

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

CRIMINAL APPEAL NO. 236 OF 1997

Sanjay Murlidhar Lolage	 Appellant
v/s.	
The State of Maharashtra	 Respondent

Mr. Sachin Pawar for the Appellant.
Mr. P.H. Gaikwad, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th DECEMBER, 2021.

ORAL JUDGMENT :-

. This is an Appeal under section 374 of Criminal Procedure Code, challenging the judgment dated 11/04/1997 in Sessions Case No.158/1996, Pune.

2. By the impugned judgment, the learned Additional Sessions Judge, Pune has held the Appellant (hereinafter referred to as 'the accused') guilty of offences under section 498-A and 306 of the Indian Penal Code and has sentenced him to undergo rigorous imprisonment for two years with fine of Rs.2,000/- in default rigorous imprisonment for three months for offence under section 498-A of IPC and rigorous imprisonment for four years with fine of Rs.2,000/- in default rigorous

imprisonment for three months for offence under section 306 of IPC.

3. The accused was married to Vaishali on 21/11/1992. They have one child from the said wed-lock. On 26/02/1992, Vaishali committed suicide by hanging. On receiving the information of death of Vaishali, PW7 – Bajirao Dadoba Mohite, PSI attached to Narayangaon Police Station registered Accidental Death No.10/1996. He conducted inquest panchanama and spot panchanama (Exhibit – 13) and referred the body for post mortem examination.

4. PW2 – Vasant Dhamankar, the brother of Vaishali lodged the First Information Report (FIR) at Exhibit – 25 alleging that the accused and his family members who were arrayed as accused nos.2 to 5 had demanded Rs.50,000/- and subjected his sister – Vaishali to cruelty. He further alleged that his sister – Vaishali had committed suicide because of the harassment meted out to her by the accused and his family members. Pursuant to the FIR at Exhibit – 25, PW7 registered C.R.No.30/1996 against the accused and his family members for offences under section 498-A and 306 r/w. 34 of IPC. He seized the letters and telegram handed over by the complainant under seizure panchanama at Exhibit – 18. He recorded statements of witnesses,

arrested the accused and upon completion of investigation, filed the charge sheet before JMFC, Junnar.

5. The case being Sessions triable, was committed to the Court of Sessions. The charge was framed and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case, examined 07 witnesses. The statement of the accused was recorded under section 313 of Cr.P.C. The defence of the accused was that of total denial. The accused, in his defence, examined DW1 – Sharad Belapurkar. Upon appreciating and analyzing the evidence on record, the learned Judge held that the prosecution had failed to prove the demand of Rs.50,000/- that the family members of the accused i.e., the accused nos. 2 to 5 had subjected Vaishali to cruelty and that they had abetted her suicide. Hence, the learned Judge acquitted accused nos.2 to 5 of all the offences. Relying upon the letters at Exhibit – 20, 21 and 24 produced by PW1 – Nandkumar Borkar, the learned Judge held that the prosecution had proved that the accused had subjected the deceased – Vaishali to cruelty and abetted her suicide. Hence, convicted and sentenced him as stated above. Being aggrieved by the judgment, the accused has preferred this Appeal.

6. Heard Mr. Sachin Pawar, learned counsel for the accused and Mr. P.H. Gaikwad, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. It is not in dispute that Vaishali had committed suicide within seven years of marriage. Section 113A of the Indian Evidence Act reposes discretion in the Court to raise a presumption of abetment, when the death is within seven years of marriage and if it is proved that her husband or his relatives had subjected her to cruelty. The term 'cruelty' is explained in clause (a) and (b) of Explanation to section 498A. Cruelty as explained in Clause (a) means any willful conduct which is likely to drive a women to commit suicide or to cause grave injury or danger to life, limb or health. Cruelty as explained in Clause (b) of the Explanation means that harassment of the women with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand. In the instant case, the learned Judge has held that the prosecution has failed to prove that the accused had demanded Rs.50,000/-. The accused have been held guilty of 498A IPC for subjecting deceased -Vaishali to

cruelty within the meaning of clause (a) of the Explanation to Section 498 A of IPC. Hence, the question for consideration is whether the prosecution has established that the accused had subjected the deceased Vaishali to cruelty within the meaning of clause (a) of Explanation to section 498A and abetted her suicide within the meaning of section 107 of IPC.

