

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 859 OF 2007**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Arvind Dashrath Bhor

Age : 24 years

2. Vilas Dashrath Bhor

Age : 26 years

3. Chhababai Dashrath Bhor

Age : 41 years

All R/o. Ninawi, Tal. Igatpuri,

Dist. Nashik.

....Respondents
(Orig. Accused)

Ms. PN. Dabholkar, APP for State.

None for Respondents/Accused.

CORAM : K.R.SHRIRAM, J.

DATED : 12th MARCH, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 28th February, 2005 passed by the 4th Ad-hoc Assistant Sessions Judge, Nashik acquitting respondents (hereinafter referred as accused) of offence punishable under Sections 498 A (*Husband or relative of husband of a woman subjecting her to cruelty*), 306 (*Abetment of suicide.—If any person commits suicide*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) and 304 B (*Dowry death*) r/w Section 34 (*Acts done by several persons in furtherance*

of common intention) of the Indian Penal Code.

2. Accused No.1 had got married to one Nisha on 22/01/2003. Nisha was daughter of P.W. 2 – Baburao Damu Bhusal. After marriage Nisha went to reside with her husband at Igatpuri. Everything was fine for the first two months. Thereafter, harassment of Nisha started. Accused No.1 and 2 are alleged to have complained that cot and cupboard that was given by Nisha's father P.W. 2 was not of good quality and on that ground used to beat Nisha. They used to also mentally harass Nisha on the ground that her parents did not give gas and television at the time of marriage. Accused No.3 used to keep taunting Nisha that she was not doing any household work and Accused No.3 has to work as a labourer to maintain Nisha. Accused No.3 used to tell Nisha to go back to her parental house and also not providing food.

3. Prosecution has also alleged that Accused Nos.1 and 2 used to suspect that Nisha was having illicit relationship with one Sampat Doodhwala, the one who was responsible for two families to meet with each other with marriage proposal. They used to beat Nisha on that count also. Nisha went and told her parents about the ill treatment and her father when he took up with accused, Accused No.1 expressed regret. But Nisha was again harassed by Accused No.1 because Nisha complained to her parents about torture in her matrimonial home. Prosecution also relied upon a chit

allegedly written by Nisha on 01/10/2003 in which the ill treatment given to her had been mentioned. That chit however was unsigned and was given to her father P.W. 2 by an unknown person. On 12/01/2004 Accused No.1 had left Nisha at the house of her parents and at that time Nisha mentioned about ill treatment. On 17/01/2004 Accused No.1 told Nisha that he will not take her back but still complainant P.W. 2 sent Nisha back to the house of accused. On 20/01/2004 complainant came to know about the death of her daughter Nisha. On 22/01/2004 complainant lodged a report with police and also produced the chit to the police. Crime was registered, investigation was commenced, inquest panchanama, seizure panchanama etc., were prepared and statement of witnesses were recorded. Postmortem report was also collected. Charges were framed. Accused pleaded not guilty and claimed to be tried.

4. According to accused, Nisha used to have heavy bleeding during her menstrual cycle and that would last for 7 or 8 days and she had even been taken to doctor for consultation. Accused have denied that they ever ill treated Nisha or made any demand as alleged by the prosecution.

5. To drive home the charge, prosecution led evidence of 5 witnesses namely Dr. Nampalla Vasistha Balaji, Medical Officer who conducted postmortem of deceased as P.W. 1 ; Bapurao Damu Bhusal, Complainant, Father of deceased as P.W.2 ; Bhaushet Laxman Toche, Panch

as P.W. 3 ; Ranjana Bapurao Bhusal, Mother of deceased as P.W. 4 and Balasaheb Tukaram Gaidhani, Investigating Officer as P.W. 5.

6. After considering postmortem report and other evidence, the Trial Court has come to a conclusion that the prosecution has established suicidal death of Nisha.

7. It is settled law to prove an offence under Section 498 A of the Indian Penal Code, the prosecution has to prove ill treatment of the victim with a view to coerce her to fulfill unlawful demand of accused or the ill treatment should be of such a nature so as to drive the victim to commit suicide.

To prove an offence under Section 306 of the Indian Penal Code, the prosecution has to establish that accused abetted commission of suicide by victim.

