



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 126 OF 2019

Santosh Asaram Rathod,
Age; 27 years, Occ; Service,
R/o; Ghonsi Tanda,
Tq. Ghansawangi,
District; Jalna.

...Appellant
(Orig. Accused No. 1)

VERSUS

The State of Maharashtra

...Respondents
(Orig. Complainant)

...
Advocate for the appellant : Mr. Sudarshan J. Salunke
APP for Respondent State : Mr. D.J. Patil
...

CORAM : ABHAY S. WAGHWASE, J.
Date : 02.05.2024.

JUDGMENT :

1. By consent of both the parties, appeal is taken up for final hearing and disposal at the admission stage itself.
2. The correctness, legality and maintainability of judgment and order of conviction passed by learned Additional Sessions Judge, Jalna, in Sessions Case No. 27 of 2013 dated

11.01.2019, recording guilt of husband for offence under Section 498-A of the Indian Penal Code [IPC], is challenged herein by way of instant appeal.

PROSECUTION STORY IN SHORT IS AS UNDER

3. Prosecution case in brief is as under :

Deceased Ravina daughter of the informant PW-2 Ashok, was married with present appellant Santosh six months prior to the incident. At the time of marriage an amount of Rs. 1.5 Lakhs was decided to be given by way of dowry and even an amount of Rs. 1 Lakh was duly paid. According to the prosecution for remaining amount of Rs.50,000/- husband and in-laws were ill-treating deceased Ravina. After one month of her co-habitation with accused, there was illegal demand of money for setting up a grocery shop and on account of non fulfillment of such demand, she was subjected to cruelty.

4. It has also the case of the prosecution that the husband was suspecting fidelity of wife Ravina and harassed her both physically and mentally and precisely getting fed up

of the same, Ravina immolated herself and resultantly suffered 89% burn. While under treatment her dying declaration was recorded.

5. However, she succumbed to the burns on 02.10.2017 and after last ritual father her set the law into motion.

6. The husband and in-laws were charge sheeted and tried by the learned Additional Sessions Judge, Jalna, who appreciated the oral and documentary evidence and acquitted in-laws from all offences i.e. from Section 304-B, 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code (IPC) and under Section 3 & 4 of the Dowry Prohibition Act, however, learned trial Judge held the appellant husband Santosh alone guilty for the offence punishable under Section 498-A of the IPC. Hence instant the appeal at his instance.

SUBMISSIONS

On behalf of the appellant :

7. On behalf of appellant, learned Counsel pointed

out that apparently there is false implication. According to him, prosecution has miserably failed to establish its case and charges beyond the reasonable doubt. He further pointed out that necessary ingredients for attracting even offence under Section 498-A IPC are patently missing from the prosecution evidence. He pointed out that on the same set of evidence, in-laws/parents of appellant are already acquitted but surprisingly, on same evidence husband alone is held guilty. According to him, there is no proper reasoning by the trial Judge for doing so. He also pointed out that specific instances and nature of ill-treatment are not stated by any of the prosecution witnesses. According to him, there was no previous complaint of any nature and even no complaint was lodged on 26.09.2012 i.e. on the day of burns suffered by Ravina. Rather according to him, false and afterthought complaint is lodged after due deliberation later on. He pointed out that police machinery recorded dying declaration on 26th September, itself. But on same day also FIR is not lodged for the best reasons known to the investigating machinery.

8. He pointed out that the grand father of Ravina

claimed to have received oral D.D. Informant father had not received any oral D.D. Moreover, grand-father did not lodge complaint on receipt of oral D.D. and therefore, it is his submission that there is apparently false implication out of annoyance of loosing victim who immolated herself in anger.

9. Lastly, he submitted that inspite of such weak evidence on record, learned trial Judge recorded guilt. According to him, there is improper appreciation of both evidence as well as law and hence he seeks indulgence at the hands of this Court for setting aside the impugned judgment.

On behalf of the State :

10. Learned APP strongly opposed the appeal by pointing out that barely six months after the marriage, there was ill-treatment to the deceased, on account of demand of dowry. He pointed out that on account of non fulfillment of demand, husband and in-laws ill-treated and harassed the victim. She promptly reported it to her parents. The family members like father, grand-father are examined by the prosecution. He further pointed out that the husband even

suspected her character and thereby made her life miserable. According to him, precisely for such maltreatment and harassment, deceased poured kerosene on her person and set her on fire. Consequently, the husband is solely responsible and therefore, he is correctly held guilty. According to him, the learned trial Court has correctly appreciated the evidence and rightly convicted the appellant/husband. According to him, there is no merit in the appeal and so he prays for dismissal of the appeal.

GIST OF THE PROSECUTION EVIDENCE IN TRIAL COURT

11. Prosecution has examined following eight witnesses to establish its case:

- PW-1** Vasant, who acted as pancha to spot panchanama, has not supported the prosecution case.
- PW-2** The informant/father, Ashok has examined at Exh. 63. The sum and substance of his evidence is that his daughter Ravina was married with present appellant Santosh. He deposed that the dowry amount of Rs. 1.5 lakhs was fixed. Out of which

1 lakh was paid. After one month husband and in-laws put up demand of remaining dowry for setting up a grocery shop. His daughter informed him about the demand as well as ill-treatment by in-laws. According to him, on 26.09.2012, around 5.30 p.m. a message was received about the burn by Ravina. They all went to the hospital. Ravina died on 02.10.2012 and after her funeral, Ashok lodged report to the police station.

PW-3 Uttam, the neighbour, who did not support the prosecution case.

PW-4 Rangrao, is Police Head Constable, who recorded dying declaration Exh. 74.

PW-5 Deshmukh, he also recorded dying declaration on the information given by the father of the deceased Ashok.

PW-6 Dr. Raut, who has issued endorsement of fitness of patient to give statement.

PW-7 Babu, is the grand father, who deposed that after marriage the in-laws and husband ill-treated and harassed the deceased Ravina on account of demand

of dowry. He further learnt from the father of Ravina that Ravina herself set herself on fire. Thereafter, they all visited the hospital. According to him, in the hospital Ravina told him about the ill-treatment meted to her at the hands of in-laws and husband and therefore, she herself set her on fire.

PW-8 Vitthal, is the Investigating Officer, who narrated that all efforts have been taken by him during the investigation till filing of the charge-sheet.

12. On appreciation of evidence of above eight witnesses, learned trial Court acquitted in-laws from all charges but recorded guilt and conviction of appellant husband alone that too for charge of 498-A IPC only.

13. Before re-appreciating and re-analyzing the evidence, it is desirable to give a brief account of the settled legal requirements and position while appreciating evidence for charge and offence under section 498-A of the IPC.

14. Law is fairly settled that, for attracting the charge under section 498A of IPC, prosecution is duty bound to prove following essential

ingredients :-

- “(1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in -*
 - (i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand ;*
 - (iii) the woman was subjected to such cruelty by her husband or any relation of her husband.”*

JUDICIAL PRECEDENT :

15. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held as under:

“The basic purport of the statutory provision 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 in 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. [emphasis added]

Similar views are echoed in ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, wherein it is held as under:

“Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582, the Hon’ble Apex Court has observed that, “*Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an*

unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC”.

In ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604, the Hon’ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of ***K. Subba Rao v. The State of Telangana*** (2018) 14 SCC 452, following observations are made:

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

ANALYSIS

16. PW-1 is the panch to the spot panchanama.

17. On studying evidence of father PW-2, who is examined at Exh. 63, the sum and substance is that six months prior to the incidence his daughter was married to appellant. According to him, out of 1.5 lakhs dowry as agreed, 1 lakh was paid and for remaining Rs. 50 thousand the

husband beat her. His daughter informed him about it and he gave understanding. Then he speaks of receiving message of burns to his daughter on 26.09.2012, that while under going treatment she expired on 02.10.2012. After P.M., funeral, he lodged report Exh. 64.

18. On visiting his cross he seems to have answered that, matrimonial house of his other daughter Meera is 200 feet away from the house of Ravina. While fixing marriage, people of Ghonsi Tanda were present but he is unable to give their names. According to him, his daughter talked to him on phone. He admitted that since 26.09.2012 up to 02.10.2012, he was in the hospital but till her death he did not lodge complaint of ill-treatment. He stated that he informed in the report about accused/husband raising suspicion on Ravina, but he is unable to assign any reason as to why it is not written in the report.