8. In this regard, PW2 – Vasant Dhamankar, the brother of the deceased has deposed that his sister – Vaishali was treated well for about three to four months after the marriage. PW2 has deposed that he had received a phone call from Vaishali stating that the accused was ill-treating her at the instance of his parents. About 8 to 10 days thereafter, he went to see Vaishali. She told him that the accused used to beat her under the influence of alcohol. She was not allowed to go out of the house and live her life in a fashionable manner. She had alleged that the accused used to assault her at the instance of his parents.

9. He has deposed that in the year 1994, Vaishali sent a letter (Exhibit-20) complaining of ill-treatment. He once again went to her matrimonial house and reprimanded the accused. On 13/08/1994, he

received another letter (Exhibit – 21) wherein she had again alleged that the accused had assaulted her a day prior to Nagapanchami. He also received a telegram from Vaishali on 24/08/1994 (Exhibit-22) calling him to Narayangaon immediately. He went to Narayangaon and met his sister. She complained that she was assaulted by all the accused and that she was deprived of food as they suspected her character. He has deposed that upon his intervention, the accused assured him that such incident would not be repeated.

10. PW2 has deposed that he and his sisters had visited Vaishali in her new house. He has deposed that the accused abused Vaishali for having prepared meals for them and also assaulted her and gave cigarette burns. He has stated that he took Vaishali to Narayangaon Police Station and lodged a complaint (Exhibit – 23). He took Vaishali to his house. About eight days thereafter, the accused came to his house and assured that he would treat her properly and gave an undertaking to that effect. He claims that within a few months thereafter, he received a letter from Vaishali (Exhibit – 24) threatening to end her life because her father-in-law had blamed her for stealing money.

11. PW3 – Sujata Suresh Shirke was a tenant of the accused. She has stated that she had accompanied Vaishali to the house of her sister – Jayshree(PW5) and that she had seen Vaishali crying and telling her sister – Jayshree that the accused was beating her. She has stated that once or twice, she had heard some persons quarreling in the house of Vaishali. In the cross-examination, she has stated that Vaishali had complained to her about ill-treatment meted out to her and his family members. She has further stated that she had seen Vaishali crying and hence, she presumed that she was complaining about her husband.

12. PW5 – Jayshree Anil Jawalkar is the sister of the deceased. This witness has also deposed that Vaishali was treated well about four to five months and thereafter, the accused and his family members started ill-treating and harassing her as they were suspecting her character. She has deposed that on 27/06/1995, she along with her brother and sister, had visited the new house of Vaishali. She had stated that Vaishali had complained of ill-treatment by her mother-in-law, father-in-law, brother-in-law and sister-in-law. Vaishali had stated that the ill-treatment was intolerable and that she was fed up of life.

13. PW6 - Subhadra Sadashiv Dhamankar, the mother of the

deceased has also deposed that the accused used to abuse and assault her and that Vaishali had also alleged ill-treatment and harassment at the hands of family members of the accused. She has further deposed that about a year prior to the death of Vaishali, she had been to the house of Vishali. She had seen Vaishali weeping. Vaishali told her that her father-in-law had blamed her for committing theft of money. She has stated that on 03/02/1997, Vaishali had come to the house of Jayshree along with her neighbour and had complained that the accused were demanding Rs.50,000/- for purchase of a house. She claims that she had seen abrasions on cheeks, face, neck, throat and when inquired, Vaishali had told her that she did not want to talk to her about the said incident.

14. The evidence of PW1, PW5 and PW6, the family members of Vaishali indicate that Vaishali had made allegations of ill-treatment and assault not only against the accused but all his family members. She had alleged that the accused had demanded Rs.50,000/- for construction of the house. The learned Judge has already disbelieved the demand of Rs.50,000/- and the allegations made against the family members of the accused and has acquitted them. The learned Judge has relied upon the letters allegedly written by Vaishali to her brother

to hold the accused guilty of offences under Section 498A and 306 of the IPC.

