

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

CRIMINAL APPEAL NO. 554 OF 2022

Sindhubai Dilip Patel ... **Appellant**
Age 58 years, Occu: Household
R/o Gujar Kh. Tq. Shirpur, Dist. Dhule

VERSUS

1. Rajesh Ashok Patil
Age 44 years, Occu: Agri.
R/o Plot No.12/13, Sairamnagar
Saikripa Nivas, Kukdel Shivar, shahada,
Tq. Sahada, Dist. Nandurbar
2. Ashok Ramdas Patil (Abated)
3. Ashabai Ashok Patil (Abated)
4. Mukesh Ashok Patil (Discharged)
5. Sau.Pushpa @ Priti Mukesh Patil
(Discharged)
6. Hemant Rajaram Jadhav (Dhobi)
Age 25 years, Occu: Agri.
R/o Nagraj Nagar, Shahada,
Tq.Shahada, Dist. Nandurbar
7. The State of Maharashtra, ... **Respondents**
Through Sahada Police Station,
Dist. Nandurbar

Mr. Dinesh U. Manwatkar, Advocate for the appellant,
Mr. R. V. Dasalkar, APP for respondent-State

CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.

DATE : 08.03.2023

JUDGMENT (Per Y. G. Khobragade, J.):

1. The present criminal appeal has been filed by the appellant-original informant under section 372 of the Code of Criminal Procedure, challenging acquittal of the respondent present respondent/accused No.1 Rajesh Ashok Patil and respondent/accused No.6 Hemant Rajaram Jadhav by the learned Additional Sessions Judge, Shahada Dist. Nandurbar in Sessions Case No. 8 of 2015, dated 07.05.2022. They have been acquitted of the offences punishable under sections 306, 498-A, 304-B read with section 34 of the Indian Penal Code.

2. Heard Shri Dinesh Manwatkar, learned counsel for appellant and Shri R.V. Dasalkar, learned APP for the State at the stage of admission. With their able assistance, we have gone through the record which was before the learned trial court.

3. The prosecution story is that the marriage of the informant's daughter Nital was solemnized with accused no.1 Rajesh Ashok Patil, four months prior to the incident. She started cohabiting with her husband in a joint family with other accused persons at Sahada Tq. Sahada Dist. Nandurbar. The accused No.1 was doing agricultural work. Matrimonial relations between deceased Nital and accused No.1 were cordial for initial days. Nital had made a phone call to her son Dinesh about her ill-treatment at the hands of the accused persons about two months prior to the First Information Report. This

fact was narrated by the son Dinesh of informant to the informant. Deceased had also disclosed about the said demand to informant when she had visited at her house for attending family programme about a month prior to FIR. She had disclosed that her husband has received a message that he should pay money to the sender or send his wife to him. The informant persuaded her daughter and sent her to matrimonial house. Thereafter mother-in-law of the deceased decided to send her to parental house for rest because deceased was pregnant. Father-in-law and mother-in-law took deceased with them from her parental house on 03.09.2014. However, the informant received phone call from the father-in-law of deceased at about 4.30 p.m. on 04.09.2014, informing that her daughter was taken to the hospital as she did not wake up. Thereafter informant / appellant went to Municipal Council Hospital Shahada, where she found dead body of Nital in the postmortem room. Informant came to know from the persons who were present there that, Nital committed suicide by hanging herself to fan. Initially Accidental Death Case No. 43 of 2014 was registered with Sahada Police station under section 174 of the Criminal Procedure Code. However later on informant lodged a FIR with the police station alleging that, her married daughter Nital committed suicide due to ill-treatment at the hands of accused persons. Hence, Crime No.157/2014 came to be registered against the accused

persons for the offences punishable under section 306, 498-A, 304-B read with 34 of the Indian Penal Code. The Investigating Officer has drawn the inquest panchanama, spot panchanama and recorded statements of the witnesses under Section 161 of Cr.P.C. The viscera preserved was sent to Chemical Analysis. After completion of investigation, the investigating officer filed charge sheet before the Judicial Magistrate First Class Shahada.

4. After the committal of the case, accused No.4 Mukesh and accused No.5 Pushpa @ Priti Mukesh Patil came to be discharged. The trial court framed charge at Exh. 38 for the offences punishable under section 306, 498-A, 304-B read with 34 of the Indian Penal code against remaining accused. Accused no.2 Ashok Ramdas Patil and accused No.3 Ashabai Ashok Patil died during pendency of the trial, therefore, trial stood abated against both of them. Therefore, trial proceeded against respondent No.1 Rajesh and respondent No.6 Hemant.

5. In order to bring home the guilt of accused, the prosecution has examined PW1 Sindhubai Dilip Patel at Exh.54, PW2 Dilip Tarachand Patel at Exh. 57, PW3 Seema Sunil Patel at Exh. 59, PW4 Dinesh Dilip Patel at Exh.60, PW5 Vijay Damu Patel at Exh. 64, PW6 Subhash Dagdu Patil at Exh. 66.

6. The learned counsel appearing for the appellant/informant canvassed that the learned trial court failed to consider the demand of money raised by the accused persons to discharge the debt of accused no.1. Threat was given to accused no.1 through message that on the failure to repay the debt, he should send his wife i.e. deceased to accused No.6 who had given the said loan. Deceased came to know the said message and therefore, she committed suicide. Learned counsel appearing for the informant-appellant, submitted that the marriage of deceased was solemnized just four months prior to lodging of FIR and on 04.09.2014, Nital has committed suicide, due to mental and physical harassment by the respondent no.1 accused. Therefore, presumption under section 113-B of the Evidence Act ought to have been raised by the learned Trial Judge. Learned trial court failed to consider the evidence in proper way and wrongly acquitted the accused, hence, the impugned judgment and order deserves to be quashed and set aside.

