

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

**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPEAL NO. 374 OF 2008**

State of Maharashtra,  
Through Police Station Officer,  
P. S. Ghuggus, Dist. Chandrapur.

. . . **APPELLANT**

**..VERSUS..**

1. Milind Shalikrao Waghmare,  
Aged about 34 years,  
R/o. Gandhi Nagar, Quarter No. 293,  
Ghuggus, Dist. Chandrapur.
2. Shalikrao Munna Waghmare,  
Aged about 69 years,  
R/o. Gandhi Nagar, W.C.L. Quarter No. 293,  
Ghuggus, Dist. Chandrapur.
3. Sau. Sakhubai Shalikrao Waghmare,  
Aged about 64 years,  
R/o. Gandhinagar, W.C.L. Quarter No. 239,  
Ghuggus, Dist. Chandrapur.

. . . **RESPONDENTS**

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Shri S. S. Doifode, A.P.P. for the appellant.  
None for the respondents.  
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**CORAM :- Z. A. HAQ AND  
AMIT B. BORKAR, JJ.**

**DATED :- 31.08.2020**

**JUDGMENT (PER : AMIT B. BORKAR, J.):-**

1. This appeal is directed against the judgment and order dated 19.03.2008 passed by learned Sessions judge, Chandrapur in Sessions Case no. 55/2002, thereby acquitting respondent nos. 1 to 3 from the offences punishable under Sections 498-A and 306 read with Section 34 of Indian Penal Code and Section 3 read with Section 4 of the Dowry Prohibition Act.

2. The prosecution case, in a nutshell, is under:-

The marriage between deceased-Sapna and accused no. 1- Milind Waghmare was performed on 12.03.1996. From the said wedlock they were blessed with two children. It is not disputed that accused no. 2-Shalikram is the father-in-law of the deceased as well as maternal uncle of the deceased by half-blood relation. It is the case of the prosecution that, in the marriage Rs. 10,000/- was given to the accused no. 1. Since the deceased was taking education at the time of marriage, she resided with her parents for a period of one year after marriage and thereafter shifted to the house of the accused. The first son was born after 2 years from the date of marriage and second son Ritik was born on 02.08.2000 but, the complainant did not incur any expense of said delivery. All the accused were insisting for payment of expenses of a second delivery and on that ground, they were abusing the deceased. In the month of October 2001, the complainant took

voluntary retirement from W.C.L. company and got an amount of Rs. 8,50,000/- in the month of October 2001. On 12.01.2002, accused no. 1 and deceased had been to the house of the complainant. Accused no. 1 demanded Rs. 20,000/- on the pretext that he has to repay the debt. At that time complainant refused to give Rs. 20,000/- to the accused no. 1. After 4-5 days, the deceased returned to the house of the complainant and informed that accused no. 1 has demanded Rs. 5000/- and is abusing and ill-treating her. The unfortunate incident took place on 21.01.2002, when the deceased committed suicide in the morning. The complainant was informed about the said incident upon which the complainant visited the house of the accused. The complainant noticed the dead body of the deceased lying on the cot and also found an injury on her neck. The complainant lodged three reports with the Police, first on 21.01.2002, second on 24.01.2002 and third on 31.01.2002. It is the third report, which was converted into the First Information Report but, it appears that the investigation by Police was started on 21.01.2002. The Police investigated by visiting the spot and prepared Spot Panchnama. The Police seized “dupatta”, which was tied to the Ceiling Fan by separate Seizure Panchnama. The dead body was sent to post-mortem and after post-mortem, Doctor opined that probable cause of death is “Aphellexia due to hanging”. The Police registered offence vide Crime No.

77/2002 under Sections 498-A and 306 read with Section 34 of Indian Penal Code and under Section 3 read with Section 4 of the Dowry Prohibition Act. The accused were arrested on 31.01.2002. After completion of investigation, Police filed a charge-sheet in the court of J.M.F.C., Chandrapur, who in turn committed the case to the Court of Sessions, as the offence under Section 306 of Indian Penal Code is exclusively triable by the Court of Sessions.

3. The Sessions Court framed charges against all the accused of an offence punishable under Sections 498-A and 306 read with Section 34 of Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act. The accused pleaded not guilty and claimed to be tried. It is the defence of the accused that on the date of the incident, son of the accused no. 1 did toilet in the passage and therefore, neighbor residing there complained to the accused no. 1, so he asked the deceased to clean that space. Accused no. 1 asked her to see that there should not be any inconvenience to others and such thing should not happen in future. The deceased, in hot temper, thrown utensils on the floor and went for cleaning the toilet did by their son. So, according to the accused, because of hot temper nature of the deceased, she might have committed suicide. The accused

denied that they ever demanded any amount from the parents of the deceased and they never ill-treated the deceased for not satisfying their demand.

4. After recording the evidence and conducting a full-fledged trial, the Trial Court acquitted all the accused of the offence punishable under Sections 498-A and 306 read with Section 34 of Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act. Hence this appeal by the State.

