

(2012) 03 BOM CK 0087

In the Bombay High Court

Case No : Criminal Appeal No. 393 of 2011

Sau. Vajabai Vikram Sonawane and Vikram Namdev
Sonawane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2)
Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 304B, 306, 323, 34, 498A

Citation : (2013) 2 ABR 236 : (2012) BomCR(Cri) 653

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Satej S. Jadhav, for the Appellant; Y.M. Kshirsagar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.M. Thipsay, J.—Both these appeals can be conveniently disposed of by this common judgment, as the appellants in both these appeals were the accused in the same Sessions Case i.e. Sessions Case No. 58 of 2007 and were tried in the same trial by the Additional Sessions Judge, Jalgaon. The learned Judge found the appellants guilty of offences punishable u/s 498A of the IPC r/w Section 34 of the IPC and Section 306 of the IPC r/w Section 34 of the IPC, and sentenced them to suffer R.I. for three years and to pay a fine of Rs. 2,000/- each, with respect to the offence punishable u/s 498A of the IPC r/w Section 34 of the IPC and R.I. for six years and to pay a fine of Rs. 1,000/- each, with respect to the offence punishable u/s 306 of the IPC r/w Section 34 of the IPC. The appellants were also charged of having committed an offence punishable u/s 304B of the IPC r/w Section 34 of the IPC, but the Additional Sessions Judge acquitted them of the said offence. The appellant in Criminal Appeal no. 621 of 2011 was the accused no.1, while the appellant nos. 1 and 2 in Criminal Appeal no. 393 of 2011 were the the accused nos.2 and 10, respectively, in the said Sessions Case.

There were seven other accused in the said case and they were also charged similarly, but the learned Additional Sessions Judge found them not guilty, and acquitted them of all the offences.

For the sake of convenience and clarity, the appellants shall be referred to by the position held by them in the trial Court, in the body of this judgment.

2. The machinery of the Criminal Law was set in motion against the accused persons, on an unnatural death of Santiga, the wife of the accused no.1. The accused no.2 is the mother of the accused no.1 and the accused no.10 is his father. The other accused were the relatives of

3. The facts of the case, as reflected in the column no. 15 of the printed prescribed proforma of the Police Report u/s 173(2)(i) of the Code of Criminal Procedure, are as follows :-

That the marriage between Sangita and accused no.1 had taken place on 26.12.2005 and after the marriage, Sangita started residing with her husband and in-laws. For about two to three months after the marriage, the accused persons treated Sangita well, but thereafter started insisting that she should bring an amount of Rs. 1 Lac from her parents, for securing a job for the accused no.1. Because of this, in furtherance of their common intention, all the accused persons caused mental and physical cruelty to Sangita. That, the original accused nos. 5, 6, 7, 8 and 9 from time to time used to visit the house of accused no.1 and Sangita and used to instigate the husband and in-laws of Sangita. Thus, the accused persons instigated Sangita to commit suicide and made her difficult to live. By being fed up, due to the cruelty meted out to her by the accused persons and as life became intolerable for Sangita, she committed suicide by jumping in a well. That the accused persons had, therefore, committed the offences punishable u/s 304B of the IPC, 498A of the IPC and Section 323 of the IPC r/w Section 34 of the IPC and offences punishable under the Dowry Prohibition Act and the Prevention of Atrocities on Women Act.

4. The facts necessary to understand the background in which the aforesaid accusations came to be levelled against the accused persons, may, in brief, be stated thus :-

Sangita, who was the youngest of the five children of her parents, married the accused no.1 Santosh at village Gondegaon on 26th December, 2005. Dowry consisting of gold ornaments, cloths was given to the accused no.1 by the parents and brothers of Sangita; and totally about Rupees One lac were spent for the marriage. The accused no.1 though had studied upto B.A., was unemployed. Within 3 days after the marriage, Sangita went to her matrimonial house at Gondegaon. There she was residing with her husband - the accused no.1 Santosh, father- in-law - the accused no.10 Vikram, the mother- in-law - the accused no.2 Vaijabai, and her brother in law Nanu - the original accused no. 3. Within a month, Nanu - original accused no.3- also got married to one Surekha- original accused no.4 - and Surekha also started residing in the same house.

Sangita was treated properly by her in-laws for two to three months. Thereafter, her in-laws started making efforts to secure a job for her husband and started insisting that Sangita should bring an amount of Rs. 1 Lac from her parents for securing employment to her husband. Sangita telephoned to her parents and asked them to arrange for Rs. 1 Lac. However, Sangita's brother and parents made it clear that it would not be possible for them to arrange for the said amount and asked Sangita to tell so to her in-laws. A few days thereafter, Sangita again telephoned to her parents and informed them that the in-laws were harassing her for bringing the amount of Rs. 1 Lac and that, even the other accused were also harassing her. Among the others, there were Shashikala, sister of the accused no.1, (original accused no.5), her husband Pandurang (original accused no.6) and Dharma - father-in-law of Sangita,(original accused no.7). During this period, Sangita became pregnant. Sangita told her mother and sister Rekha, when they had gone to her house at Pachora where Sangita, her husband and in-laws had temporarily shifted. Sangita wept before her mother and sister Rekha and told them that because they were not giving money for her husband's employment, her in-laws continuously used to harass her and assault her over trifling matters.

About two months before the death of Sangita, she made a telephone call to her parents house and spoke to her brother Mahendra (PW-1). She said that somehow her parents and brothers must make arrangement for money and that, her life had become miserable. Sangita was advised to take some money from one Vasant Nago Deore, brother-in-law of Mahendra and accordingly, Sangita along with the accused no.1 went to said Vasant Deore at Shevale and took an amount of Rs. 20,000/- from him.

However, the troubles of Sangita continued and on one occasion, Sangita, on telephone, told that Surekha's maternal uncle Budha (the original accused no.8) and his wife (original accused no.9) used to come to their house and instigate her in-laws, as a result of which quarrels were taking place between Sangita and her in-laws. Sangita also used to tell Mahendra that the sister-in-law Surekha (original accused no.4) used to quarrel with her and that, Sangita was, therefore, fed up by the illtreatment given to her by the accused persons. This fact was told by Mahendra (PW-1) to Sangita's brother Prabhakar (PW-6) on telephone. An amount of Rs. 50,000/- was paid by Sangita's father to Sangita's father-in-law - the accused no.10 Vikram.

That, on 08.01.2007, at about 4 p.m. a telephone call from accused no.1 Santosh was received at Sangita's parents' house and the accused no.1 informed that quarrel was going on in the house and that, Sangita was not willing to reside in the house; and that, she was, therefore, coming to the house of her parents. That, on the same day, at about 7.30 p.m., a telephone call from Sangita was received at her parents' house stating that she should be taken to her parents house under any circumstances. Sangita's father told her that he would send Mahendra and Sangita's mother to fetch her. At about 12 noon, the

father-in-law of Sangita - accused No. 3. - telephoned to the parents of Sangita and the call was answered by Mahendra (PW-1). The accused no.3 informed Mahendra that Sangita, who had gone for latrine, had not returned home. Thereafter, in the night at about 2.00 a.m. Mahendra (PW-1) and his friend Kiran (PW-2) went to Pachora on motorcycle. They reached the house of Sangita at about 5.30 a.m.. However, they noticed that the house of Sangita had been locked. Mahendra made enquiries in the neighbourhood, but could not know the whereabouts of Sangita and her husband. On 9th January, 2007, Mahendra and his brother went to Pachora Police Station and lodged a report to the effect that Sangita was missing. Before and after giving the missing report, Mahendra and his brother took search of Sangita at different places, including Railway Station, but Sangita

On 10.01.2007, the Police informed Mahendra that the dead body of Sangita was found floating in the water of a well. Mahendra (PW-1), his brother Prabhakar (PW-6) and father - Sahebrao (PW-3), went to the well and identified the dead body floating on the well water to be of Sangita. On the same day, at about 8 p.m. Mahendra lodged a report with the police station, which was numbered as the First Information Report (Exhibit-98) and a case in respect of the aforesaid offences came to be registered against totally 10 accused persons as aforesaid.

5. The prosecution examined totally seven witnesses during the trial. It has already been seen that first informant Mahendra (PW-1), Prabhakar (PW-6) are the brothers of Sangita and Sahebrao (PW-3) is her father. These are the witnesses through whom the allegation of cruelty is sought to be proved. The second witness is one Kiran - friend of Mahendra - who had gone to the house Sangita in midnight and had found the same locked. The fourth witness Ravindra Patil is a panch in respect of the spot panchanama, while the 5th witnesses Dr. Vijay Dalvi is the Medical Officer, who conducted post-mortem examination on the dead body of Sangita. The seventh witness Devendra Patil, Inspector of police, is the Investigating Officer.

The accused persons also examined one witness in defence. He is Dr. Deelip Mahajan, who had treated the accused No. 1 for psychotic depression.

6. I have heard Mr. Satej S. Jadhav, the learned advocate for the appellants. I have heard Mrs.Y.M. Khsirsagar, A.P.P. for respondent/State. I have gone through the entire evidence and other relevant record. I have carefully gone through the impugned judgment.

7. A number of contentions have been raised by the learned counsel for the accused in challenging the reliability of version of Mahendra (PW-1), Sahebrao (PW-3) and Prabhakar (PW-6). It is submitted that no reliance on their evidence could have been placed. The learned counsel for the accused submitted that, that Sangita died a suicidal death, was itself not established.

8. Mrs.Y.M. Kshirsagar, the learned A.P.P., on the other hand, contended that the death of Sangita had taken place within a short period of 13 months from her

marriage and that, therefore, the presumption u/s 113A of the Evidence Act about the appellants having abetted the commission of suicide by Sangita, was attracted to the facts of the case. It was submitted that the impugned judgment is proper and legal.

9. It may be observed at the outset that the cruel treatment was allegedly being given to Sangita in connection with the alleged demand of Rs. 1 Lac, which Sangita was being asked to get from her parents in order to secure employment for her husband i.e. the accused no.1. It is contended in this context that such a demand, even if believed to have been indeed made, would not be construed as a "demand for dowry" and, therefore, the ingredients of an offence punishable u/s 304B of the IPC were missing. There is substance in this contention. However, since the learned Additional Sessions Judge, has accepted this contention and has already acquitted the accused persons of an offence punishable u/s 304B of the IPC r/w Section 34 of the IPC, it is unnecessary to discuss this aspect of the matter any further. It is sufficient to observe that the acquittal of the accused persons in respect of the offence punishable u/s 304B of the IPC, as recorded by the learned Additional Sessions Judge, is proper and legal.

10. The question that is required to be considered is, (i) whether the accused had subjected Sangita to cruelty, as contemplated u/s 498A of the IPC and (ii) whether the commission of suicide by Sangita was abetted by the accused, or any of them. Needless to say, that, while deciding the point no.(ii) above, it would be necessary to consider as to whether that the death of Sangita was suicidal, was satisfactorily proved.

11. Whether Sangita, indeed, committed suicide is necessary to be determined not only for the purpose of the charge of an offence punishable u/s 306 of the IPC, for which it is undoubtedly a prerequisite, but the same would be relevant also in the context of accusations of an offence punishable u/s 498A of the IPC. It is because the cruelty and suicide are sought to be linked to each other. In other words, that Sangita was subjected to cruelty has been put forth, also to probablize the theory of her having committed suicide; and that, she committed suicide is put forth to support the theory that, she was being subjected to cruelty. Thus, from the evidence of "cruelty", the theory of suicide is sought to be supported; and from the evidence of suicide, the theory of "cruelty" is sought to be supported. It would be proper, therefore, to consider these aspects together.

12. Admittedly, no suicide note was left by Sangita. No statement of Sangita as to the cause of her death could be recorded, and therefore, that Sangita committed suicide is only an inference drawn by the relatives of Sangita and the Investigating Agency. This inference is primarily drawn on the basis that Sangita was subjected to cruelty and on the assumption that it must be the cruel treatment that had led to Sangita taking a decision to put an end to her life.

13. Though, the evidence of cruelty would be relevant in determining whether the death could be suicidal and the evidence of death being suicidal would be

relevant in judging the existence or extent of cruelty, these aspects would not be conclusive. It is because there are a number of factors, which may lead to a person deciding to take his own life. Causes of suicide is a matter of study for the psychologists. Experience shows that the people who suffer severe and great miseries and sorrows do not end their lives, but people, who are required to undergo comparatively minor sufferings do, at times, commit suicide. The level of tolerance of various persons differs and further, the causes of depression, which leads to suicide may be very many. Therefore, the conclusion of cruelty cannot be drawn merely from the fact that suicide has in fact been committed, and conversely, the conclusion that the death was suicidal also can not be drawn, merely from the fact that some cruelty was meted out to the deceased. Though these aspects may be relevant, they certainly would not be conclusive.

14. The concept of "Cruelty" has been in existence in Matrimonial Law, but such a concept was introduced into Criminal Law for the first time by the Criminal Law (Second Amendment) Act, 1983 and by the Dowry Prohibition (Amendment) Act, 1986, by inserting certain sections in the Indian Penal Code and the Indian Evidence Act and by making consequential amendments to the Code. Section 498A of the Indian Penal Code and Section 113A of the Indian Evidence Act were inserted by the Criminal Law (Second Amendment) Act, 1983 and the relevant provisions came in force w.e.f. 25.12.1983. By Dowry Prohibition (Amendment) Act, 1986, section 304B was inserted in the Indian Penal Code and section 113B of the Indian Evidence Act. The relevant provisions were brought in force with effect from 19.11.1986. The reasons for introducing these provisions in the Criminal Law were to effectively check the social evils of the dowry system, the cruelty with which some married women were being treated by their husbands and in-laws and the culmination of such cruel treatment into suicides and dowry deaths of such women. It was felt that these social evils could not be effectively checked under the Criminal Law, as was existing before the insertion of the said provisions, and that is why the relevant provisions were introduced.

15. Though under the Matrimonial Statutes, the necessity of defining the term 'Cruelty' was not felt, when it was made an offence punishable u/s 498A of the Indian Penal Code, the term 'Cruelty' could not be left to be undefined for obvious reasons. Criminal liability could not be fastened on the basis of a vague or varying concept. The subjective element involved in the concept of "cruelty" needed to be reduced to the minimum, by defining the said term and therefore, the term 'cruelty' has been defined in the explanation appended to Section 498A of the Indian Penal Code, which reads as under :-

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

- (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.

16. The terms 'willful conduct', 'likely to' and 'injury' as used in clause (a) and the terms 'harassment' and 'unlawful demand' as used in clause (b) emphasize the scope, import and the ambit of the said clauses. It is not every type of cruelty that is made punishable u/s 498A of the Indian Penal Code. The conduct, which is alleged to be cruel must be "willful", and it must be of such a gravity as is "likely" to drive the woman to commit suicide, or to cause grave injury to the life, limb or health. The word "likely" has been interpreted to show "probability" and stands on a higher footing than a mere "possibility".

17. Gathering proof of cruelty, in cases of offence punishable u/s 498A of the Indian Penal Code, simplicitor, where the evidence of the wife would be available, would be considerably easier than gathering such proof in cases of offences punishable under Sections 306 and 304B of the Indian Penal Code, where the evidence of the wife would not be available. This is particularly so, when a dying declaration of the deceased wife is not available, as is the case here. The prosecution evidence available in this case is of the witnesses, to whom the deceased wife had, (according to these witnesses) disclosed about cruelty meted out to her by the accused. As aforesaid, no dying declaration and no letters or chits previously written by Sangita, are available in this case.

18. The evidence of Mahendra (PW-1), Sahebrao (PW-3) and Prabhakar (PW-6) is therefore, required to be scrutinized very carefully. It is to be understood that that Sangita had jumped into the well and had committed suicide, is only an inference drawn by these witnesses. Admittedly, there was no one who had seen Sangita jumping in the well; at least there is no such claim of the prosecution and in any case no such witness is examined. It is elementary that in order to hold that the accused have abetted the commission of suicide by Sangita, the factum of death of Sangita being suicidal must be satisfactorily established. The possibility of the death being accidental or even homicidal has to be ruled out.

19. In the case of N.D. Nanjappa V/s State of Karnata, reported in (2009) 3 S.C.C. (Cri) 262, the appellant before the Supreme Court had been convicted of offences punishable u/s 306 of the IPC and u/s 498A of the IPC by the Sessions Court. The Sessions Judge had found that Revati, wife of the appellant, was being illtreated by the appellant and that, she had committed suicide. The conviction of the appellant was upheld by the High Court and that's why the appellant had approached the Supreme Court of India. Their Lordships of the Supreme Court observed that the conclusion that Revati had committed suicide was drawn only on the basis of "mahazar" prepared by the Sub-Inspector of Police and recovery of "chappals" from the side of tank in which Revati had jumped and drowned. Their Lordships, on the facts of that case, held that the prosecution had failed to prove that the death of Revati was suicidal. The facts appearing in the reported judgment indicate that the prosecution had produced a

series of letters, allegedly written by the deceased, to show that she was being ill-treated by her husband and that, her life was miserable. Their Lordships held that even if, it is accepted that the contents of the letters were true, that would only prove that Revati was being ill-treated by her husband and if it was an accidental death, the appellant could not have been found guilty of the offence u/s 498A or 306 of the IPC. Thus, what needs to be kept in mind is that even where the allegations of cruelty are levelled, merely on the basis of such allegations and even after assuming the same to be true, it cannot be inferred that an unnatural death of wife must be suicidal and that, it could not be accidental.

20. In the instant case, the evidence shows - rather that is the case of the first informant and of the prosecution - that on 08.01.2007, the accused no.1 Santosh had telephoned to Sangita's parents house and had informed them that quarrel was going on in the house and that, Sangita was not willing to reside in the house; and that, she was coming to their house i.e. her parents' house. The evidence further shows that on the same day, at about 7.30 p.m. telephone from Sangita was received by Mahendra and Sangita's parents; and that, Sangita told them that they should take her to their house under any circumstances. It is in the midnight that Mahendra again received a telephone call - this time from accused no.10 Vikram - that Sangita had not returned to home after having gone for latrine. Thus, the evidence undoubtedly, shows that some quarrel had taken place between Sangita on one hand and her husband and in-laws on the other hand, and that, Sangita was not ready to stay in the house. In fact, Sangita was insisting that she should be taken away from the matrimonial house forthwith. It is quite likely under the circumstances, that Sangita left the house in an angry and sad mood and she could very well be intending to go to her parents. Assuming that Sangita had committed suicide by jumping into the well, the cause for such suicide would be the quarrel, that took place on that day, and not the previous demand of Rs. 1 Lac, which was allegedly made being repeatedly since several dates. What was the cause of such quarrel is not clear, but apparently, the accused no.1 himself had told Sangita's brother and parents by telephoning, that Sangita was not ready to live in the house. Apparently, the accused were worried about this attitude of Sangita. Otherwise, there was no reason to inform her parents and brother about it. That, the quarrel was taking place and that, Sangita was not willing to reside in the house was stated by the accused no.1 himself to Sangita's brother and the parents, is relevant. If the accused were harassing or beating Sangita at that time they would not have informed her parents that Sangita was not willing to reside in their house, which was in the nature of complaint against Sangita.

21. Undoubtedly, some suspicion is created against the accused by saying that they gave different versions about where Sangita had gone, but the fact remains that even the accused persons must have been worried because of the quarrel and because of Sangita's leaving their house. That Sangita had left the house can not be doubted and disputed, as it is nobody's case that she was picked up

and thrown in the well, or she was killed and her dead body was thrown in the well. If Sangita, after quarrel, had left the house and had not returned for a considerable time, naturally the accused persons would be worried and it is possible, they would try to give some explanation of Sangita's not being there, which would not put immediate blame on them. In that process, even if some false explanation or inconsistent version is given, it would not be possible to say that they had abetted commission of suicide by Sangita. These factors have no relevance with the commission of suicide by Sangita, in as much as, obviously, even the accused would not know what exactly Sangita had done after leaving house. It is nobody's case that in their presence Sangita jumped in the well. Thus, even if the version of the accused persons that Sangita had gone for latrine and had not returned, is false, and that, actually Sangita had left in a fit of anger due to quarrel, still, that would not make any difference in judging whether the accused had committed an offence punishable u/s 306 of the IPC, or whether Sangita died a suicidal death.

22. Since that death was suicidal is sought to be established by proving the illtreatment, allegedly, meted out to Sangita, the nature of illtreatment alleged may briefly be examined. It is clear that the illtreatment was only for the demand of Rs. 1 Lac, which money was required for securing an employment for the accused no.1. What type of physical and mental cruelty was meted out to Sangita, is not stated by Mahendra (PW-1), Sahebrao (PW-3) or Prabhakar(PW-6). The assertion with respect to cruelty is vague and general. Keeping in mind that it is easy for the grieved relatives to make such allegation after the death of victim, the evidence needs to be scrutinized properly. Certain facts, which have been elicited from the relatives of the deceased in their cross examination, would be relevant and significant; and their basic assertion and grievance needs to be examined in the light of such other factors as would be revealed. In this case, Sangita was pregnant and Mahendra himself has stated that at the time of Diwali, Mahendra and Sangita's parents wanted to bring her to the parental house but, Sangita herself had informed them that she would not come with them as she was carrying pregnancy and doctor had prohibited her from travelling. Sangita's declining to go to her parents house even when they so desired and there was opportunity for her to go there, does not fit in properly with the behaviour of a woman who was being troubled and harassed to such an extent that she wanted to put the end to her life.

23. Further, Mahendra (PW-1) had stated that since Sangita did not come back, his mother and sister Rekha went to Sangita's house and it is at that time Sangita disclosed to them that the accused were harassing and ill-treating her for a demand of money. However, neither Sangita's mother, nor Rekha, have been examined as witnesses, apparently, for no reason. Therefore, the claim of Mahendra based on what his mother and sister Rekha, allegedly, told him, can not be taken into consideration as the evidence of Sangita indeed having said so to her mother and Rekhabai. Even otherwise, assuming (just for the same of argument) that Sangita had indeed stated so to her mother and sister, it would

not convey the truth of the statements made by Sangita, as this demand of money does not appear to be a cause of the death of Sangita as discussed earlier. It is something that had happened on 08.01.2007 that apparently was the cause of suicide, if at all it was a suicide.

24. Even the evidence that an amount of Rs. 20,000/- was paid by Sangita's sister Pushpabai to Sangita and the accused no.1, is doubtful, as Pushpabai was not examined as a witness to establish this. The money, admittedly, was not paid to Sangita and the accused no.1 in presence of the prosecution witnesses.

25. Vague and general allegation about the cruelty cannot be believed particularly because Mahendra (PW-1) himself has admitted in the cross examination that since the date of marriage till the death of Sangita, she never complained that the accused no.1 was not treating her properly except for the demand of Rs. 1 Lac. Such a demand cannot be easily accepted to be "willful conduct", which was "likely" to drive Sangita to commit suicide.

26. There is also another aspect of the matter, which needs consideration. The evidence shows that on receipt of message from the accused no.1 and 3, Mahendra and his friend Kiran (PW-2) went to Sangita's house on motorbike and they reached there in the midnight. That, at that time, the house of Sangita was locked. Mahendra and Kiran (PW-2) made enquiries in the neighbourhood, but were unable to get any clue. At about 8 a.m. Prabhakar (PW-6) also joined them. Thereafter, all of them took search for Sangita at Railway Station and other places and ultimately, went to Pachora Police Station and gave a "missing report". It is clear from the evidence that both the brothers of Sangita and even her father were present in Pachora Police Station when the missing report was filed. At that time, no report, except that Sangita was missing was made to the Police. What is further significant that even after the dead body of Sangita was found, the First Information Report was immediately lodged. When search for Sangita was going on, when the missing report had been lodged, when there was a previous history of quarrel between Sangita and her husband and in-laws, at least when the fact that Sangita had died, supposedly by committing suicide, was revealed, the First Information Report could have been promptly lodged, particularly because the Police were already around and had been available for registering the case. The dead body of Sangita was found at about 11.30 a.m. and the statement of Prabhakar (PW-6) regarding the identification of the dead body was recorded at that time, but the First Information Report was lodged only at 8 p.m.. Thus, the possibility of the First Information Report having been lodged after some contemplation, leading to exaggeration and making out a case of connecting the death with the alleged demand of Rs. 1 Lac, can not be ruled out.

27. In my opinion, neither the fact that Sangita's death was suicidal was satisfactorily proved nor the fact that she was subjected to such cruelty, as is contemplated u/s 498A of the IPC, was satisfactorily proved in this case. The appreciation of the evidence, as done by the learned Additional Sessions Judge,

was not proper and in accordance with law. The learned Additional Sessions Judge was highly influenced by the fact that the accused persons were not found at their residence when Mahendra (PW-1) and Kiran (PW-2) went there. The learned Additional Sessions Judge in that regard observed as follows :-

"It was the bounden duty of accused no.1 and his father accused no.10 to report to Police Station about missing of Sangita. Instead they simply made telephone call to PW1 Mahendra and left the house. This conduct of accused persons is more irresponsible. PW1 Mahendra and his friend were required to go urgently to Pachora on Motorcycle and they found house of the accused persons locked early in the morning at 5.30 hours. This is simply shocking."

28. Undoubtedly, the conduct of the accused persons in locking the house and leaving the place is objectionable, but the same is indicative of the fact that the accused persons were under tremendous fear and nothing more. The learned Judge, while holding the behaviour "irresponsible" and "shocking", failed to realise that it had nothing to do with the allegation of having abetted commission of suicide by Sangita. This conduct of the accused after Sangita went missing and the accused imagined some serious problems neither proves that they had treated Sangita with cruelty, nor that they had abetted the commission of suicide by her. It cannot be overlooked that they had informed the parents and brothers of Sangita that she was missing and ensured the proper steps would be taken for tracing and locating her before disappearing, obviously, due to fear.

29. The learned Judge also observed that Sangita was carrying pregnancy of 28 weeks and that, clearly a lady cannot end her life when she is pregnant and when her pregnancy was more than four months. According to the learned Judge in such a situation, "the lady would think twice". The correctness of this belief of the learned Judge may be accepted, but what can not be overlooked is that the unlikelihood of a lady committing suicide when she was pregnant, ought to have occurred to be relevant to the learned Judge for doubting whether the death was indeed suicidal, if he would have been dispassionate and objective while assessing the evidence. It has already been seen that there was no satisfactory evidence of death being suicidal. This factor, which should have been considered while coming to a conclusion about the death being suicidal, was not considered at that stage, and by ignoring it, the conclusion in that regard was arrived at; and after having concluded death to be suicidal, (by ignoring this aspect) this aspect is focussed, to conclude about "cruelty".

30. The learned Judge did not believe the allegation of illtreatment made by the prosecution witnesses against the other accused. He has clearly held so in para no.29 of the impugned judgment and in my opinion, rightly. However, inspite of having concluded that the evidence with respect to the illtreatment of Sangita was not acceptable, at least with respect to those accused and that, therefore, the prosecution witnesses at least to that extent, were not telling the truth, the learned Judge was not alarmed and did not scrutinize the evidence minutely so far as it related to the present accused persons.

31. In my opinion, this was a fit case where the accused persons, ought to have been acquitted.

32. The appeals are allowed.

33. The impugned judgment of conviction and the sentences imposed upon the appellants are set aside.

34. The appellants are acquitted.

35. The appellant in Criminal Appeal no.621 of 2011 and the appellant no.2 in Criminal Appeal no. 393 of 2011 be set at liberty forthwith, unless required to be detained in connection with some other case.

36. Bail bonds of the appellant no.1 in criminal appeal no. 393 of 2011 stand discharged. Fine, if paid, be refunded to the appellants, respectively.