

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 569 OF 2001

1. Sakharam Ganpati Raut
Age : 51 yrs, occ : agri.,
R/o Mali Chincholi,
Tal. Kaij, District Beed.

2. Malanbai w/o Sakharam Raut
Age : 46 yrs, occ : agri.,
R/o as above.

3. Satish Sakharam Raut
Age : 23 yrs, occ : agri.,
R/o as above.

Appellants

Versus

1. The State of Maharashtra

2. Avinash Rangnath Kokate
Age : 55 yrs, occ : agri.,
R/o Khodas, Taluka Kaij,
District Beed

3. Gajarbai w/o Avinash Kokate
Age : 50 yrs, occ : household
R/o as above.

Respondents

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Mr. S.P. Katneshwarkar, Advocate for the appellants.

Mr. P.M. Kulkarni, A.P.P. for respondent No.1 – State.

Mr. K.J. Suryawanshi, Advocate for respondent Nos.2 and 3.

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CORAM : **SANDIPKUMAR C. MORE, J.**

Judgment Reserved on : 12 September 2023

Judgment pronounced on : 31 October 2023

Judgment :

1. The appellants, who are the original accused, have preferred this appeal against judgment and order dated

28.11.2001 passed by the 2nd Additional Sessions Judge, Ambejogai (hereinafter referred to as “the learned trial Court”) in Sessions Case No.7/2000, whereby they are convicted for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code (for short, “I.P.C.”) and sentenced to suffer rigorous imprisonment for two years each and to pay fine of Rs. 1000/- each, in default to suffer rigorous imprisonment for three months each.

2. The prosecution story is as under :-

One Savitrabai @ Savita who was the daughter of PW-4 Gajrabai and PW-5 Avinash, resident of village Khodas, Taluka Kaij, got married with present appellant No.3 Satish from village Mali Chincholi in the year 1998. Appellant Nos.1 and 2 are the parents of appellant No.3 Satish. On 23.04.1999 at about 4.00 a.m. Savita received burn injuries in her matrimonial home at Mali Chincholi. She was immediately taken to S.R.T.R. Medical College and Hospital at Ambejogai in the jeep of PW-1 Dattatraya Galande at about 7.50 a.m. Her parents Gajrabai and Avinash, on getting knowledge of the same, rushed to the said hospital. On making enquiry, Savita told them that in the night of 22.04.1999 appellant No.3 Satish i.e. her husband mercilessly

beat her with fists and kicks. Thereafter when she slept with him in one room, she got up at about 4.00 a.m. and at that time she heard whisper between her husband and mother-in-law Malanbai. Her husband Satish poured kerosene on her and mother-in-law Malanbai set her ablaze with the help of match stick. When she cried for help, her cousin mother-in-law Sumanbai and neighbours came there and doused her fire and then she was taken to the hospital as mentioned above. PW-5 Avinash then lodged written complaint in Ambejogai Police Station, but the police authorities of the said police station did not take any cognizance of the same.

3. Thereafter on 27.04.1999 Avinash approached Kaij Police Station and requested PW-6 A.P.I.Kamble to make proper inquiry. Accordingly, A.P.I. Kamble rushed to the hospital and recorded statement of Savita at about 12.30 hrs. Savita told him as to how the incident took place. She specifically told him that she was treated well only upto Diwali festival and thereafter when she went to Malinagar Sugar Factory alongwith her husband Satish for doing labour work of cutting sugarcane, Satish assaulted and ill-treated her as he found that she was avoiding the work on the pretext of stomach-ache. It was also disclosed that after period of

two months Savita directly returned to her parental house at Khodas and narrated the aforesaid ill-treatment to her parents. When Satish had come to Khodas to take her back, Savita's parents while sending her to matrimonial house, requested Satish to treat her well.

