

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

CRIMINAL APPEAL NO. 246 OF 2019

1. Ramesh Ashok Mashalkar
2. Kashibai Ashok Mashalkar
3. Ashok Narayan Mashalkar

..Appellants.

Versus

The State of Maharashtra

..Respondent

Mr. Viresh V. Purwant a/w. Rushikesh Kale, for Appellants.
Smt. M. R. Tidke, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18 JANUARY 2023**

JUDGMENT :

1. The Appellants have challenged the Judgment and order dated 14/01/2019, passed by learned Additional Sessions Judge, Solapur, in Sessions Case No.205 of 2017. The Appellant Nos.1 to 3 were the original accused Nos. 1 to 3 before the Trial court. The Appellants were convicted and sentenced as follows:

- i) The Appellants were convicted for commission of offence punishable U/s.498-A of the I.P.C. and

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were sentenced to suffer R.I. for 3 years and to pay a fine of Rs.1000/- and in default of payment of fine to undergo further R.I. for 15 days.

- ii) The Appellants were convicted for commission of offence punishable U/s.306 of the I.P.C. and were sentenced to suffer R.I. for 7 years and to pay a fine of Rs.3000/- and in default of payment of fine to undergo further R.I. for one month.
- iii) The Appellants were convicted for commission of offence punishable U/s.323 of the I.P.C. and were sentenced to suffer S.I. for six months and to pay a fine of Rs.1000/- and in default of payment of fine to undergo further S.I. for 15 days.
- iv) The Appellants were convicted for commission of offence punishable U/s.304-B of the I.P.C. and

were sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- and in default of payment of fine to undergo further R.I. for two months.

All the substantive sentences were directed to run concurrently. The Appellants were given set off U/s.428 of the Cr.p.c.

2. Heard Shri. Purwant, learned counsel for the Appellants and Smt. Tidke, learned APP for the State/Respondent.

3. The prosecution case is that, the deceased Anjali had got married with the Appellant No.1 on 01/05/2016. There are allegations that, there was a demand of a tempo and on non fulfillment of that demand, Anjali was harassed. In the month of July 2016, she was sent to her uncle's house. That time, she had complained of the harassment. Her uncles took her to her matrimonial house. After that, in January 2017, for the festival of *Sankranti* she came to her uncle's house. The Appellants did not take her back to her matrimonial house till April 2017, ultimately

her uncles took her to her matrimonial house in the month of April 2017. After that, on 02/05/2017 she committed suicide in her matrimonial house. The F.I.R. was lodged at Vijapur Naka police station vide C.R.No.252 of 2017. The Appellants were arrested. The investigation was carried out. The postmortem examination was conducted. The statements of the witnesses were recorded and at the conclusion of the investigation the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined 9 witnesses including two uncles of the deceased, two neighbours of the Appellants, the Medical Officer who conducted the postmortem examination and the Investigating officer. The defence of the Appellants was of total denial. On behalf of the Appellants, the defence witness namely Anand Jadhav was examined to show that he had taken down the dead body found in hanging condition. Learned Judge, after considering the evidence on record and after hearing the parties, recorded his conviction and sentence, as mentioned earlier.

5. The F.I.R. was lodged by Anjali's uncle Chandrakant Metkari. He was examined as PW-1. He has deposed as follows:

He had three brothers. Anjali was daughter of his brother Anil, who had died in the year 2000. Anjali was born after 40 days from Anil's death. Her mother Archana remarried. Anjali was looked after by PW-1. On 01/05/2016, she got married to the Appellant No.1. Anjali was born in the year 2000. The Appellants were residing in Vijapur Naka Zopadpatti No.2. One and half months prior to the marriage, there was a meeting. It was attended by PW-2 Vishwas Gaikwad, PW-3 Dattatray Ganmote, the Appellant No.1's uncle Rajendra Mashalkar, Rajendra's wife and son. The meeting was also attended by PW-1's brothers Nandkumar and Mahesh. PW-1 has further deposed that the Appellant Nos.1 to 3 demanded a tempo for the Appellant No.1. PW-1 and others assured that they would buy a tempo after the marriage. The marriage took place and Anjali went to reside with the Appellants. She stayed in the matrimonial house for about two months. On 12/07/2016, in the night, Anjali was sent back to PW-1's house. It was alleged that, she was beaten before that. On

