

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

CRIMINAL APPEAL NO.547 OF 2018

1. Revan Sudam Kanhere, &
2. Rajabai Sudam Kanhere. Appellants
Versus
The State of Maharashtra
and another Respondents

Mr. Jaydeep D. Mane, Advocate for the Appellants.
Smt. Veera Shinde, APP for the Respondent No.1-State.

CORAM :SARANG V. KOTWAL, J.

DATE : 29th AUGUST, 2022

ORAL JUDGMENT :

1. The appellants have challenged the judgment and order dated 31.3.2018 passed by the Additional Sessions Judge, Solapur in Sessions Case No.305/2018. Both the appellants were convicted for commission of the offence punishable under Section 306 read with 34 of the Indian Penal Code. They were sentenced to suffer RI for ten years each and to pay fine of Rs.1,000/- each and in default to suffer further RI for three months each. They were also convicted for commission of the offence punishable under Section 498-A read with 34 of IPC and were sentenced to suffer RI for three years each and to pay fine of Rs.500/- each and

in default of payment of fine to suffer RI for 15 days each. Both the sentences were directed to run concurrently. They were given set off for the period undergone as under-trial prisoners under Section 428 of Cr.P.C.. The appellant No.1 was directed to pay compensation of Rs.1 Lakh to the parents of the deceased Rekha under Section 357(3) of Cr.P.C. within a period of three months from the date of the judgment and order. Learned trial Judge directed that if the same was not tendered in the stipulated time, the same was to be recovered in accordance with law after the appeal period was over and if there was no stay by this Court.

2. The appellant Nos.1 & 2 were accused Nos.1 & 3 respectively. There was one more accused i.e. accused No.2 Audumbar Kanhere. He was brother of accused No.1 and son of accused No.3. He was acquitted from both these charges.

3. Heard Shri Jaydeep Mane, learned counsel for the appellants and Smt. Veera Shinde, learned APP for the State.

4. The prosecution case is that the appellant No.1 got married with Rekha on 15.6.2012. There was a demand of Rs.50,000/- initially which Rekha's parents somehow managed to

pay. Even after that there was demand of Rs.50,000/- for digging a well. On both these counts, Rekha was continuously harassed by both the appellants and other family members. On 21.5.2014, the appellant No.1 left Rekha at her parental house. There was continuous demand of Rs.50,000/-. Ultimately, Rekha committed suicide by consuming poison on 26.5.2014. She was taken to hospital but efforts to save her were in vain. She died in the hospital. The FIR was lodged on 5.6.2014 at Kurduwadi police station vide C.R. No.81/2014. The appellants were arrested on 6.6.2014. Statements of witnesses were recorded. After death of the deceased immediately postmortem was conducted, viscera was preserved and it was sent for chemical analysis. Opinion regarding cause of death was reserved at the time of postmortem examination. The C.A. report was received. However, no poison was detected in the viscera. After that final opinion of the doctor was sought. It was opined that she had died due to poison. The investigation was completed. The charge-sheet was filed. The case was committed to the Court of Sessions.

5. During trial, the prosecution examined eight witnesses including the mother, uncle and a neighbour of the deceased,

pancha for spot panchnama, the investigating officers, the medical officers conducting the postmortem examination and one who had treated the deceased. The defence of the appellants was of total denial. Learned Judge after considering the evidence on record and statements of the appellants recorded under Section 313 of Cr.P.C. and after hearing the arguments, was satisfied that the offence was committed. Therefore, he convicted and sentenced the appellants as mentioned earlier.

6. PW-1 Alka Garad was the mother of deceased Rekha. She had lodged the FIR. She has deposed that Rekha had got married with the appellant No.1 on 15.6.2012. She was residing with the accused No.1, 2 & 3 in her matrimonial house. After eight months from the marriage, the appellants' family shifted to a village known as Masle Chaudhari. After that, the appellant No.2 and Rekha came to PW-1's village. Rekha told her that the accused were harassing her and were demanding Rs.50,000/- for construction of their house. PW-1 and her family told the appellant No.2 that their financial condition was not good and that they should not harass Rekha. Again after ten days, Rekha and the appellant No.2 came to PW-1's house. Rekha repeated the

demand made by her in-laws. She told her that she was being harassed. Therefore, PW-1's family took loan of Rs.50,000/- from one Sudhir Garad and gave that amount to the appellant No.2. After about eight to nine months from that, the accused again started demanding amount of Rs.50,000/- for digging well. They used to harass her by starving, abusing and beating. Rekha told about the harassment by making a phone call. After that, PW-1's family told the accused that their financial condition was not sound. Their previous loan was not repaid. But there was no change in their attitude. On 21.5.2014, the appellant No.1 brought Rekha to PW-1's house. He told them that he would not take back Rekha unless the amount of Rs.50,000/- was paid. He then went back alone. Rekha was left at her parental house. After that the appellant No.1 made a phone call on PW-1's sister-in-law's phone. That time, Rekha had a conversation with the appellant No.1 who told her that he would take her back for cohabitation only if the amount was arranged. Rekha told PW-1 about this conversation. Again on 25.5.2014 he made a phone call and asked Rekha whether Rekha's parents had arranged for Rs.50,000/-. He again repeated his resolve not to take her back

until the said amount was paid to her. Rekha got disturbed. On the next day, she went to a field of one Sakhubai Nalavade to wash her clothes near a well. She had gone there with her friends Bharti and Bhakti. After some time, Rekha became unconscious. Bharti and Bhakti rushed to PW-1's house and informed them about it. PW-1 and others went to that spot. They took Rekha to hospital. PW-1 deposed that there was smell of poisonous medicine from Rekha's mouth. During treatment in the hospital, Rekha died at about 3.00 p.m.. The accused did not come to the hospital or for funeral. The medical officer informed the police about Rekha's death. PW-1 has specifically deposed that as her family's state of mind was not proper, she lodged her FIR afterwards. The FIR was lodged on 5.6.2014. It is produced on record at Exhibit-39.

In the cross-examination, she deposed that Rekha was educated upto 7th standard. Their village i.e. Laul village was a big village in Madha Taluka. There was a police patil and sarpanch in their village. The police station was half an hour away from Kadam hospital where Rekha was treated. During her lifetime, Rekha or PW-1's family had not lodged any complaint in the police

station. PW-1 denied the suggestion that Masle Chaudhari was a small village, and that the deceased always stayed at her parental house. She further deposed that after the doctor had informed the police, they enquired with her and had recorded her statement. She admitted that the accused quarreled with her family as the funeral was performed before their arrival. She volunteered that since the accused did not come by 11.00 p.m., they waited for the accused and thereafter they performed the funeral. She further deposed that on 10th day from the death, at the time of performing the rituals at Pandharpur, there was a quarrel between the accused and PW-1's family and after that PW-1 came to Kurduwadi and lodged the FIR.

The FIR lodged on 5.6.2014 corroborates the deposition of PW-1.

7. PW-2 Namdeo Nalavade was a pancha for spot panchnama. He has produced the spot panchnama at Exhibit-44. It mentions that the incident of consumption of poison took place in a hut in the land of Namdeo Nalavade that is the spot pancha himself.

8. PW-3 Sunil Garad was the paternal uncle of Rekha. He has corroborated the version of PW-1. He had gone to the house of accused to make them see reason. He was was a close relative and he has deposed in the same manner as deposed by PW-1.

9. PW-5 Shrikant Kadam was a neighbour of PW-1. He was told by Rekha about the demand made by the accused and the harassment caused to her. He has also corroborated the evidence of PW-1 and PW-2. He has deposed that on 21.5.2014 when he was at home he saw that the appellant No.1 had brought Rekha to the house of PW-1. At that time he went to their house and Rekha told him that her in-laws were harassing her on demand of Rs.50,000/- and unless the amount was paid the accused would not allow her to go back to her matrimonial house for cohabitation.

10. PW-7 API Ankush Pawar was the first investigating officer. He was informed that Rekha was admitted to Kadam hospital, Kurduwadi and that she had died there. PW-7 then conducted the inquest panchnama. He recorded the statements of two witnesses. He recorded spot panchnama on 6.6.2014. He

arrested both the appellants. He had arranged to send the dead body for postmortem examination, he collected the postmortem notes.

11. PW-6 PSI Dnyandeo Devkate took charge of the investigation on 26.7.2014. He deposed that viscera was sent to the chemical analyzer's office at Pune on 25.7.2014. PW-6 had then filed the charge-sheet after completion of the investigation.

12. PW-4 Dr. Dineshkumar Kadam is an important witness. Rekha was brought to his hospital on 26.5.2014. He observed that her vital parameters were bad and inspite of his best efforts Rekha could not survive. She died at about 3.00 p.m. on 26.5.2014. He has deposed that she was brought with the history of having consumed foret granules. When she was admitted to the hospital, he informed the police and even after the death he again informed the police. Significantly he has deposed that the treatment was given according to symptoms of poisoning. In his prima facie opinion the death was caused by organo phosphorous poisoning. He has further deposed that if the poison is absorbed in blood, the same may not be detected in viscera.

