

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

CRIMINAL APPEAL NO. 1139 OF 2007

The State of Maharashtra
(Dagadu Kashinath Telore
Age – 53 years, Occ. Service,
R/o. Shantinagar, Near Kopari Colony,
Kirana Shop, Thane,
Dist. Thane.

....Appellant
(Orig. Complainant)

V/s.

1. Bablu Damu Ubale
Age – 23 years
2. Damu Mesuji Ubale
Age – 65 years,
(Trial is abated against Accused No.2)
3. Yamuna Damu Ubale
Age – 60 years,
All R/o. Pimprisado,
Taluka – Igatpuri.
4. Sunita Keru Jagtap
Age – 32 years
R/o. Nandgaon Sado,
Taluka – Igatpuri.
5. Lalita @ Lalan Suresh Bhavar
Age – 27 years
R/o. Pimprisado,
Taluka – Igatpuri.

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

Ms. Anamika Malhotra, APP for State.
None for Respondent.

CORAM : K.R.SHRIRAM, J.

DATED : 30th APRIL, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 12th July, 2006 passed by the 3rd Ad-hoc Additional Sessions Judge, Nashik acquitting the respondents (hereinafter referred as accused) of offence punishable under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306 (*Abetment of suicide*) of the Indian Penal Code.

2. Accused No.1 had married a girl by the name Naina. Accused No.3 is mother of Accused No.1 and therefore mother-in-law of Naina. Accused Nos.4 and 5 are married sisters of Accused No.1. Accused No.2 against whom the trial had abated was father of Accused No.1.

3. It is prosecution's case that for four to five months after marriage Naina was treated well but later on harassment started accusing of her being dark skinned and unlucky for the family. Accused used to also taunt her and mentally harass her. It is alleged that original Accused No.2 became indebted and had to borrow money after arrival of Naina into the household and accused were demanding Rs.50,000/- for securing job to Accused No.1 and for getting the mortgaged land of original Accused No.2 released from mortgage. Whenever Naina would go visiting her parents' house she would inform them about the ill treatment. Naina would be sent

back and accused will be requested not to make any such demand as the parents of Naina were not in a financial position to meet their demand.

4. In course of time, two children were born to Accused No.1 and Naina. During raksha bandhan before the death of Naina, Naina had gone with Accused No.1 to her parents' house. It is alleged that at that time Accused No.1 had demanded Rs.50,000/- from her parents and it seems Naina informed them that they should give money to Accused No.1 or else he will harass her. Parents of Naina (P.W. 1 and P.W. 2) explained to Accused No.1 and Naina that it would not possible for them to give so much money and they were sent back empty handed.

5. After some days Accused No.1 informed P.W. 1 and P.W. 2 that Naina was seriously ill and was admitted to hospital in Ghoti. When P.W. 1 and P.W. 2 reached the hospital they found Naina had already expired and police thereafter registered accidental death case and commenced investigation. Inquest panchanama had been drawn and postmortem was also conducted. Subsequently, P.W. 1 lodged complaint against accused, investigation was commenced, statement of witnesses were recorded, spot panchanama conducted and certain medicinal tablets were seized from the house of accused. Charges were framed and were read over to accused who pleaded not guilty and claimed to be tried. According to defence Naina was not physically well and she had consumed excess tablets and due to excess dosage she expired and hence it is an accidental death.

6. To bring home the charge, prosecution has examined seven witnesses viz., Dagadu Kashinath Telore, Complainant - father of Naina as P.W. 1 ; Sangita Dagadu Telore, mother of Naina as P.W. 2 ; Ananda Dada Sable, husband of maternal aunt of Naina as P.W. 3 ; Dattatray Krushanaji Khadtar, maternal grand father of Naina as P.W. 4 ; API Ganesh Nathu Chaudhari, Investigating Officer as P.W. 5, Dr. Prashant Ashokrao Ghoderao, Medical Officer who performed postmortem of dead body of Naina as P.W. 6 and Jagnath Sudama Ubale who advanced loan to original Accused No.2 as P.W. 7.

7. The Trial Court after considering the evidence has rightly acquitted all accused.

8. Admittedly, Naina expired on 01/10/2004 and there is no dispute about the cause of death, i.e., she died an accidental death.

P.W. 1 has stated that Naina was looked after well for four to five months after her marriage and later on she was harassed and ill treated and was also told to get Rs.50,000/- from her parents for seeking employment for Accused No.1 and to release certain property of Accused No.2 from mortgage. This Naina would tell her parents whenever she visited her parents' house. We have to note that marriage of Naina and Accused No.1 was performed on 08/05/1998 and Naina had expired on 01/10/2004 (about 6 years and 5 months). According to P.W.1's statement

harassment would have then started sometimes towards end of 1998 and is supposed to have continued for almost six years. The allegations made by P.W. 1 and P.W. 2, however, are more of general type and there are no specific evidence of any incident. We should also note that Naina, in the meanwhile, had delivered two children.

9. Evidence of P.W. 2 is on the same line as of P.W. 1. It seems when the other daughter of P.W. 1 and P.W. 2, Priyanka, had delivered a child and Naina was informed about the same, it seems Naina informed them that she would not be able to come as her in laws will not permit and that she was being ill treated. But there is no evidence to show that it was ever seriously taken by the parents.

10. Even P.W. 3 who is husband of maternal aunt of Naina states that six to seven months after her marriage Naina had come to their village and she mentioned about ill treatment and demand of money by accused. This would mean the incident would have occurred sometimes towards end of 1998. Certainly that cannot have any nexus with the death of Naina on 01/10/2004.

11. P.W. 4 is the maternal grand father of Naina. Even his allegations of ill treatment which Naina is supposed to have mentioned are very general.

12. There is no evidence to show what happened in 2004 that compelled Naina to commit suicide. The Trial Court has also concluded that there is no evidence to indicate that Naina consumed excess medicinal tablets containing chloroquine with intention to commit suicide. Evidence of P.W. 7 indicates that Accused No.2 had taken loan of Rs.10,000/- at the time of marriage of his son and daughter but that cannot be inferred to conclude that Naina was being harassed and that harassment amounted to cruelty to the extent as defined under Section 498 A or it was sufficient for Naina to commit suicide and to hold accused guilty of abetment.

13. Therefore, the Trial Court has rightly concluded that no case has been made out to prove the offence charged under Section 498 A or 306 of the Indian Penal Code.

14. I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, 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.

15. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that

every person shall be presumed to be innocent unless they are 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 Sessions Court rightly observed that the prosecution had failed to prove its case.

16. 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.

17. Appeal dismissed.

(K.R. SHRIRAM, J.)