enquiry, she told that she was sent back on the demand of tempo. PW-1 and other family members kept her with them for about two days. The Appellants did not approach them to take her back. Therefore, PW-1, his brothers and the aforementioned two neighbours went to the house of the Appellants. PW-1 and others told the Appellants that they would buy a tempo after a child is born to Anjali. They requested the Appellants not to cause physical and mental harassment to Anjali. According to PW-1, even thereafter the Appellants were causing mental and physical harassment to Anjali on demand of tempo. This was happening frequently and there used to be meetings between them.

In January 2017, PW-1 and others brought Anjali back to their house for the festival of *Sankranti*. For about two months, PW-1 kept her in their house. They had sent a message to the Appellant No.1, but he had told them that unless he was given a tempo, Anjali should not be sent back to her matrimonial house. According to PW-1, since the Appellant No.1 was in their relation, they did not make any complaint. This harassment went on for about 5 to 6 months. Finally, on 07/04/2017, PW-1 and others

again took Anjali to the Appellants' house. On 02/05/2017, at about 6.30p.m. PW-1 was telephonically told by his wife that Anjali had committed suicide by hanging herself in her matrimonial house. PW-1 went to the Appellants' house. PW-1's wife Jayashree and brother Mahesh were present there. Mahesh told PW-1 that he climbed the wall of the house, went inside and pushed the door of the room. He saw that Anjali was hanging from the ceiling. She had hanged herself with her *saree*. There were injuries on her person. PW-1 then took Anjali in his rickshaw to the Civil Hospital, Solapur. A doctor examined her and declared her dead. On 03/05/2017, PW-1 gave his F.I.R. It is produced on record at Exhibit 40.

In the cross-examination, he deposed that, there was no document executed at the time of the meeting before the marriage regarding exchange of gifts. Most of the cross-examination was in the nature of suggestions; which he had denied. However, one important omission from his F.I.R. was put to him. He was asked, why he had not mentioned in the F.I.R. that, in the meeting the Appellant Nos.1 to 3 had demanded a tempo and

that PW-1 and others had assured that they would buy a tempo after the marriage. PW-1 could not assign any reason as to why it was not mentioned in that complaint.

6. PW-4 Mahesh Metkari was another uncle of the victim. He has deposed the background as was deposed by PW-1. He has stated that, the appellants were residing in the same locality. One month prior to the marriage, there was a meeting which was attended by the victim's uncles and neighbours PW-2 and PW-3. All the Appellants were present in the meeting. In the meeting, it was agreed that the Appellants would be given one and half tola gold and that PW-1 and 4 would bear marriage expenditure. He has further deposed that, Appellant No.3 Ashok said that since the Appellant No.1 was a tempo driver, they should buy a tempo for him. PW-4 and others assured that they would buy a tempo within two months. After the marriage, Anjali started residing with the Appellants. According to PW-4, she was illtreated for the demand of tempo. The Appellants used to quarrel with Anjali and used to beat her.

7. On 12/07/2016, in the midnight, Anjali was beaten and driven out of the house. She came to her uncles' house and informed them that the Appellants had told her not to come back without a tempo. After two days, PW-1 to PW-4 went to the Appellants' house and assured them that they would buy a tempo in few days. According to him, this incident occurred 5 to 6 times and every time they called a meeting and had taken Anajli back to stay with the Appellants.

