



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 31 OF 2004

Madhukar s/o Shriram Nimbhore,
Age; 32 years, Occ; Service,
R/o; Badri Plot, Jamner Road,
Bhusawal, District Jalgaon.

...APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Advocate for the Appellant : Mr. Prasanna Kutti
APP for Respondent-State : Mr.C.V. Bhadane
...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 21.11.2025

JUDGMENT :

1. Being aggrieved by the judgment and order dated 18.12.2003 passed in Sessions Case No. 71 of 2002 by the learned 2nd Ad-hoc Additional Sessions Judge, Jalgaon, convicting the appellant for the offences punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code, the present appeal is filed.

2. The prosecution case in brief is as under :

The Complainant Khanderao Digambar Arkhe, submitted a

report on 14.06.2001 stating therein that his 2nd daughter Kalpana @ Nalini was married with present appellant/Accused No. 1 namely Madhukar s/o Shriram Nimbhore on 19.04.1998. One son namely Suresh was also born to her out of the said wedlock. During their marriage certain ornaments and cash was given as dowry in the marriage. After the marriage, the deceased Kalpana went to reside with the joint family of accused at her matrimonial house. After some days of the marriage, Kalpana and her husband appellant started residing separately in a rented room, near TV Center at Bhusaval. It is the case of the Complainant that the appellant/accused started demanding Rs.1,00,000/- to the deceased Kalpana for construction of separate house. Since the Complainant was unable to fulfill the demand, therefore, the accused has not sent Kalpana to the house of her parents for about one year. According to the Complainant, accused No. 1 used to beat his daughter Kalpana and used to insist her to leave matrimonial house.

3. Then on 14.06.2001 appellant/accused lodged report to Bajapeth Police Station Bhusawal, which came to be registered as Accidental Death i.e. A.D. No. 17 of 2001 under Section 174 of the Code of Criminal Procedure. The said AD case was registered pertaining to the death of Kalpana on the same day at about 8.15 a.m. An inquiry in the said A.D. was entrusted to ASI G.N.Ingale, who prepared inquest panchanama at 18.00 hrs. and the dead body of the deceased was sent to Medical Officer Municipal Council Hospital, Bhusawal alongwith requisition

letter with a Police Constable Mr. Chaudhari, B.No. 617. The Same. ASI Mr. Ingale prepared the spot panchanama at about 18.50 hrs. On the very same day at about 22.30 hrs. the Complainant Khanderao Digambar Arkhe, the father of the deceased lodged oral report with Police Station, which was reduced into writing by ASO, N.S. Ghuge, P.I., who registered the Crime No. 61 of 2001 for the offence punishable under Section 498-A and 304B read with Section 34 of the Indian Penal Code. The statement of witnesses came to be recorded and the dead body was handed over for postmortem examination. After completion of investigation, on 01.08.2001 the Investigating Officer has filed the charge-sheet in the Court of J.M.F.C., Bhusawal, where the case was registered as Regular Criminal Case No.206 of 2001. On committal of the said case to the learned Sessions Court, the said case came to be registered as Sessions Case No. 71 of 2001. The charge came to be framed as per Exh. 38 and all the accused persons pleaded not guilty and claimed to be tried. Since the defence of the accused persons was of total denial and false implication, their case was proceeded further.

4. The prosecution has proceeded to prove the charge against the accused persons. The prosecution has examined as many as five witnesses. PW-1 Vijaya Khandu Arkhe, the real sister of the deceased vide (Exh. 52). Whereas, (PW-2) Sunil Khandu Arkhe is the brother of the deceased, who has been examined at (Exh. 57). Both the aforesaid witnesses are closely related to the deceased being the real sister and

brother. They have stated that after the marriage the deceased Kalpana, had been to the house of appellant. The appellant used to harass her for dowry i.e. for bringing money for construction of new house and on that count he used to ill-treat her and also not allowed her to see her parents. Aforesaid both the witnesses have also further stated that the appellant/accused had not sent Kalpana on the occasion of marriage of PW-2 Sunil for few days. However, Kalpana directly came on the wedding/ marriage day of PW-2 Sunil for only one day and in the evening she was returned to her matrimonial house. Thus, they both have claimed that the deceased has committed suicide on account of harassment and in view of demand of amount for construction of new house.

5. PW-3 is the pancha of spot panchanama i.e. Madhukar Patil who was examined at (Exh. 58), whereas, (PW 4 & 5) are the Investigating Officers who have been examined at (Exh. 67 and Exh. 72) respectively.

6. On the basis of testimony of aforesaid witnesses, the learned Sessions Judge in the judgment and order dated 18.12.2003 acquitted all the accused for the offence punishable under Section 304B and accused Nos. 2 to 8 acquitted under Sections 498-A read with Section 34 of the Indian Penal Code. However, the present appellant came to be convicted for the offence punishable under Section 498-A of the IPC and is sentenced to suffer R.I. for three years and to pay fine of Rs. 3,000/- and in default of payment of fine, he has to undergo R.I. for further three months. He is

also came to be convicted under Section 306 of the IPC and sentenced to suffer R.I. for three years and to pay fine of Rs.5,000/- and in default of payment of fine, he has to undergo R.I. for five months.

7. Heard Mr. Prasanna Kutti, learned Counsel for the appellant and Mr. C.V. Bhadane, learned APP for Respondent State at length.

