

A NAVAL KISHORE

v.

STATE OF MAHARASHTRA

B (Criminal Appeal No.2246 of 2011)

MARCH 17, 2015

**[T.S. THAKUR AND PRAFULLA C. PANT, JJ.]**

C *Penal Code, 1860 – ss.498A, 302, 201 – Conviction*  
D *and sentence under – Prosecution case that wife harassed*  
E *and subject to cruelty by her husband and in-laws – Death*  
F *of wife by burn injuries – Conviction and sentence of*  
G *husband u/ss. 498A, 302 and 201 by courts below – On*  
*appeal, held: It is clear from the medical evidence that*  
*attempt to burn the body was made in order to cause*  
*disappearance of evidence of murder – There is trustworthy*  
*evidence of brother of deceased as also her neighbours that*  
*she was subjected to physical cruelty – In view thereof there*  
*is little force in the submission of the husband that wife*  
*committed suicide and left a chit-suicide note, which was*  
*not proved – Further the submission that the Investigating*  
*Officer made no effort to obtain handwriting expert report*  
*relating to seized chit and that no explanation was given*  
*by the prosecution as to why ante mortem injuries (other*  
*than burn injuries) were not mentioned in the inquest report*  
*not material nor fatal to the prosecution case – Thus, there*  
*is no illegality in the order of conviction and sentence of*  
*the husband by the courts below.*

*State of West Bengal v Mir Mohammad Omar and*  
*Others (2000) 8 SCC 382 – referred to.*

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**Case Law Reference**

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**(2000) 8 SCC 382 referred to. Para 17**

**CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2246 of 2011.**

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From the Judgment and Order dated 05.03.2010 of the High Court of Judicature at Bombay at Nagpur Bench in Criminal Appeal No. 518 of 2004.

Dharmendra Kumar Sinha for the Appellant.

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Aniruddha P. Mayee, Shankar Chillarge, Charudatta Mahindrakar, A. Selvin Raja for the Respondent.

The Judgment of the Court was delivered by

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**PRAFULLA C. PANT, J.** 1. This appeal is directed against judgment and order dated 5.3.2010, passed by the High Court of Judicature at Bombay, Nagpur Bench, in Criminal Appeal No. 518 of 2004 whereby said appeal, filed by the appellant Naval Kishore, was dismissed, and conviction and sentence recorded against him under Sections 498A, 302 and 201 of Indian Penal Code (IPC), by Additional Sessions Judge, Khampur in Sessions Case No. 75 of 1999, stood affirmed.

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2. We have heard learned counsel for the parties at length and perused the record.

3. Prosecution story in brief is that appellant Naval Kishore got married to Jyoti (deceased) on 27.6.1992. After marriage she was harassed and subjected to cruelty by her husband and in-laws. On 15.7.1997, she was driven out of her matrimonial house with her two children, born from the wedlock, with regard to which a report was lodged with Police Station Ramdas Peth in Akola. While the proceedings

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A relating to said case were pending, the appellant went to parental house of Jyoti, and promised her and other relatives that he would not repeat the conduct. As such, the parents and brothers of Jyoti allowed her to go back to her matrimonial house on 24.11.1997. It appears that the  
B appellant again started beating his wife and continued to ill-treat her. On 23.4.1999, a telephonic information was received in the parental house of Jyoti that she has died due to burn injuries in Nandura, the place where the deceased was living with her husband. On the very day  
C (23.4.1999) a First Information Report (Ex. 69) was lodged at Police Station Nandura by PW-1, Suresh Jain (brother of the deceased). On the basis of said report Crime No. 61 of 1999 was registered in respect of offences punishable under Sections 306, 498A read with Section 34 IPC against  
D the appellant, his brother Vinod Kumar, mother Krishnabai and maternal uncle Ishwar Bhagchand Jain. Meanwhile, the appellant also gave a report regarding death of his wife due to burn injuries at the police station with a story that  
E she committed suicide by setting herself on fire. Said report was recorded by the police as A.D. No. 16 of 1999.

4. Investigation was taken up by PW-8 Sub-Inspector M.R. Thakare, who rushed to the spot with the police party. Dead body of Jyoti in a burned condition was taken into  
F possession by the police, and the same was sealed. Inquest Report (Ex. 73) was prepared and the body was sent for post mortem examination. PW-6 Dr. Keshav Mende with Dr. (Mrs.) S.V. Kulkarni conducted autopsy, and opined  
G that the deceased had died of asphyxia due to suffocation. The team of doctors recorded three ante mortem injuries and 21% post mortem burn injuries in its report (Ex.79). A chit is also said to have been found regarding which  
H accused pleaded that the same was suicide note left by the deceased (however, the same was not proved on the

record). Burnt pieces of clothes – petticoat and saree, and the tin containing kerosene were also seized by the police from the place of incident, regarding which seizure memo (Ex. 60) was prepared. After interrogation of witnesses and on completion of investigation, charge sheet in respect of offences punishable under Sections 498A, 302 read with Section 34 IPC, and under Section 201 IPC, was filed against the appellant Naval Kishore, his brother Vinod Kumar, mother Krishnabai and maternal uncle Ishwar Bhagchand Jain.

5. The case was committed to the Court of Sessions on 11.8.1999, and necessary copies were given to the accused. On 17.4.2004, after hearing the parties, charge was framed against all the four accused, including appellant Naval Kishore, in respect of offences punishable under Sections 498A, 302/34 and 201 IPC to which all of them pleaded not guilty and claimed to be tried.

6. On this, prosecution got examined PW-1 Suresh Jain (informant and brother of the deceased), PW-2 Constable Dayaram Pawar, PW-3 Malatibai (mother of the deceased), PW-4 Narayan Rakhonde (panch witness), PW-5 Gitabai (neighbor), PW-6 Dr. Keshav Mende (who conducted autopsy with his colleague Dr. Mrs. Kulkarni), PW-7 Lilabai (another neighbour of the deceased) and PW-8 Sub-Inspector M.R. Thakare. (who investigated the drime).

7. Oral and documentary evidence was put to the appellant and other accused under Section 313 of the Code of Criminal Procedure, 1973, on 17.7.2004, in reply to which they admitted that the appellant got married to Jyoti on 27.6.1992. Appellant Naval Kishore further admitted that his wife used to live with him and the couple had two children. Accused, including the appellant, also admitted that on 23.4.1999 Jyoti died but denied that she was

A subjected to cruelty. However, no evidence was adduced in defence.

8. The trial court, after hearing the parties, found that charge relating to all the three offences punishable under Sections 498A, 302 and 201 IPC, stood proved against accused Naval Kishore (appellant before us) and convicted him accordingly. However, in respect of other accused, the trial court found that the charge was not proved and they were acquitted. After hearing on sentence, convict Naval Kishore was sentenced under Section 498A IPC to undergo rigorous imprisonment for a period of three years and directed to pay fine of Rs.500/-, in default of payment of which further imprisonment of two months was directed to be served. He was sentenced under Section 302 IPC to undergo imprisonment for life and directed to pay fine of Rs.1,000/-, in default of payment of fine to further undergo four months' imprisonment. The convict was further sentenced to undergo rigorous imprisonment for a period of three years and directed to pay fine of Rs.700/-, in default of payment of which he was directed to serve further imprisonment for a period of three months under Section 201 IPC.

9. Aggrieved by the judgment and order dated 5.8.2004, passed by the learned Additional Sessions Judge, Khamgaon, in Sessions Case No. 75 of 1999, the convict Naval Kishore preferred appeal before the High Court of Bombay, Nagpur Bench, which was registered as Criminal Appeal No. 518 of 2004. After hearing the parties and on reappraisal of evidence, the High Court concurred with the view taken by the trial court, and upheld the order of conviction and sentence passed against accused Naval Kishore. Hence, this appeal through special leave.

10. On behalf of the appellant it is argued before us

that the courts below have erred in law in not taking note of the fact that suicide chit was recovered from the place of incident. It is further argued that the trial court as well as the High Court has further erred in law in not taking note of the fact that the appellant had already given a report (Ex.59) regarding death of his wife, who committed suicide, at Police Station Nandura, which shows his bona fide. It is also pointed out that in the deposition made by the Investigating Officer it is stated that there were no injury marks (except burn injuries) on the person of the deceased at the time of preparation of inquest report but the autopsy report discloses three ante mortem injuries, which creates doubt as to the manner in which prosecution has suggested that the crime was committed.

11. Before further discussion, we think it just and proper to mention the injuries found on the body of the deceased at the time of post mortem examination. The same are reproduced below from the autopsy report (Ex.79): -

- "1. Contusion on (Rt) side of nose on chick ½" below (Rt) eye 4 cm x 2 cm. Reddish, Inflamed.
2. Contusion on (lt.) side of nose on thick 1" below (Lt) eye size 5 cm x 2 cm. Reddish inflamed nose become completely flattened and nostril of nose are blocked with blood & blood clot.
3. L.W. (Rt) face ½" below (Rt) lower lid. Laterally placed. Size 2 cm x 2 cm x 1 cm. Bleeding + Base of injury is red inflamed & Reddish. Margins of injury irregular. Skin of the face is blackened due to soot. Age of above injuries are within 24 hrs. caused by Hard & blunt object. All above injuries are Antemortem.
4. Following burn injuries are seen on body

- A i. Burn injury on Head, Neck, Face – 2%  
 ii. B.I. to chest & Abd. Wall – 2%  
 iii. B.I. to (Rt) Upper Extri. With palm – 3%
- B iv. B.I. to (Lt) upper Extri. With palm – 2%  
 v. B.I. to Back and Buttock – 3%  
 vi. B.I. to (Rt) lower Extri. With sole of foot – 4%
- C vii. B.I. to (Lt) lower Extri. With sole of foot – 4%  
 viii. B.I. to perineum – 1%

**Total – 21%**

- D - All burn injuries are superficial I & II degree  
 - Base of Burn injuries are pale.  
 - No red line of inflammation seen.
- E - Soot in upper respiratory tract & trachea is absent.  
 - All body become Blackish due to soot.  
 - No vesicle of blister seen on burn area.
- F - Injury no. 4 are post mortem burn injuries.  
 - Injury no. (1) to (3) are antemortem. Injury no. (4) are post mortem.

G 12. PW-6, Dr. Keshav Mende has further observed in his report that uterus of the deceased was in full term and bulky containing single male dead foetus full x torn x of size 19" x 10" of two kgs. The team of Medical Officers, Dr. K.B. Mende (PW-6) and Dr. (Mrs.) S.V. Kulkarni, has opined in

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their report (Ex.79) that "mode of death is Asphyxia, the cause of which is suffocation". The report discloses that the post mortem examination was done on the very day, i.e., 23.4.1999. A

13. The above medical evidence on record clearly establishes that the deceased was smothered as she suffered two contusions and one lacerated wound as ante mortem injuries on her face. The second injury recorded above clearly shows that the nose of the deceased had completely flattened. It appears that after the deceased was made to suffocate by closing her mouth and nose, and thereafter she was set on fire and suffered 21% post mortem burn injuries. It is clear that attempt to burn the body was made in order to cause disappearance of evidence of murder. From Ex. 80, read with the statement of PW-6 Dr., Keshav Mende, it is evident that suffocation appears to have been caused by obstruction to the air passage. And the witness (medical officer) has disagreed with the suggestion given by the defence that the deceased, who was pregnant, might have fallen on the surface and suffered the first three ante mortem injuries mentioned above. From the cross-examination of PW-6, it is also clear that the death had occurred within 12 hours of post mortem examination. Though it has been pleaded on behalf of the appellant that the wife of the appellant committed suicide, but there is nothing on the record to suggest as to why she wanted to commit suicide, particularly at the stage of full pregnancy. B  
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14. Statement of PW-1, Suresh Jain (brother of the deceased), establishes that after the marriage of his sister Jyoti (deceased) with the appellant, she was subjected to cruelty. In support of his allegation, the witness has stated that earlier the deceased was driven out of her matrimonial G  
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A house, with her children, in July, 1997 and a report was lodged at Police Station Ramdas Peth, Akola, against the appellant and other accused. He has further narrated the fact that only after the appellant came and assured that he would not repeat the conduct, the deceased was allowed to go back with him to her matrimonial house in Nandura. PW-1, Suresh Jain, has further told that on 20.4.1999, three days before the incident, he had gone to attend marriage of daughter of his maternal uncle Kanti Lal Jain, where also Jyoti complained that she was being frequently assaulted by the appellant. We are of the view that the courts below have rightly believed the natural testimony of PW-1 Suresh Jain, brother of the deceased.

15. In this connection, we think it just and proper to mention the evidence of PW-7, Lilabai, who is the neighbour of the appellant in Nandura. She has stated that the appellant used to quarrel with Jyoti. She further told that she had seen the appellant assaulting Jyoti. She further deposed that the day when she saw the appellant beating his wife, next morning she was found dead. This statement of independent witness corroborates the statement of PW-1 Suresh Jain.

16. Not only PW-7 Lilabai, but PW-5 Gitabai, who is also neighbour of the deceased and her husband (appellant), has also corroborated that the fact of physical cruelty was committed by the appellant against his wife. She has stated that she heard shouts of Jyoti and her husband on two occasions. She further told that she heard commotion from the house of the appellant about six hours before the incident, whereafter she came to know that Jyoti has succumbed to injuries. This witness also lives at a close distance from the house of the appellant. As against the above trustworthy evidence of PW-1, PW-5 and PW-7

read with medical evidence (post mortem report), we find little force in the argument of learned counsel for the appellant that the wife of the appellant committed suicide and had left a chit, found from nearby place, which, according to the appellant, was suicide note. Nobody has proved the contents of said chit, on the record. Theory of suicide, advanced by the defence in report A.D. 16 of 1999, was rightly not found true by the courts below.

17. Mr. Dharmendra Kumar Sinha, learned counsel for the appellant, pointed out that Investigating Officer has made no effort to obtain handwriting expert report relating to the seized chit. It is also pleaded that no explanation was given by the prosecution as to why ante mortem injuries (other than burn injuries) were not mentioned in the inquest report. After going through the record, we are of the view that the same, in the present facts and circumstances of the case, are not material nor fatal to the prosecution. In ***State of W.B. v. Mir Mohammad Omar and others***<sup>1</sup>, this Court, in paragraph 41, has observed as under:-

“Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation.”

<sup>1</sup> (2000) 8 SCC 382

A        18. For the reasons, as discussed above, we find no illegality in the conviction and sentence recorded by the trial court against the appellant Naval Kishore under Sections 498A, 302 and Section 201 IPC, which has been affirmed by the High Court.

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19. Therefore, the appeal is dismissed. The appellant Naval Kishore is on bail, his bail is cancelled. He shall surrender before the court concerned to serve out the remaining part of the sentence, awarded against him by the trial court. Lower court record be sent back forthwith.

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Nidhi Jain

Appeal dismissed.