8. On 01/05/2017, the Appellant No.2 came to his grocery shop and told him that Anjali was not opening the door. PW-4 then went to the Appellants' house. There was a gate and the door of the gate was latched from inside. PW-4 then climbed the wall and went inside. Anjali's room was not locked. He pushed the door and opened it. He saw that Anjali was hanging from the ceiling. He took her down with the help of PW-1's wife Jayashree. He saw there were injuries on Anjali's person. She was taken to the Civil Hospital, Solapur, but she was declared dead. This witness's statement was recorded on 14/05/2017. The police did not make any inquiry with him between 02/05/2017 to 13/05/2017. His

statement was also recorded by the Magistrate under section 164 of the Cr.p.c. It is produced on record at Exhibit 46.

In the cross-examination, he denied that, before marriage, Anjali was residing with her mother Archana at Pandharpur. His cross-examination consists of only suggestions; which he had denied.

9. PW-2 Vishwas Gaikwad was the Appellants' neighbour. He knew PW-1, his family, as well as, the appellants. He had attended Anjali's marriage with the appellant No.1 on 01/05/2016. He has deposed that, he had attended the meeting held two months before the marriage, wherein, it was agreed that the expenditure for the marriage would be borne by Anjali's uncles. The Appellants had demanded gold and a tempo for the Appellant No.1 and Anjali's uncle had agreed to give that after her marriage. According to him, the appellants did not treat her well for the demand of tempo. They were illtreating her and drove her out of the house. She was driven out of the house on two to three occasions. There was a meeting in the house of Appellants which

he had attended. The Appellant No.1 was working as a driver on PW-2's tempo, previously. He asked the appellant No.1 to look after Anjali properly and drive PW-2's tempo till PW-1 could buy a tempo for him. However, there was no change in the behaviour of the appellants. According to him, the Appellants were illtreating Anjali by saying that, she did not know cooking and that she did not get up early.

In the cross-examination, he stated that, he did not know whether there was a document executed for giving a tempo and gold. There were 20 to 25 persons in the meeting. There was a police chowky near the vicinity. He never felt like lodging a complaint for illtreatment given to Anjali by the appellants.

10. PW-3 Dattatray Ganmote was another neighbour. He knew PW-1, the deceased Anjali and the appellants. There was a common wall between his house and the house of the appellants. He has deposed that, in the meeting before the marriage, it was agreed that Anjali's family would give one and half tola gold, utensils and a tempo after the marriage. He has stated that the

Appellants were illtreating and beating Anjali. They were demanding gold and a tempo. They used to send Anjali to PW-1's house. There were meetings on two to three occasions. In spite of that, there was no change in the behaviour of the appellants. On five occasions he had attended those meetings. He has deposed that, he had personally seen that the appellants were beating Anjali.

In the cross-examination, he deposed that, he never felt like lodging complaint in respect of illtreatment given to Anjali by the appellants. He denied other suggestions. He admitted that, he had not stated before the police that he had seen the appellants beating Anjali. This is an important omission.

11. PW-5 Dr. Kunal Shirsat, who was attached to Civil Hospital, Solapur had conducted the postmortem examination on Anjali's dead body on 03/05/2017. He had found 14 injuries on the dead body. The postmortem report was admitted by the defence. It is produced on record at Exhibit 33. PW-5 has stated that the injury Nos.9 to 14 were postmortem injuries and were

caused by ant bites. The injury Nos.1 to 8 were antemortem injuries. The injury No.1 was of course a ligature mark and abrasion caused because of the hanging. The injury Nos.2 to 8 were in the nature of contusions and abrasions. Out of them, the injury Nos. 2 to 7 were caused within 5 to 7 days before the death and injury No.8 which was the abrasion on the right cheek was caused within 24 hours. According to him, the death was caused due to hanging.

In the cross-examination, he deposed that, injury Nos.2, 3 and 4 could be caused because of fall from the motorcycle while travelling, but injury Nos.5 to 7 were not so possible. The cause of death was 'death due to hanging'. The cause of death certificate is produced on record at Exhibit 56. The C.A. reports did not throw much light beyond the evidence of PW-5.

