

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

CRIMINAL APPEAL NO. 548 OF 2003

1. Bapurao Sopanrao Waghmare
Died through L.Rs.
 - 1-A. Vaishali Bapurao Waghmare,
Age: 37 years, Occu. Household
 - 1-B. Abhijeet S/o Bapurao Waghmare
Age: 27 years, Occu. Education,
 - 1-C. Yash S/o Bapurao Waghmare,
Age: 15 years, Occu. Education,
Since Minor u.g. of applicant no.1-A
Mother Vaishali Bapurao Waghmare,

All R/o Shivajinagar, TPS Road,
Parli Vaijnath, Dist. Beed
 2. Rukminibai W/o Sopanrao Waghmare - abated
Since Died
 3. Narsabai W/o Ramrao Salunke
Age: 45 years, Occu: Labourer
R/o Primiya gate Colony,
Milindnagar Zopadpatti Ghatkopar,
Mumbai
 4. Antyabai W/o Namdeo Waghmare
Age: 35 years, Occu: Labourer
R/o old Bus Stand Adilabad (A.P.)
 5. Shantabai W/o Mahadeo Aamlpure
Age: 32 years, Occu: Labourer
R/o Dharmapuri Tal. Ambajogai,
Dist. Beed
- ... Appellants**

Versus

The State of Maharashtra

... Respondent

....

Mr. Sachin S. Deshmukh, Advocate for appellants

Mr. S. P. Sonpawale, APP for respondent-State

....

**WITH
CRIMINAL APPEAL NO. 631 OF 2003**

The State of Maharashtra

Through Police Station Parli City,

Parli Vajinath, Dist. Beed

... Appellant

Versus

1. Bapurao s/o Sopanrao Waghmare
Age: 32 years, Occupation Service
R/o Station Road, Parli, Tal. Parli
Vajinath, Dist. Beed
2. Rukhminbai w/o Sopan Waghmare
Age: 60 years, Occupation Household,
R/o Lohara, Tal Udgir, Dist. Latur
3. Antyabai w/o Namdeo Waghmare
Age: 32 years, Occupation Labour,
R/o Old Bus Stand, Adilabad (A.P)
4. Narsabai w/o Ramrao Salunke,
Age: 33 years, Occupation Labour,
R/o Primiya Gate Company,
Milind Nagar Zopadpatti,
Ghatcopar, Mumbai
5. Shantabai w/o Mahadeo Aamlpure,
Age: 32 years, Occupation: Labour,
R/o Dharmapur, Tal. Ambajogai,
District Beed

... Respondents

Mr. S. P. Sonpawale, APP for appellant - State
Mr. Sachin S. Deshmukh, Advocate for respondents

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 07th APRIL, 2022

PRONOUNCED ON : 14th JUNE, 2022

J U D G M E N T :-

. Both these appeals are being decided by this common judgment and order since they are interconnected. The Appeal (No.548 of 2003) has been preferred by the original accused Nos. 1 to 5 against the judgment and order dated 29.07.2003 passed by the learned Additional Sessions Judge, Ambajogai in Sessions Case No.83 of 1999, convicting them for the offences punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code and resultant sentence. While, the Appeal (No.631 of 2003) has been preferred by the State for enhancement of the sentence.

2. Pending the appeals, the appellant Nos.1 and 2 in Appeal No.548 of 2003 passed away. The widow and son of the deceased appellant No.1 came on record to pursue the appeal.

3. The facts in brief giving rise to both the appeals are as follows.

4. Jyoti (deceased) was the daughter of PW1 – Rohidas. She had married the deceased appellant No.1 – Bapurao in 1993. On 01.12.1998, Jyoti committed suicide by setting her ablaze. PW1 Rohidas therefore lodged FIR (Exh.53) alleging her husband Bapurao, mother-in-law Rukhminbai (deceased appellant No.2) and the sisters-in-law (Appellant Nos. 2 to 5) to have had harassed and ill treated the deceased Jyoti in connection with unlawful demand of dowry and thereby driven her to commit suicide.

