



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 104 OF 2004

Laxman S/o. Vishwanath Waghmare,
Aged : 27 years, Occu. : Business,
R/o. Renakhali, Tq. Pathri,
Dist. Parbhani.

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra,
Through the Police Station Officer,
Police Station, Pathri, Tq. Pathri,
Dist. Parbhani

... Respondent

...
Mrs. Rekha Choudhari h/f. Mr.S.S.Choudhari, Advocate for Appellant.
Mrs. Chaitali Choudhari – Kutti, APP for Respondent – State.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16 JULY, 2024

PRONOUNCED ON : 22 JULY, 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction of appellant for offence punishable under sections 498A and 306 of Indian Penal Code (IPC) in Sessions Case No.63 of 2001 passed by learned 2nd Additional Sessions Judge, Parbhani dated 17.01.2004.

FACTS GIVING RISE TO THE SESSIONS CASE

2. Appellant and his family members comprising of parents and brother were arrested by Pathri Police Station on

report lodged by mother (PW1 Ashamati), who informed police that her daughter Shankuntala was married to accused seven years back. Out of wedlock, they had a son. At the time of Diwali festival, when Shakuntala was brought i.e. just before the incident, she told that husband appellant demanding Rs.15,000/- for starting Hair Cutting Saloon and he asked her to bring money. He also demanded a tape recorder and gold ring. Informant was unable to satisfy the demand. After Diwali festival, Shakuntala was sent back to her matrimonial house. Within eight days, news of suicide committed by Shakuntala was received. Hence, report was lodged with Pathri police station, on the basis of which, crime was registered and investigated by PW6 P.I. Sangram Sangale, who charge-sheeted appellant and his family members for offence punishable under sections 498A and 306 of IPC.

On committal of case, it was tried by learned 2nd Additional Sessions Judge, Parbhani, vide Sessions Case No.63 of 2001. At trial, prosecution adduced evidence of six witnesses. Accused did not lead any evidence.

On appreciation of prosecution evidence, learned trial Judge held husband appellant alone guilty for above charge and acquitted remaining accused.

Hence, the instant appeal.

EVIDENCE ON RECORD BEFORE TRIAL COURT

3. **PW1** Dr. Krishnakumar Choudhary, autopsy doctor, who after conducting postmortem, opined death to be due to Cardio Respiratory failure due to asphyxia due to drowning and issued P.M. report at Exh.37.

PW2 Ashamati informant, mother of deceased, narrated about marriage, giving cash dowry of Rs.5,000/- and a wrist watch to the accused appellant. She deposed that, at the time of Diwali festival, when her daughter Shakuntala came, she reported demand by husband of Rs.15,000/- for hair cutting saloon, a tape recorder and a gold ring and also reported harassment with a view to get demand satisfied. Eight days after, her daughter went and news of her suicidal death was received, and therefore, report was lodged.

PW3 Digambar, maternal uncle and brother of informant claimed that, after marriage at the time of Diwali, he had been to Saikheda. Deceased told him and his sister that accused husband was asking her to bring Rs.15,000/-, tape recorder and gold ring from her mother and ill treating her with a view to satisfy demand. According to him, she told that, husband beat her by kicks and fist blows. Message of death of Shakuntala was received

and her dead body was found in a well. According to him, Shakuntala committed suicide due to ill treatment.

PW4 Bhimrao, brother of deceased, stated that, husband ill treated his sister with a view to satisfy demand of Rs.15,000/- and she narrated it and also stated that, there was ill treatment i.e. when she visited for Diwali festival. She was sent back after Diwali. She died by committing suicide.

PW5 Udhav, pancha to inquest panchanama (Exh.43) and spot panchanama (Exh.44).

PW6 P.I. Sangram Sangale, Investigating Officer, who registered A.D., thereafter carried out investigation and after gathering sufficient evidence, charge-sheeted accused.

SUBMISSIONS

On behalf of Appellant :-

4. Challenging the conviction, learned counsel for appellant pointed out that, apparently there is false implication on vague and general allegations of demand and ill treatment. It is pointed out that, marriage is almost seven years old and baseless allegations of demand of Rs.15,000/- for opening saloon and tape recorder are levelled. That, simplicitor allegations are of harassment without specifying instances or nature of harassment.

She pointed out that, even when there was alleged threat to kill on failure to meet demand, there was no complaint at any point of time.

5. It is next submitted that, apart from mother, her brother and brother of deceased, there is no other independent witness. No neighbours are examined. That, only interested witnesses are examined. According to learned counsel, mother, maternal uncle and brother of deceased are also not consistent and corroborated each other.

6. With regard to charge of 306 of IPC, learned counsel pointed out that, there is no evidence on the point of any abetment to commit suicide. She pointed out that, in-laws are already acquitted by trial court, but only husband is held guilty in absence of cogent and reliable evidence about abetment or inducement to commit suicide. Consequently, learned counsel criticized the findings and judgment recorded by trial court and prays to allow the appeal.

On behalf of State : -

7. Per contra, supporting the judgment of conviction, learned APP would point out that, appellant husband put up

demand of money, music system and ornaments and as the same was not met, deceased Shakuntala was subjected to both physical and mental cruelty. That, she had reported such demand and ill treatment when she had come for Diwali. That, there was also threat to kill, if demand was not met. Learned APP emphasized that the very aspect of demand of music system shows that, there was demand of money for opening saloon, which is required for entertaining customer. She pointed out that, maternal uncle, who had come during Diwali was also reported and he has deposed to that extent. That, even real brother, who had been to bring her for Diwali has deposed about demand and ill treatment. According to learned APP, in cases of such nature, best available evidence is that of close relatives and as such there cannot be independent testimonies. Learned APP submitted that, when their testimonies were found to be trustworthy and having remained unshaken, learned trial Judge rightly accepted the same. Therefore, according to her, there is no need to disturb the findings and conclusion reached at by learned trial Judge.

ANALYSIS

8. Here, there is evidence of informant mother (PW1), her brother (PW3) and brother of deceased (PW4).

On analyzing the evidence on record, it is emerging

from mother's evidence that, marriage is seven years old prior to death of Shakuntala. In her testimony she stated that, just before the incident, her daughter had come for Diwali and had reported that accused husband Laxman was demanding Rs.15,000/- for starting hair cutting saloon, demanding tape recorder and a gold ring. According to her, her daughter told that she was subjected to harassment for satisfying the demand and even issued life threats, upon failure to bring amount and valuables.

PW3 Digambar, brother of PW2 informant, who is maternal uncle of deceased, in his evidence at Exh.40, stated that, when he had come to Saikheda for Diwali festival, deceased told him that accused husband asking her to bring Rs.15,000/-, tape recorder and gold ring from her mother and was ill treating her to satisfy his demand. According to him, husband beat deceased by kicks and fist blows.

PW4 Bhimrao, brother of deceased stated that, husband ill treated his sister for satisfying demand of Rs.15,000/- and she reported when came for Diwali festival.

9. On carefully sifting the above evidence, it is noticed that, mother merely speaks about her daughter informing her that she was harassed by husband. What was the harassment and in

what form and whether it was physical or mental, has not been stated by her. In cross examination she stated that, her son Bhimrao went to bring deceased for Diwali and in second breath she stated that, she herself brought deceased prior to Diwali festival. Then she answered that, her daughter told about ill treatment after Diwali. In further cross, she admitted that, accused nos.1 and 3 resided separately and they were independently working as Barber by accepting remuneration.

10. Whereas, PW3 maternal uncle has not specified about demand of Rs.15,000/- for starting hair cutting saloon as is deposed by his sister. Even he merely speaks about ill treatment without specifying its form or quoting any instances.

11. Brother also, has failed to state about Rs.15,000/- for saloon and he even did not depose about demand of gold ring and tape recorder as is deposed by his mother and uncle.

Therefore, firstly witnesses, who are close relatives, are not consistent. Secondly they are raising general allegations by merely speaking about harassment and ill treatment without giving specification or clarifications, manner of harassment and nature of ill treatment. Thus, general, vague and omnibus allegations are raised which are not sufficient to attract offence of 498A of IPC.

12. Husband alone is held guilty for commission of offence under section 306 of IPC as well. Informant mother alleges that, her daughter Shakuntala committed suicide due to ill treatment. This court has already analyzed available evidence and has reached to a finding that there is weak and ambiguous evidence on the point of 498A of IPC. Witnesses are not giving instances and form of ill treatment. No doubt, dead body of Shakuntala was traced in the well, but there is no distinct evidence to show that, before alleged suicide, which is a case of prosecution, there was cruelty which was of such nature that she was left with no alternative, but to end up her life by committing suicide or that there was any abetment or inducement by husband to commit suicide. On the contrary, circumstances and scene of occurrence show that, footwear and nylon rope, who was lying at the well, wherein there was also evidence of freshly drawn water. Admittedly, A.D. is at the instance of accused no.2 and Investigating Officer in his cross examination has admitted to that extent. Prosecution has not demonstrated in trial court that, death was only and only suicidal and not otherwise. Above discussed circumstances and the scene of occurrence creates other possibility also. Column no.17 of P.M. report shows that, contused laceration over left eyebrow. Autopsy doctor has not issued opinion as to whether it was ante-mortem injury or post-mortem

injury. Defence has also unfortunately not taken pains to elicit explanation.

13. With such material on record, no concrete inference or opinion can be drawn that Shakuntala died due to jumping in the well only. Therefore, it is the case of benefit of doubt.

14. Learned APP tried to point out that, nylon rope was found to be entangled to the neck when body was extracted out of the well. In support of such contention, she invited attention of the court to the scene of occurrence panchanama and inquest panchanama. But, pancha PW5 Udhav, who has stepped into witness box does not speak about such condition of dead body. Therefore, apparently substantive evidence of pancha PW5 Udhav is silent about entanglement of any nylon rope. Rather, piece of nylon rope is also shown to be lying near the well. Therefore, such circumstances further creates doubt about mode and manner of death.

In the light of above discussion, neither charge of section 498A nor section 306 of IPC is firmly and cogently proved.

15. Perused the judgment, learned trial Judge has apparently not appreciated the inconsistencies in the evidence of PW2 mother, PW3 maternal uncle and PW4 brother of deceased.

Allegations which are vague and omnibus, are improperly appreciated to record guilt.

Hence, the findings and the conclusion reached at by the learned trial Judge, being erroneous, interference is called for. Accordingly, I proceed to pass following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Laxman S/o. Vishwanath Waghmare in Sessions Case No.63 of 2001 by the learned 2nd Additional Sessions Judge, Parbhani on 17.01.2004 for the offence punishable under Sections 498A and 306 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498A and 306 of the Indian Penal Code.
- IV) The bail bonds of the appellant stands 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, J.)