12. PW-6 Rajendra Ushire, A.P.I. had recorded the F.I.R. at about 10:30p.m. on 03/05/2017 when PW-1 had approached him for giving his F.I.R. PW-6 then forwarded the F.I.R. to P.S.O. Initially, the investigation was handed over to P.S.I. Chavan. PW-6

was given the investigation on 05/06/2017. He had prepared a rough map of the spot of incident. He had sent the *saree* for chemical analysis. He had sought opinion of the doctor regarding the injuries found on the dead body.

13. PW-7 Kisan Rathod, P.S.I. had registered the offence vide C.R.No.252 of 2017. He was P.S.O. of Vijapur Naka police station. He handed over the investigation to P.S.I. Chavan. The offence was registered at 1.39a.m. on 04/05/2017.

14. PW-8 P.H.C. Savita Kale was the P.S.O. of Vijapur Naka police station on 02/05/2017. She was informed about Anjali's death. She had registered A.D. report on the basis of that information.

15. PW-9 Dnyaneshwar Chavan, P.S.I. was the first investigating officer. He had arrested the accused. He had recorded the statements of six witnesses. He forwarded the witnesses to the Magistrate on 08/05/2017 for recording their statements U/s.164 of the Cr.p.c.

This, in short, is the evidence of the prosecution

witnesses.

16. In the statement U/s.313 of the Cr.p.c., the Appellant No.1 stated that, he had not made any demand of tempo. He did not even have driving licence. The Appellants examined Anand Jadhav as a defence witness. He deposed that, on 02/05/2017, at about 7.00p.m., he was near the house of the Appellants. One boy named Fardin told him about Anjali's suicide. This witness then entered the house by breaking the door. He brought the dead body on the ground and then he went away.

In the cross-examination, he stated that he had discussed with the appellants as to how the evidence was to be given before the Court. He had not gone to the police for giving his statement and whatever he was deposing was disclosed by him for the first time. He had not told about it to anybody else before.

Learned Trial Judge believed the evidence of the prosecution witnesses and convicted and sentenced the appellants, as mentioned earlier.

17. Learned counsel for the Appellants submitted that the

prosecution has failed to prove its case beyond reasonable doubt. The evidence of the prosecution witnesses is not consistent. A question was raised that PW-1 and PW-4 had not looked after Anjali. There is no independent corroboration to show that PW-1 and PW-4 had looked after Anjali for her upbringing. He submitted that the evidence regarding the meeting and the demand made in the meeting is inconsistent. There are important omissions from the police statements and the statements recorded U/s.164 of the Cr.p.c. of the prosecution witnesses; which amount to contradictions in their deposition before the trial Court. He submitted that the allegations are vague and general in nature. No specific instances are mentioned. No specific role is attributed to any of the appellants separately. He submitted that the deceased Anjali was hardly 16 year old when she was married to the Appellant No.1 and within a year thereafter she committed suicide. The suicide was a result of her tender age. It has nothing to do with the alleged harassment caused by the appellants. He submitted that, since the prosecution evidence itself was lacking, the presumptions under the Indian Evidence Act do not operate

against the appellants. The injuries on the dead body were at least 4 to 5 days old and they cannot be attributed directly to any of the appellants. He submitted that, there cannot be any dispute regarding the cause of death. There is nothing to show that the appellants had harassed the victim on demand of dowry before her death and, therefore, the offence U/s.304-B of the I.P.C. is not proved. There is nothing to suggest that, any of the appellants had abetted commission of suicide as per requirement of Section 107 r/w. 306 of the I.P.C.

18. Shri. Purwant relied on the Judgment of the Hon'ble Supreme Court in the case of *Nimay Sah Versus State of Jharkhand*¹. He contended that, since the allegations were vague and general in nature, based on the ratio of this Judgment, the appellants deserve benefit of doubt.

