

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

APPEAL NO. 1270 OF 2003

Santosh Mallikarjun Nula

..Appellant

v/s.

The State of Maharashtra

..Respondent/s

Mr. Swaraj Jadhav i/b. Dhananjay Chavan and Vijay Garad for the Appellant.

Mr. S.V.Gavand, APP for the Respondent-State.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 4th AUGUST, 2021.

P.C.

1. This is an Appeal under Section 374 of Code of Criminal Procedure, directed against the judgment dated 01.09.2003 passed by learned Session Judge, Solapur in Sessions Case No.171 of 2003. By the impugned judgment, the Appellant has been convicted and sentenced to undergo rigorous imprisonment for three years with fine of Rs.5000/- for the offence under Section 498A of IPC and rigorous imprisonment for five years and fine of Rs.2000/- i.d. to suffer rigorous imprisonment for six months for offence under Section 306 of IPC.

2. The prosecution case in short is that Vasanti, the daughter of the first informant- Chandrappa Bugade (PW2) and the Appellant were married on 25.04.1999. About a year after the marriage, Vasanti and the Appellant started residing in a separate house. Said Vasanti committed suicide by hanging on 17.02.2003 i.e. within seven years of the marriage. Her father Chandrappa Sidhappa Bugade (PW2) lodged the first information report alleging that the Appellant had subjected Vasanti to cruelty for not meeting the unlawful demand of money to start Swadeshi business and to purchase a motorcycle. PW2 further alleged that the Appellant was constantly harassing Vasanti for not leaving her job and not joining Swadeshi scheme. He had stated that his daughter Vasanti had committed suicide because of the harassment meted out to her by the Appellant. Pursuant to the first information report, Crime No. 37 of 2003 for the offences under Sections 498A and 306 of IPC came to be registered.

3. PW1- Ismail Shaikh, Investigating Officer conducted the scene of offence panchanama as well as inquest panchanama, recorded statements of the witnesses and upon completion of

investigation filed the charge sheet against the Appellant for offences under Sections 498A and 306 of IPC. Charge was framed and explained to the Appellant. He pleaded not guilty and claimed to be tried. The prosecution, in support of its case examined 7 witnesses.

4. The material witnesses included PW2- Chandrakant Bugade, PW3-Ratanmala Bugade and PW4-Gangadhar Shankar Kothe, the parents and the maternal uncle of the deceased. The statement of the Appellant was recorded under Section 313 of Cr.P.C. The Appellant denied all the incriminating evidence. Upon considering the oral as well as documentary evidence on record, the learned Judge held the Appellant guilty of the offences under Sections 498A and 306 of the IPC and sentenced as stated above. Being aggrieved by the conviction and sentence, the Appellant has preferred this appeal.

5. Mr. Sawaraj Jadhav, learned counsel for the Appellant submits that the Sessions Court has committed a grave error in holding the Appellant guilty of offences under Sections 306 and

498A of the IPC. He submits that apart from one isolated incident of beating, which had allegedly occurred 4-5 months prior to the incident of suicide, there is absolutely no evidence on record to prove the charges under Section 498A or 306 of the IPC. He submits that the Appellant wanted his wife to be gainfully employed and hence he was persuading her to join 'Swadeshi Scheme'. He submits that trivial quarrel over the said issue does not amount to 'cruelty'. He submits that there is no cogent and conclusive evidence to prove that the Appellant had demanded money for business purpose or to purchase a motorcycle. He submits that the learned Sessions Judge has grossly erred in relying upon the letter at Exhibit 24, which was not produced before the Investigating Officer. Moreover, the prosecution has not examined the sister of the deceased to whom the letter at Exhibit-24 was allegedly addressed. Relying upon the decision of the Apex Court in ***State of West Bengal vs. Orilal Jaiswal and Anr. (1994) 1 SCC 73***, he submits that the burden was on the prosecution to prove the charges against the Appellant beyond all reasonable doubts and this requirement does not stand altered even with introduction of Section 113-A of the Indian Evidence Act. Reliance has been placed

on the decision of this Court in *Ravindra Pyarelal Bidlan And Ors. vs State of Maharashtra, 1993 (1) MhLj 658* to urge that mere harassment or isolated incident of beating does not amount to cruelty within the meaning of clause (a) of the Explanation to Section 498 A. He has relied upon the decision of the Apex Court in *Ramesh Kumar vs. State of Chattisgarh (2001) 9 SCC 618* wherein the Apex Court has observed that instigation is to goad, urge forward, provoke, incite or encourage to do an act. He submits that the prosecution has failed to prove that the Appellant had instigated or induced the victim to commit suicide and that in the absence of any evidence to prove 'abetment' within the meaning of Section 107 of IPC, the conviction under Section 306 of IPC is not tenable.

6. Per contra, learned APP submits that the death of Vasanti was unnatural and was within seven years from the date of the marriage. He submits that the evidence of PW2, PW3 and PW4 amply proves that the Appellant had earlier assaulted the deceased. Despite written assurance not to ill-treat her, the Appellant continued harassing her for not meeting the unlawful demand of

money. He submits that the prosecution has established that Vasanti had committed suicide within a period of seven years from the date of her marriage and that the Appellant herein had subjected her to cruelty. He therefore submits that the conviction of the Appellant under Section 306 with the aid of Section 107 of IPC cannot be interfered with.

7. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

8. The Appellant has been held guilty of offences under Section 498A and Section 306 with aid of Section 113 A of IPC. It is not in dispute that the marriage of the Appellant and Vasanti was solemnized on 25.04.1999. On 17.02.2003 she committed suicide by hanging. The death of Vasanti was within seven years of the marriage. The question for consideration is whether the Appellant had subjected his wife Vasanti to cruelty and whether he had abetted her suicide and thereby committed offences under Sections 498A and 306 of the IPC.

9. Section 498A provides that 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. The term 'cruelty', as defined in clause (a) to Explanation of Section 498 A, means – 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. Clause (b) of the Explanation provides that cruelty means 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.

10. Section 306 of the IPC, which relates to abetment of suicide provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

11. The ingredients of abetment are set out in section 107 of the IPC. Section 107 provides that a person abets the doing of a thing, who (i) instigates any person to do that thing, or (ii) engages with one or more other person or persons in any conspiracy for the doing of that thing, if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing or (iii) intentionally aids, by an act or illegal omission, the doing of that thing.

12. When the question is to whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband, Section 113-A of the Indian Evidence Act gives discretion to the Court to raise a presumption as to abetment of suicide by her husband or his relatives, when it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relatives of her husband had subjected her to 'cruelty' within the meaning of Section 498-A of the IPC.

13. In the instant case PW2-Chandrakant, the father of the

deceased has deposed that the Appellant was working as a teacher and was also doing 'Swadeshi' business. He has deposed that soon after the marriage, the Appellant had started complaining that despite having a diploma in elementary education (D.Ed.), his wife Vasanti was not employed. He has deposed that the Appellant used to demand money for 'Swadeshi' business and had also demanded money to purchase a new vehicle. PW2 claims that the Appellant had started ill-treating Vasanti as he had refused to pay the money. He claims that the father of the Appellant had called him at midnight and informed that the Appellant was beating Vasanti mercilessly. He went to Solapur and saw that Vasanti was bleeding from her mouth. He did not lodge a complaint as the Appellant gave in writing at Exhibit 22 that he would not beat Vasanti and would give her money to go to School. He claims that there was change in his behaviour for some while, but after about 15 days the Appellant again started quarreling with his wife. He was insisting that she should resign from service since she was not getting any salary. The Appellant was insisting that Vasanti should help him in Swadeshi business. This witness has produced a letter (Exhibit 24), allegedly written by Vasanti to her sister.

14. It is pertinent to note that this witness has admitted that he had not stated before the police about demand of money to start Swadeshi business. He had not stated that he had seen blood oozing from his daughter's mouth. He had not stated that the Appellant had started quarreling with his wife within 15 days from giving an undertaking at Exhibit 22. These material omissions cast doubt on the veracity of his statement that the Appellant demanded money for Swadeshi business and that he ill-treated Vasanti for non fulfillment of the said demand.

15. Though this witness had claimed that the Appellant had also demanded money to buy a motor-cycle, the evidence of PW6 reveals that the Appellant had already sold his old motor cycle on 4.12.2002 for Rs.18,000/- and that he had purchased a new motor cycle on 11.12.2002. The letter at Exhibit 24 allegedly written by the deceased also cannot be relied upon as the said letter was not produced before the Investigating Officer and the sister who had allegedly received the letter was not examined.

16. P.W.3 Ratnamala, the mother of the deceased has made further improvement as in addition to demand of money, she claims that the Appellant had also demanded gold. She candidly admits not stating this fact to the police. PW4 Gangadhar, uncle of the deceased has also made vague allegations about demand of money. Suffice it to say, mere omnibus statement regarding demand of money does not *ipso facto* make out a case under Section 498A IPC.

17. The evidence of PW2 indicates that there was a quarrel between the Appellant and his wife Vasanti about 4-5 months prior to her death. However, there is no evidence to prove that the Appellant had beaten his wife with an intention of forcing her to bring money to meet any unlawful demand. On the contrary, the writing at Exhibit 22 indicates that the Appellant had agreed not to beat his wife and further agreed to give her money to go to school. The writing indicates that the quarrel was over non-payment of money to the deceased to go to school. Even otherwise, an isolated incident of beating in a trivial marital dispute cannot be considered as 'cruelty' as to constitute an offence under Section 498A of IPC. An incident which had occurred 4-5 months prior

had not driven Vasanti to commit suicide.

18. The evidence on record further indicates that the deceased was working in a school. She was not getting salary for which reason the Appellant was insisting that she should leave the job and help her in Swadeshi business . There is no evidence on record to indicate that the Appellant had ill-treated his wife Vasanti for not resigning from her job and/or not helping her in business. The evidence on record indicates that the Appellant only wanted his wife to be gainfully employed and with this desire he was asking her to quit the job for which she was not being paid. In the absence of physical and mental torture, such demand or insistence cannot be termed as 'cruelty'.

19. Having considered the evidence on record, the prosecution has failed to prove that the Appellant had subjected Vasanti to 'cruelty' and that he had abetted her suicide. Hence, conviction under Section 498A and 306 cannot be sustained.

20. Under the circumstances, Appeal is allowed. The

impugned judgment and order dated 01.09.2003, passed by the Addl. Sessions Judge, Solapur in Sessions Case No.171 of 2003 is quashed and set aside.

ii) Bail bond stands discharged.

(ANUJA PRABHUDESSAI, J.)