8. Mr. Kutti, learned Counsel appearing for the appellant submitted that the learned Sessions Court has committed error in appreciating evidence and PW Nos.1 & 2 to the extent of harassment and cruelty and also for the commission of offence punishable under Section 306 i.e. abetment to commit suicide. He further submitted that the evidence brought by the prosecution through the aforesaid relatives and interested witnesses cannot be considered for convicting the appellant. He further submitted that the prosecution has also failed to examine various witnesses which were necessary to prove the charge against the accused persons. According to him, the death of the deceased was whether homicidal, suicidal or accidental has not been proved by the prosecution, as the prosecution has not examined the Medical Officer, who conducted the postmortem of the deceased. In absence of the sufficient evidence, it was not proper for the learned Sessions Judge to arrive at a conclusion that the death of the deceased is suicidal. If for the sake of admission, there is nothing on record that the deceased has committed suicide, still the prosecution virtually failed to establish that the deceased Kalpana has

committed suicide in pursuance to the harassment caused to her due to the appellant and that the harassment was to such an extent that the deceased Kalpana had no other option but to commit suicide. In short, the prosecution virtually failed to establish that it is the appellant and none other else, who has instigated the deceased Kalpana to commit suicide. He, therefore, submitted that the evidence of aforesaid five witnesses is insufficient and there is no cogent material to base the conviction of the appellant for the offence punishable under Section 306 and 498-A of the IPC. Therefore, he prayed for quashing and setting aside the aforesaid impugned judgment and order dated passed by the learned Sessions Court.

9. Per-Contra, Mr. C.V. Bhadane, learned APP strongly opposed the instant appeal. He submitted that the number of witnesses are not important to impose the conviction, rather the quality of the evidence and it should be in a such nature that it inspires confidence and once it is established beyond reasonable doubt that the appellant is alone who is responsible for committing aforesaid crime, the conviction based upon such evidence is proper and conclusive. He therefore submitted that the learned Sessions Court has committed no mistake or error of law in awarding the conviction and sentence to the appellant. He, therefore, prayed for dismissal of the instant appeal by maintaining the impugned judgment and order.

10 With the assistance of Mr. Kutti, learned Counsel for the

appellant as well as Mr. Bhadane, learned APP for State, I have gone through the submissions on record of the instant criminal appeal. The prosecution has examined five witnesses. Out of them, two witnesses are the sister and brother of the deceased. Admittedly, the prosecution has not examined the complainant, who was the father of the deceased. The prosecution also has not examined witness Mohan, who is alleged to have informed the appellant that one lady wearing red chocolate colour gown jumped into well and who is the first person who informed the appellant as regards the incident. The prosecution has also not examined the Medical Officer who has conducted the postmortem examination and issued the P.M. report. In such scenario, it is very difficult to arrive at conclusion that the deceased Kalpana has committed suicide. Admittedly, no suicide note is found in the house of the deceased. The well, where the deceased has committed suicide is away from the house of the appellant and it is a public common well, where the public is having access to fetch the water from the said well. The incident had taken place on 14.06.2001 at 8.15 a.m. and it was morning and at that time since the public Well is located in the middle place of the village and everybody is having access to said Well, therefore, so many villagers might have present at the said spot at that time. However, it is very surprising to note here that nobody has come forward to depose or either to give statement to police that the deceased has committed suicide or he has fallen down in the well accidentally. In that view of the matter, the evidence of the prosecution witnesses to the extent that the deceased has

committed suicide is unacceptable.

11. The second aspect which is involved in this matter is that even if it is considered that the deceased has committed suicide, whether such suicide is due to harassment meted out to her by the appellant in pursuance to the demand of Rs.1,00,000/- for construction of the house. The witnesses have stated no specific events and incidents as regards when the appellant has demanded and as to on how many occasions he ill-treated the deceased. The allegations of demand or harassment are of general in nature. The allegations which are coming through the depositions of the witnesses do not inspire confidence that the appellant/accused was harassing the deceased Kalpana on the count of above demand of Rs.1,00,000/- from her parents for construction of new house. Mere bald statement of general nature is not sufficient to base the conviction for the offence of abetment to commit suicide as well as cruelty to the deceased under Section 498-A of the IPC. After perusal and scrutinizing of the entire evidence it is crystal clear that the prosecution has not proved that it was the appellant alone and none the else was responsible for the harassment caused to the deceased due to which the deceased had no other option than to commit suicide.

12. It is well settled legal position as regards Section 306 of the IPC and as reiterated by the Hon'ble Supreme Court in *Gurcharan Singh v. State of Punjab* (2020), *Madan Mohan Singh v. State of Gujarat* (2010), and *M.*

Arjunan v. State of Tamil Nadu (2019), that in order to constitute abetment of suicide, the prosecution must establish: (i) a clear mens rea to instigate or aid the commission of suicide, (ii) a proximate and live link between the alleged acts of cruelty and the suicide, and (iii) such persistent or grave conduct on the part of the accused that it leaves the deceased with no option except to commit suicide. Mere general allegations of harassment or ordinary domestic discord, without specific acts of instigation, cannot amount to abetment.

13. In view of the discussion in foregoing paragraphs, the prosecution having failed to prove the charges under Section 306 and 498-A of the Indian Penal Code, the appellant deserves to be acquitted. Consequently, this Criminal Appeal is allowed and the impugned judgment and order is quashed and set aside. The appellant/ accused is acquitted for the said offence. As the appellant is on bail, he need not surrender. 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.)