

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

CRIMINAL APPEAL NO. 669 OF 2006

State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

1. Sachin Appasaheb Gaikwad
Age : 26 years, Occupation : Service.
2. Sandip Appasaheb Gaikwad,
Age : 28 years, Occupation : Driver
3. Appasaheb Tatyaba Gaikwad
Age : 55 years, Occupation : Service
4. Shobha Sandip Gaikwad
Age : 25 years, Occupation : Household
5. Sarubai Tatyaba Gaikwad
Age : 87 years, Occupation : Household

All R/o. Pimpre Khurd, Tal.: Purandhar,
Dist. Pune

...Respondents
(Orig. Accused Nos. 1 to 5)

.....

Mr.V.B.Konde-Deshmukh, APP for the Appellant-State.
None for the respondents-accused.

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**CORAM : PRASANNA.B.VARALE &
V.G. BISHT, JJ.**

DATE : 6th January, 2021

JUDGMENT (PER: V.G.BISHT, J.)

1. This appeal is filed by the State challenging the judgment and order of acquittal dated 31st August, 2004 passed in Sessions Case

No. 58 of 2004 by learned 1st Ad-hoc Additional Sessions Judge, Pune for the offences punishable under Sections 498-A, 306 and 304 (B) read with 34 of the Indian Penal Code, 1860 (for short "IPC").

2. The occurrence that led to launching of prosecution is that, the informant's niece, namely, Pooja (since deceased) was married to accused Sachin Appasaheb Gaikwad (A-1) before two years from the date of lodging of the report. Accused Appasaheb Tatyaba Gaikwad (A-3), accused Sarubai Tatyaba Gaikwad (A-5), accused Sandip Appasaheb Gaikwad (A-2) and accused Shobha Sandip Gaikwad (A-4) are father-in-law, grand-mother-in-law, brother-in-law and sister-in-law and of the deceased respectively.

3. The prosecution alleges that after one month of marriage, A-1 and A-5 started asking deceased to bring a ring of one Tola and showcase almari from her parents and on that ground they started beating her. Even the deceased was driven to the house of her aunt, namely, Sunita Gaikwad (PW-3) but on her persuasion, the deceased again resumed cohabitation with accused.

4. The prosecution further alleges that all the accused, however, thereafter again used to beat deceased from time to time, make her starve and indulge in tongue lashing. Whenever the informant used to visit deceased or have a talk with him telephonically, she used to

tell about harassment at the hands of accused. The prosecution further alleges that prior to 8 to 9 months of lodging of the report, all the accused drove deceased out after beating but due to intervention of police from Neera Police Chowki, she again resumed cohabitation.

5. According to prosecution, on 30th November, 2003, the informant got a message from PW-3 about the burning of deceased and her admission to Sassoon Hospital. By the time, informant and others reached to the hospital, the deceased was dead.

6. The informant on the next date lodged the complaint against accused on the basis of which Crime No. 93 of 2003 for the offences punishable under Sections 498 -A, 306, 323, 504, 506 read with 34 of IPC with Jejuri Police Station came to be registered against all the accused.

7. On going through the record, it is seen that PW-5 Vishwanath Dnyandeo Ghanwat, API of Jejuri Police Station was handed over the investigation. He visited the place of occurrence and drew spot panchnama (Exh. 35). He also recorded the statements of witnesses, seized various articles from the spot and after the completion of investigation, forwarded the chargesheet against accused.

8. The prosecution in order to prove its case has examined as many as five witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of the Code of Criminal Procedure, 1973 (for short "the Cr.PC") about the incriminating evidence and circumstances appearing against them and they denied all of them as false. According to A-2, since beginning they have got two motorcycles and therefore, they never demanded amount of Rs. 20,000/- to purchase motorcycle. According to A-3, father-in-law, despite the financial condition of deceased being poor, he got his son married and after four months of marriage, the deceased and his son started living independently. Similarly, according to PW-4, her in-laws got his brother, namely, A-1 married with deceased despite the economic condition of deceased was poor. Even after the marriage of deceased no quarrel ever took place in the family.

9. Mr.Konde-Deshmukh, learned APP for the appellant -State, submitted that the prosecution despite adducing the cogent and convincing evidence, the learned trial Judge wrongly gave weightage to the minor discrepancies which do not go to the root of the matter. On the contrary, the evidence of all the witnesses, more particularly, PW-1 to PW-3 who are close relatives of the deceased have elaborately stated as to how the deceased was subjected to

cruelty and illegal demands of gold ring and showcase almari, leading to the establishment of necessary ingredients of the offences with which accused are charged. Thus, the finding of acquittal given by the learned trial Judge is against material on record. The learned trial Judge ought to have convicted the respondents-accused. The judgment and order of acquittal being bad in law, the same is liable to be quashed and set aside, argued learned APP.

10. None appeared for the respondents-accused when called.

11. Now, since the prosecution has come with a case of cruelty and dowry death and as also abetment of suicide and before undertaking the exercise of assessment of evidence led by prosecution, we think it proper to refer to Section 498-A, 304B and 306 of the IPC. The said provisions read as follows :

“498-A – HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY:

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.

Explanation : For the purposes of this section, “cruelty” means

(a) Any willful 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;

or

(b) 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”.

12. The said provision came up for consideration in **Giridhar Shankar Tawade v. State of Maharashtra**¹, where the Apex Court dwelling upon the scope and purport of Section 498-A IPC has held thus:-

“ The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures: Whereas explanation (a) involves three specific situations viz., (i) to drive the woman

¹ (2002) 5 SCC 177; (AIR 2002 SC 2078)

to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A."

13. Section 304B of the IPC reads as follows:

"304B. Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. —For the purpose of this subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act,

1961 (28 of 1961).

2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

14. Section 113B of The Indian Evidence Act, 1872 reads as follows:

"113B. Presumption as to dowry death.—
When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860)."

15. Thus, it can be seen that the offence created by Section 304B requires the following elements to be present in order that it may apply:

I. Within 7 years of the marriage, there must happen the death of a woman (the wife).

II. The death must be caused by any burns or bodily injury.

OR

The death must occur otherwise than under normal circumstances.

III. It must be established that soon before her death, she was subjected to cruelty or harassment.

IV. The cruelty or harassment may be by her husband or any relative of her husband.

V. The cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.

16. Section 304B treats this as a dowry death. Therefore, in such circumstances, it further provides that husband or relative shall be deemed to have caused her death. Section 113B of the Indian Evidence Act, 1872 provides for presumption as to dowry death. It provides that when the question is whether the dowry death, namely, the death contemplated under Section 304B of the IPC, has been committed by a person, if it is shown that soon before her death, the woman was subjected by such person to cruelty or harassment, for in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. It is no doubt a rebuttable presumption and it is open to the husband and

his relatives to show the absence of the elements of Section 304B.

17. The foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is raised, it must be established that the woman was subjected by such person to cruelty or harassment and it is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.

18. The aforesaid analysis of the provisions lay down how coercion harassment can have the attribute of cruelty that would meet the criterion as conceived of under Sections 498-A and 304B of the IPC.

19. Section 306 of the IPC reads as follows:

“Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

20. From a bare reading of the provision, it is clear that to constitute an offence under Section 306, IPC, the prosecution has to

establish : (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused.

21. To say, in other words, an offence under Section 306 would stand only if there is an “abetment” for the commission of the crime. The parameters of “abetment” have been stated in Section 107 of the IPC, which defines abetment of a thing as follows :

“107. Abetment of a thing – A person abets the doing of a thing, who-

First – Instigates any person to do that thing ; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing”.

22. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of “abetment”. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of

suicide is essential to bring home the offence under Section 306 of the IPC.

23. If both the Sections viz. 306 and 107 are read conjointly, it would be clear that if any person who instigates other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under Section 306 of the IPC for abetting the commission of suicide.

24. The Supreme Court in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)***,² had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words 'instigation' and 'goading'. The Court said :-

“Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by “goading” or “urging forward”. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action: provoke to action or reaction” (See : Concise Oxford English Dictionary); “to keep irritating or annoying somebody until he reacts” (See: Oxford Advanced Learner’s Dictionary-7th Edition). Similarly, “urge” means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction,

² AIR 2010 SC 1446

especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or “urge forward” the latter with intention to provoke, incite or encourage the doing of an act by the latter”.

25. The Apex Court in this aforesaid case of **Chitresh Kumar Chopra** (*supra*) reiterated the legal position laid down in its earlier three Judges Bench judgment in the case of Ramesh Kumar v. State of Chhattisgarh, reported in AIR 2001 SC page 3837: 2001 Cri. LJ 4724 (1) and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. Their Lordships in the aforesaid case of Chitresh Kumar (AIR 2010 SC 1446) (*supra*), summed up the legal position as under :-

“In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that :

(i) the accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful omission or conduct to make the deceased move forward more quickly in a forward direction ; and ,

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mensrea is the necessary concomitant of instigation”.

26. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

27. Keeping above analysis in mind, we now consider the evidence on record.

28. PW-1 Balkrishna Vishwanath Bhosale states in his evidence (Exh. 25) that the deceased was daughter of his sister. Two years ago, the deceased was given in a marriage to Sachin Appasaheb Gaikwad (A-1). After the marriage, deceased started residing at Pimpre Khurd along with her husband (A-1), grand-mother-in-law (A-5), brother-in-law (A-2) and sister-in-law (A-4). It is his further evidence that after one month of marriage, the deceased was driven out to the house of Sunita Gaikwad (PW-3). Her husband (A-1), grand mother-in-law (A-5), father-in-law (A-3) and brother-in-law (A-

2) started taunting her and teasing her on that count. They also started abusing deceased and assaulting her and kept her on starvation for that reason. The house of Sunita Gaikwad (PW-3) is at a distance of one and half k.m. from the house of all accused. The deceased narrated all the facts to her maternal aunt Sunita Gaikwad (PW-3) and Sunita Gaikwad informed him on telephone. Sunita Gaikwad also tried to convince the in-laws of deceased and sent her for cohabitation.

29. It is his further evidence that during his visit, the deceased used to tell him that he should give one tola gold ring and showcase almari to her in-laws because they are teasing her and taunting her on that count and abusing her and assaulting her. After 8 to 9 months of her marriage, the deceased was again driven out and at that time she stayed for about two days in the house of her maternal aunt. However, Nira Police compromised the matter and sent deceased to the house of her in-laws. Thereafter also the deceased was subjected to cruelty and harassment.

30. His evidence lastly shows that on 30th November, 2003, his sister Sunita (PW-3) informed him about the death of deceased due to burn injuries. He then proved his FIR at Exh. 26.

31. The whole evidence of informant is quite inconsistent with the contents of his own FIR. If the FIR is read carefully, it definitely gives semblance that all the sufferings suffered by the deceased was told to this witness either telephonically or whenever this witness used to visit the matrimonial home of the deceased. But interestingly his substantive evidence shows that the deceased after having been driven out for the first time, had been to the house of Sunita Gaikwad (PW-3) to whom she narrated all her sufferings and it was Sunita Gaikwad who informed this witness telephonically about the harassment sustained by deceased at the hands of accused. Surprisingly also, the examination-in-chief is totally silent as is alleged in the FIR that the deceased was subjected to harassment on the ground of demand of one tola gold ring and showcase almari.

32. His evidence also shows that after 8 to 9 months of the marriage, the deceased was driven out and at that time she stayed for about 2 days in the house of maternal aunt but then again no such case is made out in the FIR by this witness. In the FIR, it is also alleged with clear assertion that the accused provoked the deceased to commit suicide by constantly subjecting her to physical and mental harassment. However, in the cross-examination, PW-1 was not certain to say whether the deceased died due to burns in

accidental fire and then admitted that he suspected that the deceased might have committed suicide and therefore, he filed complaint. This admission is very much self explanatory. Even otherwise, it is also not the case of prosecution nor that of PW-1 informant that the accused had created such circumstances that the deceased was left with no other option except to commit suicide.

33. We have already pointed out from his admission given in the cross-examination that it was his suspension that the deceased might have committed suicide and that facilitated him to file complaint against the accused.

34. As far as the accusation of cruelty and demand of dowry is concerned, we would like to go through the evidence of remaining witnesses, namely, PW-2 and PW-3 and it is only after appreciation of their respective evidence, we would be able to give findings whether prosecution indeed has been able to bring home those charges against accused.

35. PW-2 Krishna Pralhad Dandekar states in his evidence (Exh. 28) that the deceased was daughter of his sister-in-law. After the marriage of deceased, he had been to the house to accused for fetching the deceased for Diwali festival and at that time the deceased told him that the accused are subjecting her to cruelty,

abusing her and keeping her on starvation for fulfillment of their demand of Rs. 20,000/- for purchase of motorcycle. Even A-3 and A-1 demanded Rs. 20,000/- from him saying that as he had not given proper *Manpan* (honour) at the time of marriage and since the deceased had no parents, he should pay the amount.

36. It is his further evidence that on 28th November, 2003 at about 8.30 pm., he received a telephone call from deceased informing him that she is being continuously subjected to cruelty and assault and is being starved. She further asked him that somebody should meet them and inform when they would be paid cash. According to this witness, the accused were demanding Rs. 20,000/-, gold ring and showcase cupboard. The deceased further asked him to visit her house otherwise within two to three days she would be killed. She further told him that the accused are threatening her with death. The deceased also used to inform him that she is likely to commit suicide.

37. This witness has certainly put the prosecution in quandary. We say so because altogether a new story is introduced by this witness, who is none other than the relative of deceased. According to him, the deceased was subjected to physical and mental harassment on the ground of demand of Rs.20,000/- as the accused wanted to purchase motorcycle. There is no such foundation in the

FIR nor a single word is whispered by PW-1 informant in his evidence. This witness goes to the extent that even he was demanded, when he visited the house of deceased, Rs.20,000/- by the accused on the ground that since the accused were not given proper honour in the marriage ceremony and the fact that the deceased was not having parents, this witness was asked to fulfill the demand of Rs.20,000/-.

