

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 174 OF 2003

State of Maharashtra

... Appellant
(Original Complainant)

Vs

1. Sandip Shankar Gavde, age 27 yrs.
Occ : Carpenter.

2. Shankar Babu Gavde, age 55 yrs.
Occu Agri & Labour Work.

3. Prakash Shankar Gavde, age 25 yrs.,
Occ : Service.

4. Sou. Akkatai Shankar Gavde, age 50 yrs.,
Occ : Household.

5. Sou. Alka Appaso Kolekar, age 34 yrs.,
Occ : Household.

All R/o Chipri, Tal. Shirole,
Dist. Kolhapur.

... Respondents
(Original Accused No 1 to 5)

Mr. Ajay Patil, Learned APP for the State.

Mr. Rahul Patil i/b. Umesh Mankapure, Advocate for
Respondents No. 1 to 5.

CORAM : SANDEEP K. SHINDE J.
DATE : September 11th, 2019

P.C. :

1. It is an appeal filed under Section 378(1)(b) of the Code of

Criminal Procedure 1973 by the State, against the order of acquittal passed in Sessions Case No. 116 of 2002 by the 5th Ad-hoc Assistant Sessions Judge, Kolhapur.

2. Heard Learned APP for the State and Mr. Mankapure, Learned Advocate for the Respondents/ Accused.

3. Deceased, Suman Gavde, suffered suicidal death on 26.01.2002. Ten months prior thereto, she was married to Sandeep Shankar Gavde, Accused No. 1. Accused No. 2 is father-in-law, Accused No. 3 is brother-in-law, Accused No. 4 is mother-in-law and Accused No. 5 is married sister-in-law, of the deceased. It is alleged that the accused and the deceased were living together at Chipri, Tal. Shirole, and that “willful conduct”, of the accused forced deceased to commit suicide. As such accused were made for the offences, under Section 498-A r/w/s. 34 & 306 of Indian Penal Code 1860 (for short, “IPC”).

4. The prosecution, in support of the charge, in essence, relied on the dying declaration of the deceased recorded on 25.01.2010 in the hospital, and evidence of deceased's father, who was examined as

witness no. 1.

5. Learned APP has taken me through the dying declaration and the evidence of the Medical Officer. Dying declaration spells-out how deceased was ill-treated and refers to abuses hurled to her by in-laws. In the dying declaration, Suman disclosed that her in-laws were suspecting her character, and on that count, they were insulting and ridicule her. It further spells out frequent insults made her life miserable and therefore she poured Kerosene and set herself on fire.

6. Before appreciating the evidence of PW1 and the disclosures in dying declaration, it may be noted that the husband and the father-in-law immediately after noticing the incident, made efforts to douse fire and moved her to the hospital. Thus, the conduct of the accused needs to be noted and considered.

7. Father, of the deceased deposed before the Court that Suman was complaining against her in-laws, who were then suspicious about her character. Other witnesses deposed on the same line.

8. The question is whether this “willful conduct”, envisaged in Section 498-A, explanation 'a' has been proved by the prosecution

and further, whether prosecution has proved that the accused abetted the deceased for commission of suicide by their alleged “willful conduct”.

9. It is clear from the plain reading of Section 498-A, that conviction for offence under Section 498-A of IPC can be for a willful conduct, which is likely to drive the woman to commit suicide.

10. In this case, there is no evidence on record to hold that deceased was subjected to cruelty by the accused by their “willful conduct”. Father of deceased would simply state that the accused were taunting Suman; however in the dying declaration Suman stated that the accused were suspecting her character and were not satisfied about her behaviour. These allegations, fall short of the requirement of “willful conduct” as envisaged in explanation 'a' to Section 498-A of IPC. Just to say that deceased was taunted by in-laws by suspecting her character, by itself is not sufficient to hold and infer that by willful conduct the accused were causing cruelty to Suman. Thus, once the prosecution fails to establish “willful conduct” on the part of the accused, obviously it cannot be said that the

accused intentionally abetted Suman to commit suicide. For establishing the charge under Section 306 of IPC, there should be clear mense-rea to commit suicide. It also requires active act or direct act, which would lead the deceased to commit suicide, seeing no option and this act must have been intended to push the deceased into the said position. In this case, the prosecution has neither proved mental nor physical cruelty caused to the deceased by the accused, soon before the death of Suman.

11. I have gone through the Judgment of the Trial Court. Trial Court except referring the Judgments of various High Courts, has not at all analyzed the evidence and recorded the finding. However, taking into consideration the evidence on record, though the Trial Court has not recorded the findings, this Court is empowered to assess the evidence and record the findings.

12. In my view, for the reasons stated, charge under Section 498-A and 306 of IPC has not been proved at all. Thus, the appeal fails and dismissed accordingly.

(SANDEEP K. SHINDE, J.)