

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

CRIMINAL APPEAL NO.106 OF 2003

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| 1. Uttam s/o. Prabhu Biradar,
Aged. 35 years, Occ. Agriculture,
R/o. Sumthana, Tq. Shirur-Anantpal,
Dist. Latur. | .. | Appellants
[original accused] |
| 2. Dhondubai w/o. Laxman Shivare,
Aged.61 years, Occ. Household,
R/o. Sumthana, Tq. Shirur-Anantpal,
Dist. Latur. | | |
| 3. Baban s/o. Laxman Shivare,
Aged. 26 years, Occ. Agriculture,
R/o. Sumthana, Tq. Shirur-Anantpal,
Dist. Latur. | | |

Versus

The State of Maharashtra Through the Police Station Officer, Police Station Shirur-Anantpal, Tq. Shirur-Anantpal, Dist. Latur.	..	Respondent [original complainant]
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Mr.Govind A. Kulkarni h/f. Mr. Devang R. Deshmukh, Advocate for the appellants.
Mrs.P.V. Diggikar, APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
DATED	:	27.09.2022

ORAL JUDGMENT :-

01. By way of present appeal, the appellants-original accused have challenged judgment and order dated 24.01.2003 passed by the learned Adhoc Additional Sessions Judge, Nilanga, in Sessions Case No.13 of 2002. By the impugned judgment and order, the learned Judge has held all the appellants/accused guilty of committing offences punishable under sections 498-A and 306 read with section 34 of the Indian Penal Code [for short "the IPC"]. He awarded sentence of rigorous imprisonment of five years and to pay fine of Rs.500/- each and in default to suffer simple imprisonment for one month for offence punishable under section 306 r/w 34 of the IPC. For the offence punishable under section 498-A r/w 34 of the IPC, sentence of one year is awarded and fine of Rs.250/- is imposed, in default to suffer simple imprisonment for 15 days. The sentences are directed to run concurrently.

02. It is a case of the prosecution that deceased Ranjana – sister of the informant died by consuming poison due to illtreatment at the hands of the accused persons as the deceased had come to know about illicit relations between accused Nos.1 and 2. The accused were apprehending that the deceased will disclose said relations and on that count they started illtreating

the deceased. It is further alleged that accused persons also started demanding Rs.50,000/- from the deceased for acquiring a new residence, where accused No.3 and the deceased can reside and start a business.

03. Initially a case was registered as A.D. No. 4/2002. After drawing inquest panchanama and spot panchanama, dead body was forwarded to Primary Health Centre. In the opinion of doctor who performed autopsy, cause of death was due to poisoning, however, viscera was sent to C.A.

04. PW-5, namely, Kishan i.e. brother of the deceased thereafter lodged First Information Report (FIR) on 26.02.2002. In the FIR it is stated that the deceased and accused No.3 got married on 06.05.2001. Initially for five months, she was treated well. However, thereafter there was illtreatment at the hands of the accused persons for the reasons stated above. On 26.02.2002 deceased Ranjana consumed poison at around 12=30 to 02=00 a.m. On the basis of the information, crime came to be registered. Investigation was completed and charge-sheet came to be filed. The prosecution examined total eleven witnesses. Witness Nos.1 to 4, who happen to be persons staying in the neighbouring houses did not support the story of prosecution and therefore they were declared hostile.

05. Main witness PW-5 was examined to prove an FIR, he stated in his evidence that at the time of marriage Rs.50,000/- and 1 tola gold were given in dowry. Initially for 5-6 months, deceased Ranjana cohabited happily with the accused. One and half months prior to the incident, this witness had gone to Ashta to fetch her, where she stated that she had seen illicit relations between accused Nos.1 and 2 and since then accused started illtreating her. The accused were insisting that she should reside separately with her husband. She was like an obstacle between relations between accused Nos.1 and 2 and for that purpose accused persons wanted accused No. 3 and the deceased reside separately. For the reasons given above, the accused even started beating the deceased. On 26.02.2002, he came to know in the morning at about 8.00 a.m. that the deceased died at midnight. He reached Sumthana at around 10.00 a.m. with his relatives and villagers. The dead body was at the house of the accused. There was smell of poison around the corpus. Funeral was performed at around 4.00 p.m. and thereafter he lodged FIR at 5.00 p.m.

06. In the cross-examination, it is stated that he used to fetch the deceased at the time of festival. It has come in the cross that on some occasions the father-in-law of deceased also used to come and visit the house.

It was tried to suggest that because accused No.3 had gone to Buldhana and she also wanted to go with him and as accused did not take with him and therefore, she committed suicide.

