisdom acquitted the accused. As regards the delay, the Trial Court observed that the only reason given was P.W. 1 was severely shocked due to death of Vanita and then she required to take treatment at Mumbai for few months and only after she recovered, the complaint was lodged.

13. It is settled law that delay in lodging the complaint cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the complaint. At the same time, delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered,

whether it is satisfactory. If prosecution fails to satisfactorily explain the delay, the delay could be fatal to prosecution. The Apex Court in **State of Himachal Pradesh V/s. Gian Chand**¹, held as under :

12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In the present case, PW1—the mother of the prosecutrix is a widow. The accused is a close relation of brother of late husband of PW1. PW1 obviously needed her family members consisting of her in-laws to accompany her or at least help her in lodging the first information report at the police station. The incident having occurred in a village, the approach of the in-laws of PW1 displayed rusticity in first calling upon the father of the accused and complaining to him of what his son had done. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of family. That failed. It is thereafter only that the complainant, the widow woman, left all by herself and having no male family member willing to accompany her, proceeded alone to police station. She was lent moral support by Ruldu Ram, the village Panch, whereupon the report of the incident was lodged. The sequence of events soon following the crime and as described by the prosecution witnesses sounds quite natural and provides a satisfactory explanation for the delay. It was found to be so by the learned Sessions Judge. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained unexplained and hence fatal to the prosecution case. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is a reluctance on the part of the family of the victim to report the matter to the police and carry the same to the court. A cool thought may precede lodging of the FIR. Such are the observations found to have been made by this Court in State of Punjab Vs. Gurmit Singh & Ors., (1996) 2 SCC 384 and also in the case of Harpal Singh (1981) SCC Crl. 208. We are satisfied that the delay in making the FIR has been satisfactorily explained and therefore does not cause any dent in the prosecution case.

1. (2001)6 SCC 71

14. We have to mention that the incident took place on 13/10/2003 whereas the complaint came to be filed on 25/02/2004. The Trial Court rightly did not accept the explanation because P.W. 2 and 3 also state that Vanita also mentioned to them about ill treatment and the demand for money and that Rs.30,000/- was paid by their father to the accused. Nothing prevented P.W. 2 and P.W. 3 from lodging the complaint, even if P.W.1, their mother, was in a state of shock for four months. It is necessary to mention that in the statement of P.W. 1 recorded on 13/10/2003 as noted earlier there is no grievance raised against any of the accused.

Therefore, the delay certainly dents prosecution case.

15. Even if there is a presumption under Section 113 A of the Indian Evidence Act, there has to be some evidence of instigation for a charge under Section 306 of the Indian Penal Code, and for Section 498 A of the Indian Penal Code, there has to be evidence of cruelty. Baring one instance of slapping there is no other evidence of physical cruelty. Certainly that is not sufficient to conclude that the conduct of the accused was of such a nature as is likely to drive Vanita to commit suicide or to cause grave injury or danger to life, limb or health of Vanita.

16. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that

every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

17. 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, need not be interfered with.

18. Appeal dismissed.

(K.R. SHRIRAM, J.)