4. Thereafter on 20.04.1999 Savita alongwith her husband had attended marriage of her relative at Kanadi Mali where her parents namely PW-4 Gajarabai and PW-5 Avinash had also come. At that time also Savita complained to her parents regarding her continuous ill-treatment at the hands of her husband and in-laws on the ground that she was avoiding the work pretending being ill and that her character was not good. Besides A.P.I. Kamble, the Executive Magistrate DW-1 Mr. Kadam also recorded statement of Savita between 2.00 to 2.25 p.m. On the basis of those statements, crime No. 96/1999 was registered against all the appellants/accused for the offences under Sections 307, 498-A read with Section 34 of I.P.C. On completion of investigation, the appellants were charge-sheeted and the learned trial Court conducted the trial and convicted them for the offence punishable under Section 498-A read with Section 34 of I.P.C. Hence this appeal.

5. Learned Counsel for the appellants submitted that all of them are already acquitted for the offence under Section 307 of I.P.C. on the basis of the same evidence, but wrongly convicted for the offence punishable under Section 498-A of I.P.C. He pointed out that it was alleged by the prosecution that all the appellants were ill-treating Savita as she was not doing the work on the ground of alleged stomach-ache, but real brother of Savita i.e. Asaram was residing with appellant No.3 Satish and Savita at Mali Nagar throughout the period and surprisingly his statement was not recorded and he was not examined. Thus, the prosecution suppressed the important fact regarding the alleged ill-treatment of Savita at the hands of appellant No.3 Satish at Mali Nagar. He further submitted that so far as the other evidence of ill-treatment of Savita at the hands of appellants, when she was residing in her matrimonial house, is concerned, it is found untrustworthy and not convincing as no independent witness has been examined to that effect. He pointed out that at least upto October 1998 there was no ill-treatment to Savita and about her alleged ill-treatment at Mali Nagar, there is no convincing evidence with specific details of such alleged ill-treatment, is on record. He pointed out that though it is the story of prosecution that immediately after meeting Savita in

the hospital on 23.04.1999 a written complaint was lodged by PW-5 Avinash i.e. the father of Svita, but the same is not produced on record, and therefore, the complaint lodged on 24.04.1999 definitely appeared to be an afterthought. He further pointed out that there were no injuries found on the person of Savita at the time of her postmortem and there was also no smell of kerosene. Thus, according to him, no cruelty as contemplated in clause (a) of Section 498-A of I.P.C. has been established. In addition to his submissions, the learned Counsel for the appellants also relied on the following judgments :

- (i) State of Punjab vs Parveen Kumar, ARI 2005 SC 1277*
- (ii) Bhagirath Bhaurao Kanade vs The State of Maharashtra, 1997 ALL MR (Cri) 362*
- (iii) Girdhar Shankar Tawade vs State of Maharashtra (2002) 5 SCC 177*

6. On the contrary, learned A.P.P. as well as learned Counsel for respondent Nos.2 and 3, who are the parents of deceased Savita, strongly opposed the submissions made on behalf of the appellants. According to him, valuable life of Savita is lost and the appellants have been acquitted from the offence under Section 307 of I.P.C. only on wrong interpretation of her two dying declarations. They pointed out that the learned trial Court has also observed rightly that

there was no delay in lodging the complaint. According to them, beating of Savita by kicks and blows at the hands of appellant No.3 has already come on record from the two statements of deceased Savita, and therefore, learned trial Court has rightly convicted the appellants under Section 498-A of I.P.C.

7. Heard rival submissions in the light of entire oral and documentary evidence on record and also the impugned judgment.

8. Admittedly, the appellants were initially charged for the offences under Sections 307, 498-A read with Section 34 of I.P.C. but they are acquitted from the charge under Section 307 of I.P.C. as the learned trial Court found contradictions in the two alleged dying declarations of Savita, one recorded by PW-6 A.P.I. Kamble and other recorded by DW-1 Kadam. Admittedly, there are two dying declarations on record of deceased Savita. First one is recorded by PW-6 A.P.I. Kamble at Exh.27 on getting information on 27.04.1999 and second one is recorded by DW-1 Kadam i.e. the Executive Magistrate at Ambejogai at about 2.00 p.m. on the same day, which is at Exh.32. As per the first dying declaration (Exh.27), deceased Savita had narrated that the appellants

were ill-treating her by making allegations that she was avoiding the work on account of stomach-ache and on 22.04.1999 her husband beat her in the night with kicks and fists and at about 4.00 a.m. of 23.04.1999 her husband poured kerosene on her person and then her mother-in-law Malanbai set her ablaze with the help of match stick. She has also stated that while bringing her to hospital all the appellants/accused had told her to depose before the police that she got burn injuries accidentally by falling kerosene lamp on her person. However, on the same day at about 2.00 p.m. while stating before the Executive Magistrate DW-1 Kadam she resiled from her earlier statement and tried to shield the appellants by stating that she did not know as to how she caught fire and due to smoke could not see as to who doused her. She further expressed that she thought that her husband and mother-in-law might have set her ablaze. In the second statement she did not state anything about ill-treatment from appellant Nos.1 and 2, who are her in-laws.

