

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

CRIMINAL APPEAL NO.1081 OF 2007

State of Maharashtra

...Appellant

Versus

1. Narsayya Vyankatesham Dusa
Age : 60 Years.
R/o Vyankatesh Dusa Building,
Markendyanagar, Padmanagar,
Bhiwandi.

2. Surekha Tirupati Tatipamula
Age : 24 Years,
R/o Ashirwadnagar,
Behind Shivsena Office,
Kamatghar, Bhiwandi.

...Respondents

....

Mr. S. H. Yadav, APP for the Appellant – State.

Mr. Bhavin Jain i/by Mr. Ganesh Gole, Advocate for the
Respondents.

CORAM : PRAKASH D. NAIK, J.
DATE : 14th JANUARY, 2022.

ORAL JUDGMENT :

1. The State of Maharashtra is the appellant in this appeal. The appeal has been preferred by invoking Section 378(3) of Criminal Procedure Code (for short “Cr.P.C.”) challenging the judgment and order dated 4th January, 2006 passed by the IIIrd Additional Sessions Judge, Thane in

Sessions Case No.458/2004 ordering acquittal of respondents for the offences punishable under Sections 498(A) r/w Section 34 of Indian Penal Code (for short "IPC") and Section 306 r/w Section 34 of IPC.

2. The case of the prosecution is as follows :

The deceased was married to the son of respondent No.1 on 25th February, 2004. During the marriage, the father of the deceased had presented gold ornaments and it was agreed that Rs.50,000/- would be given at the time of Diwali festival. The said terms were settled in the presence of the community persons at the time of settlement of marriage. After the marriage, the deceased started residing with her husband and mother-in-law. The sister-in-law though married, she used to stay with the co-accused. Husband of the deceased was serving in powerloom factory. There was no ill treatment to the deceased at the hands of her husband. He was not impleaded as accused. It is alleged that the mother-in-law and sister-in-law were harassing the deceased. They were insisting that the deceased should bring amount of Rs.50,000/- from her parents. They also demanded interest on the said amount. The father of the deceased gave some amount on one or two

occasions for household expenses to the husband of deceased. On 6th October, 2004, the deceased poured kerosene on her person and set herself on fire. She was taken to hospital. On account of burn injuries, she died in the hospital. First Information Report (for short 'FIR') was registered under Section 498(A) and 306 r/w Section 34 of IPC by the father of the deceased. On completing investigation charge-sheet was filed.

3. Charge was framed against the accused for offences under Section 498(A) r/w Section 34 of IPC and Section 306 r/w Section 34 of IPC vide order dated 10th August, 2005. The evidence of witnesses was recorded. The prosecution has examined 5 witnesses. PW-1 Laxman Anjayya Maruti is the father of deceased. PW-2 Shrinivas Bujeri Upadhyay is the neighbour. PW-3 - Dasi Ambalal Guchhayya is the Special Executive Officer. He recorded dying declaration of the deceased. PW-4 - Balkrishna Kashinath Patil was the Police Sub Inspector. He is the Investigating Officer. PW-5 - Shankar Tatoba Patil is the Police Sub Inspector. He had conducted investigation.

4. The statements of the accused were recorded

under Section 313 of Cr.P.C. Both the accused pleaded not guilty.

5. Vide judgment and order dated 4th January, 2006, the learned IIIrd Additional Sessions Judge, Thane acquitted both the accused for offences under Sections 498(A) and 306 r/w Section 34 of IPC.

6. Learned APP submitted that the incident of suicide had occurred within short span from the date of marriage. The marriage was performed on 25th February, 2004 and the incident of suicide had occurred on 6th October, 2004. The presumption under Section 113(A) of the Evidence Act can be invoked in the present case. It was not rebutted by the defence. The evidence of PW-1 establishes that the deceased was subjected to ill treatment, harassment, resulting in cruelty. There was demand of money from the deceased. There was continuous harassment and on account of frustration she had committed suicide. There was sufficient evidence before the trial Court to convict the accused for offences under Sections 498(A) and 306 of IPC. The version of the witnesses and the documentary evidence on record supported the case of the prosecution. The statement of the deceased in the form of dying declaration

was recorded. The deceased had stated that, on account of harassment by the accused, she has committed suicide. Accused No.1 is the mother-in-law and accused No.2 is sister-in-law of the deceased. There is no reason to doubt the dying declaration of the deceased. The defence has not succeeded in demolishing the prosecution case. The trial Court has failed to appreciate the oral and documentary evidence on record in proper perspective. The judgment of acquittal is perverse. Hence, the impugned judgment is required to be set aside and the respondent accused be convicted for the said offences.

7. Learned Advocate representing the respondent submitted that there is no reason to set aside the order of acquittal. The trial Court while appreciating the evidence has given finding that the prosecution has not established its case. The offences under Sections 498(A) and 306 of IPC were not proved. Merely on the basis of the presumption under Section 113-A of the Evidence Act, the accused could not be convicted. The basic ingredients to constitute the cruelty and abetment to commit suicide were lacking. The order of acquittal could be set aside only in exceptional circumstances. The evidence of the witnesses is short of constituting for offences under Sections 498(A) and 306 of

IPC. The complainant has improved his version. His evidence suffers from contradictions and omissions. The dying declaration does not spell out that there was demand of dowry by the accused from the deceased or that harassment was not fulfilling demand of dowry. Except stating that there was harassment, the dying declaration did not mention anything further.

