

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

CRIMINAL REVISION APPLICATION NO.444 OF 2004

Babasaheb Janku Hinge,
Age : 31 years, Occu. Agri.,
R/o Dahigaon, Tq. & Dist. Ahmednagar.
(At present, in jail).

... **Applicant.**

Versus

The State of Maharashtra.

... **Respondent.**

...
Advocate for Applicant : Mr. N. R. Bhavar.
APP for Respondent-State : Mr. S. P. Deshmukh.
...

CORAM : S. G. MEHARE, J.

**RESERVED ON : 17.07.2023
PRONOUNCED ON : 25.09.2023.**

JUDGMENT :-

1. Heard the respective learned counsels for the parties.
2. The applicant takes exception to the judgments and orders of the conviction of the learned 4th Adhoc Assistant Sessions Judge, Ahmednagar, passed in Sessions Case No.106 of 2002, dated 21.09.2002 and in Criminal Appeal No.42 of 2002 of the Additional Sessions Judge, Ahmednagar, dated 08.10.2004.

3. The facts of the case in brief were that the applicant married the deceased on 11.12.2001. She went to cohabit with him. It has been alleged that two months after the marriage, the deceased and the accused went to the house of his in-laws. They stayed there for one day. During the stay, the accused demanded Rs.70,000/- from the complainant to purchase the motorcycle and plaster the house. The complainant expressed her inability to fulfill his demand due to her poor financial condition. The accused demanded the money in front of her son Sagar and daughter Bharati. On 25.04.2002, the complainant had been to the marriage at Dahigaon with her daughter Bharti. There, the deceased Swati also came. She complained that the accused were beating, abusing and ill-treating her for non-fulfilling their demand of Rs.70,000/-. Her daughter P.W.2 Bharti requested the complainant to allow her to stay with Swati for 4-5 days at her home. Twelve days thereafter, the accused went to leave Bharti to the complainant's house. That time, again, he demanded Rs.70,000/- and threatened that she should keep the money ready; otherwise, she would see what would happen in future. The deceased committed suicide by hanging in the house of the accused on 12.05.2002. One Nana Shripati Mhaske lodged a report of the incident on the same day to the Police Station.

The police registered the accidental death case. After that, the complainant gave her statement on 13.05.2002, making the above allegations. Therefore, Police Station Nagar Taluka registered Crime No.68 of 2002 against the accused and his relatives under Section 498-A and 306, read with Section 34 of the I.P.C.

4. Both Courts held the accused guilty of the offences punishable under Sections 498-A and 306 of the I.P.C. However, the other co-accused were acquitted.

5. Heard the learned counsel for the accused and the learned APP for the State.

6. Learned counsel for the accused has vehemently argued that the second star witness, PW.2 Bharti, has clearly admitted that she did not know why Swati was beaten at her home while she was staying with her. Her evidence has not been correctly appreciated. Both Courts did not consider the material admissions of the complainant on the better financial condition of the applicants than her. The Courts erred in holding that the contradictory stand of the accused goes against him. The statement of the accused under Section 313 has been used against him without considering its object. To

bolster his argument, he relied on the case of ***Mariano Anto Bruno and another Vs. The Inspector of Police ; 2022 Live Law (SC) 834.***

7. He further argued that the silence of the deceased till committing suicide about the ill-treatment was not properly considered. The admission of P.W.1/the mother of the deceased, that she is financially poor has also not been considered in the context of the allegation of paying Rs.80,000/- to the accused before the marriage. Learned Trial Court and the First Appellate Court did not consider that P.W.1 to 3 were the interested witnesses. The learned Trial Court committed a grave error of Law in observing that the omission to State by P.W.2 Bharti in her statement under Section 161 of the Cr.PC. about threats by accused No.1 in the house of P.W.1/the mother of the victim that if the amount is not paid, be prepared for consequences in future cannot be taken as a contradiction and does not affect the core of the statement of the P.W.2. Both Courts did not consider there was delay in lodging the report. Both Courts have erred in believing the evidence of the prosecution that the prosecution has established an offence under Section 306 of the I.P.C. The presumption under Section 113-A of the Indian Evidence Act

has been incorrectly applied. Giving a slap to Swati at his home does not prove the offence of illegal demand of money. The learned First Appellate Court has unnecessarily shifted the burden upon the applicant to explain why the deceased Swati committed suicide. The silence of the complainant till the funeral had a great and significant adverse effect on the prosecution case. Since the death of the deceased till the filing of the F.I.R., they had sufficient time to hatch the plan to file a false complaint. He would lastly argue that in the absence of evidence of abetting the deceased to commit suicide, the wrong conclusion has been drawn by both Courts that the prosecution had proved the offence under Section 306 of the I.P.C. The prosecution did not prove that the deceased was harassed for the demand of dowry, and for that, she was coerced. Hence, the accused be acquitted.

8. In the alternative, he submits the term of imprisonment imposed upon the accused against the sentencing policy. In the facts and circumstances, it was disproportionate. Hence, his sentence may kindly be reduced, and a reasonable term may be imposed if the Court concludes that any offence is proved against the accused.

9. Per contra, learned APP would submit that Section 113-A of the Indian Evidence Act has been correctly applied in this case as the deceased died within five months of her marriage. It was categorically proved that the accused was demanding dowry, and for that purpose, he was harassing and ill-treating the deceased. The evidence of the witnesses was consistent. The witnesses, being relatives of the deceased, cannot be branded as interested witnesses. Independent evidence was there to prove that Rs.80,000/- were paid to the accused before marriage. Merely a sound financial condition of the accused is no ground to disbelieve that there was no illegal demand. Both judgments are legally correct and proper. There are no grounds to interfere with the impugned judgments and orders.

10. Admittedly, the victim died within five months of her marriage. She had hanged herself. The accused has a defence that the deceased was good-looking and the financial condition of her family was poor. Hence, he performed the marriage with her at his expense. They were not involved in the crime. The marriage of the deceased Swati was performed against her will. Hence, she was going frequently to her parental home without the knowledge of the accused/present applicant. She

was behaving arrogantly. Her parents did not convince her. Hence, she committed suicide. They never demanded money, as alleged. They have been falsely implicated in the crime as their daughter has committed suicide.

11. The First Appellate Court observed that the accused was to give some plausible explanation for the cause of death in their statements under Section 313 of the Cr.P.C. The explanation given by the accused is not at all probable as the prosecution has proved that the suicide has taken place. It was further observed that 'I hold that evidence of the prosecution witnesses will have to be read in the light of these circumstances'.

12. The Law is well settled that the statement of the accused under Section 313 of the Cr.P.C. is not evidence. It is only the accused's stand or version by way of explanation when incriminating materials appearing against him are brought to his notice. It is also the Law settled in the case of ***Bable Vs. State of Chattisgarh; A.I.R. 2012 SC 2621*** that "answer given by the accused in the statement under Section 313 of the Cr.P.C. or defence of plea by him binds the accused". There is no bar to take defence as many as possible. The Court can use

the statement insofar as it corroborates the prosecution case, but conviction cannot be based only on such statement. If the various defences have been taken, those will not be used against the accused. Even a false defence is no ground to convict the accused if a chain of circumstantial evidence is incomplete.

13. The accused has been convicted for the offence punishable under Section 498-A of the I.P.C. appreciating the evidence of the mother and sister of the deceased. The mother had testified that after two months of the marriage, the accused demanded Rs.70,000/- from her for a motorcycle and plastering of his home. Secondly, he again demanded her money for the same cause at his village Dahigaon when she had been to attend the marriage of her relative on 25.02.2002. At that time, the deceased requested her to pay the money because her in-laws and the accused were harassing her. She also complained about abusing and beating her. She also testified that around 12 days thereafter, when the victim went to her home to leave her daughter P.W.2, Bharti, for the third time, he demanded the money for the same reason. At that time, the accused threatened her that she would see something happen if she did not arrange for money. P.W.2 Bharti, the

deceased's sister, has corroborated her regarding the demand on all three occasions. In addition, she has testified that when she was at her home for 12 days, the accused beat her. However, she did not know why the deceased was beaten. She did not depose that the accused had beaten the deceased for unlawful demand of money.

14. Learned counsel for the applicant has emphasized that both Courts did not consider the admission of P.W.1 that the accused was more financially sound than her. He has vehemently argued that he had no reason to demand money when the accused was financially sound. But, her marriage was performed against her wish. Hence, she committed suicide. Therefore, the false allegations have been levelled against him. He has tried to convince the Court that a person who has a sound financial condition is not greedy.

15. It is not the universal rule that a rich person is not greedy. It's a mindset. It is a selfish and excessive desire for more of something (such as money) than needed. It is an insatiable demand for material gain. It has no concern with the financial condition of a man. Anybody may be greedy. the

financial soundness is not an exception. Hence, the arguments of the learned counsel on this point find no water.

16. To disbelieve the allegation of unlawful demand, except the sound financial condition, the testimony of these two material witnesses i.e. P.W.1, and 2, was not shattered and nothing material has been procured from these witnesses. The evidence of P.W.1 and 2 appears natural. There was no exaggeration and the circumstances to disbelieve them. The evidence of P.W.1 and 2 was cogent and reliable to believe that the accused harassed the deceased was harassed for the unlawful demand of money. Their evidence establishes that the allegations of unlawful demand of money fall under explanation (b) to Section 498-A of the Indian Penal Code. Both Courts have correctly appreciated the evidence on the harassment of the deceased for unlawful demand of money. Hence, there is no error on the face of the record.