07. Next witness is PW.6 i.e. sister of the deceased, namely, Sangita. She stated that the deceased had told her that the deceased had seen illicit relations between accused Nos. 1 and 2 and on that count the accused started illtreating the deceased. The accused also demanded an amount of Rs.50,000/- for opening a shop for accused No.3 and to make arrangement to stay separately. She stated that the deceased had told her about this one and half months prior to the incident, wherein she had disclosed about the illtreatment at the hands of by the accused persons to the deceased. She stated in her cross-examination that she came to know about the illtreatment when deceased had come on the occasion of 'Vel Amavasya'. She stated that the husband used to beat her on the instigation of mother-in-law i.e. accused No.2 and there was continuous harassment.

08. PW-7, namely, Venkatrao Deone, who happens to be maternal uncle of the deceased stated that at the time of 'Vel Amavasya' the deceased had been to her parents house. Two months prior to the incident, the

deceased had met him at Ashta, where she told him about illicit relations between accused Nos.1 and 2 and on that count she was illtreated by the accused persons.

09. Dr. Kiran Sonve, Medical Officer at Primary Health Center, Shirur-Anantpal performed autopsy along with Dr. Ansari. They noticed following injuries.

- i) Blood stained froath coming out through nose and mouth.
- ii) Blood stained marks present over angle of mouth, chin and cheek. Brain substance were congested. Lungs were congested. Mucoza of stomach inflamed and congested. Semi solid food particles were present with peculiar smell, suggestive of poisoning. Small intestine congested and contents were having peculiar smell of poison.

. In the cross-examination, he stated that no external injury was found on the corpus.

10. From the postmortem notes, cause of death is seen as due to poisoning and viscera was preserved for chemical analysis. From the C.A.

report, however, it appears that no poison was detected. It is clearly mentioned that on chemical testing it did not reveal any poison.

11. Next is the evidence of Dr. Sayyad Noor Abdul Aziz, Sub-Inspector, who is examined as PW-9 at Exh.29 who registered offence.

12. PW-10 is father-in-law of the deceased, who has not supported the case of the prosecution. He was declared hostile and he was cross-examined by the learned APP. In the cross, nothing could be elicited by the prosecution about illicit relations between accused Nos.1 and 2.

13. Last witness is PW-11 who conducted investigation and filed charge-sheet. He stated that the death was initially registered as accidental death bearing AD No.4 of 2002. After lodging FIR he arrested the accused on 14.05.2002. He had recorded statements of the witnesses and filed charge-sheet.

14. After going through the evidence, it needs to be seen as to whether the prosecution has proved guilt of the accused persons beyond reasonable doubt.

15. Except PWs-5,6 and 7, who are closely related to the deceased,

there is no independent witness to show any kind of illtreatment at the hands of the accused persons. The case of the prosecutions thus, rests only on oral testimony of witnesses on the point of illtreatment and demand. No poison is detected in viscera. All panchanamas are admitted by the defence.

16. It is submission of the learned Advocate for the appellants that the prosecution has utterly failed to prove the offence punishable under sections 306 and 498-A of the IPC beyond reasonable doubt. He submits that the learned Court below has wrongly held appellants guilty. Though PWs-5,6 and 7 have deposed in the Court supporting prosecution, however, their evidence is not corroborating with each other. He submits that there is delay in lodging the FIR. The informant came to know about the incident at 8 a.m. in the morning that his sister committed suicide, still he did not immediately lodge any report. The FIR shows that it was registered at around 5 p.m. and there is no explanation for delay. He further submitted that there is no sufficient evidence to prove guilt of the accused. The prosecution has utterly failed to bring on record any material to point out that the deceased has committed suicide due to illtreatment or for demand. The case of section 306 of the IPC is clearly ruled out, stating that the last disclosure by the deceased

of any illtreatment at the hands of the accused was prior to one and half months of the incident. Thus, there is no close proximity in the alleged incident of illtreatment and suicide of the accused. He submitted that the prosecution has failed to bring on record that the illtreatment was of such a nature, which would bring the act of the accused punishable under section 498-A of the IPC.

17. Learned APP submits that if the evidence of PWs 5,6 and 7 is seen, clearly a case of section 306 and 498-A of the IPC is made out. All witnesses are consistent on the point that there was illtreatment at the hands of the accused persons, for the reason that she had come to know about the illicit relations between accused Nos.1 and 2. As a matter of fact, she had seen the relations between accused Nos. 1 and 2 and thus, there was clear motive to give illtreatment to the deceased. There is also motive to see that accused No.3 and deceased stay separate as she was like an obstacle in the relations. Witnesses PW.5,6 and 7 are related to the deceased and therefore it is quite natural that the deceased told them about the illtreatment given by the accused persons. It is submission of the learned APP that the judgment delivered by the Court below is well reasoned and does not require any interference. To show that the learned Judge has applied his mind, the learned

APP pointed out that the learned Judge had acquitted accused persons under section 304-B of the IPC. Decision of the deceased to commit suicide was cumulative effect of illtreatment given to her and continuous demand by the accused persons. She prayed for dismissal of the appeal.

18. Learned Advocate for the appellants relied upon judgment reported in **2011 ALL MR (Cri) 3415 in the case of Vithal Mhasuji Gadhe Vs. The State of Maharashtra**. It is his submission that the facts of the case are almost identical to the facts of the present case. In para 17 of the judgment the Court has considered the evidence of the Medical Officer, in which it has come that the clothes on body were stained with reddish froth and also with fical matter and there was fine bloody froth oozing from mouth and nostril. However, there was no evidence of external injury. On internal examination, brain, larynx, lungs and internal organs were congested. On opening, the stomach mucosa was highly congested and it contained about 200 ml of liquid material with black granules smelling kerosene. In the opinion of the Doctor, it was death due to poisoning. In that case also there was no independent witness to show unlawful demand. Thus, this Court in the said case on appreciation of the evidence and the material on record, reversed the judgment of conviction. It is clearly held that the evidence of the prosecution

does not inspire confidence and the prosecution has failed to bring the guilt home against accused. Thus the accused was acquitted of the offences punishable under sections 498-A, 306 and 323 of the IPC.

19. Considering the submissions and evidence on record, it is clear that PWs 5,6 and 7 are consistent on the point that the deceased had told them about illicit relations between accused Nos.1 and 2. Looking to the relations of these witnesses, it is quite natural for the deceased to disclose such things to them. The conduct of the deceased cannot be said to be unnatural. However, there is no evidence as to what kind of illtreatment exactly was given to her as there are no specific instances quoted, except that accused used to beat and abuse her. Only vague statement is there that husband used to beat her but no particulars are given. Though there is consistency only on the fact that deceased had told them that she became aware of the illicit relations on that count and she was illtreated, there are no specific instances quoted by any of the witness. Even on the point of demand there is no specific date or time in respect of the demand or how she was being beaten has come on record. Though PW 1 to 4 were examined but none of them, who can be said to be independent witness, have supported the case of the prosecution. PW-10 father of the accused No.3 and husband of accused

No.2 also did not support the case of the prosecution. Though learned Court below has quoted some portion from the book of medical jurisprudence, that in a case of poisoning even if poison is not detected on chemical analysis, the Judge in deciding a charge of poisoning should consider in evidence the symptoms, postmortem appearances and the oral evidence. In this case, even if it is assumed that the death was due to poison, but still there is no evidence leading to any conclusion as to why the deceased has consumed poison.

20. On the point of delay, the learned advocate for the appellants placed reliance on the judgment of the Hon'ble Apex Court in a case of **Thulia Kali Vs. State of T. N.** reported in **AIR 1973 Supreme Court 501**. In that case, the incident had taken place on 12.03.1970 at about 12.00 noon. The incident was reported on 13.03.1970 at 08.30 a.m., thus there was a delay of 30 hours. It is in those facts, the Hon'ble Apex Court had found that there was a delay in lodging FIR. In this case, however, this Court found that there is no delay in lodging FIR which is already discussed.

21. The learned advocate for the appellants has relied upon judgment of this Court in a case of **Vithal Mhasuji Gadhe (Supra)**. He relied on paragraph Nos. 17 and 20 of the said judgment. In that case, no external

injury was found on the person or the deceased. No froth was sent for analysis. In this case also, froth is not preserved, nor it was sent for chemical analysis. Assuming that, this is case of death by poison, it was necessary to show that the deceased had consumed poison only because of illtreatment and/or at the instigation of the accused persons. Merely by saying that there was a motive for the accused is not sufficient when the accused is guilty of any of the offence.

22. Next case relied upon by the learned advocate for the appellants is the case of **Sandeep Kumar and others Vs. State of Uttarakhand and another** reported in **2021 AIR (SC) 691**. The Hon'ble Apex Court in the said case has discussed three tests to establish a case of poisoning. First that the death took place on account of poisoning. Secondly, the accused had the poison in his possession and third, the accused had an opportunity to administer the poison. In this case, it is not the case of any of the accused persons that they had the poison or as even suggested the deceased to commit suicide with an intention that the deceased should commit a suicide.

