

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 642 OF 1996

Nivrutti Shankar Jadhav.)
Age : 26 yrs. R/o. Paritewadi,)
Tal. Madha, Dist. Solapur.)... Appellant.

Versus

The State of Maharashtra. ... Respondent.

WITH
CRIMINAL REVISION APPLICATION NO. 286 OF 1996

Shri Haridas Gajendra Patekar)
Adult, Occ. Labourer)
residing at and post Paritewadi,)
Taluka Mhada, Dist. Solapur.)... Applicant.

Versus

1. Abhiman Shankar Jadhav, Adult,)
2. Shankar Kondiba Jadhav, Adult,)
3. Rukmini Shankar Jadhav, Adult,)
4. Hanumant Shankar Jadhav, Adult)
All resident of Paritewadi, Taluka Mhada,))
Taluka Mhada, Dist. Solapur.)
5. The State of Maharashtra)... Respondents.

Mr. Sangram Lotankar, advocate appointed for appellant.

Mr. Sarvajit B. Patil, advocate appointed for applicant in Revn. No. 286/1996.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : APRIL 29, 2016

JUDGMENT:

1 The appellant herein is convicted of the offence punishable under Section 498A of the Indian Penal Code and sentenced to suffer R.I. for 3 years and fine of Rs. 1000/- I.d. to suffer R.I. for 3 years, he is also convicted for offence punishable under Section 306 of the Indian Penal Code and sentenced to suffer R.I. 5 years and to pay fine of Rs. 1000/- I.d. to suffer R.I. for 3 months, by the 4th Additional Sessions Judge, Solapur in Sessions Case No. 124 of 1996 vide Judgment and Order dated 25/10/1996. Hence, the appeal.

2 The original complainant has filed Revision Application No. 286/1996 challenging the Judgment and Order passed by the 4th

Additional Sessions Judge, Solapur in Sessions Case No. 124 of 1996 vide Judgment and Order dated 25/10/1996 acquitting accused Nos. 2 to 5 of the offence punishable under Section 498A, 304B, 306 read with section 34 of the Indian Penal Code.

3 Such of the facts necessary for the decision of this appeal are as follows :

(i) It is the case of the prosecution that the present appellant was married to Baby 2 to 2 ½ years prior to 24/11/1995. On 24/11/1995 Haridas Patekar, father of Baby lodged a report at the police station alleging therein that at the time of settlement of marriage, it was agreed that the total expenses for the marriage would be borne by the complainant. The marriage was performed in front of the house of the complainant.

(ii) After marriage, his daughter had been to her matrimonial house situated at Paritawadi. She was treated properly for a period of 2 months by her husband and in laws. One day he had paid a courtesy

visit to the house of his daughter. Upon enquiry, she had disclosed that she was treated properly only for a period of 2 months. But thereafter, she is being taunted on account of not being efficient in performing the domestic chores and that she does not know to cook well. She was also humiliated on account of not being able to carry out agricultural operations efficiently and therefore, there was threat by her husband that he would get re-married.

(iii) She had also disclosed that she is being harassed and ill-treated by her husband. The complainant had attempted to pacify her in-laws and at that time, they had also reiterated before him that his daughter was not a good cook and not a good house wife. The complainant had brought his daughter to his house and she was residing in her parental house for 2 and half months.

(iv) Thereafter, her father-in-law had been to the house of the complainant to fetch Baby. For 5 to 6 months, she was treated properly, but thereafter they meted out Baby with cruelty and ill-

treatment. Baby had disclosed about it to Martand Jagtap, a distant relative and he had brought Baby to her paternal house.

(v) The appellant had sent a legal notice to her. The complainant was advised to file a police complaint. But to secure marital life of her daughter, he had not approached the police station. But it was decided to resolve the dispute amicably.

(vi) Subsequently, her brother-in-law namely Abhiman had come to their house to fetch her. She was treated properly till Diwali festival. She had visited her maternal house at the time of Diwali festival. She had sustained some burn injuries on her in the course of cooking and therefore, continued to reside with her parents for some time. On 16/11/1995 he had sent his daughter to the house of the appellant alongwith his relative.