17. The next point for consideration would be whether the prosecution evidence is sufficient to believe that the accused abetted the deceased to commit suicide and whether presumption under Section 113-A of the Indian Evidence Act would apply since the deceased died within seven (7) years of

her marriage. It would also fall for consideration whether the offence under Section 498-A of the I.P.C. has been proved; the presumption under Section 113-A of the Indian Evidence Act would automatically attract or apply.

18. The Hon'ble Supreme Court, in a recent judgment of *Gurjit Singh Vs. State of Punjab in Criminal Appeal Nos.1492-1493 of 2010, dated 26.11.2019*, reiterated the ratio laid down in the case of *State of West Bengal Vs. Orilal Jaiswal ; (1994) 1 S.C.C. 73*, in which it was held that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. It has also been held that Sections 498-A and 306 of the I.P.C. are independent and constitute different offences. Depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A of I.P.C. If a course of conduct amounting to cruelty is established, leaving no other option for the woman except to commit suicide, it may also amount to abetment to commit suicide. Merely because the accused has been held liable to be punished under Section 498-A of I.P.C., it does not follow that

on the same evidence, he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.

19. Further, the Hon'ble Supreme Court has reiterated the issue raised in the case of ***Hans Raj Vs. State of Haryana ; (2004) 12 SCC 257*** and observed in para No.26, which reads thus :

“26. After observing the aforesaid, this Court, relying on the judgment of this Court in the case of Hans Raj (supra), observed that even if it is established that the woman concerned had committed suicide within a period of seven years from the date of marriage and that her husband has subjected her to cruelty, the Court is not bound to presume that suicide has been abetted by her husband. It is required to take into consideration all other circumstances of the case.”

20. To attract or apply Section 306 of the I.P.C., the prosecution has to prove that there was abetment to commit suicide. The term 'abetment' has been defined in Section 107 of the I.P.C. This Section has been scanned in various cases, and the legal position has been settled that there shall be instigation by a person to other people to do a particular thing or engage with one or more other persons in any conspiracy for doing that act. There shall be intentional aids, by any act or

illegal omission for doing that thing. The term 'instigation' means to goad, urge, forward, provoke, incite or encourage to do an act. The actual words are not essential. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature is clear that in order to convict a person under Section 306 of I.P.C. there has to be a clear *mens rea* to commit the offence. It also requires an active or direct act that led the deceased to commit suicide, seeing no option, and this act must have been intended to push the deceased into such a position that he/she committed suicide. (***M. Mohan Vs. State, Represented by the Dy. Superintendent of Police A.I.R. 2011 SC 1238***).

21. In the case of *Gurjit Singh (cited supra)*, the ratio laid down in the case of *Hans Raj* was discussed in paragraph No.21, it has been held that when the allegation is of cruelty, it must consider the nature of cruelty to which the woman was subjected having regard to the meaning of the word "cruelty" in Section 498-A of I.P.C. It has been held that one of the circumstances that has to be taken into consideration by the

Court is whether the alleged cruelty was of such a nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

22. To establish the instigation to commit suicide, there shall be a proximate nexus between the commission of suicide and illegal demand made by the accused.

23. As far as 113-A of the Indian Evidence Act is concerned, paragraph 13 of the *Hans Raj* case is the guiding principle which reiterate thus :

“Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of Law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A of the Indian Evidence Act the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the Court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word cruelty in Section

498-A I.P.C. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.....”

24. Bearing in mind the Law as regards the abetment to commit suicide and the cruelty caused to the wife and application of presumption under Section 113-A of the Indian Evidence Act; the Court has gone through the findings of both Courts. It is the prosecution evidence that three times, the accused demanded money from the mother of the deceased. It also appears that at the time of the demand for money for the first time, the accused went to the complainant's house. On the second time, the mother and sister of the deceased went to the village of the accused to attend the marriage of her relative. The accused had taken the deceased to attend the said marriage, and on that day, he took P.W.2 Bharti, sister of the deceased, to his home. She stayed there for about 12 days. However, she testified that the deceased was beaten twice

during her stay. She never disclosed to anybody that the accused demanded Rs.70,000/- at Dahigaon. She was unable to tell the exact dates of beating the deceased at her home. She has explained that since the deceased asked her not to disclose the incident of beating, she kept mum. She never disclosed about beating the deceased during her stay at home, even to her mother, until her statement was recorded. The material allegations that the accused demanded money and threatened if not paid are by way of omission. The prosecution has a case that after leaving P.W.2 Bharti to her home, the deceased committed suicide after about three days. One of the significant facts is that the report was lodged after the cremation, and it was done at the place of the accused. She has given the candid admission that till the filing of the complaint, she never disclosed to anybody that the accused was demanding money to purchase the motorcycle and plaster his home. Though Bharti believed that there was a beating to the deceased, her evidence is not specific that she was beaten for not fulfilling the unlawful demand for money. On the contrary, her evidence reveals that it was the quarrel on trivial grounds. This situation is sufficient to infer that the deceased had no cruelty to infer that there was a nexus between harassment/ cruelty and abetment to commit suicide. The conduct of the

