

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

**CRIMINAL APPEAL NO. 382 OF 2009**

State of Maharashtra

...Appellant

Versus

Rajendra Bhojraj Mhatre

Age : 39 Years,

R/a – Koproli, Tal : Pen,

Dist. Raigad.

...Respondent

....

Mr. S. H. Yadav, Advocate for the Appellant-State

None for the Respondent.

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 19<sup>th</sup> JANUARY, 2022.**

**ORAL JUDGMENT :**

1. This appeal has been preferred by the State of Maharashtra under Section 378(3) of the Code of Criminal Procedure (for short “Cr.P.C.”) challenging the judgment and order dated 14<sup>th</sup> October, 2008 passed by learned Additional Sessions Judge, Raigad-Alibag. The respondent has been acquitted for offences under Sections 498-A and 306 of Indian Penal Code (for short “IPC”).

2. The case of the prosecution is that the

deceased Lata was wife of the accused. Their marriage was solemnized six years prior to the incident. The accused was suspecting character of his wife. On that count she was assaulted. She was not allowed to talk with anyone. The deceased had complained about it to her parents whenever she had visited her parental home. The parents of the deceased had given her hope that the accused would treat her well some day and persuaded her to join matrimonial home. On 29<sup>th</sup> March, 2004 information was received by the complainant that the deceased had suffered heart attack. Subsequently, they were informed that the deceased had passed away. The complainant and others visited the matrimonial home of the deceased. It was noticed that there was ligature mark on the neck of the deceased. The complaint was lodged with Police Station and the First Information Report (for short "FIR") was registered vide C.R. No. 30 of 2004 for offences under Sections 498-A and 306 of IPC with Pen Police Station, Dist. Raigad, on 29<sup>th</sup> March, 2004. The accused was arrested. Investigation proceeded. Inquest panchanama was recorded. Post-

mortem was conducted. Statements of witnesses were recorded. On completing investigation, charge-sheet was filed.

3. Charge was framed under Sections 498-A and 306 of IPC vide order dated 19<sup>th</sup> May, 2005.

4. The prosecution had examined 7 witnesses. PW-1-Eknath Mhatre is the father of victim. He is the complainant. PW-2-Janardan Mhatre is the uncle of victim. PW-3-Ramchandra Mhatre is the neighbour of PW-1. PW-4-Gangubai Mhatre is the mother of deceased. PW-5 Nivrutti Patil acted as panch for spot panchanama. PW-6-Dr.Satish Kulkarni conducted autopsy. PW-7-Indrjit Vishwkarma is the Police Sub Inspector, who conducted investigation.

5. After recording evidence of witnesses, statement of the accused was recorded under Section 313 of Cr.P.C. on 11<sup>th</sup> September, 2008. The submissions of the prosecution as well as the defence counsel were heard. By judgment and order dated 14<sup>th</sup> October, 2008, the trial Court has acquitted the respondent of all the

charges under Sections 498-A and 306 of IPC.

6. The trial Court on appreciation of evidence came to the conclusion that it has not been proved that on account of torture by the accused, the victim had committed suicide. The prosecution has not proved the fact that the accused had assaulted the deceased, hurled abuses and caused mental and physical torture to her. There should be some connection between the cause of death of the deceased and torture being caused to the deceased. Since the prosecution could not prove the fact that the victim was tortured by the accused, Section 113-A of the Evidence Act would not help the prosecution. The impugned judgment of the trial Court indicates that the evidence of witnesses has been appreciated by the trial Court. The Court has taken note of the discrepancies in the evidence. The Court has noted the law laid down in several decisions, relating to the requirement to constitute offences under Sections 498-A and 306 of IPC and has arrived at the findings that the prosecution has not been able to establish the charges under Sections 498-A and 306 of IPC.

