

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.606 OF 1998

Pandurang Shamrao Pawar,]
R/o. Nerli, Tal, Khanapur, Dist. Sangli.] ... Appellant

Versus

The State of Maharashtra]
[At the instance of Sr. P.I. Kadegaon Police]
Station, Dist. Sangli].] ... Respondents

...

Mr. Kuldeep S. Patil for the Appellant.

Mr. S.R. Agarkar, A.P.P. for the State.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 23RD JUNE, 2021.

PRONOUNCED ON : 30TH JUNE, 2021.

JUDGMENT:-

1. The deceased Shakuntala was married to the Appellant-accused on 07/05/1985 and, out of the said wedlock, two children were born, who were major on the date when the unfortunate incident took place. The body of Shakuntala was found in a well

situated in the field of one Keshav Patil, a resident of Nerli. On the body being found, a case of accidental death was registered vide AD No.14 of 1996 on 13/05/1996 itself. On 14/05/1996, a complaint was lodged by Popat Maruti Renuse (PW-2), father of Shakuntala alleging that Shakuntala was facing ill-treatment at the hands of her husband, the Appellant and, for the last 5-6 months, he was not coming home, since he was keeping an illicit relationship with a woman in the village and this conduct of the Appellant constrained the deceased to commit suicide by throwing herself in the well of Gorav Keshav Patil. The father, therefore, alleged that the suicide of her daughter was abetted by the Appellant.

2. On the said complaint being lodged, an offence came to be registered under Sections 306 and 498A of the IPC. On completion of investigation by the investigating officer (PW-8), charge-sheet was instituted and the Appellant was charged for subjecting his wife Shakuntala for cruelty and to drive her to commit suicide. He was also charged with abetment to commit suicide, an offence punishable under Sections 306 of the IPC. Since the Appellant denied the charge and preferred to be tried, the trial was conducted by the Additional Sessions Judge, Sangli.

3. To establish the charge against the Appellant-accused and before transforming him into a convict, the prosecution led evidence before the Sessions Court in the form of documentary

evidence and oral evidence through eight witnesses, which included close relations of the deceased, being her father (PW-2), cousin brother (PW-3), mother (PW-4), daughter (PW-5) and wife of the cousin brother (PW-6). Apart from the said witnesses, a panch witness was examined as PW-1 and the members of the investigating team came to be examined as PW-7 and PW-8.

4. The defence also relied on the documentary evidence and since the inquest panchnama, death certificate and postmortem notes were admitted by the defence, they came to be exhibited as Ex-6, Ex-7 and Ex-8 respectively. The panchnama of the scene of offence, which was cited in evidence was, however, not admitted by the defence.

5. With the aforesaid framework being laid, the Additional Sessions Judge proceeded with the trial and after recording the statements of the accused under Section 313 of the Cr.P.C., recorded a finding of conviction against the accused under both the penal provisions, for which he was charged i.e. Sections 498A and 306 of the IPC. On being convicted on the first count, the accused is sentenced to suffer 3 years' RI and to pay fine of Rs.500/- and, in default, 3 months' RI and, on conviction under Section 306, he is sentenced to suffer 5 years' RI and to pay fine of Rs.1000/- and, in default, 6 months' RI. The substantive sentences were ordered to run concurrently. Being aggrieved by the said judgment dated

02/07/1998, the Appellant is in appeal before this court.

6. I have heard Mr. Kuldeep Patil, learned counsel appearing for the Appellant and Mr. Agarkar, learned A.P.P. appearing for the State. With the assistance of the respective counsel, I have scrutinized the evidence on record and also perused the impugned judgment.

7. The Appellant is convicted for abetment of suicide of his wife Shakuntala. The submission of learned counsel for the Appellant is to the effect that the prosecution has failed to conclusively establish that the death of Shakuntala was by suicide. In support of the said submission, Mr. Patil placed heavy reliance on the panchnama drawn as regards the scene of offence, being Ex-10 and proved by PW-1 Ramchandra. Referring to the said panchnama, the submission of learned counsel for the Appellant is that the scene of offence as can be seen from the panchnama and described by PW-1 is hinting towards a different situation than what the prosecution has sought to establish before the court and, the scenario, which emerges from the testimony of PW-1 and the spot panchnama proved by him would lead to a possibility of the deceased going into the well for fetching water and accidentally slipping and being drowned in the well. The postmortem report, which describes presence of contusion over the temporal region with the hematoma also found to be properly supplementing the scenario on the spot

and the submission of learned counsel is that, this, in no way, is indicative of the fact that the death of the deceased was by way of suicide. The theory of suicide, according to Mr. Patil, gets further negated from the version of the prosecution witness in particular, the father, the mother and deceased's own daughter. I shall, therefore, proceed to examine the evidence, which would necessarily be scrutinized in appreciation of his submission.