5. Pursuant to the First Information Report (FIR) (Exh.53), a Crime vide CR No.189 of 1998 for the offences punishable under Sections 498-A, 306, 304-B r.w. Section 34 of the Indian Penal Code, came to be registered with Parali Vajinath Police Station. The investigation of the crime took place. Statements of persons acquainted with the facts and circumstances of the case were recorded. Scene of offence panchanama was drawn. The dead body of Jyoti was subjected to post mortem examination. On completion of the investigation, the appellants were proceeded against by filing charge-sheet. The learned J.M.F.C. committed the case to the Court of Sessions for trial in accordance with law. The learned Additional Sessions Judge, Ambajogai, framed the charge. The appellants

pleaded not guilty. The prosecution examined six witnesses and produced in evidence certain documents to bring home the charge. The learned Additional Sessions Judge, on appreciation of the evidence in the case, convicted the appellants for the offence punishable under Sections 498-A and 306 I.P.C. and therefore, sentenced to suffer two years rigorous imprisonment and pay fine of Rs.500/- each on both counts. In default of payment of fine, they were directed to undergo rigorous imprisonment for six months.

6. The learned Advocate for the appellants would submit that the deceased did not leave behind any suicide note nor did she made oral dying declaration. The deceased had happy married life. She was hyper sensitive. On the given day, the deceased wanted to visit her parental house. Her husband (deceased appellant No.1) was opposed to her proposal. She, therefore, got annoyed and set herself ablaze. The learned Advocate took me through the evidence on record to ultimately submit that the impugned judgment and order is unsustainable on facts and law as well.

7. The learned APP would, on the other hand, submit that the deceased committed suicide within seven years of her marriage.

The evidence of the father of the deceased coupled with the evidence of the independent witnesses would undoubtedly suggest that the deceased was subjected to ill treatment in connection with the payment of outstanding dowry amount and illegal demand of motorbike. The learned APP reiterated the reasons given by the trial Court in support of the judgment of conviction. He, ultimately, urged for dismissal of the appeal against the conviction. He, even urged for enhancement of sentence.

8. Considered the submissions advanced. Perused the evidence relied on. Gone through the documents referred to. Let us appreciate the evidence let in by the prosecution.

Admittedly, the deceased Jyoti had married Bapurao (deceased) in 1993. She had started residing at her matrimonial home since the day of her marriage. On 01.12.1998, the deceased committed suicide by setting her ablaze. No suicide note was left behind by the deceased nor did she make any dying declaration (oral or documentary). In absence of such kind of evidence, we have to appreciate the oral evidence of the prosecution witnesses. PW-1 Rohidas – father of the deceased testified that at the time of settlement of the marriage, he had agreed to pay Rs.50,000/- as

dowry, besides 10 gram gold and a wrist watch. For want of funds, he agreed to pay Rs.25,000/- (part of dowry amount) two years after the marriage. Since he could not pay the outstanding amount of Rs.25,000/-, her husband Bapurao, his mother and the sisters-in-law (appellants) started ill-treating her. It is in his evidence that deceased Bapurao had beaten up Jyoti and dropped her at his residence. He had asked him not to send Jyoti back to the matrimonial home unless he was paid Rs.25,000/- and a motorbike. He had tried to convince Bapurao, but in vain. His son Deepak had therefore been to the house of appellant Bapurao along with Jyoti. Both of them were not allowed to enter the matrimonial home. Bapurao assaulted both of them. Deceased Jyoti had therefore to take shelter at the house of one Nagnath Waghmare in the same village. PW1 Rohidas accompanied by his friend Prakash (PW2) went to the house of the appellants to convince them. It is further in his evidence that deceased Jyoti and her husband Bapurao thereafter started residing at Parali. He also ill-treated Jyoti at Parali. Jyoti would relate her woes to him. It is further in his evidence that just two days before, Jyoti set herself ablaze, he had been to her residence. Jyoti related him that time that the appellant Bapurao was ill-treating her. She

therefore requested him to meet the demand of Rs.25,000/- and a motorbike.