7. In the light of the observations of the trial Court, I have perused evidence of the witnesses.

8. PW-1 - Eknath Mhatre is the father of deceased. He lodged the FIR. His evidence discloses that the marriage between the deceased and the accused was solemnized six years prior to the incident. The victim was cohabiting with the accused at village Koproli. After the marriage she was treated well for a period of about 6 months. Thereafter, the accused was assaulting her by suspecting her character. The victim had disclosed about the ill treatment at the instance of the accused to her parents. There are three children out of wedlock. On receipt of information, the complainant visited the matrimonial home of the victim. He noticed that there was ligature marks on her neck. FIR was registered. In the cross examination he stated that after the marriage, the accused were residing jointly with his parents in old house situated at Koproli village. The brothers of the accused were also residing in the same house. About two years prior to incident, the family of the accused had constructed another house. In pursuant to that the

victim and the accused were residing in the old house and all the other family members started residing in the new house. At the time of second delivery, the deceased was in the house of accused. Till the incident of suicide she was staying with the accused. While proceeding to Police Station for lodging complaint some persons from Village Koproli have stopped him from proceeding to the Police Station. They requested him to compromise the matter. The brother of accused No.1 threatened him. In the cross examination however, he admitted that the said fact is not stated by him in the FIR. He has not stated to the in his complaint that his daughter used to come after every 15 days to 1 month and complaining of ill treatment at the hands of the accused. It is not mentioned in the complaint that after six months of marriage the accused was assaulting his daughter by taking doubt on her character. He cannot say exactly the date and month on which the complaint of ill treatment was made by his daughter to him. Although his daughter was making complaint about ill treatment at the instance of the accused he did not make any complaint to Police

Station. He admitted that, whenever there was occasion of marriage or any other ceremony at his house, his daughter used to visit his house along with accused. The fact that he had received phone call on 29<sup>th</sup> March, 2004 giving information that the deceased had left the house is not reflected in his complaint. It is also not reflected that the accused had told him that the victim is sleeping and that she died due to fever. He has not stated in the complaint that the villagers had stopped him and were forcing him to settle the matter and that the elder brother of the accused has threatened him of dire consequences, if he lodges complaint. He admitted that he was at Koproli Village from 10.00 a.m. to 1.00 p.m. on 29<sup>th</sup> March, 2004. The police had reached at Koproli village at about 1.00 p.m. He did not make any complaint to Police at Koproli. He has deposed for the first time in the Court that he had not attended the funeral apprehending danger to his life and that the police had assured protection to him in the event he attends the funeral in the village.

**9.** PW-2 Janardan Mhatre is the brother of PW-1.

According to him, the victim had been to the house of the accused after the marriage at Village Koproli. She used to come to the house of her father after every 15 days or one month. His house is adjacent to PW-1. PW-1 had received the message about missing of Lata and after some time telephonic message was received that Lata is dead due to heart attack. He had been to Koproli with family and relatives. He noticed ligature mark on the neck of the deceased. He was suspecting that the victim was killed. The complaint was lodged by his brother. In the cross examination he admitted that Lata did not inform him at any point of time that she was ill treated by the accused. Police did not make any inquiry with him at any point of time.

10. PW-3 is the resident of Village Koproli. He has stated that he knows the accused and deceased. On 29<sup>th</sup> March, 2004 at 6.30 a.m. he came to know that the victim has hanged herself in the house. He went to the spot. The victim was found hanging in the house of accused. People had gathered there. She had hanged herself with rope of nylon. The rope was removed which

was around her neck and the dead body of the victim was taken down. The victim has three children. His house is at the distance of the 2 to 3 houses from the house of the accused. Thus, the evidence of this witness makes it clear that the victim was found hanging in the house. People had gathered at the spot and the body was removed. He has not referred to the presence of the accused when he saw the victim hanging in the house. His evidence does not create any doubt whether the victim was killed by any person. In cross-examination he stated that, he had never seen quarrel between the accused and the deceased Lata. After some time the police had come to the spot. Thereafter relatives of Lata (deceased) came to the place of incident.

11. PW-4-Gangubai Mhatre is the mother of victim. She has deposed that the marriage of Lata was performed with the accused about 10 years ago. She died before 4 years. After the marriage Lata had been to the house of the accused at Village Koproli. There are 3 children out of the wedlock. The accused was ill treating the deceased. Lata had made grievance against the

accused about the assault whenever she visited parental home. Lata did not disclose to her the reason as to why the accused was assaulting her. Accused was not allowing Lata to go to the house of any neighbour. On the day of incident she received telephonic message that Lata is missing and thereafter information was received that she is dead. She had visited Village Koproli. She noticed ligature mark on the neck of the deceased. Lata committed suicide due to ill treatment of the accused. From the examination-in-chief of this witness it is apparent that the deceased never disclosed to her that she was ill treated by the accused as he was suspecting her character. The reasons for assault was not known to her. In the cross examination she admitted that one of the daughter of Lata was suffering from illness of epilepsy. The accused was rickshaw driver and for that purpose he used to remain outside the house during day time. Lata and her 3 children were in the house during day time. Lata was residing with her husband and children at Koproli. Other family members were residing in newly constructed house. The old house where the

deceased and her husband were residing is surrounded with houses of neighbours. All the family members of the accused had attended the ceremony after the birth of son. The family members of the accused had been to her house to see Lata and her son. All children of Lata are with accused. She cannot say the month, day and year in which Lata had told him that she was ill treated by accused by assaulting her. She did not make any complaint to anybody about ill treatment given to Lata by the accused. Whenever there was occasion accused had been to her house along with Lata. From the evidence of PW-3 it can be seen that specific period of ill treatment is not known to the witness. The victim and her husband were residing in old house along with their children. The other family members were occupying new house. It is not stated by this witness that the accused was suspecting character of deceased. The accused and his family had visited the house of the complainant for attending ceremony. Thus, there is no cogent evidence to establish that the victim was assaulted by the accused by suspecting her character. The marriage was solemnized

6 years prior to the incident. There are three children out of the wedlock. The allegations appears to be after thought.

12. PW-5-Nivrutti Patil acted as panch to the spot panchanama. According to him he was called by the Police to act as panch on 29<sup>th</sup> March, 2004. Dead body of Lata was lying in the house. Police visited the spot. Nylon rope was seized from the spot. Other articles were seized from the house. Panchanama was prepared. The spot of incident is adjacent to his house. Accused has not ill treated his wife in his presence at any time. He never heard about ill treatment to the deceased at the hands of the accused.

13. PW-6 is the Medical Officer. He conducted autopsy. The post-mortem report is adduced in evidence. PW-6 noted that there were injuries in the nature of scar mark on the upper part of the neck extending to ears. The injuries were ante-mortem. There was fracture on hyoid bone. Lungs were congested. In his opinion, the cause of death of deceased is terminal cardio respiratory

arrest due to asphyxia due to hanging. Advance cause of death certificate was issued by him. There was no defence mark and therefore it difficult to say that whether it was suicidal or homicidal death. In the cross examination however he stated that there was no defence injury over the dead body of the deceased. Although this witness have stated in examination-in-chief that it is difficult to state whether it was suicidal or homicidal death, there were no incriminating circumstances to indicate that it was a case of homicidal death. The deposition of this witness also makes it clear that there was no defence injury over the dead body of the deceased. The prosecution case proceeded on the basis that it was case of suicide. The charges were framed against the accused under Sections 498-A and 306 of IPC. PW-2 has vaguely stated that he was suspecting that the victim was killed. However, during investigation, no incriminating evidence is brought on record to suggest that it was a case of murder. It is also pertinent to note that PW-3 has stated that the victim was found hanging. People had gathered at the residence

of the victim. She was found hanging in the room. The body was removed. Ligature marks were noticed on her neck. Thus, the evidence of this witness and the other circumstances on record does not indicate that it was a case of murder

14. PW-7 is the Investigating Officer. He has disclosed the details as to how investigation proceeded. In the cross examination he stated that he visited Koproli along with other staff members between 1.30 to 2.30 p.m. When he reached the Police Station crime was registered. He recorded the complaint of PW-1. In the complaint there is no mention that after a period of six months from the marriage, the accused started ill treating the deceased.

15. Thus, from the evidence of the witnesses as stated above, it has not been established by the prosecution that the accused has ill treated the victim to such an incident that there was instigation for the victim to commit suicide. The evidence suffers from serious infirmities. There are omissions and contradictions.

Some of the witnesses stated that there were no instances of ill treatment. The marriage was performed about 6 years prior to the incident. There are 3 children out of the wedlock. The prosecution has not proved its case beyond reasonable doubt.

16. Taking into consideration all the circumstances and the findings of the trial Court, that the prosecution has not been able to establish the charges under Section 498-A and 306 of IPC, I do not find any reason to take different view. The trial Court has assigned cogent reason for giving findings of acquittal. Taking into consideration the aforesaid aspects, case for setting aside the judgment of acquittal is not made out. Thus, appeal must fail.

17. Hence, I pass the following order :

**ORDER**

Criminal Appeal No. 382 of 2009 is dismissed  
and stands disposed of.

**(PRAKASH D. NAIK, J.)**