

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

CRIMINAL APPEAL NO. 649 OF 1998

Sadashiv Parbati Rupnawar
Aged 23 years, Occ: Shepherd
residing at Jalbavi
Taluka Malshiras, Dist. Solapur
(Presently in Satara Jail)

...Appellant

Vs.

The State of Maharashtra

...Respondent

Ms. Nasreen S. K. Ayubi	Appointed Advocate for the Appellant
Ms. R. S. Tendulkar	APP for the Respondent-State

CORAM : S. M. MODAK, J.

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ORAL JUDGMENT :-

1. Heard learned appointed Advocate Ms. Ayubi for the Appellant and learned APP Ms. Tendulkar for the Respondent-State.

2. The present Appellant and father-in-law of the deceased were prosecuted for harassing Prema, and they have abetted her suicide. Prema is the wife of Accused no. 1 and the daughter-in-law of Accused

No. 2. The charges were under Sections 498-A, 306 read with 34 of the Indian Penal Code. Accused No. 2 was acquitted, whereas Accused No. 1 is convicted for an offence punishable under Section 498-A of the Indian Penal Code. The sentence is :-

- (i) Rigorous imprisonment for one year and to pay fine of Rs. 500/-, and in case of default, further rigorous imprisonment for one month for the offence punishable **under Sections 498-A** of the Indian Penal Code.
- (ii) For the offence punishable **under Section 306** of the Indian Penal Code, the sentence is rigorous imprisonment for five years and a fine of Rs. 500/-, and in case of default, further rigorous imprisonment for one month.

3. In all prosecution examined five witnesses. There are certain admitted documents. They are evidence and documents. With their assistance, **I find that the conviction is not supported by the evidence.** On record, though Prema was being taunted on account of her complexion, I do not think that it will fall within the explanation to Section 498-A of the Indian Penal Code. Even conviction for the offence punishable under Section 306 of the Indian Penal Code cannot

be sustained, because the prosecution could not prove the suicide being the outcome of the harassment. I will give reasons for my decision.

4. Prema was married to accused no. 1 in the year 1993, whereas the incident took place in the month of January 1998. The expenses of the marriage were borne by both the sides. Prema and Accused No. 1 were illiterate. Accused No. 1 used to graze the she goats. She used to stay along with Accused No.1 at matrimonial house. He used to be away for a long time. The Prema used to come her mother's house and she used to disclose about harassment. Finally, she has put an end to her life by jumping into well. She went missing from the home. Her dead body was found in well at village Degaon, Satara. The panchnama was prepared on 24.01.1995.

5. The F.I.R. was registered under Sections 498-A and 306 of the Indian Penal Code on the complaint of PW No.2. After completing of the investigation, the charge-sheet came to be filed. Both the accused have denied the commission of the offence. According to them, it was accidental death. The witnesses are as follows:-

PW No. 1	Jalindar Piraji Kamble	He is spot panch	Page No. 46
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PW No. 2	Parubai Pandurang Kale	She is mother of the deceased	Page No. 51
PW No. 3	Chaturabai Subhash Kolekar	The relatives of the deceased	Page No. 70
PW No. 4	Bhimrao Sambhaji Sul	The relative of the deceased	Page No. 74
PW No. 5	Investigating Officer	Ashok Shankarrao Survegandh	Page No. 85

6. PW Nos. 2, 3 and 4 are the material witnesses. The deceased had met them and shared her matrimonial experiences. **It is admitted fact that reason of the harassment is not a demand for dowry.** As per the Explanation to Section 498-A of the Indian Penal Code, if there is a demand for dowry and consequent harassment, it falls under Explanation (b). This is not applicable. There can be harassment for other reason. It is covered under Explanation (b). It contemplates such harassment must be of such a degree so as to compel the woman to put an end to her life.

7. So what the legislature contemplates is that every dispute, quarrel or altercation arising from the matrimonial life are not criminal offence. It will take colour of Criminal law only when there are no alternatives for the wife but to put an end to her life, because of

the harassment. The reasons for the harassment is revealed from the evidence of the PW Nos. 2, 3 and 4. They are as follows:

- (a) **The accused no. 1** was taunting her by saying she is of black complexion and that he does not like her. Accused no. 1 was telling her he will perform a second marriage.
- (b) **The Accused no. 2** was complaining about capacity of the Prema to prepare food. She was not preparing food properly. This was told to the Mother-Parubai, when Prema had gone to her house.
- (c) **Chaturabai** is the Mother-in-law of the sister of the deceased Prema. Both of them met at village at Chinchner. At that time, deceased has expressed her feelings by weeping. The accused were ill-treating and beating her.
- (d) **PW No. 4-Bhimrao** is brother of the PW No. 1-Parubai. He had met Prema at her matrimonial house. Even during the festivals of Diwali and Panchami, both of them have met each other. The deceased informed him about the harassment by her husband and father-in-law. The reasons were she was dark complexion and not preparing food properly.

8. If we consider all these reasons, they can be said to be quarrels arising out of matrimonial life. They are domestic quarrels. It cannot be said to be of such a high degree so as to compel Prema to commit suicide. So, an offence under Section 498-A of the Indian Penal Code is not made out.

9. I have read the judgment of the trial Court. The trial Court is fully aware about the Explanation-(a) to Section 498-A:- The willful conduct must be of a high degree; however, when the evidence of the three witnesses are considered by the trial Court, **there is no finding that the harassment is of high degree.** There cannot be such a finding simply for the reason that even if the reasons for harassment are admitted, no case will fall under Section 498-A of the Indian Penal Code. **The findings need to be set aside.**

10. The trial Court has discussed about the presumption under Section 113-A of the Indian Evidence Act. Suicide itself is not an offence, if someone abets it, then only it becomes a punishable offence. So, abetment and suicide both need to be proved. In this case, though the accused took a defence about accident by falling into the well, the learned Judge rightly observed that it cannot be accepted because no

articles were found in or around the well. There is other reason to believe that it was suicide, but the prosecution could not prove the connection in between the harassment and the act of suicide. There was harassment, but it was not of that kind of harassment due to which criminal law can be set in motion. The judgment of the trial Court cannot be sustained in the eyes of law. The learned Judge has forgotten the basic principles and ingredients of the Sections.

11. In no case the judgment can be sustained. It needs to be interfered with. The appeal needs to be allowed. Hence, the order:-

ORDER

- (i) The appeal is allowed.
 - (ii) The judgment passed by the Court of the Additional Sessions Judge, Satara dated 31.07.1998 in Sessions Case No. 66 of 1995 is set aside.
 - (iii) The Appellant is acquitted for the offence punishable under Section 498-A and Section 306 of the Indian Penal Code.
 - (iv) Fine, if any, be returned to the Appellant.
12. The Appeal is disposed of.
13. The learned appointed Advocate be paid fees as per the Rules.

[S. M. MODAK, J.]