9. PW2 – Prakash tried to corroborate PW-1's evidence. He testified to have had accompanied his friend Rohidas to the house of deceased Bapurao. It is in his evidence that he had persuaded the parents-in-law of Jyoti. As a result thereof, they took Jyoti back to her matrimonial home. He did not speak anything more. Then we have evidence of PW4 Narayan – brother of the deceased. He gave his evidence on the lines of evidence given by his father PW1 – Rohidas. PW5 Manik testified that he was present at the time of settlement of marriage. Dowry amount was fixed at Rs.50,000/-, besides one tola of gold. Rs. 25,000/- were paid and the balance was agreed to be paid later on. It is further in his evidence that Jyoti had told him to have been harassed and ill-treated by her husband Bapurao, over the demand of dowry amount. On the same lines, is the same evidence of PW3 Rasoolsaheb. He too testified in consonance with the evidence of PW1.

10. All these five witnesses were subjected to a searching cross examination. PW1 – Rohidas – father of the deceased admitted

that he was illiterate. He could sign only, but was unable to read properly. It is in his evidence that after the funeral of the deceased, he had discussion with his brother over the cause of death and then a complaint was got typed at village Chapoli, taluka Ahmedpur. He lodged the same with the concerned Police Station. He was confronted with his oral evidence viz-a-viz FIR Exh.53. It is in his evidence that Jyoti's marriage took place at Lohara, the place of her in-laws. Local expenditure was borne by deceased Bapurao. His evidence indicate that only for about 1 ½ years, Jyoti had stayed at her matrimonial home at village Lohara along with her parents and sisters-in-law. Thereafter, both, Jyoti and her husband had started residing at Parali. There is nothing in the evidence to indicate that the mother and sisters-in-law had ever been staying at Parali for a long. As such, a bare statement in the evidence that the sisters-in-law (appellant Nos. 3 to 5) would ill-treat her in connection with demand of dowry is of no consequence to uphold their conviction. There is no other evidence against the sisters-in-law. The husband Bapurao and mother-in-law (Rukminibai) passed away pending the appeals.

11. The couple, deceased Jyoti and Bapurao was blessed with a baby boy. Admittedly, pre-delivery ceremony (Dohal-Jevan) was held at Parali. The Parents of Jyoti and all her relations had attended the said function. Admittedly, Jyoti got married while she had passed 9th standard examination. Post marriage, she successfully passed matriculation. Deceased appellant Bapurao, allowed her to take further education. She was, however, unsuccessful in H.S.C. examination. Bapurao was serving as a Lecturer with a local college. PW1 Rohidas admitted in no uncertain terms that the FIR is silent to state that the balance amount of dowry was agreed to be paid two years after the marriage. The FIR is also silent to state that deceased Bapurao had driven Jyoti out of her house and asked her to come back only if his demand was satisfied. The FIR is also silent to state that PW1 Rohidas had been to the house of Jyoti at Parali just two days before she did end her life. The FIR is also silent to state that while his son had been to the house of the appellants, he was beaten up. His evidence would further indicate that deceased Bapurao took Jyoti to Lohara for celebrating Diwali festival.

12. As such, the evidence of PW1 Rohidas undoubtedly indicate that the FIR is a product of deliberations and imaginations,

as well. The FIR is silent to state all the material facts that would connect the appellants with the crime in question. Whatever incriminating has been deposed to by PW1 in his examination-in-chief was found to be improvement, since the same do not find place in the FIR. PW2 – Prakash did not attribute anything incriminating to any of the appellants. His evidence indicate that the parents-in-law of the deceased were requested to be kind enough with the deceased. PW3 – Rasoolsaheb – a friend of the informant had attended pre-delivery ceremony (Dohal-Jevan) of Jyoti. The same suggests that such a ceremony was held with fanfare. He is none other than a close friend of the informant. Evidence of PW4 – Narayan indicates that deceased Bapurao had left Jyoti at her house 2 ½ years after her marriage on account of non payment of dowry. Even if we accept his evidence as it is, it was the incident that took place 2 ½ years before the deceased committed suicide. Admittedly, the deceased did not leave behind any suicide note or made any dying declaration. It is therefore difficult to connect the said incident with the cause of death of Jyoti. This witness has unequivocally testified that instead of giving gold ornaments to Bapurao, it was given to deceased Jyoti. Deceased Bapurao had

offered Mangalsutra. His police statement was silent to state that after 2 ½ years of marriage, appellant Bapurao had left Jyoti at his house.

13. Appreciation of the evidence of the aforesaid witnesses would undoubtedly leads this Court to observe that except their bare words, there is nothing to suggest that the deceased had committed suicide on account of ill-treatment meted out to her with a view to satisfy demand of dowry and motorbike. The evidence undoubtedly indicate that the sisters-in-law (appellants No. 3 to 5) have unnecessarily been roped in. The evidence on the other hand suggest that after the deceased Jyoti stayed at her matrimonial home for a year or two, she started residing separately along with her husband at Parali, husband's service place. Neither the mother, nor the sisters-in-law had been staying with them at parali. The deceased was permitted to continue with her education. She was therefore admitted to junior college. She had successfully passed S.S.C. examination post marriage and attended the classes for H.S.C., but was not successful. The couple was blessed with a baby boy. Pre-delivery ceremony (Dohal-Jevan) was held at Parali with all the celebrations. All her relations from parental side had attended the

function. The evidence indicate that the deceased appellant Bapurao was serving as a Lecturer. His work hours were from 9.00 a.m. To 12.00 noon and 2.00 p.m. to 5.00 p.m. On the fateful day, he had just returned home. It is his case that the deceased had expressed her desire to visit her parents home. He had politely refused. She therefore committed suicide. There is no investigation on these lines. The Investigating Officer had recorded the statements of the neighbours of the deceased. None of them was examined as a witness. The Investigating Officer has admitted that while inquiry with the neighbours, it was revealed that the deceased was not subjected to ill-treatment.

14. Section 306 and 498-A of I.P.C. are reproduced below:

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“498A. Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – for the purpose of this section, ***cruelty*** means -

1. Any willful 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; or

2. Harassment of the women 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.”

15. There has to be some evidence to indicate the deceased to have been ill-treated. It has further to be shown that such ill-treatment was with a view to drive her to commit suicide. True, in view of Section 113-A of the Evidence Act an inference of the abetment of suicide could be drawn. For drawing such inference there has to be nexus between the ill-treatment and the factum of death. The FIR was the product of imagination and deliberations. The FIR is silent to state material facts which have been narrated in examination in chief. The evidence on the other hand indicate that the deceased was treated well. Whatever dispute or quarrel had between the couple that dates back to 2 ½ years before, the deceased committed suicide. Based on such evidence, the trial Court, was not justified in convicting the appellants. In view of this Court, there is no evidence to connect the appellants with the crime in question. The appeal (Criminal Appeal No.548 of 2003), therefore, deserves to be allowed. The State's appeal fails.

16. The appeal (Criminal Appeal No.548 of 2003), thus, succeeds. Hence, following order.

ORDER

- (i) Criminal Appeal No.631 of 2003 filed by the State is dismissed.
- (ii) Criminal Appeal No.548 of 2003 is allowed.
- (iii) The conviction and sentence passed against the appellants vide impugned judgment and order dated 29.07.2003 by the learned Additional Sessions Judge, Ambajogai in Sessions Case No.83 of 1999, is hereby quashed and set aside.
- (iv) The appellants are acquitted of the offences punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code.
- (v) Since the appellants are on bail, their bail bonds shall stand cancelled.
- (vi) Fine amount, if paid, be refunded to the appellants.

[R. G. AVACHAT, J.]