7. It is to be noted that in order to constitute offence under section 498-A IPC, it is necessary on the part of prosecution to prove that the husband i.e. respondent no.1 and/or his relative had subjected deceased Nital, to cruelty either physically or mentally to meet unlawful demand of any property or valuable security.

8. Further, Section 107 of the IPC, provides that a person abets doing of a thing, who instigates any person to do that thing or engages with one or more person or persons in any conspiracy for the doing of that thing, if the act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing or intentionally aids, by any act or illegal omission, the doing of that thing, would be guilty of committing the said offence.

9. Section 113-B of the Evidence Act provides presumption as to dowry death, if it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment in connection with any demand of dowry.

10. In order to bring home to the guilt for the offence under Section 304-B of the Indian Penal Code, it is necessary on the part of the prosecution to prove that there was unnatural death of a married woman and accused must have subjected her to cruelty in connection with demand of dowry, soon before her death. The legal position in connection with presumption under Section 113 B of Indian Evidence Act is that if the prima facie burden is discharged attracting ingredients of Section 304-B of Indian Penal Code, then presumption can be raised that it is a dowry death if the death is within the period of 7 years.

11. In the case of **Bajnath and others Vs. State of Madhya Pradesh**, MANU/SC/1501/2016, the Hon'ble Supreme Court held thus:

35. This court while often dwelling on the scope and purpose of Section 304B of the Code and Section 113B of the Act have pronounced that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in Shindo Alias Sawinder Kaur and Anr. V/s. State of Punjab MANU/SC/0499/2011: (2011) 11 SCC 517 and echoed in Rajeev Kumar V. State of Haryana MANU/SC/1144/2013: (2013) 16 scc 640. In the latter pronouncement, this court propounded that one of the essential ingredients of dowry death Under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under section 113B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao V. Yadla Srinivasa Rao MANU/SC/0890/2002:(2003) 1 SCC 217 to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

12. In the case in hand, informant-appellant Sindhubai has deposed that initially the married life of her daughter Nital was happy for about a one month but thereafter, she was harassed by the accused persons. On the advice of her mother-in-law, Nital stayed at house of informant for rest for some days, but the father-in-law and mother-in-law of her daughter came there on 03.09.2014 and demanded Rs.5 lakhs. Informant told them that she would collect the amount and give after some days. There upon the in-laws took Nital with them. She came to know about suicide committed by Nital on the next day. Informant has stated that Nital has committed suicide because of the cruelty by the accused. However, it can be seen that she has not stated about specific acts of cruelty. Mere use of the words is not sufficient. The acts amounting to cruelty should be stated. Fact that Nital had committed suicide is not denied, but the nexus should have been established between her suicide and alleged cruelty. She has not stated how much amount was taken by accused No. 1 from accused No. 6 as loan, since when it was outstanding, etc. Admittedly, accused No. 6 is not the relative of accused No. 1. There is also no evidence that accused No. 6 had in any way personally met deceased and had said anything. Offence under Section 498A of IPC can not be invoked against him. There is also no evidence that accused No. 6 had abetted the commission of the suicide by Nital.

13. The testimony of PW-2 Dilip Tarachand Patel, father of the deceased has also deposed in the same manner as PW 1. He has stated that Nital had informed her brother Dinesh that accused no.1 was harassing her on account of money and Dinesh had told the said fact of him. PW 2 Dilip stats that he had told his son Dinesh about arranging money after selling plot. His testimony does not say further things as to whether the land was sold or not. His testimony also lacks the details of the acts of harassment.

14. PW-3 Seema Sunil Patel is the married sister of deceased. She has deposed that when Nital had visited at their parental house and she was also there, it was told by Nital that, her husband (accused no.1) was not doing any work to earn and her father-in-law was having ill eye on her. The deceased had also disclosed that, accused no.1 has asked her to do bad work of sleeping with another male person, as he is indebted. This witness and deceased had met each other on 02.09.2014, at their parental house, when Nital was pregnant. Nital had also disclosed that accused no.1 was having illicit relations with another woman. Thus, it can be gathered from the testimony of this witness that she is giving her own story. It is not corroborated by her parents, nor she has stated that she had disclosed the said fact to her parents. If the life of Nital was so miserable then how she could send her sister for cohabitation? Her own conduct is doubtful.

15. PW4 Dinesh Dilip Patel-brother of deceased Nital has deposed that Nital had told him about her mental and physical harassment at hands of her husband and in-laws. He came to know about the death of Nital from his father. The testimony of this witness also does not specify the acts of ill-treatment.

16. The FIR as well as statements of the witnesses are full of contradictions, omissions and exaggerations. The FIR lodged by PW-1 Sindhubai does not speak about quantum of money which was allegedly demanded by the accused persons. It does not specify the acts of cruelty as aforesaid. The investigation officer has not collected any evidence as to who had sent the alleged obscene message to accused No. 1.

17. PW-5 Vijay Damu Patel is witness to spot panchanama, inquest panchanama and seizure panchanama. He has admitted in cross examination that at the time of marriage, when he along-with accused No.1 had visited the house of Nital, at that time she was not ready to marry i.e. not mentally prepared for marriage. He has admitted that PW 2 – father of deceased had forced her to marry with accused No.1. These admissions rather show that as the marriage was against her wish, she had decided to end her life.

18. From the discussion above, we conclude that the learned trial court was justified in acquitting accused no.1 Rajesh and accused

No.6 Hemant. There are no good grounds for interfering with the impugned acquittal of the respondents-accused. Therefore, the present appeal is liable to be dismissed at the stage of admission. Accordingly, the Criminal Appeal is dismissed.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

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