

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.175 OF 2002

1) Ram S/o Digambar Giri,
Age-30 years, Occu:Service,
(Appeal abated as against Appellant
No.1 as per Hon'ble Court's order
dated 26th March 2019),

2) Saraswatibai W/o Digambar Giri,
Age-53 years, Occu:Household,

3) Ratnamala Vishnupant Giri,
Age-25 years Occu: Household
(Appeal abated as against Appellant
No.3 as per Hon'ble Court's order
dated 26th March 2019),

All R/o-Chatori, Taluka-Palam,
District-Parbhani.

...APPELLANTS

VERSUS

The State of Maharashtra,
Through Police Station,
Palam.

...RESPONDENTS

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Mrs.Uma S. Bhosale Advocate appointed for Appellant No.2.
Appeal abated as against Appellant Nos. 1 and 3 as per
Hon'ble Court's order dated 26th March 2019.
Mr.S.P. Deshmukh, A.P.P. for Respondent – State.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 15th JUNE, 2022

ORAL JUDGMENT :

1. Present Appeal has been filed challenging the Judgment and conviction passed in Sessions Trial No.134 of 1999 by learned IInd Ad-hoc Additional Sessions Judge, Parbhani, dated 14th March 2002 thereby convicting all the accused persons of committing offence punishable under Sections 306 and 498-A read with Section 34 of the Indian Penal Code. At this stage itself, it will not be out of place to mention that during the pendency of the Appeal, appellant Nos.1 and 3 expired and therefore by order dated 26th March 2019, this Court abated the Appeal against them. Under such circumstance the present Appeal is in respect of conviction awarded to appellant No.2 only. Appellant No.2 Saraswatibai W/o Digamber Giri has been convicted for the offence punishable under Sections 306 and 498-A read with Section 34 of the Indian Penal Code. Appellant No.2 has been sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for two months for the offence punishable under Section 306 read with Section 34 of the Indian Penal

Code. She has been sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for two months for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code.

2. The prosecution story, in short, is that original accused No.1 – Ram Digamber Giri got married to Surekha, who was the sister of informant Sonibuwa Babubuwa Bharati on 8th May 1997. The informant had four sisters and his father expired about ten years prior to the First Information Report. The marriage was performed as per the rites and it is stated that dowry of Rs.5,000/- was given. At that time it was also decided that informant would also give gold ring, cot and mattress, but the same was remained to be given. Surekha had come to her parental home at Sindagi twice after the marriage and at that time she told the brother and mother that her husband, mother-in-law and sister-in-law were insisting that she should bring the gold ring, cot and mattress and on that count she was being harassed mentally and physically. The mother and brother told her that since they are poor, they would fulfill the demand at the time of Diwali. Informant gone to fetch Surekha for the festival of Panchami but she was not allowed to go by the accused

persons and it was told by the accused that unless the articles are given, Surekha will not be allowed to go along with the informant. On the next day, informant's uncle went to the matrimonial home of Surekha and made inquiry as to why Surekha has not been sent for the festival of Panchami and then he tried to convince that since their financial condition is poor, they would fulfill the demand at the time of Diwali. Thereafter Surekha was allowed to go along with uncle. After the festival, Surekha was left to her matrimonial home and then she was cohabiting with her husband. Message was received by the informant on 25th September 1997 that Surekha was missing. Search was undertaken and on the next day her dead body was found in a well in the said village where her matrimonial home was, i.e. Chatori and the First Information Report came to be lodged on the same day i.e. 26th September 1997.

3. After the First Information Report was lodged, investigation was undertaken. Inquest panchnama was executed as well as the spot panchnama. The dead body was sent for postmortem. The postmortem report was collected. Statements of witnesses were recorded and after the completion of investigation, charge-sheet was filed.

4. After the committal of the case, the learned Ad-hoc Additional Sessions Judge framed charge against all the accused persons vide Exhibit-18. Trial was conducted in view of accused pleading not guilty. After recording of evidence, hearing of both the sides and perusing the documents also, the learned Ad-hoc Additional Sessions Judge has convicted all the accused persons, as aforesaid. The Appeal challenges the said conviction.

5. Heard Mrs. Uma S. Bhosale Advocate appointed for appellant No.2 and Mr. S.P. Deshmukh, A.P.P. for respondent – State.

6. Learned Advocate for appellant No.2 has taken this Court through the record, especially the evidence and submitted that though PW-2 Sonibuwa, PW-3 Rangnath are the relatives of deceased Surekha and they stood allegedly corroborated by PW-4 Shivaji, the neighbour of the accused, yet it can be seen that none of the witnesses have told about the particulars of the acts amounting to harassment. The evidence has not come on record to show that how the accused persons had instigated or abetted commission of suicide by Surekha. Not sending the newly wedded girl to her parental house cannot amount to subjecting her to cruelty under Section 498-A of the Indian Penal

Code nor it can be circumstance which will amount to abetment for commission of suicide. She, therefore, prayed for setting aside the conviction of appellant No.2.

7. Per contra, the learned APP supported the reasons given by the learned Additional Sessions Judge and submitted that since the main witnesses i.e. PW-2 to PW-4 have corroborated each other, they were supporting the prosecution case that the accused persons had harassed mentally as well as physically to the deceased by placing demands for articles like gold ring, cot and mattress. Taking into consideration the poor financial condition, those articles also can be said to be of importance though for others they may be trifle articles. But when insistence for those articles was since beginning, the poor girl felt that she has no option but to commit suicide and therefore, jumped into the well. The offence that has been committed by appellant No.2 is anti-social in nature and therefore, the conviction awarded deserves to be confirmed.

8. PW-1 Dr. Pravin Ramkrishna Sanghwai, is the medical officer who had conducted the autopsy. If we consider Clause No.17 of the postmortem report, it does not describe any injury, rather no injuries were noted on the dead body. Even the

internal examination could only show the early signs of decomposition and there was no evidence of fracture. The probable cause of death was given as "Asphyxial death due to drowning". No doubt, it appears that viscera was preserved for chemical analysis, but for it no importance was given either by the prosecution or the accused. Those postmortem notes have been got exhibited through PW-1 Dr. Pravin Sanghwai. No cross-examination has been offered to him on behalf of the accused.

9. Even if we take the postmortem notes as it is, it would at the most show the probable cause of death as, due to drowning. In cases of drowning there are two possibilities, one is accidental death and second is suicidal death. In order to prove the case beyond reasonable doubt, the prosecution ought to have eliminated the evidence or possibility of accidental death. Perusal of the spot panchnama Exhibit-25, which appears to have been admitted by the accused, would show that near the spot the *Chappals* i.e. sleepers were found and also one plastic utensil was found. The prosecution has not examined as to what was the distance between the matrimonial home of Surekha and the well. What has been described as regards that plastic utensil is "*Tambya*". Further, description of that utensil has not been given. Whether she had gone to fetch the water there or for any

other reason, cannot be revealed. Therefore, taking into consideration the spot panchnama, it cannot be said that the prosecution has ruled out the possibility of accidental death.

10. Alternatively or simultaneously, we are required to consider as to whether the prosecution has brought on record those circumstances which prompted deceased Surekha to take up the last step. In order to prove offence under Section 498-A of the Indian Penal Code, taking into consideration the explanation giving definition of word "cruelty", two circumstances have been provided. As per Explanation (a), any wilful 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. Explanation (b) is in the alternative, as word "or" has been used, then in that case the prosecution will have to prove that the 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. Herein this case, both the things are tried to be stated at the same time and therefore, it is required to be seen, as to whether Explanation (a) would be applicable or explanation (b) of Section

498-A of the Indian Penal Code has been proved or not in this case. At the cost of repetition, it can be said that for proving cruelty as explained in Explanation (a) under Section 498-A of the Indian Penal Code that wilful conduct which is of such a nature that is likely to drive the woman to commit suicide, is required to be proved by the prosecution beyond reasonable doubt, and for Explanation (b) to Section 498-A of the Indian Penal Code, those demands are required to be proved.

11. From the evidence of PW-2 Sonibuwa and PW-3 Rangnath, who is maternal uncle, it can be seen that Surekha got married on 8th May 1997 and died on 26th September 1997. It is unfortunate that the girl lost her life within four months of the marriage, but that does not *ipso facto* allow us to infer that there was harassment to the girl. Unless suicide is proved, we cannot raise presumption and in fact in this case neither prosecution nor the trial Court had canvassed for Section 304-B of the Indian Penal Code. When the charge itself is not framed, we cannot consider that Section in this Appeal. PW-2 Sonibuwa and PW-3 Rangnath, both have stated that after marriage Surekha came to parental home one or two times and at that time she had told the mother and brother that the accused persons were insisting that she should bring gold ring, cot and mattress and for that

purpose they were harassing her mentally and physically. As per PW-2 Sonibuwa, she had told that accused used to beat her and abuse her on that count, but this statement is missing in his First Information Report Exhibit-29. Whereas PW-3 Rangnath says that accused persons used to harass Surekha. Further specific acts have not been stated by him. Mere use of word "harassment" and / or "ill-treatment" cannot amount to "cruelty" as contemplated under Section 498-A of the Indian Penal Code. Those acts amounting to harassment, ill-treatment or cruelty will have to be stated in First Information Report as well as those will have to be proved.

12. PW-2 Sonibuwa and PW-3 Rangnath have then stated that at the time of festival of Panchami, PW-2 had gone to fetch Surekha but accused Nos.1 and 2 told that unless the demand is fulfilled, Surekha will not be sent along with the brother. PW-2 Sonibuwa told that thereafter he went back to his village and told that fact to his mother and uncle and thereafter on the next day, PW-3 Rangnath went to matrimonial home of Surekha and both of them have stated that when uncle told that the demand would be fulfilled at the time of Diwali, Surekha was allowed to come with the uncle. Thus, it is to be noted that first day there was refusal and on the next day, may be because of the alleged

promise by PW-3 Rangnath, Surekha was allowed to go to her parental home. She was in her parental home, celebrated festival and then she was sent back to her matrimonial home. Neither PW-2 Sonibuwa nor PW-3 Rangnath have given the date of festival of Panchami nor even the approximate period, because of which we are unable to get when she returned to matrimonial home and after how much period the mishap has happened. We are interested to know what treatment was given to Surekha after her return to her matrimonial home. If that promise was accepted by the accused persons and they had allowed Surekha to go along with the uncle believing that at the time of Diwali the demand would be fulfilled, then whether there was such condition for Surekha for committing suicide before Diwali, has to be seen. It appears that this fact has not been addressed by the learned Additional Sessions Judge. In the cross-examination of both these witnesses, they have stated that they have not told about the alleged ill-treatment by the accused to Surekha, to other relatives. If the harassment or cruelty was of such a nature, then there would have been an attempt of settlement or persuasion by those relatives with the accused persons. PW-3 Rangnath, in his cross-examination, has admitted that when Surekha went to her matrimonial home after

celebrating Panchami, thereafter she had not met him. PW-2 Sonibuwa is also silent on the point as to whether any message from Surekha was received by him after she had resumed her cohabitation with her husband after Panchami. Therefore, after taking into consideration the testimony of these two witnesses, it cannot be stated that the accused persons had, in any way, subjected Surekha to cruelty and abetted commission of her suicide by putting those alleged illegal demands.

13. The prosecution is also relying on testimony of PW-4 Shivaji Kirde, who runs a floor mill opposite to the house of accused. He has deposed that accused Nos. 1 to 3 used to abuse and harass Surekha. That is the only statement that has been made by him, but he is not giving any reason as to why they were abusing, as to why they were harassing. He has also not asked Surekha as to why accused persons used to abuse and harass her. Therefore, no importance can be given to his single statement.

14. Nobody has seen Surekha jumping into the well. PW-5 Surendra Gandam, the Investigating Officer, has not taken statement of any such witness who has seen Surekha jumping into the well. Therefore, as aforesaid, together with the contents

of the spot panchnama and the postmortem report, it cannot be said that it is a case of suicide and that the prosecution has ruled out the possibility of accidental death.

15. This Court is not taking a contrary view than the view taken by the learned trial Judge only because second view is possible. This Court is constrained to take the another view, in view of the fact that there is no proper appreciation of the evidence by the trial Court. Under such circumstance, the conviction awarded to appellant No.2 deserves to be set aside by allowing the Appeal.

16. It appears that by order dated 26th March 2019 appellant No.2 was arrested in view of the non-bailable warrant issued against her and then she has been lodged in Parbhani Central Jail by learned Sessions Judge-4, Parbhani in view of the execution of the warrant. Thereafter, this Court by order dated 2nd April 2019 allowed the application filed by her for releasing her on bail. But it appears that appellant No.2 has not furnished the bail as per the report given by the jail authorities dated 10th June 2019 and therefore if she has not furnished the bail, she deserves to be set at liberty forthwith.

17. Accordingly, following order is passed:-

ORDER

(I) Appeal stands allowed as regards appellant No.2 - Sarawsatibai W/o Digamber Giri is concerned.

(II) The conviction awarded in Sessions Trial No.134 of 1999 by the learned IInd Ad-hoc Additional Sessions Judge, Parbhani on 14th March 2002 convicting the accused No.2 - present appellant No.2 for the offence punishable under Sections 306 and 498-A read with Section 34 of the Indian Penal Code stands set aside.

(III) Appellant No.2 - Sarawsatibai W/o Digamber Giri be set at liberty forthwith, if not required in any other case. If the bail bonds have been given, the bail bonds stand cancelled.

(IV) The fine amount deposited, if any, be refunded to appellant No.2, after the appeal period is over.

(V) Appeal stands abated as against appellant No.1 and appellant No.3.

(VI) No change in the order regarding disposal of Muddemal.

[SMT. VIBHA KANKANWADI, J.]