

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.281 OF 2003

Vikas s/o Jayram Date,
Age-32 years, Occu:Grossary Shopkeeper,
R/o- Beed-Sangvi, Tq-Ashti,
Dist-Beed.

...APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through Police Station Ashti,
Tq-Ashti, Dist-Beed.

...RESPONDENT

...
Mr. S.S. Chaudhari Advocate for Appellant.
Mrs. V.N. Patil (Jadhav), A.P.P. for
Respondent - State.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 28TH JUNE,2016.

DATE OF PRONOUNCING JUDGMENT: 19TH JULY, 2016.

JUDGMENT :

1. The Appellant-accused (hereafter referred

as "accused") was tried along with his parents and brother, in Sessions Case No.25 of 2002 before IVth Ad-hoc Additional Sessions Judge at Beed and on 21st March 2003, he has been convicted for offence under Section 498-A of the Indian Penal Code, 1860 ("IPC" in brief) and Section 306 of IPC. The other accused were acquitted. Thus, this Appeal.

2. In brief, the case of the prosecution is as under:-

A). On 12th November 2011 complainant Subhash Bhujbal (PW-1) filed F.I.R. (Exhibit 21) with Ashti Police Station in District Beed. In the F.I.R., he gave particulars regarding his family and that victim Sarita @ Savita was his daughter who was married to the accused Vikas 8-9 years before the incident, at Madalmohi, Tq-Georai. He informed that she was treated well for about one year and thereafter when the daughter was coming

to his place, she was informing that her husband was asking for Rupees Twenty Thousand for putting up a cloth shop and that she should get the amount from her parents. With the object that the marriage should not be in trouble, he had given Rupees Twenty Thousand, in front of his wife to the victim. The victim gave birth to son Nitin who is now six years old and daughter Priya, who is now four years old. She was then treated well for about two years. Thereafter when the daughter came, she told his wife Rukhminbai (PW-3) that her husband and other accused are consistently asking for money and she is being beaten and not provided food. The complainant explained to his daughter and sent her back. Three months before the incident, complainant had gone to the place of his daughter and she stated that her husband is asking for Rupees Twenty Thousand for construction purposes and has been beating her and making her starve. Listening this, the complainant told accused Vikas that he will make arrangement for

money in 4-5 months and she should be treated well. The F.I.R. further recorded that thereafter the accused along with victim had come to his place at Madalmohi, at which time he provided them clothes. Accused inquired from complainant as to what happened of the money and why it was not given till now. Accused stated that the same should be given in two months otherwise regarding his daughter he should see. Complainant told him that he will make arrangement for money but he did not have the same immediately. The victim also told at such time to the complainant that he should give money or else the accused persons were troubling her. The complainant explained to his daughter and sent her back to Beed-Sangvi. It is stated that on 12th November 2001 phone call was received at the place of Suresh Janardhan Vidhate (PW-5) that the victim was ill and taken to Civil Hospital at Ahmednagar. Thereafter the complainant along with his wife and relatives, went by Jeep and reached the hospital at 1.30 p.m. It was seen

at that time that the victim has already died and her body was in postmortem room. After postmortem, she was brought to Beed-Sangvi and last rites were performed. Complainant came to know that she had consumed some poisonous medicine and was taken to Ahmednagar Civil Hospital where under treatment she expired. Thus, the complaint was filed.

B). PSI Adinath Budhwant (PW-7) had, on 12th November 2001 taken up investigation-cum-inquiry of A.D. No.35 of 2001 which had been registered. He prepared spot panchnama Exhibit 25. On receiving the complaint of complainant Subhash, he registered offence at Crime No.135 of 2001. Statements of witnesses were recorded. The accused were arrested. Postmortem report was collected. Viscera of the victim was taken from the doctor and sent to Chemical Analyzer. C.A. Reports were received. On investigation being completed, charge-sheet came to be filed.

3. The accused persons pleaded not guilty in the trial Court. Their defence was of total denial. Evidence of seven witnesses was brought on record. Thereafter the trial Court convicted only the present Appellant – accused No.1 Vikas and acquitted the other accused persons.

4. I have heard learned counsel for both sides. Learned counsel for the Appellant – accused submitted that in this matter, the postmortem report recorded that the death of the victim took place due to "cardio respiratory arrest due to acute pulmonary edema". According to him, the C.A. report shows that no poison was detected in the viscera and thus according to him, the prosecution failed to prove that the victim committed suicide or that she suffered any homicidal or unnatural death. According to him, prosecution failed to prove that the victim committed suicide. It has been argued that the evidence of the witnesses did not prove cruelty and the trial Court wrongly

convicted the accused.

5. The learned A.P.P. submitted that even if it was to be said that offence under Section 306 of IPC is not established, still there is evidence for offence under Section 498-A of IPC as there was evidence that the accused was consistently demanding money. The submission of the learned A.P.P. is that the complainant as well as his wife and uncles of the victim deposed in the matter which shows that the victim was being subjected to cruel treatment.

