

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

CRIMINAL APPEAL NO. 1354 OF 2002

The State of Maharashtra
Through Jejuri Police Station,
for Ramesh Raghunath Kapre
r/a. Purandar, Tal. And Dist. Pune

...Appellant

VS.

1. Balasaheb Laxman Takawade
25 years, Occ. Agri.

2. Sau. Jijabai Laxman Tekawade
59 years, occ. Household

...Respondents

Ms. S. Kaushik – APP for the Appellant/State
Mr. Satyam H. Nimbalkar a/w Abhishek Arote – Advocate for
the Respondent No. 1.

CORAM : S. M. MODAK, J.

DATE : 16th NOVEMBER, 2022

JUDGMENT :-

1. Heard learned APP and learned Advocate
Shri Satyam Nimbalkar assisted by learned Advocate
Shri Abhishek Arote for the Respondent No. 1.

2. Charge-sheet was filed in all against three
accused persons. They are the husband of the deceased

Ujwala, Father-in-law and Mother-in-law of the said Ujwala. Father-in-law-accused no. 2 expired during the trial. Whereas it is told today that accused no. 3-Jijabai expired during the pendency of the Appeal. Two accused were charged for the offences of Sections 498A, 306, 323 r/w 34 of the Indian Penal Code.

3. The allegation is that all the accused in furtherance of their common intention harassed the deceased-Ujwala on account of pressurizing her to bring a money for the purpose of incurring expenses of digging of well and erection of water pipeline. Further allegation is that the deceased-Ujwala committed suicide and her dead body was found in the well, located at Mouje Nazre Supe, Tal. Purandar, District Pune, on 07/10/2001.

4. During the trial, the prosecution in all examined six witnesses. The defence of accused is of denial and they have tried to suggest that deceased during her life time has taken a treatment from a Doctor at Baramati for mental

illness.

5. Apart from that there are documentary evidence, in the form of F.I.R., missing report given by the father, intimation given by the Talathi, Panchnama in the form of spot and inquest. Learned Additional Sessions Judge was pleased to acquit all the accused mainly, for the reason that during the life time of Ujwala no complaint was made to the Police and even when missing report was given there was no complaint made to the police about the said harassment. Learned Additional Sessions Judge also disbelieved the prosecution evidence on the point of reason of ill treatment. The said findings are recorded for the reason that there is an evidence to suggest that already well was dug and water pipeline was erected. Furthermore, the learned Additional Sessions Judge observed that papers of enquiry about accidental death were not produced and there is delay in lodging a F.I.R..

6. Learned AGP tried to convince me that there are

oral testimonies of not only relatives of the deceased but also of two neighbours. She brought to my notice various particulars given by these five witnesses.

7. Learned Advocate for the Respondents Shri Nimbalkar supported the said judgment and submitted that there is no reason to interfere in the findings. He also read over the relevant observations from the judgment under challenge.

8. It is true that the meaning of 'Cruelty' is given by way of explanation to Section 498-A of the Indian Penal Code. If there is harassment in order to coerce wife to meet the unlawful demand, such harassment falls under clause 'b'. Whereas if there is willful conduct of such a magnitude that the wife will have no alternative but to cause injury to her life. It falls under clause 'a'. For an act of cruelty falling under clause 'a', it is not required that such willful conduct must be for coercing her to meet unlawful demand. In other words, every act of cruelty is not legal cruelty as

contemplated under the provisions of Section 498-A of the Indian Penal Code. In any family, there are various incidents, wherein there is a dispute in between the wife on one hand and the husband and other relatives on the other hand. The act is made punishable under Section 498-A of the Indian Penal Code only when it falls within either of the explanation of 'a' or 'b'.

9. It is pertinent to note that it is the specific case for the prosecution that she was being harassed to meet the unlawful demand for bringing Rs. 50,000/-. All this happened within the period of two and half years from the date of marriage. Even though the witnesses have reiterated the demand of money for digging a well and erection of water pipeline, it is brought on record that both these tasks were already accomplished and that too, prior to marriage. Learned Additional Sessions Judge in para nos. 31 and 32 has made comment about the financial condition of the accused and they were in a better financial position than of in-laws. He has categorically observed that there

was already a well in the field of the accused and the pipeline was erected prior to the year 1993, so the foundation for the cruelty has failed. So I have to see what are the incidents of harassment independently.

10. P.W. No. 1 is the first informant Ramesh, father of the deceased (page no. 27). Whereas P.W. No. 4 – Yashoda is mother of the deceased (page no. 38). Both of them used to stay at Village Rakh. Whereas one uncle of the deceased is Vasant (page no. 45), who is resident of the same village Nazare that of accused is also examined. During their evidence, they have stated certain incidents.

11. The harassment started after one year from the marriage. The disclosure about demanding the amount for digging of well was made by the deceased-Ujwala to her father. Ramesh has said that his brother-Vasant has paid amount of digging of well. Even witness-Ramesh has told to father-in-law not to ill treat her daughter. Witness also said about demanding of Rs. 50,000/- for erection of water

pipeline four months prior to the incident. At that time also witness went to the house of the accused and expressed inability to meet that demand. When the witness has expressed inability, the incidents of ill treatment are repeated, even it went to the extent of not providing milk to his daughter. The witness has deposed one incident of weeping by the daughter, when he has visited the matrimonial home, at that juncture, the husband went to the extent of snatching of the son from deceased- Ujwala. At that time deceased daughter was not ready to come with him.

12. Whereas mother-Yashoda has also deposed about certain incidents. She has referred the incident of demand of Rs. 50,000/- for erecting the pipeline four months prior to the incident. Even according to her, there was rise in the events of the harassment. She has quoted the incident of snatching a son from her deceased daughter by the husband.

13. The uncle-Vasant has deposed about one incident of meeting Ujwala on the day of the market. Deceased-Ujwala was restrained from talking with him. The witness has visited the house at night time and he heard the crying of the Ujwala. When witness has told these facts to his brother, the brother advised him not to talk with anyone so as to avoid further controversy. He has quoted one more incident about meeting Ujwala in the agricultural field.

14. If one will read all these incidents, one may form an opinion that these incidents of harassment, falls within the meaning of legal cruelty under Section 498-A of the Indian Penal Code. However when learned Additional Sessions Judge has appreciated the entire evidence in toto, he has come to conclusion that they are not believable. Ultimately the evidence of witnesses needs to be appreciated from the background of their conduct, their statements made to the police.

15. Apart from these three witnesses, two residents

of village Nazare were examined. They are P.W. No. 2 – Muktabai (page no. 22) and P.W. No. 3 – Ratnabai (page no. 34). Witness-Muktabai has said about the harassment by the accused and she had also noticed Ujwala in a nervous condition on one day. Even Ujwala has disclosed her about demand of Rs. 50,000/-. She has quoted one more incident of quarrel in between Accused and Ujwala. In fact, it has led to Ujwala being driven out from the house. Whereas Witness- Ratnabai has also said about the disclosure made by the Ujwala about harassment and not providing of milk. Learned Additional Sessions Judge has not believed their testimonies for the reason that their evidence is of general nature and no specific details are given. Furthermore, there are certain improvements made by them and it is dealt with by the trial Court. Witness-Muktabai was suggested about grudge against the accused, for the reason that the accused have helped her father-in-law and her husband. Because there was partition suit in between the witness and her. She denied it. Whereas witness-Ratnabai was also suggested about taking treatment by deceased to Dr.

Salunke at Baramati. She has also denied the reason for giving false evidence. It is for the reason that accused canvassed against her during Gram Panchayat Election.

16. It will be material to consider the evidence on the point of the missing of Ujwala and noticing dead body in well. Admittedly, accused have not lodged any complaint about missing of Ujwala. In fact, it was lodged by her father-Ramesh. It was lodged on 06/10/2001. Whereas the Police Patil informed the Jejuri Police Station that the dead body was found in the well. It is on 07/10/2001.

17. The defence have challenged the prosecution version for the reason that the papers of an enquiry about accidental death were hidden by the prosecution and in fact, there is a delay of two days in lodging a F.I.R. by father-Ramesh. It is submitted that if at all such severe harassment is there, the Police ought to have been informed atleast during the life time or atleast after the Ujwala went missing. Whereas according to the learned

APP, when Ujwala went missing, the main purpose was to trace Ujwala. It will be also material to consider what is evidence on the point of death by suicide.

18. Learned Additional Sessions Judge has concluded that death by suicide was not proved. He referred to the evidence of the Panch witness Shivaji-P.W. 6 and contents of the Panchnama. The location around well was brought on record. It has come in the evidence that there is no parapet wall and there was slope to the road towards the well. In the inquest panchnama, it is mentioned that there was no injuries, whereas it was come in the evidence that some animal have eaten the lips of the deceased. I do not find any perversity in the findings given by the trial Court about not proving the suicide by the prosecution. Any how whether it is accidental death or suicidal death, no doubt it is unnatural death. However the only difference is that an accidental death no one is responsible. Whereas in suicidal death even no one can be blamed. A third person can be blamed only when the suicide is the result of abetment as

defined in Section 107 of the Indian Penal Code.

19. The fact that there is no parapet wall in the well and the fact that there is no witness seeing deceased jumping in the well. The findings of the trial Court cannot be upset.

20. It is true that when the deceased went missing, her parent must be interested in searching her. However it is pertinent to note that till 08/10/2001, no police complaint was given. It is material to note that from 06/10/2001 to 08/10/2001, the father of the deceased was in touch with the police and even police have visited the spot and carried out certain panchnama. Even the two neighbours have said that their statements has recorded on the spot. So it was expected from the parents of the deceased, atleast to inform the police that there are having suspicion on the accused or the death is suicidal. It is true that in a criminal jurisprudence lodging of immediate F.I.R. has got its own importance. This is particularly when the three witnesses,

coupled by two witnesses were deposed about various incidents of harassment. So there is every reason to believe that the case put up by these witnesses is after due deliberations. Learned Additional Sessions Judge has discussed about all these aspects and even the individual improvements made by the witnesses. There is no explanation why the papers of accidental death were not produced before the trial Court.

21. As said above, the prosecution could brought on record through five witnesses about various incidents of harassment, but for the reason of improvement, the conduct of all these witnesses to keep quite creates doubt about their version and hence it cannot be said prosecution has proved commission of all of these offences beyond reasonable doubt. Hence I find no perversity in findings recorded by the trial Court. Hence there is no merit in the Appeal. Hence dismissed.

[S. M. MODAK, J.]