

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 428 / 1998

Dnyaneshwar Maruti Shirsat,
Aged 30 years,
Residing Pasali,
Tal. North Solapur, Dist. Solapur.

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr. Shantanu R. Phanse i/by Mr. Jaydeep Mane, Advocate for Appellant.
Mr. R.M. Pethe, APP for State/ Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 5th MARCH, 2021.

ORAL JUDGMENT :-

1. This Appeal challenges the judgment and order dated 29th January, 1998 of the 4th Additional Sessions Judge, Solapur

whereunder the appellant-accused no. 4 in Sessions Case No. 277/1997, has been convicted of the offences punishable under Sections 498-A and 306 of the Indian Penal Code, 1860 and sentence to suffer rigorous imprisonment for year and half and fine of Rs. 2500/-.

2. Briefly stated prosecution case is that; Sunita (deceased) committed suicide on 2nd September, 1997 by jumping into a well. On the same day, accidental death enquiry was held under Section 174 of Code of Criminal Procedure, 1973. Two days thereafter, father of deceased Sitaram Phadke set the criminal process in motion with registration of FIR under Sections 498-A and 306 of IPC against father-in-law, sister-in-law, husband and one relative, Kavita Shirsath (Accused no.5). Prosecution, substantiated the charge by leading evidence of parents, maternal uncle and neighbour of deceased. It is unfolded in the evidence of these witnesses, that Sunita married to appellant, 10 years before the incident. Although marriage was consummated, Sunita begot three baby girls, which, upset Sunitas' in-

laws. The testimonies of the witnesses revealed, the appellant had extra marital affairs with Kavita – accused no. 5 with whom, he married secretly in 1994. Evidence suggest, Sunita had filed maintenance proceeding against her husband and this fact has not been disputed by the accused, while they were examined under Section 313 of Cr.P.C. The evidence of Sunitas' father and of uncle, reinforces this fact. Evidence has further revealed, that in lieu of maintenance, husband and in-laws had transferred 4 ½ acre land in Sunita's name vide registered deed, executed in November, 1995 (hereinafter called "said land"). In fact, the maternal uncle of Sunita, Mr. Gajendra was a witness to this transaction, as is evident from the deed. On the back drop of these facts, Prosecution case, is the appellant had compelled Sunita to sell a part of said land, reason being he was in need of money for treatment of Kavita, his paramour. Evidence reveals, on 3rd June, 1997, Sunita executed a sale deed in favour of Shahji Nivrutti Bhosle (PW-7) and sold out a part of the said land to him for consideration. Three months, thereafter i.e. on 2nd September, 1997, Sunita committed suicide.

3. The learned Judge upon appreciating evidence convicted husband of Sunita, of the offences punishable under Sections 498-A and 306 of IPC, but acquitted other accused.

4. Learned Counsel for the Appellant would submit, the allegations of the alleged ill-treatment are general in nature and not specific. It is argued, evidence on record does not suggest that, Sunita faced, persistent harassment, and circumstances brought on record, do not suggest that Sunita was left with, no other option, but to commit suicide. It is argued that prosecution has not proved the 'willful conduct' of the appellant and as such 'mens rea' has not been established. It is argued assuming, but without admitting that appellant secretly married Kavita, but this circumstance itself would not constitute, 'abetment' within the meaning of Section 107, IPC. Contention is that event of appellant being, marrying Kavita had taken place in 1994; whereas Sunita committed suicide in September, 1997. Thus, submitted this event had no closeness to act of the suicide.

Besides it is argued, Gajendra, maternal uncle, who had reported the accidental death made no allegations against the accused, while lodging the accidental report. Submission is FIR was lodged afterthought and it is a case of false and over implication. It is contended, the impugned conviction cannot be justified unless evidence disclosed some positive act or conduct of accused, which might have induced the deceased to commit suicide. It is then submitted that there is nothing to conclude that appellant had, 'willfully neglected' Sunita or frustrated her, so as to bring the case within the meaning of Section 107, IPC. On this ground, the Counsel for the appellant seeks acquittal.

