

Baban and ors. Vs. State of Maharashtra

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Court : Mumbai

Decided On : Aug-11-1999

Reported in : I(2000)DMC568

Judge : J.N. Patel, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 306 and 498A

Appeal No. : Criminal Appeal No. 356 of 1994

Appellant : Baban and ors.

Respondent : State of Maharashtra

Advocate for Def. : A.P.P.

Advocate for Pet/Ap. : M.B. Agasti, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

J.N. Patel, J.

1. The appellants came to be prosecuted for having committed offences under Section 498-A read with Section 34 of I.P.C. Section 304-B read with Section 34 of I.P.C. in the alternative for having committed offence under Section 306 read with

34 of I.P.C. before the Additional Sessions Judge, Bhandara vide Sessions trial No. 143/91 who convicted and sentenced them for having committed offence under Section 498-A of I.P.C. and ordered to suffer R.I. for two years and fine of Rs. 500/-, in default simple imprisonment for 5 months; S.I. for six months and fine of Rs. 500/-, in default S.I. for five months and S.I. for a day and fine of Rs. 1,000/-, in default simple imprisonment for six months respectively. It is this conviction and sentence which has been challenged by them before this Court in this appeal.

2. It is the prosecution's case that deceased Usha was married to the appellant Baban, he was required to stay at his in-law's place alongwith his wife Usha for a period of 5-6 months. Thereafter, Baban and Usha went to reside at Takala i.e. at the in-law's place of deceased Usha. It so happened that on 2.4.1991 one of the brothers of deceased Usha by name Dhanpal alongwith his friends Munna Funde and Vinod who were residents of Tumsar had gone to village Takala on motor cycle to meet his sister Usha. The prosecution witness Munna Funde and Vinod Chourasiya happened to meet Usha on the way while she was returning from the field and supposed to have told Munna that accused No. 1 her husband Baban; accused No. 2 father-in-law and accused No. 3 mother-in-law were asking her to bring new sewing machine, new bedding and Rs. 20,000/- for releasing ring of accused No. 1, which was pledged. She also informed that she was being teased for not doing agricultural work properly. On their return Munna Funde narrated the incident of meeting Usha and her grievance to Radhikabai mother of deceased - P. W. 4 that she was being ill-treated at her in-law's place by the accused persons who want her to bring new sewing machine, new bedding and also sum of Rs. 20,000/-. On receiving this information Radhikabai P.W. 4 visited her daughter at Takala accompanied by Gopikabai P.W. 5 [sister-in-law of Radhikabai and aunt of Usha] at the place of in-laws and there Radhikabai and Gopikabai are supposed to have had talks with the accused persons and assured the accused No. 1 that it was not possible for her to fulfil his demand; but she will see to it in near future and returned to Tumsar. Thereafter on Sunday they came to know that Usha has committed suicide so they went to Takala and found the dead body of Usha kept under a Babul tree, which was subsequently sent to hospital for post-mortem examination, and thereafter cremated.

3. Initially, the police registered a case of accidental death due to drowning for enquiry under Section 174 of Cr.P.C; subsequently on 8.4.1991 when a report came to be lodged by Dayaram Kisan Burade, the brother of deceased Usha; the police registered offences under Sections 304-B and 498-A of I.P.C. against the accused persons. After the investigation was over the charge sheet came to be filed and the case came to be committed to the Court of Sessions, Bhandara.

4. The learned Additional Sessions Judge proceeded to frame the charge Exhibit 19 against the appellants accused for having committed offence under Section 498-A read with Section 34 and Section 304-B read with Section 34 of I.P.C. in the alternative under Section 306 read with Section 34 of I.P.C. The prosecution examined in all 8 witnesses which includes the complainant Dayaram; Munna P.W. 3, Radhikabai P.W. 4, Gopikabai P.W. 5 on the point of allegations of cruelty and harassment to the deceased Usha. Prosecution examined Dr. Sarita Patil, Medical Officer, who conducted the post-mortem examination and in her opinion death could have occurred due to asphyxia may be as a result of drowning.

5. The appellants' case was that of denial and on their behalf they examined two witnesses, Baburao son of Fatruji Thakre D.W. 1 the relative of P.W. 3 Munna Funde and Vasant son of Barkuji Zanzad son of uncle of accused husband.

6. The learned Additional Sessions Judge found that the prosecution has proved that the appellants have subjected the deceased Usha to cruelty in order to coerce her to fulfil their unlawful demands of cash and other articles and also with a threat to drive her to commit suicide. It was found that Usha has committed suicide as a result of she being subjected to cruelty, but the prosecution failed to prove that the accused persons have abetted the commission of suicide by deceased Usha in furtherance of their common intention and convicted the accused persons for having committed offence under Section 498-A read with Section 34 of I.P.C.

7. It is submitted by the learned Counsel for the appellants accused that the appellant appellants accused Nos. 2 and 3 have expired on 10.9.1997 and 21.9.1999 respectively and as such the appeal stands abated in so far as the appellant Nos. 2 and 3 are concerned.

8. Mr. Agasti, the learned Counsel for the appellants submitted that the prosecution has miserably failed to prove its case against the appellants accused, for having committed offence under Section 498-A. It is submitted that the prosecution case as regards subjecting the deceased Usha with cruelty in order to extract the dowry is based on the evidence of Munna P.W. 3, Radhikabai the mother of the deceased P.W. 4 and Gopikabai, aunt of the deceased P.W. 5. According to Mr. Agasti the evidence of Munna P.W. 3 is not reliable if one examines his evidence on the point of visiting to village Takala for the purpose of attending Tervi in the house of Baburao Thakre as Baburao Thakre D.W. 1 who came to be examined by the appellants accused has specifically stated before the Court that at the relevant time there was no Tervi Function at his house and that Munnalal Fund P.W. 3 never visited him on the said day. It is further submitted that the said Munnalal has improved his story before the Court when he stated that when Usha met them she started weeping in their presence and when he enquired with her the reason for her weeping she took them at one side and told them that the accused No. 1 is harassing and torturing her and demanding that since no good presents were presented in marriage, they were claiming Rs. 20,000/- cash; one sewing machine and new bedding. It is submitted that in cross examination P.S.I. Shamrao Pandhare P.W. 8 has categorically stated that Munnalal has not stated that Usha had asked him to communicate the grievance to her mother and she should come and visit village Takala; in his police statement; which has been so deposed by Munnalal P.W. 3 before the Court. It is submitted that this witness being a family friend has only obliged the complainant to make up a false case against the appellants accused.

9. It is submitted by Mr. Agasti, the learned Counsel for the appellants that even the evidence of Radhikabai P.W. 4 the mother of deceased Usha also cannot be relied upon regarding subjecting Usha to cruelty by appellants. In case of Radhikabai also, it is pointed out that she has improved her case before the Court as it is for the first time she stated before the Court that when she alongwith Gopikabai visited Takala Usha narrated her while weeping that the accused No. 1 was demanding Rs. 20,000/- and wanted to remarry another woman as Usha was not able to do any agricultural work. Further that Usha had told her that accused No. 1 used to beat her and insult her and, therefore, it was for the first time before

the Court that Radhikabai came up with a case that the deceased Usha was subjected to cruelty. It is submitted that in the cross examination of this witness it has been clearly brought on record that whatever she deposed before the Court, was not found in her statement recorded by the police under Section 161 of Cr.P.C. and, therefore, in view of the material omissions in the evidence of Radhikabai; her evidence before the Court cannot be relied upon and needs to be ignored.

10. Mr. Agasti further submits that in so far as Gopikabai P.W. 5 is concerned, she is a brought up witness and introduced by the prosecution in order to support Radhikabai. As regards the evidence of this witness before the Court it is submitted that in the course of investigation statement of this witness was recorded under Section 161 of Cr. P.C., but not filed alongwith charge sheet and this has greatly prejudice the appellants accused in depriving them of the opportunity to contradict the witness with her statement before the police and discredit her, therefore, the Court should draw adverse inference for this lapse on the part of the prosecution to the extent that if such statement of Gopikabai was filed alongwith the charge sheet then probably it would discredit the witness Gopikabai; as what she has deposed on oath before the Court was not stated by her in her statement under Section 161 of Cr. P.C. Therefore, on this count alone Gopikabai cannot be relied upon.

11. Mr. Agasti submitted that though there was no evidence on record, the learned Trial Court found that Usha committed suicide which fact is not proved by the prosecution either by examining any witnesses or by circumstances, which could have indicated that Ushabai committed suicide. On the other hand the spot Panchanama; seizure Panchanama and inquest Panchanama read with the evidence of defence witness Vasanta clearly go to show that Ushabai accidentally fell in well and died due to drowning, therefore charge under Section 498-A to the extent that the deceased Usha was subjected to cruelty so as to drive her to commit suicide, cannot be Sustained and the appellants deserve to be acquitted.

12. Mr. Agasti submitted that the complainant lodged a false report against the accused persons in order to save themselves from the prosecution of assaulting

the accused No. 1 and abetting his suicide; which is obvious from the report lodged by Dayaram P.W. 1 in respect of an attempt made by the appellant accused Baban to commit suicide which came to be registered as an offence under Section 309 of I.P.C. vide Crime No. 79/91 by Police Station, Tumsar and that the appellants came to be falsely implicated in the case as an after thought to cover up their misdeed of assaulting the appellant Baban by Dayaram, Munna and others. It is submitted that subsequently on investigation in Crime No. 79/91 the police filed a final report under Section 169 of Cr. P.C. It is, therefore, submitted that as the prosecution failed to prove its case against the appellant Baban he deserves to be acquitted.

13. The learned A.P.P. supports the judgment and order of conviction and sentence against the appellants. It is submitted by him that in so far as the charge under Section 498-A is concerned, the prosecution has led sufficient evidence and established its case beyond reasonable doubt. It is submitted that the main witness for the prosecution on the point is Munnalal P.W. 3 and Radhikabai P.W. 4 and Gopikabai P.W. 5 that they have corroborated each other on the point of illegal demand made by the husband of the victim and her in-laws of a sewing machine, new bedding and sum of Rs. 20,000/- and the fact that in order to coerce deceased Usha to fulfil their demand, she has been treated with cruelty, humiliated and teased by the accused because of which she committed suicide. It is submitted that the contradictions if any are minor in nature and the Trial Court has rightly appreciated the evidence of these witnesses and there is no reason to disbelieve them.

14. It is submitted by the learned A.P.P. that in the facts and circumstances of the case, it cannot be said that the witness examined by the prosecution had any grudge against the appellants accused and, therefore, the evidence as regards the allegations of cruelty and harassment are concerned, are true. It is submitted that in case the witness wanted to falsely implicate the appellant accused, nothing prevented them from stating that since the date of marriage they were harassing deceased Usha for bringing dowry; but they have been honest and have stated the facts that it is only when deceased Usha went to reside at Takala with Baban i.e. her in-laws' place that she was subjected to cruelty and in this short period due to

cruelty deceased Usha got fed up and committed suicide.

15. It is submitted that the prosecution has also sufficiently proved that it was a case of suicide as the deceased is supposed to have committed suicide by jumping into the well. It is submitted that this fact stands proved by the various circumstances brought by the prosecution on record and supported by the evidence of witness Vasanta examined by the appellants accused. It is submitted that in cross examination Vasanta has clearly stated that he did not hear the sound of falling of Usha in well; but she fell in his presence. However she did not shout while falling; she did not cry from inside the well; all this would show that the deceased Usha jumped into the well in order to commit suicide and did not fell in due to accident. Otherwise, her natural reaction would have been to save herself by shouting for help and at least could have shown some signs of struggle. The learned A.P.P. fairly concedes that though the prosecution has not been fully able to establish that the appellants accused abetted the commission of suicide, but it has been sufficiently proved that deceased Usha committed suicide due to harassment meted out to her by appellants accused in order to coerce her to fulfil their demands for dowry and, therefore, the conviction and sentence calls for no interference.

16. From the submissions made before this Court the following points arise for my determination:

- (i) Whether the prosecution proves that Ushabai's death was suicidal or accidental
- (ii) Whether the prosecution proves that Ushabai was subjected to cruelty or harassment by accused with a view to drive her to commit suicide ?
- (iii) Whether the prosecution proves that Ushabai was subjected to cruelty with a view to coerce her or her parents/relatives to meet any unlawful demand, for any property on their failure to fulfil such demand

17. In respect of the prosecution case, that deceased Ushabai committed Suicide, the only evidence led before the Court is in the form of circumstance. As regards the cause of death the prosecution has examined Dr. Sarita Patil w/o Devrao Patil

P.W. 1 who in her evidence has stated that in her opinion probable cause of death was suffocation on account of drowning. This witness has proved the post-mortem report Exhibit 20 dated 8.4.1991. In column No. 17 as regards the surface wounds and injuries, it is recorded that the deceased had minor abrasion over the back of left knee joint except for this no other injury was noticed on the body of the deceased Usha. If one examines the Panchanama of the spot of occurrence Exhibit 37 which has been admitted it refers to the well in which the deceased is supposed to have fallen and died is constructed by stones. It was 20 ft. and 8' deep and had 14 feet water. The distance between the surface of the well and the water was 6 feet and 8' the diameter of the well is 13 feet; the bucket used for water was found lying in the well; by the side of the well one Ghamela was found containing towel, gents and ladies jangiya (underwear), baniyan and lugada; which came to be seized under the seizure memo and if this Panchanama of the spot of occurrence and seizure memo is read with evidence of Vasanta D.W. 1 it only goes to show that deceased Usha had been to the well for washing clothes. D.W. 2 Vasanta has clearly stated that he had seen deceased taking out water from the well for washing clothes; he was present there at a distance of 25 feet. After the deceased had taken two buckets of water and when she was drawing the third bucket of water, she went in the well alongwith the bucket. At the relevant time one Durga was also present at the place, and when the deceased fell into the well, probably Vasanta and Durga -cousins of the accused No. 1 shouted for help and they ran towards the village, shouting Usha has fallen in the well; till they met accused No. 1 coming in the cart. The learned A.P.P. has tried to canvass before this Court that this witness Vasanta being relative of the accused he has supported the accused and, therefore, his evidence rather goes to show that Usha committed suicide, as she did not shout for help or struggle in the water. This by itself would not make the evidence of Vasanta unreliable. The Investigating Officer, A.S.I. Pandhare in his evidence before the Court stated that he had recorded the statement of Vasanta, but probably as Vasanta did not support the prosecution he was not cited as witness. There is nothing brought on record to show that at the relevant time c was not present in the field; where the well is situated and Usha was drawing water. Vasanta does not appear to be a chance witness as it was not unnatural for him to be present on the site at the relevant

time and his evidence as to how Usha fell in the well does not appear to be untrustworthy. Just because a witness has been examined in defence by the accused and is related to them, is not sufficient to discredit his evidence, but the Court has to scrutinise it with caution as to whether the evidence given by witness inspires confidence. I do not find any reason to disbelieve this witness. Considering his evidence which narrates the incident in a natural way read with the injuries suffered by the deceased, of abrasion behind the right knee, it rather supports the evidence of Vasanta that Ushabai slipped into the well rather jumped into the well. The learned Additional Sessions Judge has given undue weight to the concept of natural conduct of a person falling in the well accidentally, in order to arrive at the conclusion that Usha committed suicide by jumping into the well; because if Ushabai had jumped into the well there is no likelihood of such portion of the body suffering an abrasion; therefore, I have no hesitation to hold that Ushabai suffered an accidental death. Well it is not necessary that in all such cases a person would struggle and try to scream for help. Particularly in the present case the water in the well was only 6 feet away and probably the victim hardly got an opportunity to scream for help or struggle. The possibility that Vasanta having seen the victim falling in the well and his attempt to seek help to save the victim by running towards the village, he might have missed the opportunity to see the victim struggling in the well to save herself; or hear shouts or scream for help. This can also be looked from another angle that even if victim made an attempt to commit suicide on drowning the victim is likely to strive for survival; so merely because victim did not scream or shout for help or struggle to come out cannot be a reason by itself to conclude that she committed suicide. Therefore, this Court finds from the evidence on record that in all probabilities Ushabai died an accidental death due to drowning.

18. Now let me examine the prosecution case as regards the offence under Section 498-A is concerned. The prosecution's case in order to prove the charge against the accused persons for having committed offence under Section 498-A rests mainly on 3 witnesses namely Munnalal Funde P.W. 3; Radhikabai wd/o Kisan Burade P.W. 4, and Gopikabai wife of Ramkrishna Burade P.W. 5. From the evidence of Munnalal P.W. 3 for the first time it came to the knowledge of Radhikabai and her family members that her daughter Smt. Usha is being

harassed and tortured and a demand for sewing machine; new bedding and a sum of Rs. 20,000/- is made by the accused persons. This so happened when Munnalal alongwith his friend Vinod and Dhanpal who is brother of Usha and employed in Defence service happened to visit Takala and there Munnalal met Usha while she was returning from the field. When Smt. Usha came across Munnalal and his friend Vinod, Usha started weeping and when Munnalal enquired about the reason for her weeping; she is supposed to have narrated to them that the accused persons are harassing and torturing her and demanding a sewing machine; a new bedding and Rs. 20,000/- as no good presents were given in her marriage. According to Munnalal Smt. Usha did not reveal this fact to Dhanpal but told him that he should inform her mother about this and send her to Takala. On returning from Takala Munnalal is supposed to have informed Radhikabai P.W. 4 in presence of Dayaram complainant and Dhanpal; because of which Radhikabai visited her daughter alongwith Gopikabai P.W. 5 and it was on their visit to Usha at her in-laws' place that Usha narrated to her that accused No. 1 was demanding Rs. 20,000/- a sewing machine and a bedding. She also told her that accused Nos. 1 and 2 were teasing her as she is not able to do the agricultural work properly by saying that they will perform another marriage of accused No. 1. Usha has also told Radhikabai that accused No. 1 used to beat her and humiliate her. After hearing all this Radhikabai informed accused No. 1 that it will not be possible for her to fulfil his demand; but she will see about it in near future. Similarly Gopikabai in her evidence narrated the same story; but added that accused No. 2 quarreled with them; over the demand for dowry and when she told them not to ill-treat Usha accused No. 2 said that one or the other day Usha is likely to be found in well by twisting his mustaches and beating on his chest. It is on the following Sunday after Radhikabai and Gopikabai returned to their village by telling accused No. 1 that he should not torture her daughter Usha they came to know that Usha has died due to drowning.

19. In so far as the evidence of Munnalal P.W. 3 is concerned, his evidence as regards the visit to village of Usha alongwith Vinod and Dhanpal the brother of Usha is discredited by the accused persons by examining Baburao Fattuji Thakare D.W. 1. It was Munnalal's case that he was required to visit Takala for Tervi rites which were to be performed at the house of his relative Baburao Thakare;

whereas Baburao Thakare though admits that Munnalal Funde is related to him; but there was no programme of Tervi at his house one week before the death of Smt. Usha and that this witness had never come to his house prior to death of Usha. But, otherwise Munnalal's evidence as regards the complaint made by Usha to him does not suffer from any lacuna so as to ignore it; but evidence of Munnalal itself does not help prosecution in establishing their case against the appellants accused; particularly when the prosecution had come up with more favourable evidence by examining Radhikabai the mother of the deceased and Gopikabai aunt of the deceased. If one looks at the evidence of Radhikabai P. W. 4, she does not state before the Court that Munnalal and Vinod told her that Usha told them that she was tortured and harassed by the appellants accused. But what was told to her by Munnalal was that Usha had told that her husband and in-laws are demanding Rs. 20,000/-; a sewing machine and a new bedding and Usha wanted to be informed about it; therefore, she told her sons that she will go and meet Usha at Takala. Radhikabai, therefore, does not corroborate Munnalal P. W. 3 on the count that Usha made a grievance to him that she is being harassed and tortured by the appellants accused as no allegations of cruelty has been communicated to Radhikabai by Munnalal; nor it was Radhikabai's case before the Court that Munnalal P.W. 3 informed her that Usha was subjected to cruelty. Therefore, on account of cruelty Munnalal's evidence does not appear to be reliable. Radhikabai before police has not stated that Usha told her that she was teased by accused Nos. 1 and 2 that accused No. 1 will perform another marriage or that accused No. 1 used to beat her and humiliate; but all this has been spoken by her for the first time before the Court; as in her cross examination she has specifically accepted that though she had told to the police that Usha was weeping and told her that the accused No. 1 is demanding Rs. 20,000/- and wants to remarry because she could not perform agricultural work properly; this has not been recorded in her police statement. Further she also accepted that though she had stated to the police that Usha had told her that accused No. 1 used to beat her and used to insult her; she could not tell; why the police did not record in her statement. The omission brought on record in the cross examination of Smt. Radhikabai goes to the root of the matter. Even the Investigating Officer Shamrao Pandhare P.W. 8 who recorded statement of Radhikabai in his cross examination

stated in clear terms that Radhikabai in her statement under Section 161 of Cr. P.C. did not say that Usha told weeping that accused No. 1 wants to remarry merely because she was not able to do the agricultural work. Radhikabai has also not stated that Usha has told her that accused No. 1 used to beat her and insult her and, therefore, the evidence of Smt. Radhikabai at the most can be relied to the extent that the appellant accused made a demand of sewing machine, new bedding and a sum of Rs. 20,000/-; but the evidence is wanting in so far as subjecting Smt. Usha to cruelty in order to secure this demand is concerned. In latter part of the cross examination Smt. Radhikabai has stated that she did not enquire from Usha for what purpose accused No. 1 was demanding Rs. 20,000/-. Whereas it is prosecution's case that a demand of Rs. 20,000/- was for the purpose of discharging a loan which the applicant No. 1 Baban had obtained by pledging his ring as can be seen from the F.I.R. Exhibit 30 lodged by Dayaram Kisan Burade. Therefore considering the omissions on part of Smt. Radhikabai to state that deceased Usha had complained to her that she was harassed and tortured, in her statement before the police is material, significant and relevant for the purpose of appreciating the veracity of her evidence before the Court on oath. Therefore, the Court need not have any hesitation to hold that this material witness of the prosecution Radhikabai has improved her story before the Court. Investigating Officer, P.S.I. Pandhare P.W. 8 in his evidence has stated on 7.4.1991, when he had visited the place, where Usha had committed suicide, there was no specific complaint about dowry and beating to Usha in his presence and in the statement of witnesses recorded by him. The contention of the learned A.P.P. that at the relevant time Radhikabai who is the mother of victim Usha may not be in proper state of mind so as to give all the particulars or details to the police; when her statement came to be recorded, cannot help the prosecution in any manner for the simple reason that if that was the case, Radhikabai would be the first person to raise hue and cry, at the very first opportunity, which she got, when she saw that her daughter is dead and police investigating the cause of death.

20. Gopikabai P.W. 5 is another witness examined by the prosecution in order to prove the charge under Section 498-A of I.P.C. against the appellants accused. Though this witness in terms corroborates Radhikabai P.W. 4 on the point of harassment and torture meted out to Ushabai, by the appellants accused, but her

evidence before the Court cannot be relied upon for the reason that though the statement of this witness came to be recorded by police under Section 161 of Cr. P.C., it was neither filed alongwith the charge sheet nor the copy of it was furnished to the accused persons during trial. The fact that her statement came to be recorded by the police is admitted by P.S.I. Pandhare P.W. 8, but he has explained that it was not filed with the charge sheet as it was similar to the statement of Radhikabai. Mr. Agasti, learned Counsel for the appellants accused has strenuously urged that as the appellants accused have been deprived of an opportunity to contradict Gopikabai with her police statement; adverse inference should be drawn against the prosecution; which appears to be justified.

21. Section 161 of Cr. P.C. provides for examination of witness by police. Subsections (1) and (3) of Section 161 of Cr. P.C. leaves to the discretion of the Investigating Officer to examine any person or to record his statement in writing if examined, though Sub-section (3) leaves it to the discretion of the Investigating Officer, whether to record the statement of a witness or not and the competency of the such witness to testify in Court does not depend upon making of such record. But it cannot be overlooked that by virtue of proviso to Section 162(1) the accused is given an opportunity to test the veracity of the prosecution witnesses with reference to the statement recorded under Section 161 by bringing on record contradictions/omissions in the manner provided by Section 145 of the Evidence Act. This right is founded on the principle that the witness who makes a statement inconsistent with a previous statement of his, would be unreliable. In such a case the accused would be entitled for the benefit of doubt. Therefore, by not filing the statement of a witness recorded under Section 161 of Cr. P.C. alongwith the charge sheet or furnishing its copy to the accused; the prosecution not only deprives the accused of his valuable right to discredit the witness of confronting him with the police statement, but will also invite an inference that if such statement which could be and is not produced would if produced be unfavourable to the prosecution which withholds it, as contemplated under Section 114 of the Evidence Act, unless the prosecution gives a satisfactory explanation for not filing or producing the statement of witness recorded under Section 161. In case of Gopikabai P.W. 5 the explanation offered by the P.S.I. Pandhare that he did not file the statement of Gopikabai with the charge sheet as it was similar to the

statement of Radhikabai is no explanation in the eyes of law and, therefore, this Court has no hesitation to draw an inference that in the statement recorded by the police Gopikabai omitted to state what she has deposed before the Court as regards subjecting Usha to cruelty by accused persons, and, therefore, it will not be safe to rely on the evidence of Gopikabai before the Court.

22. After examining the evidence of the prosecution on the point of subjecting Usha to cruelty in order to coerce her and her relatives to meet unlawful demands of the appellants accused, this Court finds that the prosecution has failed to establish the charge against the accused appellants beyond reasonable doubt.

23. In this case at the best it can be said that the prosecution has been able to bring before the Court that there was a persistent demand from the side of the accused and particularly appellant Nos. 1 and 2 as regards sewing machine; new bedding and a sum of Rs. 20,000/-, but the prosecution has not been able to establish beyond reasonable doubt that the appellants accused subjected Ushabai with cruelty with a view to coercing her or her relatives to mat these unlawful demands.

24. In case of Ravindra Pyarelal Bidlan v. State of Maharashtra, reported in : 1993(1)MhLj658 ; this Court had an occasion to examine as to when it can be said that the prosecution has proved a charge under Section 498-A of I.P.C. and this Court has held as under:

'If cruelty is by itself established and the fact of suicide is also established; it would not be sufficient to bring home the guilt of committing cruelty as defined in Explanation (a). A reasonable nexus has to be established between the cruelty and the suicide in order to make good the offence of cruelty. Alternatively, the cruelty established has to be of such a gravity as is likely drive a woman to commit suicide. If suicide is established it has further to be established that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances commit suicide.

Sub-clause (b) of explanation to Section 498-A does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to

coerce the woman or any person related to her to meet any unlawful demand. Hence mere harassment by itself is not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section.'

25. Before I conclude, this Court would like to observe that the investigation. in the case has not been done with the required proficiency; though this Court may not agree with the observations of the learned Additional Sessions Judge made in reference to the Investigating Officer; the learned Additional Sessions Judge went on to convict the appellants by drawing inference that after Radhikabai and Gopikabai left the house of in-laws of Smt. Ushabai; she must have been harassed and tortured by the appellants accused; who were annoyed due to intervention of the two witnesses and, therefore, fed up with such harassment and torture Smt. Usha committed suicide.

26. In view of the aforesaid facts and circumstances, this Court finds that the prosecution having failed to prove its case beyond reasonable doubt against the appellant accused, the judgment and order of conviction and sentence passed against the appellant accused No. 1 Baban son of Anandrao Zanzad for having committed offence under Section 498-A is quashed and set aside. His bail bonds are cancelled.

27. In respect of appellants accused Nos. 2 and 3 namely Anandrao Tulshiram Zanzad and Smt. Zingabai w/o Anandrao Zanzad the appeal has abated as they have died during the pendency of the appeal. Fine deposited by the appellant accused be returned to him. Appeal is allowed in the aforesaid terms.