In the cross-examination, he admitted that there was no mention in the findings recorded by him that there was smell of organo phosphorous poisoning from Rekha's mouth. He produced the medical papers on record at Exhibit-62. As deposed by him, Rekha was admitted to his hospital at 2.15 p.m. on 26.5.2014 and the history was given by her relatives that Rekha had eaten foret granules about one hour before admission to the hospital.

The postmortem notes were produced on record at Exhibit-88. The defence had admitted that document. It was mentioned in the postmortem notes that the opinion was reserved and viscera was preserved for chemical analysis. The significant feature of the postmortem notes was description of both the lungs. It was mentioned that they were severely congested and oedematous. Advance death certificate dated 26.5.2014 was produced on record at Exhibit-84. This document was also admitted by the defence. In that certificate also it was mentioned that the opinion was reserved and the viscera was preserved for chemical analysis. After leading this evidence, the prosecution

had closed its case by tendering a pursis on 7.12.2017. The appellants' statements under Section 313 of Cr.P.C. were recorded.

13. But after that, on 28.3.2018, PW-8 Dr. Santosh Adgale was examined by the prosecution because the prosecution wanted to produce the certificate regarding cause of death of the deceased Rekha. PW-8 deposed that in his view the death was caused due to severely congested lungs leading to respiratory failure and death. In his opinion, this had happened because of the ingestion or administration of poison or poison like substance. His final opinion was produced on record at Exhibit-88A. He deposed that he formulated this opinion after he had received the opinion of chemical analyzer in respect of viscera. He was an important witness but he was not cross-examined on behalf of the defence. Only a suggestion was given to him that his opinion was erroneous. He denied that suggestion.

14. After his evidence was led, additional statement of the accused was recorded under Section 313 of Cr.P.C. on 28.3.2018. They were given an opportunity to answer the questions in respect of evidence of PW-8. The appellant No.1 and appellant No.2 both denied the evidence of PW-8 to be true. Learned Judge believed

the evidence of the prosecution. He also relied on the evidence of PW-8 to conclude that it was a case of suicide. He held that the prosecution was able to prove the harassment caused to the deceased Rekha, the involvement of both the appellants and then convicted and sentenced both of them as mentioned earlier. He however gave benefit of doubt to the original accused No.2 and acquitted him because there were no specific allegations against him compared to those against the present appellants.

15. Learned counsel for the appellants submitted that there was unexplained delay of ten days in lodging the FIR. The FIR was lodged only after the quarrel that had taken place at Pandharpur after the 10th day ritual after the death. In the meantime, there were no allegations of causing any harassment to the deceased. The allegations of harassment are made only as an afterthought and because of the quarrel between the two families. The statements of PW-1 and her family members which were recorded in the meantime were suppressed and the prosecution has deliberately kept away that part of evidence and, therefore, an adverse inference needs to be drawn against the prosecution.

16. He further submitted that the prosecution has failed to prove that it was a case of suicide. The viscera did not show presence of any poison and, therefore, there was no proof that the deceased had consumed poison and had committed suicide. The deceased was staying with her parents on the date of incident and, therefore, the appellants could not be held responsible for any step taken by the deceased. The deceased did not like staying in her matrimonial house which was in a village which was comparatively much smaller than the village where her parents were residing. Therefore, even if it is assumed that it was a case of suicide it was not because of any harassment caused by the appellants but it was because of her reluctance to stay in her matrimonial house.

17. The two companions who had gone with the deceased in the morning were not examined. Therefore, there is no cogent evidence as to what exactly had happened in the hut in the field of Namdeo Nalavade. The deceased was educated but she had not left any suicide note. The prosecution examined only interested witnesses. No independent witness was examined. He, therefore, submitted that the prosecution has not proved its case beyond

reasonable doubt and, therefore, benefit of doubt must go to the appellant.

18. On the other hand, learned APP submitted that Rekha had committed suicide within about two years from her marriage. Therefore, under the provisions of Section 113-A of the Evidence Act, presumption operated against the appellants because the suicide was committed within a period of seven years from the date of Rekha's marriage. The appellants have not rebutted this presumption. She submitted that the medical evidence in the form of PW-4 and PW-8 was sufficient to prove that Rekha had committed suicide by consuming poison. It was not necessary that in every case of poisoning, the poison must be detected in viscera. In a given case though poison may not be detected, the expert's opinion, as in the present case, carries more weight.

19. In the present case both the doctors had opined that the death was due to poisoning and, therefore, the case of suicide is clearly made out. She submitted that the evidence shows that the deceased was continuously harassed for demand of Rs.50,000/-. The demand was made on two occasions. On the

first occasion, it was fulfilled but on the second occasion since the demand was not fulfilled, she was left at her parental house. The evidence shows that the husband had left her at parental house and even after leaving her there he made telephonic calls demanding money and telling her that she would not be taken back until the amount was paid. All these instances of harassment fall within the meaning of Section 498-A of IPC as well as under Section 107 read with 306 of IPC and thus the prosecution case is proved.

20. I have considered these submissions. First and foremost, it is necessary to examine the prosecution evidence in respect of the allegations of commission of suicide. Though it is true that the chemical analyzer's report does not show any poison in the viscera, some important features will have to be taken into consideration. The record shows that the viscera was sent for chemical analysis much belatedly i.e. on 25.7.2014. The viscera was collected immediately on 26.5.2014 when the postmortem was conducted. The viscera should have been sent for chemical analysis immediately. Significantly the postmortem notes recorded after the postmortem examination held on 26.5.2014

had clearly noted that both the lungs were severely congested and they were oedematous. This important aspect was taken into consideration by PW-8 Dr. Adgale and based on this, his opinion was that death was caused due to severely congested lungs leading to respiratory failure and death. In his opinion it was due to ingestion or administration of poison or poison like substance. This opinion is unambiguous and categorical. The defence had not cross-examined PW-8 in respect of this particular opinion noted by him.

21. As far as PW-4 Dr. Kadam is concerned, he has also deposed that *prima facie* death was caused by organo phosphorous poisoning. He has explained that if the poison is absorbed in blood, the same may not be detected in the viscera. It is also mentioned in the medical papers that Rekha was brought to his hospital and at that time the history was given by relatives that she had eaten foret granules. She was given treatment based on the symptoms of poisoning. This evidence leads to a safe conclusion that the deceased had consumed poison and the death was because of poisoning. Hence, the prosecution theory that it was a case of suicide is sufficiently proved.

22. As far as harassment caused to Rekha is concerned, the prosecution has examined PW-1, PW-3 and PW-5. Their evidence is consistent. All of them have stated that there was demand of Rs.50,000/- on two separate occasions. On the first occasion, the family of the deceased had raised Rs.50,000/- by taking loan. Even thereafter demand of further Rs.50,000/- was made and the harassment continued. There is nothing in their evidence to doubt their veracity. PW-1 had explained as to why the FIR was lodged on 5.6.2014. She has deposed that their mental state was not good because of Rekha's death and therefore there was some delay in lodging the FIR. This explanation does not seem to be unreasonable. In any case, the burden was on the appellants to rebut the presumption under Section 113-A of the Evidence Act as submitted by learned APP. Therefore, the prosecution has sufficiently established that both the appellants had committed the offence punishable under Section 498-A of IPC. All these witnesses were natural witnesses and, therefore, it was not necessary to examine any other witness to support their versions. The act of the appellants falls within the explanation (b) of Section 498-A of IPC. Hence, the conviction of both the

appellants under Section 498-A read with Section 34 of IPC is properly recorded.

23. The next important question would be as to whether both the appellants can be said to have abetted commission of suicide as required under Section 306 read with Section 107 of IPC. In that context, the prosecution case differs for appellant No.1 and appellant No.2. Though there are common allegations that the deceased was harassed for the demand of money by all the accused, as far as the case of suicide is concerned that is directly attributable to the events which had taken place in May, 2014. It is the specific prosecution case brought on record through the evidence of mother of the deceased that on 21.5.2014 Rekha was brought to her parental house by only the appellant No.1. He had told them that he would not take Rekha back until Rs.50,000/- was paid. He then left Rekha and went away. He did not listen to anybody from the PW-1's family. Even after that, the appellant No.1 had phoned PW-1's sister-in-law and had conversation with Rekha. There again, he told her that unless the amount was arranged he would not take her back for cohabitation. Rekha had told PW-1 about that conversation. Even

thereafter on 25.5.2014 he made another phone call and asked Rekha whether her parents had arranged for Rs.50,000/- and again repeated his threat that Rekha would not be taken back for cohabitation unless the amount was paid. After all this, Rekha got disturbed and on the next day i.e. on 26.5.2014 she committed suicide. There was continuous harassment and demand from 21.5.2014. Thus, there is a direct connection between the acts of appellant No.1 and commission of suicide by Rekha. His acts would fall within the meaning of Section 107 read with 306 of IPC. Therefore, the prosecution has proved its case against the appellant No.1 alone as far as conviction under Section 306 of IPC is concerned. To that extent benefit of doubt can be given to appellant No.2.