8. In support of submissions, learned counsel for the respondents has relied upon the decisions of the Supreme Court in the case of Ramesh Kumar V/s. State of Chhattisgarh¹, and Heera Lal and Anr. V/s. State of Rajasthan delivered on 24th April, 2017 in Criminal Appeal No. 790 of 2017.

9. I have perused the oral and documentary evidence adduced before the trial Court. The trial Court has considered the evidence and gave findings of acquittal. The impugned judgment and order of acquittal is based on appreciation of evidence and cogent reasons are assigned by the Court for acquitting the accused. The trial Court had observed that, as per the evidence of PW-1 there was ill treatment to the deceased by the accused for bringing

¹ AIR (2001) SC 3837

interest on the amount of Rs.50,000/- which he assured to pay at the time of Diwali. PW-1 also stated that he had presented the gold ornaments and household articles in the marriage and agreed to pay Rs.50,000/- after the marriage. His evidence does not disclose that there was any demand of money either from the mother-in-law or the sister-in-law or the husband of the deceased. The Court observed that the witnesses have exaggerated the story of prosecution. The evidence of PW-3 indicates that, he had recorded the statement of the deceased which has been treated as dying declaration. Cause of harassment is not mentioned either in the dying declaration or evidence of Special Executive Officer (PW-3). The FIR was registered vide Exhibit-22, which was proved through PW-5. It was treated as dying declaration. The Court noted that the statement of the victim indicate that quarrel used to take place on domestic grounds between the deceased and the accused. The statement does not refer to demand of money from either accused or that there was harassment to the deceased for complying demand of money. Thus, the trial Court has noted the version of witnesses and the contents of dying declaration and arrived at the conclusion that offences are not made out.

10. The accused Nos.1 and 2 are mother-in-law and sister-in-law of the deceased. The husband was exonerated. In the dying declaration the victim has stated that there was no harassment from her husband. PW-1 has deposed that he has incurred marriage expenses and purchased gold ornaments. Household articles were provided during the marriage. It was decided that amount of Rs.50,000/- will be paid to the husband of deceased at the time of Diwali. The deceased was ill treated by the accused. There was demand of kerosene and rice from the parents of the deceased. PW-1 paid Rs.500/- on one occasion and Rs.600/- on another occasion for household expenses. The accused were demanding that deceased should bring interest on the amount of Rs.50,000/- from PW-1 and that the deceased was beaten by them. This fact was disclosed by his daughter to him. He had agreed to pay the amount as per agreement. The deceased had suffered from typhoid and her husband did not take her to hospital. PW-1 took her to his house. There was quarrel between the accused and the deceased. Thereafter, both the accused poured kerosene on the person of the victim, they closed the door and went outside. The incident took place on 6th October, 2004. PW-1 came to know about the incident from the public. He visited the house of

daughter. She was taken to hospital. He went to hospital and met his daughter. She was burnt. He spoke to her. His daughter disclosed to him that both the accused had assaulted and set her on fire by pouring kerosene and closed the house. She also disclosed that both the accused had assaulted her for bringing more amount from parents. He took the deceased to IGM hospital Bhiwandi. Her statement was recorded by Police. She died due to burn injuries. From the examination-in-chief of PW-1 it can be seen that, his version is contrary to dying declaration of the deceased. According to him, the accused poured kerosene on the deceased and set her on fire. He further submitted that deceased had stated to him that the accused had set her on fire by pouring kerosene. The trial Court has rightly observed that this witness is exaggerating the prosecution case. In the cross examination he stated that his statement was recorded by Police, 3 days after the incident. There are omissions in his version. The deposition that he had given ornaments to the deceased at the time of marriage worth Rs.35,000/- was not reflected in his statement. He stated that ornaments were presented by him to the deceased at the time of marriage as per his free will. The payment of Rs.50,000/- was made as per his free will. The fact that the amount of

Rs.50,000/- was to be paid to the accused is not appearing in his statement. His version that the accused were insisting the deceased to bring interest on the amount of Rs.50,000/- is not appearing in his statement. He used to visit his daughter frequently. He had disclosed to the Police that his daughter had suffered from typhoid and he took her for treatment however, the said fact is not appearing in his statement. The fact that the accused had beaten his daughter for demanding more amount from him, is not reflected in his statement. He had disclosed to the police that both the accused had poured kerosene on the person of the deceased and set her on fire but the said fact is not appearing in his statement. He admitted that the husband of the deceased and mother-in-law (accused No.1) were present at the hospital. From the evidence it is apparent that it suffers from serious omissions and contradictions.

11. PW-2 - Shrinivas Upadhyay has deposed that, he do not know about relationship between the deceased, her husband and her in laws. He received information that the deceased died by burning and pouring kerosene oil on her person. The victim was taken to hospital by him. After admitting the deceased to hospital he came out. Nothing had

happened in his presence. This witness was declared hostile and cross examined by the prosecution. He had denied the suggestions put to him at the instance of the prosecution. In the cross examination by defence Advocate he stated that accused No.2 is the sister-in-law of the deceased. She is married and residing at Kamatghar, Bhiwandi.

12. PW-3 - Dasi Ambalal Guchhayya is the Special Executive Officer. According to him, the victim was admitted to hospital. He reached the hospital. Doctor permitted him to record dying declaration of the patient. He had talk with the patient. She disclosed that because of harassment in the family, she burnt herself. She gave name of sister-in-law and mother-in-law for the harassment. She also disclosed that there was no ill treatment to her from the husband. The said statement in the form of dying declaration was adduced in evidence and marked as Exhibit-15. In the cross examination he stated that Exhibit-15 does not bear the signature of the Medical Officer. The relatives of the patient were present at the ground floor, when he recorded the dying declaration word boy and doctor were present. He cannot tell the name of the doctor. He did not make inquiry regarding the treatment given to the patient. The dying declaration made to PW-1

runs counter to this dying declaration. The dying declaration mentions that on account of harassment by mother-in-law and sister-in-law she has burnt herself and there is no harassment from her husband. There is no reference to any demand made by the accused or harassment being caused for not fulfilling demand. The trial Court has rightly observed that assuming the harassment as mentioned in the dying declaration is true, it is not sufficient to come to the conclusion that there was cruelty or abetment to commit suicide.

13. PW-4 is the Investigating Officer. He was attached to Bhiwandi Town Police Station as Police Sub Inspector. He stated that offence was registered vide C.R. No.217 of 2004 under Section 498(A) and 306 r/w Section 34 of IPC. Investigation was handed over to him. Dying declaration statement of deceased was recorded vide Exhibit-15 by PW-3. Inquest panchanama was recorded. Spot panchanama was recorded. Post mortem was conducted. On completing investigation charge-sheet was filed. In the cross examination he stated that statement of Shravani (deceased) was recorded in Civil Hospital Thane, at 11.30 p.m. It was transpired in the investigation that the accused No.2 is

married and she resides at her matrimonial home at Kamatghar. The statement of the father of the deceased was recorded on 7th October, 2004. He did not disclose that value of articles is Rs.35,000/- and that the payment of Rs.50,000/- was made to the accused. He also did not disclose that the accused were demanding interest over the amount of Rs.50,000/- and there was ill treatment. He did not disclose that his daughter was suffering from typhoid and he has taken her to hospital. He did not disclose that after pouring kerosene on the person of the deceased she was set on fire by accused.

14. PW-5 was attached to Bhiwandi City Police Station as P.S.I. He recorded statement of the deceased. According to him, statement was recorded as per her narration. She disclosed that domestic quarrel used to take place with mother-in-law and sister-in-law and as she was fed up with the quarrells, she poured kerosene on herself and set herself ablaze. The complaint - dying declaration was marked as Exhibit-22. The offences were registered. In the cross examination he deposed that he did not make any inquiry regarding treatment given to patient. The statement was recorded in question and answer form. He called Special

Executive Officer for recording statement of the patient.

15. I have also perused the statement of the deceased recorded on 6th October, 2004 which was treated as FIR as well as dying declaration. It bears the endorsement that the patient is conscious and able to give statement. On perusal of the said dying declaration it is apparent that the victim had disclosed that there used be domestic quarrels between the accused with the victim. Hence, on 6th October, 2004 at about 7.30 p.m. while nobody was in the house she closed the door of room and bolted it from inside and poured kerosene on her person and set her on fire. Her husband was not at home. He was at work place. Nobody had burnt her. She herself burnt her.

16. In the light of the aforesaid evidence, the trial Court has given findings that, there was no sufficient evidence to come to the conclusion that there was cruelty to victim resulting in instigation or abetment to commit suicide by accused.

17. I do not find any reason to deviate from the findings and the view expressed by the trial Court. The

reasons assigned by the trial Court are in consonance with the evidence on record.

18. In the case of **Ramesh Kumar V/s. State of Chhattisgarh** (Supra), while interpreting Section 113-A of Evidence Act, the Supreme Court has observed as follows :-

“13. This provision was introduced by Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-law and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall

not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - 'The other circumstances of the case' used in Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says- 'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'"

19. In another decision relied upon by the learned counsel for the respondents delivered in the case of **Heera Lal and Anr. V/s. State of Rajasthan** (Supra), the apex Court in Para 8 has observed as follows :-

“ 8..... “No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in-laws to assist the victim to commit suicide. ”

20. In the light of the settled principles of law and applying the same to the factual aspects of this matter, there is no reason to set aside the judgment of acquittal. This appeal must fail.

21. Hence, I pass the following order :

ORDER

Criminal Appeal No.1081 of 2007 is dismissed and stands disposed of.

(PRAKASH D. NAIK, J.)