



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

CRIMINAL APPEAL NO. 300 OF 2004

- 1) Gopal S/o Sopan Jature
Age: - 30 years, Occu. : Agri.,
R/o. Andhori, Tq.Ahmedpur,
Dist. Latur.
 - 2) Sopan S/o Pandurang Jature
Age: 66 years, Occu.: Agri.,
R/o. As above.
 - 3) Sou. Kashibai W/o. Sopan Jature
Age: 51 years, Occu.: Household,
R/o. As above.
-Appellants
(Orig. Accused)

Versus

- . The State of MaharashtraRespondent

.....
WITH

CRIMINAL SUO-MOTU REVISION APPLICATION NO. 1 OF 2004

The Registrar, High Court Bombay,
Bench at Aurangabasd.Applicant

Versus

1. Gopal s/o Sopan Jature and Others.Respondents

....
WITH

CRIMINAL APPEAL NO. 439 OF 2004

- . The State of Maharashtra
(through P.S., Kingaon)Appellant

Versus

- 1) Gopal Sopan Jature
Age: - 27 years, Occu. : Agri.,
R/o. Andhori, Tq.Ahmedpur, Dist. Latur.
- 2) Sopan Pandurang Jature

Age: 60 years, Occu.: Agri.,
R/o. As above.

- 3) Sou. Kashibai Sopan Jature
Age: 47 years, Occu.: Household,
R/o. As above.

.....Respondents
(Orig. Accused)

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Advocate for Appellants - Accused : Mr. A.N.Irpatgire
APP for Respondent - State : Mr.N.B.Patil

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 SEPTEMBER, 2024

PRONOUNCED ON : 20 SEPTEMBER, 2024

JUDGMENT :-

1. In Criminal Appeal No.300 of 2004 exception has been taken to the judgment and order of conviction rendered by the Additional Sessions Judge, Udgir Camp at Ahmedpur dated 23-04-2004 in Sessions Case No.180 of 2001 recording guilt of appellants for the offence under Section 498-A read with 34 and 306 read with 34 of the Indian Penal Code (IPC).

FACTS LEADING TO THE TRIAL

2. PW4 Vishwanath, father of deceased Sangita lodged report at Kingaon Police Station, Dist.Latur, alleging that Sangita was married to appellant no.1 on 27-04-1999. Initially, for a period of one and a

half year Sangita was treated well, but thereafter accused persons put up demand of Rs.25,000/- for securing employment of appellant no.1 husband and on such count, appellant no.1 and his parents subjected Sangita to cruelty. She was taunted, abused and kept starved. Such treatment was duly reported by Sangita to her sister and parents. In spite of giving understanding to accused, demand, ill-treatment and torture continued. Finally, getting fed up of the same, Sangita committed suicide by jumping in the well on 12-09-2001. After funeral and last rituals, PW4 Vishwanath lodged report with Kingaon Police Station, who registered Crime bearing no.38 of 2001 for offence punishable under Sections 498-A and 306 read with 34 of the IPC.

PW7 Vaijinath Dattatraya Mule (PSI) and PW8 Diwakar Prabhakar Rao Pedgaonkar (PI) carried out investigation respectively and after gathering sufficient evidence, accused came to be chargesheeted, tried and held guilty for the offence as stated above. Said judgment is now questioned by filing Criminal Appeal No.300 of 2004.

Criminal Suo-Motu Revision Application No.1 of 2004 and Criminal Appeal No.439 of 2004 are filed for enhancement of the sentence.

SUBMISSIONS

On behalf of appellants - Accused :

