

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

CRIMINAL APPEAL NO.730 OF 2002

Devidas Dhansing Mali,
Age : 25 years, Occu.: Labour,
R/o.: Hingane Bk., Tal. Jamner,
District : Jalgaon

.... APPELLANT
(Orig. Accused No.1)

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Advocate for Appellant : Mr. G. V. Wani
A.P.P. for Respondent-State : Mr. R. D. Sanap
....

CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 05/09/2023
PRONOUNCED ON : 15/09/2023**
....

JUDGMENT :

1. The appellant / original accused No.1, has challenged the judgment and order dated 19/12/2002 in Sessions Case No.62 of 2001, passed by the learned 3rd Adhoc Additional Sessions Judge, Jalgaon (hereinafter referred to as 'the learned trial court'). The appellant has been convicted by the learned trial court in the aforesaid case for the offence under Sections 498-A and 306 of IPC and sentenced him to undergo R.I. for three years and to pay fine of Rs.1,000/- and to undergo R.I. for five years and to pay fine of Rs.3,000/- respectively.

2. Brief facts leading to this appeal are as under :

The present appellant had married with one Mangla on 26/04/2000. After marriage, Mangla started residing with the appellant and his mother, brother and sister. However, the appellant and his family members treated Mangla properly only for fifteen days and thereafter started ill-treating her by abusing and beating. They were also demanding an amount of Rs.15,000/- from her for getting job to the present appellant. However, the parents of Mangla used to convince her and to send her for cohabitation. Thereafter, the appellant had also come to the parental house of Mangla and demanded Rs.15,000/-. Thereafter, on 02/01/2001, Mangla on account of her ill-treatment at the hands of the appellant and his family members, consumed poison at about 8.00 p.m. Therefore, she was admitted to Government Hospital, Jalgaon, but on next day at about 6.00 a.m. she died while taking treatment. Then on the next day i.e. 04/01/2001, brother of the deceased Mangla i.e. PW-1 Balchand Fulchand Magare lodged an FIR, on the basis of which, an offence under Sections 498-A and 306 r.w. 34 of IPC was registered against the appellant and his aforementioned family members. On completion of investigation, charge sheet was filed against all four accused. However, after conducting trial, the learned trial court acquitted the other three accused persons namely mother, brother and sister of the appellant and only convicted him as mentioned above. Hence, this appeal.

3. The learned counsel for the appellant vehemently argued that the conviction of the appellant is not at all proper since on the basis of same evidence the other accused persons are acquitted.

He pointed out that the prosecution in support of its case, has examined only three witnesses i.e. PW-1 Walchand Fulchand Magare is the brother & PW-2 Rakhamabai Magare is the mother of the deceased Mangla and finally PW-3 investigating officer. Thus, he pointed out that no independent witness is examined by the prosecution to support the alleged ill-treatment of deceased Mangla. According to him, PW-1 and PW-2 being brother and mother of the deceased Mangla, are bound to depose against the appellant. He pointed out that various discrepancies and contradictions in their evidence. He also pointed out vital admissions and omissions from their respective cross-examinations. He submitted that there is no requirement of any amount for getting job to the appellant since he was already doing tailoring job and the accused persons were already knowing his financial position. He further, submitted that it is a case of prosecution that all the accused were making demand and subjecting deceased Mangla to physical and mental ill-treatment, but the learned trial court only convicted the appellant though the nature of allegations against all the accused was same. He further pointed out that there is no complaint by the deceased Mangla during the period after her marriage till the incident about the alleged ill-treatment. Accordingly, he prayed for setting aside the impugned judgment and order. Besides his oral submissions, the learned counsel for the appellant also relied on the judgment in case of *Mariano Anto Bruno and another vs. The Inspector of Police, reported in 2022 AIR (Supreme Court) 4994*.

4. On the contrary, the learned APP strongly opposed the submissions made on behalf of the appellant and supported the

conviction of the appellant recorded by the learned trial court. He pointed out that there is ample evidence on record to show that the appellant had demanded an amount of Rs.15,000/- and on non-fulfillment of it, subjected the deceased Mangla to mental and physical cruelty. As such, the learned APP submitted that there is no interference required in the impugned judgment and order and thus, prayed for dismissal of the appeal.

