

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO. 176 OF 2009

Gajanan s/o Shriram Shelke,
Aged about 28 years, Occu: Service,
R/o Naigaon Jawanjal, Taluka Chikhli,
Distt. Buldhana (In Jail Buldhana) **APPELLANT**

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station, Tamgaon,
District – Buldana. **RESPONDENT**

Shri A.V. Gupta, Senior Advocate for appellant.
Shri I.J. Damle, APP for respondent/State.

CORAM: N.B. SURYAWANSHI, J.
DATE: 05-03-2021.

ORAL JUDGMENT

1. This criminal appeal is filed against the judgment and order dated 03.03.2009 passed by the learned Ad-hoc Additional Sessions Judge, Khamgaon in Sessions Trial No.24 of 2008, thereby convicting the appellant for offence punishable under Sections 498-A and 304-B of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for five years under Section 304-B of the Indian Penal Code and directing him to pay a fine of Rs.5,000/- further sentencing him to suffer rigorous imprisonment for two years under Section 498-A of the Indian Penal Code.

2. The prosecution case, in brief, is that:

The deceased Manisha was the daughter of PW-1 (Samadhan). Her marriage with the appellant took place on 11.05.2006. The appellant was a teacher at village Jastagaon and was residing along with Manisha at village Sangrampur in a rented room. According to the prosecution, after six months of their marriage, the appellant was insisting Manisha to bring Rs.50,000/- from her parents and on that count, the appellant was illtreating her. The economical condition of the father of Manisha was not good enough to provide the said amount. Prior to fifteen days of the incident, the appellant reached Manisha's parental house and demanded an amount of Rs.50,000/-. Though PW-1 (Samadhan) and his wife tried to convince him, the appellant was not ready to listen to them. Prior to 10 to 12 days of the incident, PW-1 the father of Manisha, reached at the house of appellant at Sangrampur. On 08.10.2007, PW-1 Samadhan came to know that Manisha has hanged herself and has expired. He along with his wife went to Sangrampur and there they saw the dead body of daughter Manisha. He, therefore, went to the Police Station and lodged a report against the accused Gajanan that he had committed murder of Manisha. He also alleged that Manisha was being ill-treated by her father-in-law, mother-in-law,

brother-in-law and sisters-in-law. On the basis of report lodged by PW-1, Crime No.122 of 2007 was registered against six accused persons for offence punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code. The investigation was conducted and charge-sheet came to be filed against the accused persons.

3. Charge under Section 302 of the Indian Penal Code was framed against the accused persons. All the accused denied the charge. Their defence was of total denial. The learned trial Court after recording the evidence, acquitted all the accused persons including the appellant from charge under Section 302 of the Indian Penal Code. All the other accused i.e. in-laws of the deceased were acquitted of all the charges, however, the appellant was convicted for offences punishable under Sections 498-A and 304-B of the Indian Penal Code. Hence, the present appeal.

4. Heard the learned Senior Advocate for the appellant and the learned Additional Public Prosecutor for respondent. The learned Senior Advocate for the appellant submitted that the prosecution has failed to establish that there was any ill-treatment or harassment to deceased Manisha on account of demand of

dowry. The allegations of the prosecutions about cruelty are vague and general. Specific instance of cruelty meted out to the deceased were not brought on record by the prosecution. The allegations of the prosecutions and the evidence on record does not make out offence under Section 498-A of the Indian Penal Code. The required intensity and persistence of cruelty as contemplated under Sections 498-A and 304-B of the Indian Penal Code is absent in the evidence of the prosecution. Though the deceased expired within seven years of marriage and presumption under Section 113-B of the Evidence Act, 1872 is available to the prosecution, in absence of proof of cruelty meted to the deceased, the appellant could not have been convicted. According to the learned Senior Advocate for the appellant, the trial Court has drawn unwarranted inferences while recording the conviction of the appellant and the impugned conviction is unsustainable in facts and law. He, therefore, submitted that the appeal deserves to be allowed by acquitting the appellant. In support of his arguments, he placed reliance on the following judgments :

i) Durga Prasad and another ..Vrs.. State of Madhya Pradesh, 2010 (9) SCC 73.

ii) State of Maharashtra ..Vrs.. Basveshwar Kallapa Patne and

others, 2020 SCC OnLine Bom 219.

iii) The State of Maharashtra ..Vrs.. Appasaheb Balajee Parkhe and others, 2015 SCC OnLine Bom 3339 : (2015) 1 AIR Bom R (Cri) 722.

iv) Kamlesh Satyaprakash Agarwal ..Vrs.. The State of Maharashtra, 2015 SCC OnLine Bom 5811.

