

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 733 OF 2002

Vishwanath Kondiba Kausale

Age : 22 yrs, occ : Agri.,

R/o Rahati, Tal. Kandhar,

District Nanded

Appellant

Versus

The State of Maharashtra

Through Police Station Kandhar,

District Nanded

Respondent

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Mr. Satej Jadhav, Advocate for the appellant

Mr. P.M. Kulkarni , A.P.P. for the respondent – State.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 6th September 2023

Judgment pronounced on : 18th October 2023

Judgment :

1. The appellant, who is the original accused No.1, has challenged the judgment and order dated 19.12.2002 in Sessions Case No. 2/2000 passed by the learned Sessions Judge, Nanded (hereinafter referred to as “the learned trial Court”), whereby he has been convicted for the offence punishable under Section 498-A of the Indian Penal Code (for short, “I.P.C.”) and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 6,000/-, in default to suffer simple imprisonment for six months. It is significant to

note that initially the aforesaid sessions trial was conducted against the appellant/accused No.1 and two others namely accused No.2 Kondiba Devji Kausale and accused No.3 Pralhad Kondiba Kausale, who are respectively father and brother of the appellant. However, the learned trial Court has acquitted the aforesaid two accused.

2. The prosecution case is as under :

One Ramabai @ Ashabai, who was the daughter of PW-4 Raghunath Maroti Yendale, got married with the appellant on 08.03.1999. However, after marriage, the appellant as well as other accused treated Ramabai properly only for 15 days and thereafter the appellant as well as other accused Pralhad started demanding T.V. Set and Almirah from Ramabai. They used to beat her on failure to comply their demands. They also abused her. When Ramabai visited her parental house at the time of Panchami festival, she told them about the aforesaid unlawful demands and ill-treatment. Thereafter when original accused No.2 Kondiba had come to the house of PW-4 Raghunath Yendale to take back Ramabai, she was not ready to go with him. Accused No.2 had demanded Rs. 1,000/- from Raghunath at that time, but Raghunath expressed his inability to pay the

amount immediately and assured that he would pay the same afterwards. PW-4 Raghunath also convinced Ramabai and requested Kondiba to treat her well, and accordingly she was sent back to the house of the appellant and other accused.

3. The ill-treatment at the hands of accused continued thereafter and on 11.09.1999 Ramabai was assaulted with iron rod on her head and she got injured. The appellant and other accused thereafter poured kerosene on her person and set her ablaze in their residential house itself. Ramabai sustained 33% burn injuries, and therefore, she was taken to the Civil Hospital at Nanded for medical treatment immediately. However, during medical treatment she died. On receiving message, PW-4 Raghunath came to Nanded on 12.09.1999 and lodged report against the appellant as well as other accused. In the postmortem examination it was disclosed that Ramabai died due to injury on head as well as burn injuries. Thereafter investigation was carried out by the concerned Police Station and on completion of charge-sheet, the appellant as well as other two accused were charge-sheeted for the offences punishable under Sections 498-A and 302 read with Section 34 of I.P.C. The learned trial Court, after conducting trial, by framing charge under Sections 498-

A, 302 and in alternative under Section 304-B of I.P.C., held the appellant/accused No.1 guilty only for the offence punishable under Section 498-A of I.P.C. and acquitted him of the offence punishable under Section 302 or 304-B of I.P.C. The learned trial Court has acquitted other two accused i.e. father and brother of the appellant namely Kondiba and Pralhad from the entire charge.

4. Learned Counsel for the appellant vehemently argued that the learned trial Court though rightly acquitted the appellant from the charge either under Section 302 or 304-B of I.P.C., but wrongly convicted him for the offence punishable under Section 498-A of I.P.C. He pointed out that three panch witnesses have already refused to support the prosecution case and PW-4, PW-5 and PW-6, who are the father and two uncles of the deceased, have deposed against the appellant. He submitted that though these witnesses have deposed that the appellant as well as other accused allegedly used to demand Almirah and T.V. from the deceased and on that count used to ill-treat her, but there are so many contradictions and discrepancies in their evidence. He pointed out that the learned trial Court, on the basis of same evidence, acquitted other two accused and convicted only the

present appellant and that too only for the offence punishable under Section 498-A of I.P.C. He pointed out that though PW-4 Raghunath and PW-5 Waman deposed somewhat similar, but PW-6 Bharat, who is their distant relative, has told different story. He pointed out that though Investigating Officer PW-10 P.S.I. Manik Satpute had recorded statements of neighbouring persons, but the prosecution did not examine those independent witnesses. According to him, the learned trial Court wrongly relied on the evidence of PW-4 and PW-5 only for conviction of appellant, by ignoring the contrary evidence of PW-6. As such, learned Counsel for the appellant prayed for complete acquittal of the appellant from the charges levelled against him.

5. On the contrary, learned A.P.P. supported the judgment of the learned trial Court and contended that though the learned trial Court acquitted the appellant and other accused from more serious offence under Section 302 or 304-B of I.P.C., but convicted the present appellant for the offence punishable under Section 498-A of I.P.C. by appreciating the evidence on record in proper manner. As such, he prayed for dismissal of the appeal.

6. Heard rival submissions. Also perused the entire

oral and documentary evidence on record in the light of the submissions made by the rival parties.

7. Admittedly, death of Ramabai was homicidal as she died due to head injuries allegedly caused by hitting iron rod mounted with wire. Moreover, there were also burn injuries to her. Prosecution had claimed that accused beat Ramabai with the aforesaid iron rod and thereafter set her ablaze. There is no dispute as such regarding the homicidal death of Ramabai and that too at her matrimonial place. However, the judgment indicates that the learned trial Court has acquitted all the accused from the charge under Section 302 or 304-B of I.P.C. mainly on the ground that the prosecution could not adduce any evidence in respect of presence of the accused in their house at the time of incident. Be that as it may, but the learned trial Court has convicted the appellant/accused No.1, who is the husband of the deceased, for the offence punishable under Section 498-A of I.P.C. by acquitting the other two accused. Therefore, considering the fact that the appellant alongwith other two accused has been acquitted from the charge under Section 302 or 304-B of I.P.C., I will restrict my findings only to the extent of conviction of the appellant for the offence

punishable under Section 498-A of I.P.C.

8. So far as the charge under Section 498-A of I.P.C. established against the appellant is concerned, the allegation as per the prosecution story is that the appellant and other accused used to demand Almirah and T.V. from deceased Ramabai and on non-fulfillment of the same, they used to ill-treat her. Since the conviction of appellant is only for the offence under Section 498-A of I.P.C., I only consider the evidence of PW-4 Raghunath, PW-5 Waman and PW-6 Bharat who are the father and two uncles of deceased, only to the extent of the aforesaid illegal demand and ill-treatment of the deceased thereof, which appears significant to deal with this appeal.

9. The prosecution story as reflected from the First Information Report (Exh.23) indicates that PW-4 Raghunath i.e. father of deceased, had given dowry of Rs. 39,000/- and some gold ornaments to the accused in the marriage. After 15 days of the marriage, PW-4 Raghunath had sent PW-4 Waman i.e. his brother, to bring Ramabai to his house. When PW-5 Waman went to the house of accused, the appellant and other accused in his presence started asking Ramabai to bring T.V. Set and Almirah from her father. They even beat

her in front of Woman on the aforesaid account and also abused her. PW-5 Waman tried to convince the accused persons and thereafter original accused No.2 i.e. the father of present appellant, asked him to not take Ramabai at her parental house. However, somehow Rama @ Asha was sent to her parental house with PW-5 Waman. At the time of leaving, Waman was told by the accused not to disclose this incident to PW-4 Raghunath i.e. the father of Ramabai. After returning to the parental house, PW-5 Waman had told entire incident to PW-4 Raghunath and Ramabai also told the same. Thereafter original accused No.3 Pralhad had come to take Ramabai back to the matrimonial house after 15 days and at that time he again made demand of atleast for T.V. set. However, Raghunath could not fulfill such demand and assured to fulfill the same at the time of Diwali festival. Lastly Ramabai @ Ashabai was brought to the parental house for Panchami festival through her brother Madhukar and after about three days of the same, original accused No.2 Kondiba i.e. father of the present appellant had come to take her back. At that time also original accused No.2 had made demand of Rs.1,000/- for taking back Ramabai and when Raghunath showed his inability for the same, Ramabai was not ready to go to her matrimonial house, since the appellant and other

accused used to ill-treat her on account of aforesaid illegal demand. However, somehow Ramabai was sent to her matrimonial house by PW-4 Raghunath. But on 12.09.1999 at about 11.00 a.m. PW-4 Raghunath received information through a chit that Ramabai was admitted to Civil Hospital at Nanded due to burn injuries.

