



(1)

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

CRIMINAL APPEAL NO.218 OF 2006

1. Rajendra s/o Haribhau Kothule,
Age: 27 years, Occ: Agri.
2. Haribhau s/o Tukaram Kothule,
Age: 60 years, Occ: Agril.
3. Sarubai w/o Haribhau Kothule,
Age: 58 years, Occ: Household
4. Ashabai w/o Bapu Kale,
Age: 40 years, Occ: Household,

All R/o Khadki,
Tq. & Dist. Ahmednagar

....APPELLANTS

VERSUS

The State of Maharashtra

....RESPONDENT

.....

Mr Shahed Zaidi, Advocate h/f Mr Satej S. Jadhav, Advocate for
Appellants

Ms A. S. Mantri, APP for Respondent/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

**RESERVED ON : 11 NOVEMBER 2025
PRONOUNCED ON : 18 NOVEMBER 2025**

JUDGMENT :-

1. The appellants have approached this Court being aggrieved by the judgment and order dated 23/02/2006, passed by the

(2)

learned IIIrd Ad-hoc Additional Sessions Judge, Ahmednagar, in Sessions Case No.151/2005, wherein appellant/accused No.1 was convicted for offence punishable under Sections 306 and 489-A read with Section 34 of the Indian Penal Code, whereas appellant Nos.2 to 4 were convicted for offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

2. The prosecution case is that accused No.1 Rajendra Haribhau Kothule is the son of accused Nos.2 and 3. Accused No.4 is sister of accused Nos.1. PW-1/Maruti Shankar Bhalsing and PW-3 Saraswati Maruti Bhalsing are husband and wife and are residents of Dhondewadi. Deceased Savita @ Sunita was their daughter, whose marriage took place with accused No.1/Rajendra prior 4-5 years of alleged incident dated 16/04/2005.

3. According to the informant, after two years of marriage the accused demanded Rs.1,00,000/- for purchase of Tractor. In the meanwhile, deceased Savita gave birth to a daughter Priyanka, who was 2 ½ years old at the time of incident. Accused No.1 was a Tractor driver and the appellants/accused were used to demand money by beating and abusing Savita. Savita alleged to have informed about the said harassment to PW-1/Maruti on phone. Even before the incident

(3)

on Tuesday, PW-3/Saraswati had been to house of accused No.1 and at that time, deceased Savita alleged to have told her about her ill-treatment by the accused. On 16/04/2005, Savita informed on phone to her parents that the accused assaulted her by first and kicks blows, and therefore, she was returning back to her parental house. PW-1 and PW-3, her parents were waiting for her, but at 1.00 a.m., one Dattaram, nephew of PW-5/Hausrao informed them on phone that dead bodies of deceased Savita and her daughter Priyanka are found in the well, situated at Gut No.198 of village Khadki. Thereafter, PW-1 and PW-3 proceeded to Khadki.

4. Earlier, one Gowardhan Jaywant Kothule gave information of accidental death of deceased Savita and Priyanka to PW-8/Dnyandeo Dhondiba Gajare, the then P.S.O. at Nagar Taluka Police Station which is at Exhibit-47. On the basis of said information, A.D. No.27/2005 came to be filed. Accordingly, PW-10 Prakash Karbhari Pawar drew inquest panchnama at Exhibit-29 and 23 on the dead bodies. He also drew spot panchnama at Exhibit-32. The dead bodies were sent for autopsy to the Civil Hospital, Ahmednagar. PW-9/Dilip Ramchandra Kate, who registered the Crime No.60/2005 for the said incident and handed over further investigation to PW-10/

(4)

A.P.I. Mr Prakash Karbhari Pawar. PW-10/Prakash carried out investigation by recording statements of witnesses. He requested Tahsildar to draw map of the spot, on whose behalf, PW-6/Shaiikh Manjur Ahmed, being Revenue Circle Inspector, drew the map of the spot. After completion of investigation, charge-sheet came to be filed before the learned Judicial Magistrate First Class against all the accused/appellants.

5. Learned Judicial Magistrate First Class, Ahmednagar committed trial to the Sessions Court. The learned Sessions Court, framed charge against the accused persons under Sections 489-A, 306, 304-B read with Section 34 of the Indian Penal Code. As the accused persons pleaded not guilty, they claimed to be tried.

6. The prosecution, in order to prove their case, examined as much as 10 witnesses. PW-1/Maruti Shankar Bhalsing, father of deceased Savita was examined at Exhibit-26. PW-3/Saraswati Maruti Bhalsing, mother of deceased Savita was examined at Exhibit-30. PW-5/Hausrao Appa Wadekar, maternal uncle of deceased Savita was examined on the point of ill-treatment and unlawful demand, at Exhibit-36. Another witnesses, namely, PW-2/Sakharam Nivrutti Pawar was examined on inquest panchnama at Exhibit-28 and

(5)

PW-4/Haribhau Madhavrao Nikam were examined on spot panchnama at Exhibit-32. The Revenue Circle Inspector/PW-6 Shaikh Manjur Ahmed was examined at Exhibit-37, whereas PW-7/Dr. Ashok Dadasaheb was examined at Exhibit-40. PW-8/Dnyandeo Dhondiba, A.S.I. who received information about incident was examined at Exhibit-47. PW-9/Dilip Ramchandra Kate, Police Head Constable who received complaint was examined at Exhibit-48. PW-10/Prakash Karbhari Pawar, A.P.I., who was Investigating Officer in this case was examined at Exhibit 50.

7. After recording aforesaid evidence, statements of accused person came to be recorded under provisions of Section 313 of the Code of Criminal Procedure. The defence of the accused was denied with the contention that accused No.1 himself had paid Rs.10,000/- as hand-loan to PW-1/ Maruti and on the day of incident, deceased Savita had gone to the house of PW-1/Maruti and demanded money. Instead of returning the said money, PW-1 insulted Savita and on her returned journey, she and Priyanka accidentally fell into the well and died due to drowning.

8. After recording the evidence and hearing the parties, learned Sessions Court, by order dated 23/02/2006, convicted accused No.1/Rajendra for the offence punishable under Section 306 read with

(6)

Section 34 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.500/-. In default of payment of fine, he was sentenced to suffer rigorous imprisonment for 8 months. He was further convicted for offence punishable under Section 489-A read with Section 34 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.200/-. In default of payment of fine, he was sentenced to suffer rigorous imprisonment for 4 months. Accused No.2/Haribhau, accused No.3/Sarubai and accused No.4/Ashabai were convicted for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.300/- each. In default of payment of fine, they were sentenced to suffer simple imprisonment for 2 months. All the substantive sentences were directed to be run concurrently.

9. Heard Mr Zaidi, learned Advocate holding for Advocate Mr Satej Jadhav for the appellants and learned APP Ms Mantri for respondent/State.

10. Mr Zaidi, learned Advocate for the appellants states that the impugned judgment and order is illegal and based upon presumptions and the learned Sessions judge has failed to consider

(7)

evidence on record in its proper perspective. He then states that the appellants are innocent and they are at all not involved in the instant crime and as such they cannot be held guilty for the aforesaid offences. He submits that the prosecution witnesses have not stated or given any specific date as regards alleged ill-treatment or harassment to deceased Savita. Deceased Savita was mother of 2 ½ years old girl Priyanka. PW-1/father of deceased Savita had admitted in his examination that, at the time of marriage of his son, appellant/accused No.1 had supported him by paying Rs.10,000/- at that time and therefore, alleged demand of Rs.1,00,000/- by accused persons is falsified. Deceased Savita alongwith her daughter on the date of incident had been to house of PW-1 for demanding the said amount of Rs.10,000/-. PW-1, instead of returning the amount, alleged to have insulted deceased Savita. Thereafter, she was returning to her matrimonial house and on the way, she alongwith her daughter fell into well accidentally and died. He further submits that the postmortem report discloses no injuries as regards assault on the person of deceased. PW-3/mother of the deceased Savita, by way of her improvement has elaborately stated that the accused persons have assaulted deceased with stick blows, however, the said improvement is merely to convict the appellants for serious offences as she had disclosed the said assault

(8)

for the first time in the Court. Learned Advocate for the appellants further submits that, considering the aforesaid improvement of the parties, it cannot be said that the appellants have caused any harassment to the deceased. Even if it assumed that there is harassment for the sake of arguments, same cannot be treated as harassment or cruelty as per the provisions of Sections 306 and 489-A of the Indian Penal Code. Further he submits that, in order to attract offence under Section 306 of the Indian Penal Code, harassing should be made out to the deceased to such an extent that there could not be any other option to the deceased than to take such extreme steps. Therefore, he submits that as the prosecution has miserably failed to bring such harassment before the learned Sessions Court to such an extent, the appellants cannot be regarded as guilty for the alleged offence, for which they have been charged. He, accordingly prays for allowing of the present appeal by acquitting the appellants.

11. Per contra, learned APP Ms Mantri supports the order of the learned Sessions Court. She strongly opposes the appeal and submits that the statements of the witnesses show that the deceased was harassed on account of bringing Rs.1,00,000/- from her parents for the purpose of purchase of Tractor. Their statements are consistent with each other. The deceased had committed suicide by jumping into

(9)

well in view of the said harassment. Deceased was having 2 ½ years old daughter at the time of said suicide. No mother would take such steps to commit suicide alongwith her daughter. Therefore, learned APP submits that the prosecution has proved the case against the appellants beyond reasonable doubt, and therefore, the present appeal deserves to be dismissed by holding the appellants guilty for the aforesaid offences.

12. After hearing the learned Advocates for the parties at length and having gone through the entire record, I found that deceased Savita was married to appellant No.1 4-5 years prior to incident. Appellant No.1 was a Tractor driver. The parents of the deceased had fixed marriage of deceased Savita with appellant No.1 in which PW-5 was the mediator. PW-1 and PW-3, parents of the deceased Savita, though had stated as regards alleged harassment to deceased Savita on account of bringing Rs.1,00,000/-, the fact remains that they have never made complaint to any authority as regards the said harassment. One aspect is also required to be considered that there is admission on the part of PW-1 Maruti, father of deceased Savita that he had obtained hand-loan of Rs.10,000/- from accused No.1 at the time of marriage of his son. This shows that appellant

No.1 is having sound economic position, and as such, he would require financial assistance from his in-laws, is doubtful.

13. It is also required to be considered here that the spot, where the deceased Savita had alleged to have committed suicide is far away from her matrimonial house. The said spot is located in the way between her parental house and matrimonial house. The suggestions given by the accused side that the deceased was returning from the house of her parents on the day of incident, after refusing to get amount of Rs.10,000/- paid by her husband to her father, assumes significance. Therefore, the aspect that soon before her death, cruelty meted out to her is required to be examined from the angle, whether the accused are guilty of the offences charged with. The evidence brought by the prosecution is totally silent as regards the said aspect as to who were responsible for the suicidal death of deceased Savita as it has come on record that Savita had been to her parents house before committing suicide.

14. Hence, in view of aforesaid observations, it is very difficult to consider that it was only accused persons and no one else are responsible for the said incident. The prosecution has also failed to bring before this Court that there was any cruelty as defined under

Section 498-A of the Indian Penal Code, and therefore, the appellants cannot be held guilty for the said offence punishable under Section 498-A of the Indian Penal Code.

15. In that view of the matter, in my opinion, the appellants have made out case. Consequently, this appeal is allowed. The impugned judgment and order dated 23/02/2006, passed by the learned 3rd Ad-hoc Additional Sessions Judge, Ahmednagar, in Sessions Case No.151/2005 is hereby quashed and set aside. The conviction and sentence of the appellants under Sections 306 and 498-A read with Section 34 of the Indian Penal Code is hereby set aside and they are acquitted for the charges framed against them. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The Record and Proceedings be sent back to the concerned Court.

[SUSHIL M. GHODESWAR, J.]

sjk