

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

CRIMINAL APPEAL NO. 1479 OF 2003

The State of Maharashtra
Through the Police Inspector,
Phaltan.

...Appellant
(Orig. Complainant)

Versus

1. Dipak Kisan Bhongale,
Age- 28 years, Occ- Not Mentioned,
R/o. Gat No. 1, Manevasti,
Malinagar, Tal. Malshiras now at
14, HADCO, Phaltan,
District Satara.
2. Sou. Savita Dilip Bhongale,
Age- 26 years, Occ- Household,
R/o. Gat No. 1, Manevasti, Malinagar,
Tal. Maharashtra.

...Respondents
(Orig. Accused No. 1 & 2

Mr.V.B. Konde-Deshmukh, APP for Appellant-State.
Mr.Rahul S. Kate for Respondents.

**CORAM: S. S. SHINDE &
SURENDRA P. TAVADE, JJ.**

RESERVED ON: 15th DECEMBER, 2021.
PRONOUNCED ON: 23rd DECEMBER, 2021

JUDGMENT: [PER S.S. SHINDE, J.]

1. This appeal is filed by the appellant-State challenging the judgment and order dated 30th August, 2003, passed by the

Sessions Court, Satara in Sessions Case of 30 of 2003, thereby acquitting the accused for the offences punishable under Sections 498-A and 304-B read with section 34 of Indian Penal Code, 1860 (for short 'IPC').

2. The prosecution story in short can be summarized as under:-

The marriage of Dipali (deceased) with accused no. 1 was solemnized in the year 1999 at Kopargaon, Dist. Ahmednagar. After the marriage, the house members of in-laws of Dipali behaved and treated her properly. After about 10 months from her marriage, Dipali came to her maternal home for delivery. At that time, Dipali told her parents that accused no. 1 and 2 are giving her ill treatment. She further told her parents that accused no. 1 had illicit relations with accused no. 2. Accused No. 1 was demanding Rs. 50,000/- to Rs. 1,00,000/- from Dipali. On 17th December, 2000, Dipali gave birth to a child and thereafter, for about 2 months nobody from the house of her in-laws came to see her or her son. After a period of two months from her delivery, Dipali was sent to her husband's house. Thereafter, accused no. 2 started beating Dipali and was telling her to go from the house.

Accused No. 2 was not supplying food to Dipali in time. She was giving stale food to Dipali. Accused No. 1 was also beating Dipali. Thereafter, accused no. 1 and Dipali started residing separately at Kadam Chawl, Phaltan. The parents of Dipali had come to Phaltan to attend 2nd birth anniversary of son of Dipali. He told the mother of Dipali to take Dipali to their home. The father of Dipali tried to convince accused No.1. Thereafter, Dipak started giving ill treatment to Dipali.

On 9th June, 2002, one Mr. Shaikh Jahagirdhar came to the house of complainant at 5.30 a.m. and intimated that Dipali is serious. The complainant and others thereafter went to Phaltan. They heard that Dipali hanged herself and as a result she died.

3. An offence under Section 498-A read with section 34 of the Indian Penal Code came to be registered. After completion of investigation, chargesheet came to be filed.

4. Charge under Section 498-A, 304-B read with Section 34 of IPC came to be framed. After a full fledged trial, the trial Court acquitted the accused for the offence punishable under sections 498-A and 304-B read with 34 of IPC. Hence, this appeal.

5. Heard the learned APP appearing for the Appellant – State and Mr.Kate, learned Counsel appearing for the Respondents. With the able assistance of the learned Counsel appearing for the parties, perused the entire evidence and also the findings recorded by the trial Court. It appears that charge was framed by the trial Court under sections 498A, 304B read with section 34 of the Indian Penal Code. The trial Court did not frame the charge under section 306 read with section 34 of the Indian Penal Code.

6. In order to find out whether the death of Dipali was homicidal, suicidal or accidental, it is necessary to discuss the evidence of Dr.Sudhakar Marutirao Bhokre (PW7), who was working as Medical Officer at the relevant time in Zilla Parishad Dispensary at Phaltan. In his deposition, he stated that when the patient (deceased Dipali) was brought to him at the hospital, she was unconscious. While she was under his treatment, she died at 1am on 9th June, 2002. On examination, he found that 'saliva tripped out from mouth, mark is situated above thyroid cartilage between larynx and chin directed obliquely upward following line mandible shown irregular impression on right side behind ear. The length was 23 cms. and breadth was 1 cm. On dissection,

subcutaneous tissue dry, white and glistening epiglottis congested. No fracture of larynx and trachea. Carotid artery C in normal limits'. He has also reported in the postmortem report that all organs are congested. Stomach is empty. All injuries on the body were antemortem and that the death of the deceased took place on account of asphyxia due to hanging.