For offence under Section 304 B of the Indian Penal Code, the prosecution has to prove that the death occurred otherwise than under normal circumstances within seven years of marriage and soon before death, the victim was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, or any demand for dowry.

For offence under Section 323 of the Indian Penal Code, the prosecution has to prove that accused did the act with intention to cause

hurt to the victim or with knowledge that they are likely to cause hurt to victim and it thereby caused hurt to victim.

8. To prove ill treatment prosecution has primarily relied on the evidence of P.W. 2 and P.W. 4, father and mother, respectively, of Nisha. According to P.W. 1 a chit dated 01/10/2003 was sent by Nisha and he has produced it before the police and the handwriting in the chit was of Nisha. The Trial Court has rightly not given much credence to the chit because prosecution has not made any efforts to prove that the handwriting in that chit was that of Nisha. The prosecution could have produced some other document of Nisha which contained her handwriting. Except for bare words of complainant there are nothing on record to come to a conclusion that it was Nisha's handwriting.

9. We have to note that the defence also led evidence of one Yashodabai Popat Pardhi D.W. 1 who was neighbour and friend of Nisha. In the evidence of defence witness it has come on record that Nisha used to go to her house and Nisha used to tell D.W. 1 about serious stomach cramps and severe bleeding during her menstrual cycle and that would last for about eight days. D.W. 1 has also stated that Nisha used to be ill because of that and according to her Nisha was cohabiting happily with Accused No.1 and even Accused No.1 had taken her for medical assistance. Apart from this, prosecution itself has produced Dr. Shivde's sonography report dated

27/10/2003 and the papers shows that in the month of October, 2003 Nisha was taken to hospital of Dr.Mrs. Kelkar on 8th and 15th October, 2003. The report of Dr. Shivde mentioned about increased ovarian stroma in both ovaries and tiny cist like follicles in both ovaries.

10. Against this, admittedly except the evidence of P.W. 2 and P.W. 4 there is no evidence on record to come to the conclusion that Nisha was being ill treated by accused. As stated earlier that chit on record cannot be given much importance. So far as evidence of P.W. 2 and P.W. 4, it appears more of hear say. Both the witnesses have not stated anywhere that they have seen accused treating Nisha with cruelty. Both the witnesses do not say that accused made any demand of television set or gas to them directly or they complained about quality of bed or cupboard given by them at the time of marriage. P.W. 2 says that he had asked accused to bring mediator by name Sampat and other respected persons to settle the dispute. But according to complainant Accused No.1 was suspecting Nisha of having illicit relationship with Sampat and Nisha had told P.W. 2 about it, then I wonder how could P.W. 2 have told accused to bring said Sampat to settle the dispute. This raises a question of credibility on the alleged narration of Nisha to complainant P.W. 2 and P.W. 4.

11. The Trial Court raised many other grounds for acquitting accused. For the sake of brevity, I am not dealing with all of that but would

only say that I agree with the points raised by the Trial Court.

12. Except general statements of demand or suspicion as allegedly told to P.W. 2 and P.W. 4 by Nisha there is no evidence under Section 498 A of the Indian Penal Code.

13. For charge under Section 306 of the Indian Penal Code, here is the case of abetment by instigation. When is a person said to instigate another ? The word 'instigate' literally means to goad, or urge, or to provoke, or incite, or encourage, to do an act, which the person, otherwise would not have done. It is well settled, that in order to amount to abetment, there must be mens rea or community of intention. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct incitement to do the culpable act. This issue has been discussed by various High Courts and Supreme Court of India.

The courts have held that the evidence must suggest or indicate that the accused knew or had a reason to believe that deceased would commit suicide.

14. There is no evidence, whatsoever to even suggest that Nisha committed suicide because of ill-treatment or cruelty by accused. There is

also no evidence whatsoever that the accused by their acts intended Nisha to commit suicide.

15. Likewise there is no evidence to talk about to prove the charge under Section 323, 504 or 304 B of the Indian Penal Code.

16. I have perused the impugned judgment, considered the evidence and also heard Ms. P.N. Dabholkar, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

17. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

18. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of

acquittal, in my view, need not be interfered with.

19. Appeal dismissed.

(K.R. SHRIRAM, J.)