

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.98 OF 1999

Barku Ranganath Shinde & Ors. .. Appellants

Versus

The State of Maharashtra & Anr. .. Respondents

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Ms.Rukmini Khairnar i/b Mr.Pramod Joshi for the Appellants.

Mr.N.B.Patil, A.P.P. for the State.

Mr.Zishan Quazi for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 19th APRIL, 2023

P.C:-

1. The Appeal filed by the three Appellants, questioning the legality and propriety of the judgment passed by the Additional Sessions Judge, Nashik in Sessions Case No.231 of 1997, was admitted on 22/02/1999 and pending the Appeal, the Appellants were directed to be released on bail, on furnishing P.R.Bond and sureties. When the Appeal is taken up for hearing, it is informed that Appellant No.2-Rangnath Shankar Shinde expired on 09/09/2004 and the death certificate to that effect is placed on record.

Hence, now the Appeal is being prosecuted by Appellant Nos.1 and 3 and it stand abated against Appellant No.2 on his death.

2. The Appellants were charged for committing the offences punishable under Sections 498-A and 306 read with Section 34 of IPC. The charge was framed on the complaint filed by Khandu Gaikwad (PW 2), father of one Kantabai, who was married to Accused No.1 and when she committed suicide by jumping into the well, situated in the agricultural field, belonging to the accused persons, her father lodged a complaint alleging that after solemnization of marriage of his daughter with Accused No.1, she was subjected to cruelty and harassment, physical and mental, for meeting unlawful demand of articles to be given to them by the parents of the deceased in her marriage and, thereby, committed an offence under Section 498A read with Section 34 of the Indian Penal Code (for short, “IPC”). Another charge framed against the accused persons is, they in furtherance of common intention, subjected the deceased for unlawful demand of articles and on account of the ill-treatment and harassment, she committed suicide by jumping into the well and, thus, they have committed an offence under Section 306 read with Section 34 of IPC.

The Accused pleaded not guilty and, hence, were tried in Sessions Case No.231 of 1997. Accused Nos.2 and 3 are the father-in-law and mother-in-law of the deceased, whereas Accused No.1-Barku is her husband.

3. In order to establish the aforesaid charges, the prosecution examined 10 witnesses and this included, the complainant, a father of the deceased (PW 2), her mother-Sumanbai (PW 3), her uncle-Vishnu Gaikwad (PW 6) and her

brother, aged 12 years (PW 7). Apart from this, the panch witnesses and the Investigating Officer were examined alongwith Dr.Satish Chandorkar (PW 8), who carried out the postmortem of the deceased. Dr.Vasant Jamdade was examined as PW 9, who assisted PW 8 in carrying out the postmortem.

4. At the outset, I must note that as far as the charge under Section 306 of IPC is concerned, the trial Judge arrived at a finding that there is no evidence that Kantabai's behaviour was such that she thought of committing suicide and there is no evidence placed on record by the prosecution to establish that she was compelled to commit suicide, as she was unable to satisfy the demand. On the contrary, accepting the evidence on record, which reveal that she accidentally fell into the well, as the mud surrounding the well and the depth of the well gave rise of possibility of accidental death, all the Accused were acquitted of charge under Section 306 of IPC. However, the learned Judge found the Accused guilty of committing an offence under Section 498-A and on convicting them, they were directed to undergo R.I. for one year and to pay fine of Rs.500/- each, in default to suffer S.I. for three months.

5. I must, therefore consider, whether the conviction under Section 498-A awarded in favour of the Appellants is justified, on the basis of the material placed before the learned Judge. In order to establish the charge of causing cruelty to deceased Kantabai, PW 2, PW3, PW6 and PW 7 have stepped into the witness box.

It is deposed on their behalf that marriage of Kantabai was solemnized on 26/05/1997 and after marriage, when she was brought to her parental house, it was conveyed by her to the family members that the Accused are harassing her on the ground of damaged articles given to her at the time of marriage. She stated that the articles like cupboard and cot suffered an early damage and, therefore, she conveyed that the Accused had beaten her for the said reason and Accused Nos.2 and 3 are informed to have told that unless and until she bring new articles from her father, she should not return home.

As per PW 2, her daughter complained her that Accused are beating her and Accused Nos.2 and 3 are giving taunts.

As per PW 2, he assured his daughter that he would collect some amount for purchase of the new articles and she was reached to her matrimonial house at Sonari. He also pleaded before the accused persons not to harass his daughter and if some articles given in marriage are damaged, he will replace the same. It is deposed that when PW 2 visited his daughter's house on the day of Dussehra and she was brought back, she disclosed to her family members that Accused Nos.2 and 3 had asked her to get the articles replaced. This time, his daughter refused to go back without the articles, but on an assurance that the articles shall be replaced, she was sent back. It was assured that the articles shall be given after Diwali festival.

PW 2 specifically deposed that he had given a sum of Rs.6,000/- by way of dowry, while the marriage was performed and also gave one cupboard, cot and other utensils to the accused persons.

6. The other witnesses corroborate PW 2 on the said aspect, barring a few contradictions, when PW 3, her mother admitted in cross-examination that whenever her daughter was brought to the house, her husband or her father-in-law used to come to take her back and some times, her son Ramesh used to drop her. Her bother, a minor, deposed that his sister requested their father that he should purchase new articles and of good quality.

7. The question that fell for consideration is, whether the ingredients of Section 498-A are established by the prosecution.

Section 498-A punishes an act of the husband or his relatives, where they subject a woman to cruelty. The term 'cruelty' is explained in the Explanation as under :-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or 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."

In the facts of the case, the learned trial Judge has deemed it fit to acquit the accused persons from the charge under Section 306 of IPC, by recording that the fall in well was accidental and there is no material to establish that the conduct of the accused persons was of such a nature that it would drive the deceased to commit suicide.

8. Learned counsel for Respondent No.2 would vehemently submit that the case definitely fall within clause (b) of the Explanation, appended to Section 498-A.

Clause (b) of the Explanation necessarily require two ingredients to be satisfied, namely, harassment of a woman and such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or such harassment is on account of failure to meet such demand.

The necessary ingredients of clause (b), being harassment of a woman so as to coerce her to meet any unlawful demand of property or valuable security. Scanning through the evidence brought on record by the prosecution, though PW 2 has stated that at the time of marriage, he has paid a sum of Rs.6,000/- as dowry and a cupboard, cot and some utensils were given in marriage, there is no evidence on record to establish that those things are given to the accused persons on their demand. PW 6, brother of PW 2 and PW 3, the wife of PW 2, are also silent on dowry being given at the time of marriage.

What has surfaced on record is giving of certain articles like cupboard, cot alongwith some utensils and the grievance, which the deceased made to her family members is about the articles being not of good quality, as she was asked to replace the articles. This, definitely would not amount to demand of any property or valuable security, as it has surfaced on record that her parents, at the time of marriage had given some articles, which were not found of good quality and that is why, she demanded her father to replace the articles.

The prosecution has failed to prove that the deceased suffered harassment at the hands of the accused persons, as her family failed to meet unlawful demand for any property or valuable security and the harassment was only on the ground that there was failure to meet such demand by her family members.

9. The purpose of Section 498-A, being to punish the husband or relative of the husband whoever subject a woman to cruelty, but this definitely would not cover any quibble in the family on account of any reason, as the meaning assigned to the term "cruelty" has been clarified by the Explanation appended to said Section itself and it contemplate a wilful conduct, which is of such a nature, which is likely to drive a woman to commit suicide or to cause grave injury or danger to her life, limb or health or harassment shall be with a view to coerce her or any person related to her to meet a demand of the nature specified in clause (b) of the Explanation. The request of the deceased to her parents being to purchase new articles of good quality, presupposes that the earlier one supplied, were not of good quality and that by itself do not establish the harassment on the said count, as contemplated in clause (b) of the Explanation. The trial Judge recorded that the father of the deceased was not able to give the articles of good quality and this was cause for the Appellants to taunt her and cause mental agony.

The said finding is not based on any material, as the prosecution has failed to establish the mental agony or harassment on account of demand of any valuable security or

property. What the deceased was asked, was to replace the articles, which were given to her, on being found of inferior quality. The evidence brought on record to establish the charge under Section 498-A of IPC, is not cogent and reliable, which would justify the conviction of the Appellants for causing harassment to deceased Kantabai.

The impugned judgment, since has failed to justify the conviction on the basis of the material lead before the learned Judge, deserve a reversal.

10. By setting aside the impugned judgment dated 28/01/1999, passed by Additional Sessions Judge, Nashik in Sessions Case No.231 of 1997, the Appeal is allowed.

Appellant Nos.1 and 3 are acquitted of the charges levelled against them.

The bail bond of Appellants stand discharged.

11. Before parting, I record my appreciation for Advocate Zishan Quazi, who has effectively represented the cause of Respondent No.2 before this Court. Legal Services Authority is directed to pay the legal remuneration due to Advocate Quazi within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)