5. Heard rival submission. Also perused the entire evidence on record alongwith the impugned judgment and order.

6. It is significant to note that initially the offence under Section 498-A and 306 r.w. 34 of IPC was registered against the appellant and his mother, brother and sister. However, mother, brother and sister of the appellant, are already acquitted by the learned trial court. Only the appellant is convicted under the aforementioned offence. It is a case of prosecution that the accused persons including the appellant, treated Mangla properly only for 15 days and thereafter started her ill-treating by demanding an amount of Rs.15,000/- and by beating and abusing her. It is also significant to note that the prosecution has only examined three witnesses. Out of them, PW-1 is the brother and PW-2 is the mother of the deceased Mangla. No independent witness has been examined. The evidence of PW-3 investigating officer is mainly on the procedural aspect. Therefore, the evidence of PW-1 and PW-2 needs to be scrutinized cautiously since they are termed as 'interested witnesses' as per the submissions of the learned counsel for the appellant.

7. PW-1 Walchand Fulchand Magare is the brother of the deceased Mangla, who lodged the FIR Exhibit-20. From the FIR itself, it is evident that there were three prominent incidents in respect of the alleged ill-treatment of deceased Mangla. First is after about three months of the marriage when Mangla was brought to her parental house, she told that all the accused were beating and abusing her on flimsy reasons and also demanding an amount of Rs.15,000/- for getting job for the present appellant. However, the parents and PW-1 convinced her and sent back to the appellant for cohabitation. After about one month of the said incident, PW-1 had gone to the house of accused at Hingane and at that time also all the accused in his presence quarreled with Mangla and also asked him to bring certain amount for the job of the appellant. The third incident took place when the appellant after 8 days of the earlier incident, came to him and demanded Rs.15,000/- and on non-fulfillment of the same, left from the house angrily on next day. After that the complainant PW-1 received information about consumption of poison by Mangla and her admission to the hospital. Therefore, let us go through the evidence of PW-1 and PW-2 in respect of the allegations made in the complaint.

8. PW-1 i.e. brother of Mangla has deposed as per the prosecution story. However, while deposing before the court, he has made certain improvements in respect of the first incident. He additionally stated before the court that they had told Mangla that they were not in a position to pay such amount of Rs.15,000/- as loan taken for her marriage, was not paid by that time. However, PW-1 has admitted in his cross-examination that said additional

statement in respect of first incident was not there in the complaint. Further, in respect of second incident when he went to the house of the appellant, he has stated that present appellant had asked him to provide an amount of Rs.15,000/-. However, in the complaint itself it is not stated that the appellant alone had demanded an amount of Rs.15,000/-. Instead of that all the accused had demanded certain amount for the job of the appellant. Further, though this witness has stated according to the complaint in respect of the third incident when the appellant had come to them and demanded Rs.15,000/- and on not getting the same, left angrily on next day, but in respect of the same incident PW-2 mother of the deceased Mangla, has stated differently. According to her, the appellant after non-fulfillment of the demand of Rs.15,000/-, had in fact left their house on the same day.

9. PW-2 Rakhamabai i.e. mother of the deceased Mangla, has briefly deposed as per the prosecution story and stated that when they reached Civil Hospital, Jalgaon at about 2.00 to 2.15 a.m., Mangla was unable to speak but on asking as to what happened, she pointed fingers towards her husband and mother-in-law. However, in the cross-examination, she has given certain admissions from which it can be seen that she like PW-1, has also made improvements additionally in her chief-examination, which she did not tell to police while recording her statement. She has admitted that it was not in her statement recorded by police that accused Nos.1 to 3 used to beat Mangla for fulfillment of their demand. Likewise, the fact deposed by her that she asked

Manglabai in the hospital as to what happened to her, is also not there in her police statement.

10. Thus, from the evidence of PW-1 and PW-2, it transpires that both of them have made certain improvements. The extremely important fact which is apparent from their evidence is that all the accused were demanding an amount of Rs.15,000/- from the deceased Mangla and they have also admitted the same. In the complaint itself, it is clearly mentioned that PW-1 had stated that all the accused were making demand and used to beat and abuse deceased Mangla. It is not the case either of PW-1 or the prosecution that the appellant alone was ill-treating Mangla as alleged. Further, in respect of the third incident when the appellant had come to the house of PW-1, there are contradictions in the versions of PW-1 and PW-2. According to PW-1, the appellant though was angry on non-fulfillment of demand of Rs.15,000/-, but stayed in the night and left their house on the next day. At the same time, PW-2 -mother of the deceased Mangla, had stated differently and according to her, the appellant had left their house on the same day without having dinner. As such, reasonable doubt has been created due to such contradiction as to whether the appellant really had visited the house of PW-1 for the alleged demand of Rs.15,000/-. Admittedly, there is no other independent witness is examined by the prosecution and no evidence is forthcoming that on the day when Mangla consumed poison, she was subjected to beating. It appears that the learned trial court relied on complaint Exhibit-20, wherein it is mentioned that when PW-1 and PW-2 went to the Civil Hospital, Jalgaon, Mangla was pointing towards appellant and his mother. However,