5. Per contra, the learned Additional Public Prosecutor for the respondent/State supported the impugned judgment of the learned trial Court. According to him, the unnatural death of the deceased Manisha occurred within seven years of the marriage and demand of dowry of Rs.50,000/- by the appellant has been established by leading evidence of PW-1 (Samadhan) and PW-4 (Niwedita). The learned trial Court, was therefore, justified in convicting the appellant on the basis of their evidence. He, therefore, submitted that no case is made out by the appellant to interfere with the conviction, hence, the appeal filed by the appellant, may be dismissed.

6. Heard the learned Senior Advocate for the appellant and the learned Additional Public Prosecutor for the respondent at length. Perused the record.

7. In support of its case, the prosecution has examined nine witnesses. PW-1 (Samadhan) is the father of the deceased Manisha. He deposed that deceased Manisha was his oldest daughter and her marriage was performed with the appellant on 11.05.2006. After the marriage, Manisha went for cohabitation at the house of her in-laws. Father-in-law, mother-in-law, Husband, husband's brother and husband's two sisters were residing with Manisha. The appellant was serving as a Shikshan Sewak at village Jastagaon. Manisha and appellant were residing at Sangrampur in a rented room. Appellant was demanding Rs.50,000/- from Manisha and was illtreating her. The appellant was abusing Manisha. Whenever, Manisha used to come to the parental home, she used to tell him about the ill-treatment. On 21.09.2007, the appellant reached Manisha's parental house at about 8.00 p.m. and told him to arrange for the money. Again, after three days, the appellant went to his house and asked him to arrange the money. After 2 to 4 days, PW-1 (Samadhan) reached at the house of the appellant at Sangrampur. He told the appellant that he was not in a position to pay the amount due to the economical crises. On 08.10.2007, he received telephonic call that Manisha was found in hanging position. He along with his wife went to Sangrampur. There they saw the dead body of Manisha.

Then, he went to the Police Station and gave a report (Exh.29). Printed F.I.R. (Exh-30) was registered on the basis of his report. Police recorded his statement after 3 to 4 days.

8. In the cross-examination, he admitted that the brother and the sisters of the appellant were married. He admitted that Manisha and the appellant were residing in a rented room admeasuring 10 x 10 feet and one kitchen admeasuring 6.5 x 7 feet. The house owner was residing in the side block, which was just adjacent to the block of Manisha. He was not in a position to tell, whether on the three sides of the house of Manisha, there were residential houses. He admitted that when Manisha died, she had a daughter by name Srushti aged five months. At the time of his deposition, the daughter was residing with the appellant's father. He denied the suggestion that after the delivery, the health condition of Manisha was not good. He was not aware, whether treatment of Dr. Sau. Deshmukh was being given to Manisha. The funeral of Manisha took place at the house of the appellant at village Naigaon which was the permanent residence of the appellant. He stated that he gave a report in the Police Station prior to the funeral ceremony. On the second day, he went to Tamgaon Police Station at about 7.00 a.m.

and gave a report in his own handwriting. He stated that the appellant Gajanan was getting a monthly salary of Rs.3000/- and he was possessing a motorcycle. He further stated that after reaching Sangrampur, no conversation took place between him and the appellant. He denied the suggestion that Manisha was hot tempered and was of suspicious nature. He denied that Manisha after her delivery was suffering from post delivery ailment. He stated that he did not talk with anybody at Sangrampur. His other relatives had come at Sangrampur prior to lodging of the report. He denied that he had a talk with his relatives before lodging the report.