5. *Per-contra*, learned APP for the State has supported the conviction and sentence and would contend that the evidence on record is cogent and sufficient to infer that the "willful conduct" of the appellant pushed Sunita to commit suicide. It is submitted that the Prosecution has established that the appellant had forced Sunita to sell a part of the said land in order to pay medical expenses incurred for the treatment of appellant's wife.

6. I have carefully considered the submissions of the respective Counsel. Also perused the testimonies. The trial Court found, the accused guilty under Section 498-A and 306 IPC, which are, independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also amount to abetment to commit suicide.

7. The learned trial Judge concluded Sunita was frustrated by act and/or willful neglect of the husband, at every mode of her life; be it emotional, financial or could be due to husbands' affairs with accused no.5. The trial Court thus held it would constitute abetment within the meaning of Section 107, IPC, warranting conviction under Sections 306 and 498-A of IPC. With such reasoning, trial Court concluded, when Sunita's hopes were frustrated by act of her husband or ultimately by his willful neglect, Sunita committed suicide.

8. In so far as likely reason for Sunita to commit suicide, in the

absence of evidence, conclusion cannot be drawn that she was pushed to suicide, by the circumstances alleged. Two prominent circumstance on which Prosecution has relied on and also convinced the trial Court, to hold appellant guilty of causing / cruelty and abetting suicide are; one is, appellants' affairs with accused no.5, and another, is appellant forced her to sell the land endowed to her in lieu of maintenance. In so far as second circumstance is concerned, there is no evidence at all even to indicate that, Sunita was forced to sell the land. In fact, evidence of purchaser and Mr. Bhosle (P.W.7) is plain and not sceptical. So also, there is no evidence to establish that, the consideration received was spent on treatment of appellants' paramour. So far as appellant's affair with accused no.5 is concerned, evidence suggests, it was an event which occurred in 1994 and thus had not proximity in time or otherwise to suicide committed by Sunita in September, 1997. On the contrary, it must be noted that, children born to deceased were being brought up by the appellants' family. Also, it is evidence that, in-laws and husband, had secured the maintenance by transferring the 4 ½ acre land to Sunita vide registered documents.

9. Section 107 IPC defines “abetment” and in this case, the following part of the Section will bear consideration: -

“107. Abetment of a thing – A person abets the doing of a thing, who -

First-Instigates any person to do that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

10. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

11. In the case of **Gurcharan Singh Vs. State of Punjab**, Criminal Appeal No. 40/2011; the Hon’ble Apex Court has held; In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

12. Proceeding with above understanding of law and applying the ratio to the facts in the present case is, it is to be affirmed, there was no illegal omission from appellants' side in taking due care of Sunita. In fact, in-laws had transferred 4 ½ acre land to Sunita vide registered deed executed in November, 1995, to take care of maintenance which she had claimed from husband. Therefore, it is to be held that Sunita was not neglected, either by husband or by in-laws. And although Sunita was feeling frustrated, because of her husbands' affairs with accused no.5, but it was a past event of 1994, whereafter much water had flown. Thus, to be stated, appellant secretly married accused no.5 in 1994; whereafter Sunita filed maintenance proceeding and thereafter the land was transferred in lieu of maintenance in her name by registered transferred deed in 1995. Therefore, it is to be affirmed that neither the first circumstance, nor the second circumstance would constitute "abetment" under Section 107, IPC. Besides, allegations of ill-treatment were general and not specific.

13. In consideration of the facts of the case, in my view, the trial Court erred in concluding that Sunita was driven to commit suicide by the

circumstances as stated above. The conviction is based on the inferences without any material in support thereto. As such, for the reasons stated, the impugned decision cannot be legally sustained. The same is quashed and set aside. The appeal is allowed and disposed of. Bail bond executed by the appellant is cancelled and the sureties are discharged.

(SANDEEP K. SHINDE J.)