



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 93 OF 2002

Walmik Babulal Patil

Age:25 years, R/o. Goradkheda,

Tq.Pachora, Dist.Jalgaon.

....Appellant

Versus

The State of Maharashtra

.....Respondent

.....

Advocate for Appellant : Mr. Ankush N. Nagargoje

APP for Respondent : Mr.N.D.Batule

.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 11 MARCH, 2024

JUDGMENT :-

1. Judgment and order passed by the II Additional Sessions Judge, Jalgaon, in Sessions Case No.99 of 1998 dated 14-02-2002 thereby convicting appellant for offence under Section 498-A of the Indian Penal Code (IPC) is hereby questioned by the convict by filing instant appeal.

CASE OF PROSECUTION IN BRIEF

2. Pachora Police Station chargesheeted accused for offence under Section 498-A, 302, 306 r/w 34 of the IPC on the premise that,

deceased Rekha was married to accused no.1 Walmik. Accused Walmik, his father Babulal and mother Sindhubai subjected Rekha to cruelty. They taunted and commented on her height and said that they disliked her. They addressed and treated her as their domestic servant and also talked about divorce and to perform second marriage of Walmik. Rekha promptly reported such behaviour of accused and treatment meted out to her family members and relatives. On 31-07-1997, dead body of Rekha was spotted in the well. PW1 Dhanubai lodged report exh.26 on the strength of which crime bearing no.92 of 1997 was registered. Accused were arrested, investigation was carried out and on gathering sufficient evidence, they were chargesheeted.

At trial, charges for Sections 498-A, 302 and in the alternative 306 r/w 34 were framed and explained to the accused. On denial of the same, trial was undertaken during which prosecution adduced evidence of in all eight witnesses as well as relied on documentary evidence i.e. FIR, panchanama, post mortem report etc.

After evaluating the evidence, learned trial Judge reached to a conclusion that accused no.1 Walmik alone is guilty for offence under Section 498-A of the IPC. He as well as rest of the accused were acquitted from offence under Section 302 and alternative charge of

306 of the IPC.

Hence, convict husband Walmik has taken exception to the judgment of conviction by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for appellant would submit that prosecution has failed to prove case beyond reasonable doubt. According to him, on the same set of evidence, accused nos.2 and 3 were acquitted from all charges but accused no.1 alone is convicted for offence under Section 498-A of the IPC that too in absence of cogent and reliable evidence. He pointed out that essential ingredients for attracting 498-A is patently missing from prosecution evidence. That allegations are general and ominous in nature. According to him, mere taunting will not amount to cruelty. That only interested witnesses are examined. That even otherwise testimonies of family members are not consistent. That evidence was falling short to record guilt but still learned trial Court has convicted accused no.1 and hence, he seeks interference by allowing the appeal.

On behalf of State :

4. Per contra, learned APP supported the judgment of the trial

Court holding that there was sufficient evidence about ill-treatment and cruelty, which was continuous in nature. That Rekha died unnatural death. That role of accused husband is consistently stated by each of the witnesses and as such there is correct appreciation of evidence. Learned trial Court committed no error in convicting accused no.1 and so prayers to dismiss the appeal are raised.

5. On re-appreciation and re-evaluation of evidence, following seem to be witnesses on behalf of prosecution and sum and substance of their evidence is as under :

EVIDENCE ON BEHALF OF PROSECUTION

6. **PW1** Dhanubai Muralidhar Patil is paternal aunt of deceased. According to her, after marriage, Rekha resided with Walmik in their locality itself. After 10-12 days of marriage, when she met her, Rekha told her that her mother-in-law used to suggest her husband that she is short and therefore, disliked by him. That her husband used to say that he would maintain her as yearly servant and get remarried. She also made complaint against her father-in-law for slapping her.

7. **PW2** Gulab Daulat Patil, father of deceased deposed that his daughter returned after 7-8 days after marriage and that time she

told that husband dislike her for being short and he would seek divorce. She told that her in-laws ill-treated her.

8. **PW3** Vatsalabai Gulab Patil, mother of deceased, also stated that husband's parents used to ill-treat Rekha for being short and wanted to give her divorce till Diwali.

9. **PW4** Vijaya Muralidhar Patil, cousin of deceased stated that Rekha used to tell that her in-laws ill-treated her on the pretext that she could not prepare good meals and they disliked her for being short. That she had written letter exh.31 complaining about ill-treatment.

PW5 Laxman Sukdeo Patil is Police Patil.

10. **PW6** Dayaram Daulat Patil, paternal uncle also stated that when he visited Rekha, she told that mother-in-law and sister-in-law deliberately put salt or water in the vegetables. That husband and father-in-law beat her as she was short and they disliked her and they said that they would give divorce to her. She was apprehending danger from them.

11. **PW7** Pandharinath Narayan Pachpute (PSI) is Investigating Officer, who narrated all taken steps by him during investigation.

12. **PW8** Gangadhar Govinda Kolhe is the Police Officer, who filed chargesheet against accused.

ANALYSIS

13. On carefully scrutinizing the evidence of parents, paternal aunt, paternal uncle, cousin of deceased, it is palpably evident that they are raising only allegations about husband and in-laws taunting for being short. According to PW1 Dhanubai, paternal aunt, accused were staying in their locality itself but witnesses are not consistent as to when exactly Rekha reported regarding mal-treatment. According to her, after staying for 10-12 days with accused, deceased returned with her father. Thereafter, when Rekha went back to her matrimonial house, this witness again visited her, that time, she allegedly told about taunting by husband and in-laws. Apparently, therefore, during stay with parents, Rekha had not made any complaint. PW1 Dhanubai seems to be the informant, but her evidence is apparently only regarding taunting and no mental or physical cruelty. Her own brother i.e. PW2 Gulab, father of victim merely alleges that accused husband did not like her being short and he wanted divorce. He does not utter about any ill-treatment. Similarly, PW3 Vatsalabai, mother of victim also does not specify

instances and nature of ill-treatment except alleged taunting. PW4 Vijaya, cousin of victim merely speaks of ill-treatment for not preparing good meals, which is not stated by PW1 Dhanubai, PW2 Gulab and PW3 Vatsalabai. Likewise, PW6 Dayaram, paternal uncle has also given completely different version as according to him, mother-in-law and sister-in-law deliberately added water and salt in vegetables and beating is attributed to both husband as well as father-in-law. The cross-examination of PW6 Dayaram shows that there are material omissions.

14. As pointed out, on same set of evidence, accused nos.2 and 3 are already acquitted by learned trial Judge. Therefore, on same evidence, how guilt of husband alone for offence under Section 498-A of the IPC could at all be recorded. Nature of ill-treatment is not spelt out by any of them except alleged taunting on physical features. Therefore, there is weak evidence for attracting offence under Section 498-A of the IPC also as regards to husband is concerned.

CONCLUSION

15. Learned trial Court seems to have applied different yardsticks for convicting husband alone but reason for doing so has not been provided. Therefore, there is apparently improper appreciation of

evidence necessitating indulgence at the hands of this Court by allowing the appeal. Accordingly, I pass following order:

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant Walmik Babulal Patil in Sessions Case No.99 of 1998 by the learned II Additional Sessions Judge, Jalgaon on 14-02-2002 for offence punishable under Section 498-A of the Indian Penal Code (IPC), stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Section 498-A of the Indian Penal Code (IPC).
- IV) Bail bonds furnished by the appellant stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

(**ABHAY S. WAGHWASE**)
JUDGE