8. The inquest panchnama, admitted by the Appellant, drawn on 13/05/1996 refers to the position of the corpse of the deceased Shakuntala. The panchnama reveals that the deceased was wearing the basic jewelries, which a married woman would have on her person, which included the glass bangles, a neckless containing beads and one *dorle* embedded in a black thread. The inquest describes the death to have occurred between 5.00 p.m. of 12/05/1996 and 9.00 p.m. of 13/05/1996 due to fall in the well of Keshav Patil and possibility of being drowned in the water. The spot panchnama proved by PW-1 Ramchandra contains a detailed description of the place of incident being situated at land Gut No.395 of Gorakh Keshav Patil of Nerli. The place is described as being in a well and which is on the western side of three guntha's land near stream-let. The well is described to be of measurement 30x20 feet in length/width and constructed in a square shape. The panchnama contains mention of 11 constructive steps in the north-east corner for going down in the well and some open space and

then 10 feet water in the well. The height of the well is given as 13 feet from the water level. The constructed portion of the east corner of the south and north portion of the well is described to be in a dilapidated condition. 5 HP electric motor is installed on the western side of the said well and one pipe of the electric motor is in the well and another pipe is going towards western sides palan from stream-let. The panchnama describes open space inside the northern construction of the well near the pipe of electric motor. There is open space inside by the side of the pump which goes in the well and, bushes, shrubs and grass have grown in that space. At that place, one basket/patti filled with cow-dung cakes, one empty tiffin box, one towel and some washed clothes and one pair of chappel are found. Further, in one piece of cloth, the left over of the food is found. The said articles were identified by the husband of the deceased to be belonging to the family and handed over to him. The panchnama, therefore, gives an exact description of the well and the inside of the well where the articles were found properly placed in an empty space near the construction in the well. Turning to PW-1, he reiterates the scene on the spot and deposed that the well was constructed upto 10 feet and below that there is a rock. The depth of water in the well was found to be 6 to 7 feet as per PW-1. He reiterates the above articles found inside the well. In the cross-examination, the witness admitted that the steps in the form of rock were slippery. He also admits that while going to the field of the accused from his house, one pathway is passing by the

said well and he also admits that water of the said well is used for drinking purpose. He also admits of construction of steps in the well and the steps being made by rock and being slippery.

9. Turning to the postmortem report, which is admitted by the defence, column No.17 refers to the following injuries: (1) Big contusion over left temporal region, 1 cm x 7 cm with hematoma and (2) big contusion over left side of face 10 cm x 5 cm. The cause of death as per the Medical Officer, Primary Health Centre, Vita, is "*Asphyxia due to wet drowning*".

10. The injury received by the deceased, which is reflected in column No.17 is indisputably on account of her fall in the well, either accidental or intentional. The scene panchnama reflects of neatly stacked belongings of the deceased which included her basket with cow-dung cakes, her tiffin box, washed clothes, which she was carrying and also her chappel, which were placed in the open space inside the well, which could be reached after descending the constructed rock stairs, which PW-1 has admitted to be slippery. The well is located at a place, en-route the house on one pathway from the field of the deceased and accused. The water of the well, as per PW-1, was used for drinking. The possibility expressed by the counsel for the Appellant that the death can be accidental as the deceased, who had gone to the field in the morning was returning to her house carrying her collection of cow-dung, the washed and

dried clothes and her tiffin, which was found to be empty and clean and the left over of the food which was removed from the tiffin was found neatly packed in one piece of cloth. Her pair of chappal was also placed near her other belongings. The probability expressed by the counsel for the Appellant that the deceased has descended the steps in the well for drinking water while she was en-route her house and since the rock was slippery there was a possibility that she had slipped into the well, cannot be completely overlooked. The said possibility will have to be pitched against the story of the prosecution that she has committed suicide on account of the ill-treatment administered to her by the accused. Whether there was any such ill-treatment and whether the ill-treatment was of such nature that would have prompted her to commit suicide and whether there was any abetment to commit suicide can be ascertained from the evidence of the prosecution brought on record through her relatives.

11. The prosecution has relied upon the evidence of PW-2, who also happened to be the complainant. PW-2 deposed that the marriage of his daughter was solemnized with the Appellant, 7 to 8 years back and after the marriage, his daughter was cohabiting happily with her husband. A month prior to the incident, his daughter was sent to his house because of some quarrel with her husband, which his daughter has mentioned to him but the cause of quarrel was not. PW-2 deposed that after some days, his son-in-law

i.e. the Appellant came to his house and took his daughter and, while going assured of good treatment to his wife. He admitted that his daughter had not made any complaint against her husband. The said witness was declared hostile and, therefore, permission is granted to put leading question to him in the form of cross-examination. As an outcome of the permission to cross, the witness deposed that his daughter had informed him about the illicit relationship of her husband with a lady from the village and this was the cause of quarrel between the couple as she was opposing the relationship. There is an admission by him that his daughter told him that this was happening since 2 to 3 months and when the Appellant had been to his house, he was given an understanding that he should behave with his daughter properly and the Appellant assured to do so. On being subjected to further cross-examination by the counsel for the Appellant, PW-2 admits that he used to always visit the house of his daughter and he had even visited her after her last visit to his house and, at that time, she did not raise any complaint against her husband and noticed that his daughter was happy with her husband.

12. About the incident, he deposed that on 13/05/1996, the brother of the Appellant had been to his house and enquired whether Shakuntala came there and, at 12.00 noon, he came to know that she had fallen in the well. When he went to attend to his daughter in the Government Hospital, Vita, the police made

enquiry with him about the incident. He admits that till filing of the complaint, he has not disclosed anything to the police but on 13/05/1996, his nephew Laxman and Sarpanch of his village along with 2 to 3 persons went to Government Hospital, Vita, when the postmortem was going on. He admits that they all attended the cremation at Nerli and proceeded to their village. He admits that he had a discussion with his nephew (PW-3) about the complaint. He categorically admits that about one month prior to the incident, when his daughter came to his house, she did not tell about the illicit relationship of her husband with another lady but, she had spoken about the petty quarrels with her husband. He also admits that he never enquired about the illicit relationship of his son-in-law with any lady. The deposition of the witness is at variance with his complaint, where he referred to the illicit relationship of the Appellant with one woman since 5 to 6 months as told to him by his daughter and, on account of his illicit relationship, the relationship between the husband and wife was strained. In the complaint, this witness had expressed that on account of the ill-treatment, his daughter left the house to bring wood and committed suicide by throwing herself in the well of Gorakh Keshav Patil and died at about 5.00 p.m. on 12/05/1996.

13. On similar line is the version of PW-4, the mother of the deceased, who also speaks of Shakuntala visiting her parental house about 1 – 1½ month prior to her death and speaking of ill-

treatment. In the cross-examination, however, she denies the suggestion that her daughter told her that her husband had illicit relations with one Kamal. She denied the suggestion that her daughter had informed her that her husband was not coming home for months together and that he used to beat her. When confronted with the statement given to the police, she admits the contradiction. In the cross-examination by learned counsel for the Appellant on being declared hostile, she reiterates her version that her daughter did not tell her about the ill-treatment or the illicit relationship of her husband with another lady. She admits that at the time of partition, there was some disputes between them and their nephew (PW-3) and, at that time, the Appellant had visited Renusewadi i.e. the parental house of the deceased.

14. Another important witness examined by the prosecution is daughter of the deceased and the Appellant, aged 10 years. The minor girl was examined after ascertaining whether she understands the sanctity of oath. PW-5 has deposed that at the time of her deposition, she was residing with her parents of her mother and when her mother was alive, she used to reside in the house occupied by her as well as her brother and father. She deposed that her father used to beat her mother and when her father used to be out of the house, her mother used to enquire where he had gone and on that count, he used to beat her mother. She also deposed that her father used to visit the house of Kamal and, on that count,

there used to be quarrel between the two. She further states that on 12/05/1996, there was quarrel between the two and the Appellant had beaten her mother, though she was not aware of the reason for beating. In cross-examination, PW-5 denied the suggestion that PW-3 had tutored her about what is to be deposed before the police. At that time, she was studying in 2nd standard. In cross-examination, PW-5 denied the suggestion that her father always used to sleep in the house and clarified that some times he used to halt in the field and particularly in harvest season. PW-5 has given a clear admission that her father and mother never used to quarrel in her presence. She also admits that nobody was talking in the house about Kamal. She, however, admits that the police had told her what she has to state in the court and the police had read over to her what she had to depose in the court.