19. PW-3, neighbour did not support prosecution.

20. PW-4 is the constable who recorded dying

declaration Exh. 74. According to him, she narrated that husband suspected her, beat her. That, on 26.09.2012, when she was with her in-laws, husband beat her and therefore, due to anger she poured kerosene on herself and set her on fire.

In cross he admitted that he is unable to state whether victim appended thumb impression of right hand or left hand. He admitted that as per Exh. 75, Kadim Jalna Police Station received statement on 27.09.2012.

21. PW-5 is the PSO, who entertained report of PW-2 father on 02.10.2012 and registered crime bearing No. 104 of 2012 for offences punishable under section 304-B, 498-A, 323, 504, 506, 34 of IPC and 3 and 4 of the Dowry Prohibition Act.

22. PW-6 is the Medical Officer, who gave endorsement of fitness of patient to give statement after PW-4 approached.

23. PW-7, grant-father also stated that 1.5 lakhs was fixed as dowry. 1 lakhs was paid and 50,000/- was remained.

Husband and in-laws demanded remaining dowry and ill-treated her. After getting news he visited hospital, where she narrated to him that due to ill-treatment of family members she set herself on fire.

24. PW-8 is the I.O, who carried the investigation and filed the charge-sheet.

25. On analyzing the above evidence it is emerging that the exact date of marriage has not been stated by the father or grant-father. Informant father speaks about marriage taking place prior to the incident dated 26.09,2012. Neither he, nor his father i.e. PW-7 are giving exact nature of ill-treatment or instances of ill-treatment. They merely speak of harassment or ill-treatment for remaining dowry. There is no independent witness about fixed dowry or part payment. According informant, husband demanded money for setting grocery shop but grand-father does not speak about it. Cross of informant shows the version about suspicion of character by husband is not reported in FIR. Resultantly version to that extent in witness box is improvised. Evidence of grant-father

is only about demand and ill-treatment. His evidence is silent about suspicion on character. Even otherwise, such accusation is general in nature as both of them are not clarifying on whom husband suspected his wife had relations with. Therefore, there is weak and fragile evidence about 498-A of the IPC.

26. Though police machinery took steps to record dying declaration on 26.09.2012, there is no lodgment of FIR on said D.D. Deceased died on 02.10.2012. After P.M. and ritual, father seems to have lodged report i.e. regarding occurrence which took place on 26.10.2012. Consequently FIR apparently delayed.

27. On going through the contents of D.D., Exh. 74, it is emerging that deceased narrated that on 26.09.2012, when all family members were in the house, husband beat her by raising suspicion, but on what suspicion was raised is unclear and obscured. She does not specifically state regarding what or with whom she was tried to be related to hold that there was suspicion of her character. She merely speaks of pouring kerosene and igniting herself in the rage of anger. Solitary

instance of beating that day seems to have triaged the incident. Even otherwise, husband is acquitted from charge under Section 304 or 306 of IPC. There is no material suggesting consistent or incessant cruelty to gravitate to attract Section 498-A of IPC.

SUMMATION

28. On critical analysis of above evidence, there is little weak or no evidence on the point of ill-treatment or cruelty. FIR is apparently delayed one. On same set of evidence, parents-in-law are already acquitted. Nature and instances of ill-treatment are not coming on record. Hence in the considered opinion of this Court, with such quality of evidence and in the light of above discussion, charge under Section 498-A of the IPC cannot be recorded and upheld.

29. In the considered opinion of this Court, there is apparently improper appreciation of evidence as well as law by the trial Court. Hence the indulgence at the hands of this Court becomes necessary. Hence the following order

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant-Santosh Asaram Rathod in Sessions Case No. 27 of 2013 by the learned Additional Sessions Judge, Jalna on 11.01.2019 for the offence punishable under Sections 498A of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498A of Indian Penal Code.
- IV) Bail bonds furnished by the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period is over.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

[ABHAY S. WAGHWASE]
JUDGE