9. In his cross-examination, following omissions were brought on record. That, “on 21.09.2007, Gajanan reached Manisha at my house at about 8.00 p.m and told me to arrange the money. Again after three days, Gajanan came at my house and told me to arrange the money.” That, “I am not in a position to pay the amount due to economical crises.” That “Gajanan was abusing to Manisha.” He denied the suggestions that there was no ill-treatment to Manisha and he has given false evidence against the accused persons.

10. PW-4 Niwedita is the sister of the deceased. She deposed that after the marriage, Manisha used to come to their house on the occasion of festivals. At that time, she was telling that her husband was illtreating her and mentally harassing her on account of demand of money. Prior to 20 to 25 days of the incident, Manisha had come to their house at Chikhali. After three days, the appellant came there and gave threats to Manisha to bring Rs.50,000/- otherwise, he would kill her. The appellant alone left the house. Then, on Wednesday, her father reached Manisha at Sangrampur. On 08.10.2007, when she was at her house, at about 10.00 a.m., the appellant called on her cell phone and asked the whereabouts of her father and mother. Then, at about 5.00 p.m., they were informed by somebody on the cell phone that Manisha was serious, and thereafter, she came to know that Manisha had died.

11. During the cross-examination, she stated that the delivery of Manisha had taken place at Bharad Hospital, Buldhana. She personally did not go to Bharad Hospital. She further admitted that in October 2007, she wanted to go to Delhi for one year training of Parlour Trade. She stated that the appellant asked her on cell phone, as to when she and her sister

wanted to go to Delhi. In her cross-examination, the omission to the effect that, “whenever Manisha was coming on the occasion of festival, she was telling that her husband used to demand the amount and giving her mental and physical ill-treatment” was brought on record. She admitted that she did not tell that fact in her Police statement.

12. PW-7 Usha is the landlady. She deposed that the appellant Gajanan and the deceased Manisha were residing in her house as tenant for 6 to 7 months prior to the incident. On 08.10.2007, the appellant went to the school on duty. She had kept food articles on terrace for drying. At about 3.00 to 3.30 p.m. Manisha’s daughter was crying, hence she opened the door of the appellant’s house and saw that Manisha’s body was hanging inside the room. She raised hue and cry then people gathered there.

13. During the cross, she admitted that there were residential houses on all the sides of her house. There was common varanda in front of her house and the house of the appellant. The deceased used to keep bath water in the common varanda. On the day of incident at about 10.00 to 10.30 a.m., the

appellant went to the school. Manisha took the bucket with water in the varanda at about 11.30 a.m. Manisha used to talk to her intermittently. She stated that she never heard loud voice of the appellant Gajanan and deceased Manisha at any point of time. According to her, the marital life of the appellant Gajanan and Manisha was happy.

14. PW-5 (Satish) is the Headmaster of the School, where the appellant was working . He gave the message to the appellant that the health condition of his daughter was not good. At that time, the appellant was posted at the school at Warwat Khanderao, therefore, he personally went there on motorcycle for giving message to the appellant. He then went to the house of the appellant and there he came to know that Manisha had committed suicide.

15. In the cross-examination, he stated that he had attended the marriage of the appellant and he was on visiting terms to the house of the appellant and the marital life of the appellant with Manisha was happy.

16. PW-2 (Dashrath) is the Pancha to the inquest Panchanama (Exhibit-32).

17. PW-3 (Dr. Ravindra) is the Medical Officer, who conducted the postmortem report and submitted the postmortem report (Exhibit-38). According to him, the cause of the death was due to asphyxia due to hanging.

18. PW-6 (Bhagwat) is the Pancha to the memorandum panchanama of the appellant (Exhibit-44) and seizure of rope panchanama (Exhibit-45).

19. PW-8 (Niwrutti) is the Investigating Officer. He investigated Marg No.42 of 2007. He went to the spot and prepared spot panchanama (Exhibit-33) and inquest panchanama (Exhibit-32).