3. Taking this Court through the evidence and challenging the impugned judgment, learned Counsel for the appellants pointed out that prosecution has miserably failed to establish the charges beyond reasonable doubt. Taking this Court through the evidence of and PW2 Lata, sister of deceased and PW3 Vimal, mother of deceased, learned Counsel submitted that general, vague and omnibus allegations are levelled. That neither exact nature of ill-treatment nor when such instances took place is spelt out by PW2 Lata and PW3 Vimal. He also took this Court through the answers given by them in cross-examination and would submit that both these ladies are not only inconsistent, rather their testimonies are full of material omissions and contradictions. He would strenuously submit that very father / informant PW4 Vishwanath has not supported prosecution and even independent witnesses do not support prosecution, therefore, according to him, case of prosecution rendered very weak. He pointed out that there is no evidence to show that there was cruelty as is contemplated in law. As regards offence under Section 306 is concerned, learned Counsel submitted that there is nothing to suggest that appellants abetted the suicide. He pointed out that on

the contrary, the circumstances at the well categorically show that deceased had been to the well to answer call of nature as her footwear as well as a plastic container used for carrying water to answer call of nature, were seized from the spot i.e. well. That PW2 Lata, sister and PW3 Vimal, mother candidly admitted that the surroundings of the well were used by lady folks of the villages to go to answer call of nature and therefore, there is every possibility of Sangita accidentally falling in well. That PW2 Lata, sister and PW3 Vimal, mother admits that Sangita did not knew swimming. Therefore, it is clear case of accidental fall and drowning. Resultantly, he submits that allegations of abetment to commit suicide are false, afterthought and has no foundation or support. According to him, inspite of it, learned trial Court has accepted prosecution version and has committed error in recording guilt of accused and hence, he prays to allow the appeal.

On behalf of State :

4. In answer to above, learned APP would submit that PW2 Lata, sister and PW3 Vimal mother of deceased are consistent that after one and a half year of marriage, there was ill-treatment on account of demand of Rs.25,000/- for service of appellant no.1 husband. That

there was expressed their annoyance for not receiving good amount of dowry. That both witnesses are consistent to that extent. That there was continuous harassment, torture by way of taunting, keeping her starved and hurling abuses. That PW2 Lata, sister and PW3 Vimal, mother are lending support to each other. Learned APP took this Court through the scene of occurrence panchanama and pointed out that it is clearly emerging from the same that there was electric motor for siphoning the water and therefore, there is no question of deceased Sangita going to fetch water. Thus, according to him, it is clear case of suicide. That after registration of AD and investigation, involvement of accused was revealed and therefore, they were chargesheeted. That learned trial Court has correctly appreciated the evidence and found all ingredients available regarding commission of offence under Sections 498-A and 306 read with 34 of the IPC. Therefore, he prays to confirm the impugned judgment and dismiss the appeal.

PROSECUTION WITNESSES IN TRIAL COURT

5. In support of its case, prosecution has adduced evidence of in all eight witnesses. Their status and role is as under :

PW1 Dnyanoba Santaram Shingade is pancha to inquest panchanama exh.42 and spot panchanama exh.43.

PW2 Lata d/o Vishwanath Shingade is sister of deceased Sangita. Her evidence is at exh.44.

PW3 Vimal Vishwanath Shingade is mother of deceased. Her evidence is at exh.46.

PW4 Vishwanath Dattarao Shingade is father of deceased. His evidence is at exh.47.

PW5 Mahadeo Bapurao Hake is acquaintance of informant.

PW6 Parmeshwar Vishwanath Shingade is brother of deceased.

PW7 Vaijinath Dattatraya Mule (PSI) is the Investigating Officer.

PW8 Diwakar Prabhakarrao Pedgaonkar (PI) is another Police Officer who arrested accused and filed chargesheet against them.

ANALYSIS

6. Here PW3 Vimal and PW4 Vishwanath i.e. parents of deceased Sangita and PW2 Lata, sister of deceased Sangita are examined and their evidence is of significance.

PW2 Lata, sister of deceased Sangita stated that her sister was

married to appellant no.1 Gopal two years prior to incident. That for one and a half year, she was maintained nicely and she even gave birth to a male child but thereafter, marriage of brother of Gopal by name Krishna was performed in which more dowry was received and therefore, accused persons started saying that they have received less dowry and directed Sangita to bring Rs.25,000/- for arranging service to appellant no.1. According to Lata, accused persons used to keep her sister starved and they used to hurl abuses. She pointed out that whenever she came for festivals at maternal home, at that time, she informed about above ill-treatment meted out to her. She further stated that 2-3 persons gave understanding to accused, but there was no improvement. That her sister jumped in the well due to beating and torture by accused persons.