19. Learned APP opposed these submissions. According to her, the evidence of all the four prosecution witnesses was consistent. All of them have consistently deposed that there was demand of a tempo and on that count the deceased was

1 (2020) 17 Supreme Court Cases 86

continuously harassed. This had occurred on many occasions. She submitted that the victim had died within one year of marriage and, therefore, presumption U/s.113-A and 113-B of the Indian Evidence Act will apply. She further submitted that, there were injuries on the person of Anjali and only the Appellants could have explained those injuries. The burden was on them U/s.106 of the Indian Evidence Act. She, therefore, supported the impugned Judgment and order.

20. I have considered these submissions. PW-1 is the main witness. This prosecution witness has given the background of the marriage and has deposed about the meeting. In the examination in chief he has stated that the Appellant Nos.1 to 3 demanded a tempo, but in the cross-examination he was confronted with the fact that, in his F.I.R., he had not referred to any demand for a tempo made in the meeting. The F.I.R. mentions that the Appellant No.1 was demanding a tempo and he was asking for tempo after the marriage took place. Therefore, the prosecution has not established beyond reasonable doubt that a tempo was demanded in the meeting held prior to the marriage; at least through the

evidence of this witness.

21. The other witness with reference to that meeting is PW-4. He is real brother of PW-1 and uncle of the victim. He has stated that, in the meeting, it was decided that Anjali's family would give one and half tola gold and bear marriage expenditure. He has also deposed that the appellant No.3 said that the Appellant No.1 was a tempo driver and therefore, they should buy a tempo for him. Here again the demand involved is attributed to the Appellant No.3, in the meeting. Significantly, this witness's statement is recorded belatedly on 14/05/2017. There is no explanation as to why his statement was not recorded immediately on registration of F.I.R. dated 03/05/2017. Therefore, this delay has weakened the evidentiary value of this witness. In this background, the evidence of PW-1 is important. PW-1 has referred to that demand of tempo when Anjali was sent to his house on 12/07/2016. At that time, Anjali had told this witness PW-1 that she was driven out of the house for demand of tempo. Again there was no specific reference to any of the Appellants. It was a general statement. When PW-1 and others went back to the appellants' house, they promised to

buy a tempo after a child was born to Anjali. At that time also there was no specific allegation that any of the appellants had demanded tempo.

22. The next reference to that demand for tempo is when Anjali had come to PW-1's house for *sankranti* festival. She stayed there for two months. She was not taken back to her matrimonial house. At that point, according to PW-1, the Appellant No.1 had told him that Anjali would not be taken back unless a tempo was given to him. This is for the first time, a specific reference to a specific accused/appellant was made by this witness. There is no reason to doubt this part of evidence of PW-1. Therefore, through his evidence at least, the prosecution has successfully proved that the Appellant No.1 had demanded a tempo from PW-1 and Anjali's other family members.

23. PW-2 Vishwas Gaikwad has also referred to the meeting. The prosecution case is restricted to harassment on the ground of non fulfillment of demand for tempo. He has deposed that the Appellants did not treat Anjali well on the ground of demand for

tempo and that they were illtreating her and had driven her out of the house. He has not deposed that, he had personal knowledge about these facts or that Anjali had told him about these facts. Therefore, his evidence to that extent remains hearsay evidence and is, therefore, not admissible. Since he had attended the meetings, only that part of his evidence is admissible. He has further deposed that, he had told the Appellant No.1 to properly look after Anjali and drive PW-2's own tempo till PW-1 could buy a tempo for him. Here again PW-2 has made a specific reference to the Appellant No.1 alone.