20. In his cross-examination, he stated that he did not seize anything during the investigation of Marg. PW-1 (Samadhan) gave written report to the Police Station. He further admitted that he had recorded the statements of Dr. Prasanna Mankhair, Vaibhav Sontakke, Prashant Shelke, Manoramabai Sontakke, Dr. Sau. Lata Poharekar and Jyoti Daberao. In the investigation, it was revealed that deceased Manisha had gone to the hospital of Dr. Deshmukh for showing her health condition and for medical treatment. It was also revealed that on the day of

incident, in the morning at about 10.00 to 10.30 a.m. the appellant, his wife and daughter had returned from the market and then, the appellant went to the school.

21. PW-9 (Sharangdhar) is the Investigating Officer, who investigated the crime after the report was lodged by PW-1 (Samadhan). He submitted the charge sheet.

22. On scrutiny of the prosecution evidence, it is clear that there is no evidence on record to prove the allegations of cruelty at the hands of appellant to the deceased manisha. Vague and general allegations are leveled by PW-1 (Samadhan) and PW-4 (Niwedita) in respect of alleged cruelty meted out to the deceased Manisha. No specific instances are stated by them in their evidence. The only incident of demand of Rs.50,000/- is proved to be an omission. In this view of the matter, it cannot be said that the prosecution has proved that there was demand of dowry and on account of demand of dowry, cruelty was meted out to the deceased Manisha. The prosecutions has utterly failed to prove on record the ingredients of Sections 498-A and 304-B of the Indian Penal code.

23. If the evidence of PW-5 (Satish) and PW-7 (Usha) is

considered, they have categorically stated that the married life of the appellant Gajanan and the deceased Manisha was happy. This creates serious doubt about the prosecution case. There is no material on record except vague and bald statements of PW-1 (Samadhan) and PW-4 (Niwedita) that there was demand of Rs.50,000/- by the appellant and for that the deceased was being subjected to cruelty and harassment soon before her death, the said allegations are not proved by the prosecution by leading cogent evidence.

24. The learned Senior Advocate was justified in relying upon the ratio in Durga Prasad (supra) wherein the Hon'ble Supreme Court has held that: *"except the bald statements of the victim's mother and brother alleging that victim had been subjected cruelty prior to her death. No other evidence was produced to prove that the deceased committed suicide on account of same, hence by giving benefit of doubt, acquittal was given."*

In State of Maharashtra (supra), the Bombay High Court has observed thus:

"23. Though the evidence of Irayya Swami (PW 5) it has been tried to suggest that, there was ill-treatment and harassment to Ambavva (deceased) after her marriage during her stay in the

matrimonial house by the accused, however, in his evidence also no any specific date, time or specific incident has been mentioned. So also in the evidence of Mahadevi (PW 8) and Kasturbai Manajgi (PW 10) there are no specific instances of cruelty and ill-treatment are stated. Mahadevi (PW 8) turned hostile and did not support the prosecution case, even in her cross-examination by the public prosecutor nothing useful to the prosecution was brought on record.

24. *If the evidence of all the aforesaid witnesses is considered in its entirety, it suffers from non-disclosure of specific details of alleged cruelty and harassment to Ambavva (deceased) at the hands of the accused. Therefore, their evidence is of no use to the prosecution. Mere allegations of harassment and cruelty, in absence of mentioning specific time, date and specific overtact qua accused would not attract an ingredients of Section 304B of IPC. The prosecution ought to have led evidence to suggest that within the proximate time and date of the alleged incident, there were positive acts on the part of the accused of giving an ill-treatment and harassment to the victim, which ultimately resulted into death of victim. The prosecution has failed to establish that there was cruelty and harassment to Ambavva (deceased) by the accused soon before her death.*

25. *Even to attract the ingredient of Section 498A of the IPC, the prosecution must show specific acts of the accused suggesting cruelty and harassment. There are general allegations made by the witnesses, and on the basis of such vague and general allegations, it is not possible to base the conviction of the accused thereby reversing the well reasoned order of acquittal passed by the Trial Court.”*

In the State of Maharashtra (supra) in similar circumstances, this Court held:

“Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) Whether the accused has committed the dowry death of the women?
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, on in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.”

26. Proof of cruelty for or in connection with demand of dowry is Sine-qua-non for bringing home the guilt for the offence punishable under Section 304-B of the IPC, 1860. As such, let us scan the evidence of prosecution in order to establish whether, it is proved that the respondents/accused persons or any of them had subjected deceased Shakuntala to cruelty as defined by explanation to Section 498-A of the IPC, 1860. The term cruelty used in explanation to Section 498-A of the IPC implies harsh and harmful conduct of certain intensity and persistence. It covers acts causing, both, physical and mental agony and torture or tyranny and harm as well as unending accusation and recrimination putting the married woman/victim thereof, to intense miseries. The conduct of accused persons in such offences must be of such intensity that a married woman must feel that life is now not

worth living and she should die, being the only option left. The provision of Section 498-A of the IPC envisages intention to drag or force the woman to commit suicide by un-abetted persistent and grave cruelty.”

In Kamlesh Agarwal (supra), the Bombay High Court held thus:

“23. In this case, indeed, that Kamini committed suicide, is satisfactorily established, but the allegations with respect to the cruelty are not satisfactorily established. Therefore, simply because suicide has, infact, been committed, cruelty cannot be inferred. The argument ‘why otherwise she would commit suicide’ as is often advanced, is not very scientific. This could be replied in a number of ways by referring to the opinions of the psychologists and by referring to the scientific data that would be available, but a proper reply thereto is found in a decision rendered by Kerala High Court in the case of State of Kerala vs. Mohanan Pallai. The Kerala High Court, in that case, dealt such an argument by making the following observations:

“Vagaries of human mind cannot be fathomed with precision, and one may act on sudden impulses, and suicidal proclivities cannot be explained in many cases. If the accused failed to explain as to what else would have prompted his wife to end her life in a jiffy, it is no premise to presume that she would have chosen to adopt the extreme step as she was subjected to any humiliation or illtreatment by her husband.”

24. *It is true that the appellant and the other accused have chosen to remain silent and have not advanced their version of the happenings. Though in a criminal trial, the burden of proving its case – and that too beyond reasonable doubt – is wholly on the prosecution, and that, the accused persons need not say anything in their defence, when suspicious circumstances are brought on record,*

which could be explained by the accused persons, the absence of any explanation by the accused might add strength to the prosecution case. Infact, in view of the presumptions contained in Section 113A and 113B of the IPC, in a given case, it might be quite dangerous and risky for the accused persons not to offer any explanation about what might have led the deceased to commit suicide, or what had happened on the fateful day. The silence of the accused persons in such cases, will strengthen the suspicion against them. However, that by itself would not be fatal. In this case, it appears to be the prosecution case that the appellant had admitted before PW1 Divakar that there was a quarrel between the victim and the appellant for some trivial matter on the fateful day, but no such evidence was adduced. The appellant and the other accused simply remained silent on that aspect. However, even proceeding on the basis that something must have happened on that day, it cannot be presumed that, 'that something' itself amounted to cruelty and constituted abatement to commit suicide, when otherwise, there is no satisfactory evidence of cruelty."

25. Taking into consideration the ratio of the above cited rulings, it is clear that in the present matter, the prosecution has failed to prove cruelty and harassment meted out to the deceased Manisha on account of demand of dowry.

26. The learned trial Court has erroneously presumed that since the death had occurred within seven years of the marriage, the deceased committed suicide on account of ill-treatment meted out to her. The learned trial Court has drawn unwarranted interference that the deceased must have committed

suicide only because of ill-treatment given to her. The learned trial Court has failed to consider that the prosecution has failed to prove the cruelty and or ingredients of Section 498-A and 304-B of the Indian Penal Code in the present case. In that view of the matter, the impugned judgment of the trial Court is unsustainable. Hence, the following order:

ORDER

- i] Criminal Appeal No.176 of 2009 is allowed.
- ii] The judgment and order passed by the learned Ad-hoc Additional Sessions Judge, Khamgaon in Sessions Trial No.24 of 2008 is hereby quashed and set aside.
- iii] The appellant is acquitted of all the charges.
- iv] The appellants bail bond stand cancelled.
- v] Fine amount, if any, deposited by the appellant be refunded.
- vi] The appellant to furnish personal bond of Rs. 10,000/- with one surety in the like amount before the trial Court, in terms of Section 437-A of the Code of Criminal Procedure.

JUDGE