He further stated that, even if a person hangs himself/herself and his/her knees are touching the floor, then the person can die. In case of touching of knees, it is called as partial hanging. He further opined that hanging of Dipali may be partial hanging. The defence put various suggestions to him so as to find out, whether it was a case of strangulation. He stated that there is a difference between strangulation and hanging. Hanging is suicide and strangulation is homicidal in nature. Marks in case of hanging are found at front portion of the neck. It is not necessary that there has to be abrasion and bruises in case of hanging. His evidence would clearly reveal that Dipali committed suicide.

7. The prosecution examined Prashant Hanumant Shete as PW5. He deposed before the Court that, the accused Dipak was residing in his house for about a month before the incident. The

accused was residing on the first floor. On the day of the incident, at about 10.45pm, he heard forceful knocking upon the door of first floor. He came out of the house and the accused Dipak was there and he called him to the first floor. He called some of the boys residing in the neighbourhood and also one Mrs.Waghmare, who was residing near his house. Dipak told him that the door was bolted from inside and it was not opening. The accused asked him whether they should open the door. PW5 then gave a dash upon the door. Then, the accused told him that by peeping inside the room, he was seeing that his wife had hanged herself. When the door could not be opened despite giving dash on the door, Dipak broke open the door with one axe brought by the boys from the neighborhood. After the door was broke open, PW5 saw that the wife of Dipak (Dipali) was hanging with a saree. Her knees were touching the floor. Dipak removed her and was not in a position to talk. Then, Dr.Jagtap, who was residing near their house, was called by PW5. Dr.Jagtap checked Dipali and told them to take her to hospital of Dr.Pol. Thereafter, Dipali was taken to hospital by Dipak. He stated that at about 3.45am, one of the relatives of the accused Dipak informed him that Dipali has expired at about 1am. In his cross-examination, PW5 stated that

it is true that no disputes were going on between the accused Dipak and Dipali. He has in clear words stated that Dipali committed suicide. At the relevant time, the door was closed from inside and they had to broke open the door. There was no other door to the said room. The evidence of PW5 would clearly show that Dipali committed suicide.

8. While recording the statement of the accused under section 313, the Public Prosecutor asked the accused question No.7, which is as under:

“Q.7.: Witness Prashant Shete has stated that on the day of incident about about 10-45 p.m. he heard forceful knocking upon the door of first floor. You accused Dipak were there. Some boys residing in the neighbourhood were called. Door from first floor was bolted from inside. Boys then broken open the door. Dipali was hanging with the help of saree. What you have to say about it?

In reply to the said question, the accused Dipak gave the answer in the affirmative.

Again, in reply to question No.12 i.e., ‘Have you to state anything more?’, the accused Dipak replied that he was doing labour work. Dipali was showing anger towards him as he was not getting sufficient income. She was fed up with his poverty.

9. Thus, on a joint reading of the evidence of PW7 Dr.Sudhakar Marutirao Bhokre, PW5 Prashant Hanumant Shete and question No.7 put to him under section 313 by the Public Prosecutor, it is abundantly clear that the prosecution's entire case is that Dipali had committed suicide.

10. One Babasaheb Gangawane was examined as PW1, who was panch witness to the spot panchanama conducted on 9th June, 2002. He has deposed that on 9th June, 2002, he was called by the police at plot No.14. One Mr.Bhongale was residing in the house of Shetty on 1st floor. Police showed him the place of incident. With police, one Mr.Bhongale was there. One Saree was lying. One piece of bolt of door was lying inside the room. Pieces of bangles were lying on the floor. Pots were also lying. The door was broken. Saree was attached by the police. During his cross-examination, PW1 stated the one door frame and one window were there in the room on the first floor. The door of the room on the first floor was broken.

11. The evidence clearly suggests that the door was required to be broke open. The articles lying in the said room as noticed in

the spot panchanama would suggest that only Dipali was there in the room and she hanged herself.

12. The real question that arises is as to whether Respondents were responsible for the commission of suicide by Dipali.

13. The prosecution has examined Saraswati Tulshiram Dharunte (PW2), the mother of Dipali. PW2 deposed that Dipali was her daughter and married to Dipak on 30.4.1999. They had to spend Rs.2 lakhs to Rs.2.5 lakhs in the marriage of her daughter. After marriage, her daughter started residing at Akluj in the house of her husband. PW2 never went to the matrimonial house of Dipali. In the matrimonial house of her daughter, her husband, two brothers of Dipak and the wife of one of the brothers and the father in law of Dipali were residing.

After marriage, her daughter Dipali went to her house for 2 to 3 times and then, she went for the purpose of delivery. When her daughter went to her house, she told that she was receiving ill-treatment from the wife of the elder brother of Dipak. Both the accused were making demand of Rs.50,000/- to Rs.1 lakh from Dipali. It is stated that Dipak

wanted the said amount for his business. Her daughter delivered a baby, however, nobody from the matrimonial side of her daughter visited her place to see the child. Later on, the husband of Dipali came and took her to her matrimonial home. The couple started residing separately in Kadam Chawl, Phaltan. The birth anniversary of her grandson was celebrated in the matrimonial home of Dipali and so, her husband and herself went to attend the said function. It is stated that since they did not fulfill the demand of money by the accused, the accused during their visit to the matrimonial home of Dipali, asked them to take Dipali to their house. They convinced Dipak and left the place.

PW2 was adverted to the contents of the letter written by Dipali and she stated that she did receive the said letter. She identified the handwriting and signature of her daughter Dipali on the said letter at exhibit 14.

14. PW2 was extensively cross-examined by the defence Counsel. During her cross-examination, she stated that the marriage of Dipali took place on 30.4.1999 and then, Dipali came to their house at the time of Panchami festival. She stayed there

for 4 to 5 days and then, her father in law came and took her to their house. Thereafter, again, at the time of Diwali festival, Dipali came to their house. At that time of Diwali, they invited Dipak to their house. However, due to some work, Dipak could not come to their house. After Diwali, the father in law of Dipali came to their house and took Dipali back to their house. After Diwali, her daughter again came to their house for delivery and thereafter she stayed for three months. She stated that it is true that the function of birth anniversary of Hrutik, her grandson, was performed in their house. After her daughter gave birth to son Hrutik, Dipak came to their house and stayed there for about three months. She further stated that it is not true that the accused Dipak was not able to run his business, hence, he was brought to their house. When the birth anniversary of son Hrutik was performed in their house, Dipak was in their house. After the function of first birth anniversary of her son, Dipali stayed in their house for about one year. Then Dipali went to Phaltan for staying there. At the time of function of second anniversary of daughter Dipali, PW2 herself and her husband went to the house of the accused Dipak. At that time, she resided there for 3 days. At the time of second birth anniversary, a family function was performed at Phaltan about four

months before the death of Dipali. She admitted that her daughter Dipali died in HADCO colony and not in Kadam Chawl. About two months before the death of her daughter, the accused and her daughter had shifted to the house in HADCO colony. She further stated that she learnt that in the gram powder that remained after preparing *bhaji*, her daughter poured water in it and wasted it and on that count, dispute took place between the accused Dipak and her daughter. She stated that the accused Dipak took her daughter to the hospital. The funeral took place at Phaltan and she was present at the time of funeral at Phaltan.

15. If the entire evidence of PW2 is considered and in particular, admissions given by her in the cross-examination, it is crystal clear that accused No.1 and his father used to visit their place, and they also used to go the place of Dipak and this continued till four months prior to the death of Dipali. As regards the demand of Rs.50,000/- to Rs.1 lakhs by Dipak, except the bare words of PW2, there is no other evidence to prove it. It appears that vague allegation is made about the alleged affair between accused No.1 and accused No.2 without any solid evidence to that effect. According to the prosecution case, the aforesaid two reasons gave

rise for commission of suicide of Dipali.

16. We have carefully perused the contents of the letter written by Dipali (exhibit 14), nowhere in the said letter she has alleged against the accused that they were demanding money or giving her ill-treatment. Neither there is a mention of demand of such amount nor that the accused Dipak had illicit relations with the wife of his brother i.e., accused No.2. We have also perused the evidence of the father of Dipali and also other prosecution witnesses. More or less, their evidence is similar to that of PW2.

17. As already observed, no charge was framed under section 306 read with section 34 of the Indian Penal Code. We have considered the entire evidence brought on record and we find that the prosecution has utterly failed to bring on record clear, cogent and convincing evidence to suggest that, within the proximate date and time of the alleged incident of suicide by Dipali, there were possible overt acts on the part of the accused in instigating or aiding the commission of suicide by Dipali. As already observed, the prosecution has failed to prove the demand of money of Rs.50,000/- to Rs.1 lakh by Dipak and there are no positive acts brought on record by the prosecution within the proximate date

and time of the incident to attract the ingredients of section 304B of the Indian Penal Code and to invoke section 113B of the Indian Evidence Act to presume that the death has occurred otherwise than under normal circumstances with seven years from the date of marriage.

18. We have carefully perused the findings of acquittal recorded by the trial Court and we are of the considered view that those findings are in consonance with the evidence brought on record by the prosecution. There is no perversity as such. The trial Court has taken a plausible view.

19. In the light of the discussion in foregoing paragraphs, there is no substance in the appeal filed by the State. Hence, the appeal stands dismissed.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)