10. Admittedly, death of Ramabai @ Ashabai was unnatural. However, learned trial Court has recorded conviction only under Section 498-A of I.P.C. and that too against the present appellant only. Other two accused are already acquitted from all the charges. The alleged ill-treatment of Ramabai was on account of unlawful demand of Almirah and T.V. Set by all the accused as per F.I.R. (Exh.23), and therefore, as regards to the said demand, the evidence of PW-4, PW-5 and PW-6 is only important to ascertain whether the learned trial Court has rightly convicted the appellant under Section 498-A of I.P.C. or not. PW-4 Raghunath i.e. father of deceased Ramabai has stated about the said demand by accused No.1 and on non-fulfillment of the same, beating of Ramabai. However, though this witness in the F.I.R. (Exh.23) has made accusation of the aforesaid illegal demand and ill-treatment to the deceased against all the

accused, but while deposing before the Court he made reference only to the act of appellant about such illegal demand and ill-treatment. As such, there is difference between his versions in the complaint and while deposing before the Court. Moreover, he has also admitted in his cross-examination that he did not state before the police about demand of Rs. 4,000/- made to the father of present appellant i.e. original accused No.2. Thus, it appears that PW-4 Raghunath has tried to exaggerate the prosecution story. He has also given vital admissions that he had not stated before the police that his brother Waman i.e. PW-5 had made night halt at the house of the appellant when he had gone to meet deceased Ramabai. He also tried to hide the fact that original accused Nos.2 and 3 were residing separately from the present appellant at village Peth Wadaj.

11. Further, the evidence of PW-5 Waman also indicates certain exaggeration in respect of the prosecution story. Though he deposed about the alleged ill-treatment and unlawful demand as per the prosecution story, but in the cross-examination itself he admitted that he did not state portion marked 'A' from his statement to police. The said portion is in respect of arrival of deceased alongwith the

appellant to her parental house and at that time clothes were given to both of them. Though PW-5 denied the said portion, but at the same time he could not state any reason as to why police recorded the same in his statement. On going through the said portion 'A', it appears that everything was well when after 15 days of marriage deceased Rama came to her parental house. Thus, these contents falsify the prosecution story about the so called ill-treatment of Ramabai which allegedly started after 15 days of marriage.

12. Further, the evidence of PW-6 Bharat Yendale, who was also the Police Patil, indicates exaggeration of prosecution story. Though he has stated that there was ill-treatment by the accused to deceased Ramabai on account of demand of T.V. Set and Almirah, but he has made so many additions in his version while deposing before the Court. He has specifically admitted in the cross-examination that he did not state before the police that after 4 to 5 days of marriage, Rama came to the house of her father and that he assured her to tell the relatives of the appellant and that at the time of Panchami festival Rama narrated him regarding ill-treatment by accused Nos.2 and 3. He also tried to say that he could not recollect whether he told police that the original accused

No.3 Pralhad was called to his house. Thus, from these statements and omissions, it is quite clear that this witness tried to improve the story of prosecution so as to make accusation against all the accused. Most importantly, the Investigating Officer i.e. PW-10 P.S.I. Manik Satpute has stated in his chief-examination itself that he had recorded statements of neighbours of appellant on the same day. However, the prosecution has examined only interested persons, who are the close relatives of deceased and no independent witness has been examined. Though it is not fatal to rely upon the evidence of interested person, but that has to be scrutinized more cautiously since there is always possibility of deposing falsely by the interested witness so as to frame the accused.

13. Here in this case, though only interested witnesses are examined by the prosecution on the aspect of ill-treatment of the deceased, but there are so many contradictions among the versions of these witnesses, who are father and two uncles of the deceased. Moreover, these witnesses have made allegation against all the accused on similar footing that they used to demand T.V. Set and Almirah from the deceased and on non-fulfillment of the same, used to

beat her. However, it has already held by the learned trial Court that accused Nos.2 and 3 were residing separately from the present appellant, and therefore, it appears doubtful that only appellant/accused No.1 has been convicted and other two are acquitted on the similar set of facts. Due to the discrepancies among the versions of these three witnesses, it is rather unsafe to convict the appellant only and specially when the other accused are acquitted. Therefore, considering the contradictions and omissions in the evidence of these three witnesses as regards to the alleged ill-treatment of the deceased, benefit of doubt needs to be given to the present appellant / accused No.1, especially when on the basis of similar evidence the other two accused are acquitted. Hence, I am of the opinion that the learned trial Court has definitely committed mistake while convicting the appellant under Section 498-A of the I.P.C. despite there being so many contradictions and omissions in the evidence of PW-4, PW-5 and PW-6. In the result, following order is passed.

ORDER

- (i) The appeal is hereby allowed.
- (ii) The judgment and order dated 19.12.2002 passed by the learned Sessions Judge, Nanded in Sessions Case No.2/2000 is

hereby set aside to the extent of conviction of appellant/accused Vishwanath Kondiba Kausale under Section 498-A of the Indian Penal Code.

- (iii) Appellant/accused Vishwanath Kondiba Kausale is hereby acquitted of the offence punishable under Section 498-A of the Indian Penal Code.
- (iv) His bail bond stands cancelled and the fine amount if paid by the appellant, be returned to him.
- (v) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)