9. It is significant to note that in view of the discrepancies in both the dying declarations of deceased Savita the learned trial Court has perhaps acquitted all the appellants/accused from the offence under Section 307 of

I.P.C. However, the learned trial Court appears to have considered these statements for convicting the appellants for the offence punishable under Section 498-A of I.P.C. Though deceased Savita had stated in first dying declaration that all the appellants were ill-treating her on the ground that they thought that she was avoiding the work on false pretext of stomach-ache, but in the second dying declaration (Exh.32) she did not state anything about the alleged ill-treatment at the hands of appellant Nos.1 and 2, who are her in-laws. There is only allegation against the husband i.e. appellant No.3 Satish. However, in both these dying declarations, she has specifically stated that in the earlier night of the incident i.e. on 22.04.1999 her husband i.e. appellant No.3 had mercilessly beaten her with kicks and fists. It is extremely important to note that though such merciless beating was there, but no injuries to that effect were found on the person of deceased Savita at the time of her examination except the burn injuries. PW-2 Dr. Rais Hashmi who had examined deceased Savita on 23.04.1999 at about 7.30 a.m. has specifically admitted in his cross-examination that he did not smell of burnt oil like kerosene while examining her and there were no other injuries on her person than the burns. This admission by this medical officer PW-2 Dr. Rais Hashmi has

clearly overruled the possibility of setting Savita ablaze by appellant No.3 and his mother appellant No.2 Malanbai. Further, non existence of other bodily injuries than the burn injuries also indicates falsehood in the story of prosecution that on the earlier day of incident she was beaten mercilessly by appellant No.3 Satish. Thus, only two incidents of the alleged ill-treatment remain on record.

10. It has already come on record that after the marriage till Diwali festival that means till October 1998, there was no ill-treatment of Savita by the appellants. It is the case of prosecution that after Diwali festival Savita alongwith her husband i.e. appellant No.3 had gone to Mali Nagar for job of sugarcane cutting. Obviously other accused were not residing with them during the said period. Further, it appears that according to Savita, she was having stomach-ache, but appellant No.3 Satish i.e. her husband felt that she was avoiding the work on the false pretext of such illness and used to assault her. However, it has also come on record that throughout the period they resided at Mali Nagar sugar factory, brother of Deceased Savita by name Asaram was also residing with them. It is extremely surprising that though such allegation of assault has been claimed by the

prosecution during the said period, but the Investigating Officer did not care to record the statement of Asaram who was continuously with Savita and appellant No.3 at Mali Nagar Sugar Factory. Moreover, no specific date and details about such assault are there on record. Therefore, in absence of any independent supporting evidence, the alleged ill-treatment at Mali Nagar Sugar Factory of deceased Savita at the hands of appellant No.3 Satish appears doubtful.

11. Second incident about the alleged ill-treatment of deceased is on 20.04.1999 when Savita met her parents in one marriage function of her relative. It is alleged that at that time also Savita had narrated about her ill-treatment at the hands of appellants/accused on the same ground. However, there is no supportive independent evidence on record to that effect. Though after two days of the same deceased Savita caught fire, but in her afore-mentioned two dying declarations there are contradictions as regards her alleged ill-treatment at the hands of the appellants. In the second dying declaration she did not even whisper about any ill-treatment at the hands of appellant Nos.1 and 2. Further, as mentioned above, from the admission of medical officer PW-2 Dr. Rais Hashmi, as discussed above, the act of beating by appellant No.3 is also

ruled out. It is significant to note that the learned trial Court after disbelieving the aforesaid two alleged dying declarations, has relied the same only for convicting the appellants for the offence punishable under Section 498-A of I.P.C.