24. Considering this discussion, it is held that appellant No.1 has committed the offence punishable under Section 498-A read with 34 of IPC and also has committed the offence punishable under Section 306 of IPC whereas appellant No.2 has committed the offence punishable under Section 498-A read with 34 of IPC only. She is acquitted from the charges of commission of offence punishable under Section 306 read with 34 of IPC.

25. Learned counsel for the appellants submitted that both the appellants were arrested on 6.6.2014. They were released on bail on 12.8.2014. Thus they were in custody before conviction for about two months and six days. They were convicted and sentenced on 31.3.2018. The appellant No.2 was released on bail after conviction on 28.9.2018. Thus, she had undergone imprisonment of eight months and six days as of today. As far as appellant No.1 is concerned, after his conviction on 31.3.2018 he was taken into custody. Learned APP submitted that for a few months he was on COVID-19 parole. The incident had taken place in May, 2014. Thus, more than eight years have passed. There are no allegations that either of the appellants have misused the liberty when they were on bail during trial or even after their conviction. They do not have any other criminal antecedent. Therefore, taking overall view of the nature of offence committed by them, the period undergone by the appellant No.2 in custody till today will be sufficient substantive sentence. The sentence imposed on both of them can be reduced. Reducing the sentence of the appellant No.1 from ten years to four year will meet ends of justice. The other portion of the operative part of the judgment of

directing appellant No.1 to pay compensation of Rs.1 Lakh can be retained. Hence, the following order :

:: O R D E R ::

- i. The appeal is partly allowed.
- ii. The appellant No.2 Rajabai Sudam Kanhere is acquitted from the charges of commission of offence punishable under Section 306 read with 34 of IPC. The sentence for offence under this section is set aside.
- iii. The appellant No.2 Rajabai Sudam Kanhere's conviction under Section 498-A read with 34 of IPC is maintained. However, the substantive sentence imposed on her for this offence is reduced to the period which she has already undergone. In addition, she is sentenced to pay fine of Rs.500/- (Rupees Five Hundred Only) and in default of payment of fine, she shall undergo further RI for 15 days.
- iv. The appellant No.1 Revan Sudam Kanhere's conviction under Section 498-A read with 34 of IPC is maintained. However, the substantive sentence imposed on him shall be covered for the period which he has already undergone and no further substantive sentence survives against him for Section 498-A read with 34 of IPC. In addition, however, he is directed to pay Rs.500/- (Rupees Five Hundred Only) and in default of payment of fine he shall undergo RI for 15 days.
- v. The appellant No.1 Revan Sudam Kanhere's conviction under Section 306 read with 34 of IPC is altered to that under Section 306 of IPC. He is sentenced to suffer RI for four years instead of ten years. In addition, he is sentenced to pay fine of Rs.1,000/- (Rupees

One Thousand Only) and in default of payment of fine, he is directed to undergo RI for one month.

- vi. All the substantive sentences are directed to run concurrently.
- vii. Clause (7) of the operative part of the impugned judgment reads thus :

“7] The accused No.1 Revan shall also pay compensation at Rs.1,00,000/- to the parents of the deceased Rekha viz. Alka Dilip Garad and Dilip Madhukar Garad, R/o. Laul, Taluka Madha, District Solapur u/s. 357(3) of CrPC within a period of three months. If the same is not tendered in the stipulated time, then the same may be recovered in accordance with law of course after appeal period is over and if there is no stay by the Hon’ble High Court.”

- . This clause is modified as follows :

“The accused No.1 Revan shall also pay compensation at Rs.1,00,000/- to the parents of the deceased Rekha viz. Alka Dilip Garad and Dilip Madhukar Garad, R/o. Laul, Taluka Madha, District Solapur u/s. 357(3) of CrPC within a period of three months from the date of judgment and order passed in this appeal. If the same is not tendered in the stipulated time, then the same may be recovered in accordance with law.”

- viii. The appellants are given benefit of Section 428 of Cr.P.C..
- ix. With these directions, the appeal is disposed of.

(SARANG V. KOTWAL, J.)