24. PW-3 was the next door neighbour of the appellants. He has deposed that, he had personally seen that the Appellants were beating Anjali. But in the cross-examination he admitted that he had not stated before the police that he had seen the appellants beating Anjali. Thus, this is an important improvement made by him. Even otherwise, his conduct does not appear to be natural. He had not informed Anjali's uncles about such illtreatment. Neither PW-1 nor PW-4 has stated that this witness PW-3 Dattatray had told them that Anjali was illtreated by the Appellants. Thus,

analysis of depositions of these witnesses shows that the prosecution has been able to prove the demand and ill treatment only at the hands of Appellant No.1. The allegations against other two appellants are vague, general and inconsistent. To that extent, reliance of Shri. Purwant on the case of *Nimay Sah* (supra) is correct. Therefore, I am inclined to give benefit of doubt to the Appellant Nos.2 and 3.

25. As far as the injuries to the deceased are concerned, as rightly submitted by learned APP, burden was on the appellants to explain the injuries. As mentioned earlier, the prosecution evidence is satisfactory only against the Appellant No.1. Therefore, based on the evidence of the prosecution the burden was specifically on the Appellant No.1 to explain how those injuries were caused. He has not discharged that burden.

26. There is no dispute about the fact that the deceased Anjali had committed suicide. The medical opinion mentions that it was a case of death due to hanging. PW-4's evidence shows that, outer gate was latched from inside; which supports the theory of

suicide. In these circumstances, ingredients of Section 304-B of the I.P.C. are attracted. Since I have reached the conclusion that the prosecution has been able to prove the case only against the Appellant No.1, the offence U/s.304-B of the I.P.C. also stands proved only against the Appellant No.1. The other two appellants deserve benefit of doubt. The conviction and sentence recorded against the Appellant Nos.2 and 3 is required to be set aside.

27. As far as the sentencing part is concerned, the Appellant No.1 is sentenced to suffer R.I. for 10 years U/s.304-B of the I.P.C. Shri. Purwant submitted that, at the time of incident, the Appellant No.1 was hardly 22 years of age. He was in need of tempo which possibly drove him in making that demand and, therefore, his poor financial condition may be taken into consideration for reducing the sentence from 10 years R.I. to a lesser sentence. He submitted that the minimum sentence provided for commission of offence punishable U/s.304-B of the I.P.C. is 7 years and sentence for that period would meet the ends of justice. Learned APP left the issue of sentencing to the discretion of the Court.

28. I have considered these submissions. There is substance in the submission of Shri. Purwant for reducing the sentence imposed against the Appellant No.1. He is sentenced to suffer R.I. for 7 years for commission of offence punishable U/s.306 of the I.P.C.; the same sentence can be imposed on him for commission of offence punishable U/s.304-B of the I.P.C.

29. Hence, the following order:

ORDER

- i) The Appeal is partly allowed.
- ii) The Appellant No.2 Kashibai Ashok Mashalkar and the Appellant No.3 Ashok Narayan Mashalkar are acquitted of all the charges.
- iii) The Appellant Nos.2 and 3 shall execute their bail bonds to the satisfaction of the trial Court as per the provision of Section 437-A of the Cr.p.c.
- iv) The conviction and sentence recorded by the Trial Court against the Appellant No.1 Ramesh Ashok Mashalkar for commission of offence

punishable under section 498-A of the I.P.C. are maintained.

- v) The conviction and sentence recorded by the Trial Court against the Appellant No.1 Ramesh Ashok Mashalkar for commission of offence punishable under section 306 of the I.P.C. are maintained.
- vi) The conviction and sentence recorded by the Trial Court against the Appellant No.1 Ramesh Ashok Mashalkar for commission of offence punishable under section 323 of the I.P.C. are maintained.
- vii) The conviction recorded by the Trial Court against the Appellant No.1 Ramesh Ashok Mashalkar for commission of offence punishable under section 304-B of the I.P.C. is maintained. However, instead of R.I. for 10 years, the Appellant No.1 is sentenced to suffer R.I. for 7 years and to pay a fine of Rs.5000/- and in

default of payment of fine to suffer further R.I.
for two months.

- viii) All the substantive sentences imposed on the Appellant No.1 are directed to run concurrently.
- ix) The Appellant No.1 is granted set off U/s.428 of the Cr. P. C.
- x) The Appeal is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)