38. We are aware of the fact that all the witnesses are related to each other and had it been the case of demand of Rs.20,000/- from this witness, naturally and in an ordinary course this fact ought to have been known to PW1 informant who could never have missed to allege in the FIR. Apart from demand of gold ring and showcase cupboard accused were also harassing deceased with a view to coerce her to bring Rs.20,000/- from her relatives. Therefore, in our considered opinion, we do not take the accusation of demand of Rs.20,000/- seriously coming from the mouth of this witness. There are more reasons as well to question the credibility of this witness.

39. The evidence of PW-2 showing that the deceased had asked him as to when he or for that matter other relatives are going to pay Rs.20,000/- to the deceased and if not paid, the deceased would be killed within two to three days and that she is being threatened with death threats by accused have come on record by way of omission.

All these material facts were never stated before the police by this witness and these omissions are duly confronted in the cross-examination by the defence but this witness insisted of having said all these facts to the police. Interestingly, PW5 Investigating Officer in his cross-examination has proved all these omissions by stating that all the above noted material facts were never stated by this witness during the course of recording of his statement. For all these reasons, we do not find the testimony of this witness up to the mark.

40. PW-3 Sunita Gorakh Gaikwad states in her evidence (Exh. 33) that the deceased was his sister's daughter. According to her, the deceased was maintained properly for a month after the marriage. All the accused started demanding one tola gold ring and showcase cupboard. The deceased was assaulted and put to starvation and even was driven to her house for about three times. She even convinced the family members of deceased i.e. accused. Because of treatment, assaults and putting on starvation, the deceased committed suicide.

41. She lastly states that the demand of one tola gold ring and showcase cupboard was made from all the relatives of the deceased including her. The deceased set herself on fire due to cruel treatment of her family members. This witness has also added

a new dimension to the prosecution theory. According to her, the accused made alleged demand of gold ring and showcase cupboard from all the relatives of the deceased.

42. Disturbingly enough, no such case was manifested at the time of lodging of FIR. Interestingly enough, all these three witnesses have their own theory to put forth. Similarly, according to this witness, the accused had driven deceased for about three times and every time the deceased had been to her house which is again not the case of prosecution.

43. While according to this witness the deceased set herself on fire because of the intolerable cruel treatment whereas PW-1, on his part, suspected that the deceased might have committed suicide. Not only he suspected the suicide but at the same time he nowhere said or even suspected that the deceased might have committed suicide because of unbearable treatment meted out to her at the hands of accused.

44. The cross-examination of this witness is also relevant. In the cross-examination, this witness states that after having come to know the demands of gold ring and showcase cupboard, she called her brother, mother and other relatives and informed them. All the relatives came to her house and from there they visited the house of

Appasaheb (A-3). They called deceased and her father-in-law to her house where deceased informed in presence of A-3 that gold ring and showcase cupboard should be given to her, otherwise the accused will kill her. All the relatives then sought explanation from A-3 and A-3 told them that they should supply these articles after sometime.

45. Such an elaboration is not supported either by PW1 or by PW2 though they happened to be the relatives of the deceased. They did not utter a single word as to the meeting convened by PW-3 at her residence summoning deceased and A-3 and the demand of gold ring and showcase cupboard made by A-3.

46. Needless to say, all these prosecution witnesses are at loggerheads and their testimonies are quite inconsistent with each other. We have already pointed out during the course of our discussion that there is no satisfactory evidence to prove that the conduct of the accused was of such a nature as was likely to drive the deceased to commit suicide or to cause grave injury or danger to life, limb or health. This being so, Explanation (a) to Section 498A of the IPC is not established by the prosecution.

47. As far as Explanation (b) to Section 498A of the IPC is concerned, having regard to the evidence on record and on

analyzing the entire evidence, we are of the firm view that on merits the prosecution has not succeeded to establish that harassment of deceased was with a view to coercing her or any person related to her to meet any unlawful demand. These alleged demands are full of infirmities and inconsistencies, if we may repeat again.

48. Having considered so in the proper perspective, we are of the considered view that the kind of cruelty requisite with fulfillment of the above noted principles are not satisfactorily established. There is lackluster evidence adduced by the prosecution in the form of testimonies of the close relations. The evidence on record does not satisfy conscience of this Court. On re-appreciating the evidence on record we hold that the evidence is neither inspiring nor reliable. The learned Trial Judge has considered the aforesaid legal and factual aspect in its proper perspective. As such, the impugned judgment and order does not warrant interference and deserves to be maintained.

49. In the result, we find no merit in the appeal and accordingly the appeal stands dismissed.

(V. G. BISHT,J.)

(PRASANNA.B.VARALE, J.)

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