15. Such a clear admission from the said witness, a minor girl aged 10 years, who at the time of incident, was barely of 6-7 years, who has clearly deposed what has been told to her by the police. She admits that there was no quarrel between her parents in her presence and it is hard to believe that a girl aged 6 to 7 years would understand about the extra marital relationship. The said witness, therefore, cannot be relied upon to support the case of the prosecution about the deceased being subjected to harassment or ill-treatment.

16. Another set of witnesses is PW-3 and his wife PW-6. PW-3 is the cousin brother of the deceased and PW-4 has given an admission in her cross-examination about PW-3, to the effect that at the time of partition, there was some dispute between her family and her nephew Laxman and she has also stated that the Appellant was present at Renusewadi at the time of partition. PW-3 is a resident of Renusewadi, the parental home of the deceased. PW-3, the cousin brother of the deceased deposed that for about 8 years, Shakuntala was treated nicely by her husband and, thereafter, he developed illicit relationship with another lady, whom he named as Kamal from the village Nerli. PW-3 speaks that the deceased being sent to her parental home by the Appellant and, at that time, she had informed him of the relationship of her husband with another lady and about the ill-treatment and beating meted out to her. He states that after 5 to 6 days, the Appellant came to their house and admitted that he had committed a mistake and he will not repeat the mistake and, therefore, the deceased was allowed to accompany the Appellant. On 13/05/1996, he came to know that Shakuntala was missing since the previous day and an enquiry was made whether she had been to their house. On reaching Nerli, he came to know that the body of the deceased was found in a well and the body was identified by him. He had reported the said incident to Kadegaon Police Station on 13/05/1996. On being cross-examined, PW-3 states that he had visited Nerli six months prior to the incident and Shakuntala did not complain to him of any form.

Certain omissions are brought on record in the cross-examination, where he had stated before the police that one Kamal Pawar was not cohabiting with her husband and was residing at Nerli. There was also omission about Shakuntala being sent to her parents by the Appellant and Shakuntala disclosing him about the illicit relationship of her husband and the ill-treatment meted out to her on that count. He admits that when he enquired from the villagers of Nerli as to how his sister fell in the well, the villagers told him that they are not aware of anything.

17. The Investigating Officer (PW-8) has admitted about PW-3 not making the statements and, therefore, has proved the omission. When specifically questioned about why he did not make any enquiry with Kamal or her father, he responded by stating that since he was apprehending that he would be thrashed or a false complaint would be lodged against him, he did not make any enquiry. He denied about any quarrel between him and his uncle (PW-2) on account of partition but, admits that the Appellant had asked him not to create any dispute. The testimony of PW-6, his wife is also on similar line.

As far as these two witnesses are concerned, Laxman was residing separately from the parents of the deceased since four years, is admitted by him in his cross-examination. The testimony of these two witnesses, who though being in relationship of the deceased will have to be scrutinized and looked at by accepting the

fact that she cannot be more intimate to them than that of her parents PW-2 and PW-4. PW-2 and PW-4 i.e. the parents of the deceased gave a clear admission that about one month prior to the incident, when their daughter had been to their house, she was happy with her husband. The duo also admitted that their daughter did not tell them about the illicit relationship of her husband with another lady though she had mentioned about some petty quarrels with her husband. Ill-treatment to deceased being not coming through these two witnesses, her parents, the case of the prosecution that the deceased was subjected to ill-treatment on account of the relationship of her husband with another woman falls to its ground. The case of the prosecution is that the illicit relationship is reported to be 2 to 3 months prior to the incident and PW-3, who gave the details about the name of the lady from the village Nerli, states the said statement is an omission and he clearly gave an admission that he had visited Nerli six months prior to the incident. No other resident of village Nerli has been examined by the prosecution nor any person in the neighbourhood of the deceased has been examined, who would have been in a better position to speak of the life and the relationship, which the deceased and the Appellant shared and whether there were quarrels in the house or the villagers of the village Nerli whispering about the said affair. PW-3 is the resident of Renusewadi and he did not visit Nerli lately before the incident but he had visited Nerli six months prior to the incident and, even going by the version of PW-