accused taking the deceased to attend the marriage of her relative and sister to his home and her happy stay there for 12 days, and not noticing that the deceased was harassed or treated cruelly for the demand of dowry raises doubt about the abetment to commit suicide. The prosecution evidence appears insufficient to believe that the nature of cruelty was of such a nature as was likely to drive the deceased to commit suicide or to cause grave injury or danger to the limb, life or health of the deceased.

25. Considering the Law on the abetment to commit suicide and presumption under 113-A of the Indian Evidence Act, the Court believes that the accused never abetted the deceased to commit suicide, and he never had any intention that the deceased should commit suicide and the cruelty proved against him was not of such a nature as was likely to drive the deceased to commit suicide. Hence, the findings recorded by both Courts that the prosecution has established that the accused abetted the deceased to commit suicide warrants interference.

26. The Court affirms the conviction of the accused for the offence punishable under Section 498-A of the Indian Penal

Court. The trial Court sentenced the accused to suffer rigorous imprisonment for three years. It was the maximum corporal sentence provided for the said offence.

27. Normally, the Judges consider many aspects of the case like severity, guilt, the nature of the crime, liability of the accused, the motive of the crime, and the social effect of the crime for determining the quantum of the sentence. The mitigating circumstances are also the consideration for the quantum of the sentence. In *Alister Anthony Pereira Vs. State of Maharashtra (Criminal Appeal Nos. 1318-1320, decided on 12th January 2012)*, the Hon'ble Supreme Court held that sentencing is an important task in the matters of crime. One of the prime objectives of the Criminal Law is the imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straight-jacket formula for sentencing an accused on proof of crime. The Courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case, and the Court must keep in

mind the gravity of the crime, motive for the crime, nature of the offence and all other attending circumstances."

28. In India, we adopt the reformatory theory of punishment. The sentence has to be just and fair not only to the accused but also to the victim.

29. The learned trial Judge heard the accused on the point of sentence. However, the lenient view sought on the ground that the accused was the eldest son of his parents and he was illiterate was rejected by assigning the reasons that such offences are rampant and on the rise these days. A deterrent sentence has to be awarded so the others are deterred. A soft view in the matter of such offence would provide impetus to person to commit such anti-social offences. Perhaps, the learned trial Judge might have recorded the above reasons as the accused was held guilty of the offence under Section 498-A and Section 306 of the Indian Penal Code. However, this Court held that the cruelty to the victim was not of such a nature as was likely to drive the deceased to commit suicide. The evidence reveals that most of the times demands were made to the mother of the victim/deceased. However, the conduct of the accused was that he never denied the deceased to meet her

mother and sister. Not only this, he also took the sister of the deceased at the request of her mother to his house, and she stayed there for twelve days. There was no cogent evidence that the accused ever beat the deceased for illegal demand of dowry. At the time of the incident, the accused was 29. Now, twenty years on, he must be fifty. He was a mason at the time of the incident. Considering these circumstances, the Court is of the view that the sentence imposed upon the accused for the offence punishable under Section 498-A of the Indian Penal Code is not just and fair. Hence, it requires reduction. The accused had undergone a pre-trial sentence of around five months and some days from time to time. Hence, the Court considers it appropriate to reduce the sentence to the period he has already undergone. Hence, the following order:

ORDER

- (i) The Criminal Revision Application is partly allowed.
- (ii) The impugned judgments and orders of the conviction of the learned 4th Adhoc Assistant Sessions Judge, Ahmednagar, passed in Sessions Case No.106 of 2002, dated 21.09.2002 and in Criminal Appeal No.42 of 2002 of the Additional Sessions Judge, Ahmednagar, dated 08.10.2004

stand set aside partly to the extent of convicting the accused for the offence punishable under Section 306 of the I.P.C.

- (iii) The accused, Babasaheb Janku Hinge, is acquitted of the offence punishable under Section 306 of the I.P.C.
- (iv) The conviction for the offence punishable under Section 498-A of the I.P.C. is maintained. However, the sentence imposed upon the accused is reduced to the period he has undergone from time to time.
- (v) The fine amount deposited by the accused be forfeited to the State Government.
- (vi) Bail bonds and surety bonds stand cancelled.
- (vii) Record and proceedings be returned to the Trial Court.

(S. G. MEHARE, J.)

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