There is extensive **cross-examination** but only relevant cross-examination is dealt and the same is as under :

In paragraph 7, she answered that at the time of marriage, no amount was paid to appellants. According to her, witness PW4 Vishwanath, father of deceased borrowed some amount from Balbhim Aradwad. She admitted that there were no talk at all to pay amount or any dowry after the marriage ceremony. She admitted that marriage of brother of appellant i.e. Krishna was performed at

Latur on 16-04-2000 and they all attended the marriage. She admitted that after eight days of marriage of Krishna, her sister Sangita had come for delivery and after delivery, she stayed in the maternal house for further two months. She also admitted that birthday ceremony of Aniket was performed on 12-06-2001. Then she answered that her parents, brother, uncle all attended said function at the house of accused.

In paragraph 11, she is unable to give day, date, month on which alleged understanding was given to the accused. She admitted that her sister Sangita did not knew swimming and there was no latrine facility in the house, rather ladies of the village went towards well of Shivram Gurume for answering call of nature. She admitted that her statement was recorded by Police on 13-09-2001 and further admitted that at the well, footwear and one plastic container was found. She further admitted that appellant no.1 husband performed last rituals.

In paragraph 12, she admitted that on the day of incident, accused no.1 Gopal had been to village Wanjarwadi and one Raju Kalyani and Govind Jature went to gave message about incident. She also admitted that two days prior to the incident, her father Vishwanath and accused no.2 Sopan both together went to settle

agricultural dispute at Wanjarwadi. Rest is all denial.

7. **PW3** Vimal, mother of deceased deposed that after marriage, her daughter Sangita was maintained nicely for a period of one and a half year. After marriage of Krishna, accused started taunting her daughter saying that her father has given nothing in comparison of father-in-law of Krishna. According to her, all accused started harassing Sangita for demand of Rs.25,000/- to secure service of the accused and they used taunting language. That her husband had taken four persons with him to give understanding to the accused and to request not to torture Sangita. She gave their names as Ankush Chame, Madhav Hake, Ram Muchewad. She further deposed that accused continued to torture her daughter and they used to keep her starved. Thereafter, message was sent by accused about demise of her daughter in the well. According to her, Sangita jumped in the well for the reasons of unbearable torture given by accused, keeping her starved and demanding money.

While under **cross-examination**, she admitted that Sangita did not knew swimming. She admitted that marriage of brother of accused no.1 Gopal was performed at Latur on 16-04-2000 and all attended said marriage. In paragraph 9, she admitted that marriage

ceremony of her daughter Sangita was performed nicely and happily. She is unable to state day and date of giving torture. She admitted that she has not personally seen certificate of project affected person in favour of accused Gopal. She stated that her daughter came to maternal house during Nagpanchami festival and thereafter, she did not come. She also admitted that after marriage of Krishna, Sangita came for delivery and stayed in the house for two months after delivery. She further admitted in paragraph 11 that since prior to 8-9 days of demise of Sangita, accused no.1 Gopal had been to village Wanjarwadi. That even 2 days prior to incident, her husband Vishwanath and accused no.2 Sopan had been to Wanjarwadi for settling land dispute and they had halted there and returned on the next day. In paragraph 13, she admitted that Sangita never informed about torture and whatever information she has, it was hearsay knowledge. She surprisingly answered in paragraph 13 that there is possibility of fall of Sangita in the well while washing hands and legs.

8. **PW4** Vishwanath, father and informant in paragraph 2, after stating about marriage of his daughter, he stated that his daughter Sangita died due to fall in the well. He stated that he does not know how she fall in the well. He denied that accused made demand of

Rs.25,000/- for getting any appointment to accused no.1 and even denied that there was any torture. Finding him not supporting, he was declared hostile and was cross-examined by learned APP wherein he denied contents in report.

9. **PW5** Mahadeo, acquaintance of informant and **PW6** Parmeshwar, brother of deceased also were subjected to cross-examination by learned APP as both of them did not support prosecution.

10. **PW7** Mule (PSI) and **PW9** Pedgaonkar (PI) are Investigating Officers.