6. Looking to the submissions made before me, it would be appropriate to first consider the evidence of the doctor. In this regard, PW-6 Dr. Sanjiv Ketkar was examined. His evidence is that on 12th November 2001 he had carried out postmortem on the victim. In the postmortem conducted, he deposed that they recorded their opinion that the cause of death was due to

"cardio respiratory arrest due to acute pulmonary edema". He has proved the postmortem notes at Exhibit 32. In cross-examination, he admitted that the victim did not have any external injuries and there were no internal injuries to the brain. His evidence is that viscera was preserved in this case for chemical analysis and it was sent, through the police, to the Chemical Analyzer. The cross-examination of this doctor shows that they received C.A. Reports from Chemical Analyzer and as per the C.A. Reports, no poison was detected in viscera preserved or the stomach contents and pieces of liver, spleen blood and no poison was detected from stomach wash sample. In the evidence of Investigating Officer PSI Adinath Budhwant (PW-7), C.A. Reports have been marked at Exhibit 36 and 37.

7. Thus, the medical evidence is that the victim died due to "cardio respiratory arrest" which was caused by acute pulmonary edema. Mosby's

Medical Dictionary, IIInd Edition, 1990 has explained "pulmonary edema" as below:

"The accumulation of extravascular fluid in lung tissues and alveoli, caused most commonly by congestive heart failure and also occurring in barbiturate and opiate poisoning, diffuse infections, hemorrhagic pancreatitis, renal failure, and after a stroke, skull fracture, near drowning, the inhalation of irritating gases, and the rapid administration of whole blood, plasma, serum albumin, or intravenous fluids. In congestive heart disease serious fluid is pushed back through the pulmonary capillaries into alveoli and quickly enters bronchioles and bronchi."

. Considering the above meaning of "pulmonary edema", it would appear that it is accumulation of extravascular fluid in lung tissues in alveoli, caused most commonly by congestive heart failure. It also appears that it occurs in case of barbiturate and opiate poisoning. However, in the present matter, the

evidence of doctor and the C.A. Reports do not show that any poison was detected in viscera preserved or in the stomach or contents of stomach and pieces of liver or the stomach wash.

8. The trial Court in Para 14 of its Judgment, referred to the inquest panchnama Exhibit 23 where Panchas had opined that cause of death was due to consumption of poison. In fact the Panchas were told that a poisonous medicine went in the stomach of the victim and they recorded that death "may be" due to such poisonous medicine but real cause was to be ascertained. The trial Court was aware that the doctor has given evidence that death was due to "cardio respiratory arrest due to acute pulmonary edema". However, the trial Court referred to Column No.21 of the postmortem report where it was mentioned that in the stomach contents, there was 200 c.c. blackish and coffee coloured fluid with abnormal smell present. The trial Court relied on this evidence

ignoring the evidence of the doctor that no poison was detected in the stomach wash. The trial Court put the burden on the accused when it observed that there was no suggestion to the doctor that cause of death was due to any disease or natural or any other reason. It being criminal prosecution, it was the responsibility of the prosecution to bring concerned medical evidence on record to prove that the death was unnatural. The burden could not be shifted on the accused to prove that death was natural or due to cause of any disease. Trial Court brushed aside the C.A. Reports by observing that there are various reasons for not detecting poison in viscera. Trial Court did not elaborate as to on what basis such statement was made. It simply referred to evidence of PW-1 Subhas, PW-3 Rukhmanbai, PW-4 Ram and PW-5 Suresh that they had stated that the victim committed suicide due to ill-treatment and that it was mentioned in the F.I.R. that victim had consumed poison. Relying on Section 106 of the

Indian Evidence Act, the trial Court put the burden on the accused that they had not explained the cause of death. For such reasons, the trial Court concluded that the victim had committed suicide.

9. I do not find that such reasons recorded by the trial Court for concluding that the victim committed suicide, could be accepted. There is no witness stating that the victim consumed any particular poisonous medicine. From the spot, no empty bottle or can or any other container is seized. It is for the prosecution to prove beyond reasonable doubt that victim suffered unnatural death. The doctor PW-6 Sanjiv Ketkar, in his evidence, even after seeing the C.A. Reports, did not elaborate as to what other could be the cause for the 'respiratory arrest' if poison had not been detected in the viscera or stomach contents. Looking to the meaning of "pulmonary edema", which I have reproduced above, there could be various

reasons for the "pulmonary edema" and it causing the respiratory arrest.

10. For above reasons, I find that the prosecution failed to establish that the victim died due to consumption of poison and that she had committed suicide.

11. Now before discussing the evidence brought on record by the prosecution, it would be appropriate to refer to Judgment of Hon'ble Supreme Court in the matter of **Bhairon Singh vs. State of M.P., A.I.R. 2009 Supreme Court, 2603.** The Hon'ble Supreme Court, in Para 2 of its Judgment, referred to the question which arose as follows:-

"2. The question that arises for consideration in this appeal by special leave is: in a case where accused has been acquitted of the offence punishable under Sections 304-B and 306, IPC, and the death

of wife is neither homicidal nor suicidal but accidental, whether the oral evidence of witnesses about what the deceased had told them against the accused about the treatment meted out to her is admissible under Section 32(1) of the Evidence Act to sustain conviction under Section 498-A, IPC?"

. The Hon'ble Supreme Court referred to the law with reference to Section 32(1) of the Indian Evidence Act, 1872 with reference to cases in which statement of relevant fact by person who is dead or cannot be found, etc., becomes admissible. After considering the law as regards Section 32(1) of the Indian Evidence Act, Hon'ble Supreme Court referred to the facts of that matter in Para 6 of its Judgment, and in Para 11 of the Judgment it is observed as under:-

"11. The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated

under Section 498-A, IPC. In our considered view, the evidence of PW-4 and PW-5 about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32(1) of the Evidence Act and such evidence cannot be looked into for any purpose. Except Section 32(1) of the Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW-4 and PW-5 has no connection with any circumstance of transactions which resulted in her death. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498-A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32(1) of the Evidence Act does not get attracted."

12. Looking to the observations of the Hon'ble Supreme Court in that matter of **Bhairon Singh**, cited supra, when present matter is considered, here homicide or suicide or that death was unnatural is not proved. As such what the victim told the witnesses in present matter regarding ill-treatment after going to her parents place, would have to be treated as inadmissible under Section 32(1) of the Evidence Act as it did not relate to cause of her death or circumstances of the transactions which resulted in her death. Thus the evidence cannot be looked into for any purposes.

13. For the purposes of Section 498-A of IPC, what is required to be proved by the prosecution is that the husband or relatives of the husband subjected the woman to cruelty. The evidence of the witnesses examined is thus required to be seen for the limited purpose of consideration whether the evidence shows any direct or personal

knowledge of these witnesses of cruelty taking place in their presence.

14. I thus, proceed to examine the evidence of PW-1 complainant Subhash, his wife PW-3 Rukhminbai and PW-4 Ram and PW-5 Suresh, uncles of the victim. While referring to their evidence, I will not refer to their evidence as to what the victim had told them when she was coming to the parental home.

15. The admissible evidence of PW-1 Subhash shows that the victim was married to the accused 8-9 years back. He gave the date of marriage as 26th April 1992 in the cross-examination. There is no dispute regarding the fact that from the marriage the victim got two children. The evidence of PW-1, after referring to what victim had told him regarding demand, mentions that his daughter and accused No.1 had come to Madalmohi and he had paid Rupees Twenty Thousand to his daughter and

then according to him, she paid the same to the accused. His evidence is that he paid the amount in presence of his wife. In this regard, evidence of PW-3 Rukhminbai shows, after referring to the demand informed by the daughter, that her husband had handed over Rupees Twenty Thousand to the victim in her presence.

16. The evidence of the complainant (PW-1) is that three months before incident, he had gone to the village of accused to meet his daughter. According to him, at the time of said visit, he had explained to the accused that he did not have money and would arrange the money within 4-5 months. His evidence is that his daughter and accused had come to their village for "*Dhonde Jewan*" and accused had asked at that time regarding the amount of Rupees Twenty Thousand and he had stated that he did not have the money at that time. Complainant deposed that accused told at that time, he will not allow the complainant to

speak if any bad thing happened against his daughter. PW-3 Rukhminbai also claimed that her husband had gone to meet the victim 2-3 months before the incident and in "*Adhik Mass*" the victim and accused had come for "*Dhonde Jewan*". She deposed that at that time, they convinced the accused not to ill-treat the victim and provided clothes to the victim and her husband and children.

17. Then there is evidence of these witnesses of getting information on 12th November 2001 of victim being admitted in the hospital and they going to hospital. PW-4 Ram and PW-5 Suresh, the uncles of the victim, also corroborated the PW's 1 and 3 regarding the victim informing about the demands and alleged ill-treatment.

18. Although the witnesses deposed about victim informing on various occasions regarding demand of money, particulars regarding what was

the exact ill-treatment stated, is not deposed to by the witnesses. If the admissible part of their evidence regarding what happened in their presence is considered, it does not show that there was any such conduct which could be calculated to be cruelty taking place in their presence. Regarding the giving of money to the accused, if the cross-examination of PW-3 Rukhminbai is perused, she deposed that the amount of Rupees Twenty Thousand was paid to the accused through her daughter in 1996. This would be about five years before the incident. Her evidence is that the amount was given to the accused as hand loan. In fact, even regarding the subsequent demand allegedly made by the accused, even that she says was asked as hand-loan.

19. Thus, ignoring the evidence of these witnesses regarding what the victim told them, as inadmissible [as the statement of the victim was not as to the cause of her death or any of the

circumstance of the transaction which resulted in her death] and considering the admissible evidence as to incidents which took place in their presence the same does not spell out cruelty as explained in Section 498-A of IPC.

20. For such reasons, I am unable to concur with the trial Court that offence under Section 306 of IPC or that offence under Section 498-A of IPC was established.

21. For above reasons, I pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The conviction and sentence of the Appellant-accused under Section 498-A and 306 of Indian Penal Code, 1860 is quashed and set aside.

(III) The Appellant-accused is

acquitted of the offence punishable
under Sections 498-A, 306 of Indian
Penal Code, 1860.

(IV) The bail bonds of the Appellant-
accused are cancelled.

[A.I.S. CHEEMA, J.]

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