15. It is to be noted that in the letter at Exhibit-24, the deceased had referred to the allegations of theft made by her father in law. In the subsequent letter at Exhibit-20 she has stated that her father-in-law had touched her feet and apologized for having made allegations against her. In the said letter the deceased has also made allegations against her mother-in-law. She has alleged that her mother-in-law was insisting that to go work even though she was sick. Vaishali had complained that her sister-in-law (accused No.5) had come to stay with them along with the children and that the work load had increased and further complained that she was unable to go out because of the work load. The only accusation against the accused in this letter is that 'he had pounced on her' when she had requested him to take her to Khed at her sister's house. In the letter at Exhibit-21, Vaishali has alleged that her matrimonial house had become a prison. She has further claimed that the accused had assaulted her a day prior to Nagpanchami festival. The accusations made in these letters, which are of the year 1994 i.e. more than a year prior to the death of Vaishali, are mainly against her in-laws & the accusations against the accused

was that he was ill-treating her at the behest of his parents. The learned Judge discarded the allegations made in these letters against the family members of the accused but has relied upon the same letters in convicting the accused. The learned Judge acquitted the family members of the accused and has not assigned any reasons for treating the accused differently.

16. PW2 has alleged that the accused had assaulted Vaishali and given her cigarette burns and that a complaint in this regard was lodged at the police station. The said complaint dated 28/06/1995 does not make any reference to cigarette burns. It is also to be noted that the evidence of PW5 – Jayshree Jawalkar indicates that when Vaishali had visited her on 03/02/1996, she had made allegations of ill-treatment against all the accused and not specifically against the present accused. The evidence of PW5 does not indicate that her mother – Subhadra (PW6) had also visited her house on 03/02/1996. The evidence of PW5 – Jayshree does not indicate that Vaishali had any injuries when she had visited her house on 03/02/1996. Her testimony also does not indicate that her mother also visited the house. PW5 and PW6 claims that Vaishali had visited house of PW5 – Jayshree on 03/02/1996 and had complained about her in-laws. The evidence of

this witness does not indicate that Jayshree had made specific allegations against this accused.

17. A perusal of the impugned judgment indicates that relying upon the same evidence the learned Judge has given a clean chit to the family members of the accused and has held the accused guilty when the allegations against him were that he was acting at the behest of his family. Having considered the entire material on record, in my considered view there is no cogent and conclusive evidence to prove that the accused by his willful conduct subjected Vaishali to cruelty or by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide. The prosecution having failed to prove mental or physical cruelty, conviction under Section 498A IPC cannot be sustained.

18. The accused is also held guilty of offence under section 306 which prescribes punishment for abetment of suicide. In ***M. Mohan vs. State, (2011) 3 SCC 626***, the Apex Court has held that :-

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing.

Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 of the IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he /she commits suicide. ”

19. In the instant case, as noted above, most of the letters relied upon by the learned Judge are of the year 1994 i.e. more than two years from the date of the suicide. Moreover, the accusations in these letters are mainly against the family members of the accused and not specifically against the accused. There is no proximate link between the incident disclosed in the letter at Exhibit-21 and the factum of suicide. Hence, the said letter cannot be on the basis of conviction for offence under Section 498A or 306 of the IPC.

20. Under the circumstances and in view of discussion supra, the prosecution has failed to establish cruelty and abetment.

Consequently, conviction of the accused for offences under Sections 498A and 306 of IPC cannot be sustained. Hence, the Appeal is allowed. The impugned judgment dated 11/04/1997 passed by the Additional Sessions Judge, Pune in Sessions Case No.158/1996, is quashed and set-aside. The accused is acquitted of offences under sections 498-A and 306 of the Indian Penal Code. Bail bonds stand discharged. Fine amount, if paid, be refunded to the accused. The accused shall furnish bonds before the Trial Court under section 437(A) of Cr.P.C. within the reasonable time.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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