5. Shri S. S. Doifode, learned A.P.P. appearing for the appellant/State submits that the prosecution has examined father, sister and other witnesses to prove the charges framed against the accused for the offences punishable under Sections 498-A and 306 of Indian Penal Code. It is submitted that all the witnesses have stated about ill-treatment and harassment given by accused to the deceased-Sapna. Her death was within 7 years from the date of marriage. The medical evidence also supports the prosecution case. Therefore, the view taken by the Trial Court to acquit all accused was not a possible view and therefore, he submitted that the appeal deserves to be allowed.

6. The learned Advocate appearing for the respondents was absent when the matter was heard and therefore, we proceeded to examine the case on merits in absence of Advocate for the respondents.

7. We have given careful consideration to the submissions advanced by Shri S. S. Doifode, learned A.P.P. appearing for the State and with his able assistance, we have carefully perused and scrutinized the entire evidence and other material brought on the record by the prosecution.

8. Before delving deep into the contentious issues emanating from the present case, this Court reminds itself of the duty of the Court while considering presumption intended to operate against the accused as contemplated by Section 113-A of the Indian Evidence Act.

9. It is well settled that to attract presumption under Section 113-A of the Indian Evidence Act, following three ingredients need to be fulfilled:

(i) that a woman has committed suicide,

- (ii) such suicide has been committed within a period of seven years from the date of her marriage and
- (iii) the husband or his relatives who are charged had subjected her to cruelty.

The existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression- "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between cruelty and suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. ***(See - Heera Lal and Another Vs. State of Rajasthan reported in (2018) 11 SCC 323 paras 6 to 9).***

10. Before holding an accused guilty under Section 306 of Indian Penal Code, Court is required to scrutinize following factors:-

- (i) Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of

each case and to be found out by continuous conduct of the accused, involving his mental element.

(ii) Direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.

(iii) In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

(iv) More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

(v) It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.



(vi) Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred.

(vii) Where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred.

(viii) Undoubtedly, presence of mens rea is the necessary concomitant of instigation. *(See - Pawan Kumar Vs. State of Himachal Pradesh reported in (2017) 7 SCC 780, Paras 34 to 42)*

The above list is not exhaustive. There may be several other special circumstances with reference to individual cases.

11. In the backdrop of the position of law laid down by the Hon'ble Supreme Court, we consider evidence of the prosecution, Dadaji Katkar (PW-1), father of deceased. PW-1 has stated in his evidence that the marriage of deceased with accused no.1 was performed on 12.03.1996, it is only after 01.10.2001, when PW-1 took voluntary retirement from his service, the accused started giving ill-treatment to his daughter on account of refusal to give money. It is stated that accused no.1 demanded money of Rs. 20,000/- from PW-1

on 12.01.2002. PW-1 refused to fulfill the demand of accused no. 1. The accused no.1, along with deceased returned to his home on the same day. Thereafter, PW-1 received a message regarding the death of his daughter on 21.01.2002. PW-1 in his cross-examination has admitted that accused persons were treating his deceased daughter properly till the date of his retirement i.e. till October 2001, which means accused persons were treating victim properly for 5½ years after the marriage. There is no evidence on record about any ill-treatment with the victim by the accused from 12.01.2002 till the date of suicide.

12. The next witness examined by the prosecution is Kanta Katkar (PW-3), who is the mother of the deceased. She has deposed in her evidence that the accused demanded Rs. 10,000/- at the time of marriage but, there is no such story of prosecution nor PW-1 (complainant) has deposed to that effect. Kanta Katkar (PW-3) in her evidence though has stated about ill-treatment to her daughter by the accused but, she has not given any details regarding month or year when alleged ill-treatment was given to the deceased. There are material contradictions and omissions from her evidence when compared with the evidence of Investigating Officer-Solanki (PW-6).

The Investigating Officer (PW-6) has admitted that Kanta (PW-3) never informed him while recording her statement that, at the time of marriage the accused demanded Rs. 10,000/-. Even the complainant has not stated about the demand of Rs. 10,000/- at the time of marriage in his evidence. PW-6 further admitted that PW-3 has not told him anything about ill-treatment to deceased by accused persons. It is further admitted by PW-6 (Investigating Officer) that Kanta (PW-3) did not inform him that on 12.01.2002, the deceased along with accused no. 1 had come to her house for demanding money. This shows that the evidence of Kanta (PW-3) is full of contradictions, omissions and exaggeration.

13. The third witness is the sister of deceased named Sunita Patil (PW-2). Sunita Patil (PW-2) has also stated in her evidence that accused demanded Rs. 10,000/- as dowry amount in the marriage and used to give ill-treatment to the deceased. It is also stated by PW-2 that on 12.01.2002, accused no. 1 had come to the house of PW-1 demanding Rs. 20,000/-. From the evidence of the prosecution, presence of PW-2 on 12.01.2002 is doubtful because all other witnesses who deposed about persons present on that day failed to mention the name of PW-2 amongst them. The Investigating Officer-Solanki (PW-6) has admitted that PW-2 never stated to him, while

recording her statement, that there was any ill-treatment given to deceased by the accused and there was any harassment caused to the deceased by the accused. The Investigating Officer further admitted that PW-2 had never stated to him that accused no. 1 had gone to the house of her parents for demanding of money.

14. Taking into consideration evidence of PW-2 and PW-3, it is clear that their evidence is full of contradictions and omissions and is full of exaggeration. Their evidence is not corroborating with the evidence of complainant-Dadaji (PW-1). The contradictions and omissions in the evidence of PW-2 and PW-3 are material and fail to bring home charge of cruelty under section 498-A of Indian Penal Code. The conduct of the accused has to be willful conduct of such nature, as is likely to drive the woman to commit suicide. After going through the evidence of prosecution it appears that, the prosecution has failed to prove cruelty as per Explanation to Section 498-A of Indian Penal Code. Under Section 306 of Indian Penal Code, there should be evidence of the abatement of suicide and under Explanation (a) of Section 498-A of Indian Penal Code, there should be evidence of any willful conduct by the husband or a woman or his relations, which is likely to drive her to commit suicide. We find that prosecution

having failed to prove charge of cruelty, which is the most basic ingredient for the offence under Section 498-A of the IPC, the third ingredient for application of Section 113-A of the Indian Evidence Act is missing, namely, that the relatives i.e., husband, mother-in-law and father-in-law, who are charged under Section 306 had subjected the victim to cruelty.

15. *The Hon'ble Supreme Court has consistently held that in dealing with appeals against acquittal, the Appellate Court must bear in mind the following:-*

(i) *There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court;*

(ii) *The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;*

(iii) *Though, the powers of the Appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but, the Appellate Court is generally loath in disturbing the finding of fact recorded by the Trial Court. It is so because the Trial Court had an advantage of seeing the demeanour of the witnesses. If the Trial Court takes a reasonable view of the facts of the case, interference by the Appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the Trial Court are palpably wrong or based on erroneous view of the law or if*

*such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the Appellate Court in interfering with such conclusions is fully justified; and*

(iv) *Merely because the Appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the Trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the Appellate Court in the judgment of the Trial Court. (See - **Tulsiram Kanu** [**Tulsiram Kanu Vs. State**, AIR 1954 SC 1 : 1954 Cri LJ 225] , **Madan Mohan Singh** [**Madan Mohan Singh Vs. State of U.P.**, AIR 1954 SC 637 : 1954 Cri LJ 1656] , **Atley** [**Atley Vs. State of U.P.**, AIR 1955 SC 807 : 1955 Cri LJ 1653], **Aher Raja Khima** [**Aher Raja Khima Vs. State of Saurashtra**, AIR 1956 SC 217 : 1956 Cri LJ 426], **Balbir Singh** [**Balbir Singh Vs. State of Punjab** [AIR 1957 SC 216 : 1957 Cri LJ 481], **M.G. Agarwal** [**M.G. Agarwal Vs. State of Maharashtra**, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], **Noor Khan** [**Noor Khan Vs. State of Rajasthan**, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], **Khedu Mohton** [**Khedu Mohton Vs. State of Bihar**, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , **Shivaji Sahabrao Bobade** [**Shivaji Sahabrao Bobade Vs. State of Maharashtra**, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], **Lekha Yadav** [**Lekha Yadav Vs. State of Bihar**, [(1973) 2 SCC 424 : 1973 SCC (Cri) 820], **Khem Karan** [**Khem Karan Vs. State of U.P.**, (1974) 4 SCC 603 : 1974 SCC (Cri) 639], **Bishan Singh** [**Bishan Singh Vs. State of Punjab**, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], **Umedbhai Jadavbhai** [**Umedbhai Jadavbhai Vs. State of Gujarat**, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], **K. Gopal Reddy** [**K. Gopal Reddy Vs. State of A.P.**, (1979) 1 SCC 355 : 1979 SCC (Cri) 305], **Tota Singh** [**Tota Singh Vs.***

*State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar Vs. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal Vs. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh Vs. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala Vs. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C. Antony [C. Antony Vs. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka Vs. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goa Vs. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa Vs. State of Karnataka, [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]]”*

16. The scope of appeal against acquittal is microscopic because firstly, there is presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law and secondly, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the finding of acquittal by the Trial Court.

17. In the above backdrop, keeping in mind parameters laid down by the Hon'ble Supreme Court on the scope of appeal against acquittal, we have scrutinized impugned judgment and evidence adduced by the prosecution. Having carefully considered the same, we are of the opinion that the view taken by the Trial Court is reasonable view. The conclusion drawn on the aspect of absence of cruelty and abetment are not palpably wrong. On the contrary, the learned Trial Judge was fully justified in recording findings that prosecution has failed to prove cruelty as contemplated by Section 498-A and also has failed to prove ingredients of Section 306 of Indian Penal Code.

18. In the circumstances, in our view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in our view, need not be interfered.

19. In view of the above, the appeal is dismissed.

Bail bonds of the Respondents shall stand cancelled.

Muddemal properties be disposed of as per directions of the Sessions Judge Chandrapur.

**JUDGE**

**JUDGE**

*RR Jaiswal*