23. The learned APP has relied upon the latest judgment of the Hon'ble Apex Court in a case of **Gumansinh alias Lalo alias Raju Bhikhabhai**

Chauhan and another Vs. State of Gujarat reported in **2021 SCC Online SC 660**. In this case, the Hon'ble Apex Court has considered Section 113A of the Evidence Act considering the explanation to Section 113A of the Evidence Act which reads as below :

“Explanation. - For the purposes of this Section, “cruelty” shall have the same meaning as in Section 498A of the Penal Code, 1860.”

24. Coming to the merits of the case to prove the offence under Section 498-A of the I.P.C., it is necessary for the prosecution to prove that there was ill treatment of a nature which would subject a woman to cruelty to such an extent which would likely to drive the woman to commit suicide or to cause grave injury or danger to life or of such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property. In this case, the prosecution at the most can be said to have shown that there was a motive to commit offence under Section 498-A of the I.P.C. However, there is no sufficient evidence to come to a conclusion that there was any illtreatment at the hands of any of the accused persons. No specific instances are quoted by any of the witnesses. The case of motive is on two counts. Firstly, that the deceased had noticed/seen illicit relations between accused Nos. 1 and 2. Secondly, that arising out of first aspect that

the accused persons wanted accused No. 3 and deceased to stay separately and to start a new business and for that they started demanding an amount of Rs. 50,000/-. Looking at the entire evidence of PW-5, PW-6 and PW-7 what emerges is only that the deceased had seen the relations between accused Nos.1 and 2. Though they are consistent to the extent that the deceased had disclosed about the relations and the demand of Rs. 50,000/-, there are no specific instances stated by any of the witnesses. There is no case that there was any demand from father or brother of the deceased. Thus, for want of specific allegations in respect of time or in respect of a specific accused, this Court finds it difficult to draw a conclusion that there was any ill treatment at the hands of the accused persons.

25. Secondly on the point of proving offence under section 306 of the IPC, there is no evidence to show that there was any abettment at the hands of any of the accused persons, so as to make the deceased to consume poison. It was necessary for the prosecution to examine or to place on record such evidence to show that the deceased consumed poison because of any particular incident or that there was any intention on the part of any of the accused persons that deceased should consume poison.

26. So far as submission that there is delay in lodging the FIR, it is seen that the informant came to know in the morning of the day of incident that the deceased died due to poisoning. It is the submission of the learned Advocate for the accused that there is no immediate statement given to police by the informant. The informant has lodged FIR at around 05.00 p.m. on the date of incident. Considering that informant has lost his sister and he had to attend funeral, it is not expected of him to immediately rush to police station and lodge FIR. Funeral took place at 4.00 p.m. and FIR is lodged at 5.00 p.m. Considering this, there is no delay in lodging the FIR. The prosecution has only relied upon the evidence of Dr. Sonve to prove that the deceased died due to poisoning. The panchanama is admitted by the accused persons. In the panchanama, it has come on record that one can containing poison was found at the spot. There is no story of the prosecution that the said can was deliberately kept in house so as to assist the deceased to commit suicide. Looking that the accused are agriculturists, it is quite natural to have poison in house. There is no evidence to show that poison was found in the said can.

27. In statement under section 313 of the Cr.P.C. the accused have admitted that the cause of death is due to poisoning. Taken this case as it is still it was required for the prosecution to prove that the deceased consumed

poison only because of the illtreatment that was given to her or that there was abettment by any of the accused persons, so as to make the deceased to consume the poison and end her life.

28. Though it is tried to be canvassed that the deceased has committed suicide even before completing one and half year of the marriage and therefore, presumption can be raised. However, it is difficult to accept this submission at this stage as though the charge under Section 304-B of the IPC was framed against the accused persons, they are acquitted and State has not filed any appeal to that extent.

29. Even to bring the case of presumption under Section 113A of the Evidence Act, it is necessary to show that the cruelty was of the nature falling under Section 498-A of the IPC. It is only then the presumption as to abettment of suicide can be drawn.

30. If a case under Section 113B of the Evidence Act is to be made out by the prosecution then what requires is that there was a demand of dowry to draw a presumption as to dowry death. In this case, at the most the demand is said to be for the purpose of establishing a business of accused of

No. 3 which was not related to any condition of marriage. In the result, it is held that the prosecution has failed to prove the case. Hence, following order is passed :-

ORDER

- i) The Criminal Appeal is allowed.
- ii) The judgment and order passed by the learned Adhoc Additional Sessions Judge dated 24.01.2003 in Sessions Case No. 13 of 2002 is quashed and set aside.
- iii) The bail bonds of the accused/appellants shall stand cancelled.
- iv) The appellants to comply with the conditions as per Section 437-A of the Code of Criminal Procedure.

[KISHORE C. SANT, J.]