for conviction under Section 306 of IPC, mere committing suicide is not enough. Moreover, for conviction under Section 498A of IPC also mere statement of prosecution witnesses as regards the alleged ill-treatment of the deceased or wife, are not sufficient.

11. The learned counsel for the appellant heavily relied on the judgment of Hon'ble Apex Court in the case of ***Mariano Anto Bruno and another*** (*supra*), wherein it is discussed as to what degree of proof is required to convict a person for the offence under section 306 and 498A of IPC. For securing conviction under Section 306 of IPC, the Hon'ble Apex Court has made following observation :

"This court has time and again reiterated that before convicting an accused under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable."

Thus, on going through the aforementioned observation, it appears that for recording conviction under Section 306 of IPC there has to be clear *mens rea* to commit such offence and it also

requires active act or direct act which leads deceased to commit suicide finding no other option and act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. Merely on allegation of harassment without there being any positive action proximate to time of occurrence on part of accused which led or compelled person to commit suicide, conviction in terms of Section 306 of IPC not sustainable.

12. The Hon'ble Apex Court in respect of conviction under Section 498A of IPC has also made following observation:

"Now, so far as conviction under section 498A of IPC is concerned, except the statement of the prosecution witnesses PW-1 to PW-3 recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage. The fact that there were cordial relations between the families of Appellant No.1 and the deceased is not disputed. The deceased committed suicide on 05/11/2014 and the complaint against the appellants were filed on 24/11/2014 i.e. 3 weeks after the death of the deceased."

13. Though in the present case there was no delay in lodging complaint, but except statement of prosecution witnesses recorded after the incident there is no other evidence on record to establish allegations of any demand of dowry or ill-treatment meted out to deceased during her marriage. This can be evident from the fact that after her marriage till the unfortunate incident of committing suicide, not a single complaint was lodged before an appropriate

authority either by her or her parents about such unlawful demand and her ill-treatment. Therefore, as per the aforesaid observations, the evidence brought on record by the prosecution as regards the ill-treatment of deceased Mangla at the hands of the appellant, is not sufficient to convict him under the aforesaid sections.

14. Further, it is extremely important to note that the evidence on record clearly indicates that there was almost same evidence against the appellant and other accused in respect of allegations of the ill-treatment and demand. Moreover, PW-1 i.e. brother of the deceased Mangla, has clearly admitted that he did not state to police that the appellant alone had made demand of Rs.15,000/-. On the contrary, it has come on record by way of the complaint at Exhibit-20 that all the accused were making similar demand to the deceased Mangla and on non-fulfillment of the same, they were abusing and beating her. It is also significant to note that the learned trial court on the basis of same evidence, has acquitted the other accused namely mother, brother and sister of the appellant and only convicted the appellant. It is already settled that the same evidence cannot be used for acquitting some of the accused and convicting some of them in absence of any additional evidence against the convicted accused. Therefore, the conviction recorded against the appellant by the learned trial court on the basis of same evidence whereby other accused are acquitted, is therefore not appropriate.

15. Considering all these facts, it transpire that there are additions and improvements in the evidence of PW-1 and PW-2,

who are brother and mother of the deceased Mangla respectively. Further, there is no overt act just before the incident of consuming poison by the deceased Mangla at the hands of the appellant in respect of her ill-treatment. Moreover, no independent witness in respect of alleged demand of dowry or ill-treatment, is examined except her close family members. Thus, it appears that the appellant is entitled for benefit of doubt and therefore, his conviction as recorded by the learned trial court needs to be set aside. As such, following order is passed.

ORDER

- I) The appeal is hereby allowed.
- II) The judgment and order dated 19/12/2002 in Sessions Case No.62 of 2001, passed by the learned trial court, is quashed and set aside.
- III) The appellant is acquitted from the offence under Sections 498A and 306 of Indian Penal Code.
- IV) The fine amount, if paid by the appellant, be refunded to him and his bail bond stands cancelled.
- V) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)