2 and PW-4 and the version of PW-3 himself, the affair was 2 to 3 months old. The prosecution has, therefore, utterly failed to establish the link between the alleged suicide by the deceased and any harassment meted out to her by the Appellant, which compelled her to take the extreme step. PW-2, the father himself has deposed that after the marriage, his daughter was cohabiting happily with her husband and the marriage, which was 8 to 9 years old and when the parents of the deceased narrate that she was happy in her marriage, merely raising a suspicion that the Appellant had developed an illicit relationship with some lady and that was the cause for the ill-treatment, would not be sufficient to establish a charge under Section 498A of the IPC.

18. As far as the charge under Section 306 of the IPC is concerned, to establish the abetment, the prosecution has to establish that there is instigation for a person to commit suicide by the accused and the instigation should be in close proximity of time preceding the act of suicide and cannot be something which can be assumed.

19. In the present case, since the prosecution has failed to establish conclusively that the deceased died a suicidal death since the spot of occurrence does not indicate that the deceased committed suicide and, in the light of the scene of offence, which can be seen in the spot panchnama, the possibility of the deceased

slipping into the well when she had climbed down the steps of the well, which were slippery, cannot be ruled out. It is inconceivable to believe that if the deceased wanted to commit suicide, she would descend the steps in the rock along with all her belongings and then jump in the well where the water was just 10 feet. It would have been the other way. If she intended to commit suicide, she would have jumped from the top of the well instead of descending into it by stairs and then jump. It is also not believable if she intended to commit suicide, she would have brought all her belonging into the well, stacked it up and then threw herself. The prosecution has not brought on record any evidence to show that she was in a disturbed state of mind on account of the alleged ill-treatment meted out to her and taken the extreme step. In absence of the prosecution leading positive evidence to show that the death of the deceased was suicide and that it was abetted by the Appellant, the conviction of the Appellant under Section 306 cannot be sustained.

20. As far as the charge of harassment and ill-treatment under Section 498A of the IPC is concerned, the prosecution has failed to prove the harassment by the accused. On the contrary, the evidence of the prosecution witnesses is that during the long 8 years of marriage, the deceased shared a happy marital relationship with her husband. The prosecution has, therefore, miserably failed to establish a charge under Section 498A of the IPC.

21. The impugned judgment, which after appreciating the evidence rendered a finding that whether the death was accidental or suicidal will have to be gathered from the evidence on record and merely the presence of a basket full of cow-dung, clothes and tiffin is not sufficient to establish that it is not suicidal but there is ample evidence brought on record by the prosecution to establish that the deceased was subjected to cruelty by the accused so as to drive her to commit suicide, cannot be said to be a finding based on the evidence. The Sessions Court has appreciated the evidence and returned a finding that the cruelty was meted out to the deceased by the Appellant since he had developed an illicit relationship with a lady and no married lady will tolerate such an act. This finding, without any material brought on record about the existence of the illicit relationship, through an independent witness in the village Nerli, in my considered opinion, dismantle the case of the prosecution. The Trial Court has assumed the relationship as a basis for the deceased being subjected to cruelty and harassment, prompting her to commit suicide. The reasoning of the Trial Court is de hors the evidence brought on record by the prosecution and rather it is based on certain assumptions, which in a criminal trial, are impermissible, as the burden is on the prosecution to establish its case beyond reasonable doubt and this is precisely where the prosecution has failed.

The impugned judgment, therefore, calls for an interference since the findings rendered are not based on appreciation of

prosecution case in its true perspective and as seen through the witnesses, who have deposed before the Court and the material aspect in the form of documents like the spot panchnama and the postmortem report, which overruled the possibility of death being suicidal.

In the light of the aforesaid reasoning, the Appeal is allowed and the judgment convicting the Appellant is set aside, along with the sentence resulting therefrom. The Appellant stand acquitted of the charges.

(SMT. BHARATI DANGRE, J.)