(vii) On 24/11/1995 at about 10.30 a.m. younger brother of the complainant informed him that Baby had committed suicide by

hanging herself to a tree near the well of Hari Kondiba Jadhav. The police had already arrived on the spot. The complainant had noticed that there was bleeding from the her nose and that there were marks of blunt traumatic injuries on her person. The complainant has alleged that on 23/11/1995 his daughter had committed suicide on account of the cruelty and ill-treatment meted out to her at the hands of the appellant.

(viii) On the basis of the report of the police patil of the village Paritawadi, A.D. No. 36 of 1995 was registered under Section 174 of the Code of Criminal Procedure, 1973. It was stated in the said report that on 23/11/1995 at about 6 p.m. Baby had hanged herself near a well. The investigation was completed and charge-sheet was filed. Case was registered as Sessions Case No. 124 of 1996. The prosecution has examined as many as 10 witnesses to bring home the guilt of the accused.

4 P.W. 1 Haridas Patekar is the first informant. He has deposed before the court in consonance with the first information report. He has also deposed before the Court that when his daughter was brought by Martand Jagtap to his house, she had resided in her maternal house for 4 months. After four months, she had lodged the report at Temburni Police Station against the accused Nos. 1 to 5. But there was compromise in the police station and thereafter, it was decided that she should return to her matrimonial house. He has also admitted that at the time of settlement of marriage, it was agreed to pay an amount of Rs. 40,000/- to the accused/appellants. Rs. 20,000/- were paid and the balance of Rs. 20,000/- and one golden ring was to be given. It is admitted in the cross examination that whenever Baby visited her maternal house, accused persons used to visit his house to fetch her. She used to return to her matrimonial house happily.

5 P.W. 2 Agatrao Manik Dolse happens to be the police patil of village Paritawadi. He has deposed before the Court that on

23/11/1995 at about 9 a.m. Aba Shankar Jadhav informed him that his brother's wife Baby had died by hanging to a branch of Umber tree. He verified the said information. He then proceeded to village Varvad to get some vehicle. He has further deposed before the court that on 24/11/1995 at about 7 p.m. upon an enquiry made by him, the present appellant had disclosed that there was a quarrel between the couple over tethering of buffalow. In the said quarrel, he had angrily said that she should go and die and she had also challenged him by expressing him that she would commit suicide. The appellant had drawn the dead body of his wife from the umber tree.

6 P.W.3 Sahebrao Bhole claims to have seen Baby near the cattle shed at about 5.35 p.m. on 23/11/1995 there were quarrels between the appellant and Baby. About 2-3 weeks prior to the date of incident, Baby told P.W. 3 that her husband Nivrutti and her in-laws are giving her ill-treatment alleging that she cannot prepare food properly and also work properly.

7 P.W. 4 Dr. Abhimanyu Khare was serving as medical officer at Primary Health Center, Modanimb. He had performed autopsy on the dead body of Baby on 24/11/1995. He has described the state of dead body when it was brought to the hospital. It is specifically opined that the cause of death is death due to asphyxia due to hanging. There were no other injuries found on the dead body of the deceased. The post-mortem notes are proved by P.W. 4 and are exhibited at Exh. 28. The cause of death certificate is also issued which is at Exh. 29.

8 P.W. 5 Dnyaneshwar Vadke was police head constable at Tembhurni Police Station on 24/11/1995. He has deposed before the court that on that day at about 7 a.m. police patil of village Paritewadi lodged a report in respect of death of Baby, wife of Nivrutti by hanging. The said report is at Exh. 23. He had taken entry to that effect in the station diary at Sr. No. 36 of 1995. On the basis of the said report, A.D. No. 36/1995 was registered.

9 P.W. 6 Krishna Bhole was acquainted with the accused as well as the deceased. He has deposed before the court that he was present at the time of settlement of marriage and it was agreed to pay Rs. 40,000/- and 10 gm. of gold to accused Nivrutti and also to bear marriage expenses by the father of the deceased. At the time of marriage, Rs. 20,000/- were paid and the remainder and gold ring were to be given in gift subsequently. According to P.W. 6, the deceased and her father had informed him about the ill-treatment meted out to her at the hands of the accused by not providing her food. He had settled the dispute by convincing both the parties and only thereafter, Baby had returned to her matrimonial house. On 25/11/1995 he learnt about the suicidal death of Baby in her matrimonial house. It is elicited in the cross-examination that the agricultural land of P.W. 6 is adjoining to the field of accused. He has denied about any dispute over common Bawadi. It is admitted that he is the sarpanch of village Paritewadi. It is also admitted that the original accused No. 2 Abhiman is residing separately from his parents and brothers since 1990. Rest of the suggestion about his

personal knowledge in respect of ill-treatment meted out to the deceased is denied. It is specifically admitted by P.W. 6 that on 25/11/1995 the police had in fact, contacted him and enquired with him but on that day, he had not given any statement to the police as he was at Madha.

10 P.W. 7 Yuvraj Patekar is the paternal uncle of the deceased. He has also reiterated the allegations levelled by the complainant-P.W.1 and P.W.6. According to him, Baby had disclosed all the facts to him when she had been to the house of the parents at the time of festival. He has reiterated that Baby had committed suicide due to ill-treatment and harassment at the hands of all the accused. He has denied the suggestion of false implication in the cross-examination.

11 P.W. 8 Kaveribai Patekar happens to be the mother of the deceased. She has also reiterated the allegations levelled by the complainant P.W. 1 and P.W. 6. She was confronted with her previous statement and has denied omissions.

12 P.W. 9 Fulabai Pawar has been declared hostile by the prosecution.

13 P.W. 10 Ganpat Nikam is the Investigating Officer. He has deposed before the court that on 24/11/1995. He has received information from the police patil of Paritewadi about the accidental death of Baby, wife of Nivrutti. On the basis of the said report P.W.10 registered A.D. No. 36/95. He had commenced investigation in A.D. No. 36/95. Scene of offence panchanama and inquest panchanama were conducted in A.D. enquiry. The body was sent for post mortem. P.W. 10 had also enquired with the certain witnesses including Sahebrao Bhole and others in A.D. Enquiry. The father of the deceased Haridas had complained against the accused Nos. 1 to 5 and had disclosed that his daughter was meted with cruelty and ill-treatment at the hands of all accused and therefore she has committed suicide. The statement was recorded at the police station, on the basis of which Crime No. 164/1995 was registered against the

accused for offence punishable under Section 498A, 306 read with Section 34 of the Indian Penal Code.

14 P.W.10 has proved the omissions and contradictions of the witnesses. P.W. 10 has also admitted that when he first visited the scene of offence, the parents of the deceased and other relatives were present.

15 Learned Counsel rightly submits that in all probabilities the statement of parents was recorded in A.D. enquiry but the papers of A.D. enquiry do not form of the charge-sheet. It is also submitted that the parents and witnesses had exonerated the accused in A.D. enquiry.

16 Upon perusal of the substantive evidence of witnesses, it is crystal clear that Baby was meted with cruelty and ill-treatment at the hands of accused persons and hence, it can be safely inferred that the

prosecution had proved the guilt of the accused for the offence punishable under Section 498A of the Indian Penal Code.

17 The question that remains to be answered is as to whether the prosecution has proved the case against the accused for the offence punishable under Section 306 of the Indian Penal Code and also as to whether an offence under Section 498A of the Indian Penal Code could by itself prove the offence under Section 306 of the Indian Penal Code. The answer would be in the negative. Unless there is sufficient evidence to clearly indicate that the accused persons had facilitated, abetted or instigated the person to commit suicide, it cannot be said that the offence under section 306 is proved.

18 To decide this issue it would be relevant to place implicit reliance upon the decision of the Hon'ble Apex Court in the case of **Sanju @ Sanjay Singh Sengar v/s. State of M.P. (2006) 1 SCC 463**, wherein the Hon'ble Apex Court has observed that -

“This Court, considering the definition of 'abetment' under [Section 107](#) I.P.C., found that the charge and conviction of the appellant for an offence under [Section 306](#) is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.”

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

19 In the present case, therefore, it cannot be held that the accused- appellant is guilty of the offence punishable under Section 306 read with section 34 of the Indian Penal Code and hence, they deserve to be acquitted for the same charge.

20 Hence following order is passed :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the appellant for the offence punishable under Section 306 of IPC is quashed and set aside and the appellant is acquitted of the charge under Section 306 of IPC.
- (iii) The conviction of the appellant for the offence punishable under Section 498A of IPC is maintained.
- (iv) The fine amount if paid for the offence under Section 306 of IPC be refunded to the appellant.
- (v) Fine amount for the offence under Section 498A of IPC is maintained.

(vi) Bail bonds stand cancelled.

21 Appeal & Revision Application stand disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)