



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 223 OF 2021

APPELLANT : Ramchandra Deoraoji Bagadate,  
Aged about 31 years, Occu. Labour,  
R/o Chincholi Pathar, Tah. Hingna,  
Dist. Nagpur.

VERSUS

RESPONDENT : State of Maharashtra,  
through Police Station Officer,  
Police Station, Kondhali,  
Dist. Nagpur.

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Mrs. Smita P. Deshpande, Advocate appointed for the appellant.  
Mr. S. S. Hulke, A.P.P. for the respondent/State.  
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CORAM : G. A. SANAP, J.  
DATED : AUGUST 12, 2024.

ORAL JUDGMENT

1. In this appeal, challenge is to the judgment and order dated 27.02.2019, passed by learned Additional Sessions Judge, Nagpur, whereby the learned Judge held the appellant/accused guilty of the offences punishable under Sections 498-A and 306 of the Indian Penal Code and sentenced him to suffer imprisonment for 2 (two) years and to pay fine of Rs.5,000/- (Rupees Five Thousand only) and in default to

suffer simple imprisonment for two months for the offence punishable under Section 498-A of the IPC ; and to suffer rigorous imprisonment for 10 (ten) years and to pay fine of Rs.10,000/- (Rupees Ten thousand only) and in default to suffer simple imprisonment for three months for the offence punishable under Section 306 of the IPC.

2. BACKGROUND FACTS :-

The informant (PW3) is the father of deceased Pushpa *alias* Pinki. The marriage of the accused with the deceased was solemnized on 23.04.2016. The deceased committed suicide on 02.02.2017. The informant, on receipt of the information of death of his daughter, went to her house and saw that she was lying dead with burn injuries. He went to police station and lodged the report. It is stated that after marriage, the deceased went to her matrimonial house at Chincholi Pathar. Initially for three months, the accused did not cause any problem. However, thereafter, he started demanding money. He would insist the deceased to bring money from her parents and on that count, he would harass the deceased. At the time of Diwali festival, the deceased and accused had come to their house. They gave Rs.5,000/- to the accused. They had also gifted the clothes to them.

3. It is stated that the accused is addicted to liquor. The accused after few days of Diwali festival again started demanding money for repairing his motorcycle. He started ill-treating the deceased. The deceased made a phone call to her mother and demanded money. The parents, considering their poor condition, could not fulfil this demand. The deceased had come to the informant in the 7<sup>th</sup> month of her pregnancy. At that time, she had narrated her mother about the ill-treatment meted out to her by the accused. Her mother conveyed it to the father of the deceased. The informant/father, then inquired with the deceased. The deceased told him that on account of their failure to pay the money, she was subjected to ill-treatment and cruelty at the hands of her husband.

4. On 02.02.2017, at about 4.00 p.m. while the informant was working in his field, he received a message about the death of his daughter. He went to her house with his family members. He found that the deceased was lying in burnt condition. At the time of death, she was carrying eight months' pregnancy. The informant went to Police Station, Kondhali and lodged the report. On the basis of the report, a crime bearing No. 20/2017 was registered against the accused.

5. PW9 PSI Sonali Bore conducted the investigation. She drew the spot panchanama. She drew the inquest panchanama of the dead body. The Investigating Officer seized the articles and samples from the spot. After completion of the investigation, she filed charge-sheet against the accused for the aforesaid offences. Learned Judge framed the charge (Exh.20) against the accused. The accused pleaded not guilty and claimed to be tried. His defence is of false implication in this crime. It is his case that since beginning the deceased did not like him. She did not want to stay with him and therefore, she committed suicide. The prosecution, in order to prove the guilt against the accused, examined 9 witnesses. Learned Judge, on consideration of the evidence, held the accused guilty and sentenced him as above.

6. I have heard Mrs. Smita P. Deshpande, learned advocate appointed for the appellant and Mr. S.S. Hulke, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

7. Mrs. Deshpande, learned advocate submitted that the evidence adduced by the prosecution is not sufficient to prove the commission of suicide by the deceased. Learned advocate submitted that the panch witness (PW1) has admitted that kerosene stove was

lying in the house at the time of the panchnama. However, this fact has not been stated in the panchanama. Learned advocate submitted that the accused has stated that there was explosion of the kerosene stove and on account of it the deceased received the burn injuries and died. Learned advocate took me through the evidence of the mother (PW2) and father (PW3) of the deceased and submitted that their evidence falls short to establish the torture and cruelty of high degree to the deceased, which could lead her on the brink of committing suicide. Learned advocate submitted that the evidence of PW2 and PW3 at the most would be sufficient to establish that the husband and wife were not on good terms. But that by itself may not be sufficient to establish that the deceased was subjected to ill-treatment and cruelty to compel her to end her life. Learned advocate submitted that on the basis of this evidence, the basic ingredients of the offence of abatement has not been established. Learned advocate submitted that the scale was tilted in favour of the prosecution because at the time of suicide, the deceased was carrying 8-9 months' pregnancy and the foetus was also found dead. Learned advocate submitted that the accused was present in the house when the parents of the deceased went there. Learned advocate submitted that this conduct of the accused is natural. It is submitted

that if the accused was responsible for the death in any manner, then he would have absconded. Learned advocate submitted that evidence of the neighbour (PW4), in stead of supporting the case of the prosecution, has lend an assurance to the defence of the accused. Learned advocate submitted that with the help of the medical evidence, the learned Judge has handed down the sentence of 10 (ten) years to the accused.

8. Learned Additional Public Prosecutor submitted that the learned Judge has made thorough analysis of the evidence. It is pointed out that the evidence of the father (PW3) and the mother (PW2) of the deceased is sufficient to prove that the deceased was subjected to mental and physical ill-treatment and cruelty. Learned APP submitted that there is no substance in the defence and therefore, it was rightly rejected by the learned Judge. Learned APP submitted that the deceased and the accused used to quarrel frequently and it has been corroborated by the evidence of PW4 Police Patil of the village. Learned APP would submit that the learned Judge has recorded cogent reasons in support of his findings and as such no interference is warranted in the well reasoned judgment and order.

9. Undisputedly, the deceased succumbed to the burn injuries. The deceased had sustained 97% burn injuries. The deceased, as can be seen from the record, had poured kerosene on her body and set her ablaze. There were no injuries on the person of the accused. The deceased did not run out of the house after setting herself on fire. The presence of the accused in the house at the time of actual incident has not been established. If the accused was present in the house, then he would have definitely tried to extinguish the fire and in the process he would have sustained some injuries. This fact would show that the deceased alone was in the house, when she committed suicide. The deceased was carrying 8-9 months' pregnancy. In the ordinary circumstances the delivery would have taken place within a short time. The father and mother of the deceased have stated in their evidence that the deceased was killed by the accused. It is not the case of the prosecution that the accused had killed the deceased. It has come in the evidence of the parents that in the heat of moment, at the time of their evidence, they have stated that the deceased was killed by the accused. The cause of death is shock due to burn injuries. The medical evidence rules out the possibility of the accused killing the deceased before she was set on fire. It has come on record that the kerosene stove was not

found in the house at the time of panchanama. However, the panch witness (PW1) has stated in his cross-examination that kerosene stove was lying in the house. It is also seen on perusal of the panchanama that the gas cylinder with gas stove was lying in the house. The existence of kerosene stove in the house and explosion or blast of the kerosene stove due to air pressure is not at all believable. If there had been a blast of kerosene stove, due to air pressure, then it would have caused fire in the house. It would have damaged the house. No such marks or signs were noticed at the time of the panchanana. The presence of kerosene oil on the floor as well as on the clothes of the accused indicate that the deceased had set herself on fire after pouring kerosene. Except burn injuries, the other injuries were not found on the body. This fact would, therefore, rule out the possibility of scuffle between the deceased and the accused prior to the incident. There is no eye-witness to the incident. Similarly, there is no witness to the incident after the deceased had set her on fire. In the facts and circumstances, it is evident that the deceased was fed up with her life and therefore, she did not go out of the house after setting her ablaze. The question is whether the accused was responsible for the abatement to commit suicide by the deceased. In order to find out an answer to this question, it is necessary to



appreciate the evidence carefully.

10. PW5 is the independent witness. He is Police Patil of the village as well as the neighbour of the accused. Before proceeding to appreciate the evidence of PW2 and PW3, the parents of the deceased, it would be appropriate to consider the evidence of PW5 Police Patil. The evidence of PW5 is sufficient to throw light on certain factual aspects. PW5 has stated that the accused was residing with his wife and mother. In my view, this evidence is crucial to establish that the mother of the accused was also residing with the accused and the deceased. No allegation has been made against the mother of the accused. PW5 has stated that the accused used to go to the work. He has stated that the relations between the accused and deceased were good. He has stated that after some time, the dispute started between them. He has stated that the wife was carrying 9 months' pregnancy. He has stated that the accused told him about the dispute with his wife. He has stated that on one occasion, he had visited their house and gave an understanding to them. This is the evidence of PW5 about the so called dispute and quarrel between the accused and the deceased. He has not stated that the deceased had complained to him about the ill-

treatment and torture on account of failure of her parents to pay money. He has not stated that the deceased told him that the accused was demanding money from her parents. He has stated that on receipt of the information of the incident, he went to the house of the accused and saw that the accused was sitting there and the deceased was lying on the floor. His statement that on one occasion the accused told him that there was dispute between him and the deceased, has been proved to be an omission. His evidence at the most would show that for some time their relations were good. His evidence would show that the accused told him about the dispute between them. He went to their house and gave them an understanding. The nature of the dispute and the cause of dispute has not been stated by him. He was the neighbour of the accused. He was Police Patil of the village. He did not say a word about the ill-treatment or torture to the deceased at the hands of the accused.

11. In the above backdrop, it is necessary to consider the evidence of the parents of the deceased. PW2 is the mother of the deceased. She has stated that after marriage the deceased went to the house of the accused for cohabitation. She has stated that thereafter the accused and her daughter had come to their house for Diwali festival.

She has stated that at that time they gave Rs.5,000/- to the accused. She has further stated that they gifted clothes to the accused. As far as the first part of the incident is concerned, PW2 is silent about any demand of money by the accused and ill-treatment to the deceased on that count. Perusal of this evidence of PW2 would show that as per the tradition in our society, the deceased and the accused had come for Diwali festival, which was their first Diwali after marriage and at that time they paid Rs.5,000/- to the accused and gifted some clothes. So PW2 is silent about any ill-treatment to the deceased prior to Diwali festival. She has stated that thereafter the accused and the deceased returned back and then the accused started giving ill-treatment to the deceased. She has stated that she received a telephonic message from the deceased that the accused was causing physical and mental torture to her. She has stated that there was some problem with his motorcycle and for that purpose, the accused was demanding money from the deceased. She has stated that they were unable to pay the money to the accused and thereafter the incident occurred. It was suggested to PW2 in her cross-examination that the deceased was not satisfied with her marriage with the accused and therefore, she committed suicide and the accused has been falsely implicated. She has denied this suggestion.

12. It is now necessary to consider the evidence of PW3, the father of the deceased. He has stated that the marriage of the deceased took place on 23.04.2016. After marriage, the deceased went to the house of the accused for cohabitation. The accused was not doing any work. He has stated that for three months, she was treated properly. He has stated that thereafter, the accused started causing physical and mental torture to the deceased for demand of money. He has stated that he gave Rs.5,000/- to the accused at the time of Diwali festival. This witness has stated that even prior to Diwali festival, the deceased was ill-treated and tortured for money. On this point, there is inconsistency between the evidence of the mother (PW2) and the father (PW3). PW3 has further stated that after celebrating Diwali at their house, the deceased and her husband went back. For few days, there was no problem, however the accused again started demanding money from the deceased. He was informed by his daughter about the demand of money and ill-treatment. He has stated that when the deceased was carrying seven months' pregnancy, she had come to their house for a function. This fact has not been stated by PW2 mother in her evidence. He has stated that the deceased informed him that the accused was addicted to liquor and under the influence of liquor, he was causing

mental and physical torture to her. PW3 has stated that the deceased told him that on account of failure to satisfy the demand, he was causing physical and mental torture to the deceased. He has stated that on account of his weak financial position, he could not give money to the deceased. As far as his examination-in-chief is concerned, he has not stated that the deceased told him that the accused needed money for repairs of his motorcycle.

13. A minute perusal of the evidence of PW2 and PW3, the parents of the deceased, would show that the accused was addicted to liquor. Their evidence would show that they have not uttered a word against the mother of the accused, who as per the evidence of PW5, was residing with the deceased and the accused. It is not their case that through PW5, they gave an understanding to the accused. The marriage was conceived. The accused was doing some work for his livelihood. The evidence of the father and the mother of the deceased, if read together, would show that there was no ill-treatment or torture of extreme nature to the deceased. It is not their case that the deceased told them that she was beaten at any time by the accused. It is also not their case that the accused had made the life of the deceased miserable.

14. It needs to be stated that in a married life, normal wear and tear are bound to occur. The dispute is bound to occur between the husband and wife on a petty cause or reason. It is a common phenomena in a married life of a couple. The question is whether this dispute of normal wear and tear could be sufficient for someone to commit suicide? It is to be noted that the ill-treatment and torture must be of such a nature to come to a conclusion that the accused thereby intentionally aided the suicide. The intention of the accused has to be gathered on the basis of the evidence and surrounding circumstances. The cruelty and torture proved on the basis of the evidence must be of such a nature to conclude that on account of such mental and physical torture and cruelty, the deceased was pushed on the brink of committing suicide. The evidence on record must be sufficient to satisfy that the cruelty and ill-treatment was of extreme nature, which left no alternative or option before the deceased than to end the life.

15. The deceased, at the time of the incident, was 8-9 months' pregnant. The evidence adduced by the prosecution, particularly the evidence of the parents of the deceased, is not sufficient to show that on account of extreme ill-treatment and cruelty, the deceased was brought on the brink of committing suicide. This aspect has not been

established on the basis of the evidence. It was the defence of the accused that the deceased did not like him and therefore, she was not happy with her married life. It is his defence that therefore, she committed suicide. It is to be noted that for some reason or the other, the deceased had decided to end her life. She was carrying 8-9 months' pregnancy. She did not even ran out of the house to seek help for extinguishing fire. She knew that within a short time, she would deliver a baby. This fact may weigh in favour of the case of the prosecution. In my view, this fact alone may not be sufficient to presume that the accused had ill-treated and tortured the deceased and which led her to end her life. The accused was not present at the house when the incident occurred. The evidence on record is not sufficient to establish that the deceased was subjected to extreme mental and physical cruelty by the accused on account of failure of her parents to pay the money.

16. The evidence on record would show that the parents are not consistent about the demand and purpose for which the accused needed money. The prosecution has not proved that the accused in fact owned a motorcycle. In my view, therefore, the evidence on record is not sufficient to prove that the deceased was subjected to extreme mental and physical cruelty and which led her to commit suicide. On

the basis of the evidence, at the most, it can be said that the dispute between the wife and husband was nothing but a normal wear and tear of the married life. In my view, therefore, the learned Judge has failed to consider the facts and the evidence in proper perspective. The learned Judge has invoked the presumption under Section 113-A of the Evidence Act, 1872. In my view, this presumption is not an absolute presumption. In order to invoke the presumption under Section 113-A of the Evidence Act, it must be proved that the death has occurred within a period of seven years from the date of the marriage and that her husband or any relative of her husband subjected her to cruelty. In this case, the suicide was committed within a period of seven years from the date of the marriage, but there is no evidence of cruelty to the deceased at the hands of the husband. In order to trigger the presumption under section 113-A of the Evidence Act, the foundational fact namely, the suicide was committed within seven years from the date of the marriage and the deceased was subjected to cruelty by the husband or any relative of her husband, need to be established. In this case, the evidence is completely lacking to prove the second important ingredient of this section. The evidence on record is not sufficient to prove the extreme mental and physical cruelty.



17. In view of the above, I conclude that the evidence on record is not sufficient to prove the charge. As such, the appeal deserves to be allowed. Accordingly, the Criminal Appeal is allowed.

(i) The judgment and order of conviction and sentence passed against the appellant by learned Additional Sessions Judge, Nagpur, dated 27.02.2019 in Sessions Case No.249/2017, is quashed and set aside.

(ii) Appellant – Ramchandra Deoraoji Bagadate is acquitted of the offences punishable under Sections 306 and 498-A of the Indian Penal Code.

(iii) Appellant – Ramchandra Deoraoji Bagadate is in jail. He be released forthwith if not required in any other crime.

(iv) The High Court Legal Services Sub Committee, Nagpur is directed to pay the fees of the learned advocate appointed for the appellant, as per the Rules.

(v) The appeal stands disposed of in the aforesaid terms.

( G. A. SANAP, J. )