

ATMARAM S/O RAYSINGH RATHOD

A

v.

STATE OF MAHARASHTRA  
(Criminal Appeal No. 985 of 2004)

FEBRUARY 08, 2013

B

[A.K. PATNAIK AND CHANDRAMAULI  
KR. PRASAD, JJ.]

*Evidence Act, 1872:*

C

*s.113-A – Presumption as to abetment of suicide – ‘Cruelty’ – Suicide by second wife of appellant – Conviction of appellant u/ss 306 and 498-A – Held: It is not the case of prosecution that appellant had subjected the deceased to cruelty of the nature described in clause (b) of Explanation to s.498A, IPC – As regards clause (a) of the Explanation, prosecution has not been able to prove beyond reasonable doubt that appellant was guilty of any wilful conduct which was of such a nature as was likely to drive deceased to commit suicide – Therefore, presumption u/s 113A is not attracted and the appellant cannot also be held guilty of abetting suicide of deceased – Judgment of courts below holding the appellant guilty of offences punishable u/ss 306 and 498-A IPC are set aside – Penal Code, 1860 – ss. 306 and 498-A.*

D

E

**The appellant, his first wife and his parents were prosecuted for committing offences punishable u/ss 306 and 498 read with s.34 IPC, on the allegations that the accused ill-treated the second wife of the appellant and did not give her food for two days because she delivered a female child, as a result of which she jumped into a well with her daughter and committed suicide. The trial court, on the strength of s.113-A of the Evidence Act, 1872, convicted the accused of the offences charged and**

F

G

H

A sentenced to them to imprisonment of three years and a fine of Rs.5000/- each. The High Court affirmed the conviction and sentence of the appellant, but acquitted the other accused.

B Allowing the appeal, the Court

HELD: 1.1. A reading of s. 113A of the Evidence Act, 1872 will show that for the purposes of the said section, 'cruelty' shall have the same meaning as in s.498A, IPC. Therefore, to convict a husband or any relative of the husband of a woman or to draw presumption as to abetment of suicide by a married woman by her husband or any relative of her husband in case of suicide committed by a woman within a period of seven years from the date of her marriage, there must first be evidence to establish that such husband or the relative of her husband committed cruelty of the nature described in clauses (a) or (b) of the Explanation to s.498A, IPC. [para 7] [874-G-H; 875-A-B]

1.2. In the instant case, it is not the case of the prosecution that the appellant had subjected the deceased to cruelty of the nature described in clause (b) of Explanation to s.498A, IPC, as there is no allegation that the appellant had harassed her with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or that he subjected her to harassment on account of failure by her or any person related to her to meet such demand. [para 8] [875-C-E]

1.3. As regards Clause (a) of the Explanation to s. 498A, the High Court has relied on Ext. 47 i.e. a written undertaking dated 17.4.1988 given by appellant to give equal treatment to both his wives. Exts. 47 is an evidence of some misbehaviour of the appellant towards the deceased but the nature of the misbehaviour has not

been stated in it. Besides, the drowning of the deceased took place three months after Ext. 47 had been executed. For holding the appellant guilty of the offences u/s 306 and 498A, IPC, there must be evidence of wilful conduct of the appellant towards the deceased soon before her death which could have driven her to commit suicide. The *post mortem* examination report of deceased described her as 'well nourished' and the last meal was taken by her within six hours. Moreover, the *post mortem* examination report does not show that the deceased was subjected to any severe beating before her death. [para 3, 9, 11 and 13] [871-D; 876-E; 877-C-D; 879-C-D]

1.4. Thus, the prosecution has not been able to prove beyond reasonable doubt that the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive the deceased to commit suicide. Rather, there appears to be some evidence in the depositions of PW-1 and PW-4 (father and sister of the deceased) that the deceased was sad due to a daughter being born to her and a son being born to the first wife of the appellant. These circumstances may have driven her to commit suicide by jumping into the well along with her daughter. Such a consequence from the mental state of the deceased cannot be a ground for holding the appellant guilty of cruelty within the meaning of clause (a) of the Explanation to s.498A, IPC. Therefore, the presumption u/s 113A is not attracted and the appellant cannot also be held guilty of abetting the suicide of the deceased. The judgments of the High Court and the trial court holding the appellant guilty of the offences punishable u/ss 306 and 498A, IPC are set aside. [para 14-15] [879-D-G; 880-D]

*State of West Bengal v. Orilal Jaiswal & Anr. (1994) 1 SCC 73* – referred to

**A Case Law Reference:**

**(1994) 1 SCC 73 referred to para 14**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 985 of 2004.

**B** From the Judgment & Order dated 3.12.2003 of the High Court of Judicature at Bombay, bench at Nagpur in Criminal Appeal No. 10 of 1991.

**C** Anagha Desai, Shashant Pareek, Satyajit A. Desai, Venkateswara Rao Anumolu for the Appellant.

Shankar Chillagre, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

**D** **A.K. PATNAIK, J.** 1. This is an appeal against the judgment dated 03.12.2003 of the Bombay High Court, Nagpur Bench, in Criminal Appeal No.10 of 1991 by which the High Court has maintained the conviction of the appellant for offences under Sections 306 and 498A of the Indian Penal Code (for short 'the IPC') and the sentence of rigorous imprisonment of three years and a fine of Rs.5,000/- for each of the aforesaid two offences by the Sessions Court.

**F** 2. The facts very briefly are that a written report was lodged by Gorsing Shewa Pawar (hereinafter referred to as 'the informant') on 17.07.1988 in the Police Station, Pusad (Rural). In this report, the informant stated that the appellant got married for the second time to his daughter Purnabai with the consent of his first wife with a hope to get a son from Purnabai and he treated her well for the first 2 to 2½ years but when she delivered a female child, the appellant and his family members started beating and harassing Purnabai and also did not provide her with meals and on 16.07.1988, the informant received a message that Purnabai died by drowning in the well at Bhandari. The informant has further stated in the report that

**H**

ATMARAM S/O RAYSINGH RATHOD v. STATE OF 871  
MAHARASHTRA [A.K. PATNAIK, J.]

he reached Bhandari in the evening and came to know that Purnabai had not been given food for two days and was ill-treated with an intention to ensure that she leave the house and because of such ill-treatment Purnabai jumped into the well along with her daughter Nanda and committed suicide. On the basis of the written report, an FIR was registered under Sections 306 and 498A of the IPC and after investigation, a charge-sheet was filed against the appellant, his first wife, his father and his mother and they were all tried for offences under Sections 306 and 498A read with Section 34 of the IPC in Sessions case No.29/1990.

3. At the trial, altogether eight witnesses were examined. The informant was examined as PW-1, the sister of Purnabai was examined as PW-4, the Police Patil of Bhandari was examined as PW-5 and the Investigating Officer was examined as PW-8. At the trial, a written undertaking dated 17.04.1988 signed by the appellant to give equal treatment to both his wives was marked as Ext.47 and a written undertaking signed by Purnabai to behave properly in future was marked as Ext. 48. The learned Sessions Judge considered the evidence and, in particular, the evidence of PW-1 and PW-4 as well as Ext.47 and held that the presumption as to abetment by the husband and his relatives of suicide by a married woman as provided in Section 113A of the Indian Evidence Act, 1872 was attracted and the appellant, his first wife, his father and his mother were all guilty of the offences under Sections 306 and 498A read with Section 34, IPC. After hearing the accused persons on the sentence, the learned Sessions Judge sentenced each of the accused persons to rigorous imprisonment for three years in respect of each offence and in addition, for a fine of Rs.5,000/- each in respect of each offence by judgment and order dated 09.01.1991. Aggrieved, all the accused persons filed Criminal Appeal No.10 of 1991 before the High Court and by the impugned judgment dated 03.12.2003, the High Court set aside the conviction and sentence of the first wife, the mother and the father of the appellant and acquitted them of the offences, but

A maintained the conviction of the appellant as well as the sentence imposed upon him by the learned Sessions Judge.

4. Learned counsel for the appellant submitted that the High Court has relied on Ext.47 and Ext.48 as well as evidence of PW-1 and PW-4 to come to the conclusion that the appellant had ill-treated the deceased Purnabai on account of which she had committed suicide by jumping into the well along with her daughter. She submitted that there is nothing in Exts.47 and 48 to indicate that the appellant had actually ill-treated Purnabai. She submitted that Exts.47 and 48 would show that the appellant had undertaken before the *Panchas* to give equal treatment to both his wives Purnabai and Kesri and Purnabai had also similarly undertaken before the *Panchas* that she would behave properly in future even though the appellant was having another wife. She submitted that the evidence of PW-1 and PW-4 also do not establish any specific act of cruelty committed by the appellant because of which Purnabai committed suicide. She submitted that the *post mortem* report of the deceased Purnabai (Ext.35) does not show any injury on her body and it also shows that she had her meals. She submitted that the appellant has not committed any cruelty of the nature defined in the Explanation to Section 498A, IPC. She submitted that the Explanation to Section 113A of the Indian Evidence Act, 1872 is also clear that to attract the presumption as to abetment of suicide by a married woman, the husband must be shown to have subjected the married woman to cruelty of the nature defined in Section 498A, IPC and, therefore, the presumption under Section 113A of the Indian Evidence Act, 1872 was not attracted in this case. She submitted that the FIR (Ext.49) was lodged on 17.07.1988, two days after the drowning took place on 15.07.1988, because the appellant denied a share in his properties to PW-1 and this was the defence of the appellant in his statement under Section 313, Cr.P.C. She finally submitted that the evidence of PW-1 and PW-4 would rather show that Purnabai was depressed and unhappy after a female child instead of male child was born to her and it is quite

B  
C  
D  
E  
F  
G  
H

ATMARAM S/O RAYSINGH RATHOD v. STATE OF 873  
MAHARASHTRA [A.K. PATNAIK, J.]

possible that she jumped into the well with the female child on account of such depression and unhappiness. A

5. Learned counsel for the respondent-State, on the other hand, submitted in his reply that the evidence of PW-1 and PW-4 clearly establishes that the appellant has been beating the deceased Purnabai and has not been providing her with food and because of these cruel acts of the appellant she committed suicide by jumping into the well with her daughter. He submitted that the evidence of PW-1 and PW-4 were also corroborated by the FIR lodged by PW-1 as well as the evidence of PW-8. He submitted that the presumption in Section 113A of the Indian Evidence Act, 1872 as to abetment of suicide by a married woman is also attracted in this case as the deceased Purnabai has committed suicide within a period of seven years from the date of her marriage and the appellant has subjected her to cruelty. He submitted that this is, therefore, not a fit case in which concurrent findings of the trial court and the High Court with regard to the guilt of the appellant under Sections 306 and 498A, IPC, should be disturbed. B  
C  
D

6. Section 498A, IPC, and Section 113A of the Indian Evidence Act, 1872 are extracted hereinbelow: E

**"498A. Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. F

*Explanation-* For the purpose of this section, "cruelty" means- G

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or H

A (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

B **“113A. Presumption as to abetment of suicide by a married woman.-** When the question is whether the commission of suicide by a women had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband has subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

D *Explanation.—* For the purposes of this section, “cruelty” shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).”

E 7. A reading of Section 498A, IPC, would show that if the husband or relative of the husband of a woman subjected such woman to cruelty, they shall be liable for the punishment mentioned therein. Moreover, the Explanation to Section 498A, IPC, defines ‘cruelty’ for the purpose of Section 498A, IPC, to mean (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. A reading of Section 113A of the Indian Evidence Act, 1872 will show that for the purposes of Section 113A of the Indian Evidence Act, 1872, ‘cruelty’ shall have the same meaning as in Section 498A, IPC. Hence, to  
 F  
 G  
 H convict a husband or any relative of the husband of a woman

ATMARAM S/O RAYSINGH RATHOD v. STATE OF 875  
MAHARASHTRA [A.K. PATNAIK, J.]

or to draw up presumption as to abetment of suicide by a married woman by her husband or any relative of her husband in case of suicide committed by a woman within a period of seven years from the date of her marriage, there must first be evidence to establish that such husband or the relative of her husband committed cruelty of the nature described in clauses (a) or (b) of the Explanation to Section 498A, IPC.

8. Therefore, the main question, which we have to decide in this case, is whether there is any such evidence to establish beyond reasonable doubt that the appellant had subjected his second wife, Purnabai, to cruelty either of the nature described in clause (a) or of the nature described in clause (b) of the Explanation to Section 498A, IPC. It is not the case of the prosecution in this case that the appellant had subjected Purnabai to cruelty of the nature described in clause (b) of Explanation to Section 498A, IPC, as there is no allegation in this case that the appellant had harassed Purnabai with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or that he subjected Purnabai to harassment on account of failure by her or any person related to her to meet such demand. We have, therefore, only to decide whether the appellant treated Purnabai with cruelty of the nature described in clause (a) of the Explanation to Section 498A, IPC.

9. Clause (a) of the Explanation to Section 498A, IPC, defines 'cruelty' to mean any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Exhibit 47, on which the High Court has relied on, is the English translation of the written undertaking given by the appellant before the *Panchas*, and is extracted hereunder:

".... As I was not having son, I got married with Purnabai from village Bhidongar, in Ganhar for getting son, about 5 to 6 years back. As I have first wife, an bhanged

A (problems) used to take place (between them) at my home. As the dispute was taken (brought) before panchas. On this day, the panchas advised me to treat both the wives well. Henceforth I will give equal treatment to Purna as well as Kesari, the sisters. If I commit any mistake in future, I  
 B will be bound by the rules. Hence this undertaking. ..”

A reading of Ext. 47 would only indicate that the appellant got married with Purnabai for getting a son and as he had his first wife also, some problems used to take place between  
 C Purnabai and his first wife in his house and the dispute was brought before the *Panchas* and the *Panchas* advised the appellant to treat both the wives well. The appellant had stated in his undertaking that as the *Panchas* advised him to treat both the wives well, he gave an undertaking that in future he will give equal treatment to Purnabai as well as Kesari (his first wife)  
 D and he will not commit any mistake in this regard. Exhibit 48 is an undertaking dated 17.04.1988 given by Purnabai in which she has assured that she would behave properly in future but her husband should also behave properly with her. Thus, Exts. 47 and 48 are evidence of some misbehaviour of the appellant  
 E towards Purnabai but the nature of the misbehaviour of the appellant towards Purnabai has not been stated in these two Exhibits.

10. PW-1 in his evidence, however, has stated that since  
 F the birth of a son from the first wife, the appellant started beating and ill-treating Purnabai and they were not providing her food and this he had come to learn from Purnabai. He has also stated in his evidence that he had gone to Paradha at the house of Shantabai before the death of Purnabai and some ladies  
 G from Bhandari had come there for grinding their grains in the flour mill and they had reported to him that the appellant and his family members were beating Purnabai severely. He has stated that he, therefore, went to the house of the appellant and found marks of Shiwal on the hands and thigh of Purnabai and he brought her to Paradha and he was going to report the  
 H

ATMARAM S/O RAYSINGH RATHOD v. STATE OF 877  
MAHARASHTRA [A.K. PATNAIK, J.]

matter to the Police Station, but the appellant and his family members and others came and told him that the appellant is going to give in writing that henceforth he will not beat Purnabai. PW-1 has further deposed that thereafter the appellant executed the undertaking (Ext.47) dated 17.04.1988 and Purnabai executed the undertaking (Ext.48) dated 17.04.1988 before the Panchas and Exts. 47 and 48 were kept with the Sarpanch and the Police Patil.

11. The aforesaid evidence of PW-1 establishes that the appellant used to beat Purnabai and was not giving her food before he executed the undertaking in Ext.47 on 17.04.1988. The drowning of Purnabai took place three months thereafter on 15.07.1988. For holding the appellant guilty of the offences under Sections 306 and 498A, IPC, there must be evidence of wilful conduct of the appellant towards Purnabai soon before her drowning which could have driven her to commit suicide and this is what PW-1 has said in his Examination-in-Chief on what happened before the drowning of Purnabai:

"Thereafter I took Purana to Bhandari in the house of accused no.1. Thereafter I brought her back to my house for Rasai. She complained that there is ill-treatment going on though it is lessened. She complained me that accused was not providing her with meals and used to beat her. She also told that as accused do not give her food she begs for food from others even then I reached her with the hope that everything will be settled. Later on I received the news of her death. On hearing dead news of Purana I went to Bhandari. I found Purana and her daughter dead due to drowning in the well. I enquired there at Bhandari and I came to know that there was lot of beating given to Purana and hence she died on fall in the well. I came to know that there was accidental death. I also came to know that Purana died along with her girl after falling in the well due to ill-treatment received by her from accused persons. Then I went to Rural P.S. Pusad and reported the matter.

A The report now read over to me is the same. It's contents are correct. It bears my thumb impression. It is at exh.49. Printed F.I.R. shown to me also bears my signature. It is at exh.50. Police recorded my statement."

B 12. In the written report (FIR) lodged by PW-1 on which the prosecution has relied upon for corroboration, it has been similarly stated:

C "So, I sent my daughter again to Bhandari and then I brought my daughter on the occasion of Rosa. At that time I came to know that the said four non-applicants were again ill-treating and beating my daughter and not providing her meals too. I also came to know that she is required to beg for food. Still then, I sent my daughter to their house. On D 16.7.88 I received message that my grand daughter died on account of drowning into the well at Bhandari. On getting the said message, I reached there at the time of evening and then I came to know that my daughter Purnabai and grand daughter died. On enquiry in the village, I came to know that my daughter was not given food E since last two days and was ill-treated with an intention that she should leave the house and hence my daughter Purnabai jumped into the well and committed suicide with her daughter Nanda."

F It is thus clear from the evidence of the PW-1 and from the FIR lodged by him that he had no personal knowledge about the cause of the death of Purnabai but on enquiry at Bhandari he had come to learn that there was lot of beating of Purnabai and no food was given to her and for such ill-treatment she had jumped into the well with her daughter.

G 13. No witness of Bhandari from whom PW-1 made the inquiry has been examined by the prosecution to prove such beating and denial of food to Purnabai soon before she committed suicide. PW-4, the sister of Purnabai, has not H deposed that there was any beating and denial of food to

Purnabai soon before her drowning in the well. PW-5, the Police Patil of Bhandari, has stated that Purnabai was ill-treated by the appellant in his house and he came to learn of this fact from the father of the appellant Raysingh who also told him that Purnabai's father had for this reason taken Purnabai to Paradha three months back but the appellant and his father took four to five *Panchas* to Paradha and brought back Purnabai. PW-5 has, therefore, also not deposed that Purnabai was beaten or not given food because of which she jumped into the well with her daughter on 15.07.1988. On the other hand, on a perusal of the *post mortem* examination report (Ext. 35) of deceased Purnabai, we find that the Doctor has described Purnabai as 'well nourished' and the last meal appears to have been taken by her within six hours. Moreover, the *post mortem* examination report (Ext. 35) does not show that the Purnabai was subjected to any severe beating before her death.

14. From the discussion of the aforesaid evidence on record, we find that the prosecution has not been able to prove beyond reasonable doubt that the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive Purnabai to commit suicide. Rather, there appears to be some evidence in the depositions of PW-1 and PW-4 (father and sister of Purnabai) that Purnabai was sad due to a daughter being born to her and a son being born to the first wife of the appellant. These circumstances may have driven Purnabai to commit suicide by jumping into the well along with her daughter. Such a consequence from the mental state of Purnabai cannot be a ground for holding that the appellant was guilty of cruelty within the meaning of clause (a) of the Explanation to Section 498A, IPC. We, therefore, hold that the presumption under Section 113A is not attracted and the appellant cannot also be held guilty of abetting the suicide of Purnabai. We have to bear in mind this note of caution in *State of West Bengal v. Orilal Jaiswal & Anr.* [(1994) 1 SCC 73]:

".....the Court should be extremely careful in assessing

- A the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”
- B
- C

15. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court and the judgment of the trial court holding the appellant guilty of the offences under Sections 306 and 498A, IPC and direct that the bail bonds executed by the appellant be discharged.
- D

R.P.

Appeal allowed.