12. Learned Counsel for the appellants heavily relied on the judgment of the Hon'ble Apex Court in the case of ***Girdhar Shankar Tawade vs State of Maharashtra*** (supra) wherein applicability of Section 498-A of I.P.C. under explanations (a) and (b) and the nature of cruelty is discussed. Admittedly, in the present case, there is no question of explanation (b) since the prosecution has not claimed cruelty on the basis of illegal demand. It is specifically observed by the Hon'ble Apex Court in the aforesaid judgment as under :

“The basic purport of Section 498-A is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only

coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A.

Section 498-A is attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial Court as regards the death negated suicide with a positive finding of accidental death. If suicide is rule out, then in that event applicability of Explanation (a) would not arise – neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498- A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A.

Explanation (b) thereto which in no uncertain terms records harassment of the woman and the Statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand- there is total absence of any of the requirements of the Statute in terms of Section 498-A.

In this case there was inherent contradiction inter se in the evidence of the brother and the cousin of the deceased and as such the same was not reliable. The other piece of evidence viz. Three letters written by the deceased to her brother and her cousin, relied on by the courts below in order to come to a finding as regards the guilt under Section 498-A also did not fulfil the requirements of the provisions of Explanation (b) or even a simple demand for dowry. The legislative intent is clear enough to indicate in particular reference to Explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (b). The letters by themselves though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused.

The statement before the Executive Magistrate by way of a declaration did not lend any assistance in the matter in issue. Dying declarations shall have to be dealt with due care and upon proper cirumspection. Though corroboration thereof not essential as such, but its introduction is otherwise expedient to strengthen the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence.

Charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other,

as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither we are included to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon - the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the Statute : Even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws place and requests the husband to treat her well-at best some torture and a request to treat her well. This by itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of the day.

There was an inherent contradiction inter se leading to the leading to the term of credibility of the oral evidence and it is in this perspective that reliance thereon by both the Trial Court and the High Court stands totally misplaced resulting in utter perversity. Other evidence also did not fulfil the requirements of Section 498-A. Therefore, conviction as recorded by the trial Judge as also by the High Court cannot be sustained. Appreciation of evidence cannot be had under Article 136 but it would be travesty of justice in our justice delivery system if such a bar is to linger on even on total misappreciation of evidence leading to utter perversity”.

. In the instant case also, the learned trial Court has already acquitted the appellants from the charge under Section 307 of I.P.C. and thereby negated attempt from the appellants to commit murder of Savita. Moreover, deceased Savita herself in the second dying declaration (Exh.32) has stated that she could not find out as to how she caught fire. Thus, the possibility of attempt of suicide has also been ruled out here. As such, only theory of accidental death remains in this case. Therefore, considering these aspects, the aforesaid discussion of the Hon'ble Apex Court deserves to be accepted to hold that there was no degree of cruelty as contemplated in Section 498-A, explanation (a) of I.P.C. in the present cast. Therefore, benefit of doubt must go to the appellants/accused as the prosecution has not established its case being must be true as observed by this Court in the case of ***Bhagirath Bhauroo Kanade vs State of Maharashtra*** (supra). Thus, I come to the conclusion that the learned trial Court has definitely erred in convicting the appellants for the offence punishable under Section 498-A of I.P.C., especially when it acquitted them on the same set of evidence from the charge under Section 307 of I.P.C. Thus, the impugned judgment certainly needs interference. In view of the same, following order is passed.

ORDER

- (i) The appeal is hereby allowed.
- (ii) Judgment and order dated 28.11.2001 passed by the learned Additional Sessions Judge, Ambejogai in Sessions Case No.7/2000 to the extent of conviction of the appellants for the offence punishable under Section 498-A read with Section 34 of I.P.C., is hereby quashed and set aside.
- (iii) The appellants/accused stand acquitted from the charge under Section 498-A read with Section 34 of I.P.C.
- (iv) Their bail bonds stand cancelled.
- (v) Fine amount be refunded to the appellants excluding the compensation amount of Rs.2,000/-, if paid to respondent Nos.2 and 3.

(SANDIPKUMAR C. MORE, J.)