ANALYSIS

11. Here though **PW2** Lata, sister and **PW3** Vimal, mother of deceased speak about deceased Sangita being treated properly for a period of one and a half year and thereafter, there was demand of Rs.25,000/- and in such background there was cruelty, they both merely speak that there used to be abuses, taunting for not bringing dowry. However, PW2 Lata, sister has admitted that previously it was not settled that any dowry or amount to be given. Her version is that after marriage of brother of appellant only because some dowry was

given by in-laws of his brother Krishna, accused started taunting for not bringing dowry. Which of the accused taunted and in what manner is not clear.

Allegations are that Rs.25,000/- were demanded for service of appellant, but witness has admitted that they were agriculturist. She has also admitted that she has not seen certificate of project affected person in favour of appellant no.1 so as to accept the version that Rs.25,000/- were demanded for employment of accused.

The answers given in paragraph 12 of cross-examination that at the time of incident, appellant no.1 husband and appellant no.2 father-in-law were not in village and they both were required to be pass message clearly shows that, accused no.1 was not present at the time of incident.

12. Similarly, even though **PW3** Vimal, mother of deceased also stated about proper treatment for one and a half year and thereafter, alleged ill-treatment, she too is also levelling allegations of taunting and abuses. But even she has not given instances as to when such ill-treatment was meted out. No specific role played by the accused are deposed by her in her evidence. Even paragraph 13 of her cross-examination inflicts severe blow to prosecution case, when she

admitted that, she had some hearsay information and that she has no personal knowledge about torture.

Both PW2 Lata and PW3 Vimal clearly admitted that they have not seen certificate of project affected person in favour of appellant no.1.

On the point of cruelty, except allegations of abuses and taunting, which are general and omnibus in nature, there are no further specific allegation of subjecting Sangita to any physical and mental cruelty. Apparently necessary ingredients for attracting offence under Section 498-A is patently missing.

As stated above, PW4 Vishwanath, father very informant and PW5 Mahadeo, one of his acquaintances PW6 Parmeshwar, brother of deceased have not supported prosecution and they have retracted from their version.

13. As regards allegation of suicide is concerned, witnesses are admitting that lady folks including deceased used to go near spot well for answering call of nature. Footwear of deceased Sangita alongwith a Plastic container meant for carrying water were also found to be lying at the spot. Taking into account that there is nothing in proximity to alleged jumping i.e. suggesting any abetment,

inducement, or any active role played by accused, even charge of Section 306 of the IPC also collapses. On the contrary, both witnesses i.e. PW Lata, sister and PW3 Vimal, mother are candidly admitting that appellant no.1 husband was at Wanjarwadi and as such he was not present in the house so as to indulge into act of abetment or inducement to commit suicide. Even appellant no.2 father-in-law was in company of informant himself and they too had been to different village. Therefore, taking such material into account, when there is no material suggesting any positive role or active role played by accused persons in abetting the suicide, even said charge fails.

14. Perused impugned judgment and in the considered opinion of this Court, there is improper appreciation of the evidence available on record. Therefore, such judgment cannot be allowed to be sustained.

15. As Criminal Appeal No.300 of 2004 deserves to be allowed, there is no question of considering prayers made in Criminal Appeal No.439 of 2004 and Criminal Suo-Motu Revision Application No.1 of 2004. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.300 of 2004 is allowed.
- II) The conviction awarded to appellant nos.(1) Gopal S/o Sopan Jature, (2) Sopan S/o Pandurang Jature and (3) Sou. Kashibai W/o Sopan Jature in Sessions Case No.180 of 2001 by the learned Additional Sessions Judge, Udgir, Camp at Ahmedpur on 23-04-2004 for the offence punishable under Sections 498-A read with 34 and 306 read with 34 of the Indian Penal Code, stands quashed and set aside.
- III) The appellants stand acquitted of the offence punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code.
- IV) **The bail bonds of appellants stand cancelled.**
- V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- VII) Criminal Appeal No.439 of 2004 is dismissed.
- VIII) Criminal Suo-Motu Revision Application No.1 of 2004 is dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE