



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

CRIMINAL APPEAL NO. 2 OF 2005

1. Suresh s/o Pralhad Shingare
Age: 27 yrs., Occu.: Agri.,
2. Shantiram s/o Pralhad Shingare
Age: 24 yrs., Occu.: Agri.,
3. Pralhad s/o Govindrao Shingare
Age: 64 yrs., Occu.: Agri.,
4. Housabai w/o Pralhad Shingare
Age: 60 yrs., Occu.: Household.

All R/o.: Kandari (Kh.), Tq.Badnapur,
Dist.Jalna.

..Appellants

Versus

- . The State of Maharashtra

..Respondent

...

WITH

CRIMINAL APPEAL NO. 323 OF 2005

1. The State of Maharashtra
Through : The Public Prosecutor,
High Court Bench At
Aurangabad.

..Appellant

Versus

1. Suresh Pralhad Shingare
Age: 27 yrs., Occu.: Agri.,
R/o. Kandari (Kh.), Tq.Badnapur,
Dist.Jalna.

..Respondent
(Ori. Accused No.1)

...

Advocate for Appellants - Accused : Mr. Nilesh S. Ghanekar
APP for Respondent – State : Mr.S.K.Shirse

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15 OCTOBER, 2024

PRONOUNCED ON : 18 OCTOBER, 2024

JUDGMENT :-

1. Convicts for offence under Sections 498-A and 306 read with 34 of the Indian Penal Code (IPC), by way of instant appeal, are taking exception to the judgment and order dated 28-12-2004, passed by the learned Sessions Judge, Jalna in Sessions Case No.144 of 2004.

PROSECUTION CASE IN BRIEF

2. On information passed by PW1 Trimbakrao, crime was registered, as he reported that his daughter Meena was married to appellant no.1 Suresh on 17-04-2000. He paid dowry of Rs.30,000/- and had borne marriage expenses. After marriage, Meena went to cohabit with her husband and in-laws. He reported that, initially for a period of six months, his daughter Meena was treated well but thereafter, there was ill-treatment at the hands of husband and in-laws. There was demand of Rs.1,25,000/-for arranging service for husband. She reported it when she came to maternal house. She had come to maternal home for delivery, but none of the accused

including husband came to either see her or the new born and rather sent a message that they would not come to see them unless Rs.1,25,000/- is paid. Informant claims to have arranged Rs.56,000/- and Rs.30,000/- on two occasions. However, inspite of receiving the said amount, there was ill-treatment. Meena reported it when she came for Nagpanchami festival. Barely after 8 to 15 days after Nagpanchami festival, news of Meena consuming poison was received. She died. After necessary rituals, informant set law into motion, on the strength of which, crime was registered and finally investigated by PW10.

After gathering sufficient evidence, accused persons came to be tried by learned Sessions Judge, Jalna, who appreciated the oral and documentary evidence and held charges for offence under Sections 498-A and 306 read with 34 of the IPC as proved and convicted them accordingly.

Precisely above judgment and order of conviction is now subject matter of appeal before this Court.

SUBMISSIONS

On behalf of appellants :

3. Learned Counsel for appellants would submit that there is false implication. He pointed out that there are general and vague

allegations. That witnesses are merely deposing about ill-treatment, but none of them has clarified or specified what was the nature of ill-treatment and at the hands of which of the accused amongst the five accused. He submitted that only on two occasions, deceased had been to the house of informant. He pointed out that there are allegation of money for service, but none of witnesses could clarify for which job said amount was required. He pointed out that another piece of evidence, which prosecution is relying, is at exh.35. However, he pointed out that text of inland itself shows that there was no demand, rather husband was insisting his wife to return back to cohabit with him and this all can be gathered from exh.35 and therefore, he submitted that said inland letter does not come to the aid of the prosecution.

4. Pointing out to the testimonies of PW2, PW3, PW4, he submitted that they are not consistent. That their testimonies are full of material omissions and contradictions. That no independent witness has been examined and therefore, according to him with such quality of evidence when necessary ingredients for attracting offence under Section 498-A and 306 of the IPC not being made, learned trial Court ought not to have accepted prosecution version.

According to him, there is improper appreciation of evidence and settled law has also not been appreciated by learned trial Judge and therefore, he questions maintainability of such judgment and prays to allow the appeal by setting aside the impugned judgment.

On behalf of State :

5. Per contra, refuting above submissions and canvassing in favour of impugned judgment, learned APP pointed out that informant father, brothers and sister of deceased are all in unison deposing about proper treatment for six months and thereafter, on account of demand of Rs.1,25,000/- for job of husband, there was mal-treatment. That deceased also reported about such demand. That part payments were paid through PW9 Rangnath. That only for fulfillment of demand, there was ill-treatment and cruelty. That testimonies of prosecution witnesses have virtually remained intact on the aspect of demand and ill-treatment. That only due to ill-treatment suicide is committed. Therefore, according to learned APP, as all necessary ingredients for attracting charges were available, learned trial Judge has committed no error whatsoever in returning guilt and hence, he prays to not to disturb well reasoned judgment.

STATUS AND ROLE OF PROSECUTION WITNESSES

6. In support of its case, prosecution has examined as many as ten witnesses. Their status and role is as under :

PW1 Trimbakrao Bajirao Ghavate is informant and father of deceased.

PW2 Krishna s/o Trimbakrao **Ghavate**, is brother of deceased.

PW3 Sunita w/o Vasant Madan is sister of deceased.

PW4 Shriram s/o Trimbakrao Ghavate, is another brother of deceased.

PW5 Dr.Sudhakar s/o Bhagwat Mhaske is Autopsy Surgeon, who conducted autopsy and gave opinion that probable cause of death might be due to poisoning.

PW6 Kalyan s/o Vithalrao Ukarde **PW7** Nivruti s/o Punjaram Raut and **PW8** Sanjay Uttamrao Shinde are Panchas

PW9 Rangnath Yeshwant Dhaiwat is father-in-law of accused nos.5, who acted as middleman for making payment to the accused.

PW10 Kundlike Kondaji Bhadag is the Investigating Officer.

SUM AND SUBSTANCE OF EVIDENCE

7. **PW1** Trimbakrao, father of deceased, in his evidence at exh.33 testified about marriage of his daughter taking place on 17-04-2000,

everything was smooth for six months. Thereafter, there was ill-treatment in backdrop of demand of Rs.1,25,000/-. According to him, whenever his daughter came to his house, she reported about ill-treatment and demand. Then, he deposed about none of the accused coming to see the baby delivered by his daughter, rather a message was sent back that, until there demand is met, they would not come. This witness initially sent Rs.56,000/- to accused and after 15 days, he received inland letter from accused issuing threats for demand. Then he again send Rs.30,000/- through Rangnath Patil (father in law of accused no.5) and one Sampat Patil. Thereafter, there was proper treatment for 3-4 months. However, when she came for festival of Nagpanchami, his daughter again reported ill-treatment and demand. She was given understanding and sent back to the accused. After 8-15 days, news of her death was received.

8. **PW2** Krishna is brother of deceased. He also deposed that his sister was treated well for a period of 5-6 months. Thereafter, there was ill-treatment on account of demand of Rs.1,25,000/- for service of accused no.1. Whenever she came for festivals, his sister reported. She came for delivery at maternal house, but none of the accused came to see either her or the child. Even according to him, after one

and a half month, Rangnath, father-in-law of accused nos.5 came to take his sister and at that time, he conveyed demand of Rs.1,25,000/- and stated that unless demand is met, Meena would not be taken back. When Rs.56,000/- were paid, he took his sister back to accused. Again after one and a half month, Rangnath came and put up demand of remaining amount. Again Rs.30,000/- were collected and in presence of Sampat paid to Rangnath and both Rangnath and Sampat went. But still ill-treatment continued. During Nagpanchami festival, his sister reported ill-treatment and demand and after one and half month, news of her death was received.

9. **PW3** Sunita is sister of deceased, who also gave evidence that there was proper treatment for six months and thereafter, for insufficient dowry, demand of Rs.1,25,000/- was put up. After delivery of her sister at maternal home, none of the accused came. Her brother Shriram went to accused, but accused said that unless Rs.1,25,000/- is paid, they will not receive his sister. He also deposed about Rs.56,000/- paid through Rangnath. That proper treatment was given for two months, but again demand was raised. His cousin uncle and brother took Rs.30,000/- alongwith his sister to the accused. Thereafter, he also deposed about news of her death

being received.

10. **PW4** Shriram is another brother of deceased, who also reiterated as above.

ANALYSIS

11. Here out of ten witnesses, PW1 Trimbakrao is informant father, PW2 Krishna and PW4 Shriram are brothers whereas PW3 Sunita is sister of deceased. PW9 Rangnath has acted as mediator. Rest of the witnesses are panchas, Police officials and autopsy surgeon.

First Charge - Section 498-A :

12. There is no dispute that marriage of appellant no.1 was performed with deceased on 17-04-2000 and she died on 06-09-2003. Appellant no.1 and deceased had one year old child. Therefore, total cohabitation is of almost three years. Prosecution alleges that there was ill-treatment in the backdrop of demand of Rs.1,25,000/- for service of accused. Twice amount was paid, but for balance Rs.25,000/- there was cruelty and ill-treatment is what is the case of prosecution is and due to it Meena allegedly consumed poison and ended up her life.

13. On meticulous re-appreciation of testimonies of PW1 father, PW2 and PW4 brothers and PW3 sister of deceased, it is emerging that they are consistent about proper treatment given for a period of 5-6 months after marriage. Thereafter, they all deposed about demand of Rs.1,25,000/- for service of accused husband and then they alleged ill-treatment. However, it is pertinent to note that informant father merely used the word ill-treatment. Similarly even brothers and sister alleged ill-treatment but it is noticed that neither of them has clarified or elaborated about mode of ill-treatment, nature of ill-treatment and by which of the accused persons. When the alleged ill-treatment was inflicted is also not specified by them. None of them also deposed about what was the nature of job which appellant husband intended to procure for which there was said to be demand of Rs.1,25,000/-. It is also noticed that informant father has admitted that marriage was performed happily. None of them uttered that prior to marriage there was any talk about occupation of husband or there was any assurance to arrange for his job, resulting into demand of Rs.1,25,000/-. First time, after six month's of marriage there are allegations of demand of Rs.1,25,000/-.

14. Unlike PW1 informant, PW3 Sunita, who is married and

resident of Jalna, deposed that there was ill-treatment for bringing insufficient dowry. PW1 Informant and PW2 another brother of deceased have not uttered a word about dowry decided or settled prior to marriage. Consequently, only general and omnibus allegations are made by deposing "they ill-treated". None has given details of instances of ill-treatment during cohabitation of three years. As pointed out informant father merely speaks of hearing from his daughter that there was demand of Rs.1,25,000/- but in initial part of his testimony, he has not uttered about any cruelty being meted out. Though PW3 sister spoke about ill-treatment in the backdrop of demand of money, it is shown to be material omission which has cropped up in paragraph 2 of the cross-examination. Informant father in paragraph 7 of the cross-examination has categorically admitted that at the time of marriage, there were no quarrels and that marriage was performed peacefully.

15. It has further come in the evidence of father and siblings of deceased that inspite of delivery of child at her parents house, none of the accused came to see her or the child. Prosecution claims that accused persons conveyed that unless said demand of amount is met, they will not come. In support of such assertion PW9 was examined.

This witness Rangnath allegedly visited house of informant to bring deceased i.e. pre as well as post delivery and through him they all claim demand of money to be raised. They also alleged that once Rs.56,000/- and once Rs.30,000/- were handed over to PW9 Rangnath to be paid to accused and it is this witness, who was star witness for prosecution. But inspite of he having examined at exh.56, he has not supported prosecution on any count and was therefore, required to be subjected to cross by prosecution itself, but it turned out to be of no use for prosecution.

Consequently, star witness for prosecution PW9 Rangnath having not supported prosecution, the very linchpin, who held both the parties together, did not support prosecution. Prosecution version suffered severe blow because he resiled and retracted from his earlier version. That apart, Sampat Patil, who allegedly accompanied PW9 Rangnath to handover amount of Rs.30,000/- to accused, is also not examined by the prosecution.

Consequently, only family members' testimony is available and as stated above their evidence is only about deceased being ill-treated, as none has clarified or elaborated its nature or form and when instances took place.

16. In the light of above, mere testimony alleging ill-treatment is not sufficient to attract charge of Section 498-A of the IPC. As to what amounts to cruelty is fairly settled in following rulings by the Hon'ble Apex Court :

(i) ***State of Andhra Pradesh v. M.Madhusudhan Rao, (2008) 15 SCC 582.***

"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."

(ii) ***Girdhar Shankar Tawade v. State of Maharashtra (2002) 5 SCC 177.***

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. 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."

17. The second piece of evidence which prosecution seems to be catching hold of is letter written by accused husband when deceased was put up with her parents where she had been for delivery. The said letter exh.34, for the sake of comprehension and analysis in translated version is as under :

“Exhibit No. 34

Many Many blessings to Meena. Reason for writing a letter is that, you left (me) on your father's trust. But what was done was well done. But now I am giving you as an advice, without ordering or warning you to return by the 10th of March last. Because you never thought of me. And if you had that thing called honor, you would come here and die, but you would not stay there. I think so from what happened in the past. And your parents have an attitude. They have nothing to do with this. Because they can bear all this. If you come till last March 15th, if you don't come, your relationship with me will be broken. And afterwards look at everything else. This is the only advice to your father. If they don't send you by March 15th, please don't wait. And don't come. Don't even think about me. Now we have completed three years of marriage. Now giving only last 15 days. Is it the end of our relationship? You can lie this too. And if you have the strength at last, put it on, do anything I'm ready to answer.

After 15th do not come. Because I can't bear it. I can do anything to

you if I find you there.

Signatures of Seizure Panchas:

- 1.....sd/-
2. Sanjay Shinde

Before me

Sd/-

I.O. PSI

Police Station, Badnapur, Dist. Jalna.”

(As translated by Sr. Translator, High Court, Aurangabad)

18. In the considered opinion of this Court, bare reading of the letter allegedly authored by husband, would show that letter itself has commenced by extending blessings to deceased. He seems to have conveyed message asking her to come back to reside with him within stipulated time i.e. by 15th March. However, when letter was written by husband and when it was received by deceased, is not clear. There is postal stamp of Badnapur Post Office on the letter indicating date of despatch as 05-03-2003. Be it so, prosecution claims that there are clear threats by husband. But on repeated evaluation of the text, it does not seem to be so. He has conveyed that if she is not sent back by 15th March by her parents, do not expect him to come or wait for him and then do not come at all and even stop thinking about him. He has posed a question also as to whether it is the end of their relationship and even challenged her and that he is ready to answer back.

Above is the communication between married couple. In said letter, there is no material suggesting that vide exh.34 again demand for amount was raised as is tried to be submitted by learned APP. For above reasons, exh.34 has nothing incriminating nor can be said to be carrying any foundation for prosecution version.

19. In the light of above discussion, in the considered opinion of this Court, cruelty as contemplated under law is not firmly, cogently proved beyond reasonable doubt so as to attract offence under Section 498-A of the IPC.

Second Charge - Section 306 of the IPC :

20. Second charge is of abetment to commit suicide. Learned trial Judge has held appellant guilty for offence of 306 of the IPC.

Before analyzing the evidence on this charge, it would be fruitful to first give a brief account of settled judicial precedent as to when said charge can be said to brought home.

Before attracting and applying charge under Section 306 of the IPC, it is bounden and statutory duty of prosecution to establish that there was abetment, inducement, instigation to commit suicide. Coupled with *mens rea*, positive role must be shown to have been

played by accused.

Law to the above extent is time and again dealt and discussed in numerous judgments, including recent judgment of ***Kumar @ Shiva Kumar v. State of Karnataka***, 2024 SCC OnLine SC 216, wherein, from para 60 onwards, the Hon'ble Apex Court has discussed the legal aspect of abetment to suicide, as to what amounts to abetment as dealt under Section 107 of IPC and also, after discussing previous legal pronouncements in ***M. Mohan v. State*** (2011) 3 SCC 626; ***Ramesh Kumar v. State of Chhattisgarh*** (2001) 9 SCC 618, ***Chitresh Kumar Chopra v. State*** (2009) 16 SCC 605; ***Amalendu Pal alias Jhantu v. State of West Bengal*** (2010) 1 SCC 707; ***Rajesh v. State of Haryana*** (2020) 15 SCC 359 and ***State of West Bengal v. Orilal Jaiswal*** (1994) 1 SCC 73, culled out a principle that, in order to prove guilt of accused for abetment to commit suicide, prosecution has to prove :

- (i) *the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and*
- (ii) *that the accused had the intention to provoke, urge or*

encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

Referring to the case of ***Amalendu Pal*** (supra), it has been observed in para 69 that :

69. ... this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played

an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

21. Prosecution witnesses have received message that Meena consumed poison on 06-09-2003. FIR is lodged on next day. Autopsy surgeon, who conducted post mortem, gave opinion about probable cause of death “death of deceased “**might**” have been caused due to poison”. Said opinion explicitly shows that autopsy surgeon has not given any concrete opinion as he seems to be unsure. Autopsy surgeon has preserved viscera (CA report does not find place in the chargesheet). Therefore, question is what is the cause of death. If case is of consumption of poison, then there has to be supportive material. Spot panchanama drawn on next day is explicit that nothing is seized from the spot. With such state of affairs, question arises is on what basis PW5 Dr.Mhaske, autopsy surgeon, expressed possibility of death due to poison. Admittedly, burden is on prosecution to prove mode of death because there is charge of 306 of the IPC.

22. Prosecution witnesses i.e. PW1 father, PW2 brother, PW3 sister, PW4 brother of deceased claim that visit of Meena to their house was at the time of Nagpanchami, which as per Indian calendar falls in the month of **August**. There are no medical papers suggesting deceased Meena being taken to hospital. Deceased Meena was declared dead on 06-09-2003. What preceded the consumption is unclear. There is a gap of almost two weeks between visit of deceased to informant and meeting them and this is axiomatic from testimony of informant in paragraph 4. When she returned back to accused is not brought on record.

In view of the charge, it is expected of the prosecution to show that during her stay with accused, there was cruelty, harassment, which was so incessant and continuous in nature that she was left with no other alternative but to end up her life. It is expected of prosecution to demonstrate that accused persons abetted or induced the suicide. Their role has to be crystallized to make them answerable for suicide by Meena. Unless above legal requirements are available, mere unnatural death taking place in their house, would not be sufficient to bring presumption into play i.e. unless foundational facts are proved. What triggered the suicide has virtually remained a mystery. Unfortunately, death has taken place

but to attribute it to accused persons, charges have to be proved beyond reasonable doubt and that is the fundamental principle of criminal jurisprudence. Here it is not proved beyond reasonable doubt that only and only because of cruelty or ill-treatment by accused in the backdrop of their demand, Meena committed suicide. Therefore, with such quality of evidence on record, it is unsafe to hold charge of 306 to be proved and same also fails. Consequently, Criminal Appeal No.2 of 2005 deserves to be allowed.

23. State has preferred Criminal Appeal No.323 of 2005 i.e. getting dissatisfied by the quantum of sentence, but as this Court has reversed the conviction, said appeal becomes redundant. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.2 of 2005 is allowed.
- II) The conviction awarded to appellants in Sessions Case No.144 of 2004 by Sessions Judge, Jalna on 28-12-2004 for the offence punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code, stands quashed and set aside.
- III) The appellants stand acquitted of the offence punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code.

- IV) **The bail bonds of appellants stand cancelled.**
- V